

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 July 7, 2008 at 6:00 PM, Mayor Joe Lockwood presiding.

CALL TO ORDER

Mayor Lockwood called the meeting to order.

INVOCATION

Pastor Scott Seeke, River Lutheran Church, led the invocation.

ROLL CALL

City Clerk Marchiafava called the roll and made general announcements.

Council Members Present: Councilmember Karen Thurman, Councilmember Bill Lusk, Councilmember Alan Tart

Council Members Absent: Councilmember Tina D'Aversa/excused, Councilmember Burt Hewitt/excused

Councilmember Julie Zahner Bailey participated in the meeting via telephone.

PLEDGE OF ALLEGIANCE

Mayor Lockwood led the Pledge of Allegiance

City Clerk Marchiafava read agenda item 08-609.

APPROVAL OF MEETING AGENDA

Staff recommended the following changes to the Meeting Agenda:

1. Add the following items to the Consent Agenda:
 - a. Acceptance of a citizens' petition regarding speeding on Hopewell Road.
 - b. Acceptance of a citizens' petition regarding a guardrail on Old Cogburn Road.
 - c. Acceptance and approval of the informal vote at the July 3, 2008 Special Called Work Session for the agenda item permitting and authority to proceed for the entire Sembler development on State Route 9 in accord with site development permit.
2. Withdraw Item #2 under First Presentation: Approval of an Ordinance Adopting Amended Rules and Procedures for the City Council Meetings and Public Hearings for the City of Milton, Georgia.

Councilmember Lusk requested to separate the June 9, 2008 Work Session Minutes under the Consent Agenda.

Councilmember Thurman requested to separate the June 16, 2008 Regular Meeting Minutes under the Consent Agenda.

Motion and Vote: Councilmember Thurman moved to approve the Meeting Agenda with changes requested by staff and under the Consent Agenda separating Item #1 Approval of the June 9, 2008 Work Session Meeting Minutes, and Item #2 Approval of the June 16, 2008 Regular meeting Minutes. Councilmember Lusk seconded the motion. There was no Council discussion. The motion passed unanimously (4-0).

CONSENT AGENDA

City Clerk Marchiafava read agenda item 08-610.

Approval of the June 9, 2008 Work Session meeting Minutes.

Motion and Vote: Mayor Lockwood moved to approve the June 9, 2008 Work Session Meeting Minutes. Councilmember Thurman seconded the motion. The motion passed unanimously (3-1), with Councilmember Lusk opposed due to not being present for the meeting.

Mayor Lockwood read agenda item 08-611.

Approval of the June 16, 2008 Regular Meeting Minutes.

Motion and Vote: Councilmember Lusk moved to approve the June 16, 2008 Regular Meeting Minutes. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed (3-1), with Councilmember Thurman opposed due to not being present at the meeting.

Mayor Lockwood read the remaining Consent Agenda Items.

Approval of the financial Statements for the period ending May 2008.

(Added by motion and vote)

Acceptance of a citizens' petition regarding speeding on Hopewell Road.

(Added by motion and vote)

Acceptance of a citizens' petition regarding a guardrail on Old Cogburn Road

(Added by motion and vote)

Acceptance and approval of the informal vote at the July 3, 2008 Special Called Work Session for the agenda item permitting and authority to proceed for the entire Sembler development on State Route 9 in accord with site development permit.

Motion and Second: Councilmember Lusk moved to approve the remaining Consent Agenda items listed above. Councilmember Thurman seconded the motion.

Discussion on the motion: Councilmember Zahner Bailey stated via telephone that she supported the acceptance and approval of the informal vote at the July 3, 2008 Special Called Work Session for the agenda item permitting and authority to proceed for the entire Sembler development on State Route 9 in accord with site development permit.

Vote: There was no further Council discussion. The motion passed unanimously (4-0).

