

---

*This summary is provided as a convenience and service to the public, media, and staff. It is not the intent to transcribe proceedings verbatim. Any reproduction of this summary must include this notice. Public comments are noted and heard by Council, but not quoted. This document includes limited presentation by Council and invited speakers in summary form. This is an official record of the Milton City Council Meeting proceedings. Official Meetings are audio recorded.*

**Work Session of the Milton City Council held March 10, 2008 at 6:00 PM, Mayor Joe Lockwood presiding.**

**Council Members Present:** Councilmember Alan Tart, Councilmember Tina D'Aversa, Councilmember Burt Hewitt, Councilmember Bill Lusk (late), Councilmember Julie Zahner Bailey, and Councilmember Karen Thurman (late)

(Councilmember Karen Thurman arrived at 6:54 pm.)

(Councilmember Bill Lusk arrived at 7:02 pm.)

**Mayor Lockwood**

- Work Sessions are a more informal setting to update the Council on business items. No vote will be taken.
- Public comment is allowed that is germane to an agenda item.
- If you wish to speak, you are required to fill out a public comment card and turn it in to City Clerk staff.
- Public comment will be allowed for a total of ten minutes per agenda item and no more than two minutes per person.
- Public comment will be heard at the beginning of each item.
- Once the item is called, no other public cards will be accepted.

**City Clerk Marchiafava** read a statement by Councilmember Thurman:

“I apologize for not being in attendance at the start of tonight’s meeting. Prior to the vote to change the meeting date from Thursday to Monday, I notified the Mayor and City Council that I have a work related conflict that would prevent me from timely attending many of the meetings if moved to Mondays at six o’clock. My schedule could be rearranged to be available any day of the week except for Monday. I am honored to serve the citizens of Milton and will continue to work hard to ensure that our dreams for the city are fulfilled.”

**City Clerk Marchiafava** stated that she received an e-mail from Councilmember Lusk notifying us that he will be attending the meeting, but he will be late.

**Mayor Lockwood** stated that at no point did he receive any information before the vote to change the meeting times and date that there was a work related issue and that Councilmember Thurman could not be here. He asked the other Councilmembers if they had heard anything different, to please respond.

**Councilmember Tart** stated that prior to changing the meetings, we had review sessions in the month of January where we heard the items that would be heard the following week. The review was from 4:00 to 6:00 pm on Mondays and Councilmember Thurman was able to attend those sessions, but for whatever reason she cannot attend Council meetings and work sessions at 6:00 pm on Mondays. It seems that the statement from her will be read before every meeting and he was wondering about the procedure for this. He asked City Clerk Marchiafava if Councilmember Thurman had directed her to read the statement.

**City Clerk Marchiafava** stated that Councilmember Thurman had asked her to read the same statement that she read at the March 3<sup>rd</sup> meeting.

**Councilmember Tart** asked if in that regard, it would be proper for him to ask a Councilmember to read his position on certain issues for the record.

**City Attorney Davis** stated that it depends on the context. You can always request a statement be read if you are not here for the vote. She would caution on zoning issues that Council be here to hear public comment. Everyone should have the opportunity to have statements read if they have business related obligations that keep them from the meeting.

**Councilmember Tart** stated that he did not want the meetings to become what they had been in the past, which is a time for grand standing and points to be made. He does not know why the statement from Councilmember Thurman has to be read at the beginning of each meeting. Councilmember Thurman could come to the review session from 4:00 to 6:00 on Mondays prior to when the change was made to the meeting date and time.

**Mayor Lockwood** stated that the comment he made was not to open discussion on the matter, but he did want it on the record that he did not know that there was a definite reason that Councilmember Thurman could not be in attendance on Mondays.

**City Clerk Marchiafava** read the first agenda item;

### **DISCUSSION ON THE K9 PROGRAM**

#### **Councilmember Zahner Bailey**

- Excited to start the meeting with such a positive program.
- Kelli Collins and Dr. Roesner are both here to address the Mayor and Council.
- This is an opportunity for a potential donation to expand our K9 program.
- Dr. Roesner is of Loving Hands Veterinary Clinic located in Milton.
- She has offered to donate a canine that would add to our existing K9 program.
- She has also offered to donate the Veterinary services.
- Kelli Collins will have the opportunity to have the “pick of the litter” Wednesday.
- We would have a second canine for the Milton K9 program.
- Interim City Manager Chris Lagerbloom was made aware of this before hand.
- We have met with Kelli Collins and had many discussions on the issue.
- At this time, she introduced Kelli Collins and Dr. Roesner.
- Kelli is a certified trainer with canines.
- She travels across the country and provides training for canines nationally.

#### **Kelli Collins**

- We wanted to get approval from Council on the concept of donating a Police Canine to the City of Milton.
- We thought that starting with a puppy would be a much better community outreach program, as well as creating a lot of opportunity for PR with Loving Hands in the community and Public Safety.
- This puppy will be able to start programs in the schools in line with the drug safety programs in place, as well as help with future training for the City’s current canine.
- The purchase and the vetting of the puppy will be handled by Loving Hands and Dr. Joanne Roesner Joann Rozner.
- She will be handling the training.

- The time line is a general time line, with the exception of the “pick of the litter” which has to happen on Wednesday.
- We will be able to take the puppy into the community and start to align ourselves with Milton Police Department.
- Any public events requested of the puppy would be an option.
- The puppy should be ready to be handed over to the K9 handler at the beginning of next year, with handler training to get them acclimated and ready for certification in March.
- Within a year, you should have another canine on the street.

**Councilmember Zahner Bailey**

- We have talked about the community outreach program and part of the discussion tonight is to get Council’s ideas about how to work with all of the schools.
- Of course, there would be parameters, but she asked for the Council to think about a naming program. For example, we would not want the puppy to be named fluffy by any of the local schools.
- It would be an opportunity to have the schools to be part of the naming process.
- We talked about video clips of the training with our public safety officers as part of the outreach program.
- The possibilities are endless.

**Kelli Collins**

- They would provide video updates on training so it keeps the community involved.
- They would also provide updates to the police department so they know how things are going.
- The sooner the handler is selected the sooner we can get them involved in the training process.
- That needs to happen in November.

**Councilmember D’Aversa**

- Recently, one of the middle schools found drugs in one of the student lockers and they had a canine enter into the school to help find the drugs.
- She wondered how often you would go into the schools with these canines as a deterrent.
- She thinks that this will get the kids excited about these dogs and the potential of the dogs coming in and covering certain suspicious materials.

**Kelli Collins**

- We are involved in doing that and would like to be more involved with the inception of this canine, because he will be a canine for the City of Milton.
- We will be going into the schools as often as possible. We need to get the puppy acclimated and we will be doing that concurrently with our other training as well, so there is a deterrent there.
- Most of the children are very receptive.
- We have done demonstrations on career days and she does demonstrations with her current narcotic canine.
- It is important to get the dogs in there early so they understand the environment and become comfortable.
- They also act as a deterrent to the children that are there because, unfortunately, it is not just the high schools, but also the middle schools.

**Dr. Joanne Roesner**

- We have a very vital program at Loving Hands that include school visits.
- She stated that raising the awareness at that more critical age, it is important.
- These dogs are able to identify a very weak scent in a very convoluted environment.
- Perhaps we cannot deter drug use from all children, but we can certainly point out the ease with which it can be identified.

**Councilmember D'Aversa**

- From listening to the kids at a particular school, they were impressed with the canine and the police coming in and finding the drugs.

**Dr. Joanne Roesner**

- These dogs act as a segway between people and law enforcement as a positive light.
- We may not influence high schoolers or middle schoolers that are too cool to listen, but when you start getting that message early in life, you may just have a child that is too cool to get into that drug culture.
- This is an opportunity for the City of Milton and the law enforcement community to bond with the community in a much more positive way.

**Councilmember Zahner Bailey**

- Red Ribbon week in the schools is a great opportunity to have some proactive programming that public safety would help to create.
- She asked Kelli to talk about the training she does with trailing and narcotics as a benefit.

**Kelli Collins**

- This puppy will have the potential to be a dual purpose canine.
- He will come to the City with trailing and narcotics training.
- Trailing is different from the police style tracking dog.
- Typically, police style tracking dogs can only do hot trails, so if you have any kind of contamination, you are pretty much done.
- Trailing offers a lot more ability to track your suspect or to find a missing person.
- She would put her canines as being reliable up to twenty four hours and with pretty serious contamination.
- They are scent specific.
- With the trailing training, it will have a lot more versatility.
- He will not have any bite work training when you get him, but he would have the potential if that is what Council would want.
- All of her dogs currently are passive trailers, so they can go out and search for a lost child, an elderly person or a suspect.

**Councilmember Zahner Bailey**

- When we talk about public safety, it is to have public safety in the league with education. When we think about our elderly community, we can take the puppy to the senior citizens who live alone or in an assisted living environment.

**Kelli Collins**

- With a trailing dog, your find the rate is much higher than with a tracking dog.
- Even given with the contamination and the age.

**Councilmember Zahner Bailey**

- Asked Kelli if she would discuss the breeder and the level of canine that would be coming to us as a donation.

**Kelli Collins**

- She currently has a puppy out of this breeding that is fourteen months old now and he is one of the best she has ever trained.
- The father of this litter competes at the world cup level. He is off the charts as far as workability, and it is the same with the female.
- They produce excellent working puppies.
- 90% of the puppies that come from these litters are actively working.
- She has the “pick of the litter” so she gets to pick first out of the whole litter.
- She deals with this breeder on a regular basis.
- With the puppy, the vetting and the training, the cost would be about \$15,000.00 if the City were to do it on their own.

**Dr. Joanne Roesner**

- What is offered from the veterinary side is the highest level of care available in the state of Georgia.
- She is a state board certified veterinary specialist.
- Her specialty is in primary care.
- Her facility has the ability to screen for hip dysplasia, which is available in a very limited way in this state.
- She would give the care that would ensure a longer, healthier, working life, above and beyond standard care.

**Councilmember Zahner Bailey**

- Wanted to be up front in the fact that when the puppy is out in the public, it would have a badge that not only said the City of Milton, but would highlight Loving Hands.

**Dr. Joanne Roesner**

- This is a win-win situation.
- It gives the opportunity for public presence for all of us.
- It would make this puppy freely available for the City’s use and community service and public relations.
- As the dog becomes a working dog, depending on the dog’s and handler’s schedule, it would be nice if the puppy could come once a year to an outreach or CPR community event.

**Interim City Manager Lagerbloom**

- We do not get these types of opportunities every day, so when they do happen, we jump on them quick.
- It certainly benefits the community and fits into the concept of our public safety program.
- We are lucky to be in a part of Fulton County that has great principals because they are what drives our ability to bring the dog into the schools.
- Some schools just simply will not allow it.
- Some of our school principals have reached out to us wanting that involvement and we are certainly willing to provide it.
- We will be there as long as they keep asking us.
- With this program we can assign the dog to someone that already exists within the agency.
- We do not have to add people to do this program.
- There will be some incremental cost as it relates to ongoing canine maintenance, which is required by law.
- We have to pay the handler a certain number of overtime hours, which we consider the canine maintenance fee.
- There is also ongoing training and equipment that is needed.
- That is a very small amount in comparison to what the benefit is.
- We hope that Council acknowledges that this is a good thing, which comes with a small cost.

**Mayor Lockwood**

- Thanked Councilmember Zahner Bailey for supporting this.
- He thanked and recognized Kelli Collins and Dr. Roenser for what they are doing.
- Thinks it is a great idea and would certainly support it.
- It would be a definite plus for the City of Milton.

**Councilmember Zahner Bailey**

- Since the “pick of the litter” is going to happen Wednesday is there a consensus that we have the direction to go ahead and have Kelli pick out the “pick of the litter”.

**Councilmember Tart**

- Said to go ahead and pick out a good one.

**Kelli Collins**

- She would and at any point if anyone has any questions about anything, feel free to call. After Wednesday you can meet the puppy. We will keep Council informed of everything that is going on.

**City Clerk Marchiafava** read the next agenda item.

**DISCUSSION ON CROOKED CREEK GATING**

**Interim City Manager Lagerbloom**

- Thinks we should hear the public comment on this first.
- There are representatives here that want to talk through some of the challenges they are facing in their neighborhood as it relates to the gating project that they currently have underway.

**Steve Smith**

- Resident of Crooked Creek for about six years.
- He is a real estate developer and Vice President of the Homeowners Association.
- Crooked Creek has 640 homes and represents approximately 13% of the population of Milton.
- There have been significant obstacles with Fulton County in the past as it relates to gating.
- They were advised that it was not worth putting the time into because it was a dead end street.
- It has turned into more of an issue recently.
- Due to the congestion on Highway 9 and some of the back roads, Crooked Creek and specifically Creek Club Drive has become a thoroughfare.
- We are fortunate that we have not had children ran over.
- Our attorney is here to talk about some of the legal ramifications.

