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**The Regular Meeting of the Mayor and Council of the City of Milton was held on November 17, 2008 at 6:00 PM, Mayor Joe Lockwood presiding.**

**INVOCATION**

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

**CALL TO ORDER**

**Mayor Lockwood** called the meeting to order.

**ROLL CALL**

**City Clerk Marchiafava** called the roll and made general announcements.

**Council Members Present:** Councilmember Karen Thurman, Councilmember Julie Zahner Bailey, Councilmember Bill Lusk, Councilmember Burt Hewitt, Councilmember Alan Tart

Councilmember Tina D'Aversa was absent/excused.

**PLEDGE OF ALLEGIANCE**

**Mayor Lockwood** led the Pledge of Allegiance

**APPROVAL OF MEETING AGENDA**

Staff recommended the following changes to the Meeting Agenda:

1. Under the Zoning Agenda, move item number 3 U08-06 – 13365 Arnold Mill Road by Extreme Mulch to obtain a use Permit for a Landscaping Business to the beginning of the Zoning Agenda.
2. Under New Business, Defer until December 15, 2008 Approval of a Resolution Requesting the Transmittal of City of Milton draft 2008 – 2028 Comprehensive Plan partial Update to the Georgia Department of Community Affairs and the Atlanta Regional Commission for their official review
3. Add a Resolution Amending Resolution No. 08-01-09, A Resolution Appointing members to the City of Milton Design Review Board for District 3 and place that item after the Alcohol Beverage Application Public Hearing.
4. Under New Business, Defer until December 1, 2008 Approval of a Resolution Amending Resolution No. 08-10-46, a resolution to Create the Milton Grows Green Committee and its Governing Board and for other Designated Purposes by Add an MGG Committee Governing Board Member

**Motion and Vote:** Councilmember Hewitt 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.

- Public comment is a time for citizens to share information with the Mayor and City Council.
- To provide input and opinions for any matter that is not scheduled for its own Public Hearing for today's meeting.
- There is no discussion on items on the Consent Agenda or First Presentation or from Council.
- Each citizen who chooses to participate in Public Comment must complete a comment card and submit it to the City Clerk.
- This is not a time to engage the Mayor or Council in discussion.

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- When your name is called please come forward and speak into the microphone stating your name and address for the record.
  - You will have five minutes for remarks.

**Dan Wolf**, 309 Pirkle Ferry Road, Cumming, Georgia

- Provided a letter concerning a request for some modification in the sign ordinance.
- They are trying to market a property in the Birmingham Crossroads Community.
- It is located on Hickory Flat Road and is next to the Fire and Police Precinct.
- He has had people steal his yard size signs.
- The yard size signs for commercial property seems a little to diminutive and does not convey the ideas of what they are trying to convey.
- He hoped they could achieve and attract an office, professional, institutional or community use to the property.
- It is a 2 acre site.
- His client sold the property to Fulton County about twelve years ago for the fire and police station.
- She sold eleven acres and now has two acres left.
- The City's property surrounds her property on three sides.
- The fourth side is the public road.
- They would like to have a sign that is a little bigger and shows up better and is hard to steal.
- They would like to go from a four square foot sign to a six square feet; two feet by three feet.
- He could use 4x4 wood posts on each side and it makes it harder to steal and it would very attractive.
- With properties that are at or near commercial districts, he asked that signs could be a little bigger that currently permitted.
- Would appreciate Council's consideration on this matter.

That completed public comment.

**CONSENT AGENDA**

**City Clerk Marchiafava** read the Consent Agenda Items.

**(Agenda Item No. 08-718)**

1. Approval of the November 3, 2008 Regular Meeting Minutes.

**(Agenda Item No. 08-719)**

2. Approval of the Financial Statements for the period ending October 2008.

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

**PUBLIC HEARING**

Approval of Alcohol Beverage License Application for Georgia CVS Pharmacy LLC d/b/a CVS Pharmacy #2945 located at 13933 Alpharetta Highway, Milton, Georgia. The applicant is Georgia CVS Pharmacy LLC for Package Retail – Wine and Malt Beverage.

**Finance Manager Stacey Inglis**

- The applicant has followed all of the requirements in the Ordinance.
- Staff recommends approval.

There was no Public Comment on the item.

**Councilmember Zahner Bailey**

- Asked Finance Manager Inglis to confirm that all of the requirements include we verified the distances from day care facility and the distances from any existing legal requirements.

**Finance Manger Inglis**

- The applicant has to be at least 100 yards from a school.
- It does not have distance requirement for a church because it is a wine and malt beverage license.
- If it was distilled spirits then church would come in to play.
- The day care facility in question is 890 feet from the establishment so they do meet the distance requirements as stated in the City Ordinance.
- According to the City Ordinance there is a definition of school buildings and there has to be a building on the property where classes take place.
- There is nothing there right now.
- If there was something built there in the future; it is not retro-active and will not affect the license.

**Motion and Vote:** Councilmember Lusk moved to approve Alcohol Beverage License Application for Georgia CVS Pharmacy LLC d/b/a CVS Pharmacy #2945 located at 13933 Alpharetta Highway, Milton, Georgia. The applicant is Georgia CVS Pharmacy LLC for Package Retail – Wine and Malt Beverage. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously 6-0.

**City Clerk Marchiafava**

- We have a member of the Milton Grows Green Committee present and needs the Oath administered.

**Mayor Lockwood** administered the Oath for the Milton Grows Green Committee to Melinda McConnell.

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

*Added by Motion and Vote*

**A Resolution Amending Resolution No. 08-01-09, a Resolution Appointing Members to the City of Milton Design Review Board by adding a Board Member for District 3.  
RESOLUTION NO. 08-11-50**

**Councilmember Lusk**

- His original appointee was Mr. Alex Paulson and he is in the process of leaving Milton and moving to Roswell.
- He talked to several people in the City and came to the decision to propose Vic Jones as his appointee to District 3 for the Design Review Board.
- He is a principle at Jones Consulting Group.
- He formed his own firm last year.
- Completed his undergraduate education at Clemson receiving a BS in Civil Engineering.
- He obtained his master in water resources and environmental engineering from the University of South Carolina in 1997.
- He has also earned a Masters in Business Administration from Georgia State.
- He is a registered professional engineer in Georgia and South Carolina.
- He is involved the American Society of Civil Engineer and the Georgia Association of Water Professionals.
- He is a certified level 2, designer through the Georgia Soil and Water Conservation Commission.
- He is been a resident of the Atlanta area since 1996 and a resident of Milton since 1999.
- He is married with three children.

- His wife serves on the BZA.

**Mayor Lockwood**

- This position is harder to find someone with the correct experience.
- Councilmember Lusk had tried to find someone in his district.
- Vic Jones is outside his district.

**Councilmember Tart**

- This would be in our category one committee and this would be the first time we appointed someone outside of our district for this type of committee.
- Asked the City Attorney to comment on that.

**City Attorney Jarrard**

- The category one criteria indicated the preference would be that it be within the district.
- If Council wanted to approve an appointment outside the district; he thinks they should do it in the form of a motion.

**Motion and Second:** Councilmember Thurman moved to allow appointments outside the district for the Design Review Board for this particular situation based on the fact the Design Review Board has criteria that has to be met and the Councilmember had tried to find someone to meet the criteria within his district and was unable to. Councilmember Hewitt seconded the motion.

**Discussion on the Motion:**

**Councilmember Zahner Bailey**

- As it relates to some of the upcoming appointments; asked how that sets in motion flexibility for Council for the Parks Commission and others.

**City Attorney Jarrard**

- In like circumstances the Council will feel there is precedent to do this.
- He thinks what Council has to demonstrate the committee has strict requirements for the type of membership and Council could not locate anyone in the district.

**Vote:** There was no further Council discussion. The motion passed unanimously 6-0.

**Motion and Vote:** Councilmember Thurman moved to approve a Resolution Amending Resolution No. 08-01-09, a Resolution Appointing Members to the City of Milton Design Review Board by appointing Vic Jones for District 3. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously 6-0.

**Mayor Lockwood** administered the Oath for the Design Review Board to Vic Jones for District 3.

**ZONING AGENDA**

**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.

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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.

*(Zoning Agenda Items typed verbatim.)*

*Moved by Motion and Vote*

**U08-06 – 13365 Arnold Mill Road by Extreme Mulch to obtain a Use Permit for a Landscaping Business (Article 19.4.27) on 3.75 acres with a 2,500 square foot existing office and an existing 2,000 square foot pole barn at a density of 1,200 square feet per acre. (First Presentation on November 3, 2008.)**

**ORDINANCE NO. 08-11-31**

**Community Development Director Alice Wakefield**

The applicant is requesting a use permit for a landscape business to basically operate a mulch distribution facility. The applicant proposes to utilize the existing structures. The recommendation of the planning commissions is approval conditional. The recommendation of staff is approval conditional. We have some additional conditions that we would like to add. At this time Senior Planner Robyn MacDonald will give greater detail.

**Senior Planner Robyn Mac Donald**

Good evening Mayor and Council. As Alice said this is a proposal for technically a landscaping business but more specifically a wholesale mulch business. The subject site is developed with a twenty five hundred square foot office and two thousand square foot pole barn. I will not that this piece of property was considered for rezoning and use permit pursuant to RZ05-28 in Fulton County. It was for rezoning from AG 1 to C 1, as well as a use permit for mini warehouses. That was denied by the Board of Commissioners at that point and time in 2005. It is also located within the agriculture forestry and mining land use designation on the focus Fulton 2025 comprehensive land use plan.

I will go over some items that staff has reviewed pertaining to the subject use and offer the following comments. Provided the applicant complies with recommended conditions of this petition and use permit requirements of Article 19.4.27 of the Zoning Ordinance, the proposed development is consistent with the intent of following policies of the comprehensive plan:

Encourage compatible institutional uses in neighborhoods and communities, encourage development consistent with the surrounding scale, transition of densities and uses of comprehensive plan policies where appropriate. If developed in accordance with staff recommended conditions and the provisions of the zoning ordinance, the proposed landscape business is expected to be compatible with other land uses in the surrounding area.

The proposed use does not violate any known local state or federal statutes, ordinances or regulations governing land development. The proposed use will not generate a significant increase in traffic. Based on discussions of the planning commission, the applicant indicated and he can also talk about it again if you would like but basically they have about three to four employees that come every morning to the site and they have about two to three maybe four loads a week of mulch that come into the bends but the majority of their mulch gets delivered directly to the site that they are serving and that they are spreading the mulch to. There seems to minimal impact as far as traffic coming in and out of the properties.

They also wanted to say that the deliveries typically are in the early afternoon, like two to three range so they miss the traffic on 140, as we all know is pretty heavy on the morning and afternoon commuter traffic so they have their vendor try to avoid that time of day, either early morning or late afternoon. The applicant shows on their site plan the required twelve parking spaces pursuant to the square footage of the development. He has agreed that currently it is gravel parking and it will remain as gravel parking. The arborist has stated that any landscape trees needed, can be planted wherever there is dirt viable for trees to survive. If developed in accordance with the requirements, the zoning ordinance and the northwest Fulton overlay district, the buffer landscape strip requirements and existing screening around the structures will provide adequate screening for proposed development. I am skipping back and forth and I will review it again.

I just passed out some revised recommended conditions so based on some conversation with the arborist and with the applicant, they are definitely agreeable with adding some more landscaping, evergreen material in the triangular part of the site plan where there is some grass to grow that they could provide additional screening so as people go north or west on 140, that will further protect screening the bends. They have also agreed in the conditions pursuant to the recommendation of the planning commission to move one of the bends to the back so basically it gives you another fifteen feet away from the road. Between moving one of the bends and adding additional screening, staff is satisfied that it will adequately protect any visual or being able to see the bends from 140. The applicant has also met all of the requirements of the buffering. It is a fifty foot buffer and ten foot improvement setback. Let me say there is room enough to provide that buffering. Many areas already provide a fully visually screened area but there are sparsely vegetated areas that they will be planting additional vegetation to meet that requirement. The hours in manner of operation, the applicant state that they are from seven am to five pm. The applicant notes that the company does not sale mulch to the general public as it is delivered and installed by the company only. Again in the conditions that you have before you we have tweaked the exact description of

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the business to deal with one; where they sale it to and the time of operation, we have changed form seven thirty to five pm, to reflect more closely with the noise ordinance Monday through Friday. Regarding lighting; if there is any lighting it has to adhere to the northwest Fulton overlay district and the night sky ordinance. The applicant has indicated that they have no lighting except for one utility pole light from Georgia Power that no longer works and when they enquired of the power company they said we do not want it. It is defunct and they only have a security light, a motion detector on their building because as the day gets darker sooner they need a little bit of light for their employees to see, so other than that there is no other lighting on the property. The applicant site plan indicates two curve cuts on Arnold Mill Road. Staff notes that one of these curve cuts will be eliminated and re-aligned to meet site distance requirements. Given the limited use of the subject site, staff is of the opinion that the proposed development will have limited impact on the community. They will be closing one of these curb cuts and located them in the proper site distance on the road.

Regarding building setbacks, it meets the zoning requirements and the northwest overlay distance requirements as their existing buildings. Building height; they meet the requirement of two stories and thirty feet from average finished grade to the bottom of the roof eve. Landscape strips and buffers again, I mentioned about the buffers; they meet that. The site plan does not indicate the ten foot landscape strip but there appears to adequate space for that landscape strip to be installed. Regarding screening and fencing, we have added this additional screening in that triangular area to help screen additional screening for the bends. The arborist made a site visit to the property this previous use was paving company, areas of buffers are sparsely vegetated. Three specimen trees located, one of which in long term decline, most likely due to activities near the tree over the years. Two other specimens were noted to be in fair to better health, though some structural defects. Specimens noted are out of any areas of disturbance. The drives located near the trees already existed. The arborist suggest fertilization maintenance program on the two specimen trees and you can see there is a twenty seven inch white oak in decline; a forty seven white oak and a forty inch white oak. According to conversations with the applicant; they have already started that fertilization maintenance program of the trees and they definitely wholeheartedly want to preserve those trees.

On September 24<sup>th</sup> the applicant was present at the community zoning information meeting. There was one nearby property owner at the meeting and she was in favor of the proposed landscaping business. The applicants presented their plan to the Milton Design Review Board on October 7<sup>th</sup>. The Design Review Board had no comments about this development once it was presented to them. All the public notice requirements were met and public participation planning report was met.

