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**The Regular Meeting of the Mayor and Council of the City of Milton was held on April 27, 2009 at 6:00 PM, Mayor Joe Lockwood presiding.**

**INVOCATION**

Rabbi Hirshy Minkowicz, Chabad of North Fulton, led the invocation.

**CALL TO ORDER**

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

**ROLL CALL**

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

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

**PLEDGE OF ALLEGIANCE**

**Mayor Lockwood** led the Pledge of Allegiance

**APPROVAL OF MEETING AGENDA**

Staff recommended the following change to the meeting agenda.

1. Move from New Business to after Reports and Presentations, Agenda Item No. 09-850, amendment of Resolution No. 09-02-79, 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 committee members.
2. Under Reports and Presentations, Add an Arbor Day Proclamation.
3. Under Reports and presentations, Add a Presentation of the Milton Arts Committee's new exhibit by Patti Silva, and recognition of Artist Marcia Blake.
4. Move to First Presentation from New Business, Agenda Item No. 09-849, and change the item from a Resolution to an Ordinance, which now reads, Approval of an Ordinance to Revise and Update Speed Zones and Regulations Regarding Vehicular Speeds within the City Limits and to Provide for Enforcement of Those Regulations.
5. Add to Reports and Presentations, Discussion on Milton Population.

**Motion and Vote:** Councilmember Thurman moved to approve the meeting Agenda, as amended. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

**PUBLIC COMMENT**

**Mayor Lockwood**

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

**Jon McPhail**, 640 A Dorris Road, Milton, Georgia

- They had a glorious day Saturday.
- There were 370 or so volunteers.
- They will be filing a final report with the City Manager about everything that was done with some maps to show what was taken and what was left.
- There are some things that remain to be done that involve the completion of repairs on the house and there were some dumps they did not get to and some barbed wire is still there.
- They appreciate all of the help.
- One and a half of linear miles of barbed wire fence was taken out, four strands deep.
- Six acres of pasture was mowed.
- Large areas of thorns were removed.
- Trees were selectively removed with the guidance of staff and the City Arborist.
- Three quarters of a mile of roadway right-of-way was cleared.
- Everyone from schools to churches, the Church of Jesus Christ of Latter Day Saints, and all of their volunteers and leadership structure was most helpful and they could not have done it without them.
- The City staff set a great example for the people out there.
- He wanted to particularly note the efforts of Carter Lucas and Roddy Motes who were there and gave us guidance.
- He thanked Chris Lagerbloom and Mark Law who were invaluable through the entire process.
- Scouts and the American Legion had a number of volunteers.
- Milton Business Alliance, Birmingham Hopewell Alliance, Parks and Recreation Committee, and people involved in the equestrian community, all joined together to make the park a better place.
- They will come back with a final report.
- It seems like every restaurant in Milton was represented and participated and donated.
- They had everything donated from bush hogs to track hoes to bobcats to trailers.
- Thanked everyone for the success.

**Leon Cole, Jr.** 16700 Birmingham Highway, Milton, Georgia

- On the agenda, he noticed there is a presentation on Article 33.
- He wanted to make Council aware of something.
- He had a situation where he called code enforcement on an eighty square foot sign hung on a tennis court in an adjacent subdivision.
- It was hung without a sign permit and stayed there for months.
- When he went before the BZA in opposition of this, the only thing that was considered basically was hardship, which was mandated before the meeting by the head of the BZA.
- The hardship was that the sign could not be seen from a public road due to trees or another structure, then there is a hardship and the sign can go up.
- In this case there was no obstruction of the sign at all which was facing Birmingham Highway.
- He is urging Council to realize that the size of these signs is important.
- He checked the sign of the developer's tennis court in another subdivision and it was 32 square feet which was fine.
- Please include the standard for the size of the signs.

That completed public comment.

**City Clerk Marchiava** read the Consent Agenda items.

## **CONSENT AGENDA**

### **(Agenda Item No. 09-846)**

1. Approval of the April 13, 2009 Regular Meeting Minutes.

### **(Agenda Item No. 09-847)**

2. Approval of Financial Statements for the period ending March 2009.

**Motion and Vote:** Councilmember Lusk moved to approve the Consent Agenda. Councilmember Tart seconded the motion. The motion passed unanimously.

## **REPORTS AND PRESENTATION**

**City Clerk Marchiafava** read the Presentation Item.

### ***Added by Motion and Vote***

#### **Proclamation for Arbor Day.**

#### **Councilmember Thurman**

- We had a Proclamation for Arbor Day last year and it is important to do this every year.
- We now have a tree committee that is working on an Ordinance and our trees are very important to all of us.
- We need to make sure we preserve especially the specimen trees in the City.
- She read the Proclamation.

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

#### **Presentation of the Art Committee's new exhibit by Patti Silva in recognition of artist Marcia Blake.**

#### **Patti Silva**

- The arts committee is pleased to announce their fifth art exhibit to run to the month of June at Milton City Hall.
- The photography of Marcia Blake.
- She has been studying and practicing photography for over thirty five years.
- She has a degree in journalism from the University of Georgia and was a television copyright in Atlanta and in St. Louis Missouri.
- She began her study in photography and related subjects at the Georgia State School of Art and Design.
- She also studied at the Penland School in North Carolina.
- The Showcase School and the Southeastern Center for Photographic Arts in Atlanta.
- She has shown in numerous venues around the Atlanta area.
- The Southeastern Flower Show has chosen several of her award winning images for their shows in 2006, 2007, 2008 and 2009.
- Many thanks to her for allowing the arts committee to display her work.
- We picked her work to coordinate with Earth Day because her passion is photographing all things green.

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

### ***Added by Motion and Vote***

#### **The City of Milton Population Statistics Review**

#### **City Manager Lagerbloom**

- Dawn Abercrombie will make a presentation.

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- There was discussion that revolved around transportation last week where we heard we were at a standstill with the master plan process until we get to a point where we could have a good population figure.
  - There is nothing to vote on, but he wanted them to have a better level of comfort as we select a range to work with as we go through some of the planning processes.
  - In June, you will have the option of accepting the census numbers or challenging them.

**Dawn Abercrombie, GIS Manager**

- The first area of the population statistics review is the summary of statistics and research they have done.
- There are four sources listed.
- The City of Milton, Atlanta Regional Commission, Environmental System Research Institute (ESRI) and the U.S. Census Bureau.
- There are some differences in statistics between them.
- The second part is a summary of the methodology.
- They are about the same where each of them do base their population for the City based on the number of housing units developed so everything goes back to the number of housing units.
- We had four primary sources of data that she pulled information from which was the 2007 parcel tax records, 2007 Access points from Fulton County GIS Apartment/condominium field survey and Final Plats submissions to City.
- They came up with a total housing unit of about 11,500.
- The ARC was the second resource and their bottle was about the same as ours basing it on housing units.
- They had very slightly different occupancy rates or methods in which they applied their occupancy rates.
- The third source was ESRI demographics.
- They applied it to the household level.
- They developed it slightly different in that they started with the census bureau but then they used a more refined method from the census by applying spacial analysis so they could have a more accurate block group count of number of households that were more specific to a spacial area.
- The census bureau was the last source and she researched to determine how they developed their methods and they did what they refer to as a distributive housing unit method where they do building permits etcetera.
- There are a couple of things they did differently.
- Some of the discrepancies were two major causes.
- They feel there is incorrect information that the census model was applying.
- They assume an occupancy rate to be uniform within the County.
- The County is very large so we feel that is an incorrect assumption to make.
- The second part of that is that their vacancy rate applied was over 16% and she thinks it is closer to 9 or maybe less vacancy rate.
- Also the boundary they had for the City of Milton was missing a large section of the City due to annexations and the City becoming incorporated.
- It was not until the last couple of months that they have received and acknowledged a new boundary update so none of the new boundary information has been included to this date.
- The other area of discrepancy was applied through local knowledge that the census does not have the advantage to apply.
- We have better occupancy rates developed through the City as well as through ARC and we have done specific bill verification on apartments and condominiums.
- She thinks that is a weak area in the census of being able to document appropriately the apartments and condominiums we have along Highway 9.
- We also have the advantage of being on ground and knowing exactly what is here.

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- Last year, we presented these results to the census bureau so before the analysis we have the census saying we had about 8,000 residential addresses and we presented to them a little over 11,500 which is about a 45% increase or 3,500 new units.
  - Some of the discrepancies apply within the other three sources but they still come up with a population estimate that she feels is very closely to what they feel represents the City of Milton which is about 28,000.
  - Since her number were based on tax information and we know based on last year's tax records we billed about 400 more residential parcels than what she had estimated because she had used year old data so it will probably be closer to 29 or 30,000.

**Councilmember Zahner Bailey**

- In looking at the 2.7 factor that was applied, she asked where the assumption is that there are 2.7 people across all of the households within Milton.

**Dawn Abercrombie, GIS Manager**

- She does not want to say it is an assumption.
- It is something the ARC came up and they felt it was a reasonable representation.
- They had pulled from the census bureau as well.
- All four sources used the 2.7.
- She wants to distinguish a household size and a family size.
- This does not reflect family size.
- The family is closer to 3.2 to 3.4.
- We do have a large family size but the household size in this region is estimated at 2.7.

**Councilmember Zahner Bailey**

- In the area from boundary perspective that was a portion of the annexation, asked if she knew generally about how many of those households were brought in that area.

**GIS Manager Dawn Abercrombie**

- She does not know.
- She is not assuming that all of them are accounted for.

**Councilmember Lusk**

- Regarding the same issue, asked if the number could be verified by the number of request sent out during the annexation period.

**Councilmember Thurman**

- They did have all of the addresses at one time.
- All of the addresses of the registered voters is the problem because that is what it is based on.

**GIS Manager Dawn Abercrombie**

- It is also interesting to note that last year we taxed around 9,600 residential parcels and that excludes vacant land.
- It includes condos but not apartments because we do not tax apartments individually so based on that 9,600 residential parcels plus about 2,200 apartments, based on tax records from last year we have over 11,800 so that increase the number she presented.

**Councilmember Zahner Bailey**

- One of the things she would like to look at separate from this meeting is the 2.7 factor.
- She would like to see what Alpharetta and Roswell utilized.

**City Manager Lagerbloom**

- He thinks we could do that and the appropriate time to bring that forward would be when we get to a point of making a decision on whether or not to challenge the census.
- He is looking for the validation they have been provided enough research and documentation to show how we arrived at a number to let us move forward with for example the transportation plan with a range.
- He was looking for guidance on the range.

**Mayor Lockwood**

- Asked for a nod from Council to move forward with that.

**City Clerk Marchiafava** read Agenda Item 09-850.

*Moved by Motion and Vote*

**Amendment of Resolution No. 09-02-79, 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 committee members.**

**RESOLUTION NO. 09-04-91**

**Councilmember Tart**

- He introduced Audrey Goolrick who lives on Voyage Trail in Milton.
- She has a background in medical technology, medical pathology and has worked all over.
- Merck, American Red Cross, University of Virginia Medical School.
- Most recently she is with North Fulton Regional Hospital and doing community education with bone density screenings and other consultations on osteoporosis.
- She is also an architectural photographer.
- She has done a lot of teaching around the country.
- The most notable is the Smithsonian Institute in Washington DC.
- She was a faculty member there, teaching architectural photography and composition and design.
- She worked with Roswell Parks and Recreation teaching staff at the visual arts center teaching composition and design, Northern Virginia Community College in the photography and architecture.
- He thanked her for her service and thinks she will add a very interesting perspective to this committee and he is looking forward to getting to know her.

**Motion and Vote:** Councilmember Hewitt moved to approve Agenda Item 09-850, Amendment of Resolution No. 09-02-79, 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 Audrey Goolrick for District 6. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

**Oath of Office**

**Mayor Lockwood** administered the Oath of Office to Audrey Goolrick to the Historic Preservation Committee for District 6.

**Mayor Lockwood**

- Took the opportunity to thank all of the volunteers for all they do.