**Attorney Stuart Teague**

- Been working with the Board for quite some time trying to isolate the legal impediments.
- It is a complicated process.
- He has not found anything that would keep the City from abandoning the streets or allowing it to revert back to the current property owners.
- The ownership status of the street is in the character of what is called an easement.
- The City has easement rights over the roads for the benefit of the public.
- The legal way for the City to get rid of its ownership rights and easement would be to adopt a Resolution of abandonment, which is something the City has the authority to do.

- The process requires that the City, as a municipality, find there is no substantial public purpose served by the public ownership of the streets.
- The reason he believes those grounds have been met is because the safety concerns are not a public purpose.
- There is no substantial public purpose served by these remaining public streets, which will allow for the cut through traffic.
- There is a lot of support.
- Streets were not designed originally by the developer as being right of ways for City traffic or public traffic, but were designed according to Fulton County Subdivision Regulations that incorporated the Department of Transportation for subdivision streets. Part of the safety concern is related to the fact that these are not public streets for the purpose of cut through traffic.
- One of the concerns raised is that there is a one hundred percent(100%) requirement that all of the adjacent property owners consent to the privatization of the streets that may be gated.
- The Board will get a majority vote to make sure the community approves this process.
- There are liabilities that would be assumed by the private homeowners.
- One proposed ordinance would be to provide for abandonment and gain of public easement rights in subdivision roads to allow restricted access when the association will assume responsibility for maintenance and liability for streets and drainage structures along with a repealer provision of whatever code provisions are currently being interpreted to not allow for this.
- Crooked Creek is one of the largest land area subdivisions in the City of Milton, so you are not really dealing with a situation where you are opening Pandora's Box, which may be what Fulton County was concerned with.
- We need to identify the ordinances that Fulton County has that the City of Milton has adopted from Fulton County to figure out which ones need to be repealed or modified.
- The City could put whatever provisions needed in the Resolution or Ordinance.
- The Homeowners' Association recognizes the concerns and believes they can work through them.
- He would welcome any comments from the City Attorneys or anyone else in regards to this issue.

**City Attorney Ken Jarrard**

- The first issue Council would have to deal with is the privatization policy of the City of Milton, which says that before you can take a public road and make it a private road, you have to have one hundred percent of all land owners affected thereby have to agree with it.
- If you have cut through roads then exactly who are the property owners affected by the public road.
- Is it everyone in the subdivision or is it everyone who uses the road?
- An argument could be made for both.
- There is also state law to deal with abandonment procedures, and the abandonment procedures in the state of Georgia require that if you have a publicly dedicated roadway to make that roadway transfer to someone else or private entities, you have to make a finding that the road has ceased to be used by the public to the extent that no substantial purpose is served by it.
- So you have to answer the question; who is the public.
- If you want to construe that narrowly, it would be the people in the subdivision, but if you construe it broadly, then it would be anyone who is using the road.
- Can this Council make a determination that this system of roads no longer serves the public?
- There is authority that even if a road continues to be used, it can be abandoned in the local government because of hazardous or danger concerns.
- If it is being used for illegal purposes or dumping, then it can be abandoned.
- Some points for Council to contemplate: is it a decision where the subdivision would like some upgrades before it transfers back to them. Obviously, they may not be interested in obtaining liability right off the bat. Secondly, is the storm water infrastructure going to be transferred and made private?

- He has spent a lot of time dealing with the residual effects of public storm water and flooding and the nuances associated with that.
- That may be one reason that 100% buy in was required.
- If the Council is interested in moving forward on this, the first step to look at is the privatization policy.
- Then we can look at compliance with state law, but your policy sets a fairly high bar.

**Mayor Lockwood**

- He sees no way there would be a 100% buy in, so maybe some research or look at some other ordinances to see what a typical buy in or percentage would be.

**City Attorney Jarrard**

- An ordinance of that kind may mirror state law in some respects where the Council needs to make some findings under the ordinance as a trigger, so they work hand in hand with the state law.
- Perhaps some guidance from other jurisdictions is a good first place to start.
- We can do this fairly quickly.

**Councilmember D'Aversa**

- Asked City Attorney Jarrard if the 100% is unrealistic.

**City Attorney Jarrard**

- Thinks what the ordinance was intended to capture is 100% of the individuals living inside the subdivision.
- It happens all the time that subdivisions want to go private, so Council has to have a benchmark as to what kind of buy in.
- Thinks the benchmark is traditionally 100%, but that does not mean it has to be.
- Other jurisdictions have grappled with the question of - do we want to saddle an unwilling participant with all of a sudden the cost and burden of operation and maintenance of what was formally a public roadway.
- That is the reason for the 100% rule.

**Councilmember D'Aversa**

- If 100% of the Crooked Creek homeowners were to be able to be brought before Council and all agreed to this then it would be hard for us not to support it.
- She would want to understand what the other ramifications are.
- Thinks there are some requirements for us to have the roads in better condition than they are today.
- There is probably several hundred dollars worth of work that needs to be done on the road.
- Suggests that we see how that vote would go, if the subdivision is prepared to go forward with a vote.
- Thinks it is 75% in the City of Alpharetta.
- Doubts this road was intended to be a cut through by the developer.
- It is terrible to drive down that street or try to get out of a driveway.

**Mayor Lockwood**

- Unrealistic to think there would be a 100% buy in.
- More to the point is whether Council would consider a lesser percentage.

**Councilmember Tart**

- If we do consider this we have to think about the cost to revitalize the roads, the cost of doing that, in the future as well.

**City Attorney Jarrard**

- Remembers the 100% is not state law, but that is what is in your privatization policy.
- The privatization policy can be repealed by Council.

**Mayor Lockwood**

- Suggested City Attorney Jarrard explore with the Homeowners' Association Attorney and then bring those findings back to Council.

**Councilmember Tart**

- He is alright with exploring it, but would like to know where the Homeowners Association is in regards to the buy in from the homeowners.

**Laura Wysong, 14305 Creek Club Drive**

- She is President of the Homeowners Association for Crooked Creek.
- Spoke when this ordinance came up that it needed to be turned down.
- Fought this in Fulton County, as well as the ordinance for traffic calming.
- Spoke to the previous City Attorney Mark Scott about adding some changes and modifications to the ordinance.
- Thinks when the 100% was devised, it was in regards to communities with twenty five to thirty homes.
- We are at six hundred and forty and the 100% is not going to happen.
- Everyone on our Board is working professionals and we have done our homework on this project.
- Have been working for years on traffic calming in our area.
- Typically, on Homeowners Boards it is two thirds of the vote or fifty one percent of quorum.
- That is a much more realistic policy to put in place.
- That is parallel to how boards operate.
- Thinks there has to be more reality in this ordinance.
- You have to look at how Homeowners Associations operate and we do not operate that way.
- To make ordinances meaningful, they need to be developed in the realm of how to function.
- Neither ordinance is functional right now.
- To answer Councilmember Tart's question, we have done our homework and have had studies done on the roadway. We have looked at drainage and curbing. We have looked at everything.
- We have spent an inordinate amount of time, as well as investment in looking at this.
- She gets phone calls every day about the traffic situation in our community.
- In a study done two years ago by Fulton County, we had two thousand cars per day out the front and around twelve hundred out the back.
- Of that mix, over one thousand are cut through.
- That number has gone up because we have more traffic situations off of Francis Road.
- We are not built for the type of roadway traffic we get.
- We are really striving to get something done.
- We are going door to door, but a lot of people just do not care and that happens in many large neighborhoods.

**Councilmember Tart**

- If Creek Club Drive were to become private, what about cut throughs.
- We have a Fire Station off of Francis Road that services District 5 and 6.
- Would the cut through still be allowed on that private road for emergency vehicles?

**City Manager Lagerbloom**

- There would be a requirement that emergency vehicles could get through.

- Have had that discussion with Crooked Creek and they are willing to make it easy for us by allowing us to put something in each of the vehicles that would open the gates automatically.

**Councilmember D'Aversa**

- They are going to have a vote of their Homeowners Association pretty soon.
- If forty percent agree to it that is one point, but if there is sixty or seventy five percent that agree, then that is a different point.

**City Attorney Jarrard**

- We will provide as much data as possible to make this a Resolution for the future and not just a regulation for a one time event.

**Mayor Lockwood**

- We as a City Council owe it to our citizens to look into this and see what we can do.
- The homeowners at Crooked Creek are impacted much greater than the citizens that use the road for a cut through.
- It would make a big difference to the quality of life and property values and safety of the homeowners.
- He is in support of having our City Attorney researching this, if it pleases the rest of Council.

**Councilmember Tart**

- Said he would agree with that.

**Councilmember Zahner Bailey**

- It would be very helpful to have the vote that is going to be taken in April, in parallel with City Attorney Jarrard's research.
- We need to look at the privatization policy beyond Crooked Creek.
- There are roads that are not subdivision roads that are part of the public preview.
- Thinks we need to be cautious in regards to repealing the privatization policy and take all roads into consideration with the impact it would have.
- Modification is very different from repeal.

**City Attorney Jarrard**

- Being mindful of that some jurisdictions do not have a policy; they simply default to state law.
- To Councilmember Zahner Bailey's point, a lot of time abandonment comes up in the context of reconfiguring right of way or changing an intersection.

**Councilmember Zahner Bailey**

- Asked the Homeowners' Association if they had information on what the economic impact would be to the homeowners.

**City Manager Lagerbloom**

- We have a requirement in our policy that they do look at those costs and report it to us.

**City Clerk Marchiafava** read the next agenda item:

**DISCUSSION ON WATER RESTRICTIONS**

**Public Works Director Dan Drake**

- Update on where we are with the water ban.

- In the fall, the Environmental Protection Division declared a level four drought for sixty one counties.
- On October 23<sup>rd</sup> the Governor mandated a ten percent (10%) reduction for permit holders, which would be Fulton County Water System.
- Cities and Counties in Georgia are responsible for enforcing these rules.
- On February 11<sup>th</sup> the director of the EPD relaxed a few of the water use exemptions.
- The relaxations that were implemented were that pools could be filled, existing landscapes could be hand watered by one garden hose, for twenty five minutes a day, three days a week, from midnight until ten am.
- Newly installed landscaped could also be watered from midnight until ten a.m. after you have registered and completed a watering use registration permit and that watering for the new landscapes can begin after March 15<sup>th</sup>.
- Fulton County Water is responsible to the state for a reduction of ten percent over the last year and as such is the responsible party for the ten percent in the City of Milton.
- Milton can create more restrictive policies than Fulton County but not less.
- Cobb County has implemented that as of March 1<sup>st</sup> citizens will be able to hand water for twenty five minutes from four a.m. to ten a.m. Pools are allowed to be filled.
- The City of Atlanta took a different approach.
- They will continue their watering ban that is in place with no hand watering allowed at all in the city.
- A thirty day exemption for landscaping is still in effect.
- Atlanta did that so that they can exempt all pools to be filled.
- Fulton County at this time has not played their hand.
- The level four restrictions are still in place.
- On March 19<sup>th</sup> we should receive more information because they will be adopting their policy then.
- Staff recommends waiting until March 19<sup>th</sup> to see what Fulton County does.
- It is a Fulton County decision as to whether Homeowners Associations can fill their pools.
- If they do not allow it, then we cannot allow it because we cannot be less restrictive than they are.

**Mayor Lockwood**

- He asked staff to give us their recommendations as soon as they find out what Fulton County does.

**City Clerk Marchiafava** read the next agenda item

**UPDATE ON NPDES PERMIT**

**Public Works Director Dan Drake**

- We are still working with EPD about the conservation subdivision.
- City Attorney Davis has more information on that.

**City Attorney Angie Davis**

- We are a part of the Metropolitan North Georgia Water Planning District.
- There is a Georgia law that says this is what it means to be in that district and it has certain requirements for a district plan.
- The whole goal is for preservation of water, decreasing in purview surfaces and creating storm water run off and all these types of things.
- Long has been a requirement of adopting this Erosion Sedimentation Control Ordinance, which you have already done and there is no problem really with that.
- As a part of this district plan, however, there are two other ordinances that have been required as a part of this district planning board and it includes a litter control ordinance.
- There is also a Conservation Subdivision Use Ordinance.

- Thinks it is problematic from a legal perspective, arguably, because the state is telling us how to vote.
- Some of our broadest powers are our constitutional power to zone property and make land use choices.
- They may argue that this is not telling you how to zone, it is just describing land use requirements.
- That is an ultimate issue that may come into play.
- We do have our NPDES permit, but it is contingent upon us adopting these other two district ordinances.
- Our ordinance has to be substantially similar, it has to comport with the purposes.
- The immediate issue comes up that we have a letter that says by June 13<sup>th</sup> we are supposed to have this adopted.
- What she has discerned is that date was reached basically on our own notice of intent.
- That is what we said we expect we could do.
- They are very willing to work with us on that time frame.
- We could start negotiating with them on the contents of some type of ordinance that might address some of these issues.
- Assuming she has the consent of the Council, she will try to get some extra time and if that requires amending our notice of intent, then we will proceed to do that. Then we will have additional time to deal with this ordinance.
- She needs to hear comments on this ordinance.
- If we do not adopt it, they would probably want to revoke our NPDES permit and also we would not be eligible for state funding or state grants.
- The City indicated that we would complete the adoption of these ordinances in May of 2008 and based upon that the EPD request, we should submit copies of the ordinance to them by June 13<sup>th</sup>.

