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The Regular Council Meeting of the Mayor and Council of the City of Milton was held on May 19, 2008 at 6:00 PM, Mayor Joe Lockwood presiding.

CALL TO ORDER

Mayor Lockwood called the meeting to order.

ROLL CALL

City Clerk Marchiafava called the roll and made general announcements.

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

Councilmember Absent: Councilmember Karen Thurman/excused

PLEDGE OF ALLEGIANCE

Cogburn Woods – Kim Sigsbee's 3rd Grade students led the Pledge of Allegiance.

Mayor Lockwood stated the reason the students are here from Cogburn Woods is because Alexis Ovington wrote a letter to the Mayor stating her concern about all the trees being cut down and all of the construction going on. All of her classmates also signed the letter, so he invited the class to come and tour City Hall. They also met with the Arborist Mark Law to learn all about trees and City processes. They learned that if someone cuts a tree down they have to replace it with another tree. He thanked the students for coming.

Mayor Lockwood welcomed Boy Scout Cameron Jackson representing Troop 1459 who is working on his Citizenship in the Community Merit Badge.

City Clerk Marchiafava read agenda item 08-577.

APPROVAL OF MEETING AGENDA

Staff recommended the following changes to the meeting agenda:

1. Under New Business, move agenda item 08-583, Approval of a Resolution Appointing a Citizen's Participation Group for potential revision to the Milton tree Preservation Ordinance and Administrative Guidelines to after Reports and Presentations.
2. Add an Executive Session to discuss pending litigation.

Motion and Vote: Councilmember Lusk moved to approve the Meeting Agenda as amended. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously (6-0).

PUBLIC COMMENT

Mayor Lockwood read the rules for Public Comment.

Jon Carroll 2140 Country Ridge Road, Milton, Georgia 30004

- Wanted to discuss something he read in the paper.
- He read the Crooked Creek Country Club wanted to gate with the streets going through Crooked Creek.

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- They wanted Milton to change the laws to less than 100% of the residents to agree, plus they wanted \$500,000.00 to upgrade and fix the streets.
 - As part of the 90% who does not live there, if there is a lot of traffic flowing through that subdivision now to stop that road would be to divert the traffic to all of the other roads which would make a bad situation even worse.
 - One of the ways the Land Use Planning Committee has to fight traffic problems is basically to encourage developers to create cross roads to get it away from the intersections that are important.
 - If we allow this neighborhood to do this, then every neighborhood is going to say "I do not want the traffic either" so all of those opportunities we have will be taken away.
 - The worse part is the money side.
 - He does not want to subsidize a gated community.
 - He does not want to pay more money to allow that to happen.
 - If the normal progression of when the roads are supposed to be maintained occurs then spend the money and they can leave if they want, but he does not want the City to pay a lump sum or to move up that process.
 - He would be hesitant to change the laws.
 - If everyone in the community wanted to do it then it is fine, but he is worried about the precedent it sets for the other traffic alleviation things we could do in the City and how that negates the other options we may have.
 - Think about the options before Council makes that decision.

That completes Public Comment.

City Clerk Marchiafava read the Consent Agenda items.

CONSENT AGENDA

(Agenda Item No. 08-578)

1. Approval of the April 21, 2008 Work Session Meeting Minutes.

(Agenda Item No. 08-579)

2. Approval of the April 28, 2008 Regular Meeting Minutes.

(Agenda Item No. 08-580)

3. Approval of the May 5, 2008 Regular Meeting Minutes.

(Agenda Item No. 08-581)

4. Approval of the Financial Statements for the period ending April 2008.

Motion and Vote: Councilmember Lusk moved to approve the Consent Agenda. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously (6-0).

REPORTS AND PRESENTATIONS

Memorial Day Proclamation

Councilmember Lusk presented a Memorial Day Proclamation and stated that we would have our first celebration of Memorial Day in this City Monday, May 26, 2008 at 10:00 by the Flag Pole at City Hall. All citizens are invited and especially those who have relatives of fallen veterans and present living veterans. As part of the ceremony, we will place markers along Deerfield Parkway from Webb Road to the front of City Hall to recognize the fallen veterans as members of families who now reside in Milton.

Mayor Lockwood thanked Councilmember Lusk for all of his hard work and planning.

Peace Officers' Memorial Day Proclamation.

Mayor Lockwood presented a Peace Officers' Memorial Day Proclamation to Chris Lagerbloom and the Public Safety Department.

Public Works Week Proclamation

Mayor Lockwood presented a Public Works Week Proclamation to the Public Works employees.

NEW BUSINESS

City Clerk Marchiafava read agenda item 08-583.

Moved by Motion and Vote

(Agenda Item No. 08-583)

Approval of a Resolution Appointing a Citizen's Participation Group for potential revision to the Milton Tree Preservation Ordinance and Administrative Guidelines.

