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The Regular Council Meeting of the Mayor and Council of the City of Milton was held on February 20, 2008 at 6:00 PM, Mayor Joe Lockwood presiding.

INVOCATION

Greg Foster, Milton Fire Department, gave the invocation.

CALL TO ORDER

Mayor Lockwood called the meeting to order.

ROLL CALL

City Clerk Marchiafava called the roll.

Councilmembers Present: Councilmember Karen Thurman, Councilmember Julie Zahner Bailey, Councilmember Bill Lusk, Councilmember Burt Hewitt, Councilmember Tina D'Aversa, and Councilmember Alan Tart

PLEDGE OF ALLEGIANCE

Mayor Lockwood led the Pledge of Allegiance

APPROVAL OF MEETING AGENDA

1. Under New Business; Defer Agenda item No. 08-498 Approval of a Resolution Amending Resolution No. 08-01-10, a Resolution Appointing members to the City of Milton construction Board of Adjustment and appeals (District 4).
2. Under New Business; Add a Resolution in support of House Bill 975 Relating to Counties and Municipal corporations in General, so as to provide that it shall be unlawful for any County or Municipal Corporation to issue any backdated license, permit, or other similar authorization under certain circumstances; to provide for a criminal penalty; to provide for related matters; to State Legislative intent; to provide an effective date; to Repeal conflicting laws; and for other Purposes.
3. Under New Business; Add a Resolution in Support of House Bill 1015 relating to special districts divided into noncontiguous areas, so as to provide for additional requirements regarding certain excess funds; to provide an effective date; to repeal conflicting laws; and for other purposes.
4. Add a Staff Report on Disability Day at the Capitol.

Motion and Vote: Councilmember D'Aversa moved to approve the meeting agenda, as amended. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously.

PUBLIC COMMENT

Mayor Lockwood read the rules for public comment.

Ed Parsons, 2950 Serenade Court, Alpharetta Georgia

- As a Milton resident, he would like to express his opinion as a local business owner on how to move the City forward in a positive productive fashion.
- In order to move forward Council must consider citizen input as a valuable barometer of the Council's performance and contribution to the City.

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- Read in the newspaper about some of the challenges that the Mayor, Council, and staff have had to deal with, much he wrote off as growing pains of the City.
 - Started attending meetings around November of 2007.
 - Has not missed one Planning Commission or City Council Meeting in four months.
 - Used the time to understand the decision making process of the City Council.
 - He would like to thank Councilmember Zahner Bailey for her hard work and commitment to making Milton a great place to live and work.
 - She probably contributes more information to the City Council Meetings than any other member.
 - All of the information she provides is relevant, meaningful, and valuable to the decision making process.
 - Councilmember Zahner Bailey researches the issues.
 - She presents well thought out and fact based information.
 - Most importantly, her opinions are heavily supported by the large majority of the voters.
 - She is the first and only person in Milton to be elected to office by a land slide margin.
 - That must suggest that her positions on the important issues facing this City is consistent with what the majority of the people want.
 - The following is what citizens are asking for and City Councilmember Zahner Bailey along with the majority of the other City Council Members are seeing.
 - We do not want sewer extension.
 - We want our highway nine corridor being developed appropriately.
 - We want to maintain the rural character of the area.
 - We want Milton to be a special place with unique qualities and character.
 - As public officials elected by your constituents, we expect that all of your actions and words be consistent with the voters who elected you into office.
 - He has observed Councilmembers whose actions and words are not consistent with what we expect from our elected officials.
 - In the January 30th issue of the Milton Herald, on page five Councilmember Thurman was quoted as saying that the City Council Members and the other appointees should “Care enough about the city that they would not want to do something that is detrimental to the city.”
 - He agrees with Councilmember Thurman’s opinions.
 - All of the City Council should care enough about the City that they would not say something detrimental about the City or its elected officials in a public forum.
 - The question is that if you do, then what happens.
 - Councilmember Lusk was quoted as saying we need to nip this in the bud.
 - These comments were in reference to an incident where a person on the Planning Commission publicly criticized the City Councilmembers, so this is in context of what he is about to say.
 - On page five of the Milton Herald, Councilmember Thurman was quoted as saying it is an embarrassment to tell people you are on City Council.
 - He could not think of a greater slap in the face to the City than to have one of its highest elected officials publicly claim to be embarrassed to serve our great City.
 - There was another article on page four where Councilmember Thurman is quoted as saying that one of the City Councilmembers was grandstanding, repeating themselves for the record, taking e-mails on their blackberries and doing work outside during meetings. She said that this leads to inefficient meetings, which are detrimental to our overworked staff. She concludes with “it is a complete waste of time”.
 - He said a prominent citizen of Milton overheard Councilmember Thurman and Councilmember Lusk criticizing another City Councilmember in front of our State Representative Jan Jones.
 - This has to stop now.
 - He told Councilmember Thurman if she truly cared about the City of Milton and representing their wishes that he humbly requests she consider offering her resignation as City Councilmember representing District 1.
 - He said her action and words are not consistent with what he expects from an elected official.
 - He stated for the good of the City they need to practice what is preached and nip this in the bud.
 - He thanked the Mayor and Council for their time.

CONSENT AGENDA

(Agenda Item No. 08-503)

1. Re-Approval of the Financial Statements for the period ending December, 2007.

(Agenda Item No. 08-504)

2. Approval of the Financial Statements for the period ending January, 2008.

(Agenda Item No. 08-505)

3. Approval of the December 10, 2007 Work Session Meeting Minutes.

(Agenda Item No. 08-506)

4. Approval of the December 13, 2007 Regular Meeting Minutes.

(Agenda Item No. 08-507)

5. Approval of the January 8, 2008 Special Called Meeting Minutes.

(Agenda Item No. 08-508)

6. Approval of the January 10, 2008 Regular Meeting Minutes.

(Agenda Item No. 08-509)

7. Approval of the January 17, 2008 Special Called Meeting Minutes.

(Agenda Item No. 08-510)

8. Approval of the January 17, 2008 Special Called Work Session Minutes.

Motion and Vote: Councilmember Tart moved to separate items 1 and 2 under the Consent Agenda and defer items 3, 4, 5, 6, 7, and 8 until the March 3, 2008 meeting. Councilmember Zahner Bailey seconded the motion. The motion passed unanimously.

Motion and Vote: Councilmember Thurman moved to approve the Financial Statements for the period ending December, 2007. Councilmember D'Aversa seconded the motion. The motion passed 5-0-2, Councilmember Tart and Councilmember Hewitt requested recusal due to not being members of the Council in December 2007.

Motion and Vote: Councilmember Tart moved to approve the Financial Statements for the period ending January, 2008. Councilmember Hewitt seconded the motion. The motion passed unanimously.

PUBLIC HEARING

ALCOHOL BEVERAGE LICENSE APPLICATION

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

Approval of Alcoholic Beverage License Application for Tribla, Inc. d/b/a I Love New York Pizza at 980 Birmingham Road, Suite 200, Milton, GA 30004. Applicant is Nereyda Blandon for Consumption on the Premises – Wine and Malt Beverage.

Interim City Manager Chris Lagerbloom

- All of the requirements as it relates to the Alcohol Beverage Ordinance as far as advertisement and application for this permit have been met.
- On February the 15th and February 19th there was occasion to investigate this restaurant, which led to two charges being made on February 20, 2008 as it relates to brown bagging at this restaurant.
- The charge has been made and will be heard in municipal court on March 24, 2008 at 1:30 p.m.
- He met with the owner of the establishment and the applicant requested to move forward at this meeting and indicated they would be present.
- Their temporary permit expires on March 1, 2008.

Mayor Lockwood asked Finance Manager Stacey Inglis to present the item.

Finance Manager Stacey Inglis stated Consumption on the Premises for Tribla, Inc. d/b/a I Love New York Pizza located at 980 Birmingham Road, Suite 100 of Milton, GA 30004 has met all of the advertising requirements and posting requirements for the alcohol license. Based on the requirements being met, staff recommends approval of the application.

Mayor Lockwood asked for options and the opinion of City Attorney Ken Jarrard.

City Attorney Ken Jarrard

- The alcohol code provides you with multiple different options.
- The Interim City Manager spoke with the applicant today and they decided to go forward, which is their right.
- The application is complete.
- The related charges have not been adjudicated.
- The most conservative option might be for Council to go ahead and approve, but in tandem with the approval, recognize the fact that you have been made aware of a situation and you are not condoning by your approval, the allegations or charges made and you are not suggesting by your approval that the pending charges are waved. If in fact there is a determination by the court or whatever body hears the allegations and they are found to have violated the code, then they would be put back in the process and a license that was granted may be taken away.