#### **Public Works Director Drake**

- We made the contention with the understanding from the Fulton Metropolitan North Georgia Plan Water District that the conservation subdivision was a “must have piece”.
- It was not something that came before Council.
- It was something that was necessary and it was supported by our City Attorney, so it was a matter of putting it in there and then figuring out how we “not do that”.

#### **Councilmember Zahner Bailey**

- It is her understanding that other cities were questioning the requirement.
- She is concerned about another entity forcing our zoning approaches.

#### **City Attorney Davis**

- My hope is that they work with us on this.
- Thinks they realize there is a “chink in the armor” on this one.
- Thinks they are looking to change it in future years, so they might be willing to work with us on this one.
- In the statutory scheme there is provision by which, if we present something and this particular person does not pass off on it, then we have an appeal provision that can go to the district board. She thinks there is one more layer of appeal that we can go to if we do not like the decision.
- We have some mechanisms if we cannot get past this initial decision maker by appealing to them.
- As a practical matter, if they are going to change something in 2009, we could be in process until then.
- One thing they stated is we have up to five years to comply with all of their requirements under our permit.
- That is why they say that this tight time frame is our own making.
- Thinks they are very willing to back off the time frame.
- They also reiterated that they were not aware of anyone who had been fined or penalized, as long as they were working with the EPD on these issues.

**Councilmember Lusk**

- Has this been adopted by other jurisdictions around the state?

**City Attorney Davis**

- Anyone who is in the Metropolitan North Georgia Water Planning District has presumably adopted this or something similar.
- It is only required if you are in this district.
- It is not a NPDES requirement.

**Councilmember Lusk**

- Is there a chance that we could research what other jurisdictions have adopted?

**City Attorney Davis**

- Absolutely and something we endeavor to do and here we have a finite number of players, so we can look at what they have adopted.
- Many of the cities that have adopted this may not have the same concerns we have.
- They may have just rubber stamped this ordinance and put it in place.
- When she gets to talk to this person, she can ask what we have to have and is hopeful we can meet their goals in other ways.
- If she has a consensus, then we will work to extend our time frame so we can all take a deep breath. Then we will look at other jurisdictions and work with EPD to see what they are willing to do.
- In the meantime, Council can look at this and offer suggestions.

**Councilmember Tart**

- When we sent the letter saying that we would adopt the Conservation Subdivision Ordinance in May of 2008, was there some sort of assumption that would be made that the Council authorized that we would adopt that ordinance and now that we are asking for that time frame to be extended. He does not want there to be any assumption made on the part of the EPD that we approved or somehow knew that we would be adopting that ordinance.

**City Attorney Davis**

- That is a fair question and I do not think so.
- Thinks that the permitting process is usually very little interaction with the governing authority level until such time that there is an approval of the actual ordinance or some other major official action.
- Will make sure that she injects that into the conversation so they do not think that the City of Milton has changed their minds.

**Councilmember Zahner Bailey**

- Would that be necessary to put that in writing so it is very clear regardless of who we are speaking with?

**City Attorney Davis**

- We can do that.

**Councilmember Zahner Bailey**

- Thinks Councilmember Tart brought up a good point.
- Might also point to the fact that back when Fulton County adopted this that they only adopted it for Fulton in large part because they did acknowledge the more rural and low density nature of this area.
- That speaks to the fact that when they adopted their 2025 plan, it was with a conscious decision not to bring conservation subdivisions into what is now the City of Milton.

- As you start to look at things are important green space, etcetera, that the density level does not necessarily need to be to increase the density and another way to skin that cat is to say if they need us to look at conservation well one way to conserve is to actually have a different approach toward conservation subdivisions it would not have to be going toward higher density.
- In theory, you could approach it from the other perspective.
- There would be resistance on the other scheme of that but that is a way to address a legal requirement if that is all we are looking and if we are not looking to undermine policies and concerns of citizens.

**City Attorney Davis**

- That is a great point, because they do not care if we have increase density, they just want us to have less impervious surface and more green space and what increases the density.
- The notion that green space equals higher density is the model of what the developers are going to seek and the pressures that we will feel from the development community and not necessarily what the EPD cares about.

**Councilmember Zahner Bailey**

- In the past the conservation subdivision, the language that has been brought forward that the citizenry here responded to pretty definitively was that it was going to allow for four thousand square foot lots and, as we all know, one acre is forty three thousand five hundred and sixty square feet. She does not think we want to walk down that path of introducing that sort of density at least this Councilperson could not support that.
- The other thing that she would suggest is that when we look at conservation subdivisions it would not have to be a requirement; it could be an option. Obviously, we do not go down the path of taking property or vested rights, but if it is an option it still could address the EPD'S issue of what things we are allowing for particularly property owners to pursue without requiring that be the development standard.

**City Attorney Davis**

- That is indeed the way it is drafted. In fact there is a big blank space that says that the conservation subdivision use is allowed in blank zoning district so presumably we could decide it is allowed that only certain zoning districts. This ordinance says that it is allowable per right - meaning we have it come before us and we get to make a discretionary decision.
- Those are some nuances that are negotiable that we might be able to agree to.
- She will advise when she has had interaction with the representative and what was said.

**Mayor Lockwood**

- Would it be the wish of the Council to have the City Attorney and Dan Drake get together and get us some more information and try to buy us some more time?

**Councilmember Tart**

- Would agree to that.
- He asked is there a deadline for giving you comments on this?

**City Attorney Davis**

- Just send your comments as you come to them and if there is any new time pressures imposed, she will let you know.

**City Clerk Marchiafava** read the next agenda item.

## **DISCUSSION ON THE ETHICS ORDINANCE**

**Mayor Lockwood** stated in regards to the discussion on the Ethics Ordinance, at our last work session our City Attorney mentioned that she had not seen a board makeup with the same makeup as we have. There was some talk about giving us some options. From his personal perspective, the proposed ordinance was just for discussion and he did not have any other discussion with any of the Council and did not talk to anyone that had the intentions to get rid of our board or change our board structure. He just wanted to make that clear. There was an article in the paper in which he was quoted that if the Ethics Board and our Council and our City Attorney felt like the board needed to be changed, then a fair and proper way to do that would be over time the spots be filled as the terms expired if that was the wish of Council. He feels that the people that have been on the board and done all the work at this point deserve to stay on and he hopes they do. He was not supporting abandoning the board.

### **Chairman of the Board of Ethics Clint Johnson**

- Asked are there any questions on the 2007 Board of Ethics Annual Report?

### **Councilmember D'Aversa**

- Suggested that he read the report.

### **Chairman Johnson**

- For the year 2007, the Ethics Board was in session for eight meetings and two work sessions for an overall total of twenty one hours.
- The first meeting was held April 9, 2007.
- The last meeting was held on December 21, 2007.
- The Board considered three complaints all of which were dismissed.
- The Board refused to hear one complaint due to faulty filing and dismissed it without prejudice.
- At work sessions, the Board amended the City of Milton Ethics Ordinance to remove ambiguities and contradictions.
- The Bylaws were suspended on a case by case basis through the disagreement of the written and rewritten ordinance.
- The rewritten ordinance was approved by the Milton City Council.
- It is to be noted that additional work hours were required by all Board members in order to study, write, and otherwise prepare for the meetings.
- Since the Board positions are voluntary, expected scheduling difficulties arose resulting in three canceled meetings during the summer months.
- The City Clerk and Ethics Board Chairman spent a great amount of time in an effort to work around Board members personal schedules.
- A quorum was available for all ten meetings with a ninety two percent attendance rate.
- At the end of 2007 only three original Board members remain due to two resignations and two changes as a result of the November election.
- Presently, there are six members with the Vice Chair position not filled.
- The Board performed admirably considering the political nature of the complaints and the pressing requirements of hearing those complaints.

### **Councilmember Thurman**

- Asked if we were talking about the calendar year because at the end of the calendar year we still had four of the original members.

### **Chairman Johnson**

- It is a calendar year report, but he included that because he wanted to say where they are right now on the day of the report.

- The actual report runs through December 31<sup>st</sup> so you are correct, there were actually four original board members there at the end of 2007 and right now there are three.
- In our last work session, we were presented with a non-draft copy of a proposed ordinance.
- We assumed that we were to approve it and pass it back to the Council to be invoked.
- It worked out ok until page eleven, which said the previously existing Board of Ethics is hereby abolished, which in essence meant that we would be working on an ordinance that would be handed over to a new board who would want a new ordinance.
- We were a little upset about that.
- Some people took it as an insult.
- We feel that if the intent is to abolish the ordinance then at the next Council meeting you should abolish the Board of Ethics and disestablish the ordinance that was written originally.
- The original ordinance was lifted from Sandy Springs.
- Sandy Springs had never used it.
- There has not been an Ethics Ordinance complaint filed as of this moment north of the Chattahoochee River.
- We are the first and the second, the third and the fourth that has filed so nobody else had a chance to test the ordinance.
- On every case we had, we tested something else and corrected it.
- We tried to make it non-conflicting with the laws of the City of Milton.
- There were some not to brilliant things stated in the original ordinance so we changed a lot in it.
- After we changed it we heard more cases and were in the process of changing it again, when the City Attorney was changed, so we suspended it at that point.
- Now we have an ordinance that still is not perfect and we do not have any bylaws in effect for our hearings because we suspend them on a case by case basis because they are in direct contradiction with the ordinance.
- Sandy Springs never had to use it so they never found out the conflicts with the ordinance.
- We now have experience in hearing cases and applying our ordinance and correcting that ordinance so it is easy to use in a hearing.
- We should really say in the ordinance what we want to happen in the City of Milton.
- If we do not do that, every case will be appealed and it will not represent what the people of the City of Milton elected Council for and what you appointed the members to the board for.
- In our work session meeting, we agreed to bring this to you and tell you to either dispose of it or apply it. It is your choice, but let's do it and not fool around. You do not hand somebody something like this and, in essence, let them vote themselves out of office. He does not think that is proper or fair.
- We are willing to stay on and do the best we can.
- Part of what was behind this ordinance from the comments we have been hearing is no ethics board member can serve "A" politically on the board because they have been appointed by a political member of the City Council.
- He totally disagrees with that.
- The Councilmembers went out of their way to find members they thought, would operate "A" "politically and ethically.
- We will have arguments on the board, but we do our best to look at this from a very fair and unbiased point.
- One place that was mentioned to find board members was the Chamber of Commerce and to me they are heavily political.
- One appointee of the Fulton County Bar Association is probably ok
- One appointee selected by the majority of the voting employees of the City of Milton is fine.
- One appointee of the Fulton County School Board, he will just remain silent on that one.
- One appointee of the Milton City Council selected by the majority vote of the City Council.

- It was hard to get seven members.
- It will be just as hard to get five members.
- A quorum is three and do we really want only three people deciding ethics in this City.
- He does not think that is a good idea.
- We mandated that everyone be present at our last hearing to vote on an issue.
- As you narrow the size of the board, you also narrow the view points on subjects.
- The City of Milton would be served well by keeping the present board makeup.
- Seven is good.
- The Mayor and Councilmembers appointing them are good because it makes you directly responsible to the Council that appointed you.
- Someone from outside the City of Milton appointing the members of the Milton Ethics Committee gives pause because they do not have anything to lose with whoever they put on the board.
- We have appointers and appointees that all live here and are responsible to the City of Milton.
- Thinks we should keep the present ordinance, but it does need some tweaking and we do need to write the bylaws and we will do that.
- Once the bylaws are rewritten and the ordinance is tweaked things will go pretty smoothly.

#### **Councilmember D'Aversa**

- Would like to thank all of the Board members. She knows it has not been an easy task to hear some of the complaints.
- One reason she feels that we do have the proper appointment of the board is that you may be appointed by each Councilmember from each district, but we all vote and it must be a majority that appoints these boards. We have adopted the Ethics Board Members unanimously.
- If there is concern over a certain member we can take appropriate action as a voting body.
- She supports the Board staying, but would like to see the ordinance tweaked.
- She would like the attorneys to work with the Board to tweak the ordinance and then have it brought to Council for approval.
- As the Mayor stated, it was a miscommunication that it was not presented as a draft for the Board to review and make a decision on.
- She apologized if anyone was insulted, but from her perspective she in no way intended that to happen.

#### **Councilmember Tart**

- Would like to reiterate that as well and thanked all of the current and past members of the Board of Ethics.
- When this discussion came up, it was truly for what is in the best interest of Milton in trying to come up with something that we could present to the board for them to provide comments on.
- Does not know if putting draft on the document would have made a difference, but what you just did by standing in front of us and giving us the pros and cons of keeping the same board members is what he envisioned that this board would provide to us.
- The ordinance does need to be changed.
- Did I hear you say that if the ordinance is changed that we need to go ahead and get rid of the board.