Resolution No. 08-05-37

Community Development Director Tom Wilson

- In order to rewrite the Tree Preservation Ordinance, Council was asked to each nominate a single member to the Tree Preservation Advisory Committee.

Mayor Lockwood

- Read the Resolution.
- Section 1. Zach Middlebrooks (Mayor's At-Large member), Adam Orkin (District 3) and Roger Festa (District 5) are appointed for a term commencing May 19, 2008 and ending December 31, 2009.
- Section 2. David Holcomb (District 2) and Diane Palmer (District 6) are appointed for a term commencing May 19, 2008 and ending on December 31, 2011.
- Section 3. When the participation group first convenes, the members will elect one of its members to serve as Chairperson, and Vice Chairperson.
- Section 4. That this Resolution shall become effective upon its adoption.

Councilmember Zahner Bailey presented her nominee:

- David Holcomb has been an involved community member and living in Milton for many years.
- He has two children involved in the community as well.
- He will serve this committee well.

Councilmember Lusk presented his nominee:

- Adam Orkin is President and CEO of Orkin Associates and Devin Properties.
- He is very much involved in landscaping and his developments are evidence of his love of trees and landscaping.

Mayor Lockwood presented his nominee:

- Zach Middlebrooks lives in Sable Point.
- He has known him for several years and he has one child.
- He is a Project Manager with Metro Group Development.
- He wants to help make Milton a special place.

Councilmember D'Aversa presented her nominee:

- Roger Festa is married to Ann and she is a Real Estate Broker.

- They have two children.
- Roger is an accomplished developer both of residential and commercial properties throughout the Southeast.
- He has been a long time advocate for tree preservation and has served on numerous Home Builders Association boards.
- He has worked with Fulton County on development, building, environmental and preservation issues.
- After having attended Ranger School, Armor School and Flight School he served in Vietnam for two years achieving the rank of Captain in the U.S. Army.
- He received many military decorations including multiple Purple Hearts, the Combat Infantryman's Badge, two Presidential Unit Citations, and the Bronze Star Medal for Valor, the Army Commendation for Valor, the Air Medal, and the Vietnamese Cross for Gallantry, the Vietnamese Medal of Honor and the Silver Star Medal for Gallantry in Action.
- He has been past Vice President of the Georgia Homebuilders Association, a member of the Atlanta Homebuilders Association.
- He was past President of Director of the National Association of Homebuilders and Director for the State of Georgia Homebuilders Association.
- He also served as a member of the Watershed Assessment and Tree Preservation Committees for Fulton County.

Councilmember Tart presented his nominee:

- Diane Palmer owns a four acre horse farm and has owned the property since 2001.
- She is a CPA and a teaching assistant at Summitt Hill Elementary School with K through 4th grade special education.
- She is looking into getting back into teaching and she also owns a CPA firm.
- It is important to her to preserve as much green space as possible in the City of Milton and she shares our enthusiasm in keeping this a rural character area.

Mayor Lockwood thanked all of the volunteers for the committee.

Motion and Vote: Councilmember D'Aversa moved to approve a Resolution Appointing a Citizen's Participation Group for potential revision to the Milton Tree Preservation Ordinance and Administrative Guidelines. Councilmember Lusk seconded the motion. There was no Council discussion. The motion passed unanimously (6-0).

Oath of Office

Mayor Lockwood administered the Oath to the members present for the Milton Tree Committee.

FIRST PRESENTATION

City Clerk Marchiafava read agenda item No. 08-582.

Approval of an Ordinance Amending Chapter 15, Health and Public Safety, Article 2, as it pertains to the regulations involving firearms and components of firearms, of the Code of the Ordinances of the City of Milton, Georgia.

Motion and Vote: Councilmember Zahner Bailey moved to approve the First Presentation of Approval of an Ordinance Amending Chapter 15, Health and Public Safety, Article 2, as it pertains to the regulations involving firearms and components of firearms, of the Code of the Ordinances of the City of Milton, Georgia. Councilmember D'Aversa seconded the motion. The motion passed unanimously (6-0).

PUBLIC HEARING
ALCOHOLIC BEVERAGE LICENSE APPLICATION

Approval of Alcohol Beverage Application for Lotty & Lotta Market, LLC d/b/a Nahm Thai Cuisine at 5310 Windward Pkwy, Suite C. Applicant is Ngamta Thong Young for Consumption on Premises – Distilled Spirits.

Finance Manager Stacey Inglis

- We ask this item be deferred until June 16, 2008.
- The applicant has done everything that she needed to do except she did not place the public notice sign in front of the business in the appropriate place.
- Everything is where it should be now.
- The reason we asked to defer is; we have to re-advertise this in the papers.

There was no public comment on this item.

Mayor Lockwood stated the Public Hearing was closed.

Motion and Vote: Councilmember Tart moved to defer until June 16, 2008 the Alcohol Beverage Application for Lotty & Lotta Market, LLC d/b/a Nahm Thai Cuisine at 5310 Windward Pkwy, Suite C. Applicant is Ngamta Thong Young for Consumption on Premises –Distilled Spirits. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously (6-0).

