
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.

The Regular Council Meeting of the Mayor and Council of the City of Milton was held on June 16, 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.

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

Council Member Absent: Councilmember Karen Thurman/excused

PLEDGE OF ALLEGIANCE

Mayor Lockwood led the Pledge of Allegiance

City Clerk Marchiafava read agenda item 08-604.

APPROVAL OF MEETING AGENDA

Staff recommended the following changes to the Meeting Agenda:

1. Add a Public Hearing after Reports and Presentations, An Ordinance to Adopt Amendments to the Fiscal 2008 Budget for Each Fund of the City of Milton, Georgia Amending the Amounts Shown in Each Budget as Expenditures, Amending the Several Items of Revenue Anticipations, Prohibiting Expenditures to Exceed Appropriations, and prohibiting Expenditures to Exceed Actual funding Available.
2. Add to New Business as an emergency agenda item based on the July 1st deadline, Approval for the Amendment of the Service Level Agreement with Rural Metro Ambulance to Provide EMS Service with the Several Cities of North Fulton County, to include the City of Milton.

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

PUBLIC COMMENT

Mayor Lockwood read the rules for Public Comment.

City Clerk Marchiafava stated there was no general public comment.

CONSENT AGENDA

City Clerk Marchiafava read agenda item 08-605.

Approval of the June 2, 2008 Regular Meeting Minutes.

Motion and Vote: Councilmember Lusk moved to approve the Consent Agenda. Councilmember Tart seconded the motion. The motion passed unanimously (6-0).

PUBLIC HEARING

City Clerk Marchiafava read the Public Hearing Item.

(Added by Motion and Vote)

Ordinance to Adopt Amendments to the Fiscal 2008 Budget for Each Fund of the City of Milton, Georgia Amending the Amounts Shown in Each Budget as Expenditures, Amending the Several Items of Revenue Anticipations, Prohibiting Expenditures to Exceed Appropriations, and prohibiting Expenditures to Exceed Actual funding Available.

Finance Manager Stacey Inglis

- The revenue appropriation and expenditure appropriation are expected to increase by \$369, 602.00.
- Our budget for the General Fund is going up from \$17,784,585.00 to \$18,154,187.00.
- The highlighted adjustments were increases in the property tax revenues and that is basically for utility property taxes which were not initially budgeted.
- The Utility tax is \$576,000.00.
- Prior year property taxes were not included in the original budget.
- Major decreases in revenue are for fines and forfeitures and admin fees in court.
- The major increases in expenditures include the Landrum Bridge Project repair.
- New software in the Police and Fire Departments.

Councilmember Lusk

- Asked Finance Manager Inglis to elaborate on the Utility Property Tax and asked if that include the substations.

Finance Manager Inglis

- That is every piece of property that a utility company has within the City limits.

Councilmember Zahner Bailey

- Regarding the reallocation of fees tied to Ch2MHill, is that just for accounting principals?

Finance Manager Inglis

- We want to mimic a traditional government as much as possible.
- When the budget was put together last year, the allocation for the contract is one line item in each department's budget.
- It is a little difficult to know how those expenses are allocated throughout the department and the budget was based on number of full time equivalent employees.
- There are departments such as Public Works who have a small number of employees, but require a larger dollar amount of expenses given the type of work that is involved with that department.
- She benchmarked our government against other traditional governments our size and reallocated cost based on comparing it to other governments our size.
- Initially, one department was missed in the budget, so if we total all of the contract reallocations the actual amount is approximately \$26,000 more than what was actually budgeted.
- The contract did not go up but the budget was incorrect when it was adopted.

Councilmember Zahner Bailey

- She assumes that later on if there were things that negotiated or changed within the contract, we would always have the opportunity to readjust by department.

City Manager Billy Beckett

- Hopes that we can modify the lump sum contract approach that we have now.
- He knows how beneficial it was, but it is probably easier from the financial management and resource allocation stand point to have those develop in a categorical fashion.

Councilmember Zahner Bailey

- Under Public Safety there were some adjustments to do with over time and we were waiting on an update with regards to where we were.

Public Safety Director Chris Lagerbloom

- The overtime figure - there are things that just by the very nature of a Police Department and some of the duties that they have to do incurs over time.
- As an example, the Officer that is here on duty during this Council Meeting for security is overtime.
- We provide three officers every time court is in session and that is overtime.
- Training and Retraining as required by the state.
- This is mostly supplemental duties that we have elected to handle in house as opposed to hiring a security company to manage the court.

Councilmember Zahner Bailey

- As some of the vacancies become filled can we expect to see some of the overtime expenses reduced because we will have more full time employees.

Public Safety Director Lagerbloom

- We are 100% staffed on the Police side now so he does not see any change in that.
- Frankly, needing three people to secure for court is a lot of it, but the way the room is laid out we need those three.

Mayor Lockwood stated there was public comment that came in late.

Tim Suddutz, 1075 S. Bethany Creek Drive

- Moved to Milton about six months ago.
- We have a beautiful place and were renting and our first Friday night came in and he could hear voices and music from his bedroom and did not know what it was.
- Turns out they live directly behind Montana's Bar and Grill.
- Knows it has been a hot topic for the City for a long time and one of the things he asks is that they look at the Ordinance.
- One thing that concerns him is that at 1:00 in the morning, even though they do not meet the threshold of 60 plus decibels, it still vibrates his windows.
- They would love to buy the house and love the City of Milton, but that is one of the things that will drive them away.
- Every Friday and Saturday night they probably call the Police Department about two times and he does not want to waste the City's resources just for a noise complaint.
- He has even called the manager and asked them to please just turn down the base or limit it to certain hours.
- We want to work with them.
- Some of the residents within our neighborhood actually offered to pay for sound proofing trees in between.
- We understand it is a business and it is revenue.
- The very first weekend when he called, one of the officers that showed up and, he knows he was a supervisor because he was driving a little bit larger car than some of the other officers out there and he said to me; "I have to tell you I do not know how much further we are going to go with this because that bar generates a lot of revenue for the City."
- My question to him is what about the homeowners; we generate revenue for the City also.
- There are a couple of officers that are phenomenal.

- They come out and take the meter reading and show us and, unfortunately, it is right under but it is still noisy.
- If there is some way we could take a look at that Noise Ordinance and see if there is anything we can do.
- We are willing to work with the establishment.

City Manager Beckett

- We are very aware of the problem and he hopes the comment made by the officer about revenue was not meant as it was stated and he apologized for that.
- He has had conversation with the Public Safety Director and he has read the documentation and is aware of the problem
- He has met with the City Attorney and they are trying to design something that is fair and enforceable as well.
- He hopes they have a solution that will be forthcoming very shortly.

Mayor Lockwood

- He would like to move to our first New Business item because we have some members who will be appointed to our Tree Preservation Committee.

Motion and Vote: Councilmember Tart moved to Amend the Meeting Agenda to move the New Business item No. 08-597 to before the Public Hearing. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously (6-0).

City Clerk Marchiafava read agenda item 08-597.

Approval of a Resolution Amending Resolution No. 08-05-37, A Resolution Appointing a Citizen's participation Group for potential revision to the Milton Tree Preservation Ordinance and Administrative Guidelines (Districts 1 and 4).

Resolution No. 08-06-40

Mayor Lockwood

- Councilmember Thurman asked me to present her nomination in her absence.
- She would like to nominate Scott Gronholm for the District 1 position.
- The Tree Committee will hold its first regular meeting before our next Regular Council Meeting.
- Scott lives in Kings Circle and has lived in Roswell all of his life before recently being annexed into Milton.
- He also has rental property in the Alpharetta and Roswell area.
- He is married with three children.

Councilmember Hewitt

- Nominated Cherilyn Allen for the Tree Committee.
- She lives on Bethany Road with her husband Terry.
- She and her family have lived in Milton approximately 37 years.
- She brings a lot of passion about our community and he is grateful for her willingness to serve on the committee.

Motion and Vote: Councilmember D'Aversa moved to approve a Resolution Amending Resolution No. 08-05-37, A Resolution Appointing a Citizen's participation Group for potential revision to the Milton Tree Preservation Ordinance and Administrative Guidelines (Districts 1 and 4) by appointing Scott Gronholm to District 1 and Cherilyn Allen to District 4. Councilmember Lusk seconded the motion. There was no Council discussion. The motion passed unanimously (6-0).

Oath of Office

Mayor Lockwood administered to the Oath for the Milton Tree Preservation Committee to Cheryl Allen.

FIRST PRESENTATION

City Clerk Marchiafava read agenda item 08-606.

Approval of an Ordinance to Adopt Amendments to the Fiscal 2008 Budget for Each Fund of the City of Milton, Georgia Amending the Amounts Shown in Each Budget as Expenditures, Amending the Several Items of Revenue Anticipations, Prohibiting Expenditures to Exceed Appropriations, and prohibiting Expenditures to Exceed Actual funding Available.

Motion and Vote: Councilmember Lusk moved to approve the First Presentation of an Ordinance to Adopt Amendments to the Fiscal 2008 Budget for Each Fund of the City of Milton, Georgia Amending the Amounts Shown in Each Budget as Expenditures, Amending the Several Items of Revenue Anticipations, Prohibiting Expenditures to Exceed Appropriations, and prohibiting. Councilmember D'Aversa seconded the motion. The motion passed unanimously (6-0).

PUBLIC HEARING

City Clerk Marchiafava read agenda item 08-607.

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. (This item was deferred on May 19, 2008).

Finance Manager Stacey Inglis

- The applicant has followed all of the requirements for this item.
- They are adding Distilled Spirits to their current beer and wine license.
- This was deferred from May 19, 2008 because they did not post the sign properly.
- Staff recommends approval of the Alcohol Beverage License.

City Clerk Marchiafava stated there was no public comment.

Mayor Lockwood closed the Public Hearing.

Motion and Vote: Councilmember Tart moved to approve 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 Zahner Bailey 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 08-497.

ZM07-005/VC07-014 North side of Webb Road, Petitioner: Webb Road Associates, LLC by Ken Morton, Request: To Modify Condition 2.a. to modify the site plan (05Z-029) and a 3-part concurrent variance: 1) To reduce the side yard setback from twenty (20) feet to ten (ten) feet along the east and west property line (Article 8.1.3.C.) 2) To reduce the rear minimum setback from twenty-five (25) feet to ten (10) feet along the south property line (Article 8.1.3.D.); 3) To reduce the 10-foot landscape strip along the east, west, and south property lines to allow for a retaining wall.
(This item was deferred on March 17, 2008, April 28, 2008 until June 16, 2008.)

Community Development Director Wakefield:

The applicant has requested modification of the approved site plan along with a three part concurrent variance. Although the recommendation of staff is approval of conditional of the modification; approval of parts one and two of the concurrent variance and withdrawal of part three is requested by the applicant based on the revised site

plan. The applicant submitted today which is June 16th a letter of request for an additional deferral until August 18, 2008 and staff can support that deferral request.

Mayor Lockwood:

Would the applicant like a chance to speak or is there any one else in favor of this modification. He does not necessarily have to. We are in receipt of the letter. Is there anyone in opposition of this?

City Clerk Marchiafava:

For the record, the only public comment card submitted is Mr. Morton's.

Mayor Lockwood:

At this point is there any Council discussion?

Councilmember Lusk:

As a point of clarification, contrary to what was stated in the agenda, I believe it is on the South Side of Webb Road. Is that correct?

Mayor Lockwood:

Thank you for that clarification.

Community Development Director Wakefield:

That is correct.

Councilmember Zahner Bailey:

I have not seen the letter, but would this be an appropriate time to ask what the basis for the deferral request was.

Community Development Director Wakefield:

The applicant indicated that due to the nature of the case as it pertains to sewer connection we feel that is in the City's best interest to let the sewer conveyance be resolved prior to the public hearing of this case.

Councilmember Tart:

I have a question for our attorney. Can you confirm what basin this property is in?

City Attorney Angie Davis:

Based on our view of the situation, we believe it is in the Etowah Basin.

Councilmember Tart:

In that case, I would like to make a motion.

Motion: Councilmember Tart moved to deny ZM07-005/VC07-014 based on the fact that the site plan is contingent on the availability of sewer and since this parcel is located in the Etowah River Basin and, therefore this parcel is subject to the No Inner Basin Transfer Policy as adopted by the Fulton County Board of Commissioners on August 19, 2006 and later adopted by the City of Milton.

Mayor Lockwood:

I have a motion to deny. Is there a second?

Second: Councilmember Zahner Bailey seconded the motion.

Mayor Lockwood:

I have a motion and a second to deny the application. Is there any Council discussion?

Discussion on the Motion:

Councilmember Zahner Bailey:

I would like to confirm with our Attorney. First of all if we could confirm; was this brought to us in March or in May?

Community Development Director Wakefield:

It appears that the first time it was before you was March 17, 2008.

Councilmember Zahner Bailey:

Time flies when you are having fun. I guess my point is if it was brought to us originally in March; it was deferred for a substantive amount of time and I believe that when it was first brought to us we had discussed at that time that it needed to be clarified from our City Attorneys whether or not it was in the No InterBasin Transfer area. Ms Davis, if you would, the other thing I would like to confirm and I believe we discussed this at the meeting in March. If you would just confirm your finding and those of Jarrard and Davis in regards to the unconstitutionality of bringing sewer to this based on the Intergovernmental Agreement Historically with Fulton County.

City Attorney Davis:

I think we discussed this at the last meeting and we entertained a deferral at that time to get a little more input from Fulton County but basically when review the situation and the historical documentation it was concluded by our office that the constitutional authority was lacking for Fulton County to provide sewer service within Milton's jurisdiction. The constitution provides that one jurisdiction can only serve in another jurisdiction by agreement and the only agreement that it is place between the two parties as of today's date is the historical Service Delivery Strategy Act dated in 2006 and that attaches a map. This particular parcel does not fall within that map or that agreement so there is no historical agreement for the sewer service.

Councilmember Zahner Bailey:

Just to make sure that I am clear and forgive this if it is a redundant question but that this parcel separate from that historic agreement which we just now heard is unconstitutional to bring sewer to this parcel; I just want to make sure that I am clear that this parcel is within not only in the Etowah Basin but that the No Interbasin Transfer Agreement that was originally put forward in 1995 and I think adjusted again in 1999 and again in 2006 does not make an exception for this parcel. Is that correct?

City Attorney Davis:

That is my understanding.

Councilmember Zahner Bailey:

And it is based on that historical policy and the fact that we have a no Interbasin Transfer Policy that has been in place that we have adopted. I do not see what would change with regards to this parcel being able to change basins with another deferral.

Mayor Lockwood:

Has there been anymore information between the County and clarifying this issue?

City Attorney Davis:

Yes. As I understand it Mr. Mayor there have been ongoing discussions with Fulton County and I do not believe that Fulton County has taken issue with our legal conclusions but one of our conclusions was that we needed to come forth with an agreement to be clear about all of these issues. As I understand at least one commissioner has put forth discussion with the City with respect to adopting a new intergovernmental agreement and presented various options as to what that might address, but a new Intergovernmental Agreement that would specifically define service areas. Not only for this court or I would think for the entire City.

Mayor Lockwood:

I would support deferment and not support denial just based on that until we do have more information.

Councilmember Tart:

I guess what I need clarification on is regardless of the Intergovernmental Agreement this parcel is still subject to the No Interbasin Transfer Policy that we have in place currently regardless what the Interagency Agreement says.

City Attorney Davis:

Right and it depends on which Interagency Agreement you are talking about. The documents that exist on this date; it is our opinion that this property would not be authorized to be sewerred by the County based on the constitutional issues. Secondarily there is the Interbasin Transfer issue because of our belief it is in the Etowah Basin and that is all as we sit here today. What the Mayor is referring to is the ability perhaps of the County and the City to negotiate a future agreement that might change that result. It might make a different service delivery area and certainly we could change it to be anything; we could change it to be totally in variation of the Interbasin Transfer if that was the will of the Council. A new agreement could do anything that we choose to do between the two parties.

Councilmember Tart:

And so are we making an assumption therefore that we could possibly not only negotiate the Interagency Agreement, but we would negotiate a long standing policy of No Interbasin Transfer.

City Attorney Davis:

Well I do not know what the new agreement shape or form would be necessarily because that would be the will of this Council, but when we sit down to renegotiate an Intergovernmental Agreement which I think was contemplated all along, because there was somewhat of a stop gap in place when the City commenced its operations. We have needed to have a comprehensive not only a City Sewer Policy, but also policy with Fulton County that would identify preferably on a map parcel by parcel what they are authorized to service. That can be anything we choose for it to be, so it can be totally different in what we have in existence today. It that is your question, if I am sensing it correctly.

Councilmember Tart:

Yes and I guess and do not mean to restate the obvious, but I want to clarify the reason I put forward a motion to deny this has nothing to do with the IGA. It has everything to do with the fact that this is in the Etowah River Basin and is subject to the No Interbasin Transfer Policy. I do not see that changing.

Councilmember Zahner Bailey:

And I guess that I am incredibly and increasingly perplexed because this is the first that I have heard that anybody of this board or entity would be contemplating changing a policy that has been in place now for thirteen years, that being as of March 1995 No Interbasin Transfer Resolution and if I am not mistaken we received survey results that indicated that significantly more than 70% of our citizenry that responded to the survey said that they expected us to uphold those policies so I am confused and I want to go back to the question and I am going to ask our City Attorney just for my clarification because this has raised a whole lot of additional that I have based on the No Interbasin Transfer Agreement which was adopted by Fulton County in 1995, modified in 1999 and then adjusted again in July 2006, we then as a City of Milton adopted that policy and we stood firm with that policy and everybody that I have heard from on this Council has indicated that they intended to uphold the no sewer policies that were previously adopted. Is there anything that would allow this parcel to suddenly moved and picked up and move into a different basin or again to your point Councilmember Tart if this is in the No Interbasin Transfer area it is in the No Interbasin Transfer area, so just to make sure I am clear and I am going to ask you again Ms Davis, is this parcel definitively in the Etowah and is it currently covered by the No Interbasin Transfer Agreement?

City Attorney Davis:

And again it is our belief that it is in the Etowah Basin. You say definitively and I think it is fair to note that Fulton County will interpret it differently. They suggest that gravity flow albeit aided by a pump station could lead to a conclusion that it is in Etowah. I think the developer's Attorney represented that it was in Etowah as well when they appeared before us last time. It is our conclusion that the correct interpretation is that it is in the Etowah.

Councilmember Zahner Bailey:

And based on that I support a denial because we have now deferred this multiple months and another deferral will not suddenly put this in another basin nor will it change the fact that the no interbasin transfer policy of thirteen years deems this to be non sewerable based on that policy.

Councilmember Lusk:

Ms Davis, I am going to put you on the spot. I understand that you have been talking with Fulton County about this particular issue and we have been down this road several times before discussing what parcel is in this basin and what parcel is in that basin and long standing policies. It is my understanding that there may be or lack of definition in some of these areas and we have even talked about engaging a survey, a physical survey of the topography to determine what parcels are in which basin, since we are lacking definitive information from Fulton County. Since we do have a City Attorney and certainly Fulton County does, I think it is time we do get a specific legal interpretation of where these parcels sit in this commercial corridor and resolve this issue once and for all. Lets come to an understanding here and based on that I think we should defer this issue until that is resolved and in an order to avoid any legal challenge from these applicants out here. I think it is only prudent on our part to avoid any type of legal challenge just to minimize our legal exposure and based on that I think we should proceed further with your negotiations and now comes to the point of putting you on the spot. What is your recommendation as far as where we are with this discussion with Fulton County and how do you feel we should resolve this legal issue once and for all.

City Attorney Davis:

Ok, you put me on the spot. I think in all fairness there has to be an agreement between Fulton County and the City of Milton. It was contemplated to be negotiated and to be done and now we are getting to that point. I do not think that taken issue with our legal opinions thus far in terms of what they can and cannot service today so in terms of how you want to act tonight. I think that is a determination for you as to whether you want to act based on what the rules and regulations are in place today or whether you want to have that new agreement in place before you respond to these particular request pending before you. My recommendation is you have to have an Intergovernmental Agreement with Fulton County on these sewer service areas, we have to define that because what we have thus far is what was done as a stop gap measure and I think we can interpret what it means, but I think we would behoove ourselves to have a nice agreement that has a map attached to it parcel by parcel that identifies sewer service area. Many of you are focusing on the lynch pen being the Interbasin Transfer Agreement and I think that is important and that is where the definition is needed more. However, the constitutional authorization issues are completely irrespective of the sewer basin transfer issues and that is something that is plainly a legal issue. That is just our opinion of what exist today. The interbasin issues; and you mention a fine legal interpretation on that, I think that is respectfully going to have to be a scientific determination because that has to be how rain falls and that is going to be a hydrologist study to determine. If that becomes the lynch pen for your new agreement; if basin is going to be the; be all end all and maybe it will be but I think we will have to have scientific studies at that point. I think the focus of our offices review at this point has been legal determinations of what exist today and I hope that is a fair response to your question.

Mayor Lockwood:

At this point, we have a motion and a second and we have heard from three Council Members.

Councilmember D'Aversa:

I just want to confirm, we do have your legal opinion in regard to the constitutionality of our authority versus Fulton County's authority to provide sewer permits if you will or to extend sewer that is not permissible. Is that fair to say?

City Attorney Davis:

Is that fair to say?