PUBLIC COMMENT

Michael Miller, 200 Mansell Court East, Suite 400, Roswell, Georgia 30076

- He is with Piedmont Investments; the developers of Kennewick Place Subdivision.
- It has 60 existing homes, many of which were permitted and CO (d) by the City of Milton.
- The builder (John Thomas Holmes) was turned down the previous week for additional building permits.
- They are caught in the same situation as Sembler.
- They meet all of the conditions that called for taking the action that occurred at the Special Called Meeting Thursday July 3rd plus having the precedent of having been issued building permits and CO(s) by the City.
- He pointed out that their land lot is specifically mentioned in the agreement even though it is not shown on the map.
- They have contracts for houses with delivery dates that are in jeopardy.

- Their attorney has been in touch with the City Attorney.
- He request that they be added to this agenda and get the same treatment as Sembler unless legally not permissible; in which case he would ask the City Council consider it at the earliest possible opportunity.

City Clerk Marchiafava stated that completes Public Comment.

Mayor Lockwood

- Asked City Attorney Angie Davis if she would like to address the issue just brought up.

City Attorney Davis

- Given the fact there appears to be a lot of people that might arguably be similarly situated and we have not given notice to the press of the intent to consider that particular situation that it would behoove Council to set a meeting quickly to consider the rest of the pending items.
- At the Special Called meeting last week, we took what was considered to be the most urgent of them due to a CO issue that was presented.
- Should take this up at the next meeting or another Special Called Meeting to determine if there are certain ones that are in a state of similar urgency.

FIRST PRESENTATION

City Clerk Marchiafava read Agenda Item 08-613.

U08-03 - 2810, 2820, 2830, 2840, 2850, 2860 Bethany Bend Road, Applicant: Church of Jesus Christ of Latter-Day Saints - To request a use permit for a 16,728 square feet church with 352 seats and storage shed, at a density of 2,320.95 square feet per acre on 7.2074 acres.

Motion and Vote: Councilmember Tart moved to approve the First Presentation Item, U08-03 - 2810, 2820, 2830, 2840, 2850, 2860 Bethany Bend Road, Applicant: Church of Jesus Christ of Latter-Day Saints - To request a use permit for a 16,728 square feet church with 352 seats and storage shed, at a density of 2,320.95 square feet per acre on 7.2074 acres. Councilmember Lusk seconded the motion. The motion passed unanimously (4-0).

PUBLIC HEARING

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.

Finance Manager Stacey Inglis

- This is the second Pubic Hearing which is required for a Budget Amendment.
- Budget Amendments are moving of funds between departments and changing revenues.
- We propose a budget increase of \$369,602 which increases the General Fund Budget from \$17,784,585 to \$18,154,187.
- Most of the increases are due to property taxes not included in the original budget as well as utility property taxes.
- There were some decreases in fines and forfeitures and court administrative fees along with some other things that were dependant on the market.
- The decreases in expenditures are mainly due to salary for vacant positions.

- Some adjustments in the Capital Projects Fund due to some new projects.
- Recommending a decrease in the Capital Grant Fund due to grants that were not awarded but were budgeted for.

Councilmember Zahner Bailey (via telephone)

- Asked if the \$30,000 for the Solid Waste Management Plan had been contemplated as part of the original CH2MHill Contract or if this was identified as an additional need.

City Manager Billy Beckett

- There is no provision in the scope of services with CH2MHill for the Solid Waste Management Plan.

There was no Public Comment.

Mayor Lockwood stated the Public Hearing was closed.

Councilmember Thurman

- Asked how the funds we received from Fulton County are reflected in this year's budget and when.

Finance Manager Inglis

- Will have to do another budget amendment.
- Since we are relatively new, we do not have a history to refer to so we will have to adjust it as needed.

Councilmember Tart

- Asked where in the budget amendments any donations would be; donation specifically to help public safety.

Finance Manager Inglis

- Under the Public Safety section under revenue.
- We propose an adjustment of \$10,371.

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. This item was deferred from that meeting and that is why we are hearing this evening. These items include rezoning petitions, modifications of zoning, use permits, and associated concurrent variances, in addition to ordinances, resolutions, 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.