ZONING AGENDA

(Zoning Agenda items typed verbatim)

City Clerk Marchiafava read the Zoning Rules:

At the second regularly scheduled meeting of the month, the Mayor and City Council consider a Zoning agenda. These items include rezoning petitions, modifications of zoning, use permits, and associated concurrent variances, in addition to ordinances, resolution, and text amendments.

The petitions will be heard in the sequence listed on the posted agenda. I would like to acquaint you with some of the rules and procedures for this meeting.

The applicant, and all those speaking in support of an application, will be allowed a total of ten (10) minutes to present the petition. The applicant may choose to save some of the time for rebuttal following the presentation by the opposition.

The opposition will be allowed a total of ten (10) minutes to present its position. If time remains, the opposition will be allowed to rebut.

Since the burden of proof is upon the applicant, the applicant will be allowed to make closing remarks, provided time remains with the allotted time.

The City Clerk's staff will be keeping track of time and will inform you periodically of the remaining time for your presentation.

Those called to speak will be taken in the order that the speaker cards were received by the City clerk's staff prior to the beginning of tonight's meeting.

All speakers will identify themselves by name, address and organization, if applicable, before beginning their presentation.

The Planning Commission heard the rezoning agenda items and recommendations have been forwarded to the Mayor and City Council for consideration and disposition.

In addition, the applicant shall not submit material to the Council during the meeting, unless requested to do so. All material that you wish to be reviewed by the Council in consideration of your application should be submitted to the staff of the Department of Community Development, to be included in the normal distribution of packages to the Council.

When an opponent of a rezoning action has made, within two years immediately preceding the filing of the rezoning action being opposed, campaign contributions aggregating \$250.00 or more to a local government official of the local government which will consider the application, it shall be the duty of the opponent to file a disclosure with the governing authority of the respective local government at least five days prior to the Planning Commission meeting. A violation of the relevant state statute constitutes a misdemeanor. Therefore, if you have contributed \$250.00 or more to a Councilmember and you have not filed a disclosure prior to the Planning Commission meeting, the City Attorney strongly suggests that you have someone else speak for your point of view.

City Clerk Marchiafava read agenda item No 08-574.

ZM08-02 – Southside of Cumming Hwy (West of Sunfish Bend); Petitioner: El Mina Inc. Request: To modify condition 2.a. of RZ03-140 to modify the site plan.

Community Development Director Tom Wilson:

Mayor and Council late this afternoon we received a letter from the applicant requesting a deferral while they take a better look at the site plan and perhaps improve upon it; beyond the point in which they have asked for a site plan modification. The Community Development Department certainly supports that deferral request.

Councilmember Tart:

Do we have a date that you recommend deferral too?

Community Development Director Wilson:

June 16th.

Senior Planner Robyn MacDonald:

The applicant is here to make that statement.

Mayor Lockwood:

I was going to ask as a point of order; do we need to allow any public comment or if we had some public comment on that.

City Clerk Marchiafava:

Would you like for the applicant to speak first.

Mayor Lockwood:

Yes, would the applicant step forward and speak?

Good evening, my name is **George at 5914 Old Dahlonega Highway** and I am representing the Developer Vanguard Builders and the reason for the deferment is we ran into slight technical problems and would like to take a closer look at the design and try and improve on it.

Mayor Lockwood:

Are there any questions at this point for the applicant?

City Clerk Marchiafava:

That completes all of the public comment cards I have received.

Mayor Lockwood:

At this point the public hearing is now closed. Is there any Council discussion on this?

Councilmember Tart:

I do have one question for staff. I know that this case came forward before we had the latest interpretation from the City Attorneys regarding the sewer. Has staff contemplated that and the impact it might have on this property?

Community Development Director Wilson:

Yes. We know this is very similar to the site plan modification that we have for the bank that we had last time. I think the situation is very similar, although this property does have sewer on it. It is certainly something for you to consider when it does come before you. I do not believe that is the cause or the reason why he has requested a deferral. I think he really truly wants to take a look at the site plan and see if he can improve on the site plan.

Councilmember Zahner Bailey:

I have a few quick questions. Again, I do not want to belabor this because it sounds like it is going to come back to us on the 16th, so if be the pleasure of this board; in addition to whatever those technical issues would be, I note that back when it was approved under Fulton County there were some concurrent variances. I will assume when it comes back to us on the 16th there will be full dialogue as to whether concurrent variances will be a part of this modification or not. I would also hope that we would have a full disclosure and discussion about sewer policies and how that relates to the IGA's and the analysis that was presented by our City Attorneys. I would hope (and I do not know if this has occurred yet) as to whether or not there has been a review by our arborist. Could you recall for us whether or not there has been a review by the arborist?

Community Development Director Wilson:

I am sure there has been. Robyn can speak to that.