**FIRST PRESENTATION**

**City Clerk Marchiafava** read the First Presentation item.

*Moved by Motion and Vote*

**Approval of an Ordinance to Revise and Update the Speed Zones and Regulations Regarding Vehicular Speeds within the City Limits and to Provide for Enforcement of Those Regulations.**

**Motion and Vote:** Councilmember D'Aversa moved to approve Agenda Item 09-849 the First Presentation Item, Approval of an Ordinance to Revise and Update the Speed Zones and Regulations Regarding Vehicular Speeds within the City Limits and to Provide for Enforcement of Those Regulations. Councilmember Hewitt seconded the motion. The motion passed unanimously 7-0.

**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

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government official of the local government which will consider the application, it shall be the duty of the opponent to file a disclosure with the governing authority of the respective local government at least five days prior to the Planning Commission meeting. A violation of the relevant state statute constitutes a misdemeanor. Therefore, if you have contributed \$250.00 or more to a Councilmember and you have not filed a disclosure prior to the Planning Commission meeting, the City Attorney strongly suggests that you have someone else speak for your point of view.

*(Zoning Agenda items typed verbatim)*

City Clerk Marchiafava read Agenda Item 09-813.

**U09-01 / VC09-01, 13120 Arnold Mill Road, by Frank Schaffer, The Landscape Group, Inc.- To obtain a use permit for a landscaping business on 1.74 acres at a density of 3,908.04 square feet per acre (Article 19.4.27). Applicant is also requesting 3-part concurrent variance:**

- 1) To delete the 50' buffer and 10' improvement setback along the west property line from the right-of-way for a distance of 140' (12H.3.1 Section C.1).**
- 2) To delete the 50' buffer and 10' improvement setback along the east property line from the right-of-way for a distance of 140' (12H.3.1 Section C.1).**
- 3) To allow a sign located less than 10' from the right-of-way (Article 33 Section 21.C). (First Presentation on March 2, 2009.)**

**Senior Planner Robyn MacDonald**

Good Evening, Mayor and Council. As what was stated the subject site is 1.74 acre tract of agriculturally zoned land located on the southern side of Arnold Mill Road. It is developed with an 800 square foot house which is currently used as an office and a two story 6,000 square foot warehouse. Three thousand square feet for each level. It is located within the agricultural and forestry and mining land use designation on the Focus Fulton 2025 Comprehensive Land Use Plan. Based on the revised site plan submitted on March 3<sup>rd</sup>, staff makes the following comments:

Regarding building setbacks, the building meets all of the setbacks of 12h.3.5 which is North Fulton Northwest overlay district. It also meets article 5.1.3c of the Zoning Ordinance for the AG-1 agricultural district. Although currently the existing house encroaches into the 60 foot front setback adjacent to Arnold Mill Road but that was basically allowed to encroach based on various reasons of right-of-way, probably as they have widened the road it has been reduced. Regards to landscape strips and buffers, Article 12h.3.1 section A-1 states that all property shall provide a minimum 10 foot wide landscape strip along all public streets. It appears that the applicant has met this requirement. Furthermore in the same article of the Northwest Overly District, it requires a 50 foot wide undisturbed buffer and 10 improvement setback which shall be located adjacent to all AG-1 zoning district and all property zoned user develop for residential uses. Staff notes that the applicant is applying for two concurrent variances to delete the 50 foot buffer and 10 landscape improvement setbacks on the east and west property lines. Since the original site plan submitted indicated a reduction for both sides along the east and west property lines for a distance of 140 feet, the applicant has submitted a revised site plan dated March 2<sup>nd</sup> with the 50 foot buffer along the east property line for approximately 70 feet from the right-of-way to the south from the proposed turn around as depicted on the plan. The revised site plan indicates the relocation of parking out of the buffer, south of the fence parallel pattern. In addition a dumpster is shown along the east property line near the truck turn around which is below grade and is not seen from the right-of-way. The entrance exit has been relocated to the west side of the property as required by the public works department, transportation department. I just want to note that during the

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discussion of the Planning Commission meeting, the applicant decided to go ahead and change his requested buffer and reduce it and that was the satisfaction of staff and the Planning Commission. The public works department requires that the applicant relocate the property entrance to the western side of the property. Since the entrance has to be close to the western property line due to site issues, staff recommends approval conditional part one of VC09-01. Staff further supports this concurrent variance request because of the narrow size and shape of the property, steep slopes and location of stream on the property. Regarding the concurrent variance for the eastern property line, staff recommends approval conditional of part 2 of VC09-01, subject to the applicant removing portions of the concrete pad as depicted on the revised site plan dated March 2<sup>nd</sup>. Furthermore the applicant must replant the eastern side of the property to buffer standards as prescribed by the City of Milton Zoning Ordinance. This will be reflected in the attached conditions, as well as a bond on the existing specimen size pine tree and that is included in the conditions.

In regards to use permit considerations, the subject site meets the proposed use and is consistent with the land user economic developer plans adopted by the Mayor and City Council. By encouraging development consistent with the surrounding scale transition of densities and uses and comprehensive plan policies where appropriate. Compatibility with land uses and zoning districts in the vicinity of the property for which the use permit is proposed. If developed in accordance with staff's recommended conditions and provisions of the Zoning Ordinance, a proposed landscape business may be compatible with other land uses in the surrounding area. Staff noted that on November 17, 2008 Milton City Council approved a use permit for a landscaping business at 13365 Arnold Mill Road, U08-06. The affect of proposed use on traffic flow vehicular and pedestrian along adjoining streets, a proposed use will not generate a significant increase in traffic but staff recommends that only one entrance be utilized at the western side of the property based on site distance requirements along Arnold Mill Road. The amount and location of open space, the applicant site plan indicates that approximately ½ of the subject site is undeveloped. Staff noticed that this open space is located behind the stream with bisects the property approximately in the middle. Staff is of the opinion that he proposed development will provide adequate open space on the south side of the property.

Hours and manner of operation, the application states that the hours of operations are from 7:30 am to 6:00 pm. The business is a full landscape maintenance and design company. Equipment consists of mowers leaf blowers, edgers and trimmers which are stored in box trucks. This business has two box trucks for lawn maintenance, two landscape trucks, two midsize pickup trucks for sales and service, one bob cat and one box trailer. In regards to signage, Article 33, Section 21.c of the Zoning Ordinance states, unless a more restrictive setback is specified in conditions of zoning or otherwise in this article, all signs shall setback the greater of 10 from the right-of-way or 20 feet from the edge of pavement if a private street and no sign shall project over the right-of-way. The applicant states that the office and driveway placement along with topography issues justify the sign variance request. Staff recommends the denial of part 3 of VC09-01 due to a lack of a significant hardship due to existing foliage or structures for this requested variance as set forth in Article 22.3.1c. Comments from the arborist, much of the vegetation within the western buffer was removed prior to submission as well as vegetation within the 75 foot non impervious setback. The eastern portion o the property was previously void of trees and is being used for parking and storage. Area of disturbance around the specimen pine tree appears to have been done previously. The arborist does support the deletion of the buffers as shown on the revised site plan dated March 2009. Buffers east and west of the warehouse shall be planted to buffer standards and must be approved by the arborist. Buffer planting shall remain in perpetuity and with good vigor and shall be replaced if it dies. A bond will be required for the specimen pine tree along the

east property line toward Arnold Mill Road. The applicant has met all of the public involvement, requirements. I went before the City of Milton Design Review Board both of February 4<sup>th</sup> and March 3<sup>rd</sup> as the subject site was deferred by the Planning Commission for further review and also so the applicant can revise the site plan to be in more keeping with the area and to reduce the amount of needed buffer variance. The City of Milton Design Review Board on March 3<sup>rd</sup> stated the following: Buffers should be a minimum of 25 feet, possibly reduce turn around area. The board approves of the gravel area if the applicant has obtained letters from adjacent property owners in support of the request with no additional encroachment.

I do have updated letters, you have some in your packet but it did not directly say that they were in support of it but I do have new letters as well as they have been able to contact the property owner to the west that they were not able to prior to this time and both people are in support of it. One by letter and one by a verbal statement.

Existing landscape buffers should be heavily planted, show fence gate detail, dumpsters shall not be screened, no expansion of existing use cleared area.

In conclusion I also want to state that the Planning Commission recommended approval of the use permit, approval of parts 1 and 2 of the concurrent variance for the reduction of the buffer and denial of part 3. Staff finds that the proposed use may be compatible with other uses in the area developed with the attached conditions and recommends approval conditional of U09-01. Staff recommends approval conditional part 1 of VC09-01 due to the recommendation by public works to relocate the entrance to the western side of the property as well as the size and the shape of the property. Staff recommends approval conditional part 2 of VC09-02 if and only if the applicant removes portions of the concrete pad as indicated on the submitted site plan and replants those areas to buffer standards as prescribed by the City of Milton Zoning Ordinance. Staff recommends denial of part 3 of VC09-03 to allow a sign to be located less than 10 feet from the right-of-way. We have not received any e-mails or phone calls in opposition to this request.

**Mayor Lockwood**

Thank you Robyn. Do we have any questions for staff on this from Council?

**Councilmember Tart**

I have a couple and I may have a couple later. Regarding part 1, the concurrent variance VC09-01, I understand the rational that is given by staff in supporting that one. I have read the analysis that you have provided and I have listened to the presentation and I still do not understand why the second part VC09-01, the second variance is being asked for. What is the hardship that is needed there? I do not understand that.

**Senior Planner Robyn MacDonald**

Along the east property line? Basically the original site plan, we were not in favor of because he had asked for a deletion of a buffer all the way up to the right-of-way and when we went to the Planning Commission and we talked through some issues he was willing to revise the site plan and as far as, if you look below where his parking and his gravel and his truck turn around, basically he cannot do his turn around without having that portion of the buffer deleted. Then he will provide a 10 foot landscape heavily landscaped strip along that east and west property line where it has been, if you choose to approve the variance, where the buffer would be and that is included in the conditions. So, basically it is

to be able to make the turn a rounds in that portion of the property where they bring the trucks in because they cannot use, originally there were two entrances on Arnold Mill Road and I guess one could argue that you could do a turnaround toward the front of the property but because of site distance issue the Public Works Department has asked for that entrance to be closed off plus he really needs it as a buffer so there is really no other place to turn around the trucks. He may be better able to explain that but that is between the shape and the topography because what happens is on that right side the eastern side, the top drops so they cannot have the driveway go down that way because it is kind of like a suicide hill so they need to bring the trucks in on the western side and then turn around on the lower level.

**Mayor Lockwood**

Do you have another question Alan?

**Councilmember Tart**

I may come back, I have a couple more notes here, but you can keep going.

**Mayor Lockwood**

Is there any other questions for staff? If not I will ask the applicant to make their presentation.

**Frank C. Schaffer Jr.**, 13120 Arnold Mill Road, Milton, Georgia

Good evening Mayor and Council, thanks for letting us come up here tonight. My name is Frank Schaffer Jr. and our business is at 13120 Arnold Milton Road, Milton Georgia and I am a business owner. I have lived in Georgia over thirty years. I am married, I have twin boys that are fifteen that go to Laceter High School, a little daughter that is ten. My wife is a Fulton County school teacher and I have thirteen years experience in the landscape industries and I am going to have my sister Sandy explain a little bit about our business in more detail and then I will explain our site plan.

**Sandy Tester**, 2407 Doubletree Drive, Acworth, Georgia

I am the Office Manager for the landscape group. I have been there for a little over a year. I will explain what we do with our business. We do not do any retail business whatsoever, so there is no customers or nobody driving in our areas, just the employees and me and my brother. We do full landscape and maintenance and design company. We have one maintenance supervisor and he has three people in his crew. They come in the morning around 7:30. They load the trucks up with their machines and they take off about 8:30 and then come back between 5 and 6:30 at night, so there is nobody coming in and out of the business in our area. We are open from 7:30 am to 6:00 pm. We do have a landscape crew that is seasonal when our busy time for landscape. We do flowers and bushes and trees, which is also like a two to three man crew that goes out. One thing that Robyn was saying, our neighbors, I spoke with them last week and at the Planning Commission they were a little concerned about did they really know what they were signing and I went to them last week and explained exactly what we were trying to do and they were like, oh, well no problem, we definitely agree with that. I did talk to Mr. Sing who is on our west side, he is in Waycross Georgia and has bought the property, it is a vacant lot, he said the same thing, no problem, I did send him a letter and have not received it back yet but I did get the verbal approval that he had no problem with it.