In conclusion, staff recommends approval conditional of this proposed use, use permit for the mulch business. On 1-A we have added wholesale wood chip mulch business delivery only and deleted landscape business and then continue on with an existing house and pole barn etcetera. Then if you skip down to 3B to maximize the screening of the mulch bends, evergreen plantings as approved by the city arborist shall occur within the grass islands between the bends and the existing house. 3C, hours of operation shall be seven thirty am to five pm, Monday through Friday and the last edition is D to provide gravel parking. That concludes the staff report.

**Mayor Lockwood**

Do I have any questions from Council to Ms. MacDonald?

**Councilmember Tart**

Ms. MacDonald, you had mentioned that there is adequate room to provide a ten foot wide landscape strip along public streets. Is there a need to add that as a condition of zoning or is that considered profiling?

**Senior Planner MacDonald**

No, it is already in the zoning ordinance requirements and once they come in for their LDP then it will be addressed then.

**Councilmember Tart**

As far as lighting, I know that the lighting is going to be in compliance with the northwest Fulton overlay, however, I am wondering if the business does not need lights at night, can we specify that as a condition of zoning?

**Senior Planner MacDonald**

Yes but I think you would need to at least allow some security so people can see at night but I am not sure of how to word that but it can be conditioned into the case.

**Mayor Lockwood**

Let's hear from the applicant and those in support of this use.

**Jeremiah Smith, 13365 Arnold Mill Road, Milton Georgia:**

I am a partner of Extreme Mulch. I live at 513 Kingland Avenue, Woodstock Georgia in reference to 13365 Arnold Mill Road Milton Georgia

**Kirk Smith, 13365 Arnold Mill Road, Milton Georgia:**

My name is Kirk Smith and I am a partner of Extreme Mulch. I live at 502 Blue Ridge Terrace, Canton Georgia and in reference to 13365 Arnold Mill Road, Milton. As far as what Robyn had to say, everything is in order as far as that goes. When we were handed the recommended conditions, it is fine with us. We are talking, in that area we probably need five trees, five Leland cypress to put in there but other than that we already meet, we are wholesale wood chip delivery business and we have gravel parking. Our hours of operation fall into that time period as well.

**Mayor Lockwood:**

You are welcome to say more or you can your time if there is anyone else to speak.

**Jeremiah Smith**

Do you guys have any questions? Everything has been clearly stated. We do not do any business as far as people coming to us. Our business is to take the mulch from our property in our blower trucks and deliver the mulch and spread it at our customer's location, which is mostly your commercial landscapers. Outside of that nobody comes to our yard, we do have most deliveries so we can leave loaded as stated before, the majority of our jobs of larger magnitude do not even come to our yard. They are delivered directly to site and everything is done from that site, loaded and blown in from that site.

**Mayor Lockwood**

What I might suggest now, you have several minutes left and if there is anyone else speaking in favor of this. Is there any one speaking in favor?

**City Clerk Marchiafava**

No sir.

**Mayor Lockwood**

Is there anyone speaking in opposition of this application?

**City Clerk Marchiafava**

I have not received any public comment cards for opposition or support other than the applicants.

**Mayor Lockwood**

I will open it to Council questions for the applicant.

**Councilmember Zahner Bailey**

It would be helpful if you could describe as an example some of the equipment that you utilize, like number of trucks that are on site. I know that Ms. MacDonald talked a little bit about number of vehicles and number of employees. If you could expound on that a little bit in terms of number of vehicles that are on site, number of vehicles that come and go and then also the size of those. If you could distinguish between those that are on site for storage purposes and then those that come and go for delivery, just to give us a better feel of the comings and goings are versus what is on site on an ongoing basis.

**Jeremiah Smith**

We have four employees, outside ourselves. Two of those actually drive to work together so really you have three additional vehicles, plus our two, to five total as far as employees coming onto the property first thing in the morning. As far as our trucks are concerned, if you could think of a dump truck, it is a mulch blower truck. It has a hopper in the back and we bestrew the mulch through a pumping system instead of putting it out by hand. We currently have three trucks on the property right now. One of them has been sold and will be picked up in the next fifteen days from what we have been told. As far as delivery is concerned, it does come in on a tractor trailer anywhere from eighty to one hundred cubic yards of mulch. We have those bends as shown on the plat, where they are located. The tractor trailer backs into those bends, walks off the mulch and from there inside the shop, we do have a loader to load our trucks with that come out and load. Everything else, the loader is stored inside but all of the trucks are stored behind the shop so it is not seen from the road whatsoever even currently without the buffer, you cannot see anything. As far as our vehicles, I have the parking spots on the plat as well. As far as coming and going hours, we have strictly told our vendor to try and come between the hours of about ten and three to miss the traffic in the morning and miss the traffic in the afternoon. They do not want to be in it and it is just less disturbance on them. As far as employees coming and going, once they leave the yard, they typically may come back one time during the day in the trucks to load again if they are not loading on site but outside of that, that is all of the traffic we would have coming and going except when they come and go to work.

**Councilmember Zahner Bailey**

Are any of those tractor trailers, do they remain on site for storage or do they come and leave?

**Kirk Smith**

Twenty minutes.

**Councilmember Zahner Bailey**

There is not any intent of having tractor trailers there for storage?

**Kirk Smith**

No Ma'am.

**Councilmember Zahner Bailey**

Could you also speak to the three trucks that you mentioned that are on site that are there currently, are those the dump trucks? Is there a capacity size? I am just trying to get a sense of...

**Jeremiah Smith**

The two that will stay is a twenty five cubic yard truck and one is a forty five cubic yard truck. Size wise they are roughly the same size in length. They are just two different style trucks. One is a box style and the other is more of a hopper style like a grain truck. I do not know how to explain it. They are very unique trucks.

**Councilmember Zahner Bailey**

In terms of growth, do you anticipate that you are going to have a lot of growth in terms of number of employees and number of trucks that would be on site and part of the reason for that is to better understand the business? We have gotten some indications from folks that have some concerns about it being more commercial like as opposed

to agriculturally based and that is why it helps to better understand your plans and whether or not there are some conditions that would help to buffer some of those concerns.

**Kirk Smith**

If we are going to grow, we are going to grow in a different part of town, like south Atlanta or a different city. Two trucks is all we can stand fuel wise. We do not want to drive around the world, so with fuel prices the way they are we are going to stay with two trucks per location. If we grow any more we are going to go to another city.

**Councilmember Zahner Bailey**

Mayor if it be your pleasure, I do not know if this is a helpful use, because this is some of the data that I am curious about, as we think about either the conditions that staff has proposed or some potential others... I just want to make sure I am clear. The number of trucks that you believe you currently have and need, it is three currently and you are selling one, so two of this size, the large trucks that you are talking about is really the maximum that you are needing on that location in addition to your employee vehicles.

**Kirk Smith**

I would say two. There will be time we may have to lease a third one for a month or two during our busiest time but two is the number we want to stay at.

**Councilmember Zahner Bailey**

Could you speak briefly about lighting. I know there was some mention about security lighting and what your intentions are and needs are for lighting at night.

**Kirk Smith**

I told Ms. MacDonald earlier today, the only thing we have on there is we have flood lights in the morning time. In the summer time the morning is dark and right now it is getting darker by the time so it is more of a safety thing if I could say anything. It is just a flood light on each side of the shop. The front and back side of the shop.

**Jeremiah Smith:**

It is not only that, it has been a residential piece of property so there is a house and a pole barn there and it would be easy for someone to drive in there and open the barn without anybody even knowing it if we did not have some kind of security for ourselves. It does not stay on all night.

**Councilmember Zahner Bailey**

In other words the lighting you need is for security purposes. You do not see a need for other night lighting?

**Jeremiah Smith**

No we do not work at night.

**Mayor Lockwood**

Ok, are there any other questions for the applicant? If there are no other comments from anyone else, I will close the public hearing now and open it back up for Council. After that I will take a motion and a second.

**Councilmember Zahner Bailey**

I would like to talk about some additional conditions. I think some of the things that have been mentioned from the applicant and as well as what staffs comments have been and part of my request that we consider some additional conditions are not necessarily for the existing use but as these applicants may or may not be aware but as we as a Council, obviously when a special use permit is assigned to a parcel, it is not just for the current use but if every that property is sold, so I would like to see us consider some conditions for this that would meet the needs of the applicant but that also make it specific in terms of what your intent is so that if ever this property is sold, then anybody in the future need to utilize that we would be protecting the intent and that the citizens that have

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some concerns would similarly be protected. I would like to see us add as Ms. MacDonald had mentioned that there would be no night lighting with the exception of appropriate security lighting which of course I think would be consistent with what the applicant just mentioned. I would like to see us include a reference to the number of vehicles and the number of employees that would be consistent with your need and I hear you say that you primarily have two but you would want up to three so I think if we just identified the fact that there would be a need to identify those three vehicles based on the trucks that you had mentioned in addition to your employees and then identify that number of employees. I think you said your two plus an additional three so if that is five or if that is six but we have done this in similar situations we have identified the number of vehicles and number of employees so I would ask us to consider that condition.

I would like to also ask staff, when we talked about buffering, I know that the northwest Fulton overlay requires buffering not just at the roadway but also along adjacent property lines. I was a little unclear and that is just probably my fault for not hearing the description from Ms. MacDonald and Alice I do not know if it is you or Robyn that could mention, the northwest Fulton overlay, since there is not a site specific plan yet, what language do we need to make sure that all of the northwest Fulton overlay requirements for buffering adjacent properties would be in place because I hear us talking about some possible plantings but I want to make sure it is specific enough that we are protecting those adjacent properties. I know there is a horse farm next door, there are some properties that would be at the back and again we need to make sure we are protecting it not just for the current use but for also anybody that might live there in the future. Could you speak to that Alice, in terms of buffering, not just on the road but along the back and side?

**Community Development Director Wakefield**

The northwest overlay requires fifty foot wide undisturbed buffer, so normally when it is already in the zoning ordinance we do not add it to the condition. We can have the arborist go out and verify the buffer and where it is sparsely vegetated we will give them a dead line to get that planting done.

**Councilmember Zahner Bailey**

That is kind of the dialogue I am wanting to have. I understand that the overlay requires that but if I am not mistaken, part of this is surrounded by a horse farm.

**Kirk Smith**

It has a buffer all the way around.

**Councilmember Zahner Bailey**

Because I do not have that in front of me, I do not know what the depth of that is. I just want to make sure that when the site plan is finalized that we have actually protected those ancillary or side buffers because again we cannot anticipate who might move in next door but I think we have an obligation to protect those side properties. Alice how would you recommend we condition that language.

**Community Development Director Wakefield**

I would just say comply with the article 12.h.3.1 Section C.1 of the northwest Fulton Overlay District.

**Councilmember Thurman**

Does it have to apply without us adding it to it though?

**Community Development Director Wakefield:**

It does not have to but if you need that comfort level, you can add it to the condition.

**Mayor Lockwood**

Is that not being redundant?

**Community Development Director Wakefield**

Somewhat, but...

**Councilmember Thurman:**

What bothers me about that is, if we always add it to it and one time we do not add it to it, it almost makes it look like it was not intended. I prefer to assume it is in there and required that we do not add it to it each time so that...

**Councilmember Zahner Bailey**

Maybe another suggestion would be that we could just say that all of the requirements of the northwest Fulton overlay would apply and if that is already is, I do not recall seeing that when I read the conditions from staff. It may be in there again we had a lot to read.

**Community Development Director Wakefield**

It does not say that specifically but it points out every incident in the analysis where it complies with the northwest overlay. We found that there was no areas where it was in non compliance and where there was a deficiency, if there was such a thing as a deficiency, like the ten foot wide landscape strip, there is adequate space to plant that. What will happen when and if this is approved, is staff will then go back to the property and verify compliance once again which we have already done that but we will make sure he comes in to compliance within a reasonable period of time.

**Councilmember Zahner Bailey**

I appreciate that and I think what struck me, Ms. Wakefield, was the discussion that there was some portions that were more sparsely vegetated so I just wanted to make sure that in those spots that were sparsely vegetated because they would be parking in back of those buildings and structures that we concern ourselves not just with buffering the mulch bends from the road but that we also ensure that we are buffering parking and those large trucks from adjacent properties which are not necessarily fronted on the road and I just want to make sure it would capture that and I was not confident that it did.

**Community Development Director Wakefield**

It is captured in the zoning ordinance. It is clearly in there.

**Mayor Lockwood**

Councilmember Lusk.

**Councilmember Lusk**

I was just going to reiterate that. I am looking at page eleven of eighteen of the report and it makes reference to article 12h.3.1 and I think as Councilmember Thurman mentioned it is somewhat redundant to further clarify or expand on it when it is clearly spelled out in the northwest Fulton overlay district ordinance.

**Councilmember Zahner Bailey**

I appreciate that...

**Mayor Lockwood**

I am going to cut in here. Is there anyone else that has not spoken or has a question?

**Councilmember Zahner Bailey**

Mayor I had one other item I would like us to consider. Because the applicant confirmed that they do not have the intention of having any tractor trailers located on that facility, I would like us to consider a condition that would specifically say that no tractor trailers would be on site other than for delivery purposes. The reason that is important there is some other examples in other areas where that was not clear and I believe that is what the

applicant confirmed is that a tractor trailer would not be on site other than for delivery purposes. I think it is important that we clarify that, not just for this applicant but for any future use, because the special use permit does stay with the property.

**Mayor Lockwood**

Ok, is there anyone else with questions or comments?

**Councilmember Hewitt**

I have a question on the parking. Would twelve parking spaces, what meets the three parking spaces per thousand square feet that will pretty much limit future... You have twelve spaces and twenty four cars there, that will not jive, is that correct? Am I thinking right?

**Community Development Director Wakefield**

Well you cannot park on the grass, so that would be a violation.

**Councilmember Hewitt**

Ok that is what I needed to know. I would like to make a motion.

**Motion and Second:** Councilmember Hewitt moved to approve agenda item 08-710 U08-06 13365 Arnold Mill Road by Extreme Mulch to obtain a Use Permit for a Landscaping Business (Article 19.4.27) on 3.75 acres with a 2,500 square foot existing office and an existing 2,000 square foot pole barn at a density of 1,200 square feet per acre with staff's recommended conditions with a couple of conditions, one that there not be excessive night lighting except for security lighting, two, that we have no overnight tractor trailer parking. Councilmember Lusk seconded the motion.