Councilmember D'Aversa:

We received that legal opinion prior to the last case when this case came before us and I would like to know what we have done with regard to our sewer policy. I see this as a much bigger. I agree with you that we need an Intergovernmental Agreement with Fulton County and it needs to be reviewed obviously and agreed upon between your firm and the County Attorneys, but we need a more formal sewer policy more specific sewer policy for the City of Milton. We certainly now have a no sewer policy both formally and informally however we have been looking at for the last six months and talking about and around a sewer policy and I guess this is for you as our City Attorney as well as for Mr. Beckett, that probably needs to jump way up there on the priority list or we are going to have these types of challenges. We said a lot of this the last meeting and here we are again and it is my understanding that we have not done anything with regard to going forward with that sewer policy. I will retract that statement. I just want to know that we are moving forward, we need to have a policy that definitively. I am a rule follower myself and I like to look back and say ok here is the rule and especially when we have just received a survey that says that 87% of our citizens agree with a no sewer policy and we have to have a policy that supports the Highway 9 corridor because there is sewer there, and we have to have a policy that covers all of Milton not just the few parcels.

City Attorney Davis:

If I could respond then I would like to yield to Mr. Beckett who has something to say no doubt. When we left the meeting last we had just prior to that meeting fairly recently prior to the last meeting disclosed our legal opinion after wading through the historical documentation and doing all of the research. We came forth with the opinion that was fairly new to you when you met last and the discussion as I recall it was. Let's see how Fulton County responds to this and in fact several of you followed up with me to say, have you heard from the Fulton County Attorney and what is the response. We never got a formal response from the Fulton County Attorney but what we did get is an overture from Commissioner Riley to start talking about an Intergovernmental Agreement and how we would go forward. Based on that and based on the discussion there has been no disagreement with the legal opinion and that was something that at our last meeting you justifiably were interested in knowing. I think there was also some issues that staff was going to look into. I remember there was a particular question about a survey that was provided and the timing on that and I think that Councilwoman Zahner Bailey asked that staff address those timing issues and I do not know how that was resolved but I think that was another reason you deferred it last time so I think it was two fold. I think we have made progress we have a legal decision; we know what we can and cannot do with what exist today. Since that time I think legitimately we gave Fulton County a little time to respond and I followed up with them weekly and I think what we have had in the last week or so are some overtures as I said again from the commissioner. As to a policy, my office has done the legal research and put before you what the rules are. In terms of policy I think we have to have a work session for you to tell us what that is; we are not drafting a policy right now and I have had a couple of questions just today that I want to set that straight and I apologize for any confusion on our parts if there was any but I would not know what policy to draft. I have heard different views and way different views from different ones of you and I think we cannot make policy. We can be the scrivener once you tell us what it is, but I think a work session immediately would be in top order for you to tell us what the policy and I think that policy is part and parcel of the Intergovernmental Agreement. I think you are completely correct that those go together.

Councilmember D'Aversa:

The rules we have in place currently today say that this parcel does not get sewer. We would be remiss; it would be unconstitutional so self admitted rule follower, I am looking at the rules and interpreting it that way. I would again encourage us to go forward as quickly as possible, but as astutely as possible. We have waited this long to put forth a sewer policy that will work for all of Milton.

Mayor Lockwood:

Mr. Beckett had a comment.

City Manager Beckett:

I will be brief to move things along and just in terms of the concise statement there has been a meeting with Fulton County regarding this issue. There has been definition of the possible area subject to review by both you and Fulton County on a lot line basis so that it is mapable. It is not subject to having to have surveys done and hydrology those sorts of things. It is clearly definitive; it is compatible with the existing Intergovernmental Agreement that was superseded in Milton becoming incorporated and in the constitutional provisions kicking in in terms of service to the City. I can tell you that there has been no discussion whatsoever modifying the Interbasin Transfer component of the agreement as it existed in the past or in the future. The Interbasin Transfer component is still there. What this proposal will do for you is it will define a specific corridor with specific lot lines that are easily mapable and it excludes some of the language in the previous agreement which made provisions for partial lots, so it is something that is straight forward and hopefully expectable to both you and Fulton County, but it will be a policy decision as Ms. Davis mentioned and it is not something that staff can impose on you. It will require debate and discussion on your part. We think it makes sense. Also thanks to Ms Wakefield we have a map. Unfortunately, it has not been surveyed but we have a map that overlaid the basin; it overlaid the service area as it previously existed for the City and we have parcels that would otherwise be served, but it is not subject to scientific scrutiny. So I can tell you that the new word seems to be vetting around here. I have heard vetting here probably anywhere that I have served. Once the attorneys are comfortable and the discussion that we have had then it will be made available to both the Fulton County Commission and to you for discussion work shops and hopefully ultimately adoption.

The second point is my personal view is, and I will take the blame for that if blame needs to be assessed, my personal view is that this is an intermediate step in resolving the issue. A longer term approach would involve something like the template and I stress that it was a template that was sent to you from Prince William County Virginia. It clearly protects environmentally sensitive areas. It identifies areas where you do not want high density development; areas you want to protect, equestrian areas, the estate type zoning those sorts of things so on a longer term basis for the future benefit of this City. To provide those protections and guide in an appropriate way growth that is appropriate that you do want to occur, I think that will give you a good model down the road. But the most immediate thing I think is to get some sort of a document in place that we can work with and you will have that hopefully in a matter of days. I hope. We are finished with it on our end from the standpoint of staff review, so we are going to move forward because you are, quite frankly in my opinion, put in an awkward position making decisions on a case-by-case basis.

Councilmember D'Aversa:

What is your opinion of the time frame it would take to go through the template process? You sent that to us a couple of weeks ago.

City Manager Beckett:

The long range process - probably months because you will get a lot of citizen input because of the feelings of the community about growth issues so you will be required to have a lot of citizen input that needs to correspond with your plans.

Councilmember D'Aversa:

Well and if we are in the middle of our Comprehensive Planning process now would it not make.....?

City Manager Beckett:

It would and also I think you have a pretty good idea now of the land use that you do absolutely positively want to protect and so you can put components of that in place right away.

Councilmember D'Aversa:

My nature would prefer to go forward with a greater review even if it takes a couple of months to get through, especially if we are going through the planning process now anyway, rather than to have interim steps but that is my opinion. It may not be the consensus of the Council.

Councilmember Zahner Bailey:

If I may weigh in because I think that is part of the discussion if we are going to discuss as it relates to not the case but the overall approach that we are taking. A couple of things I think I heard you say Mr. Beckett is that the IGA that you are working on or some are working on and I have not seen anything and I am not familiar with it, but I appreciate that input this evening. I heard you say that it would not change the No Interbasin Transfer Agreement.

City Manager Beckett:

That is correct.

Councilmember Zahner Bailey:

So assuming that it would not change that No Interbasin Transfer Agreement and that agreement which was adopted most recently July 2006 is extremely specific with regard to land lots.

City Manager Beckett:

There is no change to the Interbasin Transfer Policy that existed prior to Milton becoming a City.

Councilmember Zahner Bailey:

Ok so assuming that to be the case based on this case which is what brought us to the discussion is that this land lot is very specifically not allowed for sewer not based on the IGA but based on the no Interbasin Transfer Agreement. That is what perplexes me as to why we would defer this case given the fact that our City Manager just indicated that an IGA is not contemplating changing the No Interbasin Transfer Agreement and I note that this body historically has not wanted to continue to defer cases that have already been deferred when the data that has been provided to us indicates that the land lot is not covered by that No Interbasin Transfer. I guess that I am perplexed by what seems to be...

City Manager Beckett:

The only thing that I can add is that I cannot say; I am sure they have done the research, but I personally cannot say which basin it is in.

Councilmember Hewitt:

Don't we have a letter from Fulton County that says it is in the Big Creek Basin?

City Manager Beckett:

It says it is in the Big Creek Basin.

Councilmember Zahner Bailey:

And as we heard from our City Attorney that is based on a pump station and not on the No Interbasin Transfer Agreement. Maybe I could ask Ms. Wakefield in the no Interbasin Transfer Agreement, can we just make reference to the specific land lot. I believe that the City Attorneys have reviewed it or maybe Ms. Davis you are in a position to respond to that; this land lot is not identified as an exception under the No Interbasin Transfer Agreement.

City Attorney Davis:

To my knowledge, it is not an exception at July 2006 document that purports to accept.

Councilmember Zahner Bailey:

And I guess that is just why I am perplexed.

City Manager Beckett:

Here is some information. This is your former Intergovernmental Agreement.

Councilmember Zahner Bailey:

I was referencing the No Interbasin Transfer Agreement.

City Manager Beckett:

I do not want to muddy the picture up, but there seems to be some conflicting language because which land lot does this property lie in?

Senior Planner MacDonald:

City Manager, it is 1048 and you are looking at the Interbasin Transfer Agreement that was signed in 2006.

City Manager Beckett:

Thank you. It does identify land lot 1048 as being an exception.

Councilmember Zahner Bailey:

But based on

Mayor Lockwood:

At this point out of fairness to everyone, I think everyone has spoken on this and it sounds to me like we need a little more information on this, but at this point we do have a motion and a second so I would like to limit discussion and move on with the motion.

Councilmember Zahner Bailey:

Sure. If I may Mayor because I just want to clarify because I think that our City Manager got cut off mid stream and it is an important point to make. I believe that July 2006 also has an exception that says that the parcels have to do with fronting on Highway 9.

City Manager Beckett:

What it says, and this is the July 19, 2006 Resolution and these are the exceptions under paragraph D of section 82 dash whatever those numbers were, property west and North of State Route 9 in North Fulton County located between Windward Parkway and the Forsyth County line may connect to the Fulton County sewage system if a portion of the property fronts or abuts State Route 9 and the property is wholly located in District 2. Second section in one or a combination of the following land lots. Do you want me to read them all or just get to the one which is relevant to this; which is 1048?

Councilmember Zahner Bailey:

That is fine. Go ahead.

City Attorney Davis:

I think based on what I have heard and I do not have it in front of me, but if what I heard is it affronts and abuts and is wholly or partially located then I think that is our issue is the affronting and abutting Highway 9 that makes this perhaps not an exception there.

Councilmember Zahner Bailey:

Correct, and I just want to make sure that we were being clear because obviously for those in the audience the nuances of that July 2006 adjustment are pretty important because it either defines it as an exception or not and that is why I think it was important that our City Attorney clarify that so I appreciate that clarification.

Mayor Lockwood:

If there is no other discussion; we have a motion and a second to deny this application.

Vote: The motion failed 3-3, with Mayor Lockwood, Councilmember Lusk and Councilmember Hewitt opposed.

Motion and Vote: Councilmember Lusk moved to defer **ZM07-005/VC07-014** North side of Webb Road, Petitioner: Webb Road Associates, LLC by Ken Morton, Request: To Modify Condition 2.a. to modify the site plan (05Z-029) and a 3-part concurrent variance: 1) To reduce the side yard setback from twenty (20) feet to ten (ten) feet along the east and west property line (Article 8.1.3.C.) 2) To reduce the rear minimum setback from twenty-five (25) feet to ten (10) feet along the south property line (Article 8.1.3.D.); 3) To reduce the 10-foot landscape strip along the east, west, and south property lines to allow for a retaining wall for sixty days. Councilmember Hewitt seconded the motion. The motion failed 3-3, with Councilmember Zahner Bailey, Councilmember D'Aversa and Councilmember Tart opposed.

Mayor Lockwood:

I would like to ask our City Attorney for direction here.

City Attorney Davis:

Well would mean that there is no action on the item so it will remain pending until the tie can be broken. If there is an alternative motion that someone would like to make to see if there is a way to break the stalemate otherwise it would remain a pending item with no decision.

Councilmember Zahner Bailey:

Can I make a suggestion as part of this discussion? I guess it gets back to this issue of needing to more broadly define what our sewer policies are to the sewer and no sewer because obviously we have a combination of the two. We have a community that is very definitive about wanting to uphold those no sewer policies and be consistent with the application or the laws that have been in place historically and going forward. We also have obviously some areas that have sewer but the issue of when do you extend versus not is not a simple item and it does cause me pause that there has been discussion that we have perhaps a temporary approach for an Intergovernmental Agreement when I think we have heard from a number of folks including staff that the broader issue is really what we have to deal with. One thing that I would be supportive of would be that if we can agree to have enough time so that we do not simply look for another band aid approach for the sewer versus no sewer policy but instead agree this evening that what we really need to do is roll our sleeves and get to the core data. We have tried to do this multiple times and the most recent time we tried to do it we were told we could not have the meeting so we all came together for a meeting; the public showed up and we were told we could not have the meeting because our Attorneys needed to talk to Fulton County Attorneys. It would seem to me that what we now need to do is among Mayor and Council and our staff; is get into a work session when everybody can be here and obviously it is summer so schedules are varying but I would ask that we specifically look for a work session on the item of sewer versus no sewer when everybody can be here and we confirm what peoples schedules are so that everybody has the opportunity to weigh in. This is I believe the most critical issue facing our community and we are going to have different views but I think

unless we have this full body in a room with the public being apprised that we are not going to get where we need to get so I am not sure that a sixty day deferral is going to accomplish what we need to accomplish and I think that this is important enough to the applicants, to the citizens and to this body that we give it the time that it is due. I was under the impression that we had a sewer policy that was being developed and I am hearing tonight that in fact we do not.

City Manager Beckett:

No, let me clarify that yes there is a policy.

Councilmember Zahner Bailey:

I am sorry. I was referring to what Ms Davis indicated and that was that at least the City Attorney's were not focused on a policy. I had been under the impression that indeed Jarrard and Davis were starting to work toward that so that for whatever reason was perhaps my misunderstanding which does cause me even greater pause so I would ask if it be the pleasure of this body that we give enough time; that instead of trying to focus on a short term temporary solution; that we instead get together and have that work session that really brings in full day light with the public apprised and that we have open dialogue on an item that deserves open dialogue because I do not know that we are having open dialogue when the first time that I hear that there is an approach and that there is meetings with Fulton County is tonight and perhaps there was an attempt to bring a Resolution forward that we were not even aware of before this evening. That would be the approach that I would put forward is that we give it enough time that we can have open public discussions where everybody's views can be brought forward in the light of day.

Councilmember Lusk:

Just a comment on that; that was the basis of my earlier comment was that we have been down this road several times and had the same discussions here. I understand the survey results; 87% of the people in this City or at least 87% of those answering the survey want a no sewer policy. We have not defined really what that means and I think, well I know the City Manager has come forth with a workable template that is adaptable to this City and in support of your recommendation; I would say that really do roll up our sleeves, knuckle down and solve this issue once and for all and we terminate this endless reoccurring discussion case be case out here. It is not only wearing out our applicants; it is wearing out some of us on City Council so I do support your recommendation that we do move forward post haste and come up with a well defined sewer policy and I believe it may take an interim policy and then a long range policy to resolve this but sitting here meeting after meeting discussing the same things is fruitless. I understand what we want in this City and I think there is a way to do it. I think we have been charged here to do the right thing for the city and to use all of the available information both legal and scientific to come up with a final solution here and we can do it. I am encouraged the City Manager has brought forth a template that we can work with.

Councilmember Zahner Bailey:

I would like to respond. One, I appreciate the comments and, secondly, and I appreciate the template was provided but there are a lot of additional elements that I think we would need to address as part of an approach so just as that is one template there are a lot of templates that are out there that I would hope we would bring to the table for discussion. There is a lot of exceptions within that template that you have provided that at least historically the community has not wanted to set forth as exceptions which have to do with some certain institutions or government entities being able to make exceptions to the no sewer policies where that would apply within the City so I would not want to simply say that yes; lets

adopt a template that may have worked somewhere else that has not been defined for this area definitively enough. I just want to be sure that as we proceed we are not simply saying that we are going to adopt a template that was put forward. I am concerned.

Councilmember Lusk:

Excuse me. That was not my statement. It is a template that we can begin working with based on a topographic, geographic area very similar to ours so it is something; at least we have a template that we can start working on and adaptive to our specific conditions here but I was not implying or insinuating that we were going to adopt this specific template.

Mayor Lockwood:

I am going to step in here and let me ask we have a suggestion by Councilmember Bailey and I want to ask staff to get their opinion on an approximate timing if we were to put this to a work shop, explore a policy and are we looking at a guestimate of days or longer or shorter period. Do you have any ideas?

City Manager Beckett:

Well if I can qualify my response Mayor; first of all you have to remember, and I certainly do not mean this in a way that is going to be misinterpreted, but we also have to have buy in to whatever policy we enact by Fulton County as well and while I understand the need for a comprehensive sewer policy; given the complexity of the issues and the political elements associated with it. I do not see you getting a quick Resolution to a long term sewer policy; quite candidly. Also in the interest of candor; I think the Intergovernmental Agreement that is predicated on the IGA that was in place prior to Milton becoming a City. I think you will see that it contains most if not all of the elements that were there with some modifications that make it even more easy to administer and any discussion of a comprehensive sewer policy. I think would have to incorporate some of those elements anyway. You asked for my opinion and I will do what Council directs me to do whether it is long term, intermediate or short term, but my suggestion would be to simultaneously do both because I think until such time as you have a sewer policy in place and I would certainly defer to Ms. Davis that I think we run the risk of litigation; now I am not saying that would be successful litigation but litigation and needless litigation is not good for anyone and I do think we can roll our sleeves up and accomplish on an interim basis a defined area where sewer service make sense and then work on those areas where sewer does not make sense on a long term basis, but that is just me, it is my opinion and it is worth what you just paid for it.

Mayor Lockwood:

At this point we are in a dead lock between denying and deferring this application. I have a suggestion by Councilmember Bailey, but I do not think we have any parameters.

Councilmember Zahner Bailey:

I am happy to throw something out that we could consider. To your point we do not want to delay it for to long. I hear Mr. Beckett mention simultaneous and I think that would be a reasonable approach and that is that we do not pursue an agreement with Fulton County without at least starting a discussion about where we think it is so that instead to pursue something simultaneously that would contemplate what that Intergovernmental would need to be without changing that No Interbasin Transfer because I heard that and I am going to hold us all to that because I heard that this evening but that simultaneously we look not just at Highway 9 but we say what are those other parameters; using some templates; the one that Mr. Beckett has provided but also others. I know there has been a lot of research that Jarrard and Davis had begun to do that perhaps brought us to that issue of well we have an Intergovernmental

Agreement that needs to be affirmed and I will just speak for this one Councilmember is that I surely never thought that that was going to be the substitute for us proceeding with a development of a sewer policy, that definitively identified by land lots and by areas; not just on Highway 9 but also in Crabapple and also along Highway 9 and I think we would be remiss if we did just and Intergovernmental Agreement without contemplating that other so I would recommend that at a minimum we give an update within the next 90 days and that we work as we can so that within that 90 days as soon as this full seven person body when Councilmember Thurman is back and when everybody else is in place that we have a thorough discussion at a work session that has been appropriately advertised and maybe it is going to take more than one. I would guess it would but at least we would have a first work session before we have an item come back to this body for a definitive but instead within 90 days have our first work session that is specific to sewer versus no sewer that could contemplate simultaneous discussion of Intergovernmental Agreements as well as an overall sewer policy and then after that work session and then after that work session we can better assess how much more time might we need. Would that be reasonable?

Councilmember Tart:

Well, I think we have to take action on the current case and I do not want to be back here. This is a waste of the applicant's time. It is a waste of the citizen's time. It is a waste of all our time to keep coming back here and doing the same discussion over and over and over again and I think we need to buckle down and we need to get the sewer policy out and we need to ask staff the question; how long do you think it would take us to get a final sewer policy, not an interim one, not a band aid because I have seen a theme with this Council that we tend to put band aids on things to get us through the next week. How long do you think it would take us to get a final sewer policy, keeping in mind that we would need to get approvals from Fulton County as well? I think based on that, even though I am in total agreement that this should be denied because it is subject to the Interbasin Transfer Policy but in spite of that if we were to defer this it would be contingent upon your response to that. If I put a motion forward, I would want to do that contingent upon what you tell us, whether it be 90, 120, 180 days. I am a little worried about doing that though because what we are basically saying then is anybody that comes before us that has anything to do with sewer even if it is specifically in the Etowah Basin we are going to be in a position to then defer them as well so you are screaming a reason to do a moratorium.

City Attorney Davis:

Mr. Mayor if I could interject something that is totally off of that subject, but I just had a bug put in my ear that the applicant has indicated an interest in withdrawing his application and you might want to confirm that by him coming to the podium and clarifying that but if that is the case if Council would entertain that.

Councilmember Zahner Bailey:

I would entertain that.

Mayor Lockwood:

Would the applicant like to come to the podium?

Applicant Ken Morton:

Good evening Mayor and Council, my name is Ken Morton and I live at 14732 Taylor Valley Way here in the City of Milton. Yes, we certainly need to withdraw this because of all the confusion and some things that; with our site being in a spot where it is there seems to be a lot of confusion. Number one

there is not a pump station involved with my sewer. My sewer gravities to the Big Creek Basin and that is why Fulton County in there interpretation said it needed to but with that being said and with all of the confusion a withdrawal is asked at this time so we can get this resolved. I plead with you to please move as quickly as possible. Please understand the complexity of our property in that it does all fall to the Big Creek Basin and please spend the time to make this happen as soon as possible. I cannot tell you the financial and the worry and stress that it has put on my family and lets get this resolved as quickly and clearly understand the facts. There seems to be a lot of confusion regarding our property and I just need you to take the time to understand that and to be sensitive to the fact that my family has lived here for 150 years. I do not want sewer throughout our City. I love the way our City is. We do not want sewer where it does not make sense but we have a limited amount of commercial property so lets get sewer where it needs to be in the smart locations where we have commercially zoned property. My property has sewer on three sides of it; it only is common sense to get sewer to those properties that have that sewer capacity. It is not an extension. It is right there available to us and please take that into consideration. At this time I would like to ask for withdrawal.