Senior Planner Robyn MacDonald:

Basically, I think there is only one tree left over from what Mark had said and it was toward the front where it would probably be impacted by the deceleration lane or transportation improvements.

Councilmember Zahner Bailey:

I did not see in our packet an analysis, and I think that several months ago we had determined that anything that comes before us would have an analysis about the trees. I just did not see that, maybe it is there and I just did not have privy to it.

Senior Planner MacDonald:

I believe that once the construction is done there are no trees left on it; but he can confirm that.

Councilmember Zahner Bailey:

My point is that when we get to the 16th, hopefully, we would have a full packet of information that would include all of the things we would need for analysis, because I am seeing that some of that information is not and was not provided to us for the discussion this evening.

Community Development Director Wilson:

Mark, is there a reason why we do not have an analysis of trees on that site?

Arborist Mark Law:

There was one tree, a forty two inch and it is in the right of way. It is in decline, so I do not have the analysis on that. It is in the right of way. It is very much one sided. All of the growth on it is happening on one side. It is weighted to the highway and that is going to be hazardous for the traffic along that highway. The other tree, I think is a thirty inch caliber tree which is further north. It is a healthy tree. It could be preserved. I think they are talking about re-doing the site plan, and we were talking to them the other day and he is wanting to do some work on the plan and try to minimize some of the disturbance so I think there is a chance we could save that one, thirty inch, but the other one is right next to the road and I just do not see how or why that one should be saved.

Community Development Director Wilson:

To your point, we would provide a map and an explanation of the trees that are on that property.

Councilmember Zahner Bailey:

That would be terrific and I think that there have been some trees that have sometime been saved that are near a road, but understanding the condition etcetera and what the development is so if we could just make sure that is part of our June 16th. I also was curious as to whether or not this has been before the Design Review Board.

Community Development Director Wilson:

It has not been before the Design Review Board.

Councilmember Zahner Bailey:

So my question would be; would it go to the Design Review Board before it comes back to us for a deferral based on the request of this applicant.

Community Development Director Wilson:

It is not our procedure, but it would go to the Design Review Board, obviously the new approved site plan if you choose to approve a new site plan. If you do not choose to approve the new site plan then the old one will go before we permit.

Councilmember Zahner Bailey:

I guess my only comment to that is; that sometimes I know applicants will take it forward for a courtesy review and I did not know if a courtesy review was being requested or not.

Community Development Director Wilson:

We have not done that.

Motion and Vote: Councilmember Tart moved to defer until June 16, 2008, **ZM08-02** – Southside of Cumming Hwy (West of Sunfish Bend); Petitioner: El Mina Inc. Request: To modify condition 2.a. of RZ03-140 to modify the site plan. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously (6-0).

Mayor Lockwood:

Would the City Clerk please sound the next item?

City Clerk Marchiafava:

We have a correction on this agenda item number for the record. It will probably be Agenda Item Number 585; we will go ahead and correct that now.

**LU08-01 - Focus Fulton 2025 Future Land Use Plan and Map Amendment – 25888 Hopewell Road.
Resolution No. 08-05-38**

Community Development Director Wilson:

Mayor and Council, a few months ago we discovered that there was a parcel of land that was not in the City of Alpharetta but was in the City of Milton. It was not illustrated on the Future Land Use Map that we inherited from Fulton County. I think that was probably because of a mapping error on their part that occurred some time ago when Alpharetta annexed the property just south of this parcel. We are recommending that we add this parcel to the future land use map at one to two units per acre, which is consistent with the lowest density of any of the surrounding properties to this property. For more details on what is going on in that neighborhood, Robyn will give us a little show of that.

Senior Planner MacDonald:

Just wanted to go through where staff came up with that analysis or conclusion for the recommendation of one to two units per acre. As Tom indicated there was a parcel that the property owner at the time had annexed a portion of. (*Power Point Presentation*) The striped area next to Vaughn was annexed into the City of Alpharetta, which is the red seven portion and that was done approximately twenty years ago, Fulton County assumed that when they annexed that number seven they annexed the yellow to the north; so on our zoning maps really all records of Fulton County indicated this entire parcel (at least this portion of the parcel 7.96) Fulton County thought was in the City of Alpharetta, which it was not. The City of Alpharetta's maps have always reflected just the number of red seven to be a part of their jurisdiction, so what happened was; when we started looking at the maps we realized there was hole there as far as the future land use and that would pose a problem if anybody wanted to do anything with the property; they would not know what would be the appropriate land use or density for that area. What we did was collect all of the recent board policies from Fulton County of what was approved in the area. Let me just take a minute to go through them because I think it will make it really clear why we did what we did. Number one; we are going to go North and then back down South and then to the West and Northwest. Number