**Frank Schaffer, Jr.**

I am going to explain our site plan. Basically what we have existing is a concrete driveway here which is on the east side and we have closed it off since we have been working on this revision of how we are

going to do business so we have moved our entrance over to the west side so all of our traffic comes in and out this way. I did a detailed sketch as far as parking and even though I have trucks that are parked here, this is what we are asking for a variance on the down side but this is our turn around spot. We will have two maintenance trucks and right now we have two landscape trucks. Right now we have two in use but in order for us to do business successfully we need a turnaround spot and as the trucks pull out we are able to use this as our turn around. There is a well house unfortunately right in the middle of this area which makes it almost impossible, otherwise we would have been able to use this. So the well house is here, there is really no option for us as far as where to use a turn around and what we will do is we will close off the west side driveway and I talked to Mark Law and he gave me a list of plants that we would need that is within the Milton specs and all of that will be re-populated with all of the plants. We would put shade trees along the landscape strip along the front and then screen heavily the front and both sides all the way down. I think that would work with all of us. We have enjoyed being in Milton for the last two years and we currently or we were existing business in Roswell and we were renting there and we found this piece of property and I think we will be an asset to the community. We have actually done many improvements currently to dress the place up and being a landscape company, one of our main focuses is to beautify and not tear down and become a deterrent to the community. We want to be a good thing to the community, not something that is going to tear down. We do have a sign that we are asking for a variance, it is not quite ten feet off the right-of-way but it would really sit behind this existing wall that has been there so it would really be about 12 feet off the street and out of the right-of-way and that would be in this area here. Thank you.

**Mayor Lockwood**

Is there anyone else speaking in support of this application?

**City Clerk Marchiafava**

Ms. Maloney, are you in support or opposition? That concludes support at this time.

**Mayor Lockwood**

Ok, is there anyone who would like to speak in opposition of this permit and variance?

**Leon Cole, Jr., 16700 Birmingham Highway, Milton, Georgia**

It is my understanding the Milton Code calls for desired standards for a wide variety of situations that not only protect the citizens as individuals but also the land in general. While I understand that a variance seeking process is available for those who wish to challenge ordinance standards, I sometimes wonder why bother having standards when these challenges are so readily accepted and approved by the City. The last February, this petition went before the Planning Commission and at that time staff recommended denial for the use plan and denial for all three parts of the variance. I could not follow really what changes were made since then by the petitioner, it was too complex for my mind to follow all of that but in two months all of these denials changed to approval with conditions. I think simply put perhaps this 1.7 piece of land is not proper for this particular type of business. When the buffers have to go and so forth and there is not room to turn around the trucks, maybe they just need more land, so I would request that you deny the use permit and the variances and I think that would be the prudent thing for you to do. Thank you very much.

**Melissa Estes, 14716 Taylor Road, Milton, Georgia**

Good evening, I am Melissa Estes and I reside at 14716 Taylor Road. I am lucky to be following Mr. Cole because he basically said everything I was going to say. I support everything that he said and I

would like to add that I am here tonight because I am concerned that, I am going to be speaking on another zoning issue later but I am concerned that a bad precedent might be set if this were to go forward because it seems that special use permits would be passed without having to meet the requirements that the City has put forth. It is imperative that the City adheres to the Ordinances it has in place or our land use plan will not unfold as the citizens of Milton would have intended for it to unfold. The main point I have to make about the 13120 Arnold Mill request is really to reiterate what Mr. Cole said. If the buffers need to be deleted, that seems to me to indicate that the piece of land that they are wanting to use is too small for the business that they want to operate on that land and maybe a larger piece of land would be more appropriate. I would also recommend denial.

**Diane Maloney**, 14430 Wood Road, Milton, Georgia

Good evening, I too agree with what everyone else just said. Do we have a master plan for Milton and Crabapple? I am understanding that people worked really hard on that and I am very passionate about this and you can probably hear it in my voice because it is just so frustrating that I just think it is very disrespectful that people come up here and request variances with no regard to our master plan. It is my understanding that he was here February 24<sup>th</sup> and that staff recommended denial and then he came back again without any major changes with his property plan and it is just a waste of your time, the communities time that cares about these issues and it is very frustrating so I really would like to propose that if people come, I understand that everybody has a right to make a living and do whatever they can with their land but we should have some sort of consequence to people wasting everybody's time. If they are not going to try and abide by the master plan and come before us again without really making any changes, I think we should impose a fine on people that do that. This project is just too dense for the site and again I am worried about the precedent it might set so I therefore respectfully request that you deny these variance request. Thank you.

**City Clerk Marchiafava**

That is the end of public comment. There is time on both sides for rebuttal should they wish to do so.

**Mayor Lockwood**

Would the applicant like to say anything else?

**Frank Schaffer, Jr.**

As far as a rebuttal, I have heard a lot of, in February we came in and we met with planning council and they said we did not make any changes, well we have made a lot of changes. As far as the buffer zone, I do not know if you have all seen the property before and what we have done existing. It is like night and day and no offense to the public comments but I do not know if anybody has actually seen our site, either before or after and I am passionate about my business about the business that I do, about the City of Milton and there is no way I am going to tear down the fine City plus my business reputation. We have made changes, you can see it on our site plan and Robyn has been very helpful getting us to comply. We do not want to be looking over our shoulders. We want to do business the right way. We want to part of the community, part of the City and we are not here to tear anything down. We are here to beautify the community and I really did not hear any arguments that would make us not be welcomed. The existing site when we first moved in was a mess from end to end and we are actually going to repopulate the entire site with plants, trees, shrubs, grass. We are going to make an improvement to the City. This is going to look like a park with a house on it. You will not even know there is a landscape company there. That is really what I have to say.

**Sandy Tester**

We have also had a lot of people call us on the phone saying how it is wonderful to see what you have done to this house. Before it was a lot of rubble and it just looked horrible and we replanted by the front and it looks amazing. People called us and said thank you for doing that, I have driven by here year after year and it was just a mess and we really thank you for doing what you have done.

**Mayor Lockwood**

Are there any other comments from opposition? Ok, at this point then the public hearing is closed. I will open to Council for questions to either staff or the applicant.

**Councilmember D'Aversa**

I have a question for our staff. Do you feel like you have talked through with the applicant ways that they might do the improvements that they suggest and fit their business into a property that really is not suitable for their business without such extenuating variances? To delete the fifty foot buffers on both the east and west sides seems tremendous to me. That causes me a lot of concern not unlike what we have heard from some of our citizens tonight that we do have a plan in place and we do have requirements and we are not only asking to delete the fifty foot buffer and the ten foot improvement setback along the west property line but also the east property line and basically why do we have the design guidelines is the concern that I have and I do want to say that I appreciate the applicant beautifying the property. I think that is tremendous and I want to see you be successful here in the City of Milton but it causes me the same concern that it causes citizens that we would change our requirements so dramatically even if we are allowing a business that is going to beautify the area. I guess my question again is what type of discussion did you have about maybe a different way to allow their trucks to be able to turn around without taking out 100 feet of buffer?

**Senior Planner Robyn MacDonald**

Let me work on the east side first. When this plan was first before staff and the Planning Commission the upper right hand side or the east side was not shown as a buffer but they were requesting that entire property line to be, the buffer to be deleted and staff was pretty opposed to that because we felt like that we saw there was a need for a truck turn around and that because of the septic drain field behind the house as well as the well house that is in the middle there in front of the warehouse part that once the applicant was willing to take out the concrete and replant the buffer on the first part, as you can see this whole portion was not in the beginning, they did not have that buffered and we were opposed to it because we felt that was too much to be requesting of a variance so after discussions with the Planning Commission and it came back with the revised site plan, they came back and are planning to take out the cement entrance and replant all of this as well as providing a tree bond for the one specimen size tree. As far as the western side, the conclusion from the traffic engineer came soon after or right before the planning commission that the entrance because of site distance needed to be to the west so we felt that, there is a topo change, this is like one level and then it goes down and then it is kind of divided into two so there is a fence here and the topo goes down so you really could not bring the trucks down this way because of the topo change, it would be really difficult. Because of this requirement of the entrance to be here staff was of the opinion that was a hardship because of the narrowness of it they needed to relocate the entrance here and therefore we would recommend deletion of that buffer and that they would provide a ten foot landscape strip. As you come down here as Mr. Schaffer did indicate this well house is in the way. If this well house was not here they could probably provide the rest of that buffer there. This is a septic field here so they cannot do a lot of turn around there because of the septic field

for the house, so based on those issues and he does not show the rest of the site but if you look up at the site plan over here there is a stream that bisects it and basically this whole portion back here is not being used and we are not deleting or the applicant is not proposing to delete any of this buffer here, here, or here (pointing to site plan) but it is about 70 feet on the west property line to here and approximately about 50 feet of buffer would be deleted on the east side.

**Councilmember Zahner Bailey**

Is that 50 feet in width?

**Senior Planner Robyn MacDonald**

50 feet in length and then reduce from a 50 foot buffer to a 10 foot landscape strip along that 50 then you will have the 50 foot buffer in the front that we required like he has on the landscape plan here, go back down to 10 and then right here where he stopped his landscape plan will go back up to 50.

**Councilmember Thurman**

So really the variance is for just a small part of the side yard.

**Senior Planner Robyn MacDonald**

Correct, the length of this parcel is approximately 450 feet, at least on the west and 400 feet on the east.

**Mayor Lockwood**

I think Councilmember Lusk has a question.

**Councilmember Lusk**

Is that an active well?

**Frank Schaffer, Jr.**

Yes.

**Councilmember Lusk**

What is the separation between the septic field and the well?

**Senior Planner Robyn MacDonald**

I think that question came up, did you all check with the health department?

**Councilmember Lusk**

What is the distance between the septic field and the well?

**Frank Schaffer, Jr.**

About 75 feet.

**Councilmember Lusk**

That is not within state standards then.

**Frank Schaffer, Jr.**

The septic is with the original house and the well was installed maybe 20 years ago.

**Councilmember Lusk**

Is that a drilled well or a dug well?

**Frank Schaffer, Jr.**

I would think it is drilled. I could find out. I do not know for a fact. I believe it is 50 feet deep so I am assuming it would be drilled.

**Councilmember Lusk**

Does the grade fall from Arnold Mill to the south?

**Senior Planner Robyn MacDonald**

Yes it does, toward the creek.

**Councilmember Lusk**

So the flow of that septic field would flow in general towards the well then. I think that is probably a critical point that needs to be investigated through the health department. I guess your option would be, and I am not telling you what to do, is public water available out there?

**Frank Schaffer, Jr.**

I do not think so. We did have the water tested and it was fine.

**Mayor Lockwood**

I think Councilmember Lusk brings up a good point that you need to check. I do not know that is a decision that is the City's, typically now there is about 100 foot minimum distance, it may have been 20 years ago.

**Frank Schaffer, Jr.**

It may be 100 feet, I just do not know the answer to that.

**Sandy Tester**

We tried getting it, we checked with the water and there are no records about where the septic tank is.

**Senior Planner Robyn MacDonald**

I did give you the number to the Fulton County Health Department to get the location of the septic field so they did not have it on record.

**Mayor Lockwood**

In respect to Councilmember Lusk question that is an important issue for you guys but I do not know as it has any bearing on our discussion tonight with this application.

**Councilmember Lusk**

I think what I am getting to is if there if Fulton County water available out there just to mitigate the issue about the east buffer, if that well could be disabled and tap into county water at least we could maintain the buffer on the east property line.

**Councilmember Thurman**

You currently use that well just for the water within the house or is it also used for any bushes and things we have there.

**Frank Schaffer, Jr.**

We use it for everyday use.

**Councilmember Thurman**

So you may want to keep it in case we go through another drought.