Mayor Lockwood:

Thank you Mr. Morton. Do I have a motion and second for withdrawal?

Motion and Vote: Councilmember D'Aversa moved to approve the withdrawal for Agenda Item 08-497 ZM07005/VC07014. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously (6-0)

Councilmember Zahner Bailey:

Mayor if I may because that case is now beyond us when we get to Mayor and Council Reports would that be the appropriate time to perhaps have further discussion as to what sort of time table in concert with staff could work toward that work session when everybody can be available?

Mayor Lockwood:

We could probably wait unit Mayor and Council Reports, but I do think we need to discuss that and move forward.

Councilmember Zahner Bailey:

I do not want to hold up the next cases, but I wanted to make sure we do not lose sight of that important topic.

Mayor Lockwood:

Ok and before we move on to the next case, I am going to recuse myself because I am a director on a board that will possibly occupy a building on this next property, so I would like to recuse myself and I would like to ask if it is pleasure of the Council to have our Mayor Pro Tem take my place. Do we need to vote on that?

City Attorney Davis:

No.

Mayor Lockwood:

Ok.

Mayor Pro Tem D'Aversa:

Will the City Clerk please call the next item?

City Clerk Marchiafava:

Agenda Item No. 08-551, this is **ZM08-01** 13941, 13943, 13945 Highway 9 North - (RZ07-010)

Petitioner: Milton Organizers, LLC. The request is:

- 1) To modify Condition 2.a. of RZ07-010, to redesign site plan to eliminate septic and connect to sewer.
- 2) To modify Condition 4.d. of RZ07-010, to allow discretion by the Transportation Engineer of Milton to determine throat length of the entrance on Hwy 9.

(This item was deferred on April 18, 2008 until June 16th)

Community Development Director Wakefield:

The applicant has requested a modification of two conditions; condition 2a and condition 4. The matter was last before City Council on April 28, 2008. Although the recommendation of staff is approval of both modification request; we received a letter dated June 16th from the applicants legal representative asking for a 60 day deferral and that deferral is also based upon clarification based on the boundaries related the Fulton County sewer service area and staff can support the deferral.

Mayor Pro Tem D'Aversa:

We will hear from the applicant now.

Attorney Lauren Hansford:

Good evening members of the Council I am Lauren Hansford 3500 Lenox Road. I am here on behalf of the applicant; Milton Organizers as Ms. Wakefield mentioned this is a zoning modification request specifically to delete form the site plan the septic drain fields and allow the applicant to connect to sanitary sewer, so we find ourselves sort of stuck in the midst of this sewer plight if you will. If you recall we came before you on April 18th and at that time; just prior to that meeting we were privy to an opinion by the City Attorney or learned that there was an opinion of the City Attorney dealing with the ability of Fulton County to extend its sewer service into the City of Milton and we requested a deferral so that we could better understand that legal opinion and respond to it and also to enter into some discussions with the County as well. Since that time we have been in communication with the County Attorneys and to some extent the City Attorneys. We also filed an open records request with the City of Milton in order to determine what permits were issued on Highway 9 in order to try to figure out any inconsistencies that there may be amongst properties that might be adjacent to ours where permits were issued within the City. We also asked for copies of agreements between the City of Milton and Fulton County and as Ms. Davis as part of those open records request; one of the things that the City discloses are draft agreements and we were under the impression that the City of Milton was in communication with the County. We seen a copy of the draft agreement and while we understand that that agreement will come before the Council or may come before the Council at some point and this is of course subject to your approval; we were under the impression that the process was going to be moving along a lot faster than what I just heard so we requested a deferral for 60 days. In light of the discussion that is taking place right now; we respectfully request to withdraw our application because it sounds like it may actually take more than 60 days to get to the bottom of this so with that we respectfully request withdrawal and will entertain any questions that you might have.

Mayor Pro Tem D'Aversa:

Do we have any public comment for or against?

City Clerk Marchiafava:

That completes public comment Mayor Pro Tem.

Mayor Pro Tem D'Aversa:

Ok. Is there any Council discussion?

Motion and Vote: Councilmember Hewitt moved to approve the withdrawal of Agenda Item 08-551 **ZM08-01** – 13941, 13943, 13945 Highway 9 North - (RZ07-010) Petitioner: Milton Organizers, LLC. The request is:

- 1) To modify Condition 2.a. of RZ07-010, to redesign site plan to eliminate septic and connect to sewer.
- 2) To modify Condition 4.d. of RZ07-010, to allow discretion by the Transportation Engineer of Milton to determine throat length of the entrance on Hwy 9.

Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed 5-0-1, with Mayor Lockwood recused.

City Clerk Marchiafava:

Mayor Pro Tem, while we are waiting for Mayor Lockwood to return I will go ahead and call agenda item 08-574, this is **ZM08-02** – Southside of Cumming Hwy (West of Sunfish Bend); Petitioner: Inland Group by Eric Johansen. Request: To modify condition 2.a. of RZ03-140 to modify the site plan. (This item was deferred on May 19, 2008 until June 16, 2008)

Community Development Director Wakefield:

The applicant is requesting a modification to modify the approved site plan. The recommendation of staff is approval conditional and if you have additional questions then Ms. Robyn MacDonald is here to answer those questions.

Mayor Lockwood:

Do we have any questions for Robyn?

Senior Planner MacDonald:

I was just going to do a little presentation. This item as Alice had said is a modification of a site plan that was a zoning that was approved in Fulton County in 2003 or 2004 I believe. I do want to make one note of a staff correction on page ten if the Council and Mayor sees fit to approve this. Please reflect that it should be to the revised site plan received by the Department of Community Development on June 4, 2008. Again that correction for the record that it would be based on a revised site plan that is also reflected in your packet on page three. Basically this is a reconfiguration of the buildings. Staff believes it is a much better design overall so staff supports that. Just want to make a couple of notes that since the last deferral we have received a letter from the Georgia DOT indicating that on page 8 the site plan; we have a diagram of the two specimen size trees. The thirty inch oak which would be further to the east is to be removed because based on the development it is required to have a larger right of way and because of the bicycle lane and all of the improvements in the right of way that DOT would require that to be removed for safety reasons. Also, the forty inch oak is already in the right of way so that

would be eliminated; so as far as I can see and Mark is here to address any other questions about that; those were the two specimen trees on the site. I also want to make note that this site does have a sewer line running through it so for your information and again staff recommends approval of the modified site plan. I want to go ahead and note that we are trying to continue on that theme of the side walk and equestrian fence so that has also been included in the conditions and the applicant is more than willing to comply with those conditions as well as all of the conditions as well as the four foot bicycle lane across the entire frontage of State Route 9 and the motorized inner parcel access to the west as required by the Public Works Director.

Mayor Lockwood:

Thank you. Are there questions from Council to Ms. MacDonald while she is standing?

Councilmember Zahner Bailey:

I do have some. In the packet it did not make reference of the sewer line that you just made mention and given the last two cases and the discussions we had subsequently had. Can we talk specifically about the Interbasin Transfer Agreement?

Senior Planner MacDonald:

Yes. I would be happy to do that. This land lot is on the east and south side of the Interbasin Transfer and it is included in that Resolution from 2006 and this is a land lot that is included and there is not doubt that it should have service based on that Interbasin Transfer Policy.

Councilmember Zahner Bailey:

Is that based specifically because the land lot is identified as exceptional because it fronts.

Senior Planner MacDonald:

I am sorry; it is because it is in the Big Creek Basin. It is not Interbasin Transfer. It receives availability of sewer based on being in the Big Creek.

Councilmember Zahner Bailey:

Not based on gravity and not based on pump stations?

Councilmember Tart:

And it abuts Highway 9.

Senior Planner MacDonald:

We are confusing it. I am sorry. It is the western and northern land lots that apply to the Interbasin Transfer and therefore the land lots on the eastern and southern side of Highway 9 are entirely all the way drained and in the Big Creek Basin.

Councilmember Zahner Bailey:

One of the discussions we have had in the past that would get resolved through our collective discussions going forward on sewer is whether the distinction between sewer extension versus tapping into an existing sewer line and Robyn I do not know if that is you who would address or if it would be appropriate for Ms Davis, I just want to make sure given the discussion of these last two applicants that we do not do something here that in anyway can be inconsistent with the approach we have just

discussed which is to verify and then to put policies in place that would ensure we are providing the same approach for all applicants.

Senior Planner MacDonald:

Again; like I said the sewer line runs through the property.

Councilmember Zahner Bailey:

Is there anyway it would be considered extension based on the discussions we have had in the past with staff.

Senior Planner MacDonald:

I would defer to the City Attorney for that.

City Attorney Davis:

Regrettably, I am not familiar with this particular property. I was asked about an hour before the meeting and tried to get information on it. I think my understanding based on a quick look that it did fall within that exception and I think she is stating it a little bit differently, but it was in the exceptions Resolution of July 2006 is information I received as I was driving here from my office but candidly I cannot say that I have had an opportunity to fully review this; not being aware that it was one that had these issues presented.

Councilmember Zahner Bailey:

I guess my only question would be whether or not it would potentially be the pleasure of this body to at least give in this case a short term deferral perhaps to make sure we have had our attorneys take a look it in addition to just making sure that everybody from a staff prospective has checked and verified since our City Attorney is not able to confirm that just based on the time frame and perhaps lack of information. It is not that I doubt it; I just think this issue is so big and we have had two other applications that have now withdrawn, it would behoove us to give this adequate review.

Senior Planner MacDonald:

Also the applicant needs their opportunity as well.

Councilmember Zahner Bailey:

Absolutely, and I am saying that now so that they have that opportunity to weigh in.

Mayor Lockwood:

Is there any other questions for Ms. MacDonald? At this point lets hear from the applicant and then we can discuss this.

Applicant Eric Johansen:

Good evening Mayor and Council my name is Eric Johansen 5300 Oakbrook Parkway Building 300 Suite 368, Norcross Georgia. I am here tonight on behalf of Vanguard builders who are the owner and will be the developer of the property; the subject property that we are talking about tonight. It is an 8.3 acre tract. It is on Highway 9. It is on the east side of the road. It is across the street from Crooked Creek Country Club and it abuts it and it has sewer running through the property. I just wanted to make that clear before I get started. The property was recently zoned in 2003 and as you know in Fulton County and you guys do zone specifically to a site plan. Site plan was amended in Fulton County in

2006 and then you guys formed the City and here we are in 2008 and we would like to modify the plan again for various reasons, economic reasons and marketable reasons of looking at a better site plan. Moving forward and trying to develop the best thing for the City. Again, what we are here tonight for is the approval only of the site plan. Everything else; every other condition of zoning that was applicable to this case we are ok with. We are ok with staff's opinion. We are ok with the Highway 9 Overlay District. We are ok with sidewalks; recommendations of staff. We have had numerous discussions with staff and just for the record as we move forward since the discussion on sewer I was not prepared to have a whole sewer discussion tonight, but I took it upon myself and met with Mika Robinson of the Fulton County Health Department and I have a written opinion from her that I have submitted to staff via e-mail that this site would be required to tie into sewer. Sewer is on the site and we have over twenty thousands gallons per day usage for the proposed site and that would require anything that is within two thousand feet of a gravity fed sewer line that we have to tie into. It is also her opinion and the health departments opinion that if sewer was denied by this Council and we had to go to an onsite sewage or septic system that we would be denied from Fulton County for that so we are put in a precarious situation that we have sewer on our site; if we cannot use it we are going to be denied the right to have a septic system so when we have a discussion of extension of Crooked Creek Golf Course and that is not the direction anybody wants to go. We definitely want to work toward the approval of our site and we feel that our site is different than the other sites that you have heard tonight and we respectfully request your approval of our modification of our site plan so that we can move forward and develop that site. It is an eyesore site now with a lot of concrete and dead trees and devoid buffer and something the city would be proud of. Be happy to answer any questions.

Mayor Lockwood:

Is there any questions from Council to the applicant?

Councilmember Zahner Bailey:

One, if we could get it, the letter would be very helpful. If we could get a quick copy or make sure we all have that available to us. I have a couple other questions that have to do with parking and other site specific items. As an example; on the specimen trees and I recognize when the DOT says it is in the right of trees there is not much you can do and I do not know if Eric this would be for you to respond to or Mr. Drake if you could or Mark Law, but obviously Milton cares about their trees. Were there any other options in terms of shifting or parking or anything else or was it all right of way specific that precluded these trees from being saved.

Applicant Eric Johansen:

The parking has nothing to do with the trees. The thirty inch oak can be saved. It comes down to a liability question of who is going to be responsible. The worse case scenario is somebody drives off the road and hits that tree and they die. It is in the right of way and it is typically a tree that DOT would ask to be removed because it is a safety hazard. It is a thirty inch oak; it is not a small tree in a break away ditch or tree grades. It is a huge established tree. Currently the tree is about eight or nine feet off the existing edge of pavement. When we restripe to put the bike line in and then we shift the pavement over or whatever it takes to get the bike line in, we shift that over; the edge of the tree is now probably now about four or five feet and maybe six feet from the back of curb, so we can easily shift a side walk to go around the tree, take it from public right of way onto public property and then back onto public right of way. It is not a problem if you would like the tree to be saved we can save the tree. If you want to go with DOT's opinion, we can go with DOT's opinion, we are indifferent. It was just a question that came up during the review. It does not affect square footage of the site. It does not affect parking. It gets into

the buffer a little bit but the buffer in that area; pretty much the whole site is pretty devoid of vegetation anyway. From a safety stand point; I defer to DOT on the safe issue and I do have an e-mail from DOT as well that I forwarded staff and I highlighted two portions of the discussion so paraphrasing the tree would be too close to the travel lane and not out of their required clear zone and that they regret that they would like the tree to come down.

Councilmember Zahner Bailey:

Mr. Drake can you comment on that? Again, public safety is our first and for most consideration. Are there ever any exceptions by the DOT especially since we have two folks that we just appointed to our tree preservation so that is top of mind for many folks in the City and I just wonder if there are any exceptions before we chop it down if there is some consideration we could give.

Public Works Director Drake:

I am sure DOT give exceptions when there are trees within a right of way when those trees are much further away from the actual road way but with this tree being so close to the road way there would be no way they could except either of these trees and they have the ultimate decision at this point. It is within their right of way.

Councilmember Lusk:

I would offer too that we just turned down another case where we were proposing planting in the right of way and discouraged it for the very same reasons that encroached in the clear zone. I for one would hate to see a thirty inch oak destroyed but certainly would not want to see anybody run off the road and get killed either. I notice that your site plan does show the side walk going around the existing tree so I assume that would be modified to reflect the removal of the tree.

Applicant Eric Johansen:

And just for the record, I am the landscape architect so I understand more of the tree issue than the sewer issue but I get front end all of the issue so I try to understand as well as I can but the very nature if you notice the circle on the site plan the circle is indicative of the critical root zone; it would required if we were not anywhere near a street. That would be the area to be saved and the critical root zone extends through the bike plan, through the travel site and almost through the meeting of the existing road, so the tree is a fighter, it has stood there it's whole life and it has done very well. The one thing that I cannot control is we are required to put the bike plan and we are required to make the de-cell lane as safe as possible and we are in ten feet of the trunk of a thirty inch tree and we are going to get into the critical root zone and the feeder roots of the high side of the tree, so by saving the tree sometimes we cause another danger situation for the inside of the site we are trying to protect as well, but if the tree does come, we are indifferent and if requires recompense we are not arguing with that. It is a none issue.

Councilmember Lusk:

That is a question I was going to add, does your current landscaping plan reflect the recompense?

Applicant Eric Johansen:

The landscape that you are looking on that plan is conceptual. I wanted to show you how every island would have two to three trees in there. The plan probably has thirty percent more tree that what you see on there and the caliper size will probably be in the three inch caliper range for most trees. The one thing that it does not show is all of the plantings in the buffer that we are going to have to do in addition

to meet the onsite requirements of the landscape strip and the onsite trees. At the end of the day, it will be an all inclusive plan of the required trees.

Councilmember Zahner Bailey:

If I may, along the lines of recompense in caliper tree in some of the cases recently along Highway 9 some of the applicants have agreed to a condition that would require some of that recompense to include at least a portion of the tree that is up to a six inch caliper tree especially when large specimen trees are being taken down and I do not want to put you on the spot, but I do not know if that is something that you guys would consider; not necessarily for 100% of the recompense, but would there be some consideration from the applicant to at least some larger caliper trees in doing recompense on this parcel.

Applicant Eric Johansen:

I do not want to be here to bargain with you tonight, but if we do not make this sewer an issue and move forward since we have the sewer on site but we would be happy to do six inch caliper trees.

Councilmember Zahner Bailey:

Again my question is not - we are not negotiating; I just wanted to know specific because it relates to the trees whether or not a larger caliper tree because that would be consistent with some of the things we have done in other areas.

Applicant Eric Johansen:

We would be happy to work with the City Arborist and be consistent; he even had a point that they have been trying to do book ends to entrances and that is not an issue. We want to be consistent with the new developments along there to make it look well. I do not know if you have noticed and picked up on that site plan but the brick insets every fifty feet and we thought that was pretty attractive and actually planned to carry that into the site along the fronts of the buildings and keep the thing going.

Councilmember Zahner Bailey:

If I may Mayor, another question just regarding parking. I know that staff's analysis mentions that. Obviously, Ms. Wakefield you have a 10% administrative ability to reduce parking, but that still did not get you or did not get the applicant to the number of parking spots that would be required. I realize that this is a conceptual site plan, but one of my questions in looking at that is where would you adjust the site plan in order to accommodate the additional parking that would be required?

Applicant Eric Johansen:

Well the parking indicative of the proposed uses on the site and the proposed uses on the site; I do not want to comment to the percentages that were on there because it is a market driven commitment on retail and could be a healthy mixed use site. The proposed square footage we put on there drove the parking counts to be on there. Obviously, if we play with more office, less retail, more restaurant, less retail, it goes in a different direction of parking so they reported at the time of permit approval we would; consistent with that plan we would still have to comply with the current development regulations.

Councilmember Zahner Bailey:

So whether that was changes in uses or perhaps reducing density, somewhere to accommodate that?

Applicant Eric Johansen:

Uses would still remain the mixture of office and restaurant retail that we have shown but working within the allocation of square footages and ultimately it meant shrinking the buildings and we would pursue that as a last resort.

Motion: Councilmember Lusk moved to accept agenda item 08-574 with the modified conditions and in the interest of consistency. I propose an additional condition that we get final resolution of this site in a sewerable location with a confirmation from the County that it is in fact required to be sewerred.

Mayor Lockwood:

Do we have a letter?

Applicant Eric Johansen:

What I gave you is a confirmation that based on the usage of the site and the location of the site and Monica Robinson is one of the health department Directors who I was directed in Fulton County who oversees the sewer program and she is hesitant to write a letter that yes it is required to amount of gallons per day until she verifies with Fulton County Public Works the sewer basin it was in and also the availability of that basin and we are within the Big Creek Basin.

Councilmember Zahner Bailey:

I would like to support Councilmember Lusk's comment that verification. Perhaps not so much from Fulton County, but that at a minimum given the earlier discussions that if it be the pleasure of this board to pursue a potential approval this evening that one condition be that our City Attorney's confirm as a condition that our City Attorney's confirm that indeed it is consistent with the No Interbasin Transfer and it is consistent with the other elements because we also have the issue of constitutionality with the IGA and I do not want to lose that thought. Ms Davis,; could you maybe speak to whether or not we need to contemplate the constitutionality issue here before we approve something.

Mayor Lockwood:

At this point I would like to break in real quick, Councilmember Lusk had made a motion.

Councilmember Lusk:

I am ok with the documentation so I move to approve the application with the conditions approved by Community Development Director.

Mayor Lockwood:

Do I have a second?

Councilmember Hewitt:

Would you restate your motion Councilmember Lusk?

Restated Motion and Second: Councilmember Lusk moved to accept the application noted as Agenda Item 08-574 ZM08-02 with the modified conditions 2a of the rezoning; staff's recommendations. Councilmember Hewitt seconded the motion.

Mayor Lockwood:

I have a motion and a second; now sir, if you would like to say something.

Applicant Eric Johansen:

Just a clarification to what Ms. MacDonald had said prior to my coming up here; the dates that were in your packet says March 31, 2008 is the site plan date.

Senior Planner Robyn MacDonald:

June 4th.

Applicant Eric Johansen:

June 4th is the correct date. I just wanted to reference it as the correct date.

Mayor Lockwood:

I have a motion and a second for approval based on staff's recommendations. Is there any discussion from Council?

Discussion on the Motion:

Councilmember Tart:

I have some. I am worried about where we are going with this because it seems like there are some unanswered questions on this particular application that certainly we just talked a lot about sewer on two other parcels and I would hate for us to approve or disapprove or anything other than defer this based on unanswered questions because I think it puts the City in a pretty bad predicament to make a decision based on information that we do not know about. I have heard Councilmember Lusk talk about in his motion; as part of his motion. I think he changed that though would be contingent upon an interpretation by our attorneys and I do not know if we need to be in the business of approving something contingent upon the answers to questions we do not have.

Mayor Lockwood:

I do not think he added any contingency.

Councilmember Tart:

The issue is - the issue of sewer is still an issue on this property as well and we asked for clarification on the issue of sewer and we were not given a definitive answer so I would really hate for us to approve this application on information that is not definitive and we just had this lengthy discussion on two other parcels. That puts us in a bad legal predicament in my opinion.