**Discussion on the Motion:**

**Councilmember Thurman**

I have one question, with the lighting. To me that sounds vague, is that going to be something that can be enforced? How do you say something is security lighting and not. Another question I had as far as the tractor trailer, I thought they were not allowed according the northwest Fulton overlay were not allowed to be parked overnight anyway.

**Councilmember Zahner Bailey**

I do not believe it says that.

**Community Development Director Wakefield:**

I can double check that.

**Councilmember Thurman**

The security lighting is the main thing I was concerned about, when you just say no excess lighting...

**Community Development Director Wakefield**

Perhaps Council could condition it to the existing two security lights that are on the structure and that would be clearer.

**Mayor Lockwood**

Will the applicant be ok with that?

**Kirk Smith**

Yes, I just want to clarify, the house has normal flood lights that any house would have but the actual shop out back has two flood lights that only come on when they are turned on. They are motion censored up by the house,

just like most peoples houses but back by the shop, it is just a flood light for safety back there as far as that is concerned.

**Mayor Lockwood**

Ok, I think the intent here is just so there is not a whole lot of night...

**Kirk Smith**

Right, we do not work at night so we will not be lighting...

**Councilmember Thurman**

I just want to make sure we have something we can actually enforce.

**Mayor Lockwood**

I have a motion and second, based on Ms. Wakefield's comments, would our motion maker and second would want to address that.

**Councilmember Hewitt**

Would be happy to amend the motion.

**Motion and Second to Amend:** Councilmember Hewitt moved to approve agenda item 08-710 U08-06 13365 Arnold Mill Road by Extreme Mulch to obtain a use permit for landscaping business Article 19.4.27 on 3.75 acres with a 2500 square foot existing office and an existing 2,000 square foot pole bard at a density of 1,200 square foot per acre. To staff conditions with the addition of no overnight tractor trailer parking and no additional exterior lighting be added. Councilmember Lusk seconded the motion.

**Discussion on the Motion to Amend:**

**Councilmember Zahner Bailey**

I would like to ask the maker of the motion a question. I would like us to have at least a discussion as to the number of employees and number of trucks which would be consistent with another special use permit that this body approved for purposes of insuring the intent is consistent with what is approved. I will ask the applicant if I may Mayor, if we were to consider, hypothetically, to identify number of employees and trucks, what would meet with your requirements for that business.

**Mayor Lockwood**

Can I break in for one second? Excuse me, to our City Attorney as a point of order. Is this discussion appropriate with this motion?

**City Attorney Jarrard**

It is. This is the opportunity for this discussion.

**Councilmember Zahner Bailey**

So, based on the fact that this would be consistent with how we have addressed special use permits in the past, would the applicant please state for the record, what would meet your requirement for existing employees, with some obviously interest in possible growth as well as number of trucks.

**Jeremiah Smith**

Basically with three trucks, you have two men per truck so is we had three for those couple of months, you would have six employees and then the two of us, so eight if you include the two of us, so that would be our max as far as our busiest season, but that is only a seasonal situation which is spring.

**Kirk Smith**

Well, what can be our max? If we had ten guys in there one day, since you are hypothetically asking, I am hypothetically asking if we have twelve parking spaces which is required, if we have twelve employees, is that a problem.

**Councilmember Zahner Bailey**

My question specifically is based on what you have defined as your business and the amount of usage and the question that I have for the maker of the motion is intensity of use and because this special use permit has the potential to morph into something different, not necessarily with you guys as an applicant but if were sold and we do not define it, so I am simply trying to define it based on what your business needs are.

**Jeremiah Smith**

As it is defined here, we have a wholesale wood chip mulch business delivery only. There is probably two other people in this state that would be interested in buying it.

**Councilmember Zahner Bailey**

I appreciate that. In terms of number of employees, are you saying that the maximum is eight?

**Jeremiah Smith**

Yes.

**Councilmember Zahner Bailey**

And the maximum number of trucks on site?

**Jeremiah Smith**

Pick up trucks?

**Councilmember Zahner Bailey**

Not for the delivery purposes, but for those trucks that you have that are for storage purposes.

**Jeremiah Smith**

None of them store. We load them and they leave, so it is not a storage truck.

**Councilmember Zahner Bailey**

So trucks that employees use, your trucks, is it ten trucks, is it five trucks?

**Jeremiah Smith**

Five trucks. Five trucks above one ton, two ton, we do have some pick up trucks that are dual...

**Kirk Smith:**

I will state it this way. Max would be eight vehicles, plus possibly three working vehicles. Does that make since?

**Councilmember Zahner Bailey**

Eight vehicles?

**Kirk Smith**

No, I am saying if you have a maximum of eight employees. Right now we are in a situation where some of them car pool together.

**Councilmember Zahner Bailey:**

Right, so you might have eight employee vehicles.

**Kirk Smith**

Say we have eight different employees and they do not car pool together, you might have eight vehicles there and at our max peek season, you may have three commercial vehicles plus the eight in the morning time.

**Councilmember Zahner Bailey**

I am just looking for that maximum is so we can define it, so I would as the maker of the motion to consider including those parameters that would meet this applicant's business requirement of a maximum of eleven vehicles and eight employees.

**Mayor Lockwood**

I would jus like to state my opinion. I see where you are going but the problem that I have and especially in today's climate and anybody's business, sitting on this side of the table and dictating exactly how many employees or how many trucks come and go, because you may have fifteen trucks one day and may not have any during the winter or whatever, so I personally have a problem with trying to dictate the number of employees or whatever. I think that what dictates that is the size of the property, the structures you have and the size of the building there.

**Councilmember Zahner Bailey**

If I may ask staff, if we do not have a number of trucks limited, is there anything based on what is currently before us that would limit, whether it be this applicant or somebody in the future that would preclude twenty five trucks being parked on this parcel?

**Community Development Director Wakefield**

Well, they cannot be parked on the grass. They would have to be parked in the parking lot.

**Councilmember Zahner Bailey**

And if they have gravel other than those twelve designated spots, could somebody conceivably, and again not for this applicant, trying to understand the concerns of those adjacent properties, could this conceivably without a condition that specifies number of trucks, could it be unintentionally utilized for more intense use than these gentlemen intend to use it for?

**Community Development Director Wakefield**

Not a more intense use, you could have more trucks there because the way the condition is for, a wholesale mulch distribution business, but they could conceivable have more trucks there.

**Councilmember Zahner Bailey**

And that is all I am trying to do is to make sure that we do not have an intended result, not from this applicant, but if this applicant were to sale this land, I am assuming that you gentlemen own the land.

**Kirk Smith**

That is contingent upon this right here.

**Councilmember Zahner Bailey**

So you do not actually own it currently.

**Kirk Smith**

It is a lease purchase, contingent upon this because without this we cannot work there so there is no point in purchasing it.

**Councilmember Zahner Bailey**

I understand, so you do not own the land currently, but regardless, assuming that you would own the land, obviously a special use permit is associated and tied to the property itself, so if these gentlemen were to eventually sale it to someone else, what I hear our staff saying is that there is nothing in this condition that would preclude a maximum number of trucks and that is the only reason I asked for a reasonable condition of zoning that would state that there would be no more trucks than x, so we do not end up with an unintended consequence.

**Mayor Lockwood**

Ok, moving forward, we do have a motion and second. If the motion maker wants to continue with this motion, we can vote on this and if it does not pass, we can add these conditions.

**Councilmember Hewitt**

I am comfortable with the motion as stated.

**Vote:** There was no further discussion. The motion passed unanimously 6-0.

**Mayor Lockwood**

Thank you guys and good luck in your business. Will the City Clerk please sound the next item?

**City Clerk Marchiafava read Agenda Item 08-685:**

**RZ08-09 - To amend Article 22, Appeals of the City of Milton Zoning Ordinance.**

*First presentation on this item was October 6, 2008.*

**Community Development Director Wakefield**

This is a text amendment to article 22, appeals as was stated. This came out of a Council Work session on June 9, 2008. Council heard presentation from the City of Milton's zoning appeals board related to their recommendation, possible modifications to article 22 appeals and to Chapter 14, development Environmental protection within the code of ordinances as it relates to the variance process.

The Mayor and City Council informally supported the recommendation and gave direction for legal council and staff to make the necessary ordinance changes for adoption. This matter was presented to the planning commission and they recommended approval with some minor modifications. Staff's recommendation is also approval and we also have some amendments that we would like Council to consider and with that said Robyn MacDonald will give a more detailed description of those changes.

**Senior Planner Robyn MacDonald**

Good evening again. This is a text amendment that was initiated back in the spring and early summer. We took into consideration the recommendations that came out of the work session as well as suggestion from the Board of Zoning Appeals, so here we are tonight looking at it for a final recommendation by the Council. I will go through this, it is not to long of an ordinance, but I will go through the changes we made.

First of all it is to allow the Mayor and Council to hear and decide stream buffer variances when they were concurrent with rezoning use permits or modification requests. That is reflected on page 22 -1, where we added 22.2.1C that takes that into consideration. We have also along the way, this article has never been amended or looked at since we approved it back in 2006, so we are just cleaning up typos, changing different titles and organizations to the appropriate one, so it will be peppered throughout.

Secondly, it says to allow the Mayor and Council to hear and decide variance from any zoning ordinance provision that involves more than five lots or more than ten percent of lots in a subdivision, whichever greater, which was the original recommendation. As it was reviewed by the planning commission, they recommended that you all hear those variances that involve more than five lots but basically deleted the part of it, for instance on 22-2, at the top of the page D, or more than ten percent of lots in a subdivision, whichever is greater. Basically they felt like it would be under the community development director's decision to decide what would go before Council. Say if it was a variance and it had more than five lots, then first of all we would probably recommend that it be a rezoning to CUP or whatever applies and anything less, I guess what I am saying is that if it was five lots and it was a ten lot subdivision then we would probably recommend that it come back as a rezoning and not as a variance, so that would take care of that five lot, but if you had a hundred lot subdivision and they wanted to do four lots, we would go ahead and allow the Board of Zoning Appeals to hear that. That is our recommendation.

In 22.22, the same page B, the Board of Zoning Appeals, we added, to hear and decide applications for stream buffer variance request referencing Chapter 14, Article 6, Section 5 of the Milton Land Development City Code that are not concurrent with the rezoning use permit or modification, so basically the Board of Zoning Appeals will have the purview over those variances that are not concurrent with any other request, so that is different than what Chapter 14 now reflects. Right now Chapter 14 reflects that all stream buffer variances be heard by the BZA, it seemed to be the pleasure of Council as well as the Board of Zoning Appeals to make them concurrent to those requests.

In regards to, as we skip over to 22-4, variance considerations, there was a, you see in blue, the recommendations originally by staff based on the June 9<sup>th</sup> work session that was recommended in part by the BZA and with your discussions, that is reflected here. The planning commission recommended that on the next page under D, that or after be deleted. Since the point of time of the planning commission the staff has been mulling around this consideration and we do have some suggestions for this. Basically we felt it would be very cumbersome for many people to try to come before not only the Board of Zoning Appeals, to understand that these considerations also affect concurrent variances and modifications. There is another reference in the ordinance that says that 22.3.1 also refer to concurrent variances. Basically, any kind of variance coming with a rezoning would have to meet all of these as well and it was our opinion that it would be very difficult for many people to even start to come before the Board of Zoning Appeals or even to you to try to request a variance whether it be a variance of modification. Staff recommends after further review that instead of the word and after each letter, that it be changed to or. At the top, variance considerations, 22.31, on page 22-4, it would say, a variance must be based upon credible evidence submitted at a public hearing before the Board of zoning Appeals demonstrating at least four of the following, and then we list them and then say or instead of and as well as putting back the relief if granted would be in harmony or could be made to be in harmony with the general purpose and intent of the zoning ordinance. Again to give a little bit more flexibility to the variances to be considered.

Also as a side note, accidentally, I forgot to include the sign consideration which originally in the old version was, conditions resulting from existing foliage or structures bring about a hard ship whereby a signed meeting minimum letter size square footage and height requirements cannot be read from an adjoining public road, so whether you decide to pursue these changes as recommended by staff, this paragraph referring to sign ordinances need to be put back into the text, because it was my omission of that.

**Councilmember Zahner Bailey**

When you are reading that, are we seeing that in this current document?

**Senior Planner MacDonald**

No you do not.

**Councilmember Thurman**

Where exactly did that go?

**Senior Planner MacDonald**

That would go as H and if you did approve it, G would be the relief, the harmony considerations. I do have a version of it that I can distribute to you if you would like, although I did forget the harmony portion of it, but the majority of it is there.

**Councilmember Zahner Bailey**

Are you considering the harmony one of the four?

**Senior Planner MacDonald**

Correct.

**Councilmember Zahner Bailey**

Again that is different than what we had discussed previously?

**Senior Planner MacDonald**

Yes. Again we are bringing it up for your consideration to look at. G would be the relief harmony issue. Relief if granted would be in harmony or could be made to be in harmony. H would be conditions resulting from existing foliage which is the old sign consideration. Eventually we are going to go back and take that out and put it into Article 33, the sign consideration, because we really need to take it out of this so it will to be in jeopardy if we were ever sewed over signs, so that is a clean up for future, but we need to keep it there for now because we do have variances in the hopper regarding signs.

As you go on to 22-6, under concurrent variances, again we have just corrected some verbiages but then 22.9.1, we have added variance considerations for stream buffers because if you can understand, and we will look at it later but in Chapter 14, there is different and separate considerations for stream buffers. Stream buffers should not have the same considerations as what we just discussed no matter what forum that you eventually take on, but Chapter 14 of the City Code, these are the considerations that are used for the BZA to consider and if you would ever concurrent stream buffer you would need to use these considerations in your discussion and recommendation. They are ABCDEF, right there that has the pink highlight so that is, we are basically copying it from over Chapter 14 to make it consistent with either whether it goes to the BZA or a stream buffer comes before you.

**Councilmember Thurman**

Is this the same wording?

**Senior Planner MacDonald**

It is the exact same verbatim wording. We did not mess with it or change it or anything.

**Councilmember Zahner Bailey**

I do not know if we want to talk about it Mayor, or do we want to get through the presentation and then have some discussion?

**Mayor Lockwood**

I would say we continue with the presentation, then we will discuss it further.