**Frank Schaffer, Jr.**

Yes, it has been very helpful the last year so it is a benefit to have the well actually. I do not know if we can get Fulton County water. It is a good question though.

**Senior Planner Robyn MacDonald**

We can check on the availability.

**Councilmember Zahner Bailey**

I think it is a valid point and to the Mayor's question, does the question of Councilmember Lusk have bearing on the site plan, it would seem to me that indeed it does. That if we have a site plan and we do not yet know whether that meets Health Department requirements. It would seem that is an element that perhaps should have been addressed before it was before us, only because that is an element that could have precluded part of that variance, so is there any way or do we have anybody in the house so to speak that could help to address that or we just do not have that answer.

**Councilmember Thurman**

I assume that both the well and the septic field have been in for many years and grandfathered in to whatever.

**Frank Schaffer, Jr.**

That is correct.

**Mayor Lockwood**

That was kind of where I was going with our City Attorney, if this does have any bearing on or if this would be a grandfathered issue with septic and well.

**City Attorney Chris Hamilton**

To be quite honest with you I think it is something that I would have to check on, I do not think I can give you a spot answer whether that would be something that we could pass on tonight.

**Senior Planner Robyn MacDonald**

We could check on it if you want to give me a minute, I think there are some maps in the back. When we were dealing with the sewer issue I think there were some maps that might address the water.

**Councilmember Thurman**

But even if he was able to hook up to County water, I could understand why he would want to keep the well active having a landscape company. Considering the fact that we have water restrictions.

**Frank Schaffer, Jr.**

People are digging well these days.

**Councilmember Lusk**

My point was too, even if you kept the well where it was, is there a possibility you could put a lid over the top of it and get rid of the structure above ground and use that area for the turnaround for the area you need there and restore or maintain a required buffer along the east property.

**Frank Schaffer, Jr.**

That is a good question. I am not a plumber so I do not know if it could be moved. It is above ground, the tank is above ground. It is a holding tank so it pumps up and holds the water and then it distributes to the house.

**Councilmember Lusk**

Well, the tank and pump can be at a remote location. It does not necessarily have to be over the top of the well.

**Frank Schaffer, Jr.**

I do not know. We could possibly move, sure.

**Councilmember Hewitt**

The house and warehouse both existing, it looks like and perhaps Robyn can confirm but they encroach on the western side into the 50 foot buffer, do they not?

**Senior Planner Robyn MacDonald**

It encroaches a little bit, but we would write a condition to allow that existing structure to encroach just a little bit but they would have to provide the remainder of the buffer up to the warehouse.

**Mayor Lockwood**

Julie, you had a question?

**Councilmember Zahner Bailey**

Yes, if you would Robyn, I know earlier you were talking about the distance from road to back of property and then mentioning that a portion of it obviously is not needing a buffer but I think that the issue of course at hand is where the intensity of that density is and I think that is what we are hearing from citizens is the concern over the concurrent variance for the area that has obviously and the activity and the impact that would have. To me the measurement that is important is from the front of the road back to where that activity ceases as opposed to the entire length just because that is where the greater intense use is being proposed. Can you just give me a measurement, my eyes are getting older and if that is there I just cannot read it.

**Senior Planner Robyn MacDonald**

Yes, it is approximately a little less than, I do not know what measurement you are looking at but I will look from the right-of-way to the stream. Is that what you are considering or are you considering to the front of the warehouse?

**Councilmember Zahner Bailey**

I would like to know the measurement to the front of the warehouse first and then from there to the stream.

**Senior Planner Robyn MacDonald**

Ok, that would be approximately 125 feet. That is on the east.

**Councilmember Zahner Bailey**

What is the distance all the way back to the stream?

**Senior Planner Robyn MacDonald**

It is approximately 200 feet to the stream.

**Councilmember Zahner Bailey**

So that is an additional 75. In looking at this the buffer returns to that 50 feet but the first 125, so it is 125 feet but the full length would have been 200 to the stream.

**Senior Planner Robyn MacDonald**

Approximately, give or take.

**Councilmember Zahner Bailey**

So according the special use requirement, if we can just maybe state that for the record that that requirement for a special use permit, I believe state that the full length of the property would need to be 50 feet on both sides. I think it has to be according to the O and I standard.

**Senior Planner Robyn MacDonald**

No that is for the Northwest Overlay District.

**Councilmember Zahner Bailey**

So the Northwest Overlay District requires the 50 foot.

**Senior Planner Robyn MacDonald**

A 50 foot buffer along property lines zoned AG1 or residentially zoned.

**Councilmember Zahner Bailey**

Ok, and then within the special use permit requirement itself, all uses and structures other than parking and pedestrian walkways shall be located at least 50 feet from any adjoining residential district or AG1. I think that came out of the special use requirement as well, so what I hear you saying is that it is actually a requirement in two different of our Ordinances.

**Senior Planner Robyn MacDonald**

Correct, it just happens to be the same. If it was a larger parcel it would be 75 feet so we would have taken the large of the two buffers.

**Councilmember Zahner Bailey**

So in this case the concurrent variance is actually in conflict with two of our Ordinances if I am hearing you correctly. Maybe the reduction on both the east and west side. I do appreciate the fact, and I am familiar with the property, that you guys have enhanced with some plantings and things. I think the difficult job that we have is looking at a special use permit and the fact from my perspective, our land use policies are in place to make sure that each parcel is looked at for whether or not it can meet the uses being proposed, at least from my perspective. That is where my questions lie, just whether or not the 1.7 acres is feasible for what you are proposing and it is surely not a directive about your business or anything else and obviously we appreciate that but I will say that the citizens comments give me pause because this parcel is requesting three concurrent variances and I think there is a lot to be said for ensuring that when a special use permit is requested it actually meets those standards. I think also the comment of Councilmember Lusk is worthy of consideration. The fact that we do not know what the Health Department says or not and I would like to make a comment that from a grandfathering perspective, that really would not apply here because this is a rezoning and so there is not, you are not asking to keep it as AG1 as it was historically and this is a new use that is being requested so from that perspective, it is my understanding that Robyn or our City Attorney, if you would want to state that but my understanding with the grandfather clause is that if you are looking for a change of use which this is that the fact that an existing structure was there but it is now being proposed for a different use than what it was does not mean that the grandfather clause would necessarily be in place. It is one thing if it was still going to be used as a residence but the fact that a special use with concurrent variances are being introduced for a new use, I believe that is a different issue.

**Councilmember Thurman**

The zoning has not changed, it is just a use permit, correct?

**Senior Planner Robyn MacDonald**

Yes it still remains AG1. It is a use permit.

**Councilmember Zahner Bailey**

I guess it is how you interpret special use permits. I personally believe that a special use permit and the reason that it is part of our Zoning Ordinance is that it is part of our zoning code so it is not AG1 unencumbered. Tonight we are being asked to change that AG1 forever because a special use permit would be held with that deed whether you guys continued to hold that or not so from my perspective it is a rezoning. That is why it is on our zoning agenda because it is a zoning. It is just a special use permit change. But, Robyn did you have an answer as it related to that.

**Senior Planner Robyn MacDonald**

Ok, we go the scale so if you want it exact. To the front of the warehouse is 140 feet, east property line and when you go back to the stream it is 205 which was around 200.

**Councilmember Zahner Bailey**

I do recognize that you have come back in and if I am not mistaken Robyn, is it a 10 foot replanting?

**Senior Planner Robyn MacDonald**

Yes, landscape strip heavily planted.

**Councilmember Zahner Bailey**

The requirement is for a 50 plus a 10 so it is really a requirement of 60, is that correct?

**Senior Planner Robyn MacDonald**

Yes a 10 foot improvement setback.

**Councilmember Zahner Bailey**

So really it is not just 50, it is 50 plus just to make sure that I have my numbers correct that it would go from a required 60 foot down to what is being proposed as only 10 and then on the west side it similarly would have required a 60 foot, 50 plus the 10 and what is being proposed on that west side is what distance?

**Senior Planner Robyn MacDonald**

It is also basically a 10 foot landscape strip heavily planted.

**Councilmember Zahner Bailey**

So it previously would have been a total of 120 and now for that area of density it would only be the equivalent of about 20 so it is a differentiation between 120 and 20 so it is 100 feet of buffering that we would be approving.

**Senior Planner Robyn MacDonald**

But they are going to replant the front part so, I understand but it is not for the entire portion.

**Councilmember Zahner Bailey**

I just want to make sure I am thinking about it correctly. I am concerned about the fact that this, I support special use permits where they meet the standards. I am concerned about the standards perhaps not being met here. In terms of the stream, when I had looked at this historically I do not recall that the stream had been identified. Is that a discovery that subsequent to when this first went to the Planning Commission?

**Senior Planner Robyn MacDonald**

Correct, Mark Law had made a field survey of the stream, of requiring, it is a state water.

**Councilmember Zahner Bailey**

Ok, because when I heard that, I just want to make clear that, so part of the reason that part of that back property cannot be used, it is not because it is being left for green space it is because there is now a blue line tributary that has been identified that was not before so by law you would not be allowed to infringe on that buffer.

**Senior Planner Robyn MacDonald**

Technically you could make perpendicular crossing across it and get to the back side that is not in the stream buffer but he is choosing not to do that.

**Councilmember Zahner Bailey**

My guess is that it would involve the EPD and it would be...

**Senior Planner Robyn MacDonald**

I believe that so long as it was an approved perpendicular crossing, it would not even have to go to the state.

**Interim Public Works Director Carter Lucas**

It would be an exempt activity.

**Mayor Lockwood**

I want to give everybody a chance. Karen do you have anything you want to ask?

**Councilmember Thurman**

Let me wait, I am still formulating my questions.

**Mayor Lockwood**

Councilmember Tart do you have anything?

**Councilmember Tart**

Well, yes I do and I would even like to make a motion too and then we can have more discussion after that. I think that Councilmember Lusk made some very interesting points and being from public health background I do know that in many cases those types of issues are not grandfathered in especially when there has been changes to the property and uses to the property and that kind of thing so I am very interested in knowing if that well can be used and if not and even if it can, can it be capped and if that is the case then you would not need that variance on the western wall and that to me would be major in consideration of this. Based on that I would like to make a motion that we defer Agenda Item number 09-813 and I would like to defer it for seven days to the next meeting and that would be the May 4<sup>th</sup> meeting so that we can give the opportunity for the applicant and staff to get with the Fulton County Health Department on that particular issue.

**Motion:** Councilmember Tart moved to defer Agenda Item 09-813 to May 4, 2009 to give staff and the applicant the opportunity to get with the Fulton County Health Department.

**Second:** Councilmember D'Aversa seconded the motion.

**Discussion on the motion:**

**Councilmember Zahner Bailey**

If we are going to consider a deferral, I guess my first question for staff and for our City Manager is, is seven days enough and also for the applicant, is seven days an adequate amount of time. If we realize that maybe in seven days it was not, I do not know when that next Council meeting is and again today is Monday and I realize...

**Frank Schaffer, Jr.**

It is our busy season.

**Councilmember Zahner Bailey**

I will just ask this question of the applicant if it is ok with the Mayor. Is seven adequate for you or if there was a preponderance of this group to want to defer.

**Councilmember Tart**

The next meeting would be May 18<sup>th</sup>.

**Frank Schaffer, Jr.**

If we could go to the 18<sup>th</sup> that would be better.

**Councilmember Tart**

If that is what you would like I would make a friendly amendment to my motion.

**Senior Planner Robyn MacDonald**

Staff would actually prefer that to work through the health department and I am not so sure we could get an answer from them and for them to find the records.

**Councilmember Zahner Bailey**

Would the 18<sup>th</sup> be sufficient for staff or would you prefer later.

**Senior Planner Robyn MacDonald**

It is a good first step.

**Mayor Lockwood**

Right now we have a motion and a second to defer this. I want to ask the applicant, number one if they understand the reason and the answers that some of the members of Council are asking for and if staff would concur. I know the City Attorney said he would need to get back. Is this an appropriate direction? Again I am not so sure if in respect to everybody's comments he is still not so sure that is our call with the health department. I do not have any experience with that as far as the existing, if they do not meet those. I am looking for direction from staff. Are we going in the correct direction?

