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The Regular Meeting of the Mayor and Council of the City of Milton was held on December 15, 2008 at 6:00 PM, Mayor Joe Lockwood presiding.

INVOCATION

Tass Welch, Community Minister, Community of Christ Church.

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 Julie Zahner Bailey, Councilmember Burt Hewitt, Councilmember Tina D'Aversa, Councilmember Alan Tart

Council Members Absent: Councilmember Karen Thurman, Councilmember Bill Lusk/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 New Business, Move agenda items 1 through 6 before the Zoning Agenda; and
2. Under Staff Reports, move Discussion of the right-of-way privatization policy to the January 12, 2009 Work Session.

Motion and Vote: Councilmember Tart moved to approve the Meeting Agenda, as amended. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

PUBLIC COMMENT

Mayor Lockwood

- Public Comment is a time for citizens to share information with Mayor and Council and to provide input and opinions on any matter that is not scheduled for its own public hearing during today's meeting.
- There is no discussion on items on the Consent Agenda or First Presentation from the public or from Council.
- Each citizen who wishes 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 members of the City Council in conversation.
- 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.

There was no public comment.

CONSENT AGENDA

City Clerk Marchiafava read the Consent Agenda items.

(Agenda Item No. 08-745)

1. Approval of the December 1, 2008 Regular Meeting Minutes.

(Agenda Item No. 08-746)

2. Approval of the following task orders:
 - a. November 19, 2008 – Task Order 09-SSI-01 from Street Smarts, Inc. for traffic calming services for the City of Milton with a total cost of \$15,162.27; and
 - b. November 7, 2008 – Task Order 09-KHA-01 from Kimley-Horn and Associates, Inc. for Phase 1 Crabapple Crossroads Southeast Quadrant Study with a total cost of \$17,635.00; and
 - c. November 25, 2008 – Revised Task Order 09-KHA-01 from Kimley-Horn and Associates, Inc. for Revised Phase 1 Crabapple Crossroads Southeast Quadrant Study with a total cost of \$21,783.00

(Agenda Item No. 08-747)

3. Approval for Street light acceptance agreement with Crabapple Crossing Subdivision.

Mayor Lockwood

- Asked as a Point of Clarification, if a Councilmember has a question on an item on the Consent Agenda, would that be appropriate.

City Clerk Marchiafava

- They could make a motion to remove it from the Consent Agenda for discussion and Council could vote on the other items.

Motion and Vote: Councilmember Zahner Bailey moved to approve the Consent Agenda, with the exception of item 08-476, approval of task orders. Councilmember Tart seconded the motion. The motion passed unanimously 5-0.

Motion and Vote: Councilmember Zahner Bailey moved to add agenda item 08-746 to the regular agenda separate from Consent Agenda for purposes of discussion. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

Councilmember Zahner Bailey

- If she is not mistaken there was a similar item before Council two meetings ago that was withdrawn.
- The premise of that withdrawal was that there were monies being assigned to a quadrant specific traffic analysis that had to do with a specific zoning case.
- Asked Public Works Director Drake to expound on that.

Public Works Director Drake

- Yes, this is the same item.
- The \$17,000 was the one that we had already agreed that we were going to do in regards for task 1 through 4 for their work for us.
- The additional \$4,000, which is revising 09 KHA 01 from \$17,635 up to \$21,783, is to do the additional work that was due to the fact there a meeting scheduled with them the next morning and in order for them to close out this particular project we had another \$4,000 of expenses. We need to amend the task order for that amount.

Motion: Councilmember Tart moved to approve agenda item 08-746, Approval of the following task orders:

- a. November 19, 2008 – Task Order 09-SSI-01 from Street Smarts, Inc. for traffic calming services for the City of Milton with a total cost of \$15,162.27; and

- b. November 7, 2008 – Task Order 09-KHA-01 from Kimley-Horn and Associates, Inc. for Phase 1 Crabapple Crossroads Southeast Quadrant Study with a total cost of \$17,635.00; and
- c. November 25, 2008 – Revised Task Order 09-KHA-01 from Kimley-Horn and Associates, Inc. for Revised Phase 1 Crabapple Crossroads Southeast Quadrant Study with a total cost of \$21,783.00.

Second and Vote: Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

PUBLIC HEARING

City Clerk Marchiafava read agenda item 08-748.

Approval of Alcohol Beverage License Application for Wu & Huang Enterprises, Inc. d/b/a Ru San's Milton located at 13085 Alpharetta Highway 9N, Unit #440, Milton, Georgia. The applicant is Kent Wu for Consumption on the Premises – Wine and Malt Beverage.

Finance Manager Stacey Inglis

- The applicant has complied with all City regulations and ordinances.
- Staff recommends approval.

There was no public comment.

Motion and Vote: Councilmember Hewitt moved to approve Alcohol Beverage License Application for Wu & Huang Enterprises, Inc. d/b/a Ru San's Milton located at 13085 Alpharetta Highway 9N, Unit #440, Milton, Georgia. The applicant is Kent Wu for Consumption on the Premises – Wine and Malt Beverage. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

Mayor Lockwood

- We will now move to board and committee appointments.

City Clerk Marchiafava read agenda item 08-749.

Approval of a Resolution Amending Resolution No. 08-12-54, A Resolution to Create the Milton Parks and Recreation Advisory Board and to develop the Milton Parks and Recreation Ordinance.

Resolution No. 08-12-59

Mayor Lockwood

- His appointment is Mark Shaw.
- He has known him for several years.
- He has two young children who are actively involved in the parks.
- He is pleased to nominate him.

Motion and Vote: Councilmember Zahner Bailey moved to approve a Resolution Amending Resolution No. 08-12-54, A Resolution to Create the Milton Parks and Recreation Advisory Board and

to develop the Milton Parks and Recreation Ordinance by appointing Mark Shaw. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

City Clerk Marchiafava read agenda item 08-750.

Approval of a Resolution Amending Resolution No. 08-12-55, A Resolution to Create a Committee to Serve as the Highway 9 Design Guideline Committee for Potential Revision to the Highway 9 Overlay District of the City of Milton Zoning Ordinance.

Councilmember D'Aversa

- Her nominee will be Roger Festa, but he is not here tonight.
- She would like to wait until he is here to read his bio.

Motion and Vote: Councilmember D'Aversa moved to defer until January 5, 2008, agenda item 08-750, Approval of a Resolution Amending Resolution No. 08-12-55, A Resolution to Create a Committee to Serve as the Highway 9 Design Guideline Committee for Potential Revision to the Highway 9 Overlay District of the City of Milton Zoning Ordinance. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

City Clerk Marchiafava read agenda item 08-751.

Approval of a Resolution Amending Resolution No. 08-12-56, A Resolution to Create a Committee to Serve as the Historic Preservation Committee for Development of a Historic Preservation Ordinance for the City of Milton.

Resolution No. 08-12-61

Mayor Lockwood

- We have a nominee for District 6.

Councilmember Tart

- His nominee is Bob Meyers, who is a resident of Crooked Creek.
- He was in awe of his bio.
- He has lived in Milton for four years, but lived in the Windward area since 1989.
- He was an officer in the US foreign service for eighteen years.
- He served in Panama, Peru, Chili, Belgium, Switzerland, Washington DC and served as and advisor to the Carter Administration as a special assistant to the Whitehouse Staff Director.
- He has a distinguished career in Scientific America Atlanta now Cisco.
- He was Vice President of the Corporate Communications and subsequently investor relations there.
- He is retired now and is a glass blower part time at Stone Mountain Park.
- We are excited to have him as part of the Milton team.

Motion and Vote: Councilmember D'Aversa moved to approve a Resolution Amending Resolution No. 08-12-56, A Resolution to Create a Committee to Serve as the Historic Preservation Committee for Development of a Historic Preservation Ordinance for the City of Milton by appointing Bob Meyers for District 6. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

Mayor Lockwood administered the Oath of Office to Bob Meyers for the Historic Preservation Committee for District 6.

City Clerk Marchiafava read agenda item 08-752.

**Approval of a Resolution Amending Resolution No. 08-04-32, A Resolution Appointing Members to the City of Milton Bike and Pedestrian Path Committee.
Resolution No. 08-12-62**

Councilmember Tart

- Due to a scheduling conflict with his previous appointee, he is now nominating Sandy Sheley.
- She is also his appointee to the Parks and Recreation Committee.
- This is a good tie in with the two of these committees working together.
- She is a Director of Mortgage Supervision with the Department of Banking and Finance in Georgia.
- She has been a resident in Milton since 1996.
- She has a love of the bicycle and hiking and a lot of different recreational activities.
- She is eager to help represent the interest of those who need to walk and hike in our community.