Councilmember D'Aversa asked if there were options to not approve the license contingent on pending citations being heard.

City Attorney Jarrard

- Of course, Council has the right to deny the license, but there are concerns.
- The application was completed.
- The concern with deferring this until the next meeting is the temporary license will expire.
- If it expires and you have not granted them their license, the alcohol will have to come out of the building or whatever needs to take place to make sure there are no sales.
- The business will be impacted while we wait for the charges to be heard in court.

Councilmember D'Aversa then asked what the options would be if the applicant was found to be guilty of the charges.

City Attorney Jarrard

- The Code would be triggered and the applicant would have to go before the Alcohol Review Board, which is this Council.
- Council would have the opportunity to pull the license based on infraction or violation of the Alcohol Code.

Councilmember Thurman asked if they could defer the item until the next meeting based on the fact the applicant did not come to this meeting.

City Attorney Jarrard

- The Alcohol Code does not require them to come to the meeting.
- There is a presumption that once you set an objective standard for alcohol licenses and the standard is met then the license is issued.
- That is why we have background checks for prior incidents of alcohol related defenses so you can make sure you are comfortable this is someone you want to issue a license too.
- The converse of that is that if they violate that Code, then you have a right to pull the license.
- The license is a trust between the holder of the license and the Council, and if they violate that trust then you can pull it.
- The point being is that right now the charges are only allegations.

Councilmember D'Aversa asked if Council could defer until the next meeting and extend the temporary permit.

City Attorney Jarrard stated the temporary license could be for no more than sixty days.

Councilmember D'Aversa stated that it would be a challenge to issue a license for any business person that has pending allegations against them.

Mayor Lockwood

- Because the charges are pending they should be presumed innocent until proven guilty.
- Suggested in the spirit of not only being conservative for the City, but since the applicant has met all of the requirements and they have not gone to court on the pending charges that we move to approve this application.
- Once they go to court then we go through the Code and handle things.
- His reason was to be conservative and legally do what is best for the City.

City Attorney Jarrard

- If the Council was so inclined to make a motion to approve, he would request as part of the motion there be an acknowledgement that the Interim City Manager has brought before Council allegations that concern the Council, and in Council's active approval Council is not condoning the allegations and reserve all of Council's rights to re-review at the appropriate time.
- That way there is no mistake that Council's actions do not prejudice you later.

Councilmember Lusk stated that he wanted to be clear that they were allegations and not written citations.

Interim City Manager Lagerbloom stated that they were written citations.

Councilmember Zahner Bailey

- Asked to discuss the potential of the deferral knowing that we have a process.
- She is hesitant to approve a business that could prove to have been in violation of our laws.
- Asked if there was a balance between the most conservative option and the least conservative option that still upholds the law.

Interim City Manager Lagerbloom

- It is scheduled to be heard in the Milton Municipal Court on March 24, 2008.
- It has potential for final adjudication in this court.
- With the court system there are all sorts of different options, for instance, a jury trial.

City Attorney Jarrard

- A jury trial is a scenario where it could take a long time to be adjudicated.
- Since the temporary license expires March 1, 2008 there would be an interruption in their ability to sell.

Mayor Lockwood wanted clarification on exactly what a citation is considered to be.

City Attorney Jarrard

- It is an accusation that something has been done that violates our ordinances.
- It is more serious than a simple random allegation.

Councilmember Zahner Bailey asked who issued the citation.

Interim City Manager Lagerbloom answered that one of the Milton City Police Officer's issued the citation.

Councilmember Zahner Bailey asked if it was reasonable to assume that our officers were not in the habit of issuing written citations unless there has been an indication there is concern.

Interim City Manager Lagerbloom stated that on the face of the citation the officer swears that they believe that this crime has been committed.

Councilmember Zahner Bailey

- On that basis, she leans toward a potential deferral because it is the most conservative as it relates to the public safety health and welfare of our citizens.
- She asked if there was a way to have this go before the court sooner than the scheduled date of March 24th.

Interim City Manager Lagerbloom said that the applicant would have to agree to that.

(It was determined that the applicant had arrived sometime during the public hearing.)

Mayor Lockwood said he would like to hear from the applicant.

Nereyda Blandon

- Apologized for being late and said that when they started the business they always tried to do the right thing and follow the law.
- It was never her intention to break the rules.
- They started to do this for the customers.
- In a restaurant when the customers come in for dinner they always ask for the wine with their dinner.
- She is a good person and when she applied for this license there was a background check so it would show what kind of person she is.
- She would never do anything against the law.
- She knows she has to follow the rules and do everything the law allows.

Mayor Lockwood asked Ms. Blandon if she understood that she had received a citation.

Ms. Blandon said she understood.

- This was her first business and she was learning.
- It was not her intention to break the rules.
- She knew there were rules she had to follow since she applied for this license.
- When she applied for the license she never received a copy of the ordinance that she has to follow, so she did not know about all of these things.

- Everything she has to do she will do because she knows it is the law and she is not against it.

Interim City Manager Lagerbloom

- We actually had a staff member do better than provide an ordinance in this particular case.
- We actually spent some time one-on-one as to what was appropriate with this applicant.
- We have provided good and accurate information as it relates to this license.

Ms. Blandon

- She was not trying to blame anybody.
- Like she said before, that if she knew it before these things would not have happened.

Councilmember Tart

- Mindful that this is not a judicial body, but a legislative body.
- There has been some statements made that sounded as admission of guilt and he needed specific guidance from the City Attorney regarding deferral versus approval of this license.

City Attorney Jarrard

- His advice would always be based on liability minimization and when the license expires people lose money.
- It is one of those situations where you better have a legitimate reason to do that.
- As another option there are some things that other jurisdictions do.
- Sometimes the jurisdictions will award the license obviously subject to take the license away and as a condition to the awarded license, will require them to go through training.
- There are training organizations such as Operation 21 that will come in and train.
- They will do mock sting operations to make sure there is no selling of alcohol to minors. They will give seminars on the State of the Law in Georgia and the law in the jurisdiction.
- If Council was so inclined they could grant a license with the requirement that the individuals come back in thirty days and demonstrate compliance having entered into contract with Operation 21 or some similar entity to have received training.
- It is just another option if Council's concern is to give a license to someone who does not seem to recognize what the laws of this jurisdiction are.

Councilmember Tart

- We have to keep in mind that this is not a judicial body and we have not required others to do that.
- The only variable that would make Council want to do that is the assumption of the citations that have been issued that we cannot and should not rule on.

City Attorney Jarrard

- That is correct and he did not want Council making decisions on half facts.

Councilmember Thurman

- Asked what would happen if the applicant was found guilty.

City Attorney Jarrard

- The Interim City Manager would have an obligation to start the process in front of Council to possibly either suspend or terminate the license.
- The ordinance gives Council all of those rights.

Councilmember Thurman

- Asked if would be typical for Council to decide at that time if the applicant would go through the training in order to keep their license.

City Attorney Jarrard said yes

Interim City Manager Lagerbloom

- We have one opportunity to get it into court between now and March 1st and that would be February 25th.
- Both the accused and the judicial body would have to agree.

City Attorney Jarrard

- They could ask the applicant now if she would be willing to consider an expedited court proceeding in an effort to help Council make a better decision.

Councilmember Zahner Bailey

- Asked the applicant if she would be prepared to come and speak to the Municipal Court if their calendar allowed it on February 25th as opposed to waiting until March 24th

Ms. Blandon

- Said that she was willing to do everything she has to do to get this license and she was not against the law.

Councilmember Zahner Bailey

- Asked City Attorney Jarrard if in light of the applicant coming to court February 24th, could Council then consider a deferral and depending on the outcome of that, Council could hear this again on the 3rd of March and that would remove the concern about timing. She said Council would then have more data upon which to make a decision.

Interim City Manager Lagerbloom

- Stated that would still throw the applicant into two days without a license.

Councilmember Zahner Bailey

- Asked when the temporary license was first issued.

Ms. Blandon

- It was January 31st

Councilmember Zahner Bailey

- Given the magnitude of the decision that has to do with balancing the issuance of a license and whether or not the law has been infringed, two days is less significant than thirty.

Councilmember Thurman

- Said that if it was issued on January 31st and they have sixty days for the temporary, then they still have time.

Interim City Manager Lagerbloom

- This was the license they had worked through once before because of the withdrawal and the re-issuing.
- It is complicated.
- The very first one was issued December 7, 2007 with an expiration of January 31st of 2008.
- The second was issued on January 31st with an expiration of March 1st 2008.
- The net days are about seventy, but they are on two different processes, one was withdrawn. He asked City Attorney Jarrard if based on that information if the last issuance of thirty days could be modified for thirty three days.