**City Manager Lagerbloom**

I think Mr. Mayor that what we find out here is if the parties are agreeable to the 18<sup>th</sup>, I think what we could find out between now and the 18<sup>th</sup> is just what business that might be of ours because I do not think we can answer that tonight and give you a sufficient answer. I have not heard the applicant say they are not open to this deferral for a period of a month so I think we are fine footing to use that time to get the answers that you need to make a decision.

**Councilmember Tart**

Being the maker of the motion, I will tell you why I would like to know more about the well, it is because the position of the well is being used as a reason to justify a variance so if the well cannot be used then there is no need to have a variance. There is no need to even have to consider it and I think that is a major issue with some members of this Council and also citizens so I would like to know about the well. I am willing to make a friendly modification to my original motion to defer this until the May 18<sup>th</sup> meeting based on information from staff and the applicant.

**Amendment to the Motion:** Councilmember Tart amended the motion to defer the Agenda Item to May 18, 2009 based on information from staff and the applicant.

**Second:** Councilmember D'Aversa seconded the amended motion.

**Discussion on Motion:**

**Mayor Lockwood**

Let me ask a question, where does this put the applicant with their ongoing business?

**Senior Planner Robyn MacDonald**

Basically until they have finished the process of this use permit, they can continue to operate until a decision is made because basically once a citation or a notification is given, it is a stay of the use until it is resolved through the Council.

**Mayor Lockwood**

Understand, I see a little frustration and I am sure the applicant would like to have a decision tonight but sometimes it is better to defer it and it may make your chance better if we can get these questions answered but I want to make sure we are not holding your business up because I understand this is your busy time and we do not want to stop you from that.

**Councilmember Zahner Bailey**

I did not get a chance to make my points of discussion. If we are going to have a deferral, a couple of questions that I did not have the opportunity to ask, because I just heard citation, is the applicant here because a citation was issued because that was not mentioned.

**Senior Planner Robyn MacDonald**

Yes, code enforcement had given him a warning to come in and...

**Councilmember Zahner Bailey**

So there is an active citation on this property, I am assuming because it was operating without the appropriate special use permit.

**Senior Planner Robyn MacDonald**

Correct.

**Councilmember Zahner Bailey**

Ok, because that is new information and between now and then I would like to know what that time frame was as opposed to coming pro-actively in advance but if we could have those details. The other question I have because this is buffering the City of Roswell and I hear the applicant previously operated in Roswell and also the City of Alpharetta because obviously special use permits are not just a function in Milton, just along this boundary, I would be curious and I just do not know the answer in terms of what both the City of Roswell and the City of Alpharetta do with a business such as this in terms of what the requirements are.

**Senior Planner Robyn MacDonald**

I can answer that. I am doing research on that right now. Both the City of Roswell and the City of Alpharetta require landscape businesses like this not plant nurseries but landscape businesses to be, they are considered contractors offices with storage and therefore, neither jurisdiction really has AG1 district to begin with, so it is not really fair to compare it but they do not allow unless it is approved in a commercial or industrial district.

**Councilmember Zahner Bailey**

That is in both of those jurisdictions?

**Councilmember Thurman**

They do not have a separate landscape...

**Senior Planner Robyn MacDonald**

Obviously if you are nursery and you grow things and sell things like we allow it but as far as a landscape business then they are not. I guess it is hard to say because they do not have an AG1 holding agricultural district. They have rural residential, they have low density residential but they do not allow a landscape business in those types.

**Councilmember Thurman**

Residential but they do not have agricultural zoning?

**Senior Planner Robyn MacDonald**

Correct, it goes back to their commercial, I would have to double check on my spread sheet, also Cherokee County, they do have an AG1 and I checked with them and they do not permit landscape businesses to be in AG1. They do allow a nursery and also their City Attorney has determined that mulch businesses and hardscapes can be so it is kind of weird and when I talked to the County Planner they are not exactly in agreement but that is an issue that we are bringing to the Planning Commission tomorrow to look at landscape businesses in general.

**Councilmember Zahner Bailey**

We will get more information obviously.

**Senior Planner Robyn MacDonald**

Yes and that will go back, I believe the work session in May.

**Councilmember Zahner Bailey**

I think that what I heard that the City of Alpharetta, City of Roswell and Cherokee County, again regardless of all of the different zoning categories that they do not allow what they define as a landscape contractor to be either an AG1 or residential zoning. Is it a C-1 or something?

**Senior Planner Robyn MacDonald**

Yes and it may even be light industrial.

**Councilmember Zahner Bailey**

That would be helpful information to have and I guess my other question for the applicant would just be during this deferral period, if you could creatively look at that site and I realize it is a tight site, would there be anything that you could do that would allow your special use permit to meet those standards.

**Frank Schaffer, Jr.**

We have looked at it.

**Councilmember Zahner Bailey**

I ask that you take one more look or maybe work a little bit more with Robyn. That would be my encouragement would be to look at that special use permit and just see if there is not a way to creatively meet that and I do not know if it means that maybe you have to have fewer trucks on site, maybe your parking paths could be a little bit less. I do not know the answer but I would just, and I think the suggestion of Councilmember Lusk was helpful when you look at that well but maybe there are some things that have not been thought about yet and I would just encourage you to take that time to see if there is not some additional site modifications that would allow you to be in compliance with the permit request.

**Councilmember Thurman**

I would like to make a real quick comment. I do not think you are ever get totally in compliance because you have some buildings there that you cannot move but if there is any way to reduce the amount of variance that you need, I think that would be helpful.

**Frank Schaffer, Jr.**

The well house is a good suggestion.

**Councilmember Thurman**

Like I said there is no way you are going to be totally in compliance unless you cut off part of a house that has been there for a long time but at the same time if there is a way to reduce so that you are not needing that great of a variance on both sides, I think that would be very helpful.

**Councilmember Zahner Bailey**

And I do think that reducing the parking area adds to that because the house obviously is the house but it is the intensity of use separate from the house that I think is impeding that variance. I am just looking at that site plan trying to encourage you to look at some other potential options.

**Mayor Lockwood**

If there are no more comments we have a motion and a second to defer this to allow staff and the applicant to get more information on the water situation until the 18<sup>th</sup>.

**Vote:** After no further discussion, the motion passed unanimously 7-0.

**Mayor Lockwood**

Thank you very much and we do understand your time and we want to work with you but we also want to try and adhere to our rules the best we can.

**Frank Schaffer, Jr.**

We understand. Thank you for your time.

**City Clerk Marchiafava** read Agenda Item 09-836.

**U09-02/VC09-02 - 15150 Birmingham Hwy, Application by Robb Nestor to obtain a use permit for a landscaping business on 3.926 acres at a density of 387.92 square feet per acre (Article 19.4.27). Applicant is also requesting concurrent variance to allow access from a local street (Article 19.4.27.B.1).**

**Senior Planner Robyn MacDonald**

Staff recommends a deferral which a different recommendation than what you have before you based on some research this afternoon and discussions with the City Attorney, the applicant would need to apply for another variance for the buffer variance basically along the south property line and this site has been in use for approximately fifteen years as a landscape business and there is a provision in the ordinance that allows under Article 4 that if an existing structure when you change a zoning, if it encroaches into a buffer that you can write a condition but that only applies to areas that are not within or does no address buffers in an overlay district. I know that sounds very confusing but let's say, if you were of Highway 9 and it was before you all address buffers adjacent to non-residential uses adjacent to residential uses. If there was a house there that was part of let's say a private school and it was required to have a 50 foot buffer, then I as staff per the Ordinance can write a variance to allow it to encroach but that is what is under what is called Article 4.23.1 but the overlay district and Northwest Overlay District supersedes everything else and that requires the 50 foot buffer and when staff first looked at it we were looking at it as the 4.23 that we could write a condition to allow the house and the green house to remain and the rest of it, since it was such an old use, not only just an old house, an old structure and an old use but after further examination of it basically we need to go back and re-advertise for this additional variance along the south property line so we are asking for a deferral so we can take it back to the Planning Commission in May and then bring it back to you in June.

**Councilmember Thurman**

So you are actually going back before the Planning Commission?

**Senior Planner Robyn MacDonald**

That is our opinion, I guess technically we would not have to but I want to give the Planning Commission their opportunity to give their recommendation on concurrent variance.

**Mayor Lockwood**

So everybody understands that staff is recommending to defer it and I believe you talked to the applicants.

**Senior Planner Robyn MacDonald**

Yes and the applicant is in agreement with it. We have talked.

**Mayor Lockwood**

I think the City is willing to bear those cost at no penalty to the applicant.

**Senior Planner Robyn MacDonald**

Right and the can continue to operate as well.

**Mayor Lockwood**

As far as process we have the public hearing so do we need to have the applicant at least present their case as well as obviously let our public speak. I am sure we have public comment on this so we will have the applicant and those in favor speak.

**Robb Nestor**, 11770 Hanes Bridge Road Suite 205, Box363, Alpharetta, Georgia

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Hello, I am Robb Nester. I have a degree in horticulture from the University of Connecticut. I have been in the Milton area for more than 20 years. I bought this property 15 years ago. The address is 15150 Birmingham Highway. I tried to create an environment where no one knew the business was there. I have heavily landscaped it. I do not have a sign. We do not even have signs on our trucks just to keep it real quite. All of our business is from referrals. The only variance that I was asking for is the side entry and I had to change my entry from Birmingham Highway because after being there 10 years the area grew up so much around me so it was easier to come out the side road.

**Mayor Lockwood**

Are there any speaking in favor of this application?

**City Clerk Marchiafava**

That completes support at this time.

**Robb Nester**

As far as against, that is my livelihood, I have been there over 15 years.

**Mayor Lockwood**

I would let those in opposition speak and then you are welcome to come up and speak again.

**Leon Cole Jr.**, 16700 Birmingham Highway, Milton Georgia

This case has several concerns for me. This landscaping business has been illegally operating without use or business permit for a number of years. The only reason they are planning for one now is because they were finally sited by code enforcement. This is an AG1 zoning. I thought you had to apply and get approval for a use permit before you started your business. Maybe I am wrong. Number 2, although they requested variance calls vehicle access onto a local road, Taylor road, the address given is 15150 Birmingham Highway. There is a use variance sign posted on Taylor Road but there is no sign posted on Birmingham Highway. The fact that citizens did not attend earlier meetings concerning this matter is not reflective of a lack of concerns but rather it is a reflection of a lack of onsite public notification. Unless you happen to drive down Taylor Road you had no idea anything was going on. Even on Taylor Road the tan colored sign is posted on a tan colored fence and easily escapes the notice of passing vehicles. In the future I would suggest that dull tan colored signs be replaced by signs of a color that would draw attention. That would be very helpful to the community. Taylor presently has no commercial sites on it. It is a lovely road of private homes and large lots and a few subdivisions. I also has large areas of undeveloped land. The Birmingham Highway entrance to the property has visual limitations and the proposed Taylor Road entrance is inappropriate for a business entrance. In short this AG1 property is lacking the essentials for a commercial venture and also it is presently operating illegally. Considering all the concerns I have presented to you, the use permit and the requested variance should be denied. Thank you very much.