Councilmember D'Aversa:

There are parcels up and down Highway 9 that legally and constitutionally we permit with sewer so I guess I need clarification further for this property that there is a sewer line running through it; why would it not be sewerable or permissible at this point. The other piece of properties are completely different circumstances. We have one that we have a legal opinion that it is in the Etowah Basin, we have another one which I think was actually withdrawn because they are waiting on a new sewer policy or our sewer policy, but in this instance there are properties that are given sewer permits weekly if I am not mistaken so if I could get some clarification as to why this one may possibly not be.

Mayor Lockwood:

Is there any comments from staff?

City Manager Beckett:

My staff tells me the sewer line runs through the property and I am told it is in the Big Creek Basin.

Councilmember Zahner Bailey:

I guess my question would be for our City Attorney based on the issue of unconstitutionality that was brought forward. Not about this parcel in particular and please bear with that but as it relates to their analysis and the IGA with Fulton County.

City Attorney Davis:

This particular application was not called out to us as needing review or no inquiries made by staff or Council as I said until about an hour before the meeting so unfortunately I just do not feel like I can offer a definitive opinion. The fact that sewer runs through it is significantly different than the other situations; no doubt but as to the constitutional issues; I just do not know without putting this on a map and looking at the green scheme of the controlling document.

Mayor Lockwood:

At this point does staff have any pause that this would not be a sewerable property just like other properties that are sewerred in the City of Milton?

City Manager Beckett:

I believe that constitutional issue relate. Mayor and members of the Council, the constitutional issue relates to the fact that Fulton County has no authority to provide sewer service anywhere inside the City absent and Intergovernmental Agreement. Is that correct?

City Attorney Davis:

That is correct.

City Manager Beckett:

So that is the only constitutional issue associated with this whole thing. I am unaware based on my review and the conversations I have had and somebody jump in a help me if I am wrong, but as I understand it this property is otherwise sewerable.

Councilmember Zahner Bailey:

I guess that is my question; is whether or not our City Attorney can confirm that the IGA that is currently in place would allow Fulton County that ability. I think you are exactly right Mr. Beckett. That you just couched the question and if we do not have confirmation from our City Attorney as to whether or not it either or does or does not fall within the current IGA; not some proposed something that we have not created yet, but the current IGA. I am not sure that we tonight can answer that question unless Ms. Davis or Mr. Jarrard who I think I saw walk in who is now outside. Maybe he has data that we.....

City Attorney Davis:

I do not suspect that he will and I apologiz for that.

Councilmember Zahner Bailey:

No apology necessary.

City Attorney Davis:

I would rather not give you an incomplete answer on such an important issue, but again no inquiry was made of us before hand and I just do not know without looking at this particular parcel with all of the information available.

Councilmember Tart:

Have we issued any sewer permit since the interpretation by your firm?

City Attorney Davis:

I do not know that.

Councilmember Tart:

I need to ask staff that. Have we issued any sewer permits to any property after the interpretation by our Attorney regarding the Intergovernmental agreement?

City Manager Beckett:

None that I am aware of.

Mayor Lockwood:

I do not know that we would have issued any permits. At this point what I am hearing is; number one I have a motion and second to approve this per staff's recommendations. I am also hearing from staff that to the best of their ability and knowledge that this is a sewerable property. There is sewer running through the middle of the property and it is in an area of sewer that I do not believe they are saying there is any question unlike the other two so at this point if someone else that has not spoken yet I will be glad to allow comments but then I would like to move forward.

Councilmember Zahner Bailey:

I am sorry Mayor but if I may; if you will indulge me for a moment; while it may have sewer I am not hearing that we have an answer as to whether or not the current IGA we have with Fulton County allows for them to sewer this or not and I think that is the question. I am hearing Ms. Davis that she cannot give us an answer this evening so I am going to ask the question again so we are all on the same page; can you give us as our City Attorney an answer?

City Attorney Davis:

Well it is not an Intergovernmental Agreement per say; it is the service delivery strategy act.

Councilmember Zahner Bailey:

The current service delivery agreement that is in place; does it allow for Fulton County to sewer this parcel. I heard Ms. Davis say that she could not answer that question for us this evening. Now unless staff has reviewed that and provide us that answer that seems to be the sixty four thousand dollar question.

Mayor Lockwood:

Number one, can I ask staff are we supplying this applicant with sewer; it sounds to me like the County would be supplying the sewer to them. The County based on these letters, the health department would not allow them a septic and by law they would have to hook up to the sewer.

City Attorney Davis:

I would feel remiss to answer that question as to how they might enforce their regulations if indeed they have the authority to do that. I do not want to make it a bigger issue than it is but I just cannot answer your question as we sit here and I would like to apologize for that.

Councilmember D'Aversa:

Would you be willing to ask for a deferral and allow us to get our answers to these legal questions because we would be poor in making a decision based on the fact that we do not have adequate information? If you would indulge us.

Applicant Eric Johansen:

I understand and I am going to have a long answer to your question. We are under several time constraints. AS the market is what it is and the lenders being who they are they have changed their terms. Financing has been available on this site for eighteen months and we are under a time constraint with the bank to start this work by September 1 or we will lose all rights to money. The deal changes, the site changes and everything else does, I am not asking you to make a decision based on a financial constraint, but all decisions you make are financial decisions when it comes to zoning issues. The second thing I want you to consider is that when City of Milton broke from Fulton County my understanding agreement was that you would continue to provide sewer to sewer sites. Slime has been running through this site since the 2003 zoning so nothing has changed since this property came from Fulton County into the City of Milton. It is in the exact identical state with the exception that some clean ups and fallen debris and tree material on the site. The third point I want to make is regardless of what your decision is and regardless the agreement you come to on sewer, we have no other option with the Fulton County Health Department so regardless if you say we cannot tie on with agreement and Fulton County says you cannot use septic; we have an unusable piece of property that in essence that has been taken that when this was pursued back in 2003 it is sort of like the specimen tree. The conversation that Mark and I had on that we caused that tree to be out in the right of way because we are developing the property so we will take the responsibility for it and that is not a problem and we are not arguing that; we are not arguing any other point on the site. Nothing has changed on this site since day one. It was a sewer site in 2003 and in 2003 if it was developed prior to the City breaking through this would not be a question.

Councilmember D'Aversa:

I understand and I wish you had developed it then, but you did not. That fact remains and all I am suggesting is that this body needs time for our City Attorney to clarify a legal issue which is a constitutionality issue and I do appreciate greatly the fact that you have this opinion that they are not going to allow anything other than sewer. I felt that it would be easier for you to request a withdrawal and let us get back to you post haste which we would do and you will meet your September 1st deadline to get started.

Applicant Eric Johansen:

Well, there is a whole trigger to the September 1st and your decision is part of it but to meet our deadline, to get a permit to move forward. As you guys are well aware, we have to have a permit. We have to get erosion control plan from an agency that has nothing to do with the City and we have to get Design Review Board approval on proposed architecture. We are on a fast track starting tomorrow assuming that something positive happens tonight to make that September 1st deadline happen and with

any delay in there and you are within to do what you want but any delay in there causes us not to meet that and we have to rethink the project. It is going to make it really tough. If there was a way to defer this and I do not know if you do day meetings but if there is a way to defer it to a day meeting.

Councilmember D'Aversa:

I understand but I just wanted to give you that option. It would be a thirty day deferral.

Mayor Lockwood:

Can I make a suggestion? City Attorney Davis, lets say we have a motion and a second to approve this application per staff's recommendation. Can that be conditional that the City Attorney and the staff get together and confirm that it is sewerable and confirm some of these letters and with the County?

City Attorney Davis:

We can certainly do that. I think what I am hearing the applicant saying is he wants to start acting tomorrow and if it is contingent on our issue and decision I just want him to know that we might need to put a time period with which we need to come to that decision. I would not want him to start acting before we render our opinion.

Mayor Lockwood:

I think that this would be a decision that staff would make within the next day or two get together and confirm. Like you said you just heard about this an hour before the meeting, but if you had two hours or a day. Maybe we put a two day limit on it or something like that or ask what is fair timing that you can confirm this for the applicant.

City Attorney Davis:

Certainly a week is enough.

Councilmember D'Aversa:

I think I would request that it needs to be deferred. We need to follow our own rules and here I am back being the rule follower again but that is what we should be doing. Again if it is only to the next meeting; that is the 7th of July. With all due respect I think that is the best thing to do then you know definitely that there is no legal issues. We know definitely, we would be just putting ourselves in a predicament for our City Attorney to tell us that she cannot give us a judgment and for us to go ahead and approve something.

Councilmember Zahner Bailey:

I would just like to say that I do support the fact that our City Attorney has stated for the record that she has not had the time to provide us a review. I do not think that anyone is questioning that sewer is perhaps on that property. I think it is specific to what we have heard in earlier; is what is the constitutionality as it relates to our City Attorney and the firm reviewing that in concert with an existing Service Delivery Agreement. I want to ask Ms. Davis, I am sensing that there is a little bit of caution that is approving something that is conditional on answering a question from a legal perspective is there some additional concern in terms of whether or not we would be giving an applicant affectively approval and yet it really not an approval because we have to get that answered. They would be preceding potential and later could take action that would be predicated on approval that really was a conditional approval.

City Attorney Davis:

We would just need to be clear that it was contingent perhaps upon certification from the County Attorney and the City Manager that it is appropriate for sewer. We can do that. Often we approve contracts contingent upon staff and attorney review. Usually that is our contracts and we are not involving third parties, but I think as long as the applicant was clear on that and it is an accommodation to him in the interest in time then I am certain he would be willing to work with that.

Mayor Lockwood:

Would the applicant be ok with that?

Applicant Eric Johansen:

We are ok with that. In a week to ten days would be fine with us as well. I feel confident what the answer is going to be and at the same time I will help this process if necessary.

Mayor Lockwood:

We have a motion and a second to approve this.

Councilmember Lusk:

I would revert to my original motion where we accept the conditions from Community Development and also the condition approval as contingent upon confirmation with our attorney.

City Attorney Davis:

I believe you had another pending motion right?

Mayor Lockwood:

Yes, we had a motion and a second and we were in discussion on that and he is revising his motion.

City Attorney Davis:

We can either amend the motion and vote on the amended and the original or it might be cleanest to just withdraw your pending motion and withdraw your second and then make a new motion.

Motion Withdrawn

Councilmember Lusk:

I withdraw my pending motion.

Second Withdrawn

Councilmember Hewitt:

I withdraw my second.

Motion: Councilmember Lusk moved to approve zoning item **ZM08-02** with the modifications approved by Community Development Staff and also add the additional condition that this approval is contingent upon review by our City Attorney.

City Attorney Davis:

If you could just clarify as to availability to sewer.

Councilmember Lusk:

Correct.

Mayor Lockwood:

Would you want to put a date or number of days?

Councilmember Lusk:

Within the next ten business days.

Second: Councilmember Hewitt seconded the motion.

Mayor Lockwood:

I have a motion by Councilmember Lusk, second by Councilmember Hewitt on approval for this application based on staff's recommendation and also adding the condition that it is confirmed with the City Attorney and staff within the next ten business days of the availability of sewer. Any discussion?

Councilmember Zahner Bailey:

I do have a question about the deferral. I do understand the time sensitivity. I think I heard that this could be brought if it were to be deferred versus approved with this condition that it could be deferred and brought back at the next meeting. Can you confirm Ms. Marchiafava when that would be?

City Clerk Marchiafava:

July 7th.

Councilmember Zahner Bailey:

My next question, so let's just assume for a moment hypothetically that if we instead had a motion to potentially defer, but to the next possible meeting, would there any reason that this applicant could not proceed and get on the Design Review Board agenda so that would not be delayed. In other words an approval that is conditional would not preclude this applicant proceeding with some of the other reviews that are still needed. Can we confirm that either Ms. Wakefield or Mr. Beckett? Is there anything that preclude this applicant even with a deferral that they could proceed to the DRB?

City Manager Beckett:

I would defer to Ms. Wakefield on that particular question.

Community Development Director Wakefield:

Well, the site plan that is currently approved the site plan that we would send to the DRB would not be the right site plan so they may end up being deferred before the DRB. I would have to go back and see the agenda and see the time of it.

Councilmember Zahner Bailey

I guess my question would be is that if the intent is assuming we can get that confirmed whether it is in ten days under approval conditional or on July 7th or sooner. My thought being if this is the site plan that you intend to proceed with separate and distinct from needing to clarify the Service Delivery with Fulton County. I believe there is an opportunity for you to go ahead and proceed to the DRB with this site plan. My premise being, is that not a good compromise. It allows you to proceed with something that is important. It allows you to proceed knowing that we are simply trying to confirm with our City Attorney. I think that opportunity exist.

Mayor Lockwood:

I think the only comment I would have is do you run a risk of timing run out, but also form what I am hearing from our City Attorney Staff it is a pretty black and white issue. It is either sewerred or it is not so what is the difference in waiting three weeks or July 7th. You are going to come up with the same answer. Again, I do have a motion and a second.

Applicant Eric Johansen:

Can I comment? My only comment on a comfort level moving forward I would prefer to move forward on the motion approving the ten day because I would know my fate in ten days. If I wait thirty days - I have to wait thirty days for my resources to get the DRB plan ready.

Councilmember Zahner Bailey:

I do understand that July 7th is not a full thirty day period, but I do appreciate the comment. I continue to be concerned about our City Attorney's preference would be to review that with full review.

Councilmember Tart:

I had a comment based on this motion because yeah you have a sewer line running through it that is not the issue to me. The issue is the constitutionality and we just had a long discussion on two other cases that they withdrew because of this question and our attorney cannot give us an answer to this question because we need further review for this. I would caution us against approving something contingent on an answer we would get in the near future because we could have very well done that to the last two cases. We could have approved the last two cases contingent upon some sort of determination in the future making some determination of whether there was availability of sewer so I would caution us treating this particular parcel different than the other two.

Applicant Eric Johansen:

My rebuttal to what you said is.

Councilmember Tart:

Point of Order, we cannot have a discussion back and forth. I apologize for that.

Mayor Lockwood:

I am at a loss here on what to do. We have a motion and a second. I certainly support the motion. At this point, I would like to call the question. All in favor of calling the question and moving forward with the vote on this motion? We have support on that. So at this point we have a motion and a second to approve this application based on staff's recommendation and also confirmation with the City Attorney that this is a sewerable property within the next ten business days.

City Clerk Marchiafava:

All of those in favor of the motion please say Aye? Councilmember Zahner Bailey, Councilmember D'Aversa and Councilmember Tart are in opposition and the motion failed.

City Attorney Davis:

I was trying to figure out how many days between now and July 7th versus ten business days. It is probably pretty close and I think the applicant is willing to say July 7th sounds good to him.

Mayor Lockwood:

You do or do not think the applicant is willing.

City Attorney Davis:

He is not I do not think willing to say that is agreeable.

Applicant Eric Johansen:

I do not have a choice at this point.

Councilmember Zahner Bailey:

I am willing to put forward a motion. May I put an alternative motion forward Mayor?

Mayor Lockwood:

Go ahead.

Councilmember Zahner Bailey:

Motion: I will put forward a motion that we defer North Valley Shopping Center case ZM0802 until our next scheduled public hearing which I believe is July 7th and that during that deferral we specifically ask that our staff in concert with our City Manager and with our City Attorney simply review this at it relates to sewer ability and specifically have our City Attorneys review that in the context of their earlier analysis in regards to the constitutionality of the Service Delivery Agreement.

Second: Councilmember Tart seconded the motion.

Councilmember Zahner Bailey:

The only other thing that I would like to add is that I would encourage this applicant to get on the next Design Review Board Agenda and if that is possible for you to proceed during this deferral, I would encourage you to do that if it be the pleasure of this Council. I think that would help your time frame.

Councilmember Lusk:

I am not sure how that differs from the previous motion, but whatever it takes to get this thing moving forward lets get on with it.

Councilmember Zahner Bailey:

I would like to make clear what is different. What is different is it is a deferral versus a contingent approval and that is legally quite a different animal.

Mayor Lockwood:

Ok. We have a motion and a second to defer this applicant until the next meeting. Any more discussion?

Councilmember Zahner Bailey:

I would like to be specific that it is until July 7th.

City Attorney Davis:

To confirm that is fifteen business days as opposed to what was an agreeable ten.

Mayor Lockwood:

Any more discussion? Hearing none.

City Clerk Marchiafava:

Vote: The motion passed unanimously.

Mayor Lockwood:

Would the City Clerk please sound the next item?

City Clerk Marchiafava:

Agenda Item 08-589 - **RZ08-02** – Text Amendment to Article 28 Rezoning Procedures.

Community Development Director Wakefield:

This is an amendment to the zoning ordinance that provides for changes to the ordinance as it relates to public participation and notification making the community zoning information meeting a public meeting that requires notification and posting and advertising in the news paper. Also expanding and enhancing notifications that are mailed out. Re-posting of properties that are deferred and requiring as part of the environmental site analysis the applicant identify all of the specimen trees and also deleting the reversion provision in the current zoning ordinance. Right now, Planner Robyn MacDonald will do a presentation on the matter.

Senior Planner MacDonald:

You did a great summary of it so we will just walk through it. I have it on the power point. I just want to make sure everybody all of the changes. These are mainly based on changes that were discussed at the February 11th work session so it should not be anything major or new or anything. First of all appropriate global changes references to Fulton County again you cannot just do a search and replace. We have to make sure because there still are some references to Fulton County such as Superior Court so those have been edited out appropriately. The biggest other reason that we brought this was elimination of expiration extensions of zoning and use permits; no longer vesting's of zonings is determined unconstitutional so if you have any other questions about that I am sure the City Attorney would be happy to address that. I know that was a tradition or what was done in Fulton County. The public participation report due no later than seven business days before the planning commission hearing and the Mayor and City Council meeting, so this is something different. Prior it was just a public participation plan that was due before the Council Meeting so there will be a part A and part B to that public participation plan. Also the traffic impact study as required by the City of Milton right of way ordinance. This is an item that was approved by Council last summer. The right of way ordinance and basically and again if you want further explanation Dan can explain it to you but previously under Fulton County really the only times that you needed a traffic study was typically for development of regional impact or really big developments. Right now, under the City of Milton Right of Way Ordinance almost every use permit and rezoning has to be examined and then they do a scoping of what type of traffic study would need to be done. Originally staff has been having the applicant submit it a couple or three weeks after the application date. I believe it was the Planning Commission that had the conviction that they wanted to recommend that it be submitted at the time of application so again it is more work on the applicants part to get the traffic study done as well as coordinate with the Public Works Department to get a scoping meeting to understand what the full ramification of that study would be. So trying to get a better understanding of the proposed rezoning or use permit at the time of the Planning Commission. Again, as Alice had stated we have some different changes prior to any changes Mayor and City Council shall hold a public hearing following a CZIM meeting and a public hearing by the Planning Commission. This is the biggest part that has been changed is that prior we would have a community zoning information meeting. It is not a public hearing, it was not a public meeting that required to be posted as far as in the news paper or send out notices but we did post it on the rezoning sign but now it will be required as a public hearing. It is not a public hearing, but it is required to be posting prior to the CZIM meeting. For fourteen days prior to the CZIM. The applicant shall post a sign and it is really the same sign but we need to make sure that the sign is posted at least twenty days prior to the Planning Commission Meeting and shall remain in a conspicuous location until a decision is rendered by the Mayor and City Council. There was also discussion about how sometimes signs can disappear or they weather or the wind blows them away but really again making sure that the sign is continuously posted for the public to view. Re-notification is required when a petition is deferred by the

Planning Commission and or the Mayor and City Council for the posting of signs and notice to adjacent property owners. Again the way the Ordinance read prior that basically if it was deferred by the Planning Commission it read that you needed to re-notify but if it was deferred by the Mayor and Council then it did not to be re-notified. That is the biggest change for that. It would need to have the re-notification on the sign as well as mailed notices and the news paper. We have always had mail to all property owners within three hundred feet and as you all well know we have some pretty large parcels and it just does not bring in a lot of residents or land owners so we have been practicing or within fifty owners already. We have been doing that with our rezoning use permits so again we are just codifying it into the zoning Ordinance and mail notices shall be mailed a minimum of fourteen days prior to the Community Zoning Information meeting so again basically we are bringing in a CZIM meeting as a meeting that would need to be notified to the public. Under the environmental site analysis 28431h; identify all specimen trees as defined in the City of Milton Tree Preservation Ordinance so that is something specific that is added into that ESA report that is due from the applicant at the time of application. The public participation plan and report; we heard from Council at the work session that they did not want to have the CZIM meeting act as their public participation meeting even if they had sent out notices; that you all wanted to have a separate meeting aside form our Community Zoning Information Meeting so that is what the changes are doing. The Public Participation Report due no less than seven business days before the Planning Commission Hearing and again the Mayor reiterated the point before. If reports are not submitted in the prescribed time the Planning Commission and Mayor and City Council may defer the application; again we have left that up to you to make your own discretion about that. Applicants are required to schedule at least one meeting prior to the first planning Commission Hearing because I think in the past it was technically you could probably do that public participation meeting after the Planning Commission but now it tightens the reigns about exactly when it should happen. That concludes staff's recommendations for your approval. Any questions?