#### **Chairman Johnson**

- No.
- What he said was if Council wants to abolish the board, let's not do it this way, let's vote on it.

#### **Councilmember Tart**

- So the board is willing and able to look at a model ordinance with draft on it and give us recommendations as to what they feel is the best ordinance for the betterment of Milton.

- We all need to keep in mind what is in the best interest for the City of Milton

**Chairman Johnson**

- Think that what got to some of the board members is it was done backwards.
- Council should have come to the Board of Ethics and asked us to modify certain things and we would present it to Council and then the City Attorney could look over it.
- This came as a message from outside.

**Councilmember Tart**

- Perhaps when we look at the new ordinance that is something we need to consider.
- In other cities the Board of Ethics also serves as a recommending body, so if I were about to do something and I had a question, if I was in compliance of the ethics ordinance, I could bring that to the board before hand and have them rule on it and provide me recommendations back.
- As I understand it that is not the way this board has been operating.

**Chairman Johnson**

- We have attempted to operate that way, but it is hard to train when you already have a lot of complaints and you are trying to clear them in a proper manner and avoid embarrassment.
- It takes you away from training and education, which is part of the board's reason for being.
- We envisioned being able to have meetings with the Police and Fire Departments, purchasing agents and Council Members.
- We are a new City and we thought we could study some other cities where things had gone wrong and maybe avoid that in Milton.
- We are behind on that training and behind on rewriting the bylaws.

**Board Member Carol Lane**

- Understand that this ordinance was written as a guide and not that we were to be abolished, because I was present at the Council meeting.
- This Ethics Ordinance does not need tweaking.
- It needs an overhaul.
- The Ordinance drafted by Attorneys Jarrard and Davis has a lot of good quality.
- If we take our time and go over it and do our homework then we can come up with a good Ethics Ordinance.
- The whole idea of an Ethics Board and Ordinance is not to police.
- Ethics does not equal law.
- The ordinance we adopted early on was from the International Municipal Lawyers Association.
- The Georgia Municipal Association tells you that you should not adopt all of these details because they do not apply to us.
- We should get this worked on as soon as possible.
- Other cities have their City Council appoint board members and some of them have fourteen board members and they put those names in a hat and when a hearing comes up they pull out five of the names and that is who hears the complaint.
- The politics is not coming from the board, but from the ordinance.

**Councilmember Zahner Bailey**

- Would like to echo the thank you to all of the Ethics Board Members.
- It has been more than a year and they have served well even though it has not been an easy environment.
- She wanted to make clear that the law firm was going to present a draft to the board.
- Council did not go through that draft on a page by page basis.

- Thinks anything in the future will be stamped draft.
- It was not the intent from the Work Session discussion to abolish the board.
- Jarrard and Davis were asked to come back with different recommendations and they did that.
- Would like to see the Ethics Board Members and Jarrard and Davis collectively and collaboratively figure out the best ordinance to make sure we are a City of Ethics.
- Have respect for Jarrard and Davis and the Ethics Board Members and feel confident that they will come up with a recommendation that we can hear as Mayor and Council.

**Councilmember Hewitt**

- Would also like to thank the Ethics Board and looks forward to working with them in the future and would not have gone through the work of appointing someone if he thought it would have been abolished two weeks later.

**Councilmember Lusk**

- Respect and appreciate the time and effort they put in to the cases that are brought before them.
- He thanked them for the time they spend in this volunteer position.

**Councilmember Thurman**

- Would like to thank all of them also and agree very much with what Carol Lane said that the purpose of the Ethics Board is not to police.
- Unfortunately, we have not given them the opportunity to do their homework and to go in and train and go through the ordinance in detail and make the changes that need to be made to it.
- They started off as judge and jury and never really got to do what really needed to be done before hand.
- Hope they can take the time to go through the ordinance and look at the issues.
- We are used to getting ordinances that are not marked draft; we just know they are drafts so we do not think anything of it.
- She apologized that it came to them that way, but it was not Council's intent to abolish.

**Councilmember Tart**

- He has already thanked the members of the Board of Ethics, however, he does not want to undermine the discussion that was placed in the draft ordinance the Board received with regard to the Board membership.
- Wants to keep an open mind as to what is in the best interest for Milton.
- Would appreciate their recommendation in regards to retaining the current Board and the Board membership and the way they are selected.
- However, he will not be presumptive to assume that that is necessarily in the best interest of Milton. He asked when they look at the draft ordinance and consider it, please consider what is in the best interest of the City of Milton.
- Believes parts of the ordinance are unconstitutional.
- If there are parts that are unconstitutional then he would like to repeal that part of the ordinance until they can have the time to look at a new ordinance.
- The new ordinance should be one they can all agree is constitutional that will serve the City's needs.
- Does not want to keep an ordinance that is written in such a way that can be used as a political tool.
- Councilmember Thurman had provided comment in regards to adopting the state code of ethics or defer to it while we are rewriting ours.
- Would like advice from attorneys regarding that.

**City Attorney Davis**

- It is not always our practice to stamp draft.

- It was presented at a first meeting as a draft.
- Provided Council with a survey of other cities and how they make up their boards.
- Almost no two cities do it the same.
- This came up at a Work Session not about the Ethics Ordinance, but in the context of a Resolution that had been adopted in the prior year that prohibited certain speech and prohibited Council commenting on members of the boards and committees and attending those meetings.
- Thought that was unconstitutional and infringement of speech and we promptly rescinded that resolution.
- It was in the context of that the notion came up of how to address boards as elected officials.
- That is properly dealt with in an Ethics Ordinance.
- Your Ethics Ordinance does address it to some extent.
- She had heard Council and board members frustrations about what happened in the last year with respect to ethics and the City of Milton.
- It does not mean anyone is unethical, but it means we all recognize that the board could not even do what they are charged to do because of complaints being filed.
- She was asked why it is so different here and one of the things that she saw as different is that each of Councilmembers appoints a member.
- Appreciates that this board is not intended to police and this Board can be anything Council wants it to be, but one of its components is somewhat as police because they sit as judge and jury on these complaints.
- But the notion of the people being policed to pick the police is something that is a little unusual.
- In doing the survey, you will see that there are a variety of ways, some of which are Council's appointing by majority vote members of an Ethics Board.
- That could have a political component.
- The Chamber of Commerce could be incredibly political.
- Think we all share the same goals and that is to have a neutral body that is going to listen to what comes before them and make a decision.
- The second issue brought up is that the Ethics Board can issue a complaint on its own accord.
- That is a little bit different.
- The third thing was the notion that many of you had problems with a particular provision in the Ordinance.
- Councilmembers were concerned about constitutionality and she does not know that there are constitutional issues in the Ordinance, but they definitely are in the Resolution.
- Thinks there are some clarity issues.
- They have gotten better and better with the amendments.
- We talked about the notion of the State Ethics Code.
- She felt the consensus was to address those issues.
- She did not feel the consensus was that we are making these changes.
- She hates very much that it was presented to the Ethics Board as a predestined result because that is unfair to this Council.
- She had asked Council if they wanted this Ordinance to start from the top and go down.
- Council said they have confidence in this Board and they wanted it to go to them first.
- She had hoped that the "big bold face bracketed italic comments" made it plain that they were not expecting it to get adopted.
- Everything that goes out of her office has signature lines on it. It is just part of their formatting tools on their computer system.
- She thinks what happened needed to happen.
- It sparked dialogue and there has not been a lot of communication in the past.
- In response to Councilmember Tart's question, she does not know that there are constitutionality issues.

- She thinks there are a couple of provisions that concerns Council in regards to what they can do as elected officials.
- The terms of the Ordinance speaks about what they can and can not do in their official capacity, not in their individual capacity.
- Again, there are many things to look at in terms of clarity.
- In some respects the draft ordinance was more stringent and in other areas it was more lenient.
- We can do this any way Council wants.
- We can tweak the old ordinance.
- We can start with a proposed draft.
- We can throw that away and start from the beginning.
- She does not think that is what in place now is going to infringe on someone's rights or unduly someone's speech or activity if it is interpreted appropriately, which she would trust this Board to do as they have in the past.
- She does not think there is an immediate need to repeal.
- The State Code of Ethics applies to all political subdivisions within the state, but while it applies to Council it does not give Council an enforcement mechanism.
- That is why we need these people locally to enforce and to interpret.
- Under the State Ethics Code, they have it separate for everyone.
- If we repeal the existing provisions, we could be governed by the State Ethics Code. In the interim, we have no enforcement method unless we leave the Board in place.

#### **Mayor Lockwood**

- Thanked City Attorney Davis for clarifying the intent of the draft ordinance. It sounds like the existing Board could work with the City Attorney and come up with a good ordinance.

#### **City Attorney Davis**

- Think what she has heard is the consensus of leaving this Board in tact and work with the Ordinance.
- Council might think about leaving the seven members that are currently on the Board in place and since Chairman Johnson mentioned how hard it is to get seven members there, Council might want to add seven more members and maybe have a pooled approach.
- She said they just need some clear direction so they know where they are going from here.

#### **Councilmember D'Aversa**

- Stated they agree with what the Mayor said.

#### **Councilmember Thurman**

- For clarification purposes, she asked the City Attorney to go back and look at the existing Ordinance and to also look at the new draft they proposed and decide what parts they want.
- It bothers her that it could take several months, although it should take several months.
- If they came back with something to soon, she would be really concerned.
- Not only is the Board allowed to make claims, but basically the way our current Ordinance is written they have to report a violation if they know it has occurred.
- That puts them in an awkward position.
- Is that something that needs to be changed while they are still working on the framework of the Ordinance?

#### **City Attorney Davis**

- That has been raised as an issue with some employees as well.
- Not crazy about the language in that section because it speaks about reporting a violation.

- The board members decide what is a violation.
- Once you start piecing one part it can add some complexity.

**Councilmember D'Aversa**

- Thinks what Mayor Lockwood said was that the City Attorneys and the Board get together and make the determination of whether they continue with the old Ordinance or start with the new draft that was presented.
- They can make that determination immediately with the Board and then go forward with the modification.

**City Attorney Davis**

- From an efficiency standpoint, this Board may feel like they need some communication from Council about their preferences.
- Ultimately, it comes to Council because they are the body that will approve it so if Council wants to offer some thoughts on where to start, it might be helpful.

(Discussion from the audience)

**Mayor Lockwood**

- Stated that Council has embodied the Ethics Board and Council trusts them and the City Attorney to come up with something they can bring to Council. He said Council would leave it up to them to decide whether they start with the old Ordinance or the new proposed Ordinance.

**Councilmember Lusk**

- We have a structure in place and it is workable with some modifications to it.
- Has a concern that this is a volunteer body and would not want to impose the burden on them that it will take several months.
- Personally, he would like to see the Board work with the attorney and take what is in place and see what can be used from it.
- It was developed years ago and Council adopted it.
- It is not perfect, but no laws are perfect.
- Would like to see us work with what we have and move forward with it without spending months on end redeveloping some new Ordinance.

**Councilmember Zahner Bailey**

- Perhaps we could take what Jarrard and Davis put forward as a possible draft in concert with that which we have currently operated under and use what is in the best interest of the City of Milton.
- Supports the Mayor's comment.

**Mayor Lockwood**

- Again, he trusts the Board and our City Attorney to get together and decide what they think is best and then bring it back to Council.

City Clerk Marchiafava read the next agenda item.

**DISCUSSION WITH THE DESIGN REVIEW BOARD MEMBERS REGARDING EXPANDING AUTHORITY**

**Kathi Cook, 14670 Birmingham Hwy.**

- She is the Chairperson for the Milton Design Review Board.
- Requesting consideration to amend Article 12.

- This board is a group of volunteers placed on the board by each individual Councilmember.
- They believe they are selected based on their qualification and they would not be on the board if Council did not trust their opinions and decisions.
- They would like to change their capacity to make final decisions, which would put them in line with the rest of the boards.
- They are the only board that is a recommending body.
- Final approvals are based on the information that they are given.
- They are asking the Council to look at this Code and make the changes that are more in line with what is in the City of Alpharetta.
- Community Development Director Wilson actually liked the City of Roswell's Ordinance better.
- The difference is that the City of Alpharetta's says that the decision of the Design Review Board is final and an applicant would have to appeal to the Fulton County Court.
- The City of Roswell says that it can be appealed at the Board of Appeals, which is more of a local appeal.
- That is fine with us.
- It is still a process that they would have to go through and not pressure the staff.
- Wants to make the point that the board could not overturn ordinances.
- They are not saying that they want to grant variances.
- What they are looking at is merely moving a dumpster location or maybe when they go to City staff and say that this is really going to reduce density by one hundred square feet, we want the Director to say that the board's decision is final and here is the appeal process.
- That is the basis for the consideration they are asking for.