City Attorney Jarrard said yes.

- He does not think they are doing any disservice to the Code by doing that.
- It seems there is a legitimate basis for a few more days.

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- Also the accused has the right to go to court and ask for a deferral or an attorney or move to a jury trial.
 - Without her counsel here she cannot bind herself to how she is going to defend herself.
 - He wants it to be on the record that she will retain all of her rights and privileges.

Councilmember Zahner Bailey

- Is it legitimate from a legal perspective to extend those thirty days to thirty three?
- That would bring us back into this chamber on March 3rd and, at that point, we would have had the February 25th court date.
- Subsequent to that on the 3rd, we would then know if the applicant had resolved it in the Municipal Court or not and we would also know if the applicant had made a decision to take it to a different court.
- At that time, we could make a decision on March 3rd without any infringements of those rights.

City Attorney Jarrard

- Said that would be helpful because then they would not have to remove any of their alcohol from the premises, which is a very expensive undertaking.

Public Hearing Closed

Mayor Lockwood closed the public hearing.

Motion and Vote: Councilmember Thurman moved to defer the approval of Alcoholic Beverage License Application for Tribla, Inc. d/b/a I Love New York Pizza at 980 Birmingham Road, Suite 200, Milton, GA 30004. Applicant is Nereyda Blandon for Consumption on the Premises – Wine and Malt Beverage until March 3, 2008, and extend the temporary license through March 3, 2008 with a request to expedite the hearing for the quickest available court date. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously.

NEW BUSINESS

(Agenda Item No. 08-498) *(Deferred by motion and vote)*

Approval of a Resolution Amending Resolution No. 08-01-10, a Resolution Appointing Members to the City of Milton Construction Board of Adjustment and Appeals (District 4).

City Clerk Marchiafava read Agenda Item No. 08-499.

Approval of a Resolution Amending Resolution No. 08-01-16, a Resolution Appointing Members to the City of Milton Bike & Pedestrian Path Committee.

Resolution No. 08-02-19

City Clerk Marchiafava stated that for the record they would be appointing someone to District 1, if the Council approves the nomination. We will also defer appointing someone for Districts 2 and 4 until the March 3rd, 2008 meeting.

Community Development Director Tom Wilson stated Councilmember Thurman is nominating Allan Tetley to the Bike and Pedestrian path Committee for District 1.

Councilmember Thurman stated that Allan Tetley lives in Providence Atlanta National. He is an avid runner and biker. He will bring a lot of enthusiasm to the committee. He is also a Canadian, so we will add a little diversity to the committee. She asked that the Council approve Allan Tetley for District 1.

Motion and Vote: Councilmember Zahner Bailey moved to approve a Resolution Amending Resolution No. 08-01-16, a Resolution Appointing Members to the City of Milton Bike and Pedestrian

Path Committee by appointing Allan Tetley to District 1. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously.

Oath of Office

Mayor Lockwood administered the Oath of Office to Allan Tetley.

City Clerk Marchiafava read Agenda Item No. 08-511.

**Approval of a Resolution to Authorize the Mayor and City Council to approve the submission of a grant application to the Department of Homeland Security for the Fire Prevention and Safety Grant through the Assistance to Firefighters Grant program sponsored by FEMA.
Resolution No. 08-02-20**

Lieutenant Marietta

- The Department of Homeland Security of the assistance of the Fire Fighters Grant Program has a Fire Prevention and Safety Grant which will provide the city with funds for purchasing community outreach items for the fire department to teach children in schools home safety, fire prevention and other life skills that will reduce the incidents of injury and fire within our community.
- He asked Council to grant their approval for the application for the funds to the Department of Homeland Security.

Councilmember Zahner Bailey

- Asked Lieutenant Marietta if there were any matching funds associated with the grant.

Lieutenant Marietta

- The match is five percent.
- The total grant request is for \$52,776.00.
- At the five percent rate the cities match would be \$2,778.00.

Councilmember Zahner Bailey

- He asked Lieutenant Marietta if we already have that amount allocated in our 2008 budget and have those funds available.

Lieutenant Marietta said that we do.

Mayor Lockwood asked if there were any public comments.

City Clerk Marchiafava stated there was no public comment.

Motion and Vote: Councilmember Zahner Bailey moved to approve a Resolution to Authorize the Mayor and City Council to approve the submission of a grant application to the Department of Homeland Security for the Fire Prevention and Safety Grant through the Assistance to Firefighters Grant program sponsored by FEMA. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously.

City Clerk Marchiafava read Agenda Item 08-512.

Approval for the City of Milton Mayor and Council to sign letters in support of funding the SAFER grant in President George W. Bush's FY2009 budget and directing staff to deliver the letter once signed to Representative Tom Price and Senators Johnny Isakson and Saxby Chambliss."

Councilmember Thurman

- The four letters were signed by the Mayor and the Council Members requesting that the money be kept in the budget for the year 2009 for the SAFER (Staffing for Adequate Fire and Emergency Response) Grant.
- This grant was created to provide funding directly to Fire Departments and Volunteer Fire Departments in order to help them increase the number of trained front line fire fighters available in communities.
- We had previously applied for one of these grants and we still have not heard anything in regards to them.
- They have awarded some of them for the fiscal year 2007.
- This is so it continues to be funded.
- If we do not get it this time, we can reapply for next year.
- She said she also had a name of a person who deals with the grant, so people from the community and individual Councilmembers can send a letter requesting the grant be awarded to their community.
- She would like to get the information out so we can start writing letters, and might have a better chance of obtaining this grant.

Interim City Manager Lagerbloom

- He said he was very optimistic that we are still in the running for that grant for this year.
- We have made a good application.
- He feels it is in the City's best interest to show the people that make the decisions on these grants that we are watching and know what is going on.
- With this particular grant, we have the opportunity to make a Milton safer.

Motion and Second: Councilmember Lusk moved to approve the City of Milton Mayor and Council to sign letters in support of funding the SAFER grant in President George W. Bush's FY2009 budget and directing staff to deliver the letter once signed to Representative Tom Price and Senators Johnny Isakson and Saxby Chambliss." Councilmember Hewitt seconded the motion.

Discussion on the Motion:

Councilmember Thurman stated there is also a letter to President George W. Bush included.

Councilmember Hewitt withdrew his motion to second so that the letter to President Bush would be included in the motion.

Motion and Vote: Councilmember Lusk moved to approve the City of Milton Mayor and Council to sign letter in support of funding the SAFER grant in President George W. Bush's FY2009 budget and directing staff to deliver the letters once signed to President George W. Bush, Representative Tom Price, Senator Johnny Isakson and Senator Saxby Chambliss. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously

City Clerk Marchiafava read Agenda Item No. 08-513.

Approve the City of Milton's participation in the LUCA program as a contract addition to be provided by CH2MHill, OMI in the amount of \$13,828.

GIS Manager Dawn Abercrombie

- Asked to come before Council to discuss the City of Milton's participation in the LUCA program.
- The Census Bureau's Local Update of Census Address Program or LUCA.
- LUCA is a US census program that allows local government to update the address list, a map that the Census Bureau will review to conduct the census in the upcoming 2010 survey.
- We estimated it would cost the City approximately \$14,000.00.
- In light of this being an unbudgeted item, she was asked to present other possible options that the City has.
- There are three different options for the City.
- Option 1 is go with the current scope of work presented which is approximately \$14,000.00.
- Option 2 is to reduce that scope of work for approximately \$7,500.00.
- Option 3 is simply not to participate at all.
- Some cities with limited resources choose not to participate.
- She received some of the data that LUCA has for The City of Milton.
- They estimate currently approximately eight thousand addresses.
- As a preliminary estimate based on a partial database and an estimate of the numbers of apartment complexes that Milton has, and single addresses for apartments, there are approximately 11,500 residential addresses in the City.
- That indicates that they are missing approximately 31 percent of the residential addresses within the City.
- That does not necessarily mean that they would be missing at the end of the program.
- She feels that their information is weak.

Councilmember D'Aversa

- Asked if GIS Manager Abercrombie could describe option 2.

GIS Manager Abercrombie

- Basically in the original scope they have out about ten databases or so that they were going to be receiving from Fulton County.
- That also included some of their data.
- Obviously, the more data we have the better the results will be.
- In option 2, we have excluded the ones that Fulton County would be providing and restricted to our partial databases some field work that we have done on apartment complexes and group quarters.

Councilmember D'Aversa

- Asked what other cities were participating through CH2MHill.

GIS Manager Abercrombie

- Johns Creek is participating and her counterpart of Alpharetta.
- Alpharetta is not run by CH2MHill.
- Fulton County participates but those are the only cities she has been in contact with.