Councilmember Tart:

I have a couple of questions. I am looking at 28.3 public hearing and notice requirements. I certainly would like to approve this tonight but I have some questions and probably later when we are through with comments I might need to get some help on how to proceed getting this. The paragraph that says the applicant shall post a sign as issued by the Community Development Department in a conspicuous location on each street frontage on the subject property not later than five pm on the fourteenth day prior to the Community Zoning Information Meeting and every other paragraph where it talks about posting a sign it does not say how far back that sign needs to be; whether it be ten feet twenty feet from the right of way or anything. Did you purposefully omit that?

Senior Planner MacDonald:

Typically, we want it to be noticed so this is one of those times of being a City prescribed sign that it is ok to be in the right of way because if we put it outside the right of way sometimes it would not be. Traditionally it could be out of the right of way or just right in the right of way so I think that is part of the reason why we never set a.... we want to make it conspicuous, but again it is up to you all. City government signs are allowed to be in the right of way.

Councilmember Tart:

I am not concerned about the sign in the right of way, I guess what I am concerned about is it is not specifying where it needs to be because conspicuous is sort of a subjective term that is open for discussion.

Senior Planner MacDonald:

That was put in by the Planning Commission. I think that they were really trying to be specific not to just say posted on the frontage because they did not want it to be twenty feet away. Does conspicuous mean five feet back does it mean fifteen feet back? I think you are right it is subjective but at the same time trying to cover all of the situations that might come up for posting of a sign, but again it is up to Council's desire.

Councilmember D'Aversa:

To piggy back on that; Ms. Davis would you have an alternative wording that would be more specific and protective legally than conspicuous?

City Attorney Davis:

I think conspicuous is the reference used in the Zoning Procedures Act when it references the posting of a sign. I cannot swear to that but it is not an uncommon term. If you want to define it further it cannot hurt.

Councilmember D'Aversa;

How then could we define it further? Not greater than?

Councilmember Tart:

Our Alcohol Ordinance does in fact have a prescriptive distance back for the sign posting.

City Attorney Davis:

I think that would be a fair way to do it. You could say in a conspicuous location which shall be defined to mean no less than a safe distance maybe ten or fifteen feet from the road frontage. Is that how it is defined from the actual road?

Mayor Lockwood:

Is there a draw back to specifying a distance?

City Attorney Davis:

I think the attempt was to say conspicuous so that if there are terrain issues. It may be that ten feet back puts it in the gully, fifteen feet back puts in on the crest. There could be issues like that. Conspicuous would be more useful to us in our interpretation. You do not want to require or expect that staff is going to drive by and check off conspicuous each time because that is difficult but what I do think that they do typically is they go and take photographs.

Senior Planner MacDonald:

We do.

City Attorney Davis:

When they do that I think that would be an opportunity if they believe it is behind a bush or it is in a gully that they could notify the property owners accordingly and that would be helpful because then we would not have a situation where the application has a strict requirement that does not make sense on the particular terrain.

Councilmember Hewitt:

I see where Councilmember Tart is coming from and specifically and would like to say the Alcohol License but taking it that specifically in a developed area where you are not going to be and as someone who has had a little experience in the past few months sticking signs out. Sometimes it might be that distance somebody might take advantage of that and say well here it is at ten feet or fifteen feet or whatever.

Community Development Director Wakefield:

If I may, a concern that I would have from a community development stand point with putting a specific setback in there is then it would be upon staff to go out and verify the distance and we would spend a lot of time in discussion with the community and the applicant. I think that is one of the reasons it is left sort of vague. One of the things staff looks for when they go out is to make sure that it is visible.

Mayor Lockwood:

I feel comfortable with staff's recommendation of conspicuous. Obviously, if it is not conspicuous the staff would let us know.

Councilmember Tart:

That is a fair response. Thank you.

Councilmember Lusk:

Discretionary issues that are corroborated here by a photograph. I think reasonable people would expect something like that and they would not want to have an issue like this challenged because the sign was not twelve foot six inches from the road rather twelve foot eight inches.

Councilmember Tart:

I also have a question on 28.4.5 noise study report. If we are making this applicable to Milton and not Fulton County it makes references in this paragraph about the need to do a noise study if within 3000 feet of an active rail line or within five miles of the Hartsfield Jackson International Airport and I am not sure that either of those apply to us. Certainly, I would be willing to accept the 5000 just for the sake of argument; the 3000 feet from an active rail line. I am not sure if that applies, but I know we are more than five miles from the air port.

Senior Planner MacDonald:

There is within 1,000 feet Georgia 400 because our boundary is adjacent on the eastern portion to 400 so there is a possibility but you are right we do not have Hartsfield Jackson International Airport or train line going through the City of Milton, but it still does apply to the Georgia 400, but we would be happy to make that change or elimination of those two items.

Councilmember Tart:

I have one other concern or two others. One has to do with 28.3 public hearing and notice requirements. The next to the last paragraph that deals with the department shall give notice by regular mail to all property owners or current residents within 300 feet of the boundaries of the subject property with a minimum of fifty owners who appear on the tax records etcetera. I would like to see that increased because if we are talking about 3000 feet of the boundaries of the subject property and the Avensong off

of Highway 9; I think that would be a good number of property owners, however, I think we are trying to fix that by saying with a minimum of fifty property owners.

Mayor Lockwood:

In staff's opinion, would the fifty owners offset the fact that if it was a sparsely populated area the 300 feet would do?

Senior Planner MacDonald:

I am sorry I did not quite get what would you propose?

Councilmember Tart:

1,000 feet.

Senior Planner MacDonald:

We have a problem because then we get up to 400 around State Route 9 and I think again it is up to Council's discretion, but I do believe usually when we pull up fifty it ends up being seventy or seventy five because what we do with the GIS. We do buffering so usually it even still encompasses more than technically fifty but even now when we do the 300 feet we have 75 to 100 residents. We did a modification at Deerfield Green and it pulled up 100 residences with 300 feet so I would be a little hesitant to go that far up but again it is up to Council's discretion.

Councilmember Zahner Bailey:

Could we maybe do something in the middle? Again I appreciate these changes because I had helped propose these a long time ago so I really appreciate the effort because public participation is so critical. Would there be some sort of a middle ground where maybe it could be 500 feet or to your point maybe it could be instead of fifty it could be 75 people. Something that is manageable within staff to accommodate both the more dense areas but also the less dense. The general premise that we have talked about was to try to incorporate more of the public so I would support either a slightly greater distance and or up to 75 residents. The goal is to try to notify more folks.

Senior Planner MacDonald:

It is all generated by the computer and it is a matter of it ends up being posted. Before there was some lead way with re-notification so again we should go back to money. I know it does not seem like a lot and we do not have huge numbers but I believe that it has been a good 50, 350 already because a lot of times we grab 70 or 75 people just because the way the buffer runs on the GIS.

Councilmember Zahner Bailey:

The thought is that is we are typically grabbing 75 maybe go ahead and increase that number just to protect you. We could say 500 and or up to 50 would be a suggestion as we think through it.

Councilmember Tart:

My final question has to do with and we are putting the cart before the horse but we are being forced to because of the way the agenda is but we are going to be considering a case coming up about giving approval authority to the DRB. If we give that to the DRB, I really feel that we should have some sort of public notification of the DRB meetings and the DRB meetings are not specified in any of this public hearing.

Senior Planner MacDonald:

That is correct because right now it is not considered a public hearing in the sense of a recommending body.

Councilmember Tart:

Right, so that is something for us to consider. I would hate for us in the very next case to potentially take that action to make it an approving body and then not have it be public notice in this one.

Councilmember Zahner Bailey:

Depending on the outcome of that next agenda item, is that something that if it were to be an approving body; could you come back and make that modification to this?

Councilmember Tart:

I think that would have to be re-announced or we would have to make a motion to include it now.

Senior Planner MacDonald:

I would think make a motion to change the order of the items and hold it until after you decide on that. That is my own opinion but just vote to defer it until after those items are heard and then make a final decision.

City Manager Beckett:

I may be mishearing things, but I am reasonably sure and would defer to the City Attorney that regardless of the role if they are appointed by Council or if they become a public body subject to the open readings act in all the requirements.

Councilmember Tart:

So it needs to be added regardless.

City Manager Beckett:

It does not matter. If you appoint them and they have role to conduct public business.

Senior Planner MacDonald:

We do advertise the Design Review Board through the internet and we post it as a sign at our door. It is advertised as a public meeting. It is not published in a news paper of general circulation but it is posted on the web site and on the door.

Councilmember Zahner Bailey:

As I understand the question is whether or not notification from the applicant out to those 300 feet residences and or up to 50 or whether we call it 500 feet and 75 that there would be a public notification not through those other mechanisms but through a letter that would be mailed. One of the discussions we had in the Work Session was whether or not the DRB could at a minimum be mentioned in the letter that notifies the residents of the CZIM. In other words a letter could accomplish both. The point that had been brought up is that sometimes schedules change and that could be a foot note, but in theory you could have one letter accomplishing both which would be no more incremental postage.

Senior Planner MacDonald:

We could post it and include it in the letter of notification with the CZIM and also it would not be much more cost to add another line to the public notice but as far as putting it on the sign it starts to get really garbled and I am not sure how advantageous it is to add another line of another meeting on the posting of the sign, but it would not be a big deal to add it into the letter.

Councilmember Tart:

Mr. Beckett, I appreciate that clarification in that we do publicly announce the meeting as it is. Where I am going is the fact is if we do make an approving body maybe a more formal notification process similar to what we do for the Planning Commission and the Council is in order. Again we are putting the cart before the horse in considering that now when the very next case or maybe it does not need to have a more formal notification process if in the next case we keep it a recommending body so I think we need to consider that first although I hate we have already had this much discussion in this case to go ahead and postpone it until after the next agenda item but we may need to do that.

Community Development Director Wakefield:

If it is the consideration of this body to require notification for the Design Review Board; it would not be an article 28, it would be an article 12a which is the matter that sets forth the responsibilities of the DRB.

Senior Planner MacDonald:

That amendment actually is before you right now we do not have any changes for this.

Councilmember Zahner Bailey:

I have a question as it relates to the environmental site analysis. I appreciate the fact that that is now going to specify that specimen trees would be included so thank staff for your focus on this entire amendment. In addition would there be any reason to also state that streams of a particular parcel also are required to be identified. While that might be redundant; would it be necessary to state that?

Senior Planner MacDonald:

It only addresses 284312c, streams and stream buffers. So it is fully covered that that is a requirement to that.

Councilmember Tart:

Ms Wakefield, could you repeat what you said before as far as what the applicable section would be in the next case?

Community Development Director Wakefield:

It is article 12a and it is item number 9 which is the last text amendment matter.

Councilmember Zahner Bailey:

One other question, as it relates to the public participation, it does now specify that public participation has to occur prior to the Planning Commission in terms of a report being submitted and it cannot be the same as the CZIM but it has to be at least one separate meeting. Are there other requirements of that public participation meeting? In other words the methodologies.

Senior Planner MacDonald:

Yes, we did not amend it, but there are a lot of specifics in the Ordinance that talk about it.

Councilmember Zahner Bailey:

The reason being we would want that to be a substantive public participation process and I know there have been some concerns in the past that sometimes it gets reported but it may not have been an substantive process.

Senior Planner MacDonald:

On page 28-11, it starts talking about the specifics of it then on page 12 minimum standards this is what every applicant for rezoning or use permit requires a public hearing shall include a public petition plan which may be implemented prior to the first public hearing. Identification of all property owners within a quarter mile of the site in areas homeowners associations environmentally stressed communities political jurisdictions and any other public agencies or organizations which may be affected by an application as determined by the applicant and the current plan at the time of pre-application review explanation of how interested parties will be informed of rezoning use permit applications; methods for providing opportunities for discussion. These are just the plan. Provide dates and locations of all community and or meetings by the applicant or discussed the application. Provide the number of people who participated, a summary of concerns and issues expressed by interested parties, a summary of the applicant's response to the concerns and issues. I guess your question is; we do not have required items that have to be submitted out for those letters; is that what your question is?

Councilmember Zahner Bailey:

The question being are there some things that would help us be more specific to remove some subjectivity and to address some of the concerns we have heard over the last year from some citizens that have expressed concerns that they have not been reached out to in a substantive way by a particular applicant so we do not want to make it to onerous.

Senior Planner MacDonald:

We are required to send out the notice of their meeting within a quarter of a mile which is much larger than our minimum 300 feet are.

Councilmember Zahner Bailey:

When I saw that one thing I wondered; would we want to add to that that it is within a quarter mile and or up to either the 50 people or the 75 that we are matching. So we are consistent because again in some of our more rural areas you might have somebody who owns land that is a full quarter mile and the public participation requirement might not require that applicant to contact anymore than one person.

Senior Planner MacDonald:

It is a little easier to do distance. They do not have the same capabilities that we do with our GIS system to go to the information. They just start collecting the addresses.

Councilmember Zahner Bailey:

Since we have to do that anyway I guess we have some responsibility as a City to send some of the notifications would it be reasonable that we could share some of that contact information as a City with the applicant to ensure they can approach up to 50 or 75?

Community Development Director Wakefield:

If you are asking if we can share the notification list; that is not a problem then that is not a problem.

Councilmember Zahner Bailey:

As long as there would not be any negative to those citizens if it might help the applicant to reach out more broadly and more substantively and it also removes the risk that they only reach out to a few.

Senior Planner MacDonald:

A lot of time we do provide that but the problem is let's say if it is in the Highway 9 area. We are not going to go out a quarter mile with it so they will still have to go and collect those additional addresses, but we are always trying to be helpful. We like to provide at least a beginning of a list.

Councilmember Zahner Bailey:

So is there something that would be a balance that would be between doing all of that work for the applicant because we do not have the staff to do that in all cases and also to have some sort of specification that would say something that would be consistent with what we are requiring in terms of notification.

Senior Planner MacDonald:

We are looking at 300 feet or 50 or 75 or 1000 feet versus a quarter mile. It is like doing apples and oranges. If we were both doing both that would be no problem.

Councilmember Zahner Bailey:

I will be specific and just say a quarter of mile or up to 50 folks. I would think that the applicant would want to reach out to a certain number of residents as well and if you are going out to your point at least a quarter of mile they should capture that number because we will have captured it within the first 300 feet.

Mayor Lockwood:

Any other questions?

Councilmember Tart:

I have a question regarding procedure. If we pointed some thing out and we need to leave this room with a final amended Ordinance, do I need to propose a motion that includes specific language or do we just approve and give direction as to what it needs to capture? What is the best way to proceed?

Mayor Lockwood:

Probably make a motion to approve this item with the following recommendations or changes.

Senior Planner MacDonald:

Yeah, you need to be specific whether it is 500 feet or 100 people or 75; you need to give us direction if it is other than what is on the paper.

Mayor Lockwood:

I would say at this point there have been several questions it may be up to the will of the Council if the questions have been answered or depending if it is just the majority of the Council that has a concern

about that. We could start by asking for a motion to approve per staff's recommendations and then if anyone wants to add something; they can.

Councilmember Zahner Bailey:

Just from a timing perspective I would say that I would support some modifications just to clarify based on the discussion we just had, included increasing the number of property owners and or distance and specify under public participation to include some number so that we set something specific.

Councilmember Tart:

I am willing to make a motion but I am a little fuzzy on the distance requirements and what we really need to be saying there - 300 feet of the boundaries of the subject property with a minimum of 50 owners. Do we have a recommendation?

Mayor Lockwood:

It sounds like staff's recommended 300 feet or 50 owners so it is up to Council if we want to come up with another number.

Councilmember Tart:

I can certainly come up with an arbitrary number just to bump it up, but I would rather have a discussion as to what that number should be.

Councilmember Zahner Bailey:

I would support 500 feet and up to 75 property owners and historically if we go back about a year with some of the discussion we have had with folks that are no longer part of our City but that was some of the discussion that had been had historically and the reason it was up to that number of feet was because it basically allowed you to address those areas that were less dense.

Motion and Second: Councilmember Tart moved to approve RZ08-02 text amendment to article 28 rezoning procedures with the following changes: In 28.3 which deals with public hearing and notice requirements; in the paragraph that starts; the department shall give notice by regular mail to all property owners or current; it needs to say residents within 500 feet of the boundaries of the subject property with a minimum of 75 owners. Also in 28.4.6 Noise Study Report; keep all of that paragraph except delete the phrases; within 3000 feet of an active rail line or within 5 miles of the Hartsfield Jackson Airport boundary. Councilmember D'Aversa seconded the motion.

Mayor Lockwood:

I have a motion by Councilmember Tart and a second by Councilmember D'Aversa to increase the footage from 300 feet from the subject property to 500 feet and increase from 50 owners to 75 owners. The other change would be scratch within 3000 feet of a rail line and also the boundaries of Hartsfield Jackson Airport.

Discussion on the Motion:

Mayor Lockwood:

One question I have does staff see anything negative to these changes number one, number two again we brought up the rail line, what would that do if there was a rail line with Marta or something running up 400 at some point? It is pretty obvious that we do not have a rail line and we are no near Hartsfield

Jackson, but does this hurt us by making these changes in the future in case there was a rail line going up 400 for example?

Councilmember Tart:

I would be willing to amend my motion to keep that phrase in there about the rail line. Hopefully, we will not ever be within 5 miles of the airport so I am willing to amend my motion if you are willing to amend your second.

Councilmember Zahner Bailey:

I also have one question just with regards to public participation and if it be the pleasure of Councilman Tart as well as this body to consider in the public participation requirements to add some sort of requirement for number of individuals or land owners and or residents that the applicant would need to reach out to because right now it just has up to a quarter of a mile and I would ask us to consider either 50 or 75 which would be consistent with the notification we require of ourselves. In other words, it would have the applicant understanding what the specific expectation is so I would ask for consideration of that amendment.

Councilmember Tart:

I understand that based on some issues that we have had in the past so I guess I need clarification on what I need to do because I can restate my motion and include all of this stuff or I can withdraw my motion and restate it.

Motion Withdrawn:

Councilmember Tart:

I am going to withdraw my motion.

Second Withdrawn:

Councilmember D'Aversa:

I withdraw my second.

Councilmember Tart:

I will make a new motion.

Motion and Second: Councilmember Tart moved to approve RZ08-02 text amendment to article 28 rezoning procedures with the following changes: to 28.3; the paragraph that says; the department shall give notice by regular mail to all property owners or current; it should say residents within 500 feet of the boundaries of the subject property with a minimum of 75 owners. A second change would be to add the same requirement into 28.4.7 with regard to notification within 500 feet with a minimum of 75 owners. We are keeping a quarter mile but we are adding to that 75 owners and then to delete the phrase in 28.4.6; within 5 miles of the Hartsfield Jackson International Airport boundary. Councilmember D'Aversa seconded the motion.

Discussion on the motion:

Mayor Lockwood:

I would just like to ask Ms. Wakefield is there any detriment to increasing these distances and number of people from the staff's perspective or the City's perspective.

Community Development Director Wakefield:

None that I can think of right now.

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

Mayor Lockwood:

Will the City Clerk please sound the next item?

City Clerk Marchiafava:

Agenda Item number 08-590 - **RZ08-03** - Text Amendment to Article 12G Highway 9 /Scope of DRB.

Community Development Director Wakefield:

This is a text amendment to the Zoning Ordinance to the Highway 9 Overlay granting approval authority to the Design Review Board as it relates to building permits, land disturbance permits and demolition permits. Staff's recommendation is we support this text amendment. The Planning Commission is of the opinion that the language should remain as it is currently stated that it would be up to the Community Development Department.

Senior Planner MacDonald:

We have several text amendments based on the overlay district. The first one is State Route 9. The only two differences State Route 9 addresses the appeals process. Article 12h which is the Northwest Overlay District also addresses the appeals process. I am saying that because those are similar and the remainder of them which are the Birmingham and Crabapple Crossroads are subsets of Northwest so they do not have any issues with appeals. It is all covered under the Northwest. Staff is recommending the change for approval as recommended. When we brought this before the Planning Commission; they had much discussion about it and their opinion and recommendation was to basically keep it that same as it has traditionally been where an application. Let me just go over those applications and the change that we needed to make if you do approve per staff's recommendations. The Ordinance requires that all land disturbance permits, building permits and demolition permits for both residential and non residential basically all of those items have to come before the Design Review Board and if you do make a recommendation for; that the DRB has final approval authority; then we recommend that you take out primary variance because that is the power of the Board of Zoning Appeals to ultimately make a decision so it conflicts. If you have a primary variance go before the Design Review Board for a final recommendation or final say then it would never allow it to go further on. If they denied it, it would never be able to go on to the BZA so we figured that out mid stream through the process.

Councilmember Zahner Bailey:

Would you restate that?

Senior Planner MacDonald:

If you so desire to change the purview of the Design Review Board from a recommending body to the final approval body we would need to take out primary variance out of the consideration of the Design Review Board because lets say it is fine if they recommend approval of it but what if they recommend denial or say we do not approve this then it stops and goes into the appeal process which it was meant to go to the Board of Zoning of Appeals to begin with. Do you see where there is a conflict in a primary variance would go?

Community Development Director Wakefield:

Article 22 which deals with appeals and that established the authority of the Zoning Review Board. The Zoning Review Board has the authority over primary variances while the staff has no problems with the Design Review Board making final decisions on building permits, land disturbance permits and demolition permits, we felt that there was a conflict if we left two boards having authority over primary variance so in this case the Design Review Board would make a recommendation on the primary variance and the Zoning Review Board would make the final decision.

Councilmember Zahner Bailey:

In that instance, would the primary variance be reviewed by Community Development before it proceeded to the BZA?

Community Development Director Wakefield:

Yes.