#### **Terry Herr, 110 Champions Club Court**

- Councilmember Thurman, Councilmember Zahner Bailey and he helped craft the first overlay district ten years ago, so he has been involved with this process for ten years in the Northwest Fulton area and is very committed to it.
- One of the underlying problems that the Design Review Board has consistently had from the day that it first started was that it was a recommending body.
- This was put into place by Fulton County in their wisdom of wanting to try to control the Northwest area.
- The board has considerable experience.
- Have over 40 years of training and architectural practice as a background.
- They have another member on the board that has probably 25 to 30 years of architectural practice as well.
- Kathi is Board Administrator and has a degree in engineering so we have very qualified people on the board to make sound decisions.
- The decisions that are made are relative to aesthetics.
- Cannot write an Ordinance that spells specifically what each condition needs to be and it takes someone with training to begin to understand that.
- Would recommend Council move them to a position that they do have final authority.
- Bring that authority to a seven member board which is very important because currently the sole final say is with a party that is not an employee with the city but a consultant to the city.
- It puts him in a difficult situation.
- When trying to deal with developers and they know this board can only recommend, it puts the board in a difficult situation to extract the best solutions to problems on an on going basis.
- Highly recommends Council make the change.

#### **Councilmember Thurman**

- Would like to get staff's opinion on it and know the legal aspects.

**City Attorney Jarrard**

- As with any other local or municipal code there is a certain degree of discretion that boards or committees or a Council have.
- You cannot just make it up as you go along.
- Thinks it is how much latitude can be had.
- It is a reasonable amount of discretion because it can then blanch over into an arbitrary capricious.
- The City has to keep the amount of guidance and direction somewhat tethered to the code.
- The reality is that cities are products of legislation and they have no more power than that which is given to them by the sovereignty that lets them become sovereign in the first place.
- They then delegate that power to various tribunals, City Council, and boards and they have to give them objective criteria.
- Within the Design Review Board there is an aesthetic standard in that it lends itself so well to every time there being a black and white determination, you have to give them some discretion, but you still have to keep it somewhat constrained so that every time is not brand new and there is a wide open book of potential elements they could bring to bare each time.

**Councilmember Thurman**

- If issues of continuance come up that needs to be addressed that they are not specific for one particular thing, but on a regular basis the Council needs to know.

**Kathi Cook**

- It would be hard to detail every requirement or everything that fits into an area.
- There are times we just have to make a reasonable decision on things that are not within the code.

**City Attorney Jarrard**

- The last time he talked to the board, which was in the context of abandonment, they talked about the Council making a decision and using their discretionary authority.
- If people are treated reasonably and consistently most people appreciate that even if they do not always like it.

**Councilmember Lusk**

- The requirements for board participation are pretty specific.
- The people working in the architectural and engineering field know what reasonableness is and in his experience with Terri Herr and knowing the makeup of the board we have now, we need to put our trust in them
- Professionals of that stature have an obligation to do what is right.

**Community Director Tom Wilson**

- In his opinion, the decision made by the Design Review Board is final.
- Cannot think of any situation in which he would not observe the final recommendation of the Design Review Board when it is founded in Ordinance.
- Likewise he can not think of any situation where he would accept the recommendation of the Design Review Board when it is not founded in Ordinance.
- This gray area does concern him.
- There have been occasions where things were handed down to him that were not tied to Ordinance, even when the Ordinance is being broadly interpreted.
- The purpose of the Design Review Board is to take a “C” project and make it an “A” project.
- There are a number of standards in the Overlay District which must be adhered to and observed.

- The benefit the Design Review Board brings to our City is encouraging people to do more than the minimum standards, which takes agreement by the applicant.
- For instance if they were to say: issue this building permit only if the glass of the window is yellow, yet there is no standard in the overlay district to even speak to the glass or the colors of glass. In effect if that were to happen (and it has not happened), essentially they would have had legislative powers in order to make new Ordinances which Council did not make.
- He does not object when it is based in Ordinance.

**Councilmember Hewitt**

- Had a question/object/concern.
- To him the design elements have two aspects: one aesthetic and the other being engineering and safety standards.
- If this becomes more of a final say rather than a recommendation, would we be putting the City at risk with some of the decisions they would make.

**Kathi Cook**

- We could not overturn a safety concern.
- It is a board and it still has to go through a final staff review.
- We are not given civil plans, traffic studies or a hydrology reports.
- We try to put the best aesthetic design together and then if it goes to the arborist or engineers and they say; you may not want that detention pond up front, then it does not mean it goes back to the board.
- These are reasonable decisions.
- We are not asking for something new.
- This happens in the City of Roswell and the City of Alpharetta.

**Terry Herr**

- My firm practices in over forty states and municipalities across the country and every Design Review Board is that we go before is a governing body.

**Councilmember D'Aversa**

- What is the difference in the Roswell Ordinance and our Ordinance?

**Councilmember Tart**

- Spoke to someone on the Roswell Council and asked him about their Design Review Board and what kind of powers they have.
- Anything that comes before Council like rezoning or uses permits was all recommendations and they had certain legislative powers after to be able to approve recondition or deny application for major design plan approvals.
- What would the Roswell Design Review Board actually decide on that would be binding.

**Terry Herr**

- Probably project aesthetics, the building materials, detailing, all of the physical building aspects.
- They would also have review rights of the site development with regards to placement of parking or anything that is within the Ordinance.
- There maybe one design that is better than the rest from an aesthetic stand point.
- The Design Review Board is truly looking at design elements.
- We would not be reviewing hydrology calculations, size of ponds, etcetera.
- Those are not the purview of the Design Review Board.
- What we are talking about is how the project looks when it is finished.

**Councilmember Tart**

- So in Roswell when things come to the Design Review Board prior to the City Council while making recommendations before they consider rezoning, not only would they look at whether it meets the design standards in the Zoning Ordinance, but they might recommend conditional conditions.
- But when they have a legislative decision to make, do they then shift to only looking at what is in the Ordinance?

**Community Development Director Wilson**

- The conditions of zoning that happen with a rezoning, starts out in the first paragraph as to the owners agreement to these conditions.
- When you make up conditions you feel may mitigate the impact of development on the environment, it requires the applicant's agreement to that.
- My concern in this is that they may recommend condition and not have agreement for things that are above and beyond the Ordinance that has been adopted.
- The other concern is; what does final mean.
- If it is final then how can we change things?

**Terry Herr**

- Think we could make ours final if we did get full submissions to the Design Review Board, but we do not get full submissions all we get are maybe and elevation and that is it.
- It is very hard to make all of those decisions that would be necessary from that.
- If we did get the arborist report that said these trees are diseased then we could make decisions with regard to those items.
- We can only make decisions to the extent that we have information.

**Kathi Cook**

- We do not want the arborist report, we are not arborist, but, what we are saying is that we are going to try to force people to save a specimen tree and incorporate it into their site plan.
- We are going to make the best decision with the information we have and as far as zoning, those come to us as courtesy.
- We are talking about changing three distinct Ordinances; we are not talking about changing overlay requirements.

**Terry Herr**

- One thing that would make the Design Review Board function more properly would be for staff to get the submission and review it for technical compliments.
- Currently that is happening.
- We should then have a staff review of the actual technical aspects of it.
- A check list to go through and identify all of the various aspects of the Ordinance.
- Then once we make our final approvals, see that those are followed through in the field.
- Right now there is no mechanism to do that.

**Kathi Cook**

- We are talking about items within the code.
- We are not talking about changing the code.
- We want it to be a good experience for the developers and help them through the process.

**Councilmember Lusk**

- It sounds like we are talking about more staff time.

**Councilmember Zahner Bailey**

- It may just be that staff is reviewing it in advance and it is a timing issue.
- She is hearing that they review it in advance and in addition that it would have a summary attached.
- These issues are not new.
- In order to be efficient and provide service to the development community and the applicant, think it behooves all of us to make sure we have more clarity about what the board needs, to provide a better service to those applicants and a better decision to the City of Milton.
- Not troubled by giving final review.
- Hears positive suggestions from the Design Review Board and perhaps we have opportunity to improve the process.
- Finality does not mean that it over takes public safety or precludes staff from identifying things.

**Community Development Director Wilson**

- It creates an awkward situation to say it is final unless you think it is not.
- It would put us in an unlivable situation to do that.

**Councilmember Zahner Bailey**

- Obviously, other jurisdictions provide this sort of authority that she hears the Chair and the Vice Chair of the Design Review Board requesting.
- She would support what is being presented.

**Community Development Director Wilson**

- Does encourage them to go back and make new design standards and be very clear about what those are.
- He firmly supports that.

**Councilmember Zahner Bailey**

- With staff's support she thinks that would be very helpful and would be in the context of giving more authority to the Design Review Board.
- Thinks that all works together.
- She hears three things: authority, improvement to the overlays in terms of specific language, and potentially a check list.

**Kathi Cook**

- We would want to be helpful to staff.

**Councilmember Thurman**

- Would like to see the Chairperson and the Vice Chairperson sit down with Community Development Director Wilson and Public Works Director Dan Drake and decide how this could be accomplished so the board does have the authority it needs.
- You need to come up with something that clarifies what the final decisions are and have the City Attorney look at it as far as making sure you are not over stepping your authority so we do not have any kind of legal problems.

**Kathi Cook**

- We wrote it based on two other Ordinances, so we know it works.

- We have also met with Director Wilson and he said he was in agreement with it, so she does not know what the change has been.

**Terry Herr**

- One of the things they do is condition a specific issue, relative to further study by a department of those types of things, so if it were to save a specimen tree we would condition that to it being subject to the arborist saying it would live.
- We are not making unilateral decisions with regard to that.
- If it is an area that we are out on the limb with, we will condition it within that format.

**Councilmember Lusk**

- Would like to know what works in Alpharetta and in Sandy Springs.

**Kathi Cook**

- We have two people in the office.
- One goes to the Design Review Board and the other one checks the plans when they come in to make sure that all of the conditions are incorporated into the site.
- She sits at the Board meetings so she knows what the decisions are.
- She will make recommendations to the board.
- It is not a hard process.
- Thinks it could work here.

**Terry Herr**

- As a professional when he goes into the City of Alpharetta, he has to have everything ready to be heard, to get the process done as efficiently as possible.
- By that board having the final say, he has to meet those needs.
- As only a recommending board, he does not think they get the same level of performance by the professionals and the developers that come before them.

**Councilmember Zahner Bailey**

- Along those lines and to your point are there some cases where you do not have all of the data that you would otherwise have.
- Is that what you are trying to say?

**Terry Herr**

- That is correct.
- We have probably two thirds of the data we need.

**Councilmember Zahner Bailey**

- It seems that in order for the entire process to be more efficient and more customer service oriented to the applicants, and to help staff and the Design Review Board; can we have a requirement that says unless they have data "A" through "E" whatever those requirements may be, it does not get placed on an agenda unless the applicant has the data and if they do not have it, then it does not go forward.

**Community Development Director Wilson**

- That sounds really good but different types of applications need different types of data and if you say that every application has to have every bit of that it becomes really unreasonable for some people.

- Recently, they started asking for floor plans inside the building, and this is an aesthetic review of the Design Review Board, which is certainly something they can ask for, but, for some types of application that would be a real hardship.

**Terry Herr**

- We only see commercial projects, not residential projects so if it is a commercial project they have to have a licensed architect and he should be able to draw a floor plan.
- The Ordinance requires an offset in the building every forty feet.
- Without a floor plan you cannot tell where that offset is, so you really need to have floor plans, site plans, where the project is located, site map, building elevations, building materials.
- We need all of that submitted to review it properly and again we are talking commercial properties.
- The only place we deal with any residential is in Crabapple and in mixed use applications.

**Councilmember Tart**

- Because we do not have anything in writing, he is not sure what they are wanting.
- He knows they want more powers and can respect that.
- He is also cognizant of the fact that there are jurisdictions in which the Design Review Board does have more power.
- Have asked several times what those powers are and still does not have an answer.
- Would appreciate moving forward and consider more power to the Design Review Board, however would like something more concrete.
- Would like to see what exactly they want and the issues from staff, in a proposal.
- How is it that other cities can do what the board asks and address the issues staff has raised?

**Mayor Lockwood**

- Would reinforce the fact we need more information from the Design Review Board and staff, so we can go back through it and compare it.
- Would also like to thank the board for all the work they have put in as volunteers.

**Community Development Director Wilson**

- Would like to say what a great job they do.
- Most things go without any conflicts whatsoever and he really appreciates what they do.

**Terry Herr**

- Asked Council not to take anything he said as derogatory toward staff because they are doing a monumental job.

**City Clerk Marchiafava** read the next agenda item

**DISCUSSION ON BOARD OF ZONING APPEALS PROCESSES**

**(Continued discussion on with the Design Review Board Members Regarding Expanding Authority)**

**Councilmember Tart**

- Before we move on would like to know what we decided on.