**Senior Planner MacDonald**

They wanted it a little bit more tougher. To only consider variance requests as part of or in conjunction with. Also to change on the next paragraph B, if application for a variance is BZA duplicates a concurrent request denied by the Mayor and City Council, such an application shall not be accepted by the Director of Community Development prior to the expiration of twelve months from the date of the Mayor and City Council's denial, so that is just being consistent with a rezoning petition that would require the twelve month wait. I am sorry this is really boring but it needs to be done.

Again many of these things are just corrections to the text and nothing substantial. If we go on to 22.13.10 under decisions, the planning commission and staff concurs with this, to change the following recommendations, possible recommendations on E, approval to withdraw, not just withdraw, just being really more specific, because obviously the applicant would probably want to ask for withdrawal and then it would be approval to withdraw. Not that they would unilaterally tell them they would have to withdraw. We changed, this was the funny part, instead of the tenth addition of the Merriam Webster Collegiate Dictionary, it is now the eleventh addition.

The next page, 22-14, 22.13.13, reconsideration of denied applications, I want to make a swap with what you have before you so A would read now, at least twelve months has lapsed from the date of the decision or B, new information pertinent to the subject not previously considered is submitted by the petitioner and the six month period is waived by the hearing body.

**Councilmember Lusk**

Are you saying in A, at least six months has elapsed or twelve months?

**Senior Planner MacDonald**

Twelve and then six months for B. After much discussion with the planning commission, 22.13.14, at the top of page 2215, they had a little bit of heart burn of how that was stated so one of the attorneys on the planning commission came up with this version and the City Attorney is in agreement with it, so that was just a swap out of some wording. Basically they felt we could not make the superior court serve us so it was changed and nothing super drastic, but just to be specific. We also added appeals of decisions, secondary variances, this is interpretation, so we added that secondary portion of it. That should be it for that piece. That is staff's recommendations and presentation.

**Mayor Lockwood**

At this point if there are any specific questions to Ms. MacDonald and then we will have public comment on this.

**Councilmember Zahner Bailey**

I will try to capture these quickly but please bear with me if there is some that I forget because of the fact that we have some new information that we have not seen before. First of all I guess I will start with just the concept of stream buffers and Mr. Jarrard this may also end up being a question for and/or Robyn and Alice, because obviously we have been through this and we have gotten input of the BZA. I just want to make sure the intent and the discussions we have had are consistent with what I have read. Right now the way I read it, it says that a stream buffer has to be concurrent with the rezoning or special use permit.

**Senior Planner Robyn MacDonald**

Where do you think that says that?

**Councilmember Zahner Bailey**

In a couple of different places.

**Senior Planner MacDonald**

On our proposed, yes.

**Councilmember Zahner Bailey**

It would seem that there are situations where we might not have a concurrent variance coming at the same time as the rezoning and I spoke with Ms. Wakefield this but I will just for the record try to explain and make sure that I am still being clear. Is it if you have a rezoning that comes before us or a special use permit and at the time it comes before us, a stream buffer is not requested, either because the stream was not identified or there was not a request for such. Lets say that this body approves a rezoning or special use permit that is site specific. Six months, twelve months, three years from now that same applicant comes back to staff and request a variance. It would seem to me that because that stream buffer is specific to a rezoning or special use permit that has been before this body that would need to come back to us as a site modification as opposed to it being a variance to go to the BZA, because it was specific to a rezoning or special use permit. Could you comment on that Ms. Wakefield?

**Community Development Director Wakefield**

Yes, that is a discussion that I have had both with Mr. Jarrard and with Robyn. It would be my position, if you have a rezoning or use permit and it is condition to a site plan and you discover whatever time from now that there is a stream on the property so you need a stream buffer, I would direct the applicant to seek a modification with a concurrent variance for stream buffer. Mainly because it is site plan specific and that site plan would need to be modified to show the stream buffer instead of going directly to the BZA. Now I will say and we have talked about this to, just so you know, there will be situations like with property that is zoned AG 1 where there is no need for zoning that stream buffer would go directly to the BZA.

**Councilmember Zahner Bailey**

I appreciate that clarification because when I read this it was not clear to me in those instances and I know intent is to try to clarify both for the BZA members as well as for this board and also most importantly for the applicant so it becomes more clear. Mr. Jarrard and staff, do you believe that maybe we could clarify that a little bit more so that example is not left for interpretation later?

**City Attorney Jarrard**

Council could certainly do that if they want to and could add that language.

**Councilmember Zahner Bailey**

Ms. Wakefield, based on the fact that you mentioned that you would see that as a modification and if that is not expressly spelled out, could you help us identify how best to language that within this document?

Maybe not right here, we may have to do it separate from this evening, so I would ask us to consider that. The other thing just as term concurrent variance, and knowing we just outlined one example, the other example that strikes me is what happens, and I wrote this down, kind of in the reverse when there is a stream variance request that goes to the BZA and there has not yet been rezoning or special use permit, so an applicant goes and ask for a variance and yet they then come and do it in reverse and then come to this body for rezoning or special use permit within six months, or some time frame, is there anything within this document, because I think the intent at one point was that we wanted to also capture that instance, is there anything in this document that helps us to capture that together so we do not have divided decisions.

**Community Development Director Wakefield**

Maybe Mr. Jarrard can help me. I am not sure how you would capture that because you have created a situation where you have two bodies that can grant variances but in the situation of rezoning, only the City Council can grant a rezoning, so it is unlikely but it could conceivably happen that someone would get a variance form the BZA, say for example again AG 1, they get a stream buffer variance and maybe a couple of years, maybe the new

or existing owner decides he wants to do a more intense use or he wants to do a CUP where he can tailor the setback, then he would have to come to this body and he would still benefit from the variance that was granted by the BZA. I do not know how you prevent that.

**City Attorney Jarrard**

It gets interesting. Ms. Wakefield and I were talking about this earlier, when someone comes in and seeks a variance, typically it is because they have a development in mind and typically they do not sit on a variance. I have not found many applicants that come in and seek a casual variance for the next five or ten years. They come in with a land disturbance activity in mind, so the scenario you are talking about would be someone coming in and seeking a variance and then turning around and seeking a rezoning of their property, after they just got a variance. It could happen, it just seems like that would be a cumbersome way to accomplish things.

**Councilmember Zahner Bailey**

The reason for the question is when we originally went down this path of discussion, part of what we were trying to do I believe, both the BZA and ourselves was to make sure we removed any unintended consequences or that we effectively improved the process and what I think we wanted to do in that example was to make sure we did not create a situation where someone could misuse the system, quite candidly and I think we had some discussions, either work sessions or before Council that if a BZA stream variance goes before the BZA, we had talked about having a time frame that that same property then could not come forward for rezoning for a period of time. Very similar to what the laws have in place in different cities with regards to clear cutting for timbering as an example, that you cannot timber a parcel with the supposed intent of timbering and then as soon as you clear cut, come to a body for rezoning and claim that, oh well I do not have any trees to recompense.

**City Attorney Jarrard**

I have seen regulations that say you cannot seek rezoning for three years after you clear cut.

**Councilmember Zahner Bailey**

I am just using that as an example. It would seem that if our intent is to clarify the process and make sure that we do not have any, not that anybody would ever try to misuse our processes but knowing that that could conceivably happen it would seem that we have an opportunity to just rectify that here and I would ask that either Mr. Jarrard or Ms. Wakefield would have a suggestion for what that time table would be and again that is consistent with discussions we have had prior to this evening. I just did not see that captured in this document.

**City Attorney Jarrard**

So the thought would be that if someone seeks on a particular piece of property a variance and gets a variance, there would basically almost be a foreclosure of the right to seek rezoning on the property for a certain period of time?

**Councilmember Zahner Bailey**

I think that just as a time specific, just make sure that if their intent is to really rezone it, then they need to come for that variance as part of that land use disturbance and part of a true rezoning and if it is a reasonable time frame, effectively it is just eliminating the misuse of the BZA and this body, so it effectively forces a stream buffer tied to a land use rezoning to come before the appropriate body.

**Mayor Lockwood**

Have you ever heard of that before in this kind of situation, Ms. Wakefield?

**Community Development Director Wakefield**

Not in this type of situation. It almost sounds like reversions but in the reverse.

**Councilmember Zahner Bailey**

I think that the difference is that here we are trying to segment and decide when is a variance if it is stream specific go to the BZA versus those that come here and we could keep it very simple, it is just to make sure we do not end up with a bifurcated process. Let's just say I have a stream on my property. I know that ultimately I want it rezoned but I know to get it rezoned and to get density, I am going to have trouble with that stream, so I first go to the BZA, I do not mention that I am going to get a rezoning and then within a couple of months, I get that variance and then I come here for rezoning. There is nothing in this process that would preclude that from happening.

**Community Development Director Wakefield**

Here is the difference that I see. I do not see the BZA granting a stream buffer variance just to vacant property. That property owner or developer is going to have to come in with some site plan justifying why he or she wants the stream buffer variance and I am not....

**Councilmember Thurman**

On my twelve years with the Fulton County BZA, I do not ever remember anything like that ever happening. We would never have granted a variance when there was not...

**Mayor Lockwood**

It sounds like Councilmember Bailey is looking for a time number, but let's keeps moving through the questions.

**Councilmember Zahner Bailey**

With regards to harmony, I guess 22.3.1, right now this language does not include reference to harmony. If I recall correctly, we have a lot of discussion about this in different sessions and I think even the BZA had recommended that harmony be removed.

**Senior Planner MacDonald**

That is correct.

**Councilmember Zahner Bailey**

I am hearing tonight that it be reintroduced and I am concerned about reintroducing it because I think what we heard from our BZA members as well as from our City Attorney was that that term harmony is very subjective and I think if I recall the input from our chairman from the BZA as well as those members that have been before us was that the removal of harmony helped to make this process more objective. Mr. Jarrard, if you would like to comment on that, I believe that was something you had provided us input on before.

**City Attorney Jarrard**

My concern is that the way this ordinance is drafted is that harmony can serve as an independent unilateral basis for a variance. I had never seen that before and thought that was odd. That was my concern.

**Councilmember Thurman**

Ms. MacDonald, would you all be willing to put that statement in the beginning and have that be an and after that statement and then everything else be or.

**Senior Planner MacDonald**

Correct, or it can be an or too. I think we intended it to be an *or*.

**Councilmember Thurman**

I think we want the harmony to not be by itself the only reason, so if you have an and after, put that first and then have an and, and everything else has an or, so you know it has to be in harmony but it also has to meet one of these other.

**Senior Planner MacDonald**

What we are proposing is at least four of the following, so you would not even have to have the harmony part.

**Councilmember Thurman**

I think it still needs to be in harmony, but harmony does not need to be one of the four, it needs to be in harmony regardless and then four of the others after the harmony.

**Councilmember Zahner Bailey**

If it is not in harmony it should not even be considered.

**Councilmember Thurman**

Right.

**Mayor Lockwood**

Is staff ok with that?

**Senior Planner MacDonald**

Yes, we are fine with that.

**Councilmember Zahner Bailey**

Maybe in that same discussion, on the other side of that pendulum, did I miss language referencing hard ship, because it has always been my understanding that BZA variance had to be a hard ship and that it cannot be a self imposed hard ship.

**Community Development Director Wakefield**

It is item B.

**Councilmember Tart**

Which they are now proposing to be one of four criteria.

**Councilmember Zahner Bailey**

First of all in B I do not see the word hard ship. Maybe that is just me.

**Senior Planner MacDonald**

It is on the fourth line.

**Councilmember Zahner Bailey**

I do need reading glasses. I have been resisting but I will get some. If that is not a requirement, it can be one of the four, what that says to me is that the hard ship, it does not have to be a hard ship if it is no longer an and. It could be five, six or seven. There could be four other things. In other words it would not be a hard ship.

**City Attorney Jarrard**

That is right. That is what is being proposed.

**Councilmember Zahner Bailey**

That is what concerns me. It has always been my belief that hard ship was one of the very basis of a BZA variance. Personally I am concerned about removing hard ship as effectively as a requirement. I think it becomes too subjective. This is the first time I have seen that as an option. I would not be prepared to be able to support that because I think hard ship has always been a foundation of the variance. Forgive my, but I am just trying to get through all of my notes as we have gone through some new things that we had not heard before this evening.

**Community Development Director Wakefield**

If I may, and I think we had this discussion, the reason we went back and forth and around and around on this from staff's perspective is that we did not want to create a situation where homeowner x buys a house unbeknownst to that homeowner that house is in a setback and when he gets ready to sale it and with a good title attorney, discovers that there is a problem, there is two remedies, tear the house down, seek a variance. If that homeowner has to try and meet everyone of these considerations, the BZA would hard pressed in granting a variance.

**Councilmember Zahner Bailey**

Along that same example, wouldn't the fact that it was built in the setback, could that not meet the criteria of a hard ship because that homeowner did not build the house. If I buy a house and it had not been conveyed to me and I go to sale it and maybe Mr. Jarrard maybe this is a question for you.

**City Attorney Jarrard**

I do not know that would necessarily meet the definition. The definition as propounded by the BZA talks about exceptional or extraordinary conditions on the property, more than just a mere mistake by a title attorney. You are talking about an unusually shaped piece of property, or something like that so I do not know that scenario would necessarily lend itself as a variance under the criteria as proposed by the BZA.

**Councilmember Zahner Bailey**

In that case, what other remedies are there? I guess the converse of that is that if you suddenly in that one example say well now lets open it up there are some other unintended consequences that would come out and I guess that where I am headed with this, is it sounds like we still maybe need to work a few of these things out just to make sure we are capturing the BZA's intent and the legal intent and maybe some new things that staff has identified that we have not really had a chance to review before tonight.

**Councilmember Thurman**

I will tell you in my experience at Fulton County, we probably had at least eight or nine times a year a house that had been built in the setback, twenty, thirty, forty years before so that is not an isolated thing. That was almost a monthly thing.

**City Attorney Jarrard**

Let me offer up this too, if you apply strictly every bit of this language, you could talk yourself out of ever giving a variance for anything, but what I have seen historically is that it is just difficult for these boards to apply this verbatim. Typically, a more compelling example like that tends to get a little more flexibility in the interpretation.

**Councilmember Thurman**

That does not mean they approve these that meet the criteria, it just means that they can. We are giving them the discretion that if they meet the criteria and they think it needs to be, I think we need to trust the BZA.