Councilmember Zahner Bailey:

So a primary variance would not go directly to the BZA; it would be that the DRB would still see it but still make a recommendation and it would then come to you office for further review. Then depending you would either support or deny that. If it was denies the process would then allow and appeals process to the BZA and that would be consistent with the current section 22?

Community Development Director Wakefield:

That is consistent with the exception that staff does not currently make recommendation on variances to the BZA.

Councilmember Zahner Bailey:

If Mr. Herr is going to address for the DRB, if we could think about an example today where a primary variance gets reviewed by the DRB and if that authority is removed under this change. I just want to make sure we are thinking in real time example so I will hold that for later.

Senior Planner MacDonald:

They would still review it for recommendation and give their opinion on it. They just could not give the final.

Councilmember Tart:

Where would that change need to be?

Senior Planner MacDonald:

It is on 12g is our first article, if you look at page 2; at 12.3g; it is in that Design Review Board Section. It is a little confusing and I can walk you through it depending on which way you are going to go and make sure we clarify it for the final motion on what it should read.

Councilmember Tart:

So what you are saying, if we take the language: shall review for approval then we need to delete primary variance.

Senior Planner MacDonald:

Correct and if you continue on the way it is then you just leave it alone.

Councilmember Zahner Bailey:

In the current environment; a primary variance is reviewed by the DRB; it is recommended, it goes to community development and then the appeals process to go to the BZA.

Councilmember Tart:

If we took that out, would we have to add back in a statement that it would still go to them for recommendations?

Community Development Director Wakefield:

It could not hurt. That would be clearer.

Senior Planner MacDonald:

We added just clarified and demolition permits for both residential and non residential structures; it is something that I cleaned up just to make it really clear that demo is not for just residential but for non residential so throughout the other articles I tried to clarify that.

Councilmember Zahner Bailey:

Is that also in the Birmingham Crossroads and the Crabapple? So all of the documents have that clarification.

Senior Planner MacDonald:

Yes.

Councilmember Lusk:

On page 2 of the second to last paragraph, the first sentence, the Planning Commissions recommendation; it recommends that the board should remain a recommending body and the DRB should initiate to beef up the design standards in the overlay district. I understand that there is a lot of latitude for the DRB within the standards but beef up is sort of subjective word to use.

Senior Planner MacDonald:

The goal is I think the overlay district is as good as the specifics of the overlay district are. I think that is what the Planning Commission was trying to communicate. Especially in State Route 9 there could be more specific standards actually any of the overlay districts so the more standards there are; it is easier to enforce.

Councilmember Lusk:

How much is more?

Senior Planner MacDonald:

That is subjective.

Councilmember Zahner Bailey:

As a point of clarification, assuming that we are going to be addressed by the DRB members that are here; it is my understanding going back to our February Work Session and their input is that that board and all of the appointments still intend to bring forward to this body and staff additional

recommendations to the overlays and to those documents so it is my understanding that in addition to what they have recommended and what staff is recommending is that there is also an assumption that the DRB are still in concert with this recommended change but they are also working on additional modifications to strengthen those overlays.

Senior Planner MacDonald:

I know there has been some discussion of that but as far as now; staff has not received any recommended conditions or changes from them. If the Design Review Board was given the final authority or review for approval of all plans the appeals process would go back to the Board of Zoning Appeals. I know there was discussion of handling it different at different times but the staff recommends that if this is changed to be an approval body; any appeals would go to the Board of Zoning Appeals and if a decision is rendered by the Board of Zoning Appeals that are not what the applicant wants then they would appeal to the Superior Court of Fulton County and that is already in the article 22. All of the other articles except for 12a which is the item that Alice mentioned about the Overlay District Authority; if you do want to include some public hearing notices. We will look through it try to decide where that would go in the Overlay District Authority but basically I believe you only have this main issue to deal with and it is all subsequent with all of the other articles so I do not see a point to go through the other articles until there is a discussion.

Mayor Lockwood:

Before I open up to discussion; unless there are specific questions for Ms MacDonald; do we have any public comment?

City Clerk Marchiafava:

Terri Herr. Mr. Herr has filed a notarized affidavit.

DRB Chairman Terri Herr:

Good Evening I am chairman of the DRB for the City of Milton and I wanted to bring to your attention some of the issues that we have been dealing with. The DRB administers the Ordinance as it is currently written. It leaves a lot of latitude for interpretation because a lot of the interpretations are more aesthetic. Judgments that need to be made as to color, texture, appropriate materials and those types of things. To write an Ordinance that is very prescriptive with regards to thou shall use brick and it is red and so on and so forth becomes very onerous to write, very easy to administer but I think the end result loses the character of what the citizenry ultimately want to have so I understand where the Planning Commission is coming from in wanting to bolster it and there are a lot of instances where that can be bolstered. There are some issues that are in it currently that you could not meet with regards to percentages to opening and ratios and those types of things. There is some house keeping that needs to take place with regards to those and as the DRB we are working on coming up with those recommendations and will be presenting those to move forward. With regards to the actual information in regards to being an approval over a recommending body. The DRB has been appointed by Council and we are all citizens. We are a board that takes our position seriously. We have demonstrated over the years that we can make sound judgment and interpret the ordinance from that stand point so I think there is ability within that group to act from a legal stand point where we would not be bringing any more legal issues to the City Council or the City itself. We fully believe that the BZA should be where any appeals would go since this is a zoning issue; the overlays are a part of the zoning so the BZA would be the appropriate body to take an appeal from any decisions that we did make. We do not feel that it should be a City employee that is going to make those final decisions and it is not a reference to

any employees we have ever had or currently have but a citizen board with seven members can be far less influenced than a single person. That is probably the most important thing that we see in making change in the Ordinance by making the DRB and approval body. I am available to answer any questions.

Mayor Lockwood:

Thank you. Any questions for Mr. Herr.

Councilmember Lusk:

Based on my last comment here on the Planning Commissions recommendation to beef up the design standards; what is your proposal as Chairman of the committee to initiate that and to move forward with any tweaking and I realize there are some areas involved that really need tweaking. Do you have a plan?

DRB Chairman Terri Herr:

We have not fully discussed it as a board. We have over the period of years myself kept a running tally of issues have come up along the way that the language could be adjusted. There are items that occur on a regular basis that as the DRB we have to deal with so those items could be brought to staff probably within 30 days; to a point where they could then review it. Get any further recommendations from staff or legal counsel with regards to that and then move it forward from there, but it is readily available information that we could put together for you.

Councilmember Lusk:

I realize some of the pitfalls of the standards now and it has been my experience in the past as a member of Northwest Fulton DRB that that body has used reasonable discretion to interpret and advise recommendations on approval of different cases where there is rather than following strictly the letter of the standard and come up with some reasonable approvals. My other comment having been a member previous board; I can appreciate the fact that the board has always been composed of professional people. People in the industry and with a combined knowledge and experience level they are probably greater than what we have here in the City staff and not to disparage any one on the City Staff but the fact that there is a wide variety of experience there so I would hope that you would be able to move forward and tweak whatever standards need to be tweaked and write into the standards that there are discretionary element that needs to be applied to a lot of the cases that cannot be strictly adhered to by the standards.

Motion and Second: Councilmember Hewitt moved to approve RZ08-03 text amendment article 12g Highway 9/Scope of the DRB per staff's recommendations and also including deleting the primary variance note so it will not be in conflict with the BZA. Councilmember D'Aversa seconded the motion.

Mayor Lockwood:

I have a motion and a second. Do I have any discussion?

Discussion on the Motion:

Councilmember Tart:

The discussion would be that if you except staff's recommendation that would be to continue this as a recommending body and therefore you would not need to delete primary variance. I am sorry Planning Commission recommends that.

Councilmember Zahner Bailey:

If I may Mr. Herr with regards to the primary variance, if you could draw on an example where a primary variance has come to the DRB.

DRB Chairman Terri Herr:

A lot of times variances may be relative to building setbacks or buffers and by letter of the law there may be a specific way it may be prescribed to exist. As the Design Review Board we try to look at it on a global basis and in some cases there may be an alternative way to solve the problem aesthetically that is a little different than what the law is prescribing. We are trying to look at what the aesthetics are going to be. We set out to write a prescriptive ordinance. It is not taking into account reality to a major extent and when you get it on the land and look at what the real issues are it could be something very different than what you thought you first started to try to achieve.

Councilmember Zahner Bailey:

With regards to the primary variances if we proceed with the motion that has been put forward, do you see any issue with the fact that the DRB would not have approval on primaries but that would go to Community Development. Ms Wakefield, as it relates to some of those primary variances those might include things such as buildings. I am thinking of about some of the variances that are less aesthetic and tend to be more zoning related and what I am hearing is that the zoning related items are still going to go to Community Development and those would be up to them to review based on the requirements and if there was an issue with the decision then it would go to the BZA.

Community Development Director Wakefield:

Community Development has very limited ability to grant variances. We grant ten percent one foot. The majority of the variances have to go to the BZA and it has been my experience in the past that most variances are set back related, a side yard setback or they need a variance to put in a swimming pool because based on the definition of the ordinance that becomes their side yard or their front yard in some cases but usually primary variances are dimensional type variances.

Councilmember Zahner Bailey:

As an example the variances that might be zoning related are still going to be variances that this body would see in some cases. It does not preclude those variances that attached to zoning.

Community Development Director Wakefield:

That is correct.

Councilmember Zahner Bailey:

So this give the approving ability to the DRB for those things that Mr. Herr just mentioned about aesthetics etcetera and I would additionally encourage you and other members who have this experience to bring forward those additional changes as I know you have been hoping to be able to do for a long time so I look forward to seeing those changes as well.

Councilmember Tart:

I am in favor of the motion, however, I would like to ask one question. Is it your recommendation that we add back in a statement regarding the scope of the DRB to provide recommendations on primary variances or does that go without saying; if we just delete it out of this paragraph.

Community Development Director Wakefield:

I think if you put that language in this provision then there is no question when it comes to an applicant for a primary variance that in addition to the BZA you also have to go to the DRB for recommendation.

Councilmember Hewitt:

I would be happy to amend the motion to include the motion to include.

Councilmember Zahner Bailey:

Councilmember Hewitt when we clarify that can we clarify that the primary variance while that the DRB might be providing recommendation that it still goes to the community development for review and then if an appeal is necessary it would go to the BZA.

Motion and Second: Councilmember Hewitt moved to approve RZ0803 text amendment to article 12g Highway 9/Scope of DRB as per staff's recommendations including removing the primary variance situation and adding to clarify that a primary variance would go to the DRB for review and recommendation but ultimately the Community Development Department reviews that and in the appeal process would take that primary variance to the Board of Zoning Appeals. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously.

Mayor Lockwood:

At this point out of respect to some of our applicants if it is the will of the Council, I know we have several more text amendments to go through, would it be out of line to ask the pleasure of the Council, we have a couple of zoning amendments and we have applicants sitting in the room. If we could amend the agenda to shift number 10 and number 11 to before item number six.

Councilmember Lusk:

I think it is considerate that we do that.

Motion and Vote: Councilmember Zahner Bailey moved to approve moving items number 10 and 11 under zoning items forward in advance of item number six. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously.

Mayor Lockwood:

Would the City Clerk please sound the next item?

City Clerk Marchiafava:

Item number 10 on the agenda which is 08-595 - **ZM08-03** - 3160 Francis Road, Canine Assistants, By Planners and Engineers Collaborative, to modify condition 2.a. to modify the site plan (U07-007).

Community Development Director Wakefield:

As was mentioned the applicant is requesting a modification to condition 2a as it relates to the site plan. The recommendation of the Community Development Department is approval conditional. Ms. MacDonald will give the details.

Senior Planner MacDonald:

This item is to modify the site plan that was before you in December or January that was approved. Since that time there was some soil testing that was done at the location of the proposed building as approved by Council a couple of months ago. I know there has been some confusion because there is a soil report that the neighborhood had received and we were confirming what that report was saying. It was favorable to build a building on it and we had thought it was for the old site so we were a little confused. The applicant's engineer is here to explain it further if you need it. Basically, they took a hand auger and dug down two feet and it spurted up with water; where the original building was proposed so because of that they ordered a soil survey study further to the south which is the site which is what you are looking at now for the proposed modification and it is move approximately eighty feet from the top of the building from the old building position to the top of the building further to the south. Basically the soil report sees it being a good place to place this more rectangular building in that position versus where the original proposed position that was before you a few months ago has water right within two feet below the soil so it would not be a great place to put a building or it would cost a lot to build the building so that is why they have come before you to ask this building to be sited further to the south. Staff wants to note that the building is not closer to the property line to the west. It still has 100 foot setback from all property lines as required by the use permit. The parking has been relocated away from the subdivision and on the eastern side or the right side of the building and staff feels that is better because they will be using large buses to transport handicapped clients as well as there dogs so for diesel and loudness; we think that would be better positioning of the buses. They will still be required to do the 75 foot buffer and the 10 foot improvement setback. Staff recommends approval. We noted on the tree locations that there are two specimen pine trees; 29 inch and 26 inch and in the prior location; we basically set the same number of trees but they are different trees. In the prior location, the 26 inch would have been demolished or had to have been taken down because of the position of the building and now it will be saved but then another 29 inch will have to be taken down so it is a trade off between the two sittings as far as the trees. If you have further questions about the trees Mark is here to address them. Overall staff recommends approval of the revised site plan. In your packet is also renderings of the building that they are proposing and that will have to go before the Design Review Board. This is just covering the issue of the location of the building, we are not necessary looking at the design all though they were priming up to provide some conceptual ideas of what they want the building to look like. The building will have to meet the overlay standards of the Northwest overlay and it will be reviewed and approved by the DRB in the future once they submit for their building permit.

Mayor Lockwood:

Are there any specific questions for Ms MacDonald before we hear from the applicant?
Ok, is there any public comment?

City Clerk Marchiafava:

Ms. Pamela Little with Planners and Engineers Collaborative.

Pamela Little:

Good evening my name is Pamela Little. I work with Planners and Engineers Collaborative at 350 Research Court. I did bring an easel so basically a visual inspection was done of the original and we used hand augers down to 4 feet and there was two feet of water within those 4 feet. It was smelly, mucky, unsuitable soil so they felt being a charitable and they are trying to save cost so they did not get a perceive getting a geo technical report to see if the location was suitable. They decided to move it away from this area which is most likely in the septic field. We have been trying to get the historical

data from Fulton County and it would appear in the 1960's they did not keep a lot of that. We have plenty of information on vertical position of pipes but not so much of where they might be on the site so they did do a new geo report for the proposal which does show it. I understand that the neighbors do have some concerns that the building is moved in relation to them and I think they are concerned that they will not be heavily buffered with the new location of the building. We are not showing our rendering in our drawings to replant that buffer; it is a sparsely vegetated buffer at this time, we will plant the buffer per the County standards etcetera. We also feel that the new site plan would have met more of the City's criteria according to your Ordinances and codes and we probably would not have had to apply for as many variances. It probably would have been better idea to begin with. The parking is more to the rear of the building. We do have opportunity to save one specimen tree and in the original we would have had to remove both specimen trees whereas this one we may be able to save it with careful construction practices so we are proposing that we are allowed to modify the site plan to what you see on the rendering.

Mayor Lockwood:

Is there any other public comment?

City Clerk Marchiafava:

Not in support sir; if you would like to move to opposition.

Mayor Lockwood:

I would like to move to opposition then the applicant can come back.

City Clerk Marchiafava:

Mr. Ron Morgan and he has filed the necessary notarized affidavit.

Ron Morgan:

Good evening Mayor and Council. I am Ron Morgan. I live at 705 Old Saddle Lane and I am here representing the Cobblestone Farms Homeowners Association. We went through a long tedious drawn out process several months ago to come to a compromise in an approved location which after a lot of effort and energy on everyone's part, we all agreed then recently we found out they want to move the building. Our concern is that they had a contractor that dug some auger holes and found some water. This was a particularly heavy period of rain and we do not know the source of that water and we do not know the suitability of the soil because it has not been properly tested and before making a request to move the building after we went through as much effort as we did to approve this location it seems like the adequate measure should have been taken in order to determine if it was suitable and if there should be slight modifications for footings or slab in order to make this site work. That has not been done. We feel like if they are going to move the building; they need to find a location that is impact neutral. This is probably the highest impact move that they could place this building. Moving out of an area where there is an adequate amount and in some areas a substantial amount of buffer into an area that has almost no buffer and I have pictures that I can show you of the buffer area and the area that is going to be between Cobblestone Farms and the new building if you like to look at it. It is rutted, it is rocks, there is trash there and there are a lot of weeds growing and no practical buffer that is going to give us any protection at all from the building. We feel like if they are going to move the building that this is the worse location they could move it to so we are going to ask that you deny the request to move it to this location. They have 18 acres of land and 18 acres of opportunity to put this somewhere that is not right next to us giving us a substantial impact. There was some concerns earlier on about septic fields in this

area but I do not think anybody has found any maps of the septic field and know where they are. Like I said there should be better locations on the site for this building than where they are proposing to put it and we request that you deny this location and if I have any time left I would like to save it for rebuttal.

Councilmember Zahner Bailey:

This picture is depicting?

Ron Morgan:

That is the area between us and where the new building would go. That is looking from our property through the fence onto Canine Assistants property. You will notice that all of those plants are nice and green in the spring but in the fall the leaves are all gone away and there is virtually no buffer once the leaves are gone. The existing location there are quite a few pine trees in that buffer area that stayed green year around and we lose all of that when they move closer to the new site.

Mayor Lockwood:

In looking at the renderings and as the applicant has stated that they plan on planting a full buffer there; would that make a difference if that were enforced and there was a full buffer versus what is there right now?

Ron Morgan:

We had our landscape plan done on our new house they showed this beautiful lush landscaping and then when we saw it in the ground and it is going to be many year before it looks like what they depicted on the plan. We do not want to wait many years and have to wait for it to grow. The buffer that is there has not been maintained at all. Their focus is obviously not maintaining buffers and landscaping. We are in full support of the service they provide but they are focused on that service not landscaping and buffers and it has not been maintained. We brought that up at the last meeting and that is just as courtesy. It would be a neighborly thing to do for them to do a better job of maintaining and they have not and we do not feel comfortable will be maintained or ever get to the point it would be adequate and function.

Mayor Lockwood:

Thank you. Any questions for Mr. Morgan?

Councilmember Zahner Bailey:

I do have a question. My first question is for Ms Wakefield in terms of whether or not this has gone to the DRB, I think I heard that it has not yet gone to the DRB. We spent time talking about public participation and this maybe a question that we ask both the members of the HOA but also the applicant. Can you discuss whether or not you have been in conversation with the applicant regarding this movement and or what sort of meetings have or have not occurred.

Ron Morgan:

During the original modification and the original meetings we had there was a lot of communication and a lot of information passed back and forth and for the most part it was very good and accurate information. We have not seen that from this latest modification. There have been some conversation and e-mails. We requested a meeting and they agreed to a meeting but it never happened and the information we got has not been as accurate as we would like to have seen and the example was we asked for a soil report and it was on the new building and it was on the new site rather than the old site.

There has been a break down in communication on this new application and we felt like they knew it was going to have a negative impact and they avoided the contact with us. Quite frankly that was our feelings.

Mayor Lockwood:

Any other questions for Mr. Morgan and if not we will give the applicant a chance to come back up.

City Clerk Marchiafava:

Mr. Morgan, is Judy Morgan going to speak at this time or do you want to reserve her comment?

Judy Morgan:

I would rather reserve comments.

Councilmember D'Aversa:

Could you point out to us what the changes are because it has been awhile since we have heard this?

Pamela Little:

The original building location was back between the second and third property line. The building has now been moved up so it is back behind the second property line.

Councilmember D'Aversa:

Is that the same orientation?

Pamela Little:

It is the same orientation. The parking area has shrunk as per the original concerns of the City Council. We do not need that much parking and it is going to be gravel. We moved it to be more accessible.

Mayor Lockwood:

That is what I was trying to understand when I ask Mr. Morgan from looking at the renderings it almost looks pretty close to the same as far as the buffer. Can you address that?

Pamela Little:

We are intending to do the same thing we proposed on the first plan which is to plant evergreen trees and I know a big concern is that in the fall. I live on a heavily wooded lot and in the Fall everyone can see my front windows and I can see why that would be a concern so by planting evergreens and trying to fill in that buffer we are hoping to diminish the impacts of this building to their property.

Councilmember D'Aversa:

What is the distance between Cobblestone Farm and this building? What is the buffer there now? Is it less?

Pamela Little:

It is a 75 foot buffer and 100 foot building setback. In both plans the building is exactly on that 100 foot setback.

Mayor Lockwood:

So basically you are not moving the building a different distance but it shifted to the right a little bit?

So is there a difference in the number of lots. The existing buffer may not be there but if this is planted as shown; do you see any differences?

Pamela Little:

I do not see any differences. A different landscape architect did the rendering so the colors are a little different but we did agree in the last session to plant Evergreen Trees and we had picked out specific trees. Mark Law had gone through the list and approved of what we were proposing to plant and I think we did pick some larger calipers and that has not changed and we were trying to choose fast growing trees. In response to Mr. Morgan saying that we have not been in communication. We have been trying to communicate since April and I fully apologize. I have been out of the office a lot and that is not Mr. Morgan's fault and it is not Canine Assistant's fault and I did have someone else in touch with them but I am not sure where the break down in communication occurred. I was here for community zoning information meeting and Robyn was here with me and no one else was here. They called me last week and said we really want to meet and I was going to meet with them on the weekend and I FedExed them some documents and they did not except Fed Ex. I couriered the documents because they would not answer if they would accept the United States Postal Service. We are really trying to work with them and I realize that everyone has really busy schedules and sometimes things just does not work out but we certainly have not intended to give them a negative impact. In no way has that been our intention that we knew we were negatively impacting their property values. I was actually in the hospital so I was not talking to a lot of people so again I apologize.