Motion and Vote: Councilmember Zahner Bailey moved to approve a Resolution Amending Resolution No. 08-04-32, A Resolution Appointing Members to the City of Milton Bike and Pedestrian Path Committee by appointing Sandy Sheley for District 6. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

Mayor Lockwood administered to Oath of Office to Sandy Sheley for the Bike and Pedestrian Path Committee for District 6.

City Clerk Marchiafava read agenda item 08-753.

**Approval of a Resolution to Create a Stakeholder Advisory Committee for City of Milton Transportation Plan.
Resolution No. 08-12-63**

Public Works Director Drake

- This resolution will set up a seven member Stakeholder Advisory Committee, which is formed to provide input and recommendations for the City of Milton's first transportation plan.
- The terms will be January 5, 2009 through December 31, 2009.
- This calls for one member who resides in the respective City Council district and he would like to clarify if they have to actually reside in the Council district or owns property in the district.
- Asked if Council wanted to make them at large.

Councilmember Zahner Bailey

- Public Works Director Drake had noted that an idea would be to have someone on the intersection committee that also happens to serve on the transportation plan.
- She thinks it is important for this body to have discussion because they have not done so yet.
- She would like to get the input and perspective of the Mayor and Council.

Public Works Director Drake

- As written, it is someone who resides within the Council district.

Councilmember Tart

- He realizes that going outside their districts has its role and he realizes especially with this committee that they require a large degree of specialized experience.
- He does believe that the tenant that is in our Charter which has you try your very best to find someone within your district and he thinks it was written that way for a reason.
- He thinks it is important that all of the districts are represented on these committees.
- It should be a concerted effort on all of them to reach out to the constituents within their own districts to find members for their committees.
- With that said, he would be in favor of extending this committee to business owners or residents within their respective districts.

Councilmember D'Aversa

- She agrees with that.
- They have made exceptions for the Highway 9 design review committee, but the nominations need to come from within districts 5 and 6 and a small part of district 4 because that is considered the Highway 9 corridor.
- She would like them to stick with their own districts.

Public Works Director Drake

- Suggested they amend the verbiage to say one member to the committee who resides or owns property in their respective City Council district.

Mayor Lockwood

- Asked City Manager Smedley if there was any reason they should introduce their nominees first.

Interim City Manager Smedley

- Suggested they take the legal portion first.

Motion and Vote: Councilmember Tart moved to approve a Resolution to Create a Stakeholder Advisory Committee for City of Milton Transportation Plan with the exception that nominations for this committee can be someone who resides or owns property in their respective City Council district. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

Mayor Lockwood

- His nomination for this committee is Bruce Smitherman.
- His family has lived in Milton for many years.
- He has known them from church.
- Bruce is retired from the furniture industry.
- He has been involved in the community and wants to do what he can to help out.

Councilmember D'Aversa

- Her nominee is Vic Jones.
- He is a personal friend.
- Mr. Jones is a principal in the Jones Consulting Group, which is an engineering firm.
- He specializes in waste water management and other engineering.
- He is more than qualified.
- He has a degree from Clemson.
- He has a Masters Degree in Water Resources and Environmental Engineering from the University of South Carolina and a Masters in business from Georgia State University.
- He is a registered professional engineer in Georgia and South Carolina.
- He served on the steering committee to form the City.

Councilmember Hewitt

- Nominated Clyde Johnson.
- He retired from the Federal Highway Administration with over thirty years experience and has some time in with the Georgia Department of Transportation.
- Currently, he is a uniform act and highway beautification compliance consultant.
- He is an expert on outside advertising and billboards.
- He has also been active in the past in the Alpharetta Parks and Recreation Department.

Councilmember Tart

- Presented Brad Robinson, who has several years experience in transportation engineering for City, County, and State municipalities, as well as private developments.
- He is a graduate of Georgia Tech.
- He was a project engineer on design transportation projects and is currently a project engineer with Wolverton and Associates Inc.
- He is also a project manager with them in design transportation projects.

Motion and Vote: Councilmember Tart moved to approve agenda item 08-753, a Resolution to Create a Stakeholder Advisory Committee for City of Milton Transportation Plan with the exception that nominations for this committee can be someone who resides or owns property in their respective City Council district by appointing Bruce Smitherman for Mayor's at large, Clyde Johnson for district 4, Vic Jones for district 5, and Brad Robinson for district 6. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

Mayor Lockwood administered the Oath of Office for the Stakeholder Advisory Committee for the City of Milton Transportation Plan to Bruce Smitherman, Clyde Johnson, Vic Jones, and Brad Robinson.

City Clerk Marchiafava read agenda item 08-754.

**Approval of a Resolution to Create a Citizen Advisory Committee for City of Milton Concept Plans for the Intersections of Birmingham at Providence and Arnold Mill at New Providence.
Resolution No. 08-12-64**

Public Works Director Drake

- This is to approve another seven member Citizens Advisory Committee.
- This committee will be serving as the CAC for both design projects.
- Asked for the same discussion as to whether the members will reside in the respective Council district.

Councilmember D'Aversa

- It was her understanding that they could go outside their districts, similar to the Highway 9 Committee and Design Review Board, that we would choose people that were closer, not only with backgrounds in transportation and development.
- Her appointment for tonight is not within her district since her district is so far from these intersections.

Mayor Lockwood

- He would agree this is more of a site specific area so it would make more sense to have someone that resides or is impacted by the area.

Councilmember Hewitt

- He would agree with that also.

Councilmember Zahner Bailey

- Had a question as to how they define what that is because these two intersections are right on the cusp of districts 1 and 2 and they are not too far from district 3.
- Asked if they were going to give parameters around how they select those people.
- She does not think they should preclude someone from their district who may have an interest.

Mayor Lockwood

- Thinks the best clarification would be to leave it open to any district of the City.

Councilmember D'Aversa

- For Highway 9, the difference is that the LCI requires that it be from that corridor.

Public Works Director Drake

- We can change the verbiage so it would read - nominate one at large member to the committee.

Motion and Vote: Councilmember D'Aversa moved to approve a Resolution to Create a Citizen Advisory Committee for the City of Milton concept plans for the Intersections of Birmingham at Providence and Arnold Mill at New Providence with Councilmembers nominating citizens and residents at large from within the City. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

Mayor Lockwood

- Nominated Yvonne Latorre.
- He met her about a month ago when she came and met with Dan Drake and our City Manager. One of her big concerns was the intersection at Birmingham Highway and Providence Road.

- After talking with her about her background and experience, he thought she would be a good candidate for this.
- He is pleased to have her as his nomination.

Councilmember D'Aversa

- Her nominee is Marty Littleton.
- He has quite the background in public service from a variety of angles.
- He has been very involved with other cities.
- He has successfully managed some large projects within the City of Marietta.
- He has been very involved with the Council and development in Marietta to promote re-development in the community.
- He was involved with the tax allocation incentive.
- He managed the Manget Street development project.
- He has a tremendous background of close to twenty years in real estate development.
- He has completed over 900 real estate transactions and renovated over 200 homes.

Councilmember Tart

- His nominee is the same as his nominee for the transportation committee, Brad Robinson.
- He brings a lot of experience to the committee.
- He thanked him for his service.

Motion and Vote: Councilmember D'Aversa moved to approve the nominations for Mayor Lockwood, District 5 and District 6 to the Citizen Advisory Committee for the City of Milton Concept Plans for the intersections of Birmingham and Providence and Arnold Mill at New Providence. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

Mayor Lockwood administered the Oath of Office for the Citizen Advisory Committee for the City of Milton Concept Plans to Marty Littleton for District 5 and Brad Robinson for District 6.

Mayor Lockwood

- Thanked all of the volunteers.

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.

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

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

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

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

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

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

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

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

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

City Clerk Marchiafava read agenda item 08-734.
(*Zoning Agenda items typed verbatim*)

ZM08-08/VC0-07 - South side of Webb Road, To modify condition 2a. and a 2 part concurrent variance to 1) To reduce the side yard setback from 20 feet to 10 feet along the east and west property lines; 2) To reduce the minimum rear yard setback from 25 feet to 10 feet along the south property line.

Community Development Director Wakefield:

As was stated, the applicant is requesting a modification to amend the site plan with a two part concurrent variance related to the reduction of the side yard setback and the rear setback. Although the recommendation of staff is approval of the modification and approval of both parts of the concurrent variance, the applicant submitted on December 8th a request for deferral. This is because of a conflict with a meeting with the City of Alpharetta and staff supports the request for deferral until the January meeting.

Mayor Lockwood:

Are there any questions for Ms. Wakefield from Council?

Councilmember Tart:

I have one question. Ms. Wakefield, I sent you and City Manager Smedley a message this morning or was it yesterday concerning the fact that a deferral was not automatic and to please let the applicant know that it would be in his best interest to show up for the meeting. Did you...