**City Attorney Jarrard**

Extraordinary and exceptional is the kind of language that can be in the eye of the beholder.

**Councilmember Zahner Bailey**

Again, I do not want to remove the language that the BZA helped to create and I am just concerned we may be moving away from some of the recommendations that came to us and I think our intent was to try to capture some of their suggestions along with what our City Attorney was suggesting, so again I have pause if we start to remove hard ship. I think as Councilmember Thurman just mentioned, the language does give them some flexibility as they interpret some of those. In terms of notification, Section 2213.9 and we have not talked this yet, but when I read this, what struck this was it may not be consistent with some changes we made to public notification for other remedies and rezoning. I would propose it would be consistent with our intent to have consistent involvement and notification to the public so I would ask that we make section 2213.9 consistent with the changes we also made for zonings and in other notifications.

**Senior Planner MacDonald**

You are correct that they are inconsistent but up to this point there have been no suggestions of expanding the notification of areas.

**Councilmember Zahner Bailey**

My suggestion would be that we make it consistent with the intent of clarifying and keeping it simple. I think it were consistent, especially in the realm of notification we give our citizens the opportunity to know what is going on, so I would ask for that.

**Councilmember Tart**

If we say consistent with changes to zonings and other notifications, would staff know what we are talking about?

**Senior Planner MacDonald**

Yes, basically the primary item would be the mailed notification right now on page 2212 on three it just says the fifteen days prior is the same, but it says to be give by regular mail to all property owners within three hundred feet of the boundaries of the property appear on the current tax records of Fulton County as retrieved by the GIS and that probably should say tax assessor. I will change that to reflect the tax system.

**Community Development Director Wakefield**

It would also be at least seventy five notices.

**Senior Planner MacDonald**

Right and that is what I was about to say was in the rezoning and use permits, we go at least seventy five notices. Again with the BZA it could be ten and we just sent out one adjacent to the Sembler group and because of all the condominiums, it was two hundred fifty so again it is dependant on the location at this point and time. We can change that to be consistent but that is basically...

**Councilmember Zahner Bailey**

I think there was a distance and also up to seventy five.

**Senior Planner MacDonald**

Right it was, I think five hundred. I will make it consistent.

**Councilmember Zahner Bailey**

Again the intent is that we want to make sure we are notifying our constituents.

**Councilmember Tart**

What is the seventy five for?

**Councilmember Zahner Bailey**

Up to seventy five so you might have gone five hundred but if you only captured another two people you would have to go further out and mail up to seventy five.

**Senior Planner MacDonald**

Yes, you have to keep on going further and further out until you capture seventy five and many times in the lower density areas you can go out one thousand to fifteen hundred feet.

**Community Development Director Wakefield**

I will point out because I feel it is my duty to point this out is that increases the cost of notification significantly. Just letting you know that.

**Mayor Lockwood**

Ok, that is something to consider.

**Senior Planner MacDonald**

I believe that is the only thing that affects it as far as being consistent.

**Councilmember Zahner Bailey**

One other question for Mr. Jarrard, on section 2213.6 under legal action, if you can just clarify and this has come up from different citizens over the last two years and even prior to becoming a city, questions about the process by which if there is a parcel, either that is an illegal use or a sign or something where code enforcement has gone out and noted a citation, currently I believe our process is that we allow our remedy whether that be to the BZA or to rezoning until that is decided that that activity can continue, just as a matter of course because I have been asked the question by citizens, I wanted to bring that up for discussion, would there ever be a consideration to modify that to address the concerns of citizens in that instance?

**City Attorney Jarrard**

Yes, that is not an A typical provision. That language is in a lot of zoning codes, but it just depends on how rigorous and tough you want to be in the enforcement. Obviously there are some requisites of course and this is talking about areas that could be varied so there is automatically some limiting within that, because what you are talking about is someone for instance who gets cited or gets in the cross hairs for some sort of regulatory punishment if you will whether it be a citation or what have you and while the case is pending, they seek a variance and of course under this rule the enforcement process stops while that continues along its path. That is not a typical but if the city wanted to remove that you could and allow the prosecution or the regulatory action to move forward while that would be pending. That would result though in now two parallel tracks of enforcement at the same time and you might want to think about it from the stand point of a resource allocation stand point. Do you want to simply focus on the one? Does it make more sense trying to get your citizenry to be in compliance or is the punitive measure more important?

**Councilmember Zahner Bailey**

Is there any measure that is about between the two where you have some sort of time period where you give the opportunity to cure, but if they have not cured it in x period, the enforcement continues. Again I think there is some examples where it has been misused. I think citizens have raised the concern and I felt obligated to bring it up for consideration. I do not know the answer, I just wondered if there were some options.

**City Attorney Jarrard**

It is a good question. Obviously you want to have a nice balance between... At the end of the day what jurisdictions want is compliance. It is not about being punitive, not really. So this obviously puts a little bit of a

thumb on the scale toward the compliance but then again you do not want to be abused either and I understand that.

**Councilmember Zahner Bailey**

Would there be any suggestions that you could offer up that would give us a balance where you are kind of finding that middle road that would give both parties, the citizens that may feel it is being misused and the applicant some time?

**City Attorney Jarrard**

Quite frankly, as soon as they are identified as having a problem, are they given some kind of notice and asked to take affirmative action?

**Community Director Wakefield**

As soon as there is a notice we go out and issue a notice of violation. Within that notice you are given three days to take some sort of action. Some comply with the notice. Some ignore it then they are issued a citation and they go to court. A lot of them, once the violation is discovered come in and seek the necessary variance or the necessary rezoning. The concern that I would have, to try to pursue this on two tracks is that if you issue a citation and you go before the judge and the violator tells the judge, well I am before the BZA on such date seeking a variance, the judge is going to stay the action anyway, so end up doing what is stated here anyway.

**Councilmember Zahner Bailey**

I guess the example I would have, would be if the applicant does not pursue either the BZA or rezoning or special use permit within a reasonable time frame and they keep saying, but I am going to, because I think we have some examples out there now where that is the case and there does not seem to be a specific time frame. I just wondered if there was a way to say within, if it is within three days, but then you give them the opportunity to get to that next cycle then if they miss that next cycle...

**Community Development Director Wakefield**

We issue the citation then.

**Senior Planner MacDonald**

I work closely with Issac. We work together day in and day out talking about issues that come up and the applicant or the violator will contact me and I will tell them, this is what needs to happen and sometimes it does take a month or two to get all of their ducks in a row to get the application in but we do try to really be on them. Sometimes I have to pull code enforcement back, like I have talked to them, they are working on it, do not hound them anymore. I feel like they are really doing the best they can to get things together, and then other times they are obviously just breaking the rules and not cooperating, then he will go out and give them a citation.

**Councilmember Thurman**

Are you comfortable with the wording as it is?

**Senior Planner MacDonald**

I feel like we pursue things and I think we are at a better shape then when it was unincorporated because we have better resources and we are out here and see things and things get addressed pretty quickly overall.

**Mayor Lockwood**

What I would like to do now is go into public comment and once we close the hearing we can discuss this a little more.

**Jahnee Prince**, 6500 Sugarloaf Parkway, Duluth, Georgia:

Good evening Mayor and Council, I am with the Council for qualify growth, we work throughout the region. I cover North Fulton, I know you know this, you have seen me here before. I wanted to talk to you just a little bit about the variance criteria. Robyn sent it to me and I want to commend her on her work. I think it is really good that you keep this flexible, because you do not want to paint yourselves in a corner on something that does not pass the so what test. I know you know what kind of thing I am talking about, you mentioned some of them. On the variance criteria, I think adding in the ors is very important and I also think the addition of the harmony section is important, but I think what is also important to have in that harmony section is a piece that says that it does not undermine the intent of the ordinance and I think that is what is key, so if you can keep this as flexible as possible and not limit yourselves on the number of provisions they have to meet, so long as it does not undermine the intent of the ordinance, it passes what I call the so what test and it is in keeping with what you are trying to do so you are going to want to keep this as flexible as possible for your BZA and for yourselves when you do concurrent variances.

On the stream buffer variance, there is something I would like for you to consider and I have not mentioned this to staff, Cobb County has a buffer averaging program that works very well. It is accepted by EPD and it reduces the number of variances that you have to have so the way that works is if you have some conditions on the site where you may need to have a smaller buffer in one place. You compensate that with a larger buffer just a little bit on down the stream. It all works out in the end. Fewer variances, everything is smoother. You may want to look at that, if you do I can provide contact information.

**Councilmember Thurman**

Is there still a minimum buffer that would have to be met?

**Jahnee Prince**

There is the state's minimum. You cannot go into that but sometimes you have a site, you know how it is, it is always the topography that necessitates a variance or redevelopment site, so if you look at that buffer averaging program it works really well. It makes you have fewer variances. It sounded to me like there is still more work to be done, so I respectfully request that you defer this item and let staff work on it a little bit more and if I can help in any way please let me know. Thanks

**City Clerk Marchiafava**

That completes public comment.

**Mayor Lockwood**

The public hearing is now closed. First I just want to say, I am a little confused. I talked with staff, I talked with BZA members. I talked with our City Attorney and I am hearing a lot of discussion here. I would certainly it might be prudent if we asked our staff and City Attorney and possibly representation from the BZA and whoever else to consider the discussion we have had here tonight and come back to us with a more defined recommendation. That is my thoughts.

**Motion and Second:** Councilmember Lusk moved to defer agenda item 08-685. Councilmember Thurman seconded the motion.

**Councilmember Zahner Bailey:**

Can we be date specific?

**Councilmember Lusk:**

What is reasonable, Robyn or Alice?

**Councilmember Tart**

Is there a BZA meeting between now and the December meeting?

**Community Development Director Wakefield**

Tomorrow night. Given the holiday, January may make since. If the expectation is that we consult with the entire BZA and not just the chairperson then it is probably going to be January.

**Mayor Lockwood**

I would rather have enough time so it will be real clear cut.

**Councilmember Zahner Bailey**

Mayor, may I ask a quick question? In the process of deferral because it seems like there may be some significant changes, would the process, I am assuming the City Attorney would be reviewing it for legal measures after staff makes their recommendations, would it go back to the planning commission?

**Community Development Director Wakefield**

That is entirely up to this body.

**City Attorney Jarrard:**

It does not have to.

**Councilmember Zahner Bailey**

Could you at least seek their inputs because this has been something they have provided input.

**Councilmember Tart**

Especially in reference to the variance criteria.

**Councilmember Zahner Bailey**

I think we need to give them consideration since they have given this document consideration.

**Councilmember Tart**

That is a drastic change from what came out of the BZA to what the planning commission agreed to and then staff went back and changed it to all ors. That is a significant change than what was proposed.

**Councilmember Zahner Bailey**

I just wondered process wise if it needs to go back. Either way regardless of whether we formally take it back to them, I would request the planning commission has an opportunity to review it.

**Mayor Lockwood**

I think if they have addressed it you can look at the items they addressed again. I have a motion by Councilmember Lusk and a second by Councilmember Thurman but we were considering changing that motion to add the date.

**Motion to Amend:** Councilmember Lusk moved to expand the motion to revisiting this item until the second regular meeting in January 2009. Councilmember Thurman seconded the motion.

**Discussion on the Motion to Amend:**

**Councilmember Tart:**

Just as a point of clarification for me, as far as it going back before the planning commission, what did we just determine? What did we decide on that?

**Community Development Director Wakefield**

We will take it back to the planning commission was my understanding.

**Mayor Lockwood**

Is there any other discussion?

**City Attorney Jarrard**

To facilitate me helping staff, are the primary points for us to revisit, are obviously the global variance considerations that we went through this evening. I know the public hearing section we talked about with Robyn. Councilmember Zahner Bailey, you talked about the legal action having been stayed. There were a lot of things talked about and I want to make sure that I am not jousting at windmills here and actually know what we are looking at.

**Councilmember Tart**

The other thing that I had in mind was the inclusion, I am not sure where the most applicable place would be but the inclusion of, again I am not sure where it needs to go but if a rezoning request comes before the City Council and it does not contemplate a stream buffer and then a certain time frame later, whether that be twelve month, twenty four months, thirty six months later, they come before the BZA and ask for a stream buffer. That needs to be considered as a site plan modification. Ms. Wakefield said that it would be we need to put it in here because that has actually happened before where our Community Development Director had a different interpretation of who it should go to.

**Mayor Lockwood**

I would also like a very unbiased opinion on staff's perspective on this. Taking into consideration all these points that were brought up tonight. Hearing no more discussion.

**Vote:** There was no further discussion. The motion passed unanimously 6-0

**City Clerk Marchiafava** read agenda item 08-682.

**An Ordinance to Amending Chapter 14, Land Development and Environmental Protection, of the Code of Ordinances for the City of Milton, Georgia.** (First Presentation on October 6, 2008.)  
**ORDINANCE NO. 08-11-29**

**Community Development Director Wakefield**

This is an amendment to Article 14 of the code of ordinances, land development and environment protection. This ordinance is basically in two parts. There are amendments to the section of the ordinance dealing with stream buffer and it is necessary because of what is being considered as part of Article 22 of the zoning ordinance related to stream buffer variance. The second portion of it deals with those changes that we have to make in order to be in compliance with state regulations and also in compliance with our LIA certification and this is an effort to move us toward and MOA so we can do our own reviews. Robyn is going to give the detail.

**Senior Planner MacDonald**

What the original was, to basically allow the concurrent variances to be heard before you and that is indicated on page 59 in the middle. It is number 3 and it says when a variance request is concurrent with at rezoning use permit or modification application it shall be considered by the Mayor and City Council and shall follow the process contained in Article 229 concurrent variances of the zoning ordinance. If you go on to page 61 toward the top there is a new roman numeral of five that says that any variance approved shall be site plan specific. That was something that was discussed back at the work session and wanting it to be specific to a site plan so if somebody came back and needed another variance, or that they would need to come back and ask for another variance or

modification of that variance, if their site plan changed. As far as the variances, that is the only changes we made and the rest of the changes was done by our engineering section of community development. As Alice said to be consistent with the state model ordinance as well as basically when we submitted our paperwork of the LIA which is a local issuing authority and we have that but when it was submitted there were many edits done by the state saying you need to change this in your code so that is what is prompting all of these changes. In discussing it with Alice, even though you want to defer the concurrent variance issue with the stream buffer we request that you go ahead and approve the changes that would reflect the model ordinance of the state to be consistent with us going on to apply for our MOA. I will not bore you with all of the changes that were done but again these changes are done based on the state recommendation. It is not something that is arbitrary that we just decided to change them that way.