Councilmember Zahner Bailey:

One, I am glad you are feeling better and this maybe a question for the residents that live in Cobblestone but what I was hearing was that the shift of the building maybe shifted to an area that does not have existing growth and that the prior location had more existing growth, do you concur that is the case? Just want to make sure I heard the concerns appropriately that the shift in building was being shifted to an area that did not have existing buffer where the initial one had more existing older growth.

Mayor Lockwood:

That may be also a question we could restate for Mark Law.

Pamela Little:

I have to go and check the property lines again and check where the building stakes are. The area needs some clean up and I think planting the buffer in any way shape or form is going to really improve the area. I have not gone out to measure where he took those pictures.

Mayor Lockwood:

Mr. Law, the question was basically we are looking at the same buffer distances but we are moving the building as we are seeing it to the right and what we are perceiving is maybe there is less existing there in the new location of the building but have you looked at the proposed buffer and the existing and could you give an opinion on that as to the new plan versus the old plan when it is done if one would be better than the other as far as the neighbors are concerned?

Arborist Mark Law:

The new versus the old and one being better than the other; that is hard to say. I do believe some of the more dense vegetation is closer to Frances Road and as you move back into the site is where you have a lot of sparse open areas and gravel and stuff that needs to be cleaned up. Anywhere along that left side;

especially adjacent to Mr. Morgan's property will need to be beefed up. I do not know what else to say other than the Evergreens will be planted where sparsely vegetated where there is a 75 foot buffer so plant what we can within that area and screen it as much as we can.

Councilmember Lusk:

That is obviously conceptual. Is there a specific landscape plan?

Arborist Mark Law:

There is not a specific plan because again you have existing vegetation out there now and to get a specific plan you would have to locate each existing material out there and plant accordingly to that but what we would be looking at as far as the applicant's CO is that the area was heavily planted. If I went out there to do my final, there are some open areas that need to be planted. They would not get their seal until they finished planting to meet our satisfaction.

Mayor Lockwood:

I think that is a good point. Can we have assurances that staff will make sure physically confirm and double check and make sure that there is a buffer for the neighbors?

Arborist Mark Law:

That we will do and we will get as much in the area that can be planted. There are some areas that have existing trees; a little to close together and the root system prohibits plantings in between those areas but with a 75 foot buffer you may be able to plant heavier on the outside of that buffer. You might not get it right adjacent to his property but still be able to get some good screening and heavy material on the outside of the buffer.

Councilmember Zahner Bailey:

Mayor; if I may; just a question for the applicant and I heard mention and a reminder to all of us that this is an 18 acre parcel so there is a lot of land and I know you have been looking at different options. I know this has not yet gone to the DRB in terms of the modification yet but I am curious hearing tonight the concerns of the residents and knowing that you may not have had an opportunity to meet yet based on some issues that you mentioned; were there other sites that had been contemplated by the applicant at would meet their needs but also address the concerns that are being proposed by the residents?

Pamela Little:

Currently the majority of the property is used for stabling and training horses. They do have equestrian activities on the site. This is the easiest handicap accessible building and the founder of the organization is extremely adamant about the people that come to her business that they do not have to come in the back way or go down a long winding road and feel like they are not welcome. The location where they are is closest to the trainers and the kennels to the applicants can take their own dog to the kennel and they do not have to hand them over to someone else.

Councilmember Zahner Bailey:

I did not mean to imply all 18 acres; I just did not know even if within this rendering if there had been some potential other site location.

Pamela Little:

This particular site does not have a lot of extra room. The property line and the buffer line is a pretty tight space. It is a separate parcel from the rest of the land.

Councilmember Tart:

I have a legal question. Given that this has not gone before the DRB and we just gave the DRB approving authorities; would this particular site plan be subject to the DRB as an approving authority or would it be a recommending authority?

City Attorney Davis:

I would think this request has been in the hopper so to speak so it would go under our existing regulations.

Community Development Director Wakefield:

It is a modification so it is not required at this time to go before the DRB. Prior to filing for their LDP and their building permit; they will have to go to the DRB for their approval.

Councilmember Tart:

Would the scope of that review be as an approving authority or would it be as a recommending authority to staff?

City Attorney Davis:

If they have not come to the point of needing DRB approval then I think they would go under the regulation in place at the time.

Councilmember Tart:

So the DRB would approve or disapprove the plan.

Councilmember Zahner Bailey:

Just to make sure I am clear, the approval that we have given the DRB does not preclude a zoning modification from still coming to this body. It is a function of whether or not a zoning mod based on the site plan review goes to them. I am hearing Ms Wakefield that it is not required to go to the DRB but knowing the DRB has worked with this applicant and aware of concerns. I have some questions for you and some for the neighbors but given your intent historically had been to work with the neighbors and knowing that from a timing perspective that has been tough and I know we got a letter from the HOA earlier today that was asking for a deferral and yet when I heard the HOA members speak I heard denial of this location and I want to make sure I was not misunderstanding; is that a different position than what the letter from you noted today? I just want to make sure it was a denial that you were requesting and not a deferral.

Ron Morgan:

The original consensus of a small group of us was that we really had not been given enough information. The City had not been give enough information to adequately address the request for modification and that we needed time to do that. Once we spoke to a larger group of the homeowners the idea was that what we would hope to gain would not be to approve this location with the changes but to find a better location on the property. The idea was that if they are going to move from the original site; they need to

move to a site of neutral impact and not one of greater impact and based on that we felt we would like to have this denied and then we will work with you on another site of what we felt was more suitable.

Councilmember Zahner Bailey:

Thank you for that clarification because what I am hearing is that there is a desire from the residents to have an opportunity to review locations and whether there is an optimal balance between a neutral impact and this. I do not know if that is necessarily a denial per say, my question to both the applicant and the residents would be would a period to allow you to come together and discuss and look at the site modification be a benefit to review those other options?

Ron Morgan:

We have always tried to work with them and I do not see that we have a different opinion right now. We want to be cooperative neighbors, but we also want to make sure we are protecting our property values. Our first priority is to find a better location and our second priority would be to see if we can come to some way to make it work. I will go ahead and tell you that I think it is hard to sit here and evaluate the impact that moving the building closer to Frances Road is going to have when we are sitting in here talking about and looking at site plans and pictures. We had invited you to come out and take a look at what we faced and unfortunately your schedules did not allow you to do that but I think it is important to be there and see it.

Councilmember Zahner Bailey:

My question though to the residents and the applicant is whether or not there would be an opportunity for you guys to come together and evaluate whether or not there are some other options. My question for the applicant would be you indicated that you had a desire to meet with them, but just had not had an opportunity, would there be a benefit to the applicant and to the residents to come together and have time to do that.

Pamela Little:

At this point what the applicant is concerned with is the cost of evaluating other sites. The Geo technical reports are not free and they prefer to pour all of their resources to the services of the people that they serve. The first contact was made on April 23rd and we have been in contact for the last six weeks. The applicant concern is they would like to move forward they do not want to have to go through more testing's in that process and in terms of cost possibly not having a better resolution at the end.

Mayor Lockwood:

Are there any other questions for the applicant or for Mr. Morgan?

Councilmember Lusk:

I have a question for Mark Law. There is quite a number of tall pines and I believe there are some hard woods in there too but mostly tall trees; what amount of under story plants in there would really provide any amount of screening that could be rapid screening or that would mature in a short length of time?

Arborist Mark Law:

You have to configure the confinement of the trees and the root systems on the trees. They can go with Wax Myrtles, different Hollies. What we want is a variety of material to make it look more natural and as far as the quantity it is hard to say without getting out there and walking it off and looking where the planting can go.

Mayor Lockwood:

Is there a way for City staff to work with both the applicant and the neighbors that are affected and come up with a win win situation? I am looking at the rendering and it is shifting down to affect four or five different lots down further.

Arborist Mark Law:

We can make sure that buffer gets planted as best we can but the only way you will get total screening in that area is removing all of the existing vegetation and replant it. You get corporate spacing and corporate number of rows and then you get a good solid screen but I do not think anybody wants that. We do not encourage or allow it. To remove material just to plant more material so we have to take the existing conditions and do what we can in planting that as much as we can to provide the screen that the neighbor desires.

Councilmember Zahner Bailey:

Mayor; as a point of order, I am mindful that there was some folks that said that they wanted to hold their time and I just realized we had a mixture of discussion but I did not know if we needed to at least offer the opportunity both for the applicant and the residents to use more of their time. I am not sure where we are in that process.

City Clerk Marchiafava:

If you have completed discussion, I recommend that we do offer them each the opportunity. The both have time left.

Mayor Lockwood:

We will ask the applicant first for closing remarks and then those in opposition.

Pamela Little:

Again, the Canine Assistant is asking for approval of the new building location. The borings and soil testing has been done. It is a suitable location for the building. The do not believe it will have a harmful impact on their neighbors. They are willing to work with the neighbors with the planting and work with the arborist. It was their intention to plant Evergreen Trees and create a good buffer and they want to be good neighbors and as for the communication break down again I apologize; it certainly was not spite against these neighbors or these people in particular.

Mayor Lockwood:

Thank you. Those opposed.

Ron Morgan:

I do not want to drag this out but just hit the high points here. I am very very concerned about the buffer. We are in the second year of one of the worst droughts we have seen and we have put a substantial amount of landscaping in our yard a year and half ago and it is struggling. We have watered in the amount that we can and it is not enough water. We have expensive plants that are dying and the ones that are not dying are struggling to stay where they are and it is my understanding in talking to our arborist that once these plants get into stress mode it will take years for them to recover so we are talking about spending substantial amounts of money on a buffer. I would rather see if we could spend that same amount of money and enhance the footage of where the building was originally suppose to go and

stay with the original design. We sit up on our deck and part of the living area of our yard is higher where you are talking about putting the buffer and it will take years before the buffer really does us any good. We are certainly willing to work with and see if we can come up with an equitable solution to the problem but right now I am concerned with what they are asking you to approve and I think they are asking without giving you the information that adequate research and study on the other alternative that I think you should be allowed to look at and consider rather than just; this is the only thing that will work for them. Thank you very much.

Mayor Lockwood:

Thank you. I would like to ask staff and legal an opinion on if the applicant is adhering to all of the buffers and rules of requirements, does the Council still have a reason to deny them or ask them to go back to the table on that?

City Attorney Davis:

Do you mean complying with our regulations or zoning requirements?

Mayor Lockwood:

Regulations.

City Attorney Davis:

That is a policy decision as to whether you believe the nature of the use requires some conditions that would ameliorate the affects, adverse affects on land owners. If they are in compliance or you believe they could exist in compliance without any additional conditions but zoning conditions or any kind of special conditions are always in recognition of the fact that our developer regulation cannot contemplate every circumstance and that there might sometimes be unique uses of property that would necessitate or benefit from some type of additional condition that would ameliorate or minimize the impact of the use. So not required but within your policy or discretion to impose additional conditions if you feel it is necessary.

Mayor Lockwood:

I am wondering if the applicant would consider meeting with the homeowners one more time and try to come to some kind of terms.

Pamela Little:

We are certainly happy to meet with them but the problem is that we do not want to incur additional expenses be doing technical explorations across the site when a suitable location for the building has been found. The money that we would spend doing that could be spent on buffering.

Mayor Lockwood:

Well maybe a meeting would come to agreement on the buffer or something like that.

Pamela Little:

We are certainly willing to meet with them.

Mayor Lockwood:

Mr. Morgan, is that something that you feel like would be worth it.

Ron Morgan:

We certainly agree with that Mr. Mayor.

Councilmember Hewitt:

I have one other question for Mr. Law. Do we require some sort of bond to make sure that the buffer last a year or whatever? Do you go back and do another inspection?

Arborist Mark Law:

If it is planted in the dormant season, we do not require it, but if it is planted in the outside of the acceptable planting season, we will require a bond but the plants will have to remain in perpetuity. So that is something I could go back and check on at different intervals and they would have to replace any material that did die.

Councilmember Zahner Bailey:

If I may Mayor along the lines of your inquiry, Ms. Wakefield and Mr. Herr I know you are listening and you are not party to this if it would be the pleasure of the Mayor and Council that we give the applicant and the resident's opportunity to meet. Would it be appropriate to encourage; we cannot require but to encourage them to have some members of the DRB participate in a meeting or again not because it is a requirement because there might be some ideas that would be cost neutral but that could also be impact neutral based on the fact that the DRB has some of those approaches and experiences. Ms Wakefield; would that be reasonable?

Community Development Director Wakefield:

That is fine.

Mayor Lockwood:

It sounds like we have some options; one to approve this, one to deny it, one to defer it and ask the applicant and affected homeowners to get together and see if they can come to a closer understanding or agreement.

Councilmember Tart:

I would like to make a motion.

Motion and Second: Councilmember Tart moved to approve **ZM08-03**, 3160 Frances Road Canine Assistants by Planners and Engineers Collaborative to modify condition 2a to modify the site plan. Councilmember D'Aversa seconded the motion.

Discussion on the Motion:

Councilmember D'Aversa:

I am just looking at pictures that are in our packets that show the existing buffer and I am familiar with the property just from having been on the property with the Disability Awareness Committee and it just looks to me like there is not any difference other than a shift in the building. The buffer is still the same as it would have been. You are shifting it from the far side of the lot to more forward as they said closer toward the road but still buffered behind the existing building and to me it is not that big of a difference. It is actually a better site plan overall. It may not be necessarily a better site plan for the particular property because the property is being clear cut as well. The property adjacent is Cobblestone Farms so if you look at the property where it is going to abut; there was a lot of vegetation that would have

buffered but that has been clear cut for the home to be built so some of these lack of buffers we bring on ourselves and I am not sure we should penalize the applicant because of that.

Mayor Lockwood:

I have a motion and a second. Is there any more discussion?

Councilmember Zahner Bailey:

Do we know if some of that clear cutting that has occurred has been recent?

Councilmember D'Aversa:

Ms. MacDonald; do you know the timing of these photos?

Senior Planner MacDonald:

Yes. I believe Mr. Morgan CO'd his house approximately a year ago or maybe a little more than a year ago so that clear cutting on that property on Cobblestone Farms on that side is within the last two years when the construction of that house occurred.

Councilmember Zahner Bailey:

So the property that previously would not have had this behind it had the clear cut occurred on the lot as opposed to concern about the location of the application.

Councilmember D'Aversa:

You could it that way. I personally do not believe we should penalize the applicant when there is going to be the 75 foot buffer and there is already a buffer there unless these photos are not recent; and there has been any change in this where it is showing the two trees that are now going to be saved.

Senior Planner MacDonald:

Those photos were taken probably when they came before so it would have been last fall so if anything it should be a little more because the leaves would have dropped. I believe it was September or October when those pictures were taken.

Mayor Lockwood:

Is there any more discussion? I have a motion and a second to approve this application per staff's recommendations.

Councilmember D'Aversa:

Just for clarification, Mark what I heard you saying you were going to work with the groups to make sure the buffers are adequate and the planting is proper.

Arborist Mark Law:

That is correct.

Councilmember Zahner Bailey:

Would it also be fair to assume that this would proceed to the DRB at those appropriate times before a land disturbance permit is requested so the DRB would still have the opportunity to weigh in and this site plan that we would be approving based on this motion is still consensual?

Senior Planner MacDonald:

Excuse me; I am sorry.

Councilmember Zahner Bailey:

No no, it was not conceptual; it would be specific to this.

Senior Planner MacDonald:

Correct.

Councilmember Zahner Bailey:

Thank you and, therefore, what impact could the DRB have in terms of recommendation?

Community Development Director Wakefield:

The DRB would have recommendation in terms of the look and the feel of the structure.

Councilmember Zahner Bailey:

Would they be able to weigh in on the landscaping plan since that sounds like that is not yet determined?

Community Development Director Wakefield:

To the extent that there is provisions in the overlay, they would be.

Councilmember Zahner Bailey:

Would we need to contemplate as a specific condition, or it would be a matter of course because the DRB would be based on the overlay that is in place.

Community Development Director Wakefield:

I think it would be a matter of course because in addition to the building permit they look at the land disturbance permit.

Councilmember Zahner Bailey:

Ok; so while the building might not shift the landscaping could be further enhanced or some specific suggestions could be made.

Community Development Director Wakefield:

That is correct.

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

Mayor Lockwood:

Would the City Clerk please sound the next item?

City Clerk Marchiafava:

Item number eleven would be next by motion and vote and that is 08-596.

ZM08-04 - 5404 Windward Parkway, Real Development LLC, by Robert Forrest, to modify condition 2.a. to modify the site plan (96Z-127).

Community Development Director Wakefield:

The applicant is requesting to modify the condition related to the site plan. They are asking to go from the site plan that was approved with the original zoning to what they are currently proposing now. Staff's recommendation is approval conditional and you now hear from Ms. MacDonald.

Senior Planner MacDonald:

This is an application for a revised site plan. This was approved in Fulton County in 1996. On page four you will see the original site plan that was approved as a master plan for the Windward area. I think you know that the Fire Brazil was built and it did not look like that and we are not sure what happened with that situation but since then there are new owners to the property and they have demolished that building and that was approved by the DRB on May 6th. Staff saw that it was nothing near the site plan that was approved in 96 and therefore we ask it come before you for a modified site plan and we recommend approval of the revised site plan.

Mayor Lockwood:

Is there any specific questions for Ms MacDonald before we let the applicant speak? At this point I would like the applicant and those in favor to come forward.

Robert Forrest:

I am Robert Forrest of Real Development 2440 Old Milton Parkway. Let me clarify this. You see the site plan in your packet which is what we want to put there but the other site plan you see is a whole different building and if you look at this it is actually not just us but Home Depot's land and also the strip center to the north and McDonald's and everything else. There is over a quarter million square of office and thirty thousand square feet of retail so somewhere along the way from 96 until today; it fell through the cracks at Fulton County. The Fire Brazil has been there. There have been a number of restaurants and it just does not work there so we have come up with a new plan and we have been to the DRB with it and we had to get the demo permit for the building so they have seen it. We are here today to ask permission to change the plan around from this big thing that we have to tear down Home Depot and some other things to what we have planned on the site. Density wise and things like that it was approved for a lot more and our density is under 8000 square feet and acre. We have 2.2 one acres there and we are putting 17000 back on it. The restaurant is almost 9000 square feet and our center; we are limited to 5000 square feet by Home Depot so we are actually cutting the amount of the intensity of the restaurant to offset with the parking and what not. Not overly intense for the site.

Mayor Lockwood:

Are there any questions for the applicant?

Councilmember Zahner Bailey:

Just to clarify the density levels; to your point and make sure that I am looking at the analysis and being consistent with what I am hearing from you. The 2.2 acres is it 17000 total which reduces it to about and 8000 square foot per acre.

Robert Forrest:

That is correct. The calculations; they are looking at it because it is 262500 if we can put on the whole thing and when you look at the Home Depot they are 117. The other two buildings are 14 and 15 for a total of 149 and then plus us; we are coming in at about 100,000 square feet less density than what was approved on the site.

Councilmember Zahner Bailey:

It may not be right now Ms Wakefield, I want to make sure we have reconciled those number since it was a part of the whole and now it is a portion so thank you for that clarity.

Mayor Lockwood:

Are there any other questions for the applicant at this point? Is there any public comment?

City Clerk Marchiafava:

No other public comment has been submitted.

Motion and Second: Councilmember Hewitt moved to approve agenda item 08-596 ZM0804 5404 Windward Parkway Real Development LLC by Robert Forrest to modify condition 2a, to modify the site plan 96Z127. Councilmember Lusk seconded the motion.

Discussion on the Motion:

Councilmember Tart:

I have one question? In the recommendation, it says that the site plan is compliant with the required 10 foot landscape island for every six space and then on down it says when the land disturbance is reviewed the applicant must be compliant with that landscaping island requirement. This is on page 5 of staff analysis. Do we need to include that as a condition or is that just a given?

Community Development Director Wakefield:

This is a given.

Councilmember Tart:

Ok

Councilmember Zahner Bailey:

So it would be in compliance at the time of land disturbance?

Community Development Director Wakefield:

That is correct.

Councilmember Zahner Bailey:

Also to the point about verifying the square footage for this versus as a whole Ms Wakefield; could you confirm that the amounts we are approving for this are consistent. I am just wanting to make sure that we are reconciling the density for the whole versus this initial 2.2.

Community Development Director Wakefield:

I would have to also ask the legal department to weigh in on this because the condition as a whole that deals with the density is condition 1a and that is not what is before you so I am not sure how we would go about it. I understand what you are saying since they are doing lower; let's drop it down lower but I am not sure how we would reconcile that without bringing it back before this body.

City Attorney Davis:

I am not sure I understand the question because I do not have that condition in front of me. The request is to modify condition 2a but we are looking to also adjust condition 1a.

Councilmember Zahner Bailey:

I am hearing from the applicant that they are adjusting their condition 1a which the actual density and I think that is a positive and I want to make sure that we capture that specific information and right now I do not see that captured nor has it been captured as the motion that was put forward and that is not a criticism but I think we have an opportunity to get this closer to what you are actually proposing so we do not lose any interpretation later.

City Attorney Davis:

To the extent the site plan reflects the density. I think that is the position of the applicant. Is that right?