Community Development Director Wakefield:

I advised personally the applicant today and he was well aware of this that a deferral request was not an automatic that it was up to Mayor and Council and that we would recommend that he try and send someone if could not attend to represent him, because we could not guarantee the deferral.

Councilmember Zahner Bailey

I did not know how we were going to go about the process. I guess that was going to be my question - whether or not the applicant was here and then if we have any public...

Mayor Lockwood:

I think if we had any public comment on this item we would take that. Am I correct?

City Clerk Marchiafava:

Yes sir.

Mayor Lockwood:

Do we have any public comment in favor of this application?

City Clerk Marchiafava:

I do not have any cards submitted, but I do have an e-mail that I just received in opposition from Ms. Heidi Sowder. Would you like for me to read it for the record?

Mayor Lockwood:

Sure.

City Clerk Marchiafava:

"I am unable to attend the Council Meeting this evening, however, I would like to have my comments regarding **ZM08-08/VC0-07** read for the record. My comments are as follows: Dear Mayor Lockwood and Council, I am a resident of the State Route 9 area. I have followed the developments of this property for the past 5 years. I believe that the variances that the applicant, Mr. Ken Morton, is requesting are self-imposed. Therefore, I would request that Mayor and Council uphold the standards of the State Route 9 area and deny these variance requests.

The property was rezoned by Mr. Morton in June of 2005 under Fulton County. At that time the property consisted of 3.34 acres of land. Fulton County staff recorded no topography issues with this property. Mr. Morton was approved for 42,900 sq. ft. of Office space. **No** variances were requested to the stream buffers or any other buffers on this property.

In December of 2007 Milton's Mayor and Council approved Mr. Morton's case **RZ07-018** to re-zone his parcel adjacent to the one before you this evening. Mr. Morton took 1/2 of an acre of land from tonight's parcel and shifted it to the development of that adjacent parcel. This reduced tonight's parcel to 2.8 acres.

It would seem then, given the fact that Fulton County approved this rezoning w/no variances @ 3.34 acres, that this reduction by Mr. Morton of 1/2 acre is what is causing the hardship. Therefore, this would be a self-created hardship and should be denied.

Thank you for considering these points when deliberating the issues of this case.
Heidi Sowder”

That completes public comment.

Mayor Lockwood:

Thank you. Are we taking any other public comment at this point?

City Clerk Marchiafava:

If they submit their card, I will be happy to take them.

Community Development Director Wakefield:

If I may Mayor, if you are going to discuss this and not consider deferral, do you want staff to give their presentation of their analysis and how they came up with the recommendation?

Mayor Lockwood:

What I would like to do is since we have one more public comment, take the public comment and then open it for motion to approve, deny or defer this.

Laura Bentley, 2500 Bethany Church Road

I am probably not very prepared because I was planning to listen to the discussion so just in terms of the deferral, I was looking forward to understanding this a little better. I am a resident that sits in traffic and I am very concerned about variances that possibly could increase density in my area so I am interested in learning and hearing what is to be said about this. Thank you.

Mayor Lockwood:

Since we do not have any other public comment and certainly Ms. Wakefield that makes a lot of since but at this point I would like to ask and see if have a motion to either approve, deny or defer this.

Councilmember D’Aversa:

Can I ask a question? Is it appropriate from a legal perspective for us to go ahead and hear what staff’s recommendation was and the reasoning for it before we make a decision to defer and/or deny it.

Community Development Director Wakefield:

That is entirely up to this body.

Councilmember D’Aversa:

I would love to hear the staff’s recommendation and have that opportunity since we have some citizens here that came to hear it.

Mayor Lockwood:

If that is the will of Council, I will be glad to listen to staff’s recommendations.

Councilmember Zahner Bailey:

If we are going down the path of hearing recommendations, I would like to make sure we hear the whole of the case and have an opportunity then to discuss it because I think it is more than just the recommendations of staff. There is a whole post of analysis.

Councilmember Hewitt:

With that being said, I think it makes sense that we are going to hear one side of discussion here this evening and he would support making a motion to defer this case.

Councilmember Zahner Bailey:

I was unsure, do we have the applicant and/or the representative of the applicant in the audience? I did not hear an answer to that question.

Community Development Director Wakefield:

I am not sure. I just advised Mr. Morton that a deferral was up to Mayor and Council, but staff was supporting the request for deferral.

Councilmember Zahner Bailey:

But my question was, do we have a representative of the applicant in the audience?

Community Development Director Wakefield:

I do not think so.

Mayor Lockwood:

Let me just say this then, if staff had supported deferral and if we do have a motion and a second for deferral then I believe we can move on. If we do not then we can discuss this case.

Councilmember Zahner Bailey:

One question I have Mayor, before we consider a motion would be the time frame of a potential deferral. I am concerned that the January schedule is a little questionable. We have a January 5th schedule, I have seen some notes that indicated we had a zoning opportunity on January 12th which is not accurate and then I saw something that we could have a meeting on the 19th and I do not believe our calendar allows for a meeting on the 19th. I think our next zoning meeting would be the 21st. There are several people on this body who may not be present on the 21st. So if we are not going to hear the case tonight, I would as that we consider a deferral needing to be at a time when everyone would then be present, including those that happen to represent this district. I just think that when we consider what deliberation we are going to have that we consider the dates specifically.

Motion and Second:

Councilmember Hewitt moved to defer **ZM08-08/VC0-07** - South side of Webb Road, To modify condition 2a. and a 2 part concurrent variance to 1) To reduce the side yard setback from 20 feet to 10 feet along the east and west property lines; 2) To reduce the minimum rear yard setback from 25 feet to 10 feet along the south property line until the second regularly scheduled meeting in February. Councilmember D'Aversa seconded the motion.

Mayor Lockwood:

I have a motion by Councilmember Hewitt and a second by Councilmember D'Aversa to defer this case until the regularly scheduled second meeting in February. Is there any discussion?

Discussion on the Motion:

Councilmember Zahner Bailey:

I would like us at some point to talk about deferrals as a body. I believe that continual deferrals are a discredit to the public that shows up to participate. I am concerned that we may not have discussed what our policies are or should be and I think that a deferral should not be occurring simply because somebody asks at times. With all of my years of experience with Fulton County, and Alice I know that you can speak to that as well, it is not typical that we simply allow deferrals as a matter of convenience for people. It concerns me that we have an applicant that did not have the courtesy to at least have someone present to request deferral. I do believe that it is out of respect for our citizens and the public participation process that we need to think about what message that sends to our citizens as well as what sort of policies we are going to have in place. So I would just ask that we give consideration separate from tonight and this particular case what we as a body want to do with regards to requests for deferrals and determine what is a basis for legitimate rationale for deferral and do we want to have a specific number identified for the number of deferrals allowable. Again, that is just grounded in the history of zoning laws, the fact that you typically do not have deferrals without some sort of frame work for when those are allowed.

Mayor Lockwood:

Ok, then I would like to ask our City Manager and our staff the next available convenient time when we can get it on our work session schedule and allow our staff to prepare some information both on a staff perspective and what surrounding jurisdictions and bodies do. It would be great to have that discussion.

Councilmember D'Aversa:

I would like to ask Ms. Wakefield, you did support that deferral? You and your staff?

Community Development Director Wakefield:

Yes.

Councilmember Tart:

I would just add too, I understand that sometimes there are situations where there are unforeseen conflicts that are inevitably going to happen especially if you have lots of developments around town, in this particular case. However, I believe the conflict was a case in Alpharetta and the case was going to be heard at 8:30 tonight. Our meeting starts at six. That is about a two and a half hour span of time between the meetings with only a few miles between that City Hall and this one. So I would say that probably most developers are well aware of those kinds of conflicts well in advance and yet we only heard about this and were requested to defer this less than a week ago. Again, I would like that discussion. I would also like for staff to please, our attorney is not here so we cannot ask the question now, but I would like some clarification as to what happens if we keep deferring something. This case was already deferred once before.

Community Development Director Wakefield:

No sir, this is a new case. You are talking about the previous case. I believe it dealt with the restaurant and the self service. This is the adjoining property. This is the first time that this particular piece of property, other than cutting off the half acre, has come before this body.

Mayor Lockwood:

I would like to cut in right here. I think everyone's points have been taken and I think I have addressed it with having our staff to put it on a work session.

Councilmember Tart:

I still have a question I would like to ask.

Mayor Lockwood:

Ok, go ahead and ask your next question.

Councilmember Tart:

With regard to this property, maybe I need clarification as far as how many times this has been deferred because my memory of this was that Mr. Morton came before us before to have this heard and that the site plan modification was based on the presence of sewer availability to that property and we had not determined at that point whether sewer was available to that property so he asked for deferral. Am I wrong in saying that?

