

**Special Called Work Session of City Council
Monday, July 3, 2008 at 3:00 p.m.**

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Special Called Work Session of the Mayor and Council of the City of Milton was held on Thursday, July 3, 2008 at 3:00 PM, Mayor Joe Lockwood presiding.

Mayor Lockwood called the meeting to order and made general announcements

Councilmembers Present: Councilmember Karen Thurman, Councilmember Bill Lusk, Councilmember Burt Hewitt, and Councilmember Julie Zahner Bailey

Councilmembers Absent: Councilmember Tina D'Aversa, Councilmember Alan Tart

City Clerk Marchiafava read the agenda item.

Permitting and authority to proceed for the entire Sembler Development of State Route 9 in accord with the site development permit.

City Attorney Ken Jarrard

- Thanked Mayor and Council for calling the meeting.
- He and staff needed guidance on this issue.
- It pertains to the Sembler Development and staff's permitting and issuance of CO's with respect to the Sembler Development.
- There are certain components of the development that are at or near completion.
- This issue involves sewer.
- We will focus on Phase I and Phase II.
- Some of the pertinent facts are the Sembler Development was issued a Land Disturbance Permit by Fulton County in late 2006.
- Before the creation of the City of Milton.
- Since the issuance of that Land Disturbance Permit, Sembler has conducted a lot of operations involving the expenditure of a lot of money.
- This includes the infrastructure buildings and road ways at significant cost to the developer.
- Both phases are located in Big Creek Sewer Basin.
- Fulton County has traditionally provided sewer service to the Big Creek Basin and consistent to sewer service pursuant to the No Interbasin Transfer Policies.
- The Sembler Development is not in the Etowah.
- There are certain elements of the Sembler Development, retail components that are at or near completion.
- They are days away from opening.
- Those are some pertinent facts that staff and he wanted to bring before Council.
- The issue is that right now with respect to our relationship to Fulton County, it has been legal staff's position that Fulton County does not have the present constitutional authority to provide sewer service to this development.
- The basis is the lack of and Intergovernmental Agreement which encompasses this development.
- We have an IGA with Fulton County that encompasses a certain portion of Milton but not this area.
- In light of the recognition that there is this absence of authority; we have the Sembler Development that is close to their grand opening.
- Given the gravity of the situation we need Council's input before issuing CO'(s).
- He recommends any CO'(s) issued contains some very specific language and this is not intended to have a precedential effect with respect to other developments.
- He recommends giving staff the authority to issue any necessary permits and CO'(s) with respect to the Sembler Development to allow them to proceed.

Councilmember Zahner Bailey

- Knowing that this situation has very specific facts that pertain to this one permit from a financial responsibility standpoint is there anything additionally that we would need to capture because the current IGA does not give them constitutional authority.
- Is there any fiscal responsibility with the sewer system itself when that connection occurs since it would be prior to a modified IGA?

City Attorney Jarrard

- Does not think there would be any financial responsibility of any kind.
- We would do a retroactive capture of it in the IGA.
- This is an area that we have found ourselves in and we would be doing some cleaning up after the fact.

Councilmember Zahner Bailey

- Would Fulton County still bear the fiscal responsibility if there was any problem with the sewer later?

City Attorney Jarrard

- That is correct.
- This will be all Fulton County's responsibility.

Councilmember Zahner Bailey

- Would like to clarify this would not be an extension of sewer, but provision of sewer to a parcel that is not covered by the current IGA.

City Attorney Jarrard

- That is correct.

Councilmember Thurman

- The current IGA clearly states that Fulton County is the provider of sewer service.
- The problem was that the attached map was not the correct map.
- The parcels we are discussing now were included on the current map that Fulton County had that, unfortunately, was not the map that was attached.

City Attorney Jarrard

- That is his understanding.

Community Development Director Alice Wakefield

- Gave an explanation of the map and what the different colors represent.

Councilmember Lusk

- Asked Community Development Director Wakefield if the land lots on the Highway 9 corridor or at least on the ridge line were in the IGA.

Community Development Director Wakefield

- They are in the Interbasin Resolution of Fulton County.

Councilmember Zahner Bailey

- This particular parcel on the agenda is specifically in the Big Creek and is not in the Etowah Basin.
- It is also not in conflict with the No Interbasin Transfer Policy and it was intended under an IGA with Fulton County to have been sewerred at the time that it was rezoned and at the time the LDP was issued by Fulton County.

Community Development Director Wakefield

- That is correct.

Councilmember Zahner Bailey

- To distinguish this from some of the other we may talk about in the future is; this is at a much different state of development in permitting than any of others that in the future we may discuss.

Mayor Lockwood

- Would like to clarify that this is for Phase I and Phase II of the Sembler project and includes permits and CO(s) as they need them.

Councilmember Thurman

- Asked if this was going to be a formal vote and asked if they could take a formal vote at a work session.

City Attorney Jarrard

- Stated they could take a formal vote at a work session.
- At a called meeting of a governing authority Council can take a vote.
- Cannot take votes in Executive Session.

Councilmember Zahner Bailey

- When we introduced the meeting we said we would not be taking votes.

Mayor Lockwood

- Asked if he needed to make a statement.