one is Hopewell Place Subdivision; it was approved maximum two units per acre, no more than thirty nine units, and minimum one acre lots adjacent to Hopewell. There is another board policy along Hopewell; that the lots that adjoin Hopewell would be one acre lots and then interior lots would typically be smaller, so as we go through these different re-zonings; some of them will reflect that. Number two; is Milton Place which I believe is under development and it was approved at 1.64 units per acre and again minimum one acre lots along Hopewell. Number three; which is the purple lavender to the east is Southfield Subdivision and it was approved at 2.5 units per acre and this did not have that requirement of the one acre but it is a pretty large lot that is along Hopewell Road. Number four; is to the southeast and it is currently under development for C-2 Commercial in the City of Alpharetta. Number five; is O-I, currently developed in the City of Alpharetta. Number six; the beige is Orchards at Hopewell. It is a single family attached dwelling basically senior housing and I believe that is actually developed at 4.5 units per acre, but their land use plan recommends a density of eight units per acre so it is actually developed a little lower than what their plan states. Number seven; which is the same property owner of the subject property that is in the City of Milton is zoned unconditional C-2 commercial in the City of Alpharetta. There is no development on that currently. As you go to the west number eight; is AG-1. There are several scattered single family residents. It looks like three or four. Number nine; some of the more recent development is Vicory Crest Subdivision. Nine and ten were done two different zonings under Fulton County and there units per acre is 1.88 and then one unit per acre and again requiring the one acre lots along Hopewell Road. Basically that is what is on the ground right now and that is what helped us to determine what we would recommend for the site, so you can see these are some of the scattered single family on the AG-1 properties. This is the orchards at Hopewell which is the 4.5 units, this is the Southfield Subdivision, which is next to it, so this is the existing 2025 land use plan with the various recommended densities and so we would recommend the one to two units as shown in yellow. If you were to adopt this plan as staff has recommended; then this is what the land use plan would be adopted as, right here on this sheet. Also wanted to make a comment or let you know as we reviewed this or preceded through the Planning Commission; they unanimously agreed with staff Community Development recommendation of one to two on April 22, 2008. I just also wanted to mention that we are adopting this by Resolution or if you were to adopt it or approve it or whatever you would like to do; the Focus Fulton 20205 was adopted by Resolution in November 21, 2006 so this would be considered an amendment to that Resolution so this is not a re-zoning petition. It is not an Ordinance, but it is a Resolution to amend the plan and the map that goes with it. That is the conclusion of my report.

Mayor Lockwood:

Does Council have any questions for Robyn?

Councilmember Zahner Bailey:

I do. As it relates to the recent analysis from our City Attorney regarding land that is either within or outside of serviceable sewer areas under Intergovernmental Agreements; can you speak to whether or not this parcel is inside or outside of that agreement.

Community Development Director Wilson:

I can. It could not be more complicated. It is partially in the Etowah Basin and partially in the Big Creek Basin.

Councilmember Zahner Bailey:

Ok; so that actually goes to my second question which is about basins. My first question has to do with the actual Intergovernmental Agreement and it may be that we would need to have Mr. Jarrard speak to this as to whether or not this parcel is within or outside that serviceable area and this is a discussion that we had at our work session regarding constitutionality for the serviceability of sewer.

City Attorney Ken Jarrard:

Councilmember, with respect to the service delivery strategy act map that we based our analysis on, the map is just what it is. It is an old Brown and Caldwell map that was attached to the service delivery strategy act and it is not perfect but the map as best as we can tell this property is just on the outside of (I do not know another way to say it) just the shaded area and therefore to the extent that the map controls our analysis where Fulton County can

and cannot at this time provide sewer; our conclusion is at this time it lies outside of that area. Now that is another issue from the basin. They are two different in my respectful opinion, but to the extent my answer with respect to the map it lies in the outside of the map.

Councilmember Zahner Bailey:

I appreciate that because there really are two items. The first is whether or not this parcel is inside or outside of the Intergovernmental Agreement based on that map and I hear our City Attorney saying it is outside what is serviceable for sewer.

City Attorney Jarrard:

Yes Ma'am, best that I can tell based on that map.

Councilmember Zahner Bailey:

The second question is what basin and I heard Mr. Wilson say that there is a portion in the Etowah and a portion that appears outside and from the Etowah we have a No Inter Basin Transfer Agreement that says that we are not to be sewerage those parcels that are within the Etowah Basin. I ask these questions in particular because as I raised at our Work Session I personally have concern with providing a range of one to two. My concern with assigning a range of one to two has been heightened by the fact that we have a more recent analysis from our City Attorney with regards to the fact that we have an IGA that does not allow this parcel to be sewerable. My concern is further heightened by; when we talk about this being an amendment to the 2006 land use plan is that if we were to put a range in place with the higher end of that density range being two units to the acre; when we know today that based on the agreements we have in place that we could not sewer this. I believe we would be setting in motion an unreasonable expectation that is inconsistent with our current policies. With that I could not support a range. I believe that because of the data that has been provided to us more recently which perhaps was not available historically and it is my understanding was not provided a copy of that IGA analysis and so with that I think we would be remiss as a Council if we approve a range that would be inconsistent with the more recent analysis that has been provided to us by our City Attorney.