Senior Planner MacDonald:

That is correct. It was a zoning modification and he withdrew it. Council approved it during the discussions of the sewer issue, but this is a new petition.

Councilmember Tart:

Well that is good. I am glad to have that clarification because I had thought that it had been deferred once before and we were deferring it again and just for us going forward, if something is deferred twice, I would like to know from staff and our attorney what happens when we reach that third time and there is information we need. Do we even have the option to defer it a third time according to our rules of procedure because that could put us in a position to then be making a ruling on a case without all of the facts that we need and not having the ability to defer it. So when we have that discussion, I would like some clarification on that.

Mayor Lockwood:

That is a good point to discuss and another reason we need to have that work session. I have a motion and a second, is there any more discussion?

Councilmember Zahner Bailey:

Can we just specify the date for the record.

Mayor Lockwood:

The motion is for the second scheduled meeting so if the clerk wants to verify that date for the record.

City Clerk Marchiafava:

It would be February 18th.

Councilmember Zahner Bailey:

The reason I am asking for the clarification is that the whole premise of having it in February is to have it when everyone can be present. I know we cannot speak for two of our Council Members, but can we confirm that the individuals here. I know that Wednesday sometimes is a conflict because it is an unusual date. Is there anyone who would have a problem with that date?

Councilmember D'Aversa:

I do not think I will be in attendance on February 18th because I teach on Wednesday nights.

Councilmember Zahner Bailey:

I just think that this is important enough to defer to a date when all can be present. We have a design committee that is coming together for Highway 9, we have an LCI. I think that these cases deserve the benefit of a full body for deliberation and because this deferral was requested late, I would ask for consideration as to whether or not we could look for a date that those who have been involved with the highway 9 area, if we could consider a date where everybody could be in attendance.

Mayor Lockwood:

Right now we have the motion and a second. I believe Councilmember D'Aversa seconded. I will leave it up to the motion maker and the second if you want to change that motion.

Councilmember Hewitt:

I do not think everyone is going to be here in January.

Councilmember Tart:

Can we have this item on the first meeting or does it have to be on a zoning meeting?

Councilmember D'Aversa:

Yes.

Councilmember Tart:

It does have to be on a zoning meeting.

Councilmember Zahner Bailey:

I am not the maker of the motion, but I would suggest we move it to the March meeting which is on a Monday or the first zoning meeting that is on a Monday so we are sure that those who have been helping to represent the Highway 9 area are indeed here for that deliberation and again remember we did not request the deferral, the applicant did.

Councilmember D'Aversa:

We understand that. I would suggest that as long as it is not further than three months, which we are precluded from deferring something longer than a certain time frame then that is fine with me.

Councilmember Hewitt:

I will change it to the March zoning meeting.

City Clerk Marchiafava:

March 16th.

Councilmember D'Aversa:

I will second it.

Mayor Lockwood:

I have a motion to defer this item until the March 16th meeting by Councilmember Hewitt and seconded by Councilmember D'Aversa.

Motion and Vote: Councilmember Hewitt moved to defer until March 16, 2009, **ZM08-08/VC0-07** - South side of Webb Road, To modify condition 2a. and a 2 part concurrent variance to 1) To reduce the side yard setback from 20 feet to 10 feet along the east and west property lines; 2) To reduce the minimum rear yard setback from 25 feet to 10 feet along the south property line. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

City Clerk Marchiafava read agenda item 08-735.

RZ08-10, 622 N. Main Street by Larry Singleton, ADT Real Estate, LLC, To rezone from C-2 (Commercial) to C-1 (Community Business) to develop a 28,260 square foot retail home fashion center at a density of 12,504.42 square feet per acre on 2.26 acres.

Community Development Director Wakefield:

It was indicated this applicant is requesting rezoning from C-1 to a C-2 for the purpose of developing a retail home fashion business. He is not requesting any concurrent variances. The recommendation of staff is approval. The recommendation of the planning commission is approval and those approvals are approval conditional. Robyn MacDonald will give you greater details.

Senior Planner MacDonald:

Good evening. I just want to go into some detail on this request. The underline zoning, existing zoning as was mentioned is C-2 that was zoned previously in 2000 and it was originally the underlining zoning was for a total of 18,673 square feet or a density of 8,262.39 square feet per acre. When this was presented to the planning commission on November 25th there were some extensive discussions with the applicant regarding this petition. The proposed end user has an existing business in the City of Alpharetta but is a resident of the City of Milton and wants to relocate and expand his business into the City. Approximately 85% of the development will be the home fashion center and the remaining 15% of the building will be related businesses leased out to other tenants. The PC had discussions with the applicant in regards to parking and their need for so many spaces. They were concerned about the amount developed area on the site since the PC meeting, staff has included in condition 2a the list of exclusions of uses that were approved by you for other Highway 9 overlay district zonings. Somehow the wrong version had gotten to you but I just handed out to you the conditions that were recommended by staff which include many of those exclusions. Now I will just dip into the actual case. The proposed retail facility of develop with staff recommended conditions is suitable for subject site. Given the existing and anticipated commercial developments and the surrounding area so I want to just go through with you since it is a fairly high density proposal, more than the ten thousand typical of the area and other parts of highway 9. This the subject site. This is a map of the surrounding uses and I will just go through some of the near by zoning approvals. Just to the north, right here is the self storage, that was

zoned in 1988 and if was for a total of 85,650 square feet at a density of 13, 757 square feet per acre. Again that is an N-1 zoning. As you go to the south, it is a mixed use development and that has as far as the retail, it is at 2, 930 square feet per acre and the office is 897 square feet per acre. If you go to the south to ten that is zoned for 14,000 square feet per acre at 6,698 square feet per acre and that is undeveloped. Right now those are just two existing abandoned houses at this point in time. If you go further to the south, this blue is some office buildings that are developed at 6, 231 square feet per acre. Further to the southwest which was originally was unincorporated Fulton County but was later annexed by the City of Alpharetta but the county zoned it at 32,309 square feet per acre for a telephone sub station. Further to another southwest area again in Alpharetta but had originally been in the county was at 40,000 square feet per acre which is number 14 which is next to that other higher density. There are some various residential mixed use and higher density residential but over all the Highway 9 corridor, the land use plan recommends commercial, therefore this request is consistent with that as well as board policy in the area. Staff does not anticipate a significant impact on public services and facility however some impact on the transportation system is expected but should be mitigated to the compliance to the recommended conditions for project improvements. The proposed development is also consistent with the following plan policies, encourage development in areas where basic public facilities exist or are being improved and to discourage development in areas which would require inefficient or uneconomical extension of public facilities and encourage a broad range of business types and an even distribution of employment centers among the major divisions of the city. Going on toward the site plan analysis, the proposed development is consistent with the required setbacks. In your packet you will see the site plan. There are no variance and it meets all of the minimum required building setbacks. It meets the minimum landscape strips. There are no buffer requirements because surrounding it, this parcel is all commercial or N-1. In regards to parking, the applicant in their letter of intent had indicated wanting to request an administrative variance to reduce the parking by ten percent. Staff notes this has to be requested at the time of the land disturbance permit. As far as we can see at this point we are not in opposition to this reduction of parking based on the use of the building. I think the applicant can explain more thoroughly is for warehousing of the furniture for their retail portion, so even though right now there is a total of one hundred and ten spaces required, only ninety nine are shown but if an administrative variance is received at the time of LDP they would be able to satisfy that request or that number. Staff notes that there are at least two retaining walls on the site which must comply with article 12G of the overlay district which states that retaining walls shall be faced with or constructed of stone, brick or decorative concrete, modular block only. If any retaining wall is equal or exceeds three feet in height, a continuous evergreen planting shall be required adjacent to it. I believe at the last meeting the applicant is totally aware of this request or this requirement of needing to do the evergreen planting along those retaining walls. In addition the site plan does not indicate the required bicycle parking area so we mentioned that to them. Both the building and the site must comply with article 12G state route 9 overlay district at the time of certificate of occupancy. In regards to the trees, heavily wooded site, these are comments from the arborist, appear will have almost all trees removed, may be able to save two specimen pine trees, required tree density count of sixty seven point five units will be almost completely eliminated. Density replacements would be 135 four inch caliper trees and it is unlikely the required trees can be planted on the site although that is not a requirement of our ordinance that either this recompense should be put into the tree fund or located at other sites such as an elementary school or public school site as a possibility or at one of our parks. I do have a location map. It is hard to see but if you have any further questions about the location of the trees, Mark is here to answer any of those questions. At the October 29th CZIM meeting, the applicant was present and no members of the community or anybody interested were in attendance. Staff has not received any positive or negative comments from the community regarding this development. This proposed development went to the

Milton Design Review Board on November 5th and there is a list of different comments made. Site development density is too great. Asking for administrative variance for reduction of parking because of the density shown, proposed development requires extensive retaining walls ten feet from property line and in some cases do not allow for vegetative screening required by ordinance. Retaining walls must be met of the overlay requirements. Tree density for tree recompense needs to be substantially supported on site per arborist report. Sidewalk across front of property, sidewalk to building entrance from public right of way per ADA requirements and bicycle parking per ordinance. The rezoning petition has met all of the required public notice requirements. They have also met all of the public participation requirements as well. In conclusion the proposed development is consistent with the plan policies and the board policy for the development of C-1 to develop a home fashion retail center, therefore, staff recommends approval conditional of RZ08-10 with the following recommended conditions as I passed out to you. That concludes our presentation.