**Kathleen Johnson**, 385 Taylor Glen Drive

I live at 385 Taylor Glen Drive which is a subdivision right off of Taylor Road and I agree with Mr. Cole who just spoke. My main concern is the variance for the use of the local street on Taylor Road. Even though right now the business may be of a certain size, since the variance will run with the land in the future, my concern is that Mr. Nester might increase the size of his business or at some point in the near future or far future sale the business to someone else who might decide to make it bigger and use many more trucks that will be going on the residential street on Taylor Glen. As Mr. Cole said the

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Taylor Road is a short residential road it has three subdivisions and single family homes there is no commercial use whatsoever. I am concerned about the precedent that this might set on allowing this commercial traffic access on Taylor Road. There is also about 100 acres across the street across the street from this site that is for sale right now and I am afraid of the precedent that somehow if it is commercial use on Taylor that somehow that could be rezoned or requested to be rezoned for commercial use. Also as far as the notice, I agree that the sign on Taylor Road, now I drive down Taylor Road every single day and I have never seen that sign until I heard about this just yesterday or the day before and I had to drive by there twice to find that sign and I stopped my car and looked and finally found that sign so I think a free standing sign not on a fence would be helpful also. Also I have a safety issue, there is a new school going to be built very close to this site, right down the street Birmingham Highway. There is approximately 140 children in my subdivision alone that will be going to that elementary school and it is very close to our subdivision so there is a chance that children might want to walk and bicycle to that school once it is built in August and I worry with commercial trucks coming in and out on Taylor Road. Birmingham Highway is a major road. There is an entrance right now from the business on Birmingham Highway that I believe should be used for entrance and exit for the business. I know in order to get a variance you are supposed to show hardship. If there is already an entrance on Birmingham Highway I do not see hardship in order to allow access for Taylor Road and I do not know what his argument is that he needs that access, just because it would be easier for him, his convenience should not be superseded by the safety of children and of the residential use on Taylor Road. I was going to recommend deferral of this issue of the special use permit just to get some more information since my neighborhood has just found about this yesterday or this morning actually and we wanted to discuss it more and notify our neighbors because I have many concerned neighbors that are here tonight in the audience that either want to speak or show that they are concerned and we do want more time on it but I do request denial of the variance for the access from the local street. That is pretty much it for right now and I hope that when you defer this issue later we can come and speak about the special use permit and once we have more information. Thank you.

**Melissa Estes**, 14716 Taylor Road

Once again, I am Melissa Estes and I concur everything stated here tonight regarding the Birmingham Road Taylor Road site. I was not aware of the rezoning request because the sign is really not visible. I drive by there several times a day every day and was stated before it is a tan sign on a tan fence and I am confused as to why if the business address is on Birmingham Highway, why there is no sign on Birmingham Highway alerting the citizens of this. I think a lot more citizens would have been aware if the sign were posted in a more visible spot. I am happy that this is being deferred so that we can gather more information and that the citizens that are going to be directly impacted by this are going to have a chance to learn more about it but I want to reemphasize what I stated before that I am concerned if this passing a precedent is going to be set that says that commercial use of AG1 land is going to be allowed to happen and that is indirect conflict with our land use policy so I hope that you will weigh that seriously when considering this in the future. Thank you.

**Troy H. Hutchinson**, 14764 Taylor Valley Way, Milton Georgia

Mr. Mayor and Council thank you very much, I think what you have heard tonight.

**Mayor Lockwood**

Excuse me Mr. Hutchinson, would you mind giving your name and address for the record.

**Troy H. Hutchinson**

Yes, I am Troy Hutchinson and I live at 14764 Taylor Valley Way and as I was saying I think that this is about precedent and there are several questions that have come to mind as I have listened to this tonight. When this was unincorporated Fulton County was there a variance applied for at some point in time because the same issue existed prior to the code violation that has been sited here. I ask that you deny the special use permit and also the variance and there are many reasons for this, namely that the land is zoned AG1 and a business of this nature should be run from commercial property zoned C1. There is no horticulture occurring at this location, only commercial landscaping that I am aware of and as such it does not qualify to be operated from AG1 property. I think the issue here is not who or what is on this location today but who or what will be here in the years to come. People move, businesses grow and businesses get sold. Two trucks grow to four trucks, four trucks grow to eight and so on. I would be very concerned with the large landscaping company operating there or worse a new business center that is not culturally connected to the area buying up surrounding land for expansion. An example of this might be that I would not necessarily be excited about living next to Scottsdale Farms, now that it is a sprawling mega nursery. I might not have been concerned about this buying a house there when it was a fruit stand with a lawn mower repairman living next door. The fact is that we do not know what the addition of this variance might mean to the look and feel of Taylor Road and Taylor Glen in the years to come but I doubt that a large landscaping operation with heavy equipment and large numbers of employees coming and going not to mention the noise would bow well for our communities increase in property values long term not to mention the potential security issues. Thank you.

**City Clerk Marchiafava**

That completes public comment. If the applicant wants to rebut there is time remaining.

**Robb Nestor**

Yes I would. First of all I do have a sign on Birmingham Highway. It was given to me by the City, the colors were not my choice and it was hung the day I received it and it has been there ever since. It has been advertised in the paper. I sent out letters that I was supposed to send out to the surrounding vicinity. I am not in violation. I have been there fifteen years. I have a business license with Fulton County, now if they did not require me to get this land use permit, I did not know anything about the land use permit when they came to me and said this is what you needed, it was a surprise to me. As far as the neighborhood, this really amazes me because I have been there for fifteen years. I have been operating the same way for fifteen years. I have not grown. I have been maintaining the same operation. I was there before that neighborhood was there. I was there when there was moss on that road. I set a precedent in the area as far as landscaping, aesthetics, the horse fence, the whole nine yards, so I can understand how the neighbors feel, I can appreciate that but they have already been living with me so if they have not had a problem until now, why now just because the City is requiring me to get a land use permit. I hope I answered everybody's questions and I cannot understand how they are concerned about the future. I do not plan on growing. There is a house there, when I retire I am closing up the business so I just do not see where it is a problem for the community.

**Mayor Lockwood**

We have a question from Councilmember Thurman.

**Councilmember Thurman**

Staff has recommended deferral, are you ok with that?

**Councilmember Tart**

Point of Order please.

**Mayor Lockwood**

I do need to close the public hearing.

**City Clerk Marchiafava**

Offer time to the opposition, they have about 40 seconds left and then we can close.

**Mayor Lockwood**

Before I close the public hearing, is there anyone from the opposition that has something they would like to add.

**Kathleen Johnson**

Like I said, I understand that you were there for fifteen years and I said my main concern is the variance for the road. I do not feel as I heard enough of an argument that you need that road and that is a very big concern to me is the use of Taylor Road.

**Robb Nester**

I totally appreciate that, I do not...

**Mayor Lockwood**

Point of order, you have to stand back and let the opposition finish.

**Kathleen Johnson**

Yes, the variance for Taylor Road is a big concern, with more time like I said to look at the special use permit.

**Mayor Lockwood**

The public hearing is now closed. I believe Councilmember Thurman had a question for Mr. Nester.

**Councilmember Thurman**

Staff has recommended a referral, did you recommend thirty or sixty days?

**Senior Planner Robyn MacDonald**

It will be sixty. Basically the June Council Meeting, two months.

**Councilmember Thurman**

The third Council meeting in June, will that be the correct one?

**Senior Planner Robyn MacDonald**

Yes.

**Councilmember Thurman**

Ok, they have recommended referral and we have heard some request from opposition asking for deferral also, are you ok with that?

**Robb Nester**

Yes.

**Councilmember Thurman**

Then I would like to make a motion that we defer this case until the second Council Meeting the third week of June.

**Councilmember Zahner Bailey**

Point of order, I just have a quick question before we decide on a deferral. I have a legal question. I just have a legal question about the proposal from staff for deferral based on what I have heard. I think before we go down...

**Mayor Lockwood**

Ask your question.

**Councilmember Zahner Bailey**

Thank you Mayor. What I am hearing is that what was advertised thus far was not the complete request by the applicant. My question is would a withdrawal and then a re-application not be more appropriate because it would be different than what is currently before us and it would not change the fact that it would come back to the planning commission but it would allow the applicant to fully and completely package all of the things because I am hearing that staff as recently as today identified that there were some things that should not have been included in the recommendation etcetera, so I guess my question for the attorney is the more appropriate response that we really need to ask potentially for a withdrawal and a re-application and have that process begin again.

**City Attorney Hamilton**

That is a good question and my reply would be basically a withdrawal would be appropriate, my concern is that this particular applicant is going down the road and this was ready to be presented until a discussion happened this afternoon wherein it was realized that it may need to be re-advertised so I am not sure it would be fair to penalize the applicant in any way.

**Councilmember Zahner Bailey**

I was not viewing it as a penalty, I wanted to make sure procedurally, because I hear that it is more than just an advertisement issue which is another question because I am confused about advertisement. I heard Robyn MacDonald mention that there was an identification of a buffer requirement that was previously not identified appropriately and our City Manager may have more input on this.

**City Manager Lagerbloom**

I do not have anything more than what you have heard. I found out about it late this afternoon as well and obviously want to bring you a good work product and that was what we were prepared to bring you tonight so I recommended deferral.

**Mayor Lockwood**

I have a question too but I think Councilmember Lusk has a question.

**Councilmember Lusk**

Perhaps Ms MacDonald can clarify her concerns and her recommendation. I only heard one variance.

**Senior Planner Robyn MacDonald**

Ok, typically when we bring in or somebody submits and application for use permit, staff looks at all of the items on the proposed plan and I did not catch, I went through that long explanation and it was very confusing but the end result is that Mr. Nester needs to ask for an additional variance and it is staff's recommendation that we defer it at this point so he can submit additional paperwork to ask for a variance to the buffer standard for the Northwest Overlay District along the south property line for those areas which those structures encroach which is a house and I believe a greenhouse and that he would provide buffer for the rest of it. I cannot write a condition to just allow that to encroach. I could if it was in a different place but I cannot so therefore I am recommending deferral so we can do it properly and for a variance to be included in the process and he will submit it and I will re-advertise it, it will go back to the Planning Commission with the current variance for the local street and the buffer reduction where the structures encroach as well as the use permit, go to the Planning Commission in May, this is what I would like to see and then come back to you in June.

**Councilmember Lusk**

So if I am lead to believe then, this was an oversight by staff and not something forgotten or omitted intentionally by the applicant.

**Senior Planner Robyn MacDonald**

Correct. He was not trying to hide anything, it was just a matter of dealing with the Zoning Ordinance and there is variations and different things. If this was in a different location per the ordinance we could have allowed that existing use just to be written in as a condition. We cannot do it in this position.

**Councilmember Lusk**

Not to be critical of staff, I just wanted clarification.

**Mayor Lockwood**

Mr. City Attorney, if this is deferred as per staff's recommendation, is that a legal procedure for this situation?

**City Attorney Hamilton**

I believe it is.

**Councilmember Tart**

To add an extra variance to the existing application you can defer it?

**City Attorney Hamilton**

I believe that is correct.

**Councilmember Thurman**

As a point of order I had made a motion.

**Councilmember Zahner Bailey**

I am confused from a point of order, again no intent to interrupt but because the recommendation was deferral and I will just ask our City Attorney, the other question that I had heard from staff and did not have an opportunity to speak about it before the motion was made is the statement that was, two things, one I heard that the Planning Commission is looking to address this tomorrow night in terms of overall consideration and a deferral of course would not allow the Planning Commission to apply whatever discussions and decisions they make to this case and it is now going to have some additional variances. The other question, whereas with a withdrawal it could take into account what the Planning Commission would account for.

**Senior Planner Robyn MacDonald**

Can I address that please? It is basically a work session and this is an issue that will be addressed. No matter what their decisions are tomorrow, this case is grandfathered in no matter what happens, we are far from making an adjustment to the Zoning Ordinance in regards to landscaping. We are not going to be addressing this case.

**Councilmember Zahner Bailey**

Correct, but let me ask the City Attorney, again it is a legal question, which I am hearing a difference on Council but I would like to ask the City Attorney. My understanding with at withdrawal is that the withdrawal means that the application effectively goes away. A deferral means that the case absolutely continues in the current process but if that application were withdrawn a new application would indeed then meet whatever new standards are in place.

**Councilmember Thurman**

But the new standards could not be in place until it went to the Planning Commission.

**Mayor Lockwood**

At this point, we have had a motion to defer it. We have an opinion by the City Attorney and then we can have discussion after that. I have a motion to defer, do I have a second?

**Councilmember Hewitt**

Second.