Mayor Lockwood:

Can I clarify with Robyn was it all but one property surrounding there, that had less density than what staff is recommending.

Senior Planner MacDonald:

To the Southwest there are existing one acre lots, but as far as the future land use everything is consistent the lowest in the area is one to two.

Mayor Lockwood:

So what staff is recommending is consistent with the balance of the area. Is that correct?

Senior Planner MacDonald:

It is conservative, based on what have been approved zonings in the area as well as what the land use recommends.

Mayor Lockwood:

In respect to Councilmember Zahner Bailey's question at this point are these two different issues? I know they can be tied together at some point but what we are looking at right now. Mr. City Attorney, is that a consideration?

City Attorney Jarrard:

I think in formulating your future land use map all of these issues are important, and they would be important when you are considering a zoning based upon the land use map so this to me Mr. Mayor and Council is your quintessential public policy decision because obviously the future land use map is a manifestation of your vision

for the City. All of the issues you all are addressing; the availability of the sewer, the contiguous and surrounding property densities whether as built or as envisioned; all of those can play into this determination and for me to say which one is more important than the other, I would be respectfully out of school to say that I will provide you with as much information as I can but ultimately your vision for that area of the City is what needs to control this.

Councilmember Zahner Bailey:

And with all respect Mayor, at the time this land use map back in 2006 was put forward the information that has been brought to us by our City Attorneys was not part of the equation and it is with that and that new information that I think it is absolutely incumbent on us to consider because if we were to put forward a land use map with a range of one to two when based on the data that we have now been provided indicates that that parcel is not serviceable. I think it is like putting the "chicken before the egg" and the reality as an example, we have had some other things before us at a more recent Council Meeting whereby we said if data changes in the future we could always modify that but based on the new information that we have if we were to approve a range that is inconsistent with the analysis that has now been provided to us and that we know today that is inconsistent with the IGA and the serviceability. I think we would be approving something that we know today to be inconsistent with policy and with legal analysis that has been presented to us. I think at a minimum it would be responsible of us as a body to approve a one acre minimum today knowing that we have a sewer policy that has not been furthered, and if we need to revisit this in the future we can do that, but we could accommodate the one acre minimum which is what would be in place without sewer availability and one acre is consistent when you do not have sewer access and what we have been told is this does not have a sewer access.

Councilmember Lusk:

I understood Mr. Wilson. You said there was sewer on the parcel. Is that correct?

Community Development Director Wilson:

There is certainly sewer in the vicinity. The property to the south that is zoned C-2 certainly could be sewer through Alpharetta. The property that is to the east which is two to three units per acre (I forget the name of it, but it is built out at 2.5 units per acre) has sewer and the southern portion of this site is in the Big Creek Basin.

Councilmember Lusk:

The southern portion of this parcel percentage wise, what percentage is in Big Creek Basin?

Community Development Director Wilson:

That is a very hard question to answer because as you know there is no line out there that tells you which way it flows, but the best that I can determine by looking at the topo probably the lower twenty five percent is in the Big Creek Basin.

Councilmember Zahner Bailey:

So the majority is within the Etowah, which is controlled by the No Inter Basin Transfer Agreement Resolution. Correct?

Community Development Director Wilson:

That is correct.

Councilmember Zahner Bailey:

So the majority is in the Etowah; I just want to make sure I just heard that.

Community Development Director Wilson:

Correct.

Councilmember Lusk:

Seventy five percent would be the majority. Just a hypothetical question, if this were to come back before us or before the Planning Commission and they applied for that twenty five percent of the parcel to be rezoned to one to two units per acre and be sewerred, would that not be acceptable?

City Attorney Jarrard:

Let me take the "first shot" and then I will refer to Tom because my analysis has been focused a little differently and the basin; Tom has done the heavy lifting on that and it may very well be, Councilmember Lusk, that Fulton's intent in drawing the map of the service area was to capture the basin but they just did not do it. So right now that area of the map that I believe Fulton has the power to service does not encompass this parcel. That is a different issue than where the basin technically may lie. I am just looking on a piece of paper and saying it does not appear to be there and again that may be a very easy analysis but that is just where I am; based on that IGA.

Councilmember Lusk:

This will all be fleshed out eventually.

City Attorney Jarrard:

I did not mean to give you a politician's answer. Your question was would they have the ability to get that twenty five percent. If the Council is of the belief and subscribes to our opinion that right now they do not have the power to provide (except on parcels that are impacted by that map) then my respectful position would be that you could not right now; and unless that area on the map is modified to capture that parcel (separate issue from the basin I am just talking about the map). Right now, I do not believe twenty five percent of it is even captured on the map.

Councilmember Tart:

I guess that is where I am. The basin and the whole IGA issue is two separate issues and if we know right now on your interpretation and our City Attorney's interpretation that this area that we are looking and being told to make this one to two units per acre is outside the serviceable area. I think I could not go forward making that change when we know that based on what we have and the information today, this area cannot be sewerred.