Councilmember D'Aversa

- Asked if this was something they would do through every census.

GIS Manager Abercrombie said yes.

- She was asked previously what would happen if we postponed it and waited until the next fiscal year to participate.
- The next time that we would be asked to participate would be for the year 2017.

Councilmember Zahner Bailey

- Given the number of addresses and given that this is an activity that is going to apply to multiple cities, we were hoping that there was going to be a modified rate applied to all of the necessary addresses.
- As a mechanism to reduce the \$14,000.00, not so much to reduce the number of databases or the number of initiatives, but given there were other cities with a larger number of property owners and addresses. The question is the \$14,000.00 a real number or is there perhaps a more economical approach for us given we have fewer total residents than some of the other cities that will be participating.

GIS Manager Abercrombie

- Basically, because of the number of databases we are receiving, one is deliverable from Fulton County, so it is the cost of going through that data.
- It just so happens that the data was identical for each of the cities.
- Option 2 only restricts the databases to what we have in house.

Councilmember Zahner Bailey

- Improving our address database is critical because we get some funding from that once we identify the appropriate individuals.
- She thought that part of the \$14,000.00 was based on staff hours.
- Part of the question we had posed was that given we have less volume of ultimate addresses, that there perhaps could be fewer number of staff hours that would apply.
- She said she needed to ask our Interim City Manager if there had been any additional conversations from Tami Hanlin with CH2MHill subsequent to the review session, as to whether or not separate from reducing the number of databases, we looked more appropriately at the cost.

GIS Manager Abercrombie

- Stated that the databases would not change.

Councilmember Zahner Bailey

- Stated that she realized that, but she thought that perhaps the number of staff hours would be less.

Interim City Manager Lagerbloom

- Councilmember Zahner Bailey's inquiry was based on comments made at the review session.
- The responses that the staff has are that there are the three options.
- Upon Council's direction, he did see if this was potentially available through someone else and he has not been successful in communicating LUCA with anyone else.

Councilmember D'Aversa

- Just to clarify - the \$7,500.00 is independent of acquiring the databases from Fulton County?

GIS Manager Abercrombie

- That is correct we cannot receive the data from Fulton County.
- The \$7,500.00 is saying that we are excluding those databases.
- We have not received them. It would be the more economical approach.

Councilmember D'Aversa

- If we did not use the Fulton County databases, what would be the option of going back if we determined we needed to in the future?
- Let us say we go with the \$7,500.00 option and do our diligence there and then come back at a later date and use the Fulton County databases.
- We would obviously have copies of them if Johns Creek is going to use them or CH2MHill would have copies of them.

GIS Manager Abercrombie

- That is if we receive them.
- If the \$7,500.00 is agreed upon, we would not use those for the future.
- We are not purchasing them, they are handing them to us.
- They just have not given them to us yet.
- They are giving us seven databases and it takes time to go through them.
- If we do not receive that data, we will use what we have in house.
- The option would not be there to use that data in the future.
- There would be no point because once we submit to LUCA; we submit to LUCA.
- I would clarify that any data that we receive from LUCA cannot be used for any other purposes.

Councilmember D'Aversa

- What databases would we use if we do not use Fulton County databases?

GIS Manager Abercrombie

- Our parcel database.
- We are researching what LUCA refers to as group quarters and research on apartment complexes because that information is not in the parcel database.
- She said she thinks we have a good product for the \$7,500.00.

Councilmember Thurman

- Obviously, we want a clean database.
- She would like for GIS Manager Abercrombie to go into why it is so important.
- She asked staff if we have a place in the budget for this.

Interim City Manager Lagerbloom

- This is not something that was budgeted in our current budget.
- There are a couple of different places we could look for funding.

- Our budget at this time of year is capable of absorbing the Seventy five hundred dollars, if Council feels it is important enough.
- We would have to evaluate where we could best take the money from and we would ask that Council re-appropriate it in next year's budget.

Councilmember Thurman

- What are the long term financial benefits of this database?

GIS Manager Abercrombie

- We prepared a Fulton Census Report that was sent to Congress after the 1990 census and what it reports is that they use these numbers to base their funding on six major federal grant programs to each municipality or county.
- Based on the 1990 statistics overall the US population underestimated by 1.8 percent.
- That was the national underestimate.
- Georgia was underestimated at 1.4 percent under count.
- Fulton County had an under count of over 2 percent.
- That directly impacted us and it resulted in a loss of federal funding.
- For Georgia that was a loss of approximately Two million dollars.
- My contact at Fulton County said that for Fulton County specifically they estimated it resulted in approximately a Ten million dollar loss of Federal Grant funding in the last ten years.
- They average Three hundred dollars per missed person per year.

Councilmember Thurman

- Assumes it would also be used in the calculation of the allocation of sales tax revenue.
- If the other cities do this and we do not, it could put us at a real disadvantage.

GIS Manager Abercrombie

- Let me put an asterisk that the data that we use for Title 13 (this does not mean the data we produce) any data we receive from the census, we can not use.
- Any data we produce, we can go forward.
- They make us sign saying we will not use the Title 13 data that we receive.

Councilmember Lusk

- At the Work Session, he suggested we might contact the City of Alpharetta if there was any economy upscale in combining this study.

GIS Manager Abercrombie

- The many conversations she has had with their GIS Manager are that they are overwhelmed and they are spending too many hours on this effort.
- Her first initial thought in answer to that is no.
- They really have no vested interest in doing that for us.
- Fulton County would be the first that we would work with.
- She has a contact there and she has left him a message saying that Milton is under discussion and being considered not to participate and she asked him what we need to do, but he has not returned her calls.

Councilmember Lusk

- Until November 30, 2006, we were essentially known as the City of Alpharetta and unincorporated in Northwest Fulton County.
- How can we assure that this data base is within the discreet political boundaries of our City and included with the annexed area?

GIS Manager Abercrombie

- The GIS studies show her what parcels are within our boundaries.
- Another aspect of this program is that we do present and provide an updated boundary for our city boundary.
- They (LUCA) have provided her our boundaries saying “This is what we think it is”.
- It is all significantly with the annexed areas.
- The deadline to present this back to LUCA is the middle of April, so we have about six weeks to do this.
- After the decision is made we need some time to get this done.
- We have not received the data from Fulton County (the \$14,000 option).

PUBLIC COMMENT

Jon Carroll 2140 Country Ridge Road

- We have to do this census.
- All the grants and all of the funding are based on these numbers.
- The numbers we got on the Comprehensive Land Use Plan; the census is completely wrong.
- He said he would probably go with the \$7,500 because the Fulton County numbers have always been wrong anyway.

Motion and Vote: Councilmember D’Aversa moved to approve the City of Milton’s participation in the LUCA program as a contract addition to be provided by CH2MHill, OMI in the amount of Seventy Five Hundred (\$7,500.00) Dollars. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously.

City Clerk Marchiafava read Agenda Item No. 08-514.

Approval of a Resolution Regarding Fulton County’s Proposed Construction of Elevated Water Tank in the City of Milton.

Resolution No. 08-02-23

Councilmember Thurman requested to be recused on the basis of a potential financial conflict and left the room.

City Attorney Ken Jarrard

- There were two Resolutions that address the same issue.
- These are Resolutions that would be presented; binding City Council to the Fulton County Board of Commissioners in respect to a proposed one hundred and forty foot elevated water storage tank at Freemanville Road.
- The Resolutions look very similar except one has more detail.

- The one that has more detail goes into the background as to the basis for this water tank.
- It has the developers that are associated with the construction of the water tank and some of the assumptions by the developers as to potential alternatives for the water tank.
- Both versions of the Resolutions can accomplish a number of things.
- First, it acknowledges Fulton County's intent to build the tank.
- It also acknowledges that there has been reported to the City of Milton, evidence, including engineering evidence that alternatives exist that may provide the same thing in terms of goals.
- The Resolution further notes the construction of the tower and its height would therefore be incapable of screening and be effectively blended in to the adjoining property or the adjacent property.
- However, the City of Milton also acknowledges that adequate water pressure serves a compelling public interest and Council has no interest in doing anything to hinder that adequate water pressure.
- The City of Milton respectfully requests that Fulton County consider alternatives to this water tower.
- If Fulton County determines there are no such alternatives, then the City of Milton would respectfully request Fulton County to work with the Milton Design Review Board and come up with the best design that is aesthetically pleasing.

Mayor Lockwood

- Asked if there were any questions from Council for the City Attorney.

Councilmember Zahner Bailey

- Asked the City Attorney if he was legally satisfied that this demonstrates to Fulton County our intent to consider alternatives without giving up our concern for public safety in regards to water pressure etcetera.
- Also regardless of their decision that they would be put on notice, we would like it to be in the best design, if they do not decide at some future point to consider an alternative.