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 June 16, 2008 to July 7, 2008.)

Community Development Director Alice Wakefield:

This matter was deferred by Council to allow more time for the City Attorney to confirm the availability of sanitary sewer of the subject site. Staff's recommendation is that the proposed revised site plan be approved given that it is consistent with the approved zoning and the current development regulations. However, staff would like to point out that based on the current approved Intergovernmental Agreement with Fulton County; this site is not included in the agreement and therefore does not have legal access to sanitary sewer.

Mayor Lockwood:

First, I would like to hear from those speaking in support of this zoning modification application.

Eric Johansen, (Inland Group), 5300 Oak Brook Parkway, Building 300, Suite 368 Norcross, Georgia:

As you are aware, and Ms Thurman you were not here two weeks ago and I will bring you guys up to speed real quick. We were here two weeks ago requesting a site plan modification. The zoning was previously approved in Fulton County as a Commercial Zoning. It was approved on the 03 site plan. The 03 site plan was amended in 06. The 06 site plan was accepted by Fulton County and again here we are tonight with the first chance to bring into Milton for Milton's action on this. Again we are asking to change the site plan. All iterations and versions of the site plan that have changed to date, in our opinion and I hope staff's opinion as well is that it has gotten better progressively along the way and I think we are at our best and most marketable plan and what I think is best for the City. To me the request is very simple. We are asking for a site plan modification only. As I stated we are already zoned commercial. We can make a development application on the current site plan, albeit that we do not like that and I do not think it is the best plan for the City and we still hit the same road block. We hit the sewer road block at permitting so the decision tonight is not a sewer question. The sewer question is a bigger question that he does not think anybody has the answer for right now. The decision tonight is a modification to the site plan and what I am asking you to do is approve the site plan that has been submitted for a modification only, and we will just get in line like everybody else with the sewer issue and tackle that hopefully through an approved IGA agreement in the next couple of months. I will be happy to answer any questions and would like to save the remainder of my time for rebuttal.

Mayor Lockwood:

Thank you. Is there anyone else to speak for?

City Clerk Marchiafava:

That completes public comment on this item.

Mayor Lockwood:

Are there any questions for the applicant from Council?

Councilmember Lusk:

We have obviously seen these site plans before and I think they have distinctly improved over the previous site plans and I commend the applicant for working towards that end.

Mayor Lockwood:

Is there any other comments or questions.

Councilmember Zahner Bailey: (via telephone)

I did have a couple of comments, not necessarily a question. I do not know if this is the appropriate time or if we should wait until public comment is complete and then we have discussion as Council.

Mayor Lockwood:

Public comment has been completed and we are discussing this now with questions to the applicant, so if this is a question to the applicant, you can go ahead and if not and there are not more questions to the applicant then the Council can discuss it.

Councilmember Zahner Bailey: (via telephone)

I will wait then. Thank you.

Mayor Lockwood:

Are there any more questions for the applicant?

Applicant Eric Johansen:

At the last meeting that we had, it was my understanding when I walked away there were questions about the location of the site. I produced an e-mail from the Fulton County Health Department that stated: if we applied for an onsite sewer septic that we would be denied and based on the gallons per day, even if we were denied we would have to go to State EPD due to being over ten thousand gallons per day. The sewer line is on the site. The sewer line feeds Crooked Creek. Every house in Crooked Creek that is gravity fed across Highway 9 flows through our site, not adjacent to the site through the middle of the site, so it is an existing used sewer line that flows through the site. One of the questions that came up when I provided some information was to get further clarification on exactly where the sewer line is. Is it on Highway 9? Is it in Big Creek? Is it gravity fed and there was a letter that I provided Council as well as staff on June 19th from Fulton County; Lamar Lambert did verify that we are in the Big Creek Basin. He did verify that we are in District 1, Section 2, Land Lot 758, which to my understanding is on the sewer map of available sewer for hopefully in the future and he did also verify that the sewer is on the western side on our property, so just for the record I wanted to state that the items we were asked to address is the reason for deferral. We did and we provided those within a few notice back to Council.