Mayor Lockwood:

Before we hear from the applicant, are there any questions from Council to Ms. MacDonald? Ok, we can first hear from all of those speaking in support of this item.

Larry Singleton EDT Real Estate, LLC:

Good evening Honorable Mayor and Council. I am the managing broker of the brokerage arm of the development company EDT Development who has been hired by one of your residences to move his business from Alpharetta to Milton, very simple. I really do not have a lot of detailed information to give you because it is in your packet and is presented by Ms Wakefield. I do this evening have the owner present and I have a representative of EDT Development and I also have our architect here, all ready to answer any technical questions you may have. Other than that I yield the rest of the time to rebut anyone who may speak against this at all.

Mayor Lockwood:

All right. Thank you.

City Clerk Marchiafava:

That is all of the comment cards I have submitted for this item.

Mayor Lockwood:

Ok, so it is safe to say we do not have anyone here to speak in opposition. At that point would the applicant like to use the rest of his time to make anymore presentation or answer any questions from Council?

Larry Singleton:

Like I said, they have not submitted the cards, but if you would like to ask them questions they will walk up with the card. An issue came up in your zoning hearing regarding trees. The number of spaces are required is basically we are trying to be in compliance with your ordinance. We can actually build less spaces and it was sort of implied by your zoning commission that they would look favorably on that, but there is contractual issues in us purchasing the property for the owner that we could not delay it any more so other than that I am here to answer any questions that you may have.

Mayor Lockwood:

Do I have any questions from Council to the applicant?

Councilmember Zahner Bailey:

I guess I have one question. Is there a specific end user that has already been identified for this parcel?

Larry Singleton:

Yes, the end user is basically a furniture store and design center located approximately two miles to the south. The gentleman just wants a newer facility, of the facility as stated by Ms. Wakefield, he is going to occupy about 85%. That is going to leave 5 to 6,000 square feet left that he wanted to have available for complimentary uses, someone that relates to his business and to make a little money, but predominately this is an owner occupied facility.

Councilmember Zahner Bailey:

In terms of that additional 15%, do you have any specific tenants that are contemplated?

Larry Singleton:

Not at this time. That question was brought forward at the zoning hearing and I explained that votes taken tonight, hopefully it will be positive, if it is we have to wait thirty days, then it will be another thirty days to close, then they will start breaking ground. We are talking late 2009 before the facility is even finished.

Councilmember Zahner Bailey:

Next question, when you said owner occupied, is this land currently owned by the applicant?

Larry Singleton:

No it is not. The owner of the land is Mr. David Burre who is a long time resident of North Fulton County. I think he may live down in Roswell and we have the property under contract subject to being rezoned.

Councilmember Zahner Bailey:

Ok, so it is contingent on the rezoning?

Larry Singleton:

Yes Ma'am.

Councilmember Zahner Bailey:

Thank you.

Mayor Lockwood:

At this point before I take any more questions I do want to close the public hearing since we have no more public comment, but I will keep it open to Council for any more questions.

Public Hearing Closed

Councilmember Tart:

I just have one statement. I do not know if there is anything we can do about it. Obviously, I share the sentiments of some people that were at the community meeting, I guess regarding the clear cutting that is going to go on this property, however, I realize that our tree ordinance currently does not even address

clear cutting and that the owner can of course that amount of density there and therefore clear cut and just have to recompense. I do hope that at some point we will address that in our tree ordinance. I know that we cannot do much about that now other than maybe look into the rezoning that he is asking for and the amount of density that he is asking for to do this property.

Mayor Lockwood:

I would like to ask Ms. Wakefield could you please reconfirm the Planning Commission and the staff's recommendations.

Community Development Director Wakefield:

The recommendation of both staff and the Planning Commission is for approval conditional.

Mayor Lockwood:

My only comment would be that as I sit here today and these times and I am sure all of us are watching the news and I know that I get phone calls everyday and personal friends losing their jobs and I know we are concerned with the City with our revenues and I am sure everyone else in here is. To me, it is a bright spot to see that one of our citizens is looking to open a business in Milton and from what I see it would be a nice addition, so I want to thank the applicant for that.

Councilmember D'Aversa:

Ms. Wakefield, if the applicant does not, in fact, if we were to approve this rezoning conditional pursuant to staff's recommendation, if the applicant does not then proceed forward with the purchase of the property and ultimately moving his business here, how does that impact the rezoning?

Community Development Director Wakefield:

The rezoning goes with the land so it would still remain in the ownership of Mr. David Burre, but it would have a lot more restrictions on it than it currently has. It would be heavily restricted by uses.

Councilmember Zahner Bailey:

I have a couple of questions for staff. Can you confirm that this is within the area of Highway 9 that does have accessibility to public sewer?

Community Development Director Wakefield:

Yes, it does.

Councilmember Zahner Bailey:

Thank you. With regards to the comments that were made at the Design Review Board, I do not want to ignore those. I think they were important. I know they looked at this case and I am struck by the comments that were read by Ms. MacDonald and that are within the analysis and I am just going to state them. It says that the site development density is too great. It talks about the proposed development requiring extensive retaining walls from the property line and in some cases do not allow for that vegetative screening and then also with regards to the tree density, virtually between the DRB and our arborist that this level of density on this 2.26 acres, if allowed to be built at that density would effectively remove the ability of any trees to remain. I would be remiss if I did not say to this body that I am concerned with 28,000 square feet actually almost 29,000 square feet on 2.26 acres. The fact that the current C-2 zoning that was approved under Fulton County allows for 18,000, this jump of 10,000 square feet to me seems extensive. I am concerned that it is not consistent with what this body has

indicated with regards to looking for appropriate site development along Highway 9 and our sensitivity to the need to maybe have some more buffering than what has historically been afforded us in that Highway 9 area. This is a gateway to Milton. We are obviously pursuing an LCI. We are pursuing some other activities and I am concerned that 28,000 square feet is not consistent with the majority of those other initiatives in the area. I do think that we have the opportunity this evening, and this was a question that Councilperson D'Aversa ask, is that we could approve a C-1 rezoning, in other words effectively convert it from a C-2 to a C-1, but we could indeed condition it on a certain density level. And also to Councilmember Tarts question about recompense, anything that we do this evening can be conditioned. We could require some trees saved. We could require that some of those trees be recompensed on the property and while we do not currently have a tree ordinance that requires that on property, I have heard us as a jurisdiction say that tree save is important and so it strikes me that this density is too great when you see that the entire property would be without any trees once that density is in place. I would like Mr. Law, our arborist, to perhaps comment on the trees. Can you speak about the specimen trees for us briefly?

Arborist Mark Law:

All of the specimen trees out there are pine trees with the exception of one tulip poplar. They are in a location where potentially all of the trees on the site are going to be removed. There is one pine tree in the very back corner that could potentially be saved but with the extent of what is going on the site, I think that is not viable that tree would even remain. Again, like what was stated, the entire site will be cleared and what you are going to have coming back in on the site is basically your landscape strip along the front and your parking island trees, there maybe some room in some of the landscape strips along the perimeter to get some trees in but again those will be your required landscape trees. That may meet your density requirements with what is going on site but additionally you have the recompense trees which I do not see where any of those could be planted at this time.

Councilmember Zahner Bailey:

Is it fair to say that the reason you believe recompense cannot occur on site and/or that the trees cannot be saved is because of the level of density?

Arborist Mark Law:

That is correct.

Mayor Lockwood:

Are there any other comments or questions for Mr. Law? At this point, I will open up to either a motion to approve or deny this application.

Councilmember D'Aversa:

I would support approving this with a lower density, however, I would like to, if you think that is ok Mayor to talk with the applicant about reducing the density. If we can reduce the density to what is more acceptable, especially given the fact that we are about to go down this process of our Highway 9 design review board, it causes a lot of concern for this board that we have not had our Highway 9 Design Review Board in place and now that we do to go and start rezoning property at greater density than we would like to have in the City of Milton, it is just a problem for us. It is a problem for me personally. Is there any flexibility?