**Motion and Second:** Councilmember Thurman moved to defer Agenda Item 09-836 **U09-02/VC09-02** - 15150 Birmingham Hwy, Application by Robb Nestor to obtain a use permit for a landscaping business on 3.926 acres at a density of 387.92 square feet per acre (Article 19.4.27). Applicant is also requesting concurrent variance to allow access from a local street (Article 19.4.27.B.1). Councilmember Hewitt seconded the motion.

**Discussion on the Motion:**

**Councilmember Zahner Bailey**

Subsequent to this evening, I would like to better understand that process of when a case in grandfathered because I do have a different perspective so City Manager with our City Attorney, I would like to better understand the process that when an application comes to us, if it has been withdrawn, let's just say new information comes forward that was not part of the case which really

makes it a different case. Same use permit but there is some new information, a withdrawal, my understanding always had been legally that a withdrawal means effectively that case is taken off the table and that if they were to re-apply if there was a new process in place that new process would then apply and it may just be a function of timing so I just would like to address more globally since we may have a difference of opinion and I sure appreciate our City Attorney's input on that. I heard something very distinct from our community members. I am hearing the local road which is a requirement especially use permit is a serious concern. During a deferral process obviously the local road issue does not go away it is simply going to be the addition of a new variance that had not previously been identified. I would like to ask Carter Lucas who is our Public Works Director whether or not this case has been reviewed by Public Works and whether or not an access off of Birmingham Highway, and Mayor the reason for the question is that I heard people saying that regardless of a deferral, and it was Ms Johnson in particular that noted that she would like to later consider the special use permit, for me to know how best to vote, I need to understand whether or not this special use permit could operate as being requested with an access off of Birmingham Road which would then meet at least that one standard.

**Mayor Lockwood**

Would that be a question that could be answered during this sixty day referral.

**Councilmember Zahner Bailey**

It could be but for me to be able to make an intelligent decision even on a deferral Mayor, with all due respect, I am not clear because staff did not mention it, I am not clear whether or not staff recommended that because of site distance that Birmingham Highway entrance could not be used and therefore that variance really is co-mingled with the special use permit.

**City Manager Lagerbloom**

We are prepared with traffic studies to answer the question.

**Senior Planner Robyn MacDonald**

I did not go through the full staff report based on that.

**Councilmember Zahner Bailey**

It is not a criticism but again for me to make a decision here this evening on the current motion on the floor that is question during this discussion...

**Mayor Lockwood**

Can this be answered tonight?

**City Manager Lagerbloom**

It can be answered in ten seconds or less.

**Mayor Lockwood**

Go ahead.

**Interim Public Works Director Carter Lucas**

It was reviewed by staff prior to me getting here and what I can tell you is that staff believes that site distance on Taylor Road is better than it is on Birmingham Highway. Now during this deferral period we can re-evaluate that and bring back some better information at the next meeting.

**Councilmember Zahner Bailey**

The question that I would have is can you legally do it and Georgia DOT I am assuming would have to weigh in and I just did not know if that had been part of the analysis.

**Interim Public Works Director Carter Lucas**

If that intersection of if that entrance improvement on Birmingham Highway is modified in any way it would have to go back through Georgia DOT.

**Councilmember Zahner Bailey**

Again, I just want to make sure that if we are looking at a deferral that we are really thinking about all those issues we need to address.

**Mayor Lockwood**

I think we can make sure that staff gets all of Council's questions answered. We have sixty days on that so that you will have all of the information that you need to vote on that.

**Councilmember Tart**

Ms MacDonald, was there a citation issued on this one as well.

**Senior Planner Robyn MacDonald**

There was.

**Councilmember Tart**

There was, I was just talking with Councilmember D'Aversa, what does our ordinance say about businesses that operate illegally and are issued a citation and then they bring an action like this before us for a special use permit. I know that is held I guess in stay where they continue to operate, what happens to that citation? Let's assume he came before us and we approved it tonight, what happens to the citation?

**Senior Planner Robyn MacDonald**

It goes away.

**Councilmember Tart**

It goes away?

**Senior Planner Robyn MacDonald**

Basically if you were to grant him a use permit, he would basically, I do not know all of the technicalities because I am not the code enforcement officer but from the zoning standpoint, basically the citation would say that you are operating without a use permit so once, if the Council decides to approve a use permit then that is withdrawn or taken away and I cannot really address exactly legally how that is done.

**City Manager Lagerbloom**

Let me take a stab at it before you go much further. Code enforcement by its typical nature is used as a compliance generating body. That is what we try to have code enforcement do. That is a bit different than the vision of a Police Department for example, it might be more into issuing criminal citations or violations of other laws but code enforcement just by its very nature, the way that it works in most of its cases is it fines these types of issues for folks who may not be in compliance with the local ordinance and truly at the end of the day what we are really going after in this particular case is a compliance with our ordinance and not necessarily a punitive attack at one of our businesses or one of our community members in Milton so I think probably the phrase going away is the wrong phrase. I think the more appropriate phrase is if the code enforcement officer does their job right they have generated some voluntary compliance to the City of Milton which otherwise did not exist. The more appropriate phrase is that it would continue to work its way through our Municipal Court but it is fairly straight forward that if the person that is in violation has come into compliance with the issue for which they had been warned or sited it is a fairly standard practice for our Municipal Court to err on the side of having the process worked itself through so now we have a voluntary compliance situation in our City and the court really does not find any reason to hold any type of punitive measure against one of our citizens who has now come into compliance with the law. Completely different from a speeding ticket for example.

**Councilmember Tart**

Somewhere in all of that minutia, I am trying to find the advantage of a business owner to be proactive in applying for a special use permit without being sited first.

**City Manager Lagerbloom**

I do not know that I have necessarily a good answer for that but that is part of the thing of having different facets of the city government. Code enforcement has its purpose and this is a prime example of its purpose is to go out and find these things and bring them into compliance. Now you are right there is maybe a benefit to flying under the radar for thirty years and hoping you do not get caught and I do not know that I have a good answer for you for that tonight but the converse to that would be that we would not have code enforcement out there doing their job and then we would never be finding these things. It really is a double edged sword and I hope that maybe answers the thought process a little bit.

**Councilmember Tart**

Separate from this particular petition because we got the one right before us that is the same and I think we have had another one that came before us that was the same and I do not think these are ever going to stop because we are always going to have businesses that are operating illegally and come before us for special use permits or other actions. I would like for staff to look at other jurisdictions and how other jurisdictions are addressing that because I am having a hard time in my mind even considering rewarding businesses for not being more proactive and not getting the proper licenses that they need and approvals that they need to operate and I would like for us to consider that.

**City Manager Lagerbloom**

Absolutely, and that is a very fair discussion we can have with the entire Council as to what level of proactivity you all envision for code enforcement. Your vision may be different than mine and if it is, I need to know that. I am used to a code enforcement being a compliance generating body. Maybe there is a majority of Council that sees that more as enforcement.

**Councilmember Tart**

We only have one code enforcement officer, right?

**City Manager Lagerbloom**

That is correct.

**Councilmember Tart**

We have one code enforcement officer for forty something square miles and that code enforcement officer is paid for by tax payers dollars and I do not think it is fair that the City has to employ somebody to ride around and look for violators.

**City Manager Lagerbloom**

That is fair enough.

**Councilmember Tart**

I realize at some point that person can come do what they are supposed to do and apply for the required permits etcetera but there still needs to be something punitive in there built in for someone who does not.

**Councilmember D'Aversa**

I would just encourage our staff and beg of you to, when you reread your conclusion that says that staff is in support of the requested concurrent variance to allow access to a local street due to the safety and high volume of traffic on Birmingham Highway, that you look to this local road, the school children, the citizens have presented the issues tonight and that we take a hard look at the safety concerns that face that local street. I believe that is a very separate issue than the rest of the variances that being requested on this property and that they ought to be separated. To change a commercial business to an entrance off of a local road that is not zoned for commercial would be a sacrilege in my opinion so I hope we will take a good strong look at that safety concern.

**Mayor Lockwood**

In closing I would agree with Councilmember D'Aversa and I also understand that the applicant has had an existing business for fifteen years so it was not like he was trying to slide a business in here now. It is obviously not your fault that the City of Milton is here now and code enforcement. We are trying to work together to come up with a win/win solution that hopefully benefits the residents and does not adversely hamper your business so at this point I have a motion and a second.

**Councilmember Thurman**

Can I ask one really quick question of staff.

**Councilmember Zahner Bailey**

I do have one statement when you are done.

**Councilmember Thurman**

The question I would like to ask is along with a use permit since we are talking about schools and children walking and all, can we require them to put in sidewalks like we do in a rezoning as a condition of the use permit?

**Senior Planner Robyn MacDonald**

Basically from what I understand and Carter may be able to correct me but the position that the Community Development Department has is there will not be any land disturbance permit pulled for this property but again that is our perspective. That would be like the key to turn to get the sidewalks installed but again that is the perspective of the Community Development Department.

**Councilmember Thurman**

I do not have to have an answer tonight but it is something I would like you to think about.

**Councilmember Zahner Bailey**

The whole discussion about, and I do respect the fact that you have been operating but again simply from a legal perspective and whether we are the City of Milton now or unincorporated Fulton, we adopted the special use permits and the conditions for those special use permits from Fulton County so those are not new conditions and I just want to be very clear for the public that is here and again I do respect that you have been operating but I think as a matter of leveling and being factual that operating without appropriate special use permits is not grandfathered legally, and our City Attorney could always comment on that later but I do not understand that illegal operation provides for a grandfathering opportunity so the fact that we became incorporated, we adopted the same special use requirement so those are net new and that is all I had to say and thank you Mayor.

**Vote:** After no further discussion, the motion passed unanimously 7-0.

**City Clerk Marchiafava** read agenda item 09-837.

**RZ09-01- To amend Article 33 “Signs” of the City of Milton Zoning Ordinance to clarify the height restriction of various signs and to amend the “Considerations” for sign variances.**

**Senior Planner Robyn MacDonald**

This sign text amendment, the primary reason for it is to clarify the height issues. If you want to go to page 19 under section 25 it starts. It is 25A2 is the first part where we recommend to include temporary standard informational sign, each lot and/or development may display one standard informational sign not exceeding 4 square feet in area and five feet in height and then in agricultural district in B1A is maximum height shall be six feet from finish grade. The Planning Commission had suggested rewording that instead of including it in every paragraph. On page 20 of your packet there is a new version of it for section 25B, freestanding signs and basically what we did is on E each residence may display up to 12 square feet of signage with no single sign greater than 4 square feet and freestanding signs up at C shall have a maximum of 6 feet. Basically delete what staff had originally proposed as maximum height shall be 6 feet and freestanding signs under A. So, what it is reflecting in the shaded red area is what staff recommends which was recommended by the Planning Commission. C just below that, just adding maximum height to 6 feet is what staff had originally recommended and then Planning Commission on the next page on 24 had recommended that change to make it a little bit more consistent. That is all for now in this text amendment, so basically we are clarifying the height in these different areas of the sign ordinance just to clarify it.

**City Manager Lagerbloom**

Mayor, since this was a two part issue that was brought forward to you initially, the reason that half of it we believe that we need to bring forward at a later date along with concurrently with Article 22. We did

not want to put a recommended text amendment tonight that would all of a sudden become a conflict with one of our other ordinances and therefore we felt it appropriate there in the first part to make sure those two came forward together and fix themselves at the same time rather than forcing our self into an ordinance that would have different meanings. That was also the concurrence of the Planning Commission and I had several conversations with the Chair of the Planning Commission and feel comfortable that was their recommendation.

**Councilmember Zahner Bailey**

That phrase of maximum is that what we are specifically referencing.

**City Manager Lagerbloom**

That being section 11, paragraph D standards.

**Senior Planner Robyn MacDonald**

Page 10.