City Attorney Jarrard

- Either version of the Resolutions acknowledges Council's interest in trying to get the best product and the best design for whatever the goal needs to be for water pressure while alternatively stating that we do not want to impair public safety.
- It is very respectful and it communicates the message effectively.

Councilmember D'Aversa

- She would like to include the presentation that Wayne Super made at the Work Session as an attachment just to make sure the Commissioners see everything.

City Attorney Jarrard

- That could still be added.

Councilmember D'Aversa

- The longer version of the Resolutions with more detail she called version number two.
- It is the one that adds the information that Council had requested.
- Asked if City Attorney Jarrard had a recommendation as to which is the best.
- She felt the one with the most information is the best.

City Attorney Jarrard

- The nice thing about the lengthier Resolution is that it acts as a cross reference.
- Someone reading that Resolution will know exactly the factual underpinning that went into the decision.
- It provides a road map of how Council got to where they are.

Councilmember Lusk

- He read the memo he had prepared for Council.
- Some of the issues had been taken care of in the proposed Resolutions.
- Respects Mr. Super's presentation on the issue.
- The size of the proposed water tank is not an attraction that anyone would want in there back yard.
- Not sure all of the alternatives have been considered.
- He stated that he is a professional engineer registered with the State of Georgia.
- Although he has some experience in water treatment and supply, he does not consider himself as an expert in the pertinent field.
- He does know that he owes allegiance to the National Society of Professional Engineers Code of Ethics for Engineers.
- As such, he will hold paramount the health, safety and welfare of the public and all of those factors are at stake here.
- Additionally, Section 2.3 states that engineers shall issue public statements in a public and truthful manor.
- The Resolution version one "Whereas" number six and number seven and in Resolution version two "Whereas" number five and six, a reference is made to experts in the pertinent field.
- With all due respect to Weideman and Singleton, he feels first as an engineer that he cannot off handedly except the proposal dispelling the need for an elevated tank without first consideration of the Fulton County Public Works long standing design standards.
- It is neither in his purview nor the City of Milton Council's purview to challenge or support either design.
- He will jeopardize the safety, health and welfare of the public by endorsing the two Resolutions as written.
- It needs to be disclosed that Weideman and Singleton was the engineering firm that designed the pump station and the distribution system, so it points to the fact that they are working for one party here.
- As for having the Design Review Board review the design of the proposed elevated tank for aesthetic value, any extra expense would be born by some party and it would most likely be the City of Milton.
- Are we willing to put forth the funds to dress it up?
- What is involved is really an engineering decision that will preserve the health, safety and welfare of the public.
- Everyone realizes the negative aesthetic impact of such a tall tank.
- The issue should be resolved between Pritchard Mountain LLC and the Fulton County BPW.
- He would approve the Resolutions with a disclosure that the engineer of record is working for Pritchard Mountain LLC.

- He feels as a Council Member he can only promote that we endorse the fact that Pritchard Mountain LLC get together with the Fulton County BPW and work this out.
- He thinks that in this Resolution that we as a City would desire an option that is less obtrusive and less obnoxious.

PUBLIC COMMENT

Wayne Super, 15265 Laconia Lane

- Organized a petition of Milton citizens and land owners who oppose the water tower.
- He asked that the City of Milton firm a Resolution opposing Fulton County's construction of an elevated water tower.
- The proposal for a 150 foot elevated water tank is a result of an agreement between Fulton County and Pritchard Mountain LLC.
- The agreement was for Pritchard Mountain LLC to build a booster pump to provide water pressure and increase safety and deliver water to citizens in the area.
- The cost of the tank has ballooned to approximately \$2 million dollars.
- He provided Council with a copy of the standards set forth by the Environmental Protection Division (EPD).
- The Georgia Environmental Protection Division has approved this water pressure booster pump station to operate without an elevated water tank to supply pressure to the entire water pressure zone in Northwest Fulton County.
- They would not have approved this plan if it represented a probable water or fire safety hazard for the community, so it is in conformance with the guidelines.
- Harold Weideman expertly spoke to the Council regarding the facts of a few projects in the area; the water main project, the booster pump project and the elevated water tank project.
- Harold Weideman architected the design, so we are not trying to hide the fact that he did design this entire project for the water tank and for the booster pump and it is important that it be stated clearly that this is his design.
- His design and development report regarding these projects was submitted to the Department of Public Works as well as the Board of Commissioners for consideration.
- Harold Weideman's professional opinion was that the water tower is not necessary, given the facts of the case and the marginal redundancy gained for the dollars spent.
- Other communities such as Buckhead, exclusively and safely use water pumps to maintain water pressure.
- We are asking that Council affirmatively vote on a Resolution requesting that the County not build this water tower.
- If the county still votes in favor of erecting the water tower then we ask that Council state in the Resolution that we have a Design Committee Review Board consisting of citizens of The City of Milton representatives as well as County representatives and an impartial chair person who is a member of the American Arbitration Association selected by the design board to ensure impartiality.
- We take safety and security seriously but, these issues need to be balanced with the other needs of the community.
- If this were truly about safety and security, Fulton County would mandate that every home would have a fire hydrant in front of it and every home would have its own fire suppression system built into the ceiling.
- Also nobody was suggesting that an underground water storage system be built.

- He said it was like the ground level water tank that currently exists at the police department.
- That fact needs to be corrected in the Resolution.
- He asked Council to affirm the Resolution with the amended facts he presented.

Carol Alfaro, 16285 Laconia Lane

- If you look out my kitchen window the above ground storage tank for the water supply is right there.
- She has lived there for two years and was told by the Peachtree developer that they would have another tank in the future when they closed on their house.
- What they did not know when they closed on their house is that it would be a one hundred and fifty foot tank.
- From an engineering and scientific perspective she would have Council way heavily on whether there is a need for a tank.
- As a citizen and a taxpayer, she would hate to see a one hundred and fifty foot water tank constructed, if the money could be used more wisely.
- A booster pond makes more sense.
- She understand Councilmember Lusk concern for due diligence.
- She supports Council approving Resolution number two.

Stephanie Butler, 1640 Hamiota Ridge

- Opposes the construction of the one hundred fifty foot water tower.

Telaryn May, 16315 Laconia Lane

- She thanked Wayne Super for all of his hard work to bring light to the issue.
- She opposes the water tower.
- It is more important to her to have aesthetics.

City Clerk Marchiafava read for the record Mr. Chet May 16315 Laconia Lane's comment card.

- Object heavily to building an unsightly water tower on Pritchard's Mountain.

Motion and Second: Councilmember Zahner Bailey moved to approve A Resolution of the Milton City council Expressing Concern Over the proposed Construction by Fulton County of a 140-Foot Elevated Water Storage Tank at Freemanville Road referred to version two, which includes the additional details outlining those that were part of the Pritchard Mountain Water, LLC as well as referencing the Design Review Board to review the tower if at such time Fulton County determines an alternative would still lead them to an elevated tower and the Design Review Board be a participant in any storage tank, along with an amendment to add additional detail. Councilmember D'Aversa seconded the motion.

Discussion on the Motion:

City Attorney Jarrard stated that he wanted to make sure as part of the motion Councilmember Zahner Bailey wants to add as Exhibit A the detail that had been provided previously.

Councilmember Zahner Bailey said yes, her motion would include the amendment to add the additional detail as mentioned by Councilmember D'Aversa.

Councilmember Lusk stated he would also like to add in “Whereas #6 and “Whereas” #7 to disclose that these are the engineers of record that the distribution system, the pump station are employed by the developments.

Mayor Lockwood asked if we have a point of order because we have a motion and a second and now we are in discussion.

City Attorney Jarrard stated that is correct and that is a motion to amend the primary motion.

Councilmember Zahner Bailey stated that as an extension of this point of order, she amended her first motion and she thought it was seconded.

City Attorney Jarrard stated that is correct and that needs to be voted on.

Councilmember Zahner Bailey stated that her amendment was on the floor and seconded. She asked if we had an affirmed second of the Resolution version two with the confirmation of a forty foot above tank and the additional attachment as referenced by Councilmember D’Aversa?

Councilmember Tart stated it was seconded before she added the attachment.

Councilmember D’Aversa stated that she made a second to the motion again.

There was no further Council discussion.

Vote: The motion to amend passed 6-0-1, with Councilmember Thurman recused.

Mayor Lockwood asked Councilmember Lusk if he would like to restate his amended motion.