Mayor Lockwood:

I would be willing to, if the owner or the owner's representative would like to step back up and address that question, I would be glad to listen.

Councilmember D'Aversa:

In listening to this discussion, you have a situation where you want to move your business at 85%, if that was the only building on the property possibly that would reduce the density to a point that would more...

Larry Singleton:

What I would like to do is yield to our architect Rick Massey, who can explain this because sometimes these specimen trees mean I have to build a pentagon with an open area in the middle of the property and it is just not going to happen. I am an environmentalist and I am a business man, but I have to be realistic and they are pine trees.

Councilmember D'Aversa:

I am not suggesting that necessarily those pine trees are the trees that need to be there, what I am suggesting is that density is the challenge for me and that it may be that we would be able to handle this from a Highway 9 design perspective better if the density was a little bit lower and we knew that there could be some tree coverage around this property so it would look more with what we are trying to design up and down and what I am confident the committee is going to bring forward to us with the new design guidelines. I just hate for us to start rezoning properties that are going to be designed differently and then six months from now we have design guidelines that are going to be so much different with a lot of trees. Milton is a community that is very concerned with saving trees. We are very concerned with growing more trees and having that green space and if this is your design then there is no trees available whatsoever. There is not any planned for the property.

Larry Singleton:

Let me first yield to our architect who can explain the technical details of his design.

Mayor Lockwood:

Let me just make one comment and I certainly agree with Councilmember D'Aversa in her concerns, but I also think legally and practically we have to be respectful that we cannot step forward knowing six months from now we are going to change something or even a year. Right now, we have to deal with current recommendations.

Councilmember D'Aversa:

But it is widely accepted in the City of Milton...

Mayor Lockwood:

Sure and we will let them address that.

Councilmember Zahner Bailey:

As a Point of Order knowing that we had closed our public comment, and I realize we are making an exception, can we make sure we are keeping the comment germane to specific questions and that we are not opening our public discussion.

Councilmember D'Aversa:

I think this is great. I would love to hear what your comments are because I do not understand the necessity to not have any green space on the property given the environment that it is in right now.

Rick Massey:

My name is Rick Massey and I am an architect with Stegenga Partners in Alpharetta. First of all, the first floor of the space is twenty one thousand square feet. The balance is in a storage space down below, a daylight basement as I said earlier for storage of furniture. Earlier in staff's review they pointed out, which I have since learned that we do not have a ten foot landscape strip at the rear of the property which is back here fronting the storage area. We have five feet so I can capture five feet from this buffer and add it up here. The issue about the retaining walls was really here. They are tall retaining walls, but if we can terrace this back and use fifteen feet, I can plant smaller trees in there. True we cannot plant large specimen trees on this site because the parking requirements but we can plant smaller trees around the perimeter. If the parking requirement were not as stringent, we could leave all of the central island space here with trees and plant those. We are showing grass pavers for that. Other than that this is as close as we can come to satisfying the tree requirements.

Councilmember D'Aversa:

Ms. Wakefield, the parking requirement is based on our city requirements and that is how many parking spaces again?

Community Development Director Wakefield:

The parking requires a total of 110 spaces. I do have the ability to grant a reduction of 10% which would bring it down to 99 spaces which is shown on the site. Anything lower than that requires a variance from the BZA.

Councilmember D'Aversa:

In your development currently takes into account 110 spaces, not 99?

Rick Massey:

99.

Councilmember D'Aversa:

Ok, so you have already done that. I was just trying to see if we could find some additional room.

Councilmember Hewitt:

If you were not required to have 99 or 110, how many would you guess that you would need?

Kevin Attarha:

I am part of the development team. We believe we could get away with about 60% of the parking space required based on your ordinances and actually we would love to but of course the Planning Commission wanted us to actually go ahead and make a recommendation for reduction of parking spaces but I think it was not part of our application so it was not approved, however, if we could go with lower spaces we could actually eliminate the row of parking and have it for our detention and put some buffers, so we do not need that but the requirement calls for 110 spaces. Mr. Rozati is the owner and I think we have taken some sample of his existing business and customers and 85% being a furniture store, I believe as you all know, I do not know how many people go shopping at one time at a furniture

store, but this property has sewer. GDOT has given us a permit for driveway. There is sewer available and the topo of this property really makes it very difficult to do anything other than that. The reason I believe this is zoned and stayed that way for so long, it will continue to stay that way because it is a very challenging site and you have a twenty foot drop here as mentioned by the architect, we have only 21,000 square foot density so 28,000 is a little misleading. If you took an area photo, you are looking at 21,000 square foot on a 2.26 which is well within the guidelines.

Councilmember D'Aversa:

My question Ms. Wakefield, was once we rezone this for that density, it would stay with the property, someone else could come in if you did not proceed with your development and build something different. I like your design with the daylight basement. That makes sense to me and I am glad to hear that.

Community Development Director Wakefield:

A different developer could build it, but it would still be based on the conditions if you approve them in this site plan.

Councilmember Zahner Bailey:

I have a question. Could you speak to the detention? Is it above ground or under ground?

Kevin Attarha:

We have not gone to that detail. We would obviously talk to the city, if we can be above the ground...

Councilmember Zahner Bailey:

I am sorry. What does your current site plan show?

Kevin Attarha:

It is an underground detention pond. There is already an existing outflow here existing some sort of storm management going on right here with the storage facility so we anticipate this would be underground right here.

Councilmember D'Aversa:

The parking backs up to the storage facility. Is that correct?

Kevin Attarha:

Yes, that is correct.

Councilmember Zahner Bailey:

Could staff speak to that point? I know that this property obviously fronts on Highway 9, but it starts to encroach into part of that Hopewell area, not immediately, but what kind of falls back behind there, some of the residences?

Councilmember D'Aversa:

That is the storage facility. It wraps around.

Councilmember Zahner Bailey:

I was thinking that it begins to back up to the area off of Hopewell Road.

Community Development Director Wakefield:

A couple of things, it does not abut any residents.

Councilmember Zahner Bailey:

I know it does not abut directly. I was trying to speak to the area of Southfield Plantation at this back corner. This is where the back corner of the Southfield Plantation comes, so I am trying to get a sense of proximity, if everybody would just look at that map, because it does get very close to those residences.

Community Development Director Wakefield:

I am sorry, I am not seeing that because it is a storage facility that wraps around two sides of it and on the other side there is a commercial development in the City of Alpharetta. It is not immediately adjacent to that residential development. If I may Council, the suggestion that staff has that the Council may want to consider is if you approve it for a total square footage as requested but restrict the footprint so that the building cannot any larger than 21,000.

Councilmember Hewitt:

How could we go about keeping all of the wheels in motion if we were to approve something like this, this evening? Also, in tandem maybe be working on reducing that parking a little bit to get a little more bang for our buck.

Community Development Director Wakefield:

There are a couple of things they can do. This body could approve it as requested and they could then go to the BZA and seek a concurrent variance. The other option, and I do not think this is one that they could support because of contractual matters, is to defer it to allow the applicant to add a concurrent to reduce the parking.

Councilmember Zahner Bailey:

Given all of the discussions that we have had about this body needing to deliberate about variances that tie to a rezoning, I could not support approving density here tonight knowing that we are sending a concurrent variance to the BZA because I think it is counter to what we have talked about in our policies and procedures that we have deliberated on quite a bit. I would like to point out that again some of this development and density that is being proposed is basically non-tenant specific. It is contingent on eventual businesses coming there. I will stand that I think it is too dense for this property. The reason that the parking in some cases is required is because there is more density, so the reason we have standards, the reason we have staff with the ability to reduce parking by a maximum of 10% as an administrative variance is that we do not want to be building structures without ample parking. Again, development standards are in place for a reason. I am prepared to make a motion if it be the pleasure of this body that would accommodate the C-2 to a C-1, but would also accommodate our development standards.

Councilmember Tart:

Just for clarification, what would those development standards be relative to density?

Councilmember Zahner Bailey:

I am happy to make my motion.

Mayor Lockwood:

You are welcome to make a motion.