**City Manager Lagerbloom**

The section we are bringing forward to you tonight is the section we discovered out of finding a sign that was not part of an overlay that was an AG1 that we permitted and we permitted appropriately because we could not find a place that restricted its height. We found a place in the ordinance that we had allowed for restricting its size to the 32 square feet but nothing that we could and with the concurrence of our attorney, nothing that would restrict its height. Presumably then our ordinance was in a position that you could have somebody create a 32 square foot sign, 32 feet in the air and that was what bringing the second part forward to you tonight puts a measure in place so we do not have very tall signs starting to appear in AG1. That is the purpose for the second half and we will bring back forward to you the first half but we need to bring it back concurrently with Article 22. Again with several conversations with the Planning Commission that is exactly it. What we are bringing forward to you tonight is indirect relation to what they would hope we would bring forward tonight so the staff as well as the Planning Commission are in agreement on this one text amendment tonight.

**Councilmember Zahner Bailey**

The only question I have is on page 19 of 44 and I actually spoke to Alice Wakefield about this after we had the first presentation and it was my understanding that this was going to be modified. Under section A2 where it talks about temporary standard informational signs, those being the 2x2 and it is inserted that in an area in five feet in height, when you drive around Milton, there is obviously a lot of those 2x2s. Almost all of them are low to the ground so when I read this I suddenly envision those small signs that were initially intended to be more obscure suddenly becoming five feet and I do not think that was the intent. I know that Ms Wakefield is not here but we had had a conversation about that and it was my understanding that was going to be re-addressed before this evening so I would recommend, I am comfortable with the other conclusions, I just believe that five feet for those 2x2 signs will look really silly and it is very much not what was intended when the sign ordinance was first put in place.

**Councilmember Tart**

Where is that again?

**Councilmember Zahner Bailey**

On page 19 of 44, it is under permitting and all zoning districts. You may recall that when we had to go back and change the sign ordinance because of freedom of speech we could no longer refer to types of signs and that is why you have got up to a total of 12 feet but no one sign could be more than that 2x2 and so they get used in different ways but they are, in terms of how they are utilized and practiced, they are low to the ground. This I think would encourage height that is really not.

**City Manager Lagerbloom**

If somebody would like to make a motion to approve with changing that five to a three or something like that, staff could support that.

**Councilmember Thurman**

No, I know why this was done this way and it was done this way because a lot of the real estate signs and nicer neighborhoods are actually about 4 to 5 feet off the ground and they are hanging down from a very nice post and that is why this was originally put in there so you did not have to have a little bitty sign on the ground for a 3 or 4 million dollar home for sale. You could have a nice post and have a sign hanging down and that was the reason it was originally put that way. We originally discussed this as being kept at a 5 foot height.

**Councilmember Zahner Bailey**

I appreciate that explanation and I can understand that. My question now is going to be, how do we accommodate that concern without having an unintended consequence which is all the other signs which are intended to be low to the ground suddenly morphing to a 5 foot 2x2. It will look really silly and I do understand in that area. My request would be since Ms Wakefield cannot be here and we try to talk about it if we could just maybe pause on that one item while we approve the other so we can come up with, hopefully with our City Attorney and I know that Mr. Jarrard is not here this evening but if there are some ways that we could address that with staff, address the concern that was mentioned without ending up with some unintended consequences because I believe we will have some unintended consequences.

**City Manager Lagerbloom**

If you would like to, in speaking with the attorney if that is something you would like us to craft some language that works, we certainly can. It is not something we can just spit out to you because I think it needs to be detailed specifying exactly what type of sign we are talking about.

**Mayor Lockwood**

I would like to see which direction of the Council, we certainly do not want to do something that has unintended consequences.

**City Manager Lagerbloom**

If that happens to be the direction of the Council tonight we can accommodate that.

**Mayor Lockwood**

Can I have a show of hands that Council would like to move forward in that direction.

**Councilmember Zahner Bailey**

Meaning to have that clarified so we accommodate the one use?

**Councilmember Thurman**

I do not think you could limit it to real estate signs based on the content but you could limit it to signs that...

**City Manager Lagerbloom**

That is what we were talking about is that we would have to describe what the sign would look like.

**Councilmember D'Aversa**

But it is not the sign it is the hanging apparatus because I had one in my yard so that is where wording needs to come in. Not to exceed 5 foot height and then give it the proper terminology.

**City Manager Lagerbloom**

Right, I just cannot tell you how we will do it tonight. I think we understand the direction.

**Councilmember Zahner Bailey**

My question then Mayor would be, would our City Manager's advice be that we put forward that approves this document with the exception of section 25A2 that everything else be approved with the exception of section 25A2 so that section could be further reviewed and that information brought back with additional sign suggestions at some future date.

**City Manager Lagerbloom**

My recommendation if you are willing to do that is that we just bring it forward when we bring forward the section 11 that we are asking deferral tonight along with Article 22. It is coming forward anyway.

**Councilmember Thurman**

Are we not safer going ahead and approving it with this wording in and then rewording because right now they can be allowed to be 30 feet in height without the wording in there.

**Mayor Lockwood**

That was the reason this was brought up.

**Councilmember Thurman**

I would rather have it being 5 feet in height and lets clarify it and make it even stricter when we look at the rest of the sign ordinance rather than leaving it wide open for 30 foot sign be allowed.

**Senior Planner Robyn MacDonald**

Those real estate agents might be really desperate, they may figure that out.

**Councilmember Zahner Bailey**

Could we go ahead and craft some language temporarily that would address some of it and knowing that we still have to come back to it.

**Mayor Lockwood**

I have people talking in all directions and I am going to look to our City Manager.

**City Manager Lagerbloom**

Number one I do not think we can put together temporary language tonight that would withstand scrutiny in the sign ordinance. Knowing that this ordinance is one that is challenged more than any of the others that we have so I am not comfortable with just shooting from the hip for that. To Councilmember Thurman's point, it is a very good point. If we leave here tonight without any restriction in that particular area, then we run the risk that for the period between now and when we could bring an ordinance.

**Councilmember D'Aversa**

Chris, it is specified in here that it is 4 feet in area. Do we understand what area means? Then the hanging apparatus or the fixture of the sign be no higher than 5 feet.

**Councilmember Zahner Bailey**

If it is a hung sign versus one that is in the ground.

**Councilmember D'Aversa**

Right, but still the sign is 4 feet in area.

**City Manager Lagerbloom**

I think what Councilmember Zahner Bailey envisions which I am seeing with the explanation is this 4 foot square sign 5 feet off the ground on these little spindly...

**Councilmember D'Aversa**

How could you limit the height on specific signs. You are going to designate real estate signs separately.

**City Manager Lagerbloom**

No, that is why I said tonight we cannot specify the type of sign that is why we need more time to craft language.

**Councilmember D'Aversa**

I do not think you are going to be able to do that.

**Councilmember Thurman**

Yes you can, I have seen it done. You can do it with an exception for signs that are a certain kind.

**City Manager Lagerbloom**

Our City Attorney seems to think we can do it. We are not prepared to just spit out language tonight.

**Mayor Lockwood**

Obviously there is a chance that somebody will do a 2x2 sign 30 foot high but I would rather give staff and the attorney some time to give us the right direction.

**Motion and Vote:** Councilmember Zahner Bailey moved to approve Agenda Item 09-837 **RZ09-01-** To amend Article 33 "Signs" of the City of Milton Zoning Ordinance to clarify the height restriction of various signs and to amend the "Considerations" for sign variances, with the exception of section

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25.A.2, with that section to be reviewed by staff and our City Attorney at some future date. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously 6-0. (Councilmember Lusk was not present for the vote.)

### **UNFINISHED BUSINESS**

**City Clerk Marchiafava** read Agenda Item 09-838

**Approval of an Ordinance of the Mayor and Council of the City of Milton, Georgia, to allow a waiver of the penalty of the base amount of past due ad valorem taxes on a case by case basis, to allow for payment of past due ad valorem taxes in installments, and for other purposes.**

**ORDINANCE NO. 09-04-39**

#### **City Attorney Chris Hamilton**

- This Ordinance is an incentive mechanism to help people who have not paid their ad valorem taxes.
- It gives them a safe harbor from the penalty, not the interest if they pay within 45 days.
- They can present it to the finance department, then they can make a recommendation to Council based upon hardship.
- Presently there is some \$600,000 in uncollected ad valorem tax and by waiving the penalty, we hope to get more people into compliance.
- It also has the provision that while the penalty will still be in place, if they cannot pay it all at one time we can put an installment agreement in place so we can get some of this revenue coming in.

#### **Councilmember D'Aversa**

- Asked if someone takes advantage of this and take on the installment plan and then stop paying if it reverts back to having a penalty against them.

#### **City Attorney Hamilton**

- There would be a penalty against them and we would have all of the collection mechanisms available to us.
- They would be in violation of our good will at that point.

#### **Councilmember Zahner Bailey**

- Asked how we define hardship on a case by case basis.
- Asked if we need that to be more specific so there is not open ended subjectivity.

#### **City Attorney Hamilton**

- When he was looking at the law on this subject, hardship for one person is going to have a different definition than it will for another.
- He plugged in two levels of scrutiny, first is goes to the finance department where it would be reviewed and see if it was a case of a hardship where somebody is suffering under the current economy.
- If that is recommended then on a case by case basis, that cases would come forward to Council and Council would have the opportunity to discuss if it is a legitimate hardship but there is no legal definition of hardship.

**Councilmember Zahner Bailey**

- In other cases, sign ordinances and those types of things we need that specificity and here it is ok to have it on a case by case basis.
- Because we do not currently have a City Treasurer, asked the City Manager if he was still also in a dual function of acting as the City Treasurer.

**City Manager Lagerbloom**

- On paper that is the way it is.

**Councilmember Zahner Bailey**

- So this would assume that Stacey Inglis is our Finance Director and the City Manager as the interim treasurer serving in the capacity of the City Manger would review this.

**City Manager Lagerbloom**

- That is correct.

**Councilmember Zahner Bailey**

- Only because we do not know where we are in the hiring phase, asked if it would make since to insert language, also the review by our City Manager.

**City Attorney Hamilton**

- We can include the City Manager, but he would not want to take the City Treasurer out of there because it is so tight into the Charter.

**Councilmember Zahner Bailey**

- She was suggesting that because right now we do not have a City Treasurer.
- She will leave that to his discretion.

**City Attorney Hamilton**

- He is very comfortable with the City Manager sitting in that capacity.

**Councilmember Tart**

- In terms of equal protection and the two making the determinations in terms of hardship, he asked if there would be a policy used to make those determinations.
- He knows it will be case by case but at the same time, so I have not been paid in 2 months but somebody else has not been paid in 3 months.
- Asked what they would make the determinations with.

**City Attorney Hamilton**

- They were not asked to draft in policy as to what a hardship was.
- It was the idea that we would let the initial review followed by the review by Council.
- It is something they can look at if it is the direction of Council but again there is no true legal definition of hardship so he thinks it would have to be on a case by case basis.

### **Mayor Lockwood**

- We are in a real world situation and we have some reasonableness and allow our staff to make decisions.
- We are looking to help people and work with them without them hitting a brick wall.
- He does think they can come up with an exact plan that is going to fit all cases.

### **Councilmember Tart**

- He is all for this in concept but part of the reason he is being paid to be here is to ensure the City is protected in the future.
- In terms of equal protection and people coming before the City saying I have a hardship, he just wants to make sure they have some way to make that determination that this is a hardship and this is not because we are waiving fees and we could get sued for treating one differently than the other.

### **City Manager Lagerbloom**

- The practice is going to be that this ordinance was written for the purpose of allowing those who otherwise cannot come forward to potentially pay their taxes.
- If somebody is going to assert a hardship, it is not going to be the staff's opinion that it is not a hardship and those are ones that will likely pass forward for the Council to see.
- He cannot imagine scrutinizing every one and he hopes it is an opportunity to bring people to potentially pay that have not paid so far.
- He does not see his role as a staff member to stand in their way if we are offering this opportunity.

### **Councilmember Hewitt**

- He thinks if they are willing to come forward, then they are willing to work out something.
- It is for a finite period of 45 days and if it goes south then we have all the collection means necessary.
- When they discussed it in a work session the main goal was to try and collect some of these taxes.
- He thinks it would be wise to go through with this and start trying to realize some of the money sooner than later.

### **Councilmember Thurman**

- She thinks the City Attorney has drafted exactly what they asked him to.

**Motion and Second