Mayor Lockwood:

Ok. Thank you. Councilmember Bailey, would you like to state your comments?

Councilmember Zahner Bailey (via telephone)

Thank you Mayor. One of my questions would be for our City Attorney and I do not know if it is Ms Davis and Mr. Jarrard that is there but I guess it would be a question for either Ms Davis or Mr. Jarrard. Back on June 16th, the deferral we put forward based on the need to verify whether or not this parcel was covered by the current IGA. I believe I heard Ms. Wakefield state that staff is confirming that this parcel is not covered by the current IGA but because that was part of a legal analysis if I could ask that question of either Ms Davis or Mr. Jarrard just to confirm the constitutionality and to address whether or not there is a constitutional ability of Fulton County currently to provide sewer or not to this parcel which does tie to this specific site plan.

City Attorney Davis:

Yes, it is Ms. Davis tonight. Yes, Ms. Wakefield's comments in that regard were accurate that there is no constitutional authorization currently to service this property with sewer.

Councilmember Zahner Bailey (via telephone)

I guess the concern that I have is that as we discussed during our Thursday Special Called Meeting; there is and it was stated by staff and also as we have discussed with our City Manager there is a need to discuss in a separate meeting, how we are going to handle a variety of different categories of parcels and yet this is one of those categories of parcels that has not been yet fully evaluated by staff or Council or by our attorney. The concern I have is that we not treat each of these separately and distinctly when we know that this is in line with some other categories that need to be evaluated and it is distinct and different from the case of Sembler which we talked about on Thursday for the variety of reasons that we outlined on Thursday. Because of that I would put forward a deferral in this particular situation because

of the need to treat all of these other permits in a way that is logical and consistent with what the City Attorneys and our City Manager had outlined as next steps. So, I would very much support obviously as soon as we can and have that be an expeditious process; whereby we do get together and review those maps; we look at these relative to the No Interbasin Transfer Policy and then we make some decisions as to how we are going to handle a variety of cases along Highway 9 rather than look at these on a piece meal basis and in particular because we have had the statement again this evening that indicates that there is not a constitutional ability for this to be served by sewer and the site plan modification does contemplate sewer only. I think we need to put our legal foot forward first; so therefore that is why I would put forward a deferral until we can have this next expeditious meeting.

Mayor Lockwood:

I also would like to ask the City Attorney and I believe that Ken has been working on this too and might have some comments as far as this is just a modification and not the ability to sewer this property.

City Attorney Davis:

That is right and I think that is an important distinction. What is before us is a zoning approval for modification to the site plan. I think the developer has stated on the record that he has an understanding that the sewer issue is separate and apart from this and I certainly understand Councilmember Bailey's concerns that is part and parcel because sewer is indeed required for the development to go forward, but I think with the understanding and acknowledgement by the developer that sewer is not available to this property then proceeding with this just on the zoning modification could go forward. I think it would be important that the developer understand that there is no promise made by this Council if we agree to proceed with this in a partial manner as he suggested that there is no promise of future sewer service to the property. He would be proceeding at his own risk.

Mayor Lockwood:

Thank you.

Councilmember Thurman:

It is my understanding that the modification itself does not change his ability to get or not to get sewer whatsoever. All it does is change the site plan itself, but it does not make any adjustments as to whether or not he gets sewer. Is that correct?

City Attorney Davis:

That is correct and it should not be argued by him or any one else that your consideration of the site plan modification because it is solely a zoning function is any kind of acquiescence or acknowledgment or grant of sewer in the future because there is no current sewer available now and no promise of future sewer service.

Councilmember Tart:

Maybe I need to be enlightened then because if we are approving a site plan modification that specifies a certain density and that density is contingent upon sewer. How can you approve a site plan that is contingent upon something that we do not know that he is going to be able to get?