**Mayor Lockwood**

Are there specific questions for Ms. MacDonald?

**Councilmember Zahner Bailey**

Based on what you are indicating if we approve this, would we be approving it without the language referenced in that first section?

**Senior Planner MacDonald**

Correct, until we resolve everything.

**Councilmember Zahner Bailey**

So that language would not be part of what we would be approving. We just would not change that portion.

**Senior Planner MacDonald**

Correct. We did the similar thing to Highway 9 where you chose to change other things and leave other things alone.

**Councilmember Zahner Bailey**

Quick question on page 77 of 103 and I think you addressed it but I am going to ask the question to make sure I am reading it correctly. Where it talks about the stream buffers, and a buffer shall not apply to the following land disturbing activities, and it talks about some exceptions where that would not apply, is that at state requirement?

**Senior Planner MacDonald**

Yes it is.

**Councilmember Zahner Bailey**

Ok, and do we have any option other than to include that language?

**Community Development Director Wakefield**

I think you have the option, it does not eliminate the exemption because the state would rule.

**Councilmember Zahner Bailey**

As an example, because this is supposed to be minor exceptions, when I look at that language, what struck me was that there was some exceptions with the stream buffers. Things like sewer pipes and other land disturbance activity, what is the distance of those exceptions? Can it be a mile? Can it be two hundred feet?

**Senior Planner MacDonald**

I cannot imagine it would be more than the width of the buffer is. If it is a seventy five foot buffer then...

**Councilmember Zahner Bailey**

You can encroach on that buffer as an exception for what distance?

**Senior Planner MacDonald**

I think the intent is for perpendicular crossings, it is not just to go along the buffer and meander through it. That is not the intent at all. It is only for perpendicular crossings.

**Councilmember Zahner Bailey**

Ok, thank you.

**Mayor Lockwood**

Are there any other questions before we take public comment?

**Councilmember Tart**

I have one question. Page 59 of 103, at the bottom where it says variances will be considered only in the following cases, that last paragraph where it says variances will not be considered when following adoption of this ordinance actions of any property owner or a given property have created conditions of a hard ship on that property. I take it that is a self imposed hard ship and that is a stand alone paragraph. Correct?

**Community Development Director Wakefield**

Yes.

**Councilmember Tart**

Ok, so paragraphs A and B would be in the situations in which they could give a buffer variance and then the variances will not be considered as stand alone item, so if it is a self imposed hard ship, they cannot give a variance?

**Community Development Director Wakefield**

That is the way I interpret it, yes.

**Councilmember Zahner Bailey**

I was understanding that language was not going to be part of what we were going to be considering.

**Senior Planner MacDonald**

That is correct. That is already existing. It is already on page 59 that he is quoting.

**Councilmember Tart**

I just wanted to make sure that I was reading that properly.

**Councilmember Zahner Bailey**

Any additional changes we might make subsequent to the earlier deferral, we could always further modify this if necessary.

**Senior Planner MacDonald**

Correct.

**Mayor Lockwood**

Do we have any public comment of this?

**City Clerk Marchiafava**

No public comment.

**Mayor Lockwood**

We will close the public hearing and ask if there is any other Council discussion and if not ask for a motion and second.

**Motion and Vote:** Councilmember Tart moved to approve an ordinance amending Chapter 14, Land Development Environmental Protection of the Code of Ordinances for the City of Milton Georgia as proposed by staff with the exception of subparagraph three on page 59 of 103, dealing with rezoning and variances, also paragraph 5 at the top of page 61 of 103 dealing with the variance needing to be site plan specific. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously 6-0.

**City Clerk Marchiafava** read agenda item 08-711.

**RZ08-11 – Text Amendment to Article 3, “Definitions” of the City of Milton Zoning Ordinance.** (First Presentation on November 3, 2008.)

**ORDINANCE NO. 08-11-32**

**Community Development Director Wakefield**

This is an amendment to Article 3 which are definitions of the zoning ordinance. Most of these amendments are clarifications and clean up. The majority of the amendments came at the recommendation of the building official, such that we are consistent with the building code and also we have several clarifications related to streets and thoroughfares and rights of way. The recommendation of staff is approval. The recommendation of the Planning Commission is approval.

**Senior Planner MacDonald**

That pretty much takes care of it. I think one of the Planning Commissioners asked for a definition of gravel road and that was also included in these definitions. I know that there are some more and we could work on this for a very long time. There definitely are some edits that can be made and I think we will be working on that in the future as well. Once you start you open the can and then more and more worms come out and we do not know how to control it. We just started with one or two definitions and it just grew bigger and bigger. When you change one thing it affects other things and I think as staff that, was it 2010 we would like to... Alice, would you like to talk about that?

**Community Development Director Wakefield**

Yes, 2010, this is one of my great visions, is to work toward a unified development code, where all development related regulations are combined in one document so when it comes to amending you are not going back and forth. For example, what we are trying to do with Chapter 14 and zoning resolution, so that is my dream project for 2010.

**Councilmember Thurman**

Where is the gravel road description?

**Councilmember Lusk**

Page 317.

**Senior Planner MacDonald**

I must have gotten the wrong version.

**Councilmember Lusk**

Section 3.3.7.

**Councilmember Thurman**

It is not on the on line copy.

**Councilmember Tart**

It says gravel road and unpaved road surfaced with gravel material that is constructed and maintained to function as an all weather surface for vehicular and pedestrian travel.

**Councilmember Thurman**

The only question I had concerning it was because I know with our gravel roads, your recommendation is to pave the first so many feet of them. Is this consistent with that? I want to make sure we are not running into things where we pave a certain number of feet on each side of it, it is no longer a gravel road.

**Public Works Director Drake**

I think it is consistent with what a definition of a gravel road is. Whether we pave a first couple hundred feet or couple tens of feet is actually what we are talking about on each side as you really should impact a definition of a gravel road in my opinion.

**Councilmember Zahner Bailey**

One other quick question along those same lines is that this refers to an all weather surface or gravel material. Just know that there is different composites that are out there. I think most people think a gravel is a 57 stone and real gravel, I am just assuming that gravel material does not allow for a gravel road today to be suddenly replaced with something that is a new technologically unique composite. Does gravel still mean gravel? I mean, real gravel as opposed to stuff that looks like gravel. There are people out there that love those gravel roads and I know you have been looking at some composite.

**Public Works Director Drake**

Gravel means gravel.

**Councilmember Zahner Bailey**

Ok, thank you.

**Councilmember Tart**

At the bottom, it says changes recommended by the Planning Commission in red and all I see, unless I am not seeing it, are deleted statements in the margin in red.

**Senior Planner MacDonald**

Right, let me just say that they wanted to take just a general overall global change. They wanted to get rid of all references from the Fulton County Ordinances when they added or took away things, so that is one of them. The other item under specifically for landscaping business, if you go to page 3-21, in the middle, also 317, anything that is related to that, I think there is garden center, landscaping business and I think there is one other one and basically we are just trying to keep the definitions as definitions and what was done in Fulton County. It says with an approved use permit blah blah blah and that is not a definition, it is just some instructions. Staff concurs with the definitions. It is just cleaning up the definition.

**Mayor Lockwood**

Do we have any public comment on this item?

**City Clerk Marchiafava**

There is no public comment.

**Mayor Lockwood**

I am going to close the public hearing and ask if there is any other Council discussion.

**Motion and Vote:** Councilmember Tart moved to approve RZ08-11 Text Amendment to Article 3, definitions of the City of Milton Zoning Ordinance as recommended by staff and the Planning Commission. Councilmember Zahner Bailey seconded the motion. The motion passed unanimously 6-0.

**UNFINISHED BUSINESS**

**City Clerk Marchiafava** read agenda item 08-708.

**Approval of an Ordinance Amending the Noise Control Ordinance within the City of Milton, Georgia.**

**Public Safety Director Chris Lagerbloom**

- This is the second reading and potential adoption of some modifications to our present Noise Ordinance.
- Assumed one of the questions he would get is what every one else around us is doing or what is the standard locally as well as across the country.
- It is sometimes helpful in determining whether or not we are on track or not.
- Will show you some ordinances look like with cities and counties that use the decibel level type ordinance along with some language Council may want to add.
- Presented the following Power Point Presentation.

**City of Milton, GA**

Receiving Property Category		If Modified	
Residential	7:30 am – 10 pm	65	65
	10 pm – 7:30 am	60	55
Commercial	7:30 am – 10 pm	70	70
	10 pm – 7:30 am	65	60

Schools exempt at 70 dB

**City of Marietta, GA**

Receiving Property Category			
Residential	7 am – 11 pm	65	
	11 pm – 7 am	60	
Commercial	7 am – 11 pm	65	
	11 pm – 7 am	60	
Industrial	At all times	70	

Exemptions include practice and performance of educational bands, choirs and orchestras. Exemptions also include organized sporting events of all types.

**City of Alpharetta, GA**

Receiving Property Category

Residential	7 am – 11 pm	60
	11 pm – 7 am	55
Commercial	7 am – 11 pm	65
	11 pm – 7 am	60
Industrial	At all times	70

Exemptions include practice and performance of educational bands, choirs and orchestras. Exemptions also include organized sporting events of all types.

**City of Duluth, GA**

Receiving Property Category

Residential	7 am – 10 pm	60
	10 pm – 7 am	55
Multi Family	7 am – 10 pm	50
	10 pm – 7 am	45
Commercial	7 am – 10 pm	65
	10 pm – 7 am	60
Industrial	At all times	75

No exemptions for schools or sporting events.

**City of Woodstock, GA**

Receiving Property Category

Residential	7 am – 10 pm	60
	10 pm – 7 am	55
Commercial	7 am – 10 pm	65
	10 pm – 7 am	60
Industrial	At all times	75

No exemptions for schools or sporting events. There is an exemption for City sponsored events.

**City of Kenosha, WI**

Receiving Property Category

Residential	7 am – 10 pm	60
	10 pm – 7 am	50
Commercial	7 am – 10 pm	70
	10 pm – 7 am	70

Industrial	At all times	75
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**City of Gilbert, AZ**

Receiving Property Category

Residential	5 am – 10 pm	55
	10 pm – 5 am	45

Commercial	5 am – 10 pm	65
	10 pm – 5 am	55

Industrial	5 am – 10 pm	70
	10 pm – 5 am	60

**Walton County, FL**

Receiving Property Category

Residential	7 am – 10 pm	60
	10 pm – 7 am	50

Commercial	At all times	65
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Industrial	At all times	75
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**City of Guilford, CT**

Receiving Property Category

Residential	7 am – 10 pm	55
	10 pm – 7 am	45

Commercial	At all times	62
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Industrial	At all times	70
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**City of Huntsville, AL**

Receiving Property Category

Residential	7 am – 10 pm	55
	10 pm – 7 am	50

Commercial	At all times	62
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Industrial	At all times	70
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**Fulton County, GA**

The following acts are declared to be loud, disturbing, and unnecessary noises in violation of this section, but this enumeration shall not be deemed to be exclusive:

The using, operating, or permitting to be played, used, or operated any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants or at any time with a volume louder than necessary for

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the convenient hearing of the person who is in the room, vehicle, or chamber, in which the machine or device is operated, and who is a voluntary listener thereto. The operation of any set, instrument, phonograph, machine, or device between the hours of 11:00 p.m. and 7:00 a.m. in a manner as to be plainly audible at a distance of 50 feet from the building, structure, or vehicle in which it is located shall be prima facie evidence of a violation of this section.

**City of Sandy Springs, GA**

The following acts are declared to be loud, disturbing, and unnecessary noise in violation of this section, but this enumeration shall not be deemed to be exclusive:

The playing, using or operating, or permitting to be played, used, or operated, of any radio receiving set, musical instrument, phonograph, or other machine or device for the producing or reproducing of sound in a manner as to disturb the peace, quiet, and comfort of the neighboring inhabitants or at any time with a volume louder than necessary for the convenient hearing of the person who is in the room, vehicle, or chamber, in which the machine or device is operated, and who is a voluntary listener thereto. The operation of any set, instrument, phonograph, machine, or device between the hours of 11:00 p.m. and 7:00 a.m. on weekdays and between the hours of 12:00 a.m. and 7:00 a.m. on weekends and holidays when the audibility of the prohibited noise is measured from property line of adjacent properties or the public right-of-way of the property shall be prima facie evidence of a violation of this section.

**Forsyth County, GA**

The following acts, among others, are declared to be loud, disturbing and unnecessary noises in violation of this article; but this enumeration shall not be deemed to be exclusive:

The using, operating or permitting to be played, used or operated, of any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in a manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is reasonably necessary for convenient hearing for the person who is in the room, vehicle or chamber in which this machine or device is operated and who is a voluntary listener thereto is prohibited. The operation of the set, instrument, phonograph, or other machine or device, between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure, or vehicle in which it is located shall be prima facie evidence of a violation of this paragraph.

**City of Canton, GA**

It shall be unlawful for any person to make, continue or cause to be made or continued any loud, unnecessary or unusual noise or any noise that unreasonably or unnecessarily annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others in the city.

The using, operating or permitting to be played, used or operated any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner as to disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is necessary for convenient hearing for the person who is in the room, vehicle or chamber in which such machine or device is operated and who is a voluntary listener thereto shall be a violation of this article. The operation of any such set, instrument, phonograph, machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this section.

**City of Norcross, GA**

The following acts, among others, are declared to be loud, disturbing and unnecessary sounds or noises in violation of this article, but this enumeration shall not be deemed to be exclusive:

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The using, operating or permitting to be played, used or operated of any radio receiving set, musical instrument, phonograph or other machine or device for the producing or reproducing of sound in such manner as to unreasonably disturb the peace, quiet and comfort of the neighboring inhabitants or at any time with louder volume than is reasonably necessary for convenient hearing for the person who is in the room, vehicle or chamber in which this machine or device is operated and who is a voluntary listener thereto. The operation of the set, instrument, phonograph machine or device between the hours of 11:00 p.m. and 7:00 a.m. in such a manner as to be plainly audible at a distance of 50 feet from the room, building, structure or vehicle in which it is located shall be prima facie evidence of a violation of this subsection.