Motion: Councilmember Zahner Bailey: I would like to put forward a motion that would effectively approve the C-2 to a C-1, but I would recommend we approve it at the density that was approved by Fulton County, which is the board policy for that area on that 2.26 acres for the original density that was approved under Fulton County and I believe that is the 18,673. So my motion would be to approve a C-1 rezoning with a total of 18,673 square feet which would be consistent with board policy for the area. I would also want to ensure that we add a few conditions with regards to specimen trees. I think that with the reduction of density, some specimen trees could be saved as opposed to that site having to be clear cut. I would also ask a condition that would say that some portion of the tree saves needs to be recompensed, or the recompense needs to be on site. I would also want to include, and I did not see, and forgive me because we got the revised conditions from staff a bit late, I would want to make sure that the conditions of staff include those prohibited uses or the defined uses and everything else that was included. I did not see a reference to four board fencing on the property. I saw that with regards to detention but I got confused because earlier I saw that there was a five board fencing around the detention but then I just heard the applicant say it was underground detention, so I was a little miffed by that. Can we confirm if it is underground or above ground?

Community Development Wakefield:

It is underground.

Councilmember Zahner Bailey:

Ok, so I would want us, as we have done for other Highway 9 developments condition the use of four board fencing along the frontage and I believe it already covers the Bike and Pedestrian Pathway requirements, so that would be my motion, would be to allow for a C-1, but consistent with the 18,673 square feet that is currently allowed with the additional conditions from staff as well as a requirement that some of those trees be saved which I think would be allowable with that reduced density and with some recompense to occur on site and with the four board fencing to be utilized along the front consistent with those conditions.

Mayor Lockwood:

Do I have a second?

Councilmember Tart:

I have a question for Councilmember Zahner Bailey before we get a second, unless somebody else wants to second it. You said save some of the specimen trees and you said some recompense on site. Who is that left up to?

Councilmember Zahner Bailey:

Thank you for the question. Mr. Law?

Arborist Mark Law:

As far as the trees left on site, I would have to be able to see what is going to be left, what size of an area will be left where they could plant the trees. As far as the remaining specimen trees, the tulip poplars, I do not see how they can work around that. It is almost in the middle of the site. The problem you will have with the specimen pine trees, is by the time you, the outer portion of perimeter has already been

cleared from all of the adjacent properties. By the time you remove the interior of the trees, you are not going to have so much of a wind breaker or buffer for the existing trees and the pine trees, once that wind break has been removed, it is susceptible to wind damage. Because of the location of these pine trees, some of them are in the front parking lot, right there where the building is and some of the remaining ones are right there at the perimeter.

Councilmember Zahner Bailey:

I guess my question would be that when we - my statement, not a question - would be that with the site plan which would need to be revised to reflect that 18,673 square feet, that part of the motion would include an attempt to save some of those specimen trees because I do believe some of them could be saved and I think we have precious few trees on Highway 9. We hear everyday from our citizens that live in that area that they want some saved. I think we have an opportunity to save some, so I would be willing to condition it that based per the arborist review, but I would also want to condition it to the review of the Design Review Board because this would have to go back before them, if I am not mistaken. It is not a requirement, I would add that as a condition that the revised site plan would return to the Design Review Board and that between the Design Review Board and our Arborist, they could assess which of those five specimen trees could be potentially saved as well as being able to determine the percentage of recompense that could occur on site. With regards to recompense I would ask that it be consistent with what we did for the other cases in that area, requiring that some of those recompense on site be the six inch caliper tree. To answer your question that is how I think we could specify it and accommodate that and still make sure we have the flexibility necessary.

Second to the Motion. Councilmember Tart seconded the motion.

Mayor Lockwood:

At this point, I have a motion and a second and I will open it for discussion. First of all, we have a project here that has been through our Planning Commission, our professional staff, the last sixty days, our arborist, based on our ordinances, we have a property owner here, we have an end user, a citizen of Milton and I just cannot support something that we take in the last fifteen or twenty minutes, and I respect everybody's concerns, where we just change this applicant's whole use of his property. So I certainly cannot support this motion as it is and again I go back to the Planning Commission that supported it. We have a staff, we have recompense on the trees. I also understand, I get a lot of comments about losing trees on Highway 9 and the ironic thing is a lot of times it will come from school kids and I will bring them into City Hall and meet with the arborist and their parents will come and when the leave, they say, ok I get it now. You can save some trees, but those trees may die or they may be some pine trees or whatever, with recompense just like they have done at some of the schools, we can plant trees that will be here the next two hundred or two hundred fifty years so those are my comments and I cannot support this change.

Councilmember Tart:

I can appreciate the Mayor's comments and I guess I am less concerned with the saving of the specimen pine trees than I am the recompense on the property. I have to live along Highway 9 and it is basically a parking lot now. I am sure the residents on Highway 9 share that sentiment and we do have some pretty good quality developments along Highway 9 that I think we are all proud of, but it was because there was recompense on that property and because we know fifteen years from now that property is going to look pretty good because of the recompense that was allowed on the property. I have a hard time with

just going in and clear cutting especially when we have an opportunity to decrease that density to be able to allow some recompense on the property.

Councilmember Zahner Bailey:

May I Mayor? I was just going to respond to the point about the fact that we have somebody that lives here that wants their business here. This is actually a little bit speculative because at least 15% of the density that is being proposed has no tenant and it is speculation from the perspective that this is contingent on the rezoning. So I do understand the need to protect those citizens and their rights, but I think that the whole deliberation of this body is to have the sorts of discussions we are having today and that is not that we are trying to change a plan. It is that sometimes plans are more dense than what 2.26 acres can accommodate which is why indeed we are seeing a parcel that is effectively clear cut and it is why our Design Review Board made the statement that they did when they also deliberated and reviewed that site plan and identified the fact that it was too dense given the 2.26 acres.

Mayor Lockwood:

I think it is very clear where you stand Councilmember Bailey and I am going to ask if there are any Councilmembers who have not spoken yet and then I would like to move forward.

Councilmember Hewitt:

I would just like to say that I agree with supporting our staff and the Planning Commission on this. I think taking it down 10,000 square feet, you are not looking at a 28,000 square foot footprint, you are not going to see as much production other than some parking spaces. That is my comment.

Vote: There was no further Council discussion. The motion passed 3-2, with Mayor Lockwood and Councilmember Hewitt opposed.

NEW BUSINESS

City Clerk Marchiafava read agenda item 08-755.

Approval of task orders for concept studies of Birmingham at Providence intersection for \$116,434.06 and Arnold Mill at New Providence intersection \$70,496.70 with Street Smarts, Inc.

Public Works Director Drake

- There are two task orders with Street Smarts Inc.
- They are to support the last Resolution which was the intersection of Birmingham at Providence and Arnold Mill at New Providence.
- These task orders are for the concept studies for both intersections.
- They include public involvement, concept development and environment document phases.
- This is an 80/20 with 20% being City funds at \$23,286.81 and \$14,099.34.
- Ask for approval on this item.

Councilmember Zahner Bailey

- Asked Public Works Director Drake to confirm what they had discussed earlier for the record.
- He questioned what to do with the dollar amounts.
- She had some inquiries from citizens that had been involved.
- They asked that she make sure none of those dollars were duplicative with what Fulton County may have already done.

- They wanted to verify that we were leveraging some of the growth that had been done.

Public Works Director Drake

- They are leveraging the work that was done.
- There were concept reports that were developed for both intersections by Fulton County and those concepts will be one of the alternatives being studied.
- They are looking at other concepts.
- They will make sure they have what the citizens want.

Motion and Second: Councilmember D'Aversa moved to approve agenda item 08-755, Approval of task orders for concept studies of Birmingham at Providence intersection for \$116,434.06 and Arnold Mill at New Providence intersection \$70,496.70 with Street Smarts, Inc. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

City Clerk Marchiafava read agenda item 08-756.

Approval of a Resolution Requesting the Transmittal of the draft City of Milton 2008-2028 Comprehensive Plan Partial Update to the Atlanta Regional Commission and the State of Georgia Department of Community Affairs.

Resolution No. 08-12-65

Community Development Director Wakefield

- George Ragsdale of the CPAC committee has a brief presentation.
- This is the request to transmit the partial update of the City of Milton's Comprehensive Plan.
- The deadline for submittal is December 31, 008.
- This document represents a bridge between the Focus Fulton Plan which this body approved in 2007, however, the Resolution was not forwarded to the DCA nor the ARC therefore the deadline for the submittal for the full plan was actually November 30.
- After much discussion, the state and regional agency agreed to give us an opportunity to submit a partial update which will serve as the bridge document until we can complete the full plan.
- The CPAC with the assistance of staff will move forward with that final stage in January 2009.
- Staff recommends approval of this Resolution.

CPAC Chairman George Ragsdale

- The draft partial update plan was sent to CPAC members and City Council on October 18, 2008.
- We asked for comments to be back by November 14.
- We received comments from both.
- They had to meetings to review comments that were submitted.
- A second draft inclusive of those comments was sent out on December 5, 2008.
- They have received a few additional comments to the December 5th draft.
- The draft presented tonight is the draft they are talking about.
- There were several questions asked with respect to additional comments.
- The partial plan does refer to a need to coordinate and cooperate with surrounding municipalities and counties with respect to the collection and treatment of wastewater.
- There is no intent to imply that the plan is recommending that sewer be extended.
- The plan is leaving open the possibility for the need for additional sewer in the City.