City Attorney Davis:

I think that is a fair question. I think it would indeed have to be contingent and I think it would need to be contingent and stated with all of the caveats that I just mentioned that there is no future promise but I

think there is an intent that has been expressed by this Council to renegotiate an Intergovernmental Agreement with Fulton County and whether this property might be a part of what would be covered in that future agreement would be something the developer would be hoping for and that we would be able to make no promises on that point because we do not know what Fulton County may agree to. We do not know what this Council as a majority vote might agree to, but I think that the notion of the contingency is with the thought that there is something on the horizon in terms of future negotiations that might result in sewer.

Councilmember Lusk:

I think the point was previously clarified when the applicant stated that even he would not grant a septic tank facility for that site.

City Attorney Davis:

I think that is an independent issue because to the extent that there is a suggestion by the developer that septic is not available. I think there is a lot of issues associated with that determination and at the end of the day if sewer service is not available and either Fulton or the State approves septic then I think that is an issue with respect to those regulatory authorities and not us, because we do not control the septic determination and we have discussed the notion before about these tie on requirements and what it means when the state laws say available sewer within a certain distance and if there is not a constitutional authorization for Fulton to provide it; then we would suggest that it is not available. So I think that is an issue that is probably independent of what you have to consider tonight.

Councilmember Thurman:

This site plan modification does not change any requirements for septic or sewer or anything else; it is just a site plan modification.

City Attorney Davis:

That is correct, but it contemplates sewer to make it work.

Councilmember Thurman:

But the old one contemplated sewer to make it work so there is no change in what is contemplated other than - he is not asking for increased density that would make him no longer eligible for septic or anything. The only thing he is changing is where buildings are and where parking is.

Mayor Lockwood:

I would just like to clarify at this point the applicant is asking for modification of his plan and side note: sewer has been brought into this but at this point I think we are just discussing this modification. Our City Attorney is suggesting that does not imply that he will or will not get sewer; that is a different issue, and we can look at this just as a modification to his site plan. Am I correct?

City Attorney Davis:

Yes, Mr. Mayor.

Councilmember Zahner Bailey (via telephone)

Mayor, may I ask one more question?

Mayor Lockwood:

Sure.

Councilmember Zahner Bailey (via telephone)

Ms, Davis, along these lines, if the site modification be a distinctive difference from the decision having to do with sewer; if I recall when we discussed this on the 16th of June either you or Mr. Jarrard stated that there is not a vested right to the provision of sewer. Is that an accurate statement?

City Attorney Davis:

I think it has to be considered on the case by case basis, but I think fundamentally that is certainly a correct statement; to be analyzed on the facts of each case; but I think what is important is I think any contingent approval should be made with the statement in the motion and the acknowledgement in recognition that we are not promising future sewer that any contingent approval of the zoning would mean when they get ready to come and pull the permit that they will be considered just like everyone else and if they do not have sewer then they are not going to be able to proceed with the development; just like we have so many lined up right now asking; just like the person who spoke at public comment tonight; to consider these issues because they are at that point. This developer is not yet at that point, but it should be understood that it is not a “nod” on our part that sewer is there, or will be there, necessarily in the future.

Councilmember Tart:

I have a question regarding the similarities between the case that we heard during public comment; whereby, someone came and asked staff for approval for something i.e. sewer and they were denied and then this particular case that we are considering right now what are the similarities there? I would hate for us to take one course of action tonight with one particular property owner and then staff had taken a different course of action with others?

City Attorney Davis:

I think it is more easy to state the differences “if you will” because the developer that spoke tonight has all of the zoning approvals in place and has in fact developed out quite a lot of the subdivision and was seeking additional building permits, as I understand it, which would then result immediately in connection to sewer. So all of their zoning approvals had already been generated and they have already proceeded down the road with issuance of some permits in the neighborhood and then seeking others. This particular development is different because they do not have their zoning approvals in place so there is a lot of work to be done. I would anticipate before they can come and ask for the permit. When they come and ask for the permit, staff should deny it at this juncture until we deal with it in some other course, so then I think they will be situated in the same place, perhaps. It maybe still analyzed differently because they would be coming in as a first request versus this other developer tonight who has developed out the subdivision already. I hope that answers your question.