Motion and Second: Councilmember Lusk moved to add in the Resolution “Whereas” #6 and “Whereas” #7 where it mentions experts in the pertinent field, he would like to add parenthetically; engineers of record were employed by the developments. In the connotation, this is not an independent engineer or independent consultant in this case. Councilmember Hewitt seconded the motion.

Discussion on the Motion:

Councilmember D’Aversa stated that basically the motion is to specify who the pertinent experts are and ask if that was correct?

Councilmember Lusk said yes that is correct.

Councilmember Zahner Bailey stated her request is rather than refer to just the engineers of record that are employed by the developer, she suggested that if we are going to reference experts that we would reference the name of the engineering firm from whom we have an opinion as opposed to giving dialogue as to who those experts represent or do not represent. It was her understanding that they have represented all entities and additional experts to the evidence provided to us is historically referenced by the Environmental Protection Division. As a point of clarification, she said that this Resolution is not taking the responsibility for that expertise. We are simply saying that we have been

presented with expertise as presented by citizens and the Pritchard Mountain LLC that is comprised of four different developers, who were all in agreement. They are all in agreement based on their expertise, the expertise that they have employed, as well as the additional expertise that they would like to pursue an alternative, that they believe still meets the public safety and welfare and meets their economic enterprise and desires. Based on that she cautions that to define too discreetly that expert parenthetically within paragraphs six and seven, so if we are going to reference any expertise, she would want to reference the engineers of record but she also believes that we would need to make reference to those attachments that Councilmember D'Aversa appropriately identified that needs to be attached.

Councilmember Lusk stated that he takes exception to that respectively. He said that there was only one engineer of record and they draw upon some engineering principals, which may include Environmental Protection Division recommendations and guidelines which have already been incorporated in the first motion, so he feels it is redundant to put them in, but Wiedeman and Singleton are obviously the engineers of record. They designed the pump station and the distribution system with all of the appurtenances that go along with it. It was approved by Fulton County at that time. We had mentioned in the past in the spirit of true transparency in government that we need to disclose every thing that is involved with an issue and this is a case in point where we really need to disclose.

Councilmember Zahner Bailey stated that she appreciated that but was simply mentioning that she not only wanted to parenthetically reference engineers for record that are employed by the developer because Pritchard Mountain incorporates four different components of that LLC, but she thinks that in their expertise that there were some other references. Her point being that she did not have any problem mentioning the engineering firm of record, she just would not want to only mention that they were the engineers employed simply by the Pritchard Mountain LLC, because she thinks it goes in a more expanded way.

Councilmember Lusk asked Councilmember Zahner Bailey if she could tell him who else employed them or paid them for their services.

Councilmember Zahner Bailey asked for Pritchard Mountain LLC Representative Alec Rickenbaker or Wayne Super to come forward and address that issue. She said that it was her understanding that the county had also been in conversation as part of this engineering approach.

Mayor Lockwood said that would be alright with him.

Alec Rickenbaker stated that there was a two party agreement that was reached that included Fulton County and Pritchard Mountain LLC. They had a study done that preceded the agreement. The Weideman and Associate' package were reviewed and approved by Fulton County before the agreement was ever reached, so they are clearly in the loop. In terms of who pays the bills, if that is the issue, Pritchard Mountain has paid for the design work.

Councilmember Lusk asked if Weideman was the engineer of record on the entire project and no other parties.

Alan Rickenbaker stated that was correct.

Councilmember Lusk stated that was his point.

Councilmember Zahner Bailey said that she was simply saying that the engineering firm was not employed solely by the developer because it was a contract that was entered into and reviewed including Fulton County. Fulton County was a party to that engineering review and that was her point. She did not want to make a parenthetical reference in this Resolution that only referred to an arrangement between the engineering firm and Pritchard Mountain LLC, because Fulton County was a party to that entire agreement and to the design and asked Alec Rickenbaker if they had to review and approve the design just as the Environmental Protection Division did.

Alan Rickenbaker stated that was correct and that they actually had to review and approve the engineer before the design could be started.

Councilmember Zahner Bailey stated that was her point, that if we are going to go that route Parenthetically, she would want to refer to all of those things and she suggest we have our City Attorney craft that reference.

Mayor Lockwood asked City Attorney Jarrard what the best route would be.

City Attorney Jarrard stated that Council has a motion and second before them, before the introduction of the parenthetical that says expert in both paragraphs that says engineer of record for the developer and that has to be voted on. He said he can see both perspectives. He can see that they were the engineer of record but they were also the engineer of record for what looks like a five party contract.

Councilmember Zahner Bailey said that was her question, that before we vote on the amendment that was put forth by Councilmember Lusk and seconded by Councilmember Hewitt, if City Attorney Jarrard could state that point so that she could hear that again for the record.

City Attorney Jarrard said that what he believes he heard is that they are the engineer of record for the developer, but they were also the engineer for the record for the developer by way of a tri-par-tied agreement.

Councilmember Zahner Bailey said that was the distinction that she was trying to make, and that was the only reason that the amendment to the amended Resolution did not go quite far enough.

Councilmember Lusk asked if we know if in fact that there was a tri-partied agreement.

City Attorney Jarrard said that is what he thought he heard the individual say. He said that the bottom line was that both were accurate it just depends on which the Council prefers.

Mayor Lockwood stated that at this point we have a motion and second by Councilmember Lusk and Councilmember Hewitt. He said as part of the discussion that he was supporting this Resolution as they had already voted on and he is doing that in the interest of our citizens, the concerns of the citizens that are affected, because of the looks and the property values, but he would be remiss if he did not say that he had talked to Fulton County Commissioners and the Chairman and they were pre-

animate that they are moving forward with the tower, so he is supporting this in the hopes that they will re-look at it, but he does not want to give any false expectations that we can change Fulton County's mind.

There was no further Council discussion.

Vote: The motion failed 3-3-1, with Councilmember D'Aversa, Councilmember Zahner Bailey, and Councilmember Tart voting in opposition, and Councilmember Thurman recused.

Motion: Councilmember Zahner Bailey moved to amend the motion to add the "Whereas #6" and the "Whereas" #7 to expand on parenthetically referring to the experts in the pertinent field and insert the full legal name of the engineering firm and make reference to the fact that the engineering firm was engaged by several parties, including Fulton County as well as Pritchard Mountain LLC. She asked City Attorney Jarrard if there is any additional clarification or if that is satisfactory.

City Attorney Jarrard stated that he would like to get as close to the verbiage as we actually want in the Resolution, so the name of the engineers (Weidemen and Singleton, Inc.) should be stated.

Councilmember Zahner asked Alec Rickenbaker to verify if engaged by Pritchard Mountain LLC and Fulton County is appropriate.

Alec Rickenbaker stated that he would say engaged by Pritchard Mountain LLC in accordance with the agreement.

Councilmember Zahner Bailey stated that they should then reference that actual agreement that would be attached to the Resolution. She said that the reason for her question to Mr. Rickenbaker was because he was party to that agreement and she wants to make sure in consideration to Councilmember Lusk's point that we disclose it as fully and appropriately as necessary.

Councilmember Lusk stated that since we are coming around to his point, the developments engaged Weidemen and Singleton and apparently there is no separate agreement with Fulton County is the point that he is trying to make. He has not seen any proof of a tri-party agreement. He said that he would accept Councilmember Zahner Bailey phraseology.

Mayor Lockwood asked the City Attorney if he would come up with a phrase that says we are all right with.

City Attorney Jarrard stated that currently the agreement is not part of the Resolution, so maybe the motion needs to read; add a parenthetical that says Weidemen and Singleton, Inc. engaged by Pritchard Mountain LLC in accord with the agreement attached as exhibit "B".

Councilmember Zahner Bailey asked if we could also make reference to Fulton County within that. She said that she feels it is important that we make reference to the fact that this engineering engagement was not exclusively outside of Fulton County's preview. It is her understanding that Public Works in concert with the engineering firm worked together on the design.

Alec Rickenbaker stated that was correct.

Councilmember Zahner Bailey said that was a point she did not want to lose in this Resolution and that was why she was amending it.

Councilmember Tart asked in reference to Councilmember Lusk's issue if any of the materials given to them talks about the tri-party agreement.

Alec Rickenbaker stated that the agreement between Pritchard Mountain LLC and Fulton County was part of the material given to Council.

City Attorney Jarrard stated that the parenthetical would then read; parenthetical Weidemen and Singleton, Inc. engaged by Pritchard Mountain LLC and Fulton County in accord with the contract attached as exhibit "B".

Second: Councilmember Tart seconded the motion to amend. The motion passed 6-0-1, with Councilmember Thurman recused.

There was no further Council discussion.

Vote: Vote taken on the original Resolution with amendments.

BREAK: 8:14 PM

City Clerk Marchiafava read agenda item no. 08-515.