**Mayor Lockwood**

- Asked Public Safety Director Lagerbloom if what is proposed was identical to what the sister cities have.

**Public Safety Director Lagerbloom**

- Yes, if it is passed as is proposed it puts us on equal footing with the City of Alpharetta as well as others, except for Marietta.
- Would have to defer to the City Attorney as to whether this language would be recommended in addition to a decibel change or if it is redundant.

**City Attorney Jarrard**

- From an enforcement standpoint he always sees the decibel level specific language enforced.
- He likes objectivity.
- The decibel meter is clear and easy.
- Once you start talking about plainly audible at a distance of fifty feet, well how good is your hearing?
- Do you have normal hearing?
- It is a catch all, so you might want to see notwithstanding any other provision of this ordinance, because you do not want to get into a situation where they can say you have conflicting provisions.
- He thinks the first enforcement mechanism would be the decibel specific ranges.

**Councilmember Thurman**

- Asked the City Attorney if he saw a problem adding that if they added the phrase before hand of “notwithstanding.”

**Mayor Lockwood**

- Asked if the City Attorney knew how they compare with Forsythe County.

**Councilmember Tart:**

- Gwinnett County does not use decibel readings.
- Either you use decibel readings or you use some vague comment where you define what a nuisance sound or noise is and then you go on to mention what is clearly audible.

**Public Safety Director Lagerbloom**

- Decibel level ordinance is sometimes referred to as a measured noise ordinance and the other is referred to as a perceived noise ordinance.
- After initial research, the perceived noise ordinance is a more difficult enforcement mechanism because we are making a decision based on the perception of the responding police officer.
- There measurement of the same noise would be the same and that is why we elected to go with the measured noise ordinance as opposed to the perceived noise ordinance.
- He is more comfortable with the officers having something they can all enforce the same way.

### **Councilmember Tart**

- He had a question he could not find an answer to in his research.
- He found there are such noises that could be sustained over a period of time or maybe it is base vibration or a certain type of noise where it may not reach the decibel reading to be a violation but yet it is very uncomfortable for those that have to endure it day in and day out.
- He is talking about the base tone that is right at the violation but not quite.
- Some of the ordinances he reviewed did address that.

### **Public Safety Director Lagerbloom**

- The measurement instruments they use have the ability to monitor sounds into two different frequency bands.
- They are designed to measure decibels if the sound is a high sound or with the flip of a switch they are able to drop down and measure sounds in a lower frequency.
- If it is a deep base sound the button needs to be on the lower frequency.

### **Mayor Lockwood**

- Opened the floor to public comment.

### **Cary Eubank, 13695 Highway 9, Milton, Georgia**

- He is the owner of Montana's Bar and Grill.
- Believes the majority of this is directed toward him.
- He has spent over \$85,000 trying to help with the noise situation.
- He abided by sound engineer recommendations.
- He has had one instance where they have been over the 60 decibels.
- They have done everything possible, roof insulation, fencing, complete back wall, sound baffles and they have been within the ordinance.
- He does not want to be a bad neighbor.
- He does not know what else to do.
- He stood behind the Target Store with his decibel reader and it read 68 decibels with their mechanical equipment and there are houses a lot closer than he has.
- If it is lowered, it will put him out of business and he thinks they are opening a "can of worms."
- It takes it down to a whisper and he does not think it is fair.
- No one will be able to go in and out of his back door.
- They will be in violation if they are talking.
- No one will be able to sit on their back deck and have conversation at night.
- Council is getting ready to vote on something that is going to affect his business with twenty five employees.
- No one from Council or staff has been out at any time to listen.
- There is no way that 60 decibels at the property line is vibrating anyone's windows or mirrors.
- He would welcome them before making the decision and affecting his business that they come out and listen at the property line.
- He thinks that is only fair.
- He has spent a lot of money and tried to be a good neighbor.

**Sandy Jones**, 1125 South Bethany Creek Drive, Milton, Georgia

- She has been a resident since 1999.
- Both neighborhood and Rafters co existed in harmony for several years.
- The issue of noise nuisance became an issue when the establishment now called Montana's modified the former Ace Hardware Greenhouse area into a live music venue.
- Tuesday, Friday and Saturday on numerous occasions, she has had to find ways to muffle the base noise that is amplified from the establishment.
- The proposed change does not impact the ability for Montana's to provide live music to its patrons.
- It will alleviate some of the noise intrusion that our families experience.
- She feels the proposed amendment is a win/win solution and request approval.

**Dale Jackson**, 2105 Bethany Way, Milton, Georgia

- Have lived in Milton since 1992.
- He is in favor of maintaining the unique quality of our community.
- We have an issue of adjoining zoning types.
- One commercial and the other higher density residential.
- We have a pre-existing shopping enclave.
- Montana's caters to the entertainment needs of our residents.
- The establishment has been in the County for many years.
- Montana's established a venue known as the green house to provide its patrons with music.
- It is the only venue like it in this part of Milton.
- Not everyone finds the same joy in the same thing and what is one mans song is another mans siren.
- He has given much thought to this issue as a citizen and an attorney.
- As a citizen he feels for the neighbors and believes they are truly bothered by the sounds emanating from the green house at Montana's.
- As an attorney trained in constitutional law and in the property rights granted to the citizens and even a corporation playing music is a citizen.
- He feels Montana's is not violating the current ordinance and they like any other citizen have a right to be protected equally.
- We all have opinions on how we think we are right.
- Montana's has an expectation that if they are property zoned and abiding by the current ordinance then they should be allowed to continue their practices under the current zoning and current ordinance.
- You may say that the modification of the noise ordinance is not to specifically address the issues of the Montana's and their neighbors but to address the general issue of noise pollution throughout the City but we know this is untrue.
- As a citizen and tax payer, he begs Council to not go down this path by modifying an ordinance in mid stream.
- The legal fees and loss of credibility piled onto the already mounting cost of the external reputation of the City would not be what our citizens need or expect.
- We need to welcome business along the Highway 9 corridor and not drive it to Alpharetta where they can reap the tax benefits of our establishment.
- He requested the Council vote down the modification or table it for a period of time to allow the parties to mediate this matter further and allow our existing ordinance to stay in place.

**Lauren Holmes**, 13900 Hagood Road, Milton, Georgia

- If the City Council lowers the decibel levels, she would not be able to have a pool party with music in her back yard.
- In the summer the Birmingham Crossroads Shopping Center has movie nights on Saturday and they would not be able to do this for the residents of Milton anymore.
- In the Crooked Creek Subdivision there is a swim meet.
- Does that mean neighbors can call the police any time they feel it is getting to loud?
- Does the Council know to what extent lowering the decibels would have on the average citizen in Milton?
- As a resident of Milton she is against lowering the decibels.

**City Clerk Marchiafava** read the following comments for the record:

**Phil Cranmer**, 1040 S. Bethany Creek Drive, Milton, Georgia:

It has been four years that Montana's music has been invading the homes at Bethany Creek. During the night Montana's plays live music, Tuesday, Friday and Saturday. Many home owners resort to wearing ear plugs, running fans, leaving TVs on in order to drown out Montana's noise. The HOA worked directly with Montana's for eight months only to be give false promises. This was then validated by the past City Manager Billy Beckett. It is time we restore quiet back to Bethany Creek. On behalf of the HOA and it's ninety one residents. We thank you in advance for your anticipated support.

**Tim Sudduth**, 1075 South Bethany Creek Drive, Milton Georgia:

Members of the Council I regret I cannot be standing before you tonight as I have over the last several months. Tonight I ask that you strongly consider changing our City's Noise Ordinance appropriately in order to provide piece back to the residents of our South Bethany Creek subdivision. I am sure you are going to hear a lot tonight about how the owners of Montana's Bar and Grill believes we are being overly sensitive to his establishment. Before you make your decision let me remind you of a few things. First music is played three nights a week. Take a look at Tuesday nights, music is played to a level that vibrates our windows until eleven thirty or twelve at night. What about the multiple school age children who have to go to school the next day. After their sleep has been disturbed, second how about listening to music from your bedroom at 2:00 am each Friday and Saturday night. I have heard it said that 60 to 65 decibels is like someone standing two feet away from you and talking. Before you cash your vote tonight, think about someone in your house hold standing two feet from your pillow talking to you from 8 pm until 2 am with a few fifteen minute breaks in between. The truth is the owner of Montana's spent a lot of money on improvements but what was the improvements really? They were to expand his business out into a practically open air venue in a building that was never intended to be a venue to play amplified music. Tonight I urge you to look out for you fellow Milton citizens and make the appropriate decision. Obviously the owner of Montana's does not respect you, our subdivision or our city. Is this getting to be a personal issue? Yes, why, because my children's sleep has been disrupted one to many nights. Thank you for your consideration and your service to our city.

**Craig Kaufman**, 555 Parkbrook Trace, Alpharetta, Georgia

The Noise Ordinance needs to be revised to reduce the allowable noise levels. At present the noise levels in our neighborhood are unacceptable. The ordinance as its is currently implemented is not effective.

**Mike Grady**, 1225 South Bethany Creek Drive, Milton, Georgia

I support amending the Noise Ordinance. I have been a resident of Bethany Creek since 1999. The residents do not wish harm to any legitimate business, but need the Council's support to ensure our quality of life and indeed property values. As this issue predates the formation of Milton, we are accustomed to dealing with a County Government that was largely indifferent to our issue and look forward to the City of Milton helping us to finally address this issue.

**Marc and Lauren O'Neal**, 14085 Freemanville Road, Milton Georgia:  
We oppose lowering the Noise Ordinance. Let the city use state mandated decibel levels.

**The Mad Italian/Tom Brown:**  
We oppose lowering the noise ordinance.

That completes public comment.

**Mayor Lockwood**

- This is not a site specific issue.
- It is a city wide issue and we have good arguments from both sides.
- He is not really sure what five decibels does.
- He is open to making a visit to see what the difference between fifty five decibels and sixty decibels are.
- He would support a motion to defer this.

**Motion and Vote:** Councilmember Thurman moved to defer until December 15, 2008 Approval of an Ordinance Amending the Noise Control Ordinance within the City of Milton, Georgia. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously 6-0.

**City Clerk Marchiafava** read agenda item 08-709.

**Approval of an Ordinance Establishing Solid Waste Collection Services Within the City of Milton; Providing for the Scope and Nature of the Operation; Providing for the Disposal of Garbage, Solid Waste and Refuse; Requiring the Execution by Service Providers of a Non-Exclusive Agreement with the City of Milton; Providing Procedures for the Handling of Complaints; Providing for Forfeiture; and for Making Other Provisions.**

**ORDINANCE NO. 08-11-30**

**Public Safety Director Lagerbloom**

- This is an annual re-adopting of the Solid Waste Ordinance.
- It regulates our solid waste and recycling collection and prescribes for certain mechanisms for that to occur.
- Certain types of insurance to be required by the hauler and certain registration process.
- This was adopted last year and has a one year expiration.

**Motion and Vote:** Councilmember Tart moved to approve an Ordinance Establishing Solid Waste Collection Services Within the City of Milton; Providing for the Scope and Nature of the Operation; Providing for the Disposal of Garbage, Solid Waste and Refuse; Requiring the Execution by Service Providers of a Non-Exclusive Agreement with the City of Milton; Providing Procedures for the Handling of Complaints; Providing for Forfeiture; and for Making Other Provisions. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously 6-0.

**City Clerk Marchiafava** read agenda item 08-723.

**Approval of Resolution Requesting the Transmittal of the FY 2009 Livable Centers Initiative Study Application for Crabapple to the Atlanta Regional Commission for Consideration.**  
**RESOLUTION NO. 08-11-51**

**Community Development Director Wakefield**

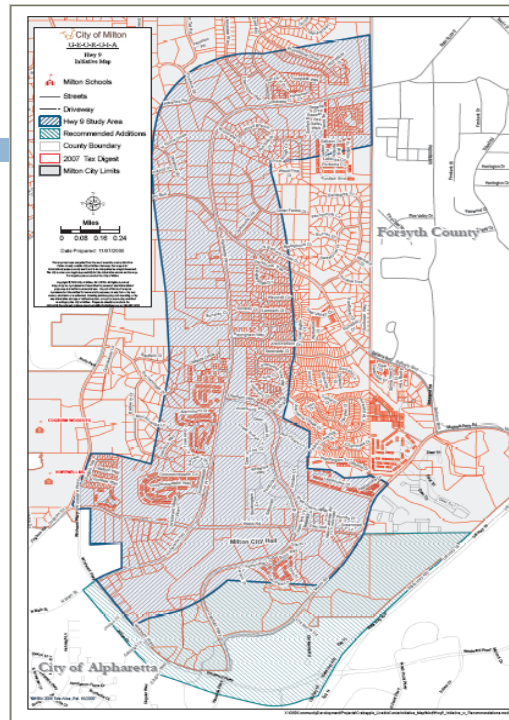
- This is a resolution we will forward to the ARC for consideration.
- If successful we will do a master plan which will be updating the Crabapple Master Plan.