- The recommendation that will be in the assessment will either recommend that there needs to be additional sewer capacity or there will not but there is not intent in the partial plan to commit to that.
- There is no intent to encourage that or convey the idea that we will be working with the surrounding municipalities to bring sewer into the city from those municipalities.
- That will be addressed in the final plan one way or the other in the final plan once we understand whether there is a need for it.
- Until the financial planning model is done, they feel the language that is in there is appropriate for where they are in that planning process.
- Another point raised was the use of conservation subdivisions.
- Historically, they have been viewed as a way to allow higher density or unusable land to be counted in the calculation for density.
- They believe that a conservation ordinance is needed as a tool possibly, but they are also conscious of the fact that the ordinance they want needs to preclude higher density or the allowance of unusable land being included in the calculation.
- The plan indicates they want to make sure that a conservation subdivision ordinance is considered as part of the strategies going forward and we would still stand by that.
- There was a question about a \$45,000 item that is included in the short term work program.
- The \$45,000 is in there for the assessment of the existing parks and development of some standards.
- There is no development on the ground development that is represented by the \$45,000.
- The money is in the budget for next year so that is why it is indicated in the short term work program.
- Those were the material changes requested.
- There are a number of other changes requested that will be included in the final plan.
- For the sake of clarity he wanted to make sure the plan Council is looking at the plan they are asking to submit is the plan subject to the material questions he raised tonight.

Councilmember D'Aversa

- Would like to confirm the entire committee has reviewed and approved this submission of the plan.

CPAC Chairman Ragsdale

- Yes, it was sent to every committee member and every Council member so everyone has had the chance to comment on it.

Councilmember Zahner Bailey

- It sounds like the majority of what she sent regarding edits was incorporated and that all of those changes, with the exception of those noted just now, will be included before the document is routed to the DCA.
- For example, where it talks about the Birmingham Crossroads, there was a disconnect from the perspective that it did not highlight many of the things that were part of that master plan.

CPAC Chairman Ragsdale

- With the exception of the things he raised tonight, the things she raised will be included.

Mayor Lockwood

- It sounds like we are on the same page.

Motion and Vote: Councilmember D'Aversa moved to approve agenda item 08-756, Approval of a Resolution Requesting the Transmittal of the draft City of Milton 2008-2028 Comprehensive Plan Partial Update to the Atlanta Regional Commission and the State of Georgia Department of Community Affairs. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

City Clerk Marchiafava read agenda item 08-757.

**Approval of a Resolution to Adopt the 2009 Zoning and Use Permit, Zoning Modification, Board of Zoning Appeals and the City of Milton Design Review Board Schedules.
Resolution No. 08-12-66**

Community Development Director Wakefield

- This is a request to approve our schedule and deadline dates for 2009.
- There are some changes.
- On the rezoning and use permit schedule, it says 4-0-09, it should be 4-7-09.
- Regarding zoning modifications on the first line it should be 2-18-09.
- On page one in the last column, we have listed Thursday and it should be Monday.

Motion and Second: Councilmember D'Aversa moved to approve agenda item 08-757, Approval of a Resolution to Adopt the 2009 Zoning and Use Permit, Zoning Modification, Board of Zoning Appeals and the City of Milton Design Review Board Schedules with the amendments made by staff. Councilmember Hewitt seconded the motion.

Discussion on the motion:

Councilmember Tart

- Asked if they had double checked the schedule because his calendar does not go out to 2010.
- Wants to make sure we are not scheduling something on a holiday.

Senior Planner MacDonald

- They did check it but for 2010 they needed to give a deadline.

Councilmember Tart

- In looking at his calendar on January 18, 2010 is Martin Luther King holiday, so it does have errors in it.

Senior Planner MacDonald

- We can amend that to be the correct Wednesday.
- It is for 2010 so the clerk has not addressed it yet.

Motion Restated: Councilmember D'Aversa moved to approve agenda item 08-757, Approval of a Resolution to Adopt the 2009 Zoning and Use Permit, Zoning Modification, Board of Zoning Appeals and the City of Milton Design Review Board Schedules, as amended by staff including a date change of January 18, 2010 to January 20, 2010 and February 15, 2010 to February 17, 2010. Councilmember

Hewitt seconded the motion. There was no further Council discussion. The motion passed unanimously 5-0.

MAYOR AND COUNCIL REPORTS

Mayor Lockwood

- Going back to our parks committee as we went through our appointment process it has come to light that we do not have a representative from the HYA or Hopewell Baseball park.
- He would suggest with that being our only active park that we have a representative there.
- He would like to get support from Council to appoint an additional person that is on the Hopewell Board and that meets all of the other requirements.

Councilmember D'Aversa

- Thinks that is a great idea and she would support it.

Councilmember Hewitt

- Would also support that.

Councilmember Tart

- Asked if there was any advantage or disadvantage for that person to be a voting member.

Mayor Lockwood

- They would need to be a voting member.

Councilmember Zahner Bailey

- She does support that and asked if there were any other entities other than HYA that needs to be considered.

Mayor Lockwood

- He will ask the City Manager to move forward on that and bring it back at a later date.

Councilmember Zahner Bailey

- Since this our last meeting before the holidays, please note the Milton Grows Green committee is helping to sponsor a Bring One for the Chipper Program.
- It will be a recycling program specifically for Christmas Trees in Milton and will be at station 43 on January 3, 2009.

Councilmember Tart

- Tim Enloe is organizing a community meeting for residents on open roads in Bethany area to discuss traffic issues.
- They are trying to figure out a good time for at least some of Council to attend.

Councilmember D'Aversa

- To our City Staff, we had such a tremendous event for Crabapple for the holiday celebration and wanted to thank Linda Blow and staff for putting that together.

STAFF REPORTS

Public Works Director Drake

- Fulton County is redistricting and they have had three meetings.
- Between the second and third meeting, the City Manager and he had a teleconference with Councilmember D'Aversa to talk about a traffic analysis of the redistrict.
- We got from Fulton County the GIS files of all the students in the schools as well as their new districts.
- He gave Council a color coded map of the shifts from one to the other and some comments they will be sending out as a letter to the Fulton County Board of Education.
- They will send a draft out to the Board of Education giving some high level analysis of their plan D.
- They are having their first reading on January 13th and January 22nd and their final vote in February.

Councilmember D'Aversa

- Asked if this is the plan they have decided they are going to take.

Public Works Director Drake

- Correct.

Councilmember D'Aversa

- This shows number of student's current, number of students under the draft of plan D.
- For example, Cogburn Woods goes from 804 mapped to 722 mapped.

Public Works Director Drake

- If you look at the grade up above that you can see where the students coming from one elementary to the other so that is the actually net delta between the schools.
- They have to shift the students.

Councilmember D'Aversa

- Thinks this will be tremendously helpful to them because there is a lot of inaccurate information that is being circulated.

Public Works Director Drake

- The dark blue boundaries on the map is area B which shows the 205 that are going from area B-1 and we can make some analysis to say of the 205 that used to be going to Cogburn Woods are not going to the new Birmingham Elementary and we can give analysis as to what we think will have effect in regards to the travel pattern in the City.

Councilmember Zahner Bailey

- Asked if the goal is to help influence or just to provide data.

Public Works Director Drake

- It is a purely objective analysis from the traffic engineer.
- There are possibly two high level recommendations that we may make.

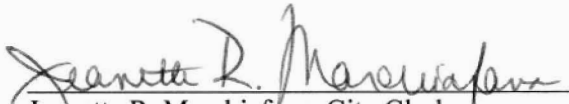
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- In area B-1, there is a dash line and we are contemplating recommending that those would be going to Birmingham from a purely transportation perspective, to go across Birmingham versus down Hopewell.
 - Those are the types of things that his traffic engineer is looking at now.
 - The other one is some of the areas just north of Summit Hill, that some of those students are within walking distance from Summit Hill and now are being reassigned as part of our safe routes to school application that it would make more sense to keep some of them at Summit Hill.

ADJOURNMENT

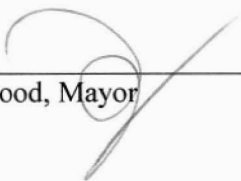
After no further business, the Regular Meeting adjourned at 8:29 PM.

Motion and Vote: Councilmember Tart moved to adjourn the regular meeting. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously 5-0.

Date Approved: January 5, 2009



Jeanette R. Marchiafava, City Clerk



Joe Lockwood, Mayor