Mayor Lockwood:

Mr. City Attorney my concern is going against staff's recommendation; and also based on everything that is surrounding there it seems to me we are talking about two different issues too. If we were to follow staff's recommendation and approve that but if in fact it is not serviceable with sewer then I think that would dictate the one acre lot minimum anyway. Am I correct?

City Attorney Jarrard:

A couple of folks have asked me about this issue and I have tried to be consistent in my analysis is that your future land use map is a guide and it is one factor albeit and important factor but one of many considerations and if this came up in front of you by way of zoning request; would the consideration of sewer availability play into your decision as to what could go there? Absolutely, of course.

Councilmember Tart:

That may be true. I know the Comprehensive Plan - we could go back after the fact and say, "ok, although it is in the Comprehensive Plan one to two units per acre if you cannot sewer it then you cannot have two units per acre", so we should not be establishing policy that is not in concert with other policies.

Mayor Lockwood:

If you guys have questions for staff then continue your questions, then we will have comment and discussion in just a minute afterward.

Councilmember Hewitt:

I have a question. Are the parcels that are on that map on the west side of Hopewell Road? They are on the land use map one to two per acre. Is that sewer or serviceable by sewer now?

Senior Planner MacDonald:

The yellow on the left? There is sewer on the subdivision. Number eight are the single family and they do not have sewer at this point. Number nine and ten have sewer; that is the purple ones on the map. Eight is the one below it and they are still on septic tanks.

Councilmember Hewitt:

Are they in the basin?

Senior Planner MacDonald:

They would be probably in the Etowah Basin based on where the ridge line goes and the nine and ten are already sewer. Number three is already sewer - four is sewer - one is sewer.

Councilmember Zahner Bailey:

If I may (and I do not know if this is a question or if it maybe a clarification based on the question just asked) are some of these parcels because we have two different basins; we cannot simply draw a blanket approach because some parcels are in the Etowah and some are not. We just heard from Tom Wilson that seventy five percent of this parcel (and I am actually going to ask another question for Mr. Jarrard) we hear that at least seventy five percent of that is in the Etowah which is non sewerable under our existing No Inter Basin Transfer Policy. Mr. Jarrard, when you took a look at the basin (and to your point Mr. Wilson apparently did most of the heavy lifting to quote you) but when you looked at that parcel can you please provide me with your assessment of whether or not that perhaps was fully in the Etowah potentially, without via opportunity for further analysis?

City Attorney Jarrard:

My original assessment before I spoke with Tom was that it was likely all within the Etowah Basin, but again, from what I have heard from Tom he may have done a more detailed study than I did, but my initial assessment was that it was all within the Etowah.

Councilmember Zahner Bailey:

I appreciate that and the only reason I bring that up is to say that this range is not a possible range when the majority is in the Etowah. It is non sewerable under our No Inter Basin Transfer Policy that was adopted in 1995; that we reaffirmed and while we could say that some parcels in Alpharetta might have sewer well some of those parcels are not in the Etowah Basin, they are in the Big Creek Basin and they have different policies that apply in the City in Alpharetta then they do now under Milton. We have new data and I believe that when staff first did this analysis, we did not have the benefit of the IGA analysis from our City Attorney so that would be my next question. When the first analysis was done and you put forward that range based on the time line? Did staff at that time have the benefit of this more recent analysis from our City Attorney?

Community Development Director Wilson:

We did not change our recommendation with the benefit of that new analysis because I find it very difficult to make a rational case. This property is unique and should have a lower designation land use map than the surrounding properties around it.

Councilmember Zahner Bailey:

I guess, again, for this body to consider is the fact that we have a large portion of this property that is in the Etowah and there are other properties that remain AG-1, one unit minimum, on Hopewell and I think also we heard from Ms. MacDonald that the policies under the Board of Commissioners of Fulton County have always been that Fulton County's rezoning along Hopewell that anything fronting on Hopewell also needs to be one unit

per acre. Again, I think we would be remiss as a body knowing that we have a sewer policy that is under way, knowing that we have more recent information, knowing that a large portion of this property falls in the Etowah. I think we have put forth an inappropriate expectation for higher density on a parcel that may not be sewerable.

Mayor Lockwood:

Mr. City Attorney, would it not be reasonable to going back with staff's recommendations basically zoning which is concurrent with the majority of the surrounding areas. Even though there is maybe seventy five percent that is non sewerable versus twenty five percent that is would it not be reasonable to follow staff's recommendations knowing that that property has the right on twenty five percent of his property to be like the surrounding properties, if in fact seventy five percent is in the Etowah Basin. Then it is not even a decision it is a health department decision and a non sewer issue; so those would be by default one acre lots. Is that a reasonable way to look at it?

City Attorney Jarrard:

I hear the "truck coming right at my head" so let me answer it this way. I could legally defend both of the two positions that are being bandied around here. If someone said; I think your future land use map designation of that property is incorrect at one to two or at one, I think both of them are "full square" within your discretion.