Councilmember Tart:

It does and thank you.

Mayor Lockwood:

Does the applicant have any closing remarks?

Applicant Eric Johansen:

There is nothing that this Council can do today and there is nothing I can do through the permitting process nor the other fifty people that are trying to get permits that are going to change the sewer. The zoning modification allows us to take one step closer to pursuing a permit if and when a sewer policy gets changed. If the sewer policy never gets changed; the site probably cannot be developed on sewer regardless of what the Health Department says or what Milton says because of an agreement between Fulton County and the City of Milton and I cannot change that nor can anybody else. What we are asking to do is change the site plan. We have an approved site plan. It is the same density; all of the items on there are the same. I think the lay out is better. I think anybody that understands the site plan would know the lay out is better. All we are doing is asking to change the site plan right now because that is the only thing we can do under this zoning request and zoning and sewer are not even related. Sewer is a development regulation and something that has to do with a different policy and what we are asking for now is a zoning issue and the two should not be confused on this application or future applications moving forward. They are two separate issues, so we just ask you to consider the zoning modification tonight. Thank you.

Mayor Lockwood:

At this point, I will say the public hearing is closed.

Motion: Councilmember Lusk moved to approve application **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. The modified site plan which is approved shall be attached to this motion for the record. All other conditions of the rezoning remain in full force and affect. This approval is subject to the following conditions:

1. There is not constitutional authority for Fulton County to provide sewer service to this property at the current time; as such this approval is contingent upon the future availability of sewer for this property.
2. This approval should not be construed as a promise of future sewer service for this property. The developer applicant and or owner of this property should proceed at their own risk with respect to incur expenses and otherwise pursuing development of this property until such time as the City of Milton authorizes the provision of sewer service for this property.

Second: Councilmember Thurman seconded the motion.

Discussion on the Motion:

Councilmember Tart:

The last time we considered this, I voiced my concern with approving something contingent upon unknown information and I still have that problem. I think the motion has been well worded and well stated with regards to sewer and I disagree with the applicant regarding sewer and zoning and how these two are interrelated. They are very much related as far as density is concerned. I guess I need some assurances from the City Attorney in other things that we have approved. We have approved it contingent upon the developer doing what is specified in the conditions of approval. This is a little different because the approval is contingent upon some policy that we come up with and I need some clarification on that and feel assured that can be done and where we are legally in being able to do that.

City Attorney Davis:

I do not know if I can give you every assurance. What I can say to you, in response to what is a very good question, is that not only is the City part of making that policy, but it is Fulton County as well because it will have to be an agreement between the County and the City. Of course, we can exercise no control over Fulton as to what they will and will not agree to, in terms of provision for sewer service in any future Intergovernmental Agreement so plainly we do not have control over all of the cards in making that determination. That is why I think it is important that the motion stated; that it cannot be a promise of future service and the developer presiding at his own risk, because there are no promises being made. There are some jurisdictions that will routinely approve contingent on availability of sewer when they may have limited capacity and other reasons and with the standard notion that it is proceeding at your own risk. I cannot give any assurance that this developer, when he comes to get his permit, will be happy with the response if he is denied, but what I think this Council has committed to is addressing the sewer issue once and for all with an IGA that will resolve the issue once for all and I think this is somewhat of a compromise that the developer is asking for so that he can, as he suggested, take one step closer to getting his development done. So, I think it is an accommodation that this Council is expressing some willingness to make for him and with that he has to bear the risk of that accommodation.

Mayor Lockwood:

Ok. Are there any other comments or questions?

Councilmember Zahner Bailey (via telephone)

I have one question for Ms. Davis about the statement that was just made. With regards to the condition of that it not being a promise of future sewer service; would it also be reasonable if it be the pleasure of Council, to consider an additional condition that would say that this is also not a promise of the density proposed by the site modification; given the density is directly tied to whether or not sewer service will be constitutionally provided? Again, I am cautious and concerned about the fact that a site plan obviously speaks to a certain density level and that density is only possible if at some future point if it comes to constitutional for Fulton County to provide sewer to this parcel. Does my question make sense, I guess first and foremost?