**Councilmember D'Aversa**

- Would like to know a time frame for what is going to be accomplished.
- Concerned that our Board feels like they are not getting all of the information they need.

**Councilmember Tart**

- So can staff and the board get together and determine what the needs are and what they can and can not do and then come back to Council to determine what needs to happen? Is that what we are doing?

**Councilmember D'Aversa**

- Do the applicants get a checklist of what they need to provide to Council?

**Community Development Director Wilson**

- Not everything on every check list is going to be needed by every development.
- When a person files a building permit application, it is automatically routed to the board.
- We do not kick it out just because it does not meet the regulations.
- If someone has applied for a building permit application and it does not meet the standards of the Design Review Board, he does not kick it out, he sends it to the Design Review Board to get whatever other information that they want to attach to it.

**Kathi Cook**

- That is different, because a lot of time they will get there and say they did not know.
- What we are saying is; if they submit their building elevation and they have already been to the board once, and they do not meet the Crabapple Cross roads overlay requirements, then they should not proceed forward, because it is a waste of our time and theirs.

**Councilmember Zahner Bailey**

- If we do not provide that communication with the applicant then the Design Review Board takes the brunt of that, but they have not been given appropriate data.
- As far as Councilmember D'Aversa's point about what was decided at this work session, she thinks that some of the Council supports the need to make sure that certain data gets to the Design Review Board before they hear a case.

**Mayor Lockwood**

- What he is hearing is that the Design Review Board and our staff will get together and work out what is needed and what is reasonable for staff, and then bring it back and present it to Council.

**Kathi Cook**

- Met with Community Director Wilson last week and he said he was fine with the language that she had put together, so she does not know what changed.

**Community Development Director Wilson**

- The language is fine.
- The only language they added to it is that their decision is final, and if it is final, then it is final.
- He can not use his best discretion in changing it.
- He will not be put in the position to change it.
- It has an appeal process and it can go to the zoning board of appeals.

**Councilmember Zahner Bailey**

- Separate from the language of authority, some new thing that we have heard is that it would be helpful if an applicant had a check list before something is scheduled to go to the Design Review Board agenda.

**Community Development Director Wilson**

- To actually have a long exhaustive list of the information that they prefer, is not always sent to them because he feels it is not always necessary.
- Sometimes it is very burdensome on certain applicants, so he uses his discretion about what needs to go to them.
- If he chooses wrong then they bring it back.
- What he hears is that now they will impose this burden on every applicant to come up with that entire list before it can go forward.

**Councilmember Zahner Bailey**

- Not suggesting we impose any burden.
- She has heard from two members of the Design Review Board that they are not getting enough data to make a good decision.
- She does not have that list, so she can not define if it is burdensome or not.
- She also does not want to impose burden on the Design Review Board.
- Think it goes back to the Mayor's point of what they need and what is reasonable, so we do not impose burden.

**Mayor Lockwood** suggested they move on to the next item

**DISCUSSION ON BOARD OF ZONING APPEALS PROCESSES**

**Councilmember Zahner Bailey**

- Felt it was important to review the process of the Board of Zoning Appeals.
- Different Councilmembers have had different experiences and concerns, so we need to talk about how to improve that process.
- Have asked the City Attorney's for input.
- Talked to staff about what we can do to improve the policies.
- Can outline some concerns.
- In regards to process what do our policies allow for that allows applicants (she will call it divide the question) for something to go to the Board of Zoning Appeals when it is ultimately going to come to us as Council and/or if something is coming to Council and yet there is a variance going to the Board of Zoning Appeals.
- Would like to resolve this.
- Does our Board of Zoning Appeals Ordinance allow for that and if so, she would like to have that fixed because that is not allowing Council or the Board of Zoning Appeals to make the best decisions. Other concerns are in regards to discretion and how an item gets to the Board of Zoning Appeals versus Mayor and Council.
- Not saying that discretion is good, bad or indifferent.
- Think Council needs to identify what that discretion is and how we address it.
- The third element has to do with data that comes to us versus data that goes to the Board of Zoning Appeals and it ties into the discussion we just had with the Design Review Board.
- What information is necessary for our boards to have and she would like to hear from our Board of Zoning Appeals Chairperson as to what data they get and if it is adequate.
- Another issue has to do with types of variances or broadness.
- We need to take a look at what the policies are.

**Councilmember Thurman**

- She thought any community development type issue would be directly discussed with the Community Development Department rather than at a work session for Council.

**Councilmember Tart**

- Thanked Councilmember Thurman for her comment.
- He had discussion with Interim City Manager Lagerbloom and with Community Development Director Wilson on all of these issues, after he was approached by the Chair of the Board of Zoning Appeals Heidi Sowder.
- Hopeful that after the meeting earlier that day that most if not all of the issues can and will be addressed based on what is currently in our Ordinance, what needs to change in our Ordinance, what staff can do that they are not doing now and what they would like to do versus what they do now.

**Community Development Director Wilson**

- As to what kind of application goes where the stream buffer variances, part of chapter 14 of the City Code says that the appeals process is to the Board of Zoning Appeals not the City Council.
- The Zoning Ordinance identifies what can go to the City Council as a concurrent variance concurrent to our rezoning modification or use permit and that is anything that is in the Zoning Ordinance.
- So you have two different kinds of ordinances in two different locations, each specifying where it can go, so that is why stream buffers go to the Board of Zoning Appeals and not to Council.
- The stream buffer variances were being reviewed by the Board of Zoning Appeals, yet the site plan was being reviewed by the City Council as a modified site plan.
- It would seem reasonable the site plan and the variance be reviewed by the same body.
- There is no requirement that you must file rezoning and a variance together; for instance you could go to the Board of Zoning Appeals independently for your stream buffer variance without any kind of site plan and then come for rezoning after you have that.

**Councilmember Zahner Bailey**

- That is not to different than when you have someone that asks for a timber permit and they clear cut under the premise of a timber permit and then in three months they come forward for a rezoning.
- One opportunity we have is to insure that if a variance goes to the Board of Zoning Appeals first, that there is a time table before, after which a rezoning can not come to us. It discourages the division of the question.
- That is why she thinks it is helpful to have a discussion to say it is a goal to insure that at site plan, data and concurrent variances are one decision, so we get the best decision from the city.
- How do we change or modify a policy to get what we need for the best decision.
- Do we go through it step by step so we start to address it?

**Community Development Director Wilson**

- We do not have to address it now.

**City Attorney Jarrard**

- The only instance he has seen that is in the realm of clear cutting, where an individual comes in to clear cut there has been more than one jurisdiction represented, which then prevents them to come in for subsequent.
- Typically within the rezoning, you have that clear cut prohibition.

**Councilmember Zahner Bailey**

- That is why she used that analogy because it does apply.

- In this case we had stream buffer requirements, but if was a rezoning it would be before us as a concurrent variance, so the policy that we have right now allows for a stream buffer to go one place and we did not have the benefit of that knowledge so we ended up with a less than desirable end result.
- Would like to make sure that does not happen in the future.
- It is two fold. One is making sure we have appropriate data, but also making sure we think through that time differential between an item coming to one body and making sure there is not potential for abuse at that process.

**Councilmember Tart**

- What he is hearing Tom Wilson say is that even if it is rezoning a stream buffer would not come before the Council it would go before the Board of Zoning Appeals.

**Community Development Director Wilson**

- Yes, currently it is that way.
- We have to change Article 14 to say that it could go either to the Board of Zoning Appeals or the City Council and we have to change what goes as a concurrent variance in the Zoning Ordinance to say anything in this Zoning Ordinance or Chapter 14 of the City Code, so we have to marry those two in both instances, then we can determine some mechanism to prevent them from coming with a zoning subsequent to a variance request.

**Councilmember Zahner Bailey**

- Asked City Attorney Jarrard if in regards to stream buffers as we think through that as an option; is it reasonable that some jurisdictions and the City of Milton could consider that if the goal is for a stream buffer and a stream variance is to be considered as part of a rezoning and or a separate variance, maybe those could be directed to Mayor and Council so we have the opportunity to review them.

**City Attorney Jarrard**

- Can carve it any way you like. There is no requirement that the Board of Zoning Appeals be the only entity that can review stream buffer variances.
- In some of the jurisdictions we represent, stream buffers are so political the Board of Zoning Appeals do not want them, they would prefer it go to Council.

**Councilmember Zahner Bailey**

- The reason she brings it up is because it sounds like another option that we consider stream buffers come to Mayor and Council for decision as opposed to going to the Board of Zoning Appeals.
- Would like Council to consider that.

**Community Development Directory Wilson**

- We have never been asked to make recommendations for the Board of Zoning Appeals.
- We would be happy to do so.
- We have always made ourselves available to answer any questions that the Board of Zoning Appeals may have, but for the most part we are clerical and we pass on the information we get.

**Councilmember Thurman**

- Can tell you at Fulton County, staff did not make recommendations to the Board of Zoning Appeals, because of the very nature of the variance.
- They did answer all kinds of questions but they did not make recommendations.

**Community Development Directory Wilson**

- The Board of Zoning Appeals does not want us to make recommendations because they want to do whatever it is that they want to do.
- Another point that has come up recently is about some of the information that he does and does not send to them.
- There is an environmental slide analysis which is prepared by the applicant and it is biased.
- Do not pass it to anyone and hardly ever read them.
- It is sort of like the impact analysis that goes with a rezoning application and is filled out by the applicant and says all the great things the applicant is going to be doing so he pretty much ignores it.
- I also do not pass along any soil information we get.
- I do not feel they are ready to evaluate that kind of information.
- Our staff has been working with these creeks for many years and if there was any relevance to the soils we would tell the Board of Zoning Appeals about it, but if not we just keep silent.
- The opportunity to make the wrong decision based on some of this information is far greater than making the right decision based on the information.

**Councilmember Zahner Bailey**

- Is there some standard information that you could provide to them that would say this is why this variance is being requested or needed.
- It is something shy of a recommendation but it is information.

**Community Development Director Wilson**

- We are very clear about what the variance request is.
- There is a statement of hardship by the applicant, for the hardship.

**Councilmember Tart**

- In going back to January and looking over all of the Board of Zoning Appeals cases with few exceptions, this is what they receive as additional department comments.
- Building plan review, no comment
- Site plan review no comment
- Arborist review no comment
- D.O.T. storm water reviews no comment and then when it gets to the recommended conditions, if the board decides to approve the variance, staff recommends the following conditions. Staff has no recommended conditions at this time.
- When you are looking at things like that and trying to make a decision that could potentially end up in court, that expert opinion is needed from staff.

**Community Development Director Wilson**

- Thinks it would be very helpful to them if they would seek our recommendation on this.
- Some Boards of Zoning Appeals do not want it.
- Be glad to go either way on that.
- We can supply them some good information as to why the variance needs to be, or what would happen if the variance is not granted, or why in our opinion it meets the criteria for granting a variance or not.

**Councilmember Zahner Bailey**

- Spoke with the City Attorneys about this.
- The Ordinance says that it can be based on either harmony or hardship.
- It seems that harmony and hardship should be a little clearer.

**Councilmember Thurman**

- Disagreed with that.
- Having sat on the Board of Zoning Appeals for Fulton County for twelve years, she can say that yes hardship was the primary thing, but sometimes you can grant variances that would make something more in harmony with the overall intent, than it would have been without granting any variances.
- What they were asking to do would be in keeping more with the overall intent.
- That is where we have to give our Board of Zoning Appeals a little bit of judgment.
- They know what the intent is.
- There are times that you can build a house and it meets all of the codes but it looks horrible.

**Community Development Directory Wilson**

- What harmony means is that first you determine why there is a standard.
- For instance; side yard set back. The purpose of the side yard set back is to protect you and move your buildings apart to keep fire from spreading and put some distance between you and the neighbor.
- So how can you give a variance and still be in harmony with that?
- If you move the buildings closer together you could fire protect those two walls so that fire does not spread between the two buildings and you would still be in harmony with the intent of that Ordinance.
- You could still plant something or a put up a fence or whatever, and separate yourself from your next door neighbor.
- It is not about being harmonious in the neighborhood or having a good color scheme.
- Can you grant this variance and still accomplish the purpose of the standard?

**Councilmember D'Aversa**

- Is that defined for applicants as well?
- How well defined is hardship?

**Community Development Director Wilson**

- It clearly says it can not be for financial benefit or self imposed.

**Councilmember D'Aversa**

- Yet it seems that hardships are noted more often for that reason.

**Community Development Director Wilson**

- This Board of Zoning Appeals has been very smart and never let that enter into it as far as he knows.

**Councilmember Zahner Bailey**

- Would like to see a better definition around hardship in those cases.
- Would like to see us evaluate whether or not we adequately define harmony and hardship with the help of the City Attorney.

**City Attorney Jarrard**

- Mayor and Council are the policy makers and what is in your code right now is the expression of your policy, but when he first read that he thought the use of the word or between the harmony and hardship was a typo.
- He is not used to seeing that.
- His is used to seeing; the first thing they have to do is show the hardship.
- What you are asking is, to vary from the terms of the governing document you have established.
- Used to seeing it being a two part process.
- It is consistent then, even though it varies.