**Power Point Presentation**

# Hwy 9 -

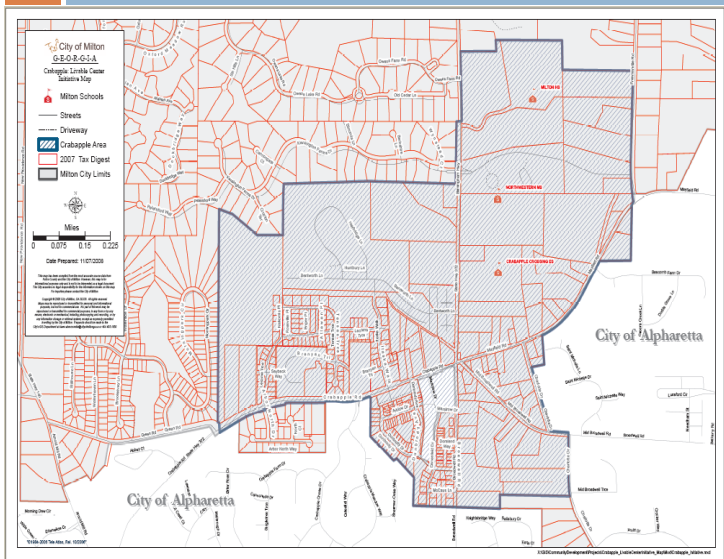
## Windward Pkwy - Deerfield

Corridor LCI



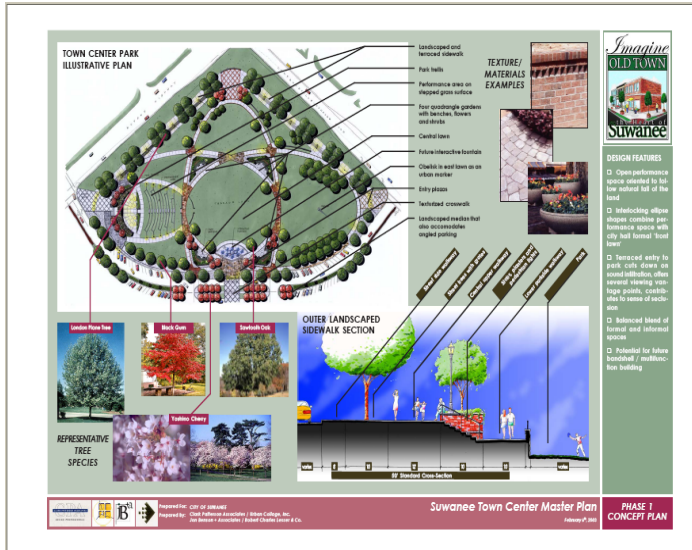
# Crabapple

Activity Center  
LCI





## Suwanee, GA



The City of Suwanee received LCI assistance for its Old Town Center and Park.

### Community Development Director Wakefield

- Staff has been working really hard in putting the application together and will be forwarding Council a copy of the final document by Wednesday.
- The deadline is Friday and if it is not in by the end of the day Friday they will not accept extensions.

*(This portion of the meeting was not recorded.)*

**Motion and Vote:** Councilmember Thurman moved to approve Resolution Requesting the Transmittal of the FY 2009 Livable Centers Initiative Study Application for Crabapple to the Atlanta Regional Commission for Consideration. Councilmember Tart seconded the motion. The motion passed unanimously 6-0.

**City Clerk Marchiafava** read agenda item 08-074.

**Approval of Resolution Requesting the Transmittal of the FY 2009 Livable Centers Initiative Study Application for Highway 9 to the Atlanta Regional Commission for Consideration.**  
**RESOLUTION NO. 08-11-52**

### Community Development Director Wakefield

- We call it Highway 9 but it encompasses most of Windward Parkway and Deerfield.
- That was based on recommendations from ARC.
- We are also including the portion of the City Alpharetta.
- We have a support letter from the City Alpharetta.
- Both of these areas require a stake holders committees and they will have to property owners, residents or business owners from the study area.
- It has to be someone with a vested interest in the study area.

**Planner Michelle McIntosh-Ross**

- We looked at the map presented and decided to include the area going up to McGinnis Ferry and along Bethany Creek so we can get some connections for pedestrians to be able to get down to this area.
- We are aware of a senior center that Forsyth County has proposed for this area and they would be using these streets coming into Milton so we wanted to connect those areas and possibly get implementation funds to do those street improvements.

**Councilmember Zahner Bailey**

- Asked her to speak to the boundaries of the LCI

**Planner McIntosh-Ross**

- It goes along Windward Parkway and then to Highway 9.
- We are also proposing that it run along Cogburn.

**Community Development Director Wakefield**

- We wanted to point out that because of having the school, it would benefit us with the safe routes to school, so where there was any type of school, we tried to piggy back and use as leverage to be successful in getting the LCI.
- Even though that is the study area, it is not to say the entire area will be maxed out in terms of density.
- They will look at density where density is appropriate but the whole area will be looked at.

**Councilmember Zahner Bailey**

- Asked if it was clear within the document that the study area is not to be misinterpreted as an area to be considered for higher density.

**Community Development Director Wakefield**

- It does not say that specifically and we do not want to submit a document to ARC automatically saying we are not going to consider this.
- One of their criteria is that you will be open to appropriate development.
- The whole study is a stakeholder community driven document so if the community does not want additional development in these areas then it will not be proposed but she does not want to submit a document that will automatically drop us down in consideration.

**Councilmember Zahner Bailey**

- Asked if the stakeholder group would be limited to seven.
- Would encourage we have not only residents in the immediate area but also those that might be beyond the boundary.
- Whether you are immediately in that area or adjacent to, you are a stakeholder in that group.

**Community Development Director Wakefield**

- A lot of the LCIs have a mixture of two groups.
- When they say stakeholders they are talking about people that have a vested interest.
- Residents that reside in the study area, own property in the study area, have a business in the study area.
- Occasionally you have a steering committee which is made up of a larger group.

**Councilmember Zahner Bailey**

- She thinks we just need to be aware we include all people that will be impacted.

**Mayor Lockwood**

- Asked if would be limited to one person per Councilmember.

**Community Development Director Wakefield**

- It can be structured however Council decides.

**Mayor Lockwood**

- One suggestion would be have each Councilmember pick two, one resident and one business owner.

**Councilmember Tart**

- That sounds like a good idea but he is confused with the committee they will approve in December, which is the Highway 9 Design Standards Committee and asked how that would compare with the stakeholders committee.

**Community Development Director Wakefield**

- That committee will just look at developing design guidelines for the Highway 9 overlay.

**Motion and Vote:** Councilmember Hewitt moved to approve Resolution Requesting the Transmittal of the FY 2009 Livable Centers Initiative Study Application for Highway 9 to the Atlanta Regional Commission for Consideration. Councilmember Lusk seconded the motion. There was no Council discussion. The motion passed unanimously 6-0.

**City Clerk Marchiafava** read agenda item 08-725.

**Approval of revised task order for Crabapple Crossroads southeast quadrant study with Kimley Horn and Associates, Inc.**

**Public Works Director Drake**

- This is a first task order for Kim Horn Associates for \$62,000.
- We have given them a notice to proceed for the first phase of this for \$17,000 which is task one through four.
- This is in response to us taking a detailed traffic analysis review of the Crabapple area specifically from the Sally Rich-Kalb discussion that we had to look at what impact we need.
- The connection through her property and through Crabapple.
- We are looking at the southeast quadrant and the northeast quadrant for some of the potential developments that would punch a road through there.
- We transferred \$35,000 from each of our two paving budget line items to pay for this.
- This is in response to meet our mid January deadline.
- Staff request approval.

**Mayor Lockwood**

- Recused himself because his wife is a tenant in one of Sally Rich-Kalb's buildings.

**Councilmember Lusk**

- Asked if the northeast quadrant come under another study because he did not see it in the document.

**Public Works Director Drake**

- It is part of the study.
- They specifically called it the southeast but when they are looking at the different alternatives.

- It is just a matter of putting in another link when they do the traffic analysis.
- Then they can see how it will have an impact of whether they need those two roads to the south, one through the Crabapple Community House and/or the one connecting to Morris.

**Councilmember Thurman**

- Although she understands the ninety day deadline, she does not think they will get people to meetings around Christmas time.
- She would rather extend it another thirty days than try to do it and not get the right kind of input we need.

**Public Works Director Drake**

- We could push both of those meetings back until the new year, to get more input.
- He looks to Council to modify that direction to him as far as getting it done in ninety days.

**Councilmember Thurman**

- Would rather take out 120 days and make sure we get the right input.

**Councilmember Zahner Bailey**

- She concurs that having meetings in December is difficult if the goal is to get community input.
- It concerns her that they are looking at \$63,000 effectively as a study in a direct response to a specific rezoning that was approved under Fulton County that had an existing road identified.
- Asked if Public Works Director Drake would confirm that this is a net new item.

**Public Works Director Drake**

- It is net new.

**Councilmember Zahner Bailey**

- Asked how it correlates to the overall transportation planning.
- If we were not under this ninety day time frame we might not have to incur this cost.
- Given our current economic environment and concerns from citizens of their perception of tax increases, she is concerned about this money that is in response to one applicant.
- She would rather see us use this dollar amount as we look at the overall transportation plan for all of Crabapple as opposed to one quadrant.
- We may not be using tax dollars as efficiently as we could.

**Public Works Director Drake**

- If you are willing to give it more time then it would have to be more than 120 days in order for this to happen but if you were to give it even more time it would allow us to use part of our federal match that we have for this.
- He put some in reserve as part of the transportation master plan for certain things like this.
- It would be an outlay of 20% and we would get 80% available to get back from the federal government as part of that grant.

**Councilmember Thurman**

- She prefers not to look at that one quadrant but thinks we should look at Crabapple as a whole.

**Public Works Director Drake**

- He could stop it at the \$17,000 that we have and instruct the consultants to put this into the Crabapple master plan.

**Councilmember Zahner Bailey**

- Speaking for herself, she thinks we should leverage those federal funds.
- We have a larger vision we have to come up with a solution for.

**Councilmember Lusk**

- Asked how it impacts our comprehensive land use plan and finalizing that document if we stretch this out.

**Public Works Director Drake**

- These are ideally after those decisions are made.
- This non interim plan will not even start until the earlier part of next year.
- It really has no impact.

**Councilmember Lusk**

- Then he agrees that a little more time spent on this and make a comprehensive study of the entire area is prudent.
- Asked if we could assume that this \$62,000 has a lot of overtime in it based on the short duration of the project.

**Public Works Director Drake**

- He is not sure there is overtime but he thinks there are some savings we can get on the 45 that is left.

**Councilmember Zahner Bailey**

- Concerned there is duplicative activity.
- We need to look at the transportation plan and all of Crabapple, we need to go about that business without having one off evaluations that become part of an overall plan.
- She recommends they not even assign 180 days because we contracted with three transportation planners and engineers and she would hope we would seek their input.
- We start to get into some less efficient approaches that become more costly if we do not look at the overall process.
- Asked if we could go back to staff and those transportation planners and find out how we do that in the most efficient way.

**Motion and Vote:** Councilmember Zahner Bailey moved to approve staff's recommendation to withdraw the revised task order for Crabapple Crossroads southeast quadrant study with Kimley Horn and Associates, Inc based on the input of staff, the input of the consensus of Council and that we would look to address transportation planning for Crabapple at the direction of staff and our transportation planners. There was no Council discussion. Councilmember Tart seconded the motion. The motion passed unanimously 5-0-1. Mayor Lockwood was recused.

**City Clerk Marchiafava** read agenda item 08-726.

**Approval of task order for Landrum Road Bridge Replacement with URS**

**Public Works Director Drake**

- Earlier this year we discovered that one of our bridges was at a major state of disrepair.
- We had to down grade the load rating of it to three tons as well as we had a recommendation that we need to within the next twelve months replace the bridge.
- This is the task order to do the full engineering design of that bridge.
- It is \$85,447 task order for URS.
- This is all local funds.

**Councilmember Thurman**

- Asked what we budgeted for the bridge.

**Public Works Director Drake**

- With engineering and design, it is somewhere around \$300,000.
- That is reasonable.
- The look and design of this bridge will be going before the Design Review Board twice as part of this task order.

**Councilmember Zahner Bailey**

- Asked if they would be talking about what context sensitive means so when it goes to the DRB they will already be moving toward the design we need.

**Public Works Director Drake**

- We will have discussions about that.
- We are thinking it will be more of a concrete structure with gravel on top of the bridge.

**Motion and Vote:** Councilmember Thurman moved to approve a task order for Landrum Road Bridge Replacement with URS. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously 6-0.

**City Clerk Marchiafava** read agenda item 08-727.

**Approval of a Resolution to authorize the Mayor and City Council to approve the submission of a grant application to the Georgia Recreational Trails Program.**

**RESOLUTION NO. 08-11-53**

**Public Works Director Drake**

- We have an application to submit to the Georgia Department of Natural Resources for a \$100,000 grant as part of our Milton Trail system.
- It is due November 28, 2008.
- There are five phases of the Milton trail and this grant is for the engineering and construction of what we are calling phase 1-A.
- Phase 1 is Freemanville from Mayfield all the way north to Phillip Circle.
- Phase 1-A is looking at from Landrum Road down to Mayfield.
- There is about 1,650 feet of existing sidewalk from Mayfield and from that point of where that sidewalk ends to Landrum Road is about .65 miles because there is another section of 470 feet of existing sidewalk in front of one of the subdivisions.
- We are talking about the design and construction of a gravel trail.
- As we go through the first phases it is important that we get substantial public involvement.
- He wanted to point that out because the engineering cost of this may be a little higher than when we get further down the road because of the public involvement.
- It is really important that we do the first one right.
- We are talking about the cost for this 1-A is going to be somewhere in the range of \$130,000.
- The design is going to be another \$60,000.

**Councilmember Thurman**

- Asked if this would tie in to the Cross Country trail at the high school all the way to Landrum Road.

**Public Works Director Drake**

- That is correct.

**Councilmember Zahner Bailey**

- From a design stand point, the approval of this grant application does not mean that we are at a final stage of the design of what that looks like.

**Public Works Director Drake**

- No, we will have to go through substantial from people as to how that looks like and how it feels.

**Councilmember Zahner Bailey**

- Assuming we get this, we are committing to and additional we will spend out of the \$200,000 of our current budget, is that correct?

**Public Works Director Drake**

- That is correct.

**Councilmember Zahner Bailey**

- Asked if that was consistent with the intent when we allocated the \$200,000.

**Public Works Director Drake**

- This is an 80/20.
- The problem is they limit engineering to 10%.
- We are matching 33% of construction.
- We are matching 80% engineering.

**Councilmember Thurman**

- She assumes the grants that are out there are limited so it is not like we have our choice of other grants.

**Public Works Director Drake**

- That is correct.

**Councilmember Lusk**

- It appears the route between Milton High School and Landrum is on the west side of Freemanville Road, asked if that was carved in stone.

**Public Works Director Drake**

- Yes it is.

**Councilmember Zahner Bailey**

- She has had some questions as to whether or not the safe routes to school program dollars will be used internal to a subdivision, are those dollars that would be used to the greater community's good.

**Public Works Director Drake**

- We have a list of projects that we are looking at for the safe routes to school and they are basically gaps in sidewalks along the major arterials.
- We are talking about improvements to the school zones.
- We are talking about improvements to the actual roadways to within some of the Fulton County controlled growths.
- There is also a piece in Kensington Farms that is immediately adjacent to the school.
- We are trying to find any gaps in the network that is in close proximity to the schools.