City Attorney Davis:

I am not sure that I followed it entirely except that I think that I understand your concern being that sewer is necessary for this density in this development and I think indeed if the condition of sewer availability in the future cannot be fulfilled, then I think this developer will find himself having to come back either for rezoning or a whole new project or abandoning the project. Because I think there is no argument to the contrary that sewer is required for this project to proceed and that is why the only way we can approve it contingent on some sewer because otherwise the project cannot proceed.

Councilmember Tart:

So you are saying that the conditions as written cover that?

City Attorney Davis:

Yes, I think so.

Councilmember Thurman:

Because he is not changing the density at all. We are not modifying the density with this.

Councilmember Zahner Bailey (via telephone)

No, but by modifying the site plan under Milton versus Fulton County we ought to effectively take it as part of that rezoning. So I was just wondering, if in addition to saying that it is not a promise of future sewer service, if there is not a necessity to also indicate that this is also not a promise of the City for a particular density level when that density is predicated on the provision of sewer which right now is constitutionally not available.

Mayor Lockwood:

I think I hear the City Attorney saying that we are covered.

City Attorney Davis:

I think that is respectfully the same thing. He gets this density that we are approving if sewer becomes available. If sewer is not available he will not have this density, nor will he likely have this project at all. I think it will go back to the drawing board to determine whether there is some other sanitary sewer solution for the property or whether there is another project that can accommodate it.

Councilmember Zahner Bailey (via telephone)

So you believe that legally by saying that this is not a promise of sewer service that it would be reasonable for this applicant as well as for any other future discussion on this to also indicate the fact that it is not a promise of sewer, also means it is not a promise that this density if it does not become constitutionally available through Fulton County.

City Attorney Davis:

That is correct.

Mayor Lockwood:

I will allow the applicant to make a comment.

Applicant Eric Johansen:

Just one other thing moving forward. The one word that I have a problem with and it what we were discussing is the word contingent that was in the motion. I am ok with everything else that was said. I understand the proceeding at your own risk and it is no promise and everything else, but the one word and one of the conditions as said the approval of this is contingent upon the sewer being available. I understand that because two of the other conditions say the same thing. The word contingent scares me a little bit meaning that this site plan is obviously contingent because you will never get the permit without the sewer, but the word that we are asking for a site plan modification and I want the site plan modification to be solid. I do not want it to be contingent on sewer, but everything else that you said in the motion moving forward without a promise. I understand that but the word contingent - I do not want the condition 2.a to be contingent on sewer.

Councilmember Tart:

It is that word in the motion that makes me feel better about placing a vote for this because in fact we are reaffirming this site plan when we vote to approve this and this site plan is contingent upon the availability of sewer to have the density that you are proposing so it is contingent.

City Attorney Davis:

Right and I think the purpose of that word is to indicate that the site plan can otherwise not go forward in the absence of sewer availability. I think it is contemplating that he is going to take those next steps at his own risk if that is his choice rather than waiting out a sewer solution but of course when there is a request for permit then it will have to be taken up in the regular course if there is no sewer service available. I think the word contingent is necessary for us in this juncture unless you are comfortable, and I do not know that this Council is, to approve it in the absence of that word. I think it is the word as Councilman Tart suggests that is giving Council the comfort to go forward approving a project that does not have a sewer solution currently.

Councilmember Tart:

In fact I think we will be on legally shaky ground to approve a site plan contingent upon something that we do not know the answer to yet when that in fact is unconstitutional at the moment.

Councilmember Lusk:

I think that is the essence of this whole condition is contingency.

City Attorney Davis:

It might be an appropriate point at which to ask the developer and if he objects to this contingency and this motion then we might as well know it now and you may want to consider an alternative motion.