Robert Forrest:

Right.

City Attorney Davis:

We could be specific in granting the modification on condition 2a by noting that it will be modified to read as they have requested but specifically noting the site plans density representations of whatever it is. We could fill that in. Is that going to directly conflict with condition 1? I do not have condition 1.

Councilmember Zahner Bailey:

For consistency I am suggesting that we would modify the motion just put forward to ensure we are reflecting tonight's site modification to reflect what the applicant actually said into the record.

City Attorney Davis:

Does the site plan depict the lesser densities?

Robert Forrest:

Yes.

City Attorney Davis:

So that is not consistent with your old condition 1a. Is that fair to say?

Robert Forrest:

Yes. I do not even know what that said 12 years ago.

City Attorney Davis:

Here is what I would suggest doing because I think there is a good point made that we have not brought forward and had a public hearing on that. Typically, if you are down zoning that is not something that I have been concerned about but I think what I would suggest is that we modify condition 2a which is the request before us which is going to adopt this new site plan and I would specify in the zoning condition approval which will become the new zoning condition 2a; that it is the site plan and to the extent the density shown on the site plan conflict with the previous condition 1a; the new site plan and condition 2a shall control and govern. Does that make sense? That will alleviate the need to have a public hearing.

Councilmember Zahner Bailey:

Will it be incumbent on Community Development to make those adjustments subsequent to this meeting so that is accurately reflected in terms of density?

City Attorney Davis:

Yes.

Councilmember Hewitt:

Motion and Second: I would be happy to modify my motion based on what Attorney Davis just stated. Councilmember Lusk seconded the motion.

Mayor Lockwood:

We have a motion and a second to approve this applicant and we can either go back to the record or have Ms. Davis state the condition that she suggested we put on this with approval.

City Attorney Davis:

The Council would make a motion to approve the request for modification of condition 2a to modify the site plan as it will be attached to this zoning modification approval. Said site plan shall control to the extent that there is any inconsistencies with the previous condition 1a.

Councilmember Zahner Bailey:

I do have one question consistent with our earlier discussion and this is just for clarity, do we have an issue with constitutionality with regards to the provision of sewer to this parcel?

City Attorney Davis:

I did not know this one was impacted with sewer so I would have to say that I have not looked at the issue.

Mayor Lockwood:

Would the fact that it is an existing building that is hooked up to sewer now have anything to do with it?

City Attorney Davis:

Yes if it is already connected I do not think we would have an issue.

Mayor Lockwood:

Hearing no more discussion, all in favor?

Vote: The motion passed unanimously.

Mayor Lockwood:

Would the City Clerk please sound the next item?

City Clerk Marchiafava:

Overlay/Scope Agenda Item No. 08-591 - this is **RZ08-04 a text amendment to article 12h Northwest of DRB.**

Community Development Director Wakefield:

This amendment to the zoning ordinance text is basically identical to what Council considered for Highway 9 granting the Design Review Board the approval over Building Permits, Land Disturbance Permits and demolition permits. Also staff is asking that primary variances be removed as an approval but to require a recommendation from the DRB. We are also asking; we are putting in the appeal procedure to go to the BZA whenever there is a disagreement with the DRB renders a decision. Staff's recommendation is approval and the Planning Commission's recommendation is to leave the language as is and the Department of Community Development would have the authority.

Councilmember Lusk:

Ms Wakefield; if we were to approve this could we use the same language that we used in the previous text amendment?

Community Development Director Wakefield:

Yes.

Motion: Councilmember Lusk moved to duplicate the previous motion from RZ0803 to apply to RZ0804.

Mayor Lockwood:

Do we have a second?

Councilmember Tart:

I am ok with that but I just want to make sure; point of order whether we can do that. Can we duplicate a motion from a previous motion?

City Attorney Davis:

I think that is fine. He is just incorporating the same text because I think it was a difficult motion stated as I recall.

City Clerk Marchiafava:

If Mr. Herr wants to speak that would be the public comment on this.

Mayor Lockwood:

Before we have a motion and a second, let's allow public comment.

City Clerk Marchiafava:

He is declining.

Second: Councilmember Tart seconded the motion.

Discussion on the Motion:

Councilmember Zahner Bailey:

I have one question for Ms. Wakefield. Early on I think that you and Ms MacDonald mentioned that in the overlays for Crabapple and Birmingham there was two points of distinction and I know that we are going to be going through this discussion for the other overlays as well, I just want to make sure if we are duplicating language that we are not in conflict with those other items that were different.

Community Development Director Wakefield:

The only point of distinction in the next two is that we are not asking for the language to amend to allow for appeal because that has already taken place with the Northwest Overlay and which these two Overlays are subsections of the Northwest Overlay.

Councilmember Zahner Bailey:

I just wanted to make sure on number six then the appeal process does still need to be stated?

Community Development Director Wakefield:

Yes.

Councilmember Tart:

Will staff tell us at what point in the next however many cases, we need to add I the provision of notification?

Community Development Director Wakefield:

I will do that but if you do not mind me saying this, I would also ask if Legal Council would weigh in because in order to add the notification. That would require an entire new section and I do not know if that needs to go back through the process or not. I think it may have to go back through the public hearing process.

Senior Planner MacDonald:

It has been advertised for that section but we did not propose that.

Councilmember Zahner Bailey:

Is it required by law?

City Attorney Davis:

To be consistent with the other changes we are making tonight, I think that to the extent that we have had a public hearing and we have noticed that we were going to discuss changes to this; part of what has come out of our public hearing process tonight has resulted in you making an amendment to the policy and I think that is fine. It is related to subject matter enough. Part of the public hearing process is sometimes you hear something that makes you modify your decision and that is what it is all about. I think it is appropriate because it is in a limited context here.

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

Mayor Lockwood:

Would the City Clerk please sound the next item?

City Clerk Marchiafava:

Agenda Item No. 08-592 - this is **RZ 08-05 text amendment to Article 12h1 Crabapple/Scope of DRB.**

Community Development Director Wakefield:

This is a text amendment where the proposal is to grant the approval authority to the Design Review Board as it relates to Land Disturbance Permit, Demolition Permit and Building Permits. We would also ask that you delete the provision related to primary variances but grant recommendation to the DRB as it relates to primary variances. There is no need to add a provision related to appeals. Recommendation of staff is approval and of course the recommendation of the Planning Commission is that the matter remain as currently stated that it should be the authority of the Department of Community Development.

Motion and Vote: Councilmember Zahner Bailey moved to support the statement just made by Community Development that clarifies what is needed for this particular section. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously.

City Clerk Marchiafava:

Agenda Item number 08-593 this is - **RZ08-06 text amendment to Article 12h2 Birmingham/Scope of DRB.**

Community Development Director Wakefield:

As with the item before this is a text amendment to the Birmingham Crossroad portion of the Northwest District and the proposal is to amend the requirements to allow authority to the DRB as it relates to Land Disturbance Permit, Demolition Permit and Building Permits and to grant them recommendation ability on primary variances. As mentioned previously it is not required to add provision for appeals. Recommendation is staff approval and recommendation of the Planning Commission is to leave the language as it currently is.

Motion and Vote: Councilmember Zahner Bailey moved to approve this item as recommended by Community Development including the language just stated and just to confirm; that allows the Community Development Department to be that appeals process in this case. Councilmember Tart seconded the motion. The motion passed unanimously.

City Clerk Marchiafava:

Agenda Item 08-594 this is - **RZ08-07 text amendment to Article 12a overlay district/Scope of DRB.**

Community Development Director Wakefield:

This proposal was an amendment to section 12a of the overlay district authority. Staff came tonight prepared to ask that this be withdrawn because we were not proposing any amendments at this time; however as the Council has mentioned earlier that you would like to ask some notification provision for the DRB and I was just talking to Ms MacDonald and I am not sure where we would add that. If you look at page 12a-5 and add a provision 12a.3.3a notification of DRB; that would be an appropriate location. It is between submission of plan and interior alterations.

Motion and Second: Councilmember Hewitt moved to approve Agenda Item 08-594 RZO8-07 text amendment to Article 12a overlay district/Scope of DRB to include the information that Ms Wakefield just stated. Councilmember Lusk seconded the motion.

Discussion on the Motion:

Councilmember Tart:

We might need to specify what those requirements would be.

Community Development Director Wakefield:

You are adding a provision in Article 12a section 12a.3.3.a notification of the DRB and it would reflect the requirements that are indicated in Article 28 as it relates to the Planning Commission for the notification of property owners or current residents within 500 feet of a boundary of a subject property with a minimum of 75 owners who appear on the tax record of Fulton County as retrieved by the City's geographic information system and the notification will be mailed a minimum of 14 days prior and we will package that with the CZIM and the Planning Commission notification.

Mayor Lockwood:

If I can confirm that Councilmember Hewitt that is your motion and Councilmember Lusk seconds.

Councilmember Hewitt:

Confirmed.

Councilmember Lusk:

Second.

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

Mayor Lockwood:

I think that was item number 9. Item numbers 10 and 11, we have completed so we will move on to New Business.

NEW BUSINESS

City Clerk Marchiafava read the next agenda item.

Added by Motion and Vote

Approval of Amendment of the Service Level Agreement with Rural metro Ambulance to Provide EMS Service with Several Cities of North Fulton County to Include the City of Milton.

Public Safety Director Lagerbloom

- I need this agreement to go forward on July 1, 2008.
- Two items that were cleaned up in the Service Level Agreement.
- Exhibit A, Section 3.1 that deals with the deployment plan for rural metro takes it one step further and states what the minimum staffing will be and allows for penalties to be imposed upon rural metro if they do not maintain that level of service.
- Section 4.6d and in that section there was a section defined what an unpredictable system overload was although it was not very definitive. This goes further as to what that is.
- Hope that when a motion is made that there will be some type of language understanding that this is the last meeting between now and July 1st.
- Would like to motion if possible to allow the City Manager to use his discretion along with legal review to allow for modest and non substantive revisions and allow us to still be able to execute this agreement without having to bring it back to Council.

Mayor Lockwood

- As clarification, the reason we added this to the agenda without more notice is because it is of the utmost urgency that we do address this.

Councilmember Zahner Bailey

- For the record if the City Attorney could confirm that from a legal perspective you are satisfied that we approach it that way and any changes that would be needed would be predicated on the City Managers involvement along with Public Safety in conjunction with ultimate approval by those parties and Jarrard and Davis.

City Attorney Davis:

- In essence the motion will authorize the City Manager to execute the contract pending staff and City Attorney review.

Motion and Vote: Mayor Lockwood moved to approve the Rural Metro Agreement authorizing the City Manager to execute the contract. Also want to include in the motion to grant the City Manager discretion to execute this agreement if further amendments are made; if staff and the City Attorney determine the possible future changes to be modest and non-substantive. Councilmember Lusk seconded the motion. There was no Council discussion. The motion passed unanimously (6-0).

COUNCIL REPORTS

Councilmember D'Aversa

- Wanted to bring to Council's attention some of the things that are going on with Bell Memorial Park and the Hopewell Youth Association.
- Spent time with an attorney with Paul Fricke of Jarrard and Davis in reviewing what will be a facility use agreement and would like to make sure it is the Council's wishes that we go forward with a stricter facility use agreement than what we have had in the past.
- Given that this is our only active park and there are some legal issues that we need to protect ourselves, as a City as well as our citizens some usage issues we are seeking to make this a tight agreement.
- The attorney is revising the agreement and hopes to get it to us this week some time and then we will go forward with it after everyone has reviewed it.
- We are short staffed on the Public Work's side to have someone dedicated to working with our City Attorneys and working through this process.
- We would like to go forward with trying to institute either a parks commission or a parks committee.
- Would like to have someone appointed from each district to have the same type of authority as some of our other committees.
- We need that type of extension of our staff.

City Manager Beckett

- Wants the Council as comfortable with this agreement as possible.
- The only point of emphasis is; in his opinion we are inadequately staffed to properly administer the agreement.
- As long as Council realizes they will have to apply their resources even though it is just the Hopewell Youth Association and it is only one park.

Councilmember D'Aversa

- It is a higher level in how many teams will be at the park.
- The usage and schedule times.
- Who is getting the money when people rent the park?
- People are running businesses from this park and we do not get a dime for it.
- Just want to make sure in the future we will not have some legal issue because of accountability in things we allow even if it was unknowingly.
- We now need to just make sure it is being maintained at that level.
- Hearing from citizens; they do not care that we do not have the staff.

Mayor Lockwood

- Thanked Councilmember D'Aversa for her contribution to that project.
- Being the Mayor and being at City Hall he knows we have a huge loop hole with the sewer issue.
- Knows the frustration that staff and citizens have when someone comes in that is zoned commercially and areas that were supposedly promised sewer by Fulton County and our staff cannot tell them yes, no or maybe.
- Thinks it is very important to at least draw the line and do what is reasonable and come to a conclusion on the sewer issue.
- He had supported a Resolution recently and we withdrew it from the agenda because we realized there was a time issue.
- There was a comment earlier that maybe someone was trying to slide it through and he had no idea that all of the Council would not be at the meetings.
- He just wanted to make that clear.
- From his perspective it is not extending sewer or any different than most of the citizens and Council's vision of what Milton is.

City Manager Beckett

- With regard to the sewer issue and how quickly staff can respond, as far as he is concerned we can bring forward the Intergovernmental Agreement in July.
- We have talked about it and are prepared to bring that forward once it has been vetted by Milton and Fulton County.
- To answer the question specifically about how long will it take staff, we believe we could respond in terms of a more comprehensive within 90 days but that is not the issue.
- There are two other issues that will impact us.
- First, it will probably take Fulton County a year to go through their process and get back with us if we are talking about a more comprehensive approach than the one contained in the Intergovernmental Agreement.
- In addition if we have to conduct more scientific types of studies; that will extend it as well.
- We are currently predicating a lot of decisions on the Service Delivery Strategy that was adopted and that is the map attached to the Service Delivery Strategy.
- We are not exactly sure where the ridge line is.
- We thought that Fulton County would have land lots and topography and those sorts of things but they do not.
- We had our GIS people overlay the basin with the service area and with the City limits.
- Even with that none of us can say absolutely positively within the exact metric location if there is a sewer line.

- No one has information that you can really hang your hat on with absolute certainty.
- We are trying to accomplish with an Intergovernmental Agreement on an interim basis a lot line where there are also legal descriptions and we will know.
- We will have a map with lot lines that are not dependant on topography or water flow or anything else.
- From the staff's perspective depending upon certain variable we can move really quickly.
- It is so important to resolve this issue on an interim and long term basis.
- There could be consequences if we continue to make decisions the way we are making them now; political and legal consequences for our actions.
- We have to resolve the issue.
- We have to collectively along with the community look at realistic patterns where development should more appropriately occur for the long term future of the community and leave alone those precious areas that we want to preserve.
- He will bring the proposed IGA forward in July.

Councilmember Zahner Bailey

- The problem is we have asked a lot of questions and none of them have been answered.
- She would like to go back to the idea of simultaneously addressing it.
- A temporary IGA without the overall sewer policy is putting the cart before the horse.
- She though what they said was there was a need to simultaneously address these.
- We also said it would be important that all members of this body be present for that work session to begin that dialogue.
- We need to be in a room talking about these things together as a first place to discuss it and making sure everyone is there.

City Manager Beckett

- He understands and he will handle it any way Council wants but he does not believe that any IGA that would be brought forward would conflict with a comprehensive sewer policy simply because the IGA is going to be predicated to some extent on what Fulton County already had in their plans.

Councilmember Zahner Bailey

- She would appreciate the simultaneous opportunity to discuss it.

Councilmember D'Aversa

- I would certainly be agreeable to getting together and discussing it.
- For the record, she will be gone July 1st through the 14th.

Mayor Lockwood

- Appreciates the City Manager's plan and in essence he was saying pretty much the same thing.
- We would bring it forward, take it to a work session, and discuss it.
- Maybe we have a special work session.

Councilmember Zahner Bailey

- Would like to confirm it will come to a work session and not a public hearing before we have had an opportunity for a work session.

- Another thing that would help us move toward getting to the bottom of some of this is maybe we need to resend all of the questions that we have independently to make sure every one has them so that we are clear.

Councilmember Lusk

- We need to meet and we need to meet soon.
- It appears that everyone will be on board towards the end of July.
- He recommends meeting in July.
- Set one work session specifically for this subject and move forward on it.

City Manager Beckett

- We will schedule it depending on everyone's schedule.

STAFF REPORTS

City Manager Beckett

- We received a letter today from the Fulton County tax commissioner and more than 3% of the assessed values have been appealed so a state statute kicks in and he now has to secure an order from the Superior Court allowing for the temporary of taxes and that affects us as well.
- The City Attorney's will be working on that.
- We could be potentially impacted next year as a result of that.
- It is a statutory provision so he did not have any choice.
- He also received a directive from Fulton County that we adopt a Resolution relating to the Community Development Block Grant Program and the Home Program by June 23rd.
- He called and told them that we did not have time to digest this because the program is pretty complex and imposes some requirements and even though he suspects we will not be eligible for a lot of funding it is directed mostly toward low to moderate income individuals.
- He was not going to be in a position to get this accomplished by June 23rd.

Projects Coordinator Linda Blow

- She wanted to direct everyone to the City Website.
- We are going to have a 4th of July parade and it starts at 10:00 am.
- All of the details are on the website.
- The Milton Roundup is in the works and scheduled for September 13th and Birmingham United Methodist.
- Lot of new things going on this year.

Public Works Director Dan Drake

- The mast arms at Bethany Bend and Cogburn have been finally finished painting.

City Attorney Jarrard

- He heard an exchange with respect to the fact that the Fulton County Board of Health has indicated that they would not provide a septic permit to someone who otherwise was not in the area that we believe Fulton Can sewer.
- That is not a hard question for him.
- They need to provide the permit.

- They would need to let Fulton County take a look at that and maybe vet that before they make such a conclusion.
- The constitutional prohibition against Fulton County from providing sewer trumps your DHR or your Board of Health regulations.
- He does not want to be in the position that the City Council as his client is looking for guidance and it is not coming.

Mayor Lockwood

- The City Attorneys see the problem and legal issues that may come up.
- He would like to have suggestion and guidance from them.

City Attorney Jarrard

- The suggestion that he heard that is an absolute must is if you are developing a policy, an IGA no matter how well it is crafted is not a policy.
- The first thing Council needs to do is get together in some sort of a forum and articulate.
- We have to know the collective of this Council and then senior staff and he can begin doing what they do.
- Until you do that it is difficult to draft a policy because he does not know where to begin.

Councilmember Lusk

- Would like to see an outline of the whole issue.
- The legal issues, the environmental issues, the land use issues, the IGA, the service and all of the other agreements.
- We need to start identifying the different aspects of this whole issue and where certain part will apply and other parts will not.

City Attorney Davis

- Are there some questions that you want to present to us?

Councilmember Zahner Bailey

- Yes.
- To go back to the meeting that we had where Ray Wooten was going to be here to discuss things and we were told by Commissioner Riley that she did not want him to be present.
- It is a combination of legal and staff questions.
- Community Development was going to get with the City Attorneys and collective review the questions that needed to be provided to Fulton County's attorney.
- There was a lot of questions that had to do with specific parcels.
- Questions about gravity stations versus gravity fed.
- Questions that tied back to the map the Community Development has been trying to get some answers on.
- We cannot guess on those things.
- We have to make sure we are looking at a map that we are not assuming to be correct but know it to be correct.
- She will be happy to resubmit that she thought that were in the process of being answered by someone.

City Attorney Jarrard

- He does not think this debate has been static.
- There has been some progress made.
- Some of the issues that we needed Fulton County input on we do not need anymore because based upon Fulton County's conduct he believes they have subscribed to our legal opinion as to where they have the legal authority to provide sewer and where they do not.
- That to him means some of these issues about gravity flow versus pump station goes away because if our opinion is correct; it is not that sophisticated.
- Where we go forward from there is a matter to direct, but he is suggesting that the reasons he wanted to meet with Fulton and hear some of their thoughts; they were injecting some opinions into some of those sewer letters that we were not sure we agreed with their thought process but a lot of that is moot now.
- They have moved past that and he thinks they are saying, ok, we agree. The map seems to control.
- The IGA was drafted with an eye toward recognizing acknowledging and embracing the history.
- That is important to many Council members and you do not want that history lost.

EXECUTIVE SESSION

Motion and Vote: Councilmember Lusk moved to adjourn into Executive Session at 11:27 p.m. to discuss pending litigation. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously (6-0).

RECONVENE

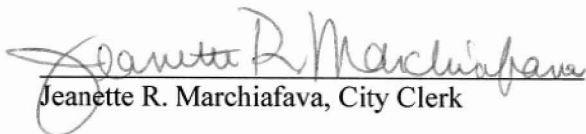
Motion and Vote: Councilmember Lusk moved to reconvene the Regular Meeting at 11:46 p.m. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously (6-0).

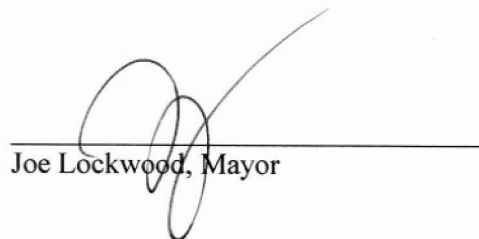
ADJOURNMENT

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

After no further business, the Regular Meeting adjourned at 11:48 pm.

Date Approved: July 7, 2008


Jeanette R. Marchiafava, City Clerk


Joe Lockwood, Mayor