City Attorney Jarrard

- If it would make Council feel comfortable procedurally, they could take the vote now and add it to the Consent Agenda at the next Regular Meeting.

Motion and Vote: Councilmember Hewitt moved to authorize Milton staff to issue all necessary permits and certificates of occupancy as to Phases I and II of the Sembler development in Milton in spite of there being no present constitutional authority for the development of be connected to Fulton County sewer, based upon the following findings:

1. That both phases of the Sembler development in Milton have had a Land Disturbance permit issued by Fulton County in late 2006, before the creation of Milton.
2. That since issuance of the land Disturbance permit, Sembler has conducted development operations in both phases, including the erection of infrastructure, buildings, and roadways – at significant cost to the developer;
3. That both phases of the Sembler development are located within the Big Creek sewer basin, which is a basin where Fulton County has traditionally provided sewer service – and is a basin for which the provision of sewer is consistent with the No Interbasin Transfer Act;
4. The Sembler development is not located in the Etowah basin, which is a basin where Fulton County has traditionally not provided sewer service;
5. That certain retail components in the Sembler development are nearing completion, with stores literally days away from grand opening;
6. That based upon the above facts, the equities of the situation are such that in spite of the lack of authority for Fulton to provide sewer service, Milton believes it in the best interest of the health, welfare and safety of its citizens for the development to proceed; and,

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7. A statement shall be attached to any CO(s) issued in either phase I or II of the Sembler development, that "Issuance of the CO should not be construed as a waiver by Milton of its right to seek strict compliance of all constitutional entitlements and safeguards concerning the requirement that another jurisdiction may only provide new sewer service in Milton pursuant to an Intergovernmental Agreement. The issuance of this CO was the product of a fact specific inquiry and is to have no precedential effect with respect to any other development.

Second: Councilmember Thurman seconded the motion.

Discussion and Public Comment

Brian Snelling, 1450 South Johnson Ferry Road, Atlanta, Georgia 30319

- Represents the Sembler Company.
- Thanked Mayor and Council for calling the Special Meeting.
- He would like to recapture item number 1 and asked Councilmember Hewitt what he stated regarding the time frame of the permits that were issued as a condition of this approval.

Councilmember Zahner Bailey

- It just clarifies that they were approved in 2006 under Fulton County.
- It is clarifying why this proceeding is a motion.

Councilmember Thurman

- It says that both phases had a Land Disturbance Permit issued by Fulton County in late 2006.
- Asked Brian Snelling if that was correct.

Brian Snelling

- We had a Land Disturbance Permit in 2006 for the full 47 acres which is the entire development to work, clearing, grading, some infrastructure and most of the infrastructure was focused on Phase I.
- We did get a LDP from Fulton County and Milton earlier this year on Phase II.

Mayor Lockwood

- You will get the permits that you need now and your CO(s) for the buildings.

City Attorney Jarrard

- This is not a conditional approval but an approval that contains some factual stipulations.

Brain Snelling

- With staff direction today; does that mean that at 8:30 Monday Morning he can pick up the permits or does he have to wait for the Consent Agenda approval Monday night?

City Attorney Jarrard

- The direction is given to staff at this meeting but Council will formally ratify it at Monday night's meeting.
- You can pick up your permits Monday morning.

Jim Jacobi, 4550 Atwater Court Suite 208, Buford Georgia 30518

- He hopes Council approves the Sembler Project and their sewer but he would also like for Council to consider amending the Resolution to say that all active developments within the red blocks on the map.
- We currently have a development that was approved in 2005 and platted in 2006 and have been cut off.
- We would like for Council to consider that they are in the red box area.
- We would like to be treated equally.

City Clerk Marchiafava stated that completes public comment.

Mayor Lockwood

- Asked City Attorney Jarrard if he had any comment on the last public comment.

City Attorney Jarrard

- We are hamstrung by the call of the meeting and need to limit it.
- No one approached this meeting thinking this was the only issue we need to resolve.
- We know there are others, but for purposes of today, we should focus only on what we came prepared to talk about.
- He cannot discuss meaningfully the other ones.

Councilmember Zahner Bailey

- The motion put forward was intended to specify why the decision for Phase I and II were being made that is specific to this parcel.
- For the record it is important to say that those facts are specific to this case and this discussion.

Mayor Lockwood

- Would like to state for the record that we do realize as Mayor and Council, City Attorney and staff that there are other issues out there and they need to be handled expeditiously.

Councilmember Thurman

- Would like to know as soon as possible what our time frame is.
- We need to get things settled.

There was no further Council discussion.

Vote: The motion passed unanimously (5-0). (Councilmember D'Aversa and Councilmember Tart were not present for the vote.)

City Attorney Jarrard

- Council spent some time looking at a map during the meeting and he respectfully requests the map be made available to the people in the gallery.

Councilmember Thurman

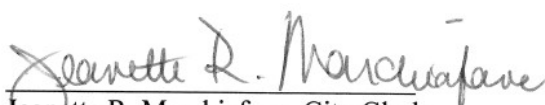
- Would like to get a copy of the map electronically.

Community Development Director Wakefield


- Will send it to all of the Council Members.

After no further business, the work session adjourned at 3:30 p.m.

Date Approved: July 21, 2008



Jeanette R. Marchiafava, City Clerk



Joe Lockwood, Mayor