**Councilmember Zahner Bailey**

- Believes we need to evaluate whether it should be harmony and hardship with hardship being first and foremost.
- That is why she brought it to work session to discuss.

**Councilmember Thurman**

- Disagrees with it.
- We have a Board of Zoning Appeals and we should trust them to do what is best.

**Community Development Director Wilson**

- About the harmony and hardship.
- To him it is no different.
- Nobody seeks a variance for the fun of it.
- There has to be a hardship for them to put out money, so whether it says and or whether it says or it is the same thing.

**Councilmember Zahner Bailey**

- From her perspective it emphasizes to the applicant that it is not an either or and it leaves a little bit less interpretation.
- It sends a message saying variances should be based on hardship.
- What one person thinks is a hardship another may not, but by saying hardship and harmony it gives better direction than a variance should be, based on hardship and harmony, not one or the other.

**City Attorney Jarrard**

- The only point he is trying to make is he is not used to seeing harmony being an independent singular basis for a variance.

**Mayor Lockwood**

- So basically we are looking at it as hardship first as the reason that you are going for the variance, and then as harmony as the way to deal with it.

**City Attorney Jarrard**

- Agrees with your Community Development Director.
- Do not think that people come and seek a variance just for kicks.
- It is a grueling process.
- On the other hand under this code they would have the right to come to you with no hardship but base, it with something that deviates from your rules, yet is otherwise consistent with your rules.

**Councilmember Thurman**

- We always looked at it like it was a scale and if you had a really strong hardship, then it did not matter quite as much what the harmony was.
- If you had no hardship at all, then you better have a really good reason that you needed it for the harmony.

**Councilmember Zahner Bailey**

- She was just asking that they clarify that and she thinks she has heard that based under this jurisdiction, it would be common to have harmony and hardship, not one or the other.

**Scott Kilgore**

- We do see applicants bringing cases to us for the wrong reasons, for their financial gain, or things that are going to be harmful to the city as a whole.
- The problem with the way the Ordinance is written is; if they make it overly harmonious and have shown no hardship, we have to grant it on that basis because it says or.

**Heidi Sowder**

- As an example of what Scott Kilgore is talking about; we had a case come before us in January. Z07021 and the applicant was applying for a variance to setback for ninety six lots within a subdivision, for the entire subdivision.
- Setback reductions to the side yards and the rear yard and the front yard for all ninety six lots and there was no hardship.
- All of the specimen trees were in the buffer areas.
- The topography was all pasture land, it was rolling, no hills and no steep slopes so there was no hardship and because of this or harmony or hardship, the board passed it based solely on harmony.
- Think the harmony and hardship needs to go hand in hand.
- A couple of members have asked staff to specify the intent of the Ordinance that the applicant is requesting a variance from.
- That would be very helpful to us prior to our meeting to give us the intent.
- She was told that if staff is not giving comments with the packets then it means it is ok and that really concerns her because stream buffers are a big issue.
- She would expect to have staff comments on that and not just staff recommended placement of whatever according the Georgia State Environmental condition.
- That means nothing to her because the board did not have a copy of Chapter Fourteen, which was a stream buffer variance and flood plain, until six o'clock the night of the meeting.
- It is not online so we can not call it up on our computers to review it, so we went into the meeting cold, yet we are ask to make decisions on that.
- She would really like to have more input from staff.
- She thought a variance board was going to hear things on an individual case by case basis, not on a ninety six lot subdivision.
- It is more like a zoning modification.

**Councilmember Tart**

- Would like to ask City Attorney with regards to the Board of Zoning Appeals cases, about the extent or volume of variances that would normally be considered on one application.

**City Attorney Jarrard**

- If you get more than two or three lots in a subdivision then you are talking about a modification to your policy.
- Not aware on any variance criteria based on hardship where they can come in with ninety six lots.
- The standard can not be met.

**Interim City Manager Lagerbloom**

- A lot has been said and he wants to give Community Development Director Wilson the opportunity to address these issues.
- Would like to know if there is a reason why we did what we did there.

**Community Development Director Wilson**

- About the ninety six lots.

- They came to him and asked if they could have variance on ninety six lots and he had some decisions to make.
- Obviously you can have a variance on any lot you want, if you bound two hundred and fifty dollars.
- He never dreamed that the Board of Zoning Appeals would approve it, which is why he let them roll all of the lots into one side, one rear, one front, as opposed to ninety six applications.
- Have no authority to ask them for a variance on any lot that is out there.

**Councilmember Zahner Bailey**

- Regardless of how we might have thought the Board of Zoning Appeals might have voted, obviously they did not vote that way and they approved a C.U.P. under the guise of a variance.
- Her concern in that instance is; was the authority in place on our current policy to allow that to happen and if so we need to go back and correct that policy.
- Does the current policy allow for that to happen?

**City Attorney Jarrard**

- The policy does allow it, there is no prohibition on it, so it is not a matter of what can be done, it is a matter of what can be done in the future and how do you correct it.

**Councilmember Zahner Bailey**

- How would that not have been identified as a CUP?

**Community Development Director Wilson**

- It is not a CUP, it is still an AG 1 subdivision, a CUP is a terrific zoning category and it is very creative and you can just change anything you want to about it.

**Councilmember Zahner Bailey**

- To clarify her statement; the CUP in this area that has a one acre minimum has been side yard, front yard, all of the things they ultimately came to the Board of Zoning Appeals with.
- Ninety six lots should have in no way been one variance to go to the Board of Zoning Appeals.

**Heidi Sowder**

- To quote from the applicant's letter they say the variance will allow the development to preserve the harmony (this is where she has the issue with the word harmony) in nearby developments by conforming to developments such as Kingsley Estates and Kingsley Estates was rezoned in 2006 by Fulton County as a CUP.

**Community Development Director Wilson**

- There was several ways to accomplish what they wanted to accomplish.
- One would have been to rezone to CUP.
- Another is to seed variances on ninety six lots.
- They chose not to rezone.

**Scott Kilgore**

- This brings us full circle back to the original issue, which is the fact that this applicant did not have to prove hardship.
- In fact if there had been a poll taken of the board they would have said there is not hardship, but they made a very good case for harmony.
- They convinced the board that they were doing a good thing.

**Councilmember Thurman**

- That kind of decision needs to be made by an elected official.

**Heidi Sowder**

- We are claiming; if it is left as harmony or hardship then that decision can continue to be made based on harmony.
- They made a good case.

**Mayor Lockwood**

- Think we are on the same page with what our City Attorney has recommended on harmony and hardship or vice versa.

**Councilmember Tart**

- Do not know if we are on the same page as far as changing the Zoning Ordinance to be hardship and harmony.

**Councilmember Thurman**

- Can the City Attorney give us some alternative words?
- Maybe we could get rid of the word harmony.

**Councilmember Tart**

- Think part of the problem is, whereas Community Development Director Wilson may be able to say; the reason for x buffer is x,y and z and these are the reasons why this setback or buffer is in the Ordinance, but he is not so sure the Board of Zoning Appeals members know the purpose and intent behind every single provision in the Zoning Ordinance, yet they are being asked whether something is in harmony.

**Mayor Lockwood**

- As we are venting through this, as with other items, this is a way to communicate back and forth, and we see we can give the boards more information from staff.

**Community Development Director Wilson**

- In all honesty, this is fairly complicated and complex, it is a lot for everyone to learn in a very short period of time.
- Staff is here to help and if the board members would like or ever ask for recommendations, we would be happy to help.
- We have training on the eighteenth on stream buffers and variances.
- It may be helpful if all of City Council was there.
- Would recommend that stream buffers come before the Council.

**Councilmember Zahner Bailey**

- Just like with the Design Review Board, we have to come to terms with what this board needs.
- Heard some things that extremely concern her.
- If there is data that does not come before the board until an hour before and it is one hundred and six pages and nobody has read it; do we have the opportunity within the Board of Zoning Appeals to have an automatic deferral.

**Community Development Directory Wilson**

- They can make recommendations or they can defer.

**Councilmember Zahner Bailey**

- Being a new body and not having been trained, they may not know to ask for deferral, if they do not have staff there recommending deferral then how do they know to ask the question.
- Maybe they should always have an attorney present.

**City Attorney Jarrard**

- Yes they should.
- It would be nice to have someone there who has been doing this awhile.

**Community Development Director Wilson**

- Would just like to say they were instructed about stream buffers, early on when we first did training on this.
- It is not surprising that they may not remember because there was an awful lot coming at them very fast.
- If they needed more training then all they had to do is ask and we would be more than happy to do that.
- They certainly have been instructed on what their options are on what to approve, deny or defer, so he would ask the question; why did they do the things that they did, because they had those options before them and they did not choose those options.
- It sounds like they are dissatisfied with the decisions of their own board.

**Scott Kilgore**

- We need to get more comfortable with what we are doing and deferring cases.

**Councilmember Thurman**

- If she did not have all of the information she felt like she needed, then she did not hesitate to defer.

**Councilmember Zahner Bailey**

- We as a Council should provide that support and not because they asked, but because we know they need it.
- These boards are volunteers and they do not have that experience.

**City Attorney Jarrard**

- Will be at the training session on March 18<sup>th</sup>.
- Thinks it would be a good idea if Council was there.

**Councilmember Thurman**

- Thinks that decision should be made by an elected official, just like she thinks there should be more than a certain percentage of homes in a subdivision asking for variance, it should be rezoning and should come before council and not the Board of Zoning Appeals.

**Councilmember Zahner Bailey**

- We need to get our arms around what data we need to provide for a particular case and if that data is not available for whatever reason, then it should not be on the agenda.
- She has also heard if an item is on the agenda then action has to be taken.
- Thinks that is being misconstrued somehow.

**Councilmember Tart**

- Thinks the action item is for staff to work with the Board of Zoning Appeals to determine what information they need to properly make decisions.

**Heidi Sowder**

- During the last year, under recommended conditions there would be; if the board chooses to approve this variance staff recommends a b c d e, and those things were helpful.
- As time went on we stopped getting a lot of that information.

**Councilmember Zahner Bailey**

- It sounds like we are going to have our City Attorneys help with modifying the policies or the ordinance to have stream buffers come back to Mayor and Council.

**Councilmember Tart**

- If we are saying that stream buffers need to come before Council; he is wondering what the acreage would be.
- Need explanation as to why acreage matters.

**Scott Kilgore**

- Not sure how it needs to be crafted, but on the acreage, if we are making a decision on a very large tract of land, it starts to feel more like rezoning than just a simple variance from an Ordinance.

**Councilmember Zahner Bailey**

- Going back to hardship and harmony, when you look at the and are there jurisdictions that only has hardship without the work harmony.
- It sounds like harmony gets misconstrued sometimes by people that may not have as much historical experience.

**City Attorney Jarrard**

- Certainly there are jurisdictions that only have hardships.
- It is just another thing for the Board of Zoning Appeals to consider that is if it is a hardship; what is the applicant proposing and is the proposal consistent with the code.
- That is what he is used to seeing.
- He can draft some sample verbiage.
- If he has learned anything from this meeting it is that he is going to get more than head bobs with respect to what he is going to go back and draft.
- Stream buffers to the Council is one thing, number of lots that are sought for a variance goes to Council and maybe some verbiage about maximum acreage or percentage and the variance considerations, perhaps changing the or to an and, and then also some other hardship or variance criteria that has been used in other jurisdictions.

**Councilmember Hewitt**

- Would seriously look at changing the word harmony.

**Councilmember Tart**

- Can we restate the action items between the Board of Zoning Appeals and staff, which has to do with recommendations and getting together to determine what recommendations and information data that the board needs to have from staff to make good decisions.

**Scott Kilgore**

- Stating the intent of the Ordinance.
- A lot of time they give an opinion but to the best of their ability.
- Right now they list the Ordinance and he would like to see underneath that; what the general purpose and intent of the Ordinance is.

**Community Development Director Wilson**

- It would be helpful if the board would design the format of whatever they like and we will be more than happy to comply with that.

**Councilmember Zahner Bailey**

- Heard that they would also have somebody from staff as well as the City Attorney at the meetings.
- We also talked about a waiting period.

**Councilmember D'Aversa**

- We grant variances for density and the applicant comes before another board and gets tremendously more density because of the stream buffers that were allowed.

**City Attorney Jarrard**

- How far do we want to go to paralyzing the good actor who just messes up?
- He would like to bring Council some options.

**Mayor Lockwood**

- Would like to thank the board for all of their hard work.
- It does make a difference in our community.

**Heidi Sowder**

- Has one more question; the cases that were supposed to come forward in March were administratively deferred until April so how will the discussion this evening to move stream buffers to the Council affect that.

**Community Development Director Wilson**

- It will not affect the meeting in April.
- They will defer it until they do not have authority over it any more and that means we will have to refund their money.