Mayor Lockwood:

Alright.

Councilmember Zahner Bailey:

Since we are having this dialogue from this perspective, (and I ask this question of you at our work session) and it had to do with whether or not the stronger position for jurisdiction is to have a land use plan that is consistent with its sewer policies and it is consistent with what we know today to be possible. As an example, if an applicant comes in and there is a range and I think history would show that the range typically gets requested at the higher end and if the land uses plan you said earlier that there is a variety of different things. If I am not mistaken most jurisdictions have two principal issues. First, is land use map and what does it reflect. Second, what is board policy? Whatever decision we make tonight is going to be reflected as our board policy and whatever land use map we put in place is going to now be our land use map as of May 19, 2008. So, the most current information that someone would have to pull would be based on this evenings decisions, that would also reflect the fact that we have a more recent City Attorney analysis, so is it fair to say that it is reasonable that the first two things that an applicant and or a court of law would look at would be the land use map and board policy for this jurisdiction.

City Attorney Jarrard:

That is reasonable.

Mayor Lockwood:

Let me just clarify, what was the land use map recommendation for this parcel?

Community Development Director Wilson:

One to two is my recommendation for the land use map. The land use map is absent any designation for this parcel.

Mayor Lockwood:

Is there any public comment on this?

Jon Carroll, 2140 Country Ridge Road

I am going to make two conflicting statements and then the first one is from a land use plan point of view. Usually you want to keep your density closer and then spread out, so the logical sense here would be this is closer to Alpharetta, lot of density so the one to two is fine, but as Tom Wilson will testify, we have a pretty large return from our survey and it said less not more. So considering you have the question of sewer that could be resolved

later. I would go with the smaller designation of the one acre lots just because the stuff across the street which is what you are usually seeing if you go down that road is that and it would be consistent plus anything on the front would have to be one acre anyway, so I do not know how much you can get on the back. Since there is already a legal question, I would just leave it at one acre now and then the applicant whoever owns the land, can come in and decide if they want to try to get it rezoned and if things change, if the sewer stuff gets worked out, then you can change it at that time. Just from a land use plan, once you put it down it is tough to argue with people. We already have problems now where people are wanting sewer that are connected to land that has sewer, so my vote would be one acre lots.

City Clerk Marchiafava:

That completes public comment.

Mayor Lockwood:

Public hearing is now closed.

Is there any other Council discussion? Hearing none - Is there a motion and a second.

Motion and Vote: Councilmember Zahner Bailey moved to approve **LU08-01** - Focus Fulton 2025 Future Land Use Plan and Map Amendment – 25888 Hopewell Road as 1 unit or less per acre. Councilmember D’Aversa seconded the motion. There was no Council discussion. The motion passed (5-1), with Councilmember Lusk opposed.

COUNCIL REPORTS

There were no Council reports.

STAFF REPORTS

Public Safety Director Lagerbloom

- Two events occurred simultaneously today.
- With the assistance of several adjoining jurisdictions; Forsythe County, the City of Alpharetta, the City of Atlanta and our resources Rural Metro Ambulances, we brought to conclusion two incidents.
- One was a house fire on Hopewell Road.
- One Milton fire unit assisted along with four from Alpharetta.
- We can be thankful in their assistance because our other two units were tied up at the hole which collapsed.
- There were no injuries in the house fire and it looks as though the injuries in the hole collapsing were non life threatening.
- We are thankful for the help and the good outcomes.

Mayor Lockwood

- He has evidenced a few times now with our own Public Safety (which are doing a great job) but even more important is seeing the team work and comradery and the help we are receiving and extending to other jurisdictions.
- He is excited to see how well our Public Safety Department is working with our neighbors and that is a very positive plus to our residents.

EXECUTIVE SESSION

Motion and Vote: Councilmember Lusk moved to adjourn into Executive Session to discuss pending litigation at 7:26 p.m. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously (6-0).

RECONVENE

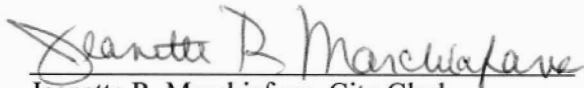
Motion and Vote: Councilmember D'Aversa moved to reconvene the Regular Meeting at 9:35 p.m. Councilmember Lusk seconded the motion. There was no Council discussion. The motion passed unanimously (6-0).

ADJOURNMENT

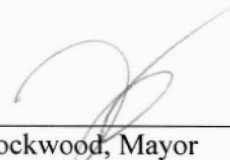
Motion and Vote: Councilmember D'Aversa moved to adjourn the Regular Meeting. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously (6-0).

After no further business, the Regular Meeting adjourned at 9:37pm.

Date Approved: June 2, 2008



Jeanette R. Marchiafava, City Clerk



Joe Lockwood, Mayor

The meeting adjourned at 9:37 p.m.