Consideration of Rescission of Resolution No. 07-03-27, A Resolution to Govern the Conduct of City Council Members as they relate to Boards, Commissions, and Authorities.

City Attorney Jarrard

- This Resolution was adopted by Council on March 15, 2007.
- This Resolution provided that no elected official shall participate or comment on or influence the operation of any board commission or authority, and any training sessions for any board, commission or authority unless requested the majority vote of this body and or the City Council can respond to request information or input or to appear before such body.
- At a publicly called Work Session on February 11, 2008, this item was discussed to bring this to the regular meeting for council to consider rescission.

Councilmember Lusk

- Asked City Attorney Jarrard if in regards to the Resolution if there was any question of infringement on the first amendment rights.

City Attorney Jarrard

- Yes, there are some concerns.
- For instance phrases like it is not lawful for an elected official (which means one of the Council Members) to comment on another board, commission or authority.
- The concern is not so much with the intent.

- The concern is within the details and what does it mean when an elected official comments on another entity.
- That is the concern that we have had with this Resolution.
- It is a little broad.

Councilmember Lusk asked if it could be made “less broad” by eliminating the words “and comments”.

City Attorney Jarrard

- If Council gave him direction that they wanted variation on this or they wanted the theme of this to continue, he would need to draft some proposed language and circulate it to them.
- When you get into the realm of telling people they are not able to influence other duly called bodies that are open to the public, you get close to infringing on the first amendment and even the right to assembly, the right to petition and some of the other constitutional right.
- Would not want to give Council guidance that gets us right back here with the same situation.
- He needs to do some research.

Councilmember Lusk

- As the author of this Resolution last year, he thinks it has served its purpose.
- It corrected an issue that came up last year.
- It was more than influencing.
- There was an issue with interfering with the smooth, efficient operation of a committee.

City Attorney Jarrard

- Did not know until now who drafted the Resolution and it was not his intent to try and disparage his draft.
- It is possible that we could probably work with this and shore it up, to accomplish some goal that the Council may have, but this language makes him uncomfortable.

Councilmember Lusk

- He would be the first to admit that his legal training is minimal but his legal exposure is far reaching.
- Would recommend that we would continue to work on the Resolution and craft it in a manner that it is not over broad.

Councilmember Thurman

- She believes that City Attorney Angie Davis said that it would be her professional opinion that instead of having a separate Resolution that this be incorporated in with the Ethics Ordinance.

City Attorney Jarrard

- That is right.
- We are having a meeting with the Board of Ethics on the 25th and we are going to discuss some potential modifications to the ethics ordinance.
- This smacks of an ethical resolution.
- It smacks of trying to keep the Council Members and elected officials acting ethically.
- That would make more since than a stand alone resolution.

- It would make more sense to be part of the body of ethical cannon as this Council and other elected officials are required to comply with.

Motion and Second: Councilmember Lusk moved to Rescind the Resolution with the understanding that this issue be specifically brought forth to the ethics board for consideration and inclusion in any revisions to the ethics ordinance. Councilmember Thurman seconded the motion.

Discussion on the Motion:

Mayor Lockwood

- Agrees that it is something the ethics committee should consider.
- It would not be up to us to specifically state that.
- He would like for the City Attorney during the preview of the Ethics Ordinance, discuss it with that board and let them make the decision.

Councilmember Tart

- Needs to reiterate an example he used in the work session.
- He is particularly interested in this Resolution.
- He has problems taking it before the Board of Ethics for the following reason. If he has a neighbor who goes before the board of zoning appeals and wants to dump raw sewage in his yard and that is an action before the board of zoning appeals, as this stands he would not be able to go before that board and state his case to not have sewage dumped in his yard.
- For this to go forward and say this needs to be considered in the ethics ordinance, still violates his rights to free speech and he would have to say even within the ethics ordinance that is written (which needs to be modified in many ways) is contradictory to the whole make up of the ethics ordinance.
- The ethics ordinance clearly says the City recognizes that public servants are also members of society and, therefore, share the same general personal and economic interest in the decisions of policies of government as all members of the community and public servants retain their rights to publicly express their views on matters of general public interest and to express their opinions on the effects of the public actions on their personal and economic interest or rights.
- There are other provisions in it that would tend to lend weight to the fact that a public official could in fact make a personal statement in one of these meetings.
- Section 11A, paragraph 5 talks about prohibited conduct and other abuses and misuses of position and it states that prohibited conduct of each such public servant shall include but not be limited to the following; paragraph 5 says appearing on behalf of any private person other than ones self before any public body in the City.
- He does not think anybody wants to go before any board or commission in this City and say they take issue with any particular application before them.
- He thinks everyone wants to be able to speak their minds as they are entitled to as citizens.

Councilmember D'Aversa

- Wanted to make a comment that references the first amendment rights.
- In the newspaper (our legally adopted organ) there was a side bar that says the first amendment: We the people, congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof or abridging the freedom of speech or of the press or of the right of people peacefully to assemble and to petition the government for a redress of grievances.

- That is the United States Constitution.
- It is her understanding that the Constitution takes purview over any Municipal Ordinances that we might adopt and that in no way can any of the ordinances legally violate our first amendment rights.
- She just wanted to state that for the record.
- The tact with which she operates in going to meetings, she will certainly be mindful of her comments and not unduly influence any citizens group or any committee as an elected official and not to abuse any power that has been bestowed upon her as an elected official, but it says it very clearly in the first amendment that we have the right to free speech and to make statements and to address government with our grievances.
- Would like for us to be mindful of this when we re-address our ethics ordinance and any other ordinances that might conflict with that.

Councilmember Thurman

- We definitely need to get legal advice on this.
- We do have a right to free speech.
- We do not necessarily have a right to hold a position in government and sometimes when you take a position you have to give up certain rights.
- We clearly need a legal opinion.

City Attorney Jarrard

- That is right, the discussion you are having is all fair.
- You wear different hats and obviously each of you has an individual capacity hat, where you are simply citizens of the city and the state.
- You also have an elected official hat and there are different hats associated with that.
- What this issue is getting is the abuse of your elected official hat, which is wearing a mantel of you as a Council Person and then taking action that may be abusive within the context of that hat, and that is fair.
- Unfortunately this resolution goes farther than that in that it defines you by your elected status and you can not go home and get into bed and not be an elected official anymore, because you still are.
- With all due respect it is just too broad and if the board of ethics wants to discuss this then he will be happy to.
- Going to Councilmember Tart's question, we will not be able to address this Ethics Ordinance or otherwise in a way that violates the Georgia or Federal Constitution.
- We will have to be mindful of those legal principals.

Councilmember Zahner Bailey

- At our Work Session Attorney Angie Davis had respectfully requested that we rescind this Resolution as a rescission.
- On the May 14th 2007, our staff received a letter from the ethics board that called into question this Resolution and they had wanted it to be reconsidered as well.

Mayor Lockwood stated that the motion on the table is to Rescind this Resolution, but to specifically direct the Ethics Board to pick it up.

Councilmember Lusk stated it was for the City Attorney and the Ethics Board to consider the intent of this Resolution and attempt to incorporate it in the further amendment to the Ethics Ordinance.

Councilmember Thurman stated she was unclear if they were requesting that they consider this, or if they were directing them.

City Attorney Jarrard stated that Council was directing him that when he goes before the Board of Ethics that this is going to be rescinded, that is the first part of the motion, and the second part is when he goes before the board of ethics he will specifically direct them that we have to consider and incorporate the intent of this language into the revision of the ethics ordinance in a way that is obviously lawful that is implicit within the motion.

Mayor Lockwood stated that again, as he stated earlier, he would not want to be specific in telling our City Attorney. He would like to think that when our City Attorney meets with the Ethics Board that they consider everything that they think is important and leave that to his purview.

Councilmember Thurman asked if Councilmember Lusk would be willing to amend his motion to instead of directing them specifically to put this in, to request them to look at this issue, as to how it needs to be addressed. She does not feel comfortable directing our Ethics Board to do that, but she would rather request.

Councilmember Tart stated that he would agree with that because directing them sounds like we want them to include it.

Councilmember Thurman stated that is correct and Council should give them the latitude to make that decision.

Councilmember Zahner Bailey stated that she thought the direction from our City Attorney was to rescind it without any additional noise around it and she believes that on May 14th they received a letter from our Ethics Board that they had already considered it and felt it needed to be reconsidered.

Councilmember Thurman stated that they only looked at what our actual Resolution that had already been passed was. What we are asking them now is to look at what the intent is and seeing if there is a way to incorporate it in there, rather than looking at this direct Resolution.

Mayor Lockwood stated that we can call the question and if it does not pass, we can always go back to it.