**Councilmember Tart**

- If they put in an application would they not be heard on the rules and policies in place in that time?

**Councilmember Zahner Bailey**

- Since those variances are serious enough to come before Council; is there an option that that body in discussion with staff and Council to defer be a legitimate case.
- Is that an approach that can be pursued?

**City Attorney Jarrard**

- His guidance would be that if they filed under an old code and we planned to change that code that gives the benefit of that code all the way through the process.
- The only time that would be an exception is if a code change benefits the applicant.

- They have a right to take advantage of that code change, because in land use every benefit goes to the applicant.

**Councilmember Zahner Bailey**

- Will assume that staff and our City Attorney will make it known that the change is forthcoming so that all members of the Board of Zoning Appeals understands it.

**Community Development Director Wilson**

- Then this training needs to be for the City Council and not the Board of Zoning Appeals.

**Councilmember Tart**

- Does not understand that, because the Board of Zoning Appeals is still going to hear the stream buffer cases that are coming before them in April.

**Community Development Director Wilson**

- In the long term they are going to be heard by Council, so Council needs to be part of the training.

**Councilmember Zahner Bailey**

- Even if we have to have two training sessions, please do not hold up their training because of us.

**Community Development Director Wilson**

- We found in the Ordinance today that stream restoration does not require a variance, so the one up on Freemanville that we had so much heartache about last week; we are going to withdraw it because it does not require a variance to restore it.

**Heidi Sowder**

- It would also be helpful to get any comments from the public in the packet.

**Councilmember Zahner Bailey**

- Sometimes citizens do send us things because they do not know who to send it to for the Board of Zoning Appeals, so she thinks the web site could be made more user friendly for that purpose.
- Maybe there is a way to highlight it on the website so it becomes much more obvious, and then people know who to contact and how to contact them.
- We get things that the boards do not get

**Interim City Manager Lagerbloom**

- We have addressed looking into ways that we can enhance the website.
- Do not know if he agrees with the response he got form the program manager and he wanted to make sure they were on the same page before he tells what the plan is.

**Community Development Director Wilson**

- One thing that can be done, (and he thought he had been doing this with the Board of Zoning Appeals) is forward it to the Board of Zoning Appeals and then it is captured on their website and they will always have it.

**Councilmember Thurman**

- Thinks we need to forward with no comments.

**Scott Kilgore**

- One other comment in regards to wording; he heard some comments about hardship being hard to define.

- The wording in our current by laws are pretty tight and it is pretty clear that with a hardship you have to prove extraordinary and exceptional conditions of size, shape and topography and if we can keep our eye on the ball with that, think we are ok.
- Does not think we will have to do a lot with the definition of hardship.

**Heidi Sowder**

- Would like to thank Mayor, Council and staff for allowing them to come and talk about their concerns, because we all need to work together.

City Clerk Marchiafava read the next agenda item.

**DISCUSSION ON COMMITTEES**

**Interim City Manager Chris Lagerbloom**

- We have certain committees that exist as a part of the City of Milton.
- Bike and Pedestrian Committee, the Green Committee, the Disability Awareness Committee, we have committees and we have boards.
- Need some policy guidance from the elected officials.
- What is the mechanism on how a committee is created?
- He has four questions that need answering tonight.
- What is the difference between an officially endorsed versus a non-officially endorsed committee of the Mayor and Council?
- Some of our committees have come before Council for a vote just to have that committee, some have come before Council for appointments and others have not.
- The ones that come by appointments have been voted on with a majority vote and others have not.
- He is trying to figure out what Council considers to be an officially sanctioned versus non-officially sanctioned committee of the Council.
- Who decides what committees are actually needed in the city and which ones are not?
- What triggers the assignment of the staff to the committee and how was that staff member selected?
- Want to know what your expectations are as to who actually appears at these committees, how does he select a staff member or if a staff member is even needed.
- If it is a night meeting, need guidance as to how many nights he should keep the same staff person here.
- What is the goal of each committee and how are they formed, how do they report progress and how do they demonstrate continued need?
- The final question is; how do we make sure these committees we are setting up actually need to continue.
- If we do not have them report to somebody at some point in time, in his experience you find a group of people who are willing to sit in the same room and you give them a vision or a mission statement they will find a reason to continue to exist, even if it is contrary to what the wishes are of the Council.
- If they are not serving a reasonable purpose, we can take those volunteers and find a good purpose for them to fit into.

**Councilmember Thurman**

- One primary concern is the fact that our staff has a “full plate” already.
- Any new committee that would require significant staff time needs to be Council approved.
- We decide a work plan and we currently had to postpone things that are on our work plan because staff did not have time to do some things.
- If it is anything that requires Community Development or Public Works or City Managers time, then those things need to come through Council so we can prioritize our work plan.

**Interim City Manager Lagerbloom**

- We just watched a process with the Milton Disability Awareness Committee and that was a very sophisticated process from start to finish.
- It culminated after months into the process of being brought to Council.

**Councilmember Thurman**

- Do not think anyone is trying to come up with a committee that is not beneficial to the city, but we need to decide as a Council how to use our staff.

**Mayor Lockwood**

- Thinks we need to update our work plan very soon and prioritize, because if not, we could start committees' everyday.

**Councilmember Thurman**

- Councilmember Lusk and she wanted to do some work with preservation and when we brought that forward we were told it would require staff time so we have been on hold for a year.
- It is something that is important to her but at the same time, she understands that they do not want to work six nights a week.

**Mayor Lockwood**

- Are we in agreement that we need to work through our work plan and what we have slated.

**Interim City Manager Lagerbloom**

- It would help, so it was not the staff making decisions on the Council's priority to actually work through that work plan and have those projects that may need a committee attached to them approved through the work plan.
- Wanted to make sure we do what the Council wishes.
- Think we have been reasonably successful at this point, but am concerned that if we do not address it now, we will run out of recourses.

**Councilmember Tart**

- As clarity, the fiscal year starts in October, so are we not already into a work plan that was predetermined by this council.

**Interim City Manager Lagerbloom**

- We have a work plan that would have routinely updated in October, but we made the decision to hold the retreat and the work plan update until we got a new City Manager.

**Councilmember Thurman**

- Also we did not file our work plan last year until April, so it has not been a full year.

**Councilmember Tart**

- If there are committees under way that does not require staff commitment then that needs to be reflected in the work plan.

**Councilmember Thurman**

- Unfortunately our first work plan was community development and we had so many needs for so long that we are trying to catch up in one year but we just did not have the staff or recourses to do it.

**Interim City Manger Lagerbloom**

- If we think that work plan is coming soon, then we hold with the committees and boards that we have now and wait on forming any new ones until after the work plan is completed.

**Mayor Lockwood**

- That sounds reasonable.

**Interim City Manger Lagerbloom**

- Want to find out what the process is to formalize.
- We will not have any more officially endorsed or non-officially endorsed until after the work plan is done and then whatever ends up on the work plan becomes the officially endorsed committees for the City of Milton.
- Unless there is someone here that thinks there is a committee out there that we absolutely need between now and then, but he does not see any immediate need.

**Councilmember Tart**

- What about the round up, or spring fling committee.

**Interim City Manger Lagerbloom**

- Would not consider that to be new, because it is a special events and it already exist through Linda Blow's area.

**Councilmember Lusk**

- Would like to see any of these initiatives stand on their own and be evaluated on their own.
- Are they going to require a lot of staff or any staff?
- In working on the celebration for Memorial Day, do not see a lot of staff time involved.
- We will have volunteers form the community from different veterans groups to help pull this thing together.
- As far as formal staff time, Linda and Lisa have been informed of what we are doing; do not see a lot of staff time.
- My point is a lot of these initiatives that do not require a lot of staff time, he would like to see move forward if it really improves the image of the city.

**Mayor Lockwood**

- Councilmember Lusk has made a good point and we have to go back and clarify what a committee and what is sponsored and what are not.
- If it is something that does not require staff time, yet improves the community or our image, then it would be a management decision.
- If something comes up and the City Manager accepts it then it comes to Council under reports and presentations.

**Councilmember Thurman**

- First, make sure it does not take up to much staff time, and then bring it forward to Council.
- Step three would be going out to the community.

**Councilmember Lusk**

- From a scientific approach, whoever is imposing a committee should come up with a plan.
- X number of staff needs to participate x number of hours a week, the project will take x amount of time.

- Program it like a project and come up with a schedule and the amount of recourses that will be required for it from staff and volunteer.

**Mayor Lockwood**

- It puts a lot on the City Manager but where do we draw the line with staff.
- It needs to have some latitude with the City Manager, and then let him express to Mayor and Council how he feels about it.

**Councilmember Lusk**

- Part of that proposal is justification.
- Are the recourses justified for the project brought forth?
- It would take a lot of the burden from him if they have to present their case.

**Councilmember Thurman**

- If it requires staff time it has to be on the work plan.

**Mayor Lockwood**

- The check system is; they will give a report at a Council Meeting and if the majority agrees, then it goes forward.

**Interim City Manager Lagerbloom**

- A lot of this process will get easier for the City Manager when that person is able to bring on more people and fill some vacancies we have now.
- After the approval stage, it would be a great thing for the Executive Aid to the Mayor and Council to do.

**Councilmember Zahner Bailey**

- In regards to the Green Committee, there is absolutely no requirement from staff at all, so short of locking the door, there is no issue.

**Linda Blow**

- That is a point because many times she has come in after work so that a meeting can happen. Otherwise, the committee could not get in the door.

**Councilmember Zahner Bailey**

- Sounds like that is a facility management issue.
- It should not be incumbent on Linda.
- There really should be a way to lock a door, so staff does not have to come and do it.

**Mayor Lockwood**

- We will have to try the system and if it garnets merit form the City Manager, then he gives a report and the Council as a whole can say yea or nay.

**Interim City Manager Lagerbloom**

- He can operate within those guidelines.

**Councilmember Tart**

- Have an issue with the Comprehensive Plan Survey and have been approached by some citizens with concerns with the anonymity or lack thereof or perceived lack thereof with regards to the raffle part of the survey and the fact that once you turn in your survey and you turn in your raffle ticket, then you have

your name submitted with the survey. That was an issue brought before the Comprehensive Plan Advisory Committee prior to the survey.

**Community Development Director Wilson**

- We tried every way in the world to make it anonymous and that is why we used the tickets the way we did.

**Councilmember Tart**

- The other issue is, we are calling it a raffle when we were given legal advice not to call it a raffle.

**Interim City Manager Lagerbloom**

- That was changed.
- It was determined by the City Attorney Davis to be ok

**Councilmember Tart**

- With regards to the water restrictions, although we said we would wait until Wednesday to hear what Fulton County has to say.
- He does not want to wait until the next meeting in April to determine what we are going to do.
- These Homeowners Associations need to know whether they need to truck in water to open their pools.
- There is a lot involved on what they need to do and we need to have a decision on the water restriction as soon as possible.

**City Attorney Jarrard**

- If Council is going to take action on that it will require a public meeting, even if it is a special called work session right after Fulton County makes their decision.

**Mayor Lockwood**

- Since we can not be less restrictive than Fulton County, why not say we agree with what Fulton County does and have that Resolution ready.

**Councilmember Tart**

- In the fiscal year 2007 general fund revenues and expenditures in the annual report; an Avensong resident approached me and said that Avensong donated Three thousand (\$3,000.00) dollars last year and it says under donations and contributions a total of one thousand four hundred and sixty two, so please check that, because the citizens of Avensong want to make sure their money was used in the fashion that they provided it to the city.
- The last thing is a favor to ask of all Council Members; if you are having meetings or have been assigned functions to meet with various individuals throughout the state or the city staff, it would be good to share those things with the rest of Council.
- There have been incidents this past week, where some of us found out about certain things that were being worked on, in the paper, and it does not really do good things for a team who is supposed to be working together to find out about things in the paper.
- We need to be updated on who is working on what at all times, so that we are familiar with everything.

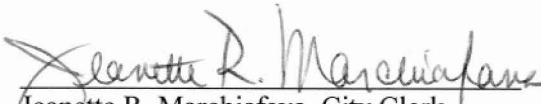
**Community Development Director Wilson**

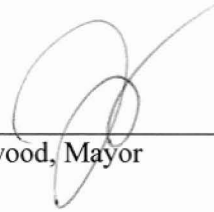
- We looked at the Leland project to observe the progress that they are making to get to compliance; last week we issued a stop work order and citation for failure to maintain their erosion and sediment control devices.
- We are being contacted by EPD and they will make a site visit to review the project with us.

- If they find it necessary they may impose additional enforcement beyond that which we have taken, so this will be going into court.
- It is not just Leland's projects, there are other projects upstream who have contributed to this, but anyway today it looked pretty good.

After no further business, the Work Session adjourned at 11:43 PM.

**Date Approved: April 14, 2008**

  
Jeanette R. Marchiafava, City Clerk

  
\_\_\_\_\_  
Joe Lockwood, Mayor