Councilmember Zahner Bailey (via telephone)

I would just say that without the contingency on sewer availability the constitutionality issue - without that I think there would be no choice other than a deferral. Of course dialogue is an option, but in the spirit of cooperation and trying to arrive at an eventual solution if the condition that is read does not include contingent. I guess, again, I will get back to my statement from earlier that I would prefer a deferral so that all of those questions could be answered and then at that time approve a site modification with known information.

Applicant Eric Johansen:

We are ok as the motion was proposed.

Mayor Lockwood:

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

Councilmember Tart:

I think Councilmember Thurman called the question, so we need to vote to call the question.

Mayor Lockwood:

I am sorry, I did not hear that. Is that correct Councilmember Thurman?

Councilmember Thurman:

Yes.

Mayor Lockwood:

Ok; all of those in favor of calling the question?

All were in favor. There was no further Council discussion.

City Clerk Marchiafava:

We will now vote on the motion.

Vote: The motion passed unanimously (4-0).

UNFINISHED BUSINESS

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.

(First Presentation on June 16, 2008. This is the Second Reading.)

Ordinance 08-07-17

Motion and Vote: Councilmember Thurman moved to approve 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. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously (4-0).

MAYOR AND COUNCIL REPORTS

There was no Council Reports

STAFF REPORTS

Councilmember Tart

- Asked if we have concrete plans to begin this process of the review of our policy on sewer.

City Manager Beckett

- We do not have anything concrete but he discussed with City Attorney Jarrard to bring forward the “blue dot” area followed by the “red dot” area followed by subsequent conversation about the IGA and specific land lot lines.
- He is waiting on a map from Fulton County that indicates where the sewer lines actually are now and what he service area is from their perspective.
- The City Attorney and he will talk about the so called “blue dot” areas because he feels the challenges of having a called became evident so we will have to schedule with sufficient time to ensure that as many of Council is possible can physically be present to discuss the issue.
- He does not have a precise date.
- If we can bring information to Council on July 14th at the Work Session Meeting, then they will certainly do that.

Mayor Lockwood

- We would like to make that a priority.

Councilmember Thurman

- Would like us to discuss rules and procedures.
- Our policy before was that we did not take any votes at work sessions and now we are saying we can.

City Manager Beckett

- Council can be assured that we will bring something forward to define things like what present means and define what we mean by some of the other terms that are different such as when you can and cannot vote.
- There are some interpretive decisions that are different.
- Sometimes when you try to write a good law you end up with a bad one but we will try to better define those terms.

Councilmember Zahner Bailey (via telephone)

- Would like to confirm that we will have a meeting as soon as possible with additional data to address the issues.
- One immediate issue is the Highway 9 corridor.
- The next is looking at a revised IGA and the context of an overall sewer policy.

City Manager Beckett

- Blue, Red, IGA, Crabapple and comprehensive sewer policy.

EXECUTIVE SESSION

City Clerk Marchiafava read agenda item 08-615

Executive Session to discuss personnel.

Motion and Vote: Councilmember Lusk moved to adjourn into Executive Session at 7:29 p.m. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously (4-0).

RECONVENE

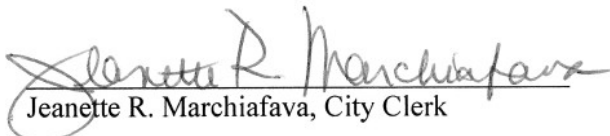
Motion and Vote: Councilmember Thurman moved to reconvene the Regular Meeting at 7:45 p.m. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously (4-0).

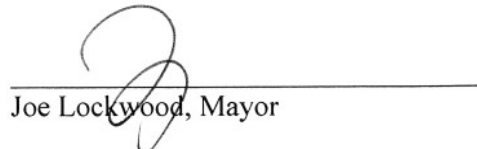
ADJOURNMENT

Motion and Vote: Councilmember Lusk moved to adjourn the Regular Meeting at 7:47 p.m. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously (4-0).

After no further business, the meeting adjourned at 7:47 p.m.

Date Approved: July 21, 2008


Jeanette R. Marchiafava, City Clerk


Joe Lockwood, Mayor