Councilmember Thurman stated that she withdraws her second if it is to direct them because she does not feel comfortable directing them.

Mayor Lockwood asked if there was a second.

There was no second to the motion

Motion and Vote: Councilmember Zahner Bailey moved to approve Rescission of Resolution No. 07-03-27, A Resolution to Govern the Conduct of City Council Members as they relate to Boards,

Commissions, and Authorities. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously.

(Added by Motion and Vote)

Approval of a Resolution in Support of House Bill 975 Relating to Counties and Municipal Corporations in general, so as to provide that it shall be unlawful for any county or municipal corporation to issue any backdated license, permit, or other similar authorization under certain circumstances to provide for a criminal penalty; to provide for related matters; to state legislative intent; to provide an effective date; to repeal conflicting laws; and for other purposes.

Resolution No. 08-02-21

City Attorney Jarrard

- This is a Resolution in support and asking the general assembly to support house Bill 975 which would basically forbid counties to back date licenses, permits or other similar authorizations.

Motion and Vote: Councilmember Thurman moved to approve a Resolution in Support of House Bill 975 Relating to Counties and Municipal Corporations in general, so as to provide that it shall be unlawful for any county or municipal corporation to issue any backdated license, permit, or other similar authorization under certain circumstances to provide for a criminal penalty; to provide for related matters; to state legislative intent; to provide an effective date; to repeal conflicting laws; and for other purposes. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously.

(Added by Motion and Vote)

A Resolution in support of House Bill 1015 relating to special districts divided into noncontiguous areas, so as to provide for additional requirements regarding certain excess funds; to provide an effective date; to repeal conflicting laws; and for other purposes.

Resolution No. 08-02-22

Motion and Vote: Councilmember Lusk moved to approve A Resolution in support of House Bill 1015 relating to special districts divided into noncontiguous areas, so as to provide for additional requirements regarding certain excess funds; to provide an effective date; to repeal conflicting laws; and for other purposes. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously.

Councilmember Lusk stated that this Bill did pass the House at 159 - 0.

Councilmember Zahner Bailey stated that she was there today and had the opportunity to thank Jan Jones on our behalf. She mentioned the amendment that she would be making in regards to adding some audit language.

MAYOR AND COUNCIL REPORTS

Councilmember Zahner Bailey

- Senator Moody, Representative Jan Jones, and also Representative Martin were very appreciative that we were bringing Resolutions forward to demonstrate our support of these House Bills.

- House Bill 975 was going to committee today at 3:00, so she does not know the results of that.
- It is important that we continue to demonstrate that support and work collaboratively with the other cities as we are doing now.
- Councilmember D'Aversa and I participated this past week end in some equestrian training that took place with our Public Safety Department and with the equestrian community.
- If Laura Bentley and some of the other equestrian community were here we would want to publicly thank them for their outreach to the equestrian community to engage our Public Safety Department and to thank our Public Safety Officers.
- Primarily this weekend and the prior week were about providing training for the people that has to go out and save the lives of animals.
- It was a great collaborative effort and we will be seeing more of that.
- There was discussion of now having emergency numbers of vets or emergency numbers for a network of people within the equestrian community, so if there is a larger scale emergency there will be a mechanism to reach out and help, even to the extent that the fire trucks are now going to have a special kit for an equestrian element.
- It is a really great example of citizens and volunteers stepping up to help that element of our community.
- There was also discussion about an ongoing committee.

Councilmember D'Aversa

- The young Ms. Carlee Bentley, who is a seventh grader at Hopewell Middle School, and obviously an avid rider and participates in a lot of shows. She is raising money to buy one of those harnesses that would lift the horses up.
- She has not raised enough money, but once she does we should have her come forward and present it.

Councilmember Lusk

- Attended a program sponsored by the North Fulton Chamber of Commerce, which includes Alpharetta, Roswell and Milton.
- As part of the presentation they passed out a survey similar to the process that we are going through the land use plan here.
- On our vision of what the CID and surrounding areas are going to be like, we should get the results of those within a week or so.

Public Works Director Dan Drake

- We met with their consultants last week and we will be active in those committees going forward.

Councilmember Zahner Bailey asked Councilmember Lusk if there was a survey that went to all of the businesses in the CID and do we have a sense of how broad the survey is.

Councilmember Lusk stated he did not believe they were going to distribute it.

Mayor Lockwood

- Spent today interviewing candidates for the City Manager position and it went very well.
- We have some top notch candidates, but we are continuing to interview.

Councilmember Tart asked staff where we are in regards to the sewer policy. He would like to put an end to that discussion.

Community Development Director Tom Wilson stated that we are not there yet. Staff is still working on it.

Councilmember Lusk asked Community Development Director Wilson if there had been any progress in regards to signage on 400, to include Milton and some directional signs.

Public Works Director Drake replied and stated that they had talked with GDOT (Georgia Department of Transportation) about that and they have given permission for us to go put those signs out there and hopefully we will be bringing that to the City Manager in the upcoming weeks.

Community Development Director Wilson

- If we actually do achieve a sign on 400 that says Milton exit, we can then participate in the hospitality highway (which Council had asked about at an earlier date) for some small amount of economic development dollars.

Interim City Manager Lagerbloom stated that the signs that they had begun to commission are ground signs not overhead.

STAFF REPORTS

Linda Blow, Projects Coordinator

- Just came across an e-mail from Mark Johnson about the Georgia Governors Council and Development Disability tenth anniversary.
- They are having Disability Day at the capital tomorrow.
- She just wanted to say that Disability Day is everyday for so many of our citizens.
- The closer she gets to the members of MDAC, the more she understands they should all be awarded medals.
- They are phenomenal people and they need to be recognized and made more a part of our City.

Councilmember D'Aversa

- They will be here for the March 3rd meeting.
- They want to be formalized and we have approved a mission statement that will be brought to Council with the Resolution.
- We have approved a logo.
- They would like to be more formalized and deputized to the extent that they can be.
- City Attorneys Jarrard and Davis, along with Interim City Manager Lagerbloom are working on the Resolution.
- They are doing a tremendous job.
- They have gone out and looked at our city with regard to compliance.
- They have a long list of things they want to bring forward.
- They will be appreciative of any direction we can give them.
- Mark Johnson will continue to be an adviser to them.

Councilmember Thurman asked if this would be a committee where we would have to appoint one member from each district.

Councilmember D'Aversa

- She struggled with that and when she put together the Resolution herself for the attorneys to take and make proper; she did it while having in mind that every member of that committee is in their area.
- It would be her opinion that it would be fine to bring forth to rest of Council to approve a committee that is not necessarily appointed.

Councilmember Thurman stated that she would just hate for someone who had the passion for it to be excluded because they happen to live in the same district.

Councilmember D'Aversa said she understood and that would be up to Council to decide.

Councilmember Thurman

- This was something that was changed in our Charter last year.
- It was amended so that people had to appoint people from their district, so she just wanted to make sure.
- She agrees that it is a good group and it would be hard to say to someone that they have to come off and then we have to put someone else on that may not have the same expertise.

Councilmember D'Aversa said that what is interesting is that she looked each of the districts and the challenge is that there are three people from district four that are on there, but there is someone from district six and from district five.

City Attorney Jarrard stated that they are working on what the charter says about that now and we will infuse as much flexibility in it as possible.

Councilmember Thurman stated it would be hard to kick someone off of the committee who had such a passion for it.

Mayor and Council thanked Linda Blow for her presentation.

Mayor Lockwood also thanked City Attorneys Ken Jarrard and Angie Davis. He said he was hearing nothing but good things about them.

City Clerk Marchiafava read Agenda Item No. 08-516.

EXECUTIVE SESSION

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

Motion and Vote: Councilmember Lusk moved to enter into Executive Session at 9:10 p.m. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously.

RECONVENE

Motion and Vote: Councilmember Lusk moved to reconvene the Regular Meeting. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously.

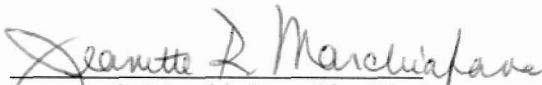
(Agenda Item No. 08-517)

ADJOURNMENT

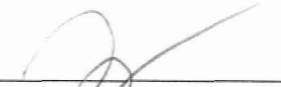
Motion and Vote: Councilmember Lusk moved to adjourn the Regular Meeting. Councilmember Hewitt seconded the motion. There as no Council discussion. The motion passed unanimously.

After no further business, the regular meeting of the Milton City Council was adjourned at 9:55 p.m.

Date Approved: March 17, 2008



Jeanette R. Marchiafava, City Clerk



Joe Lockwood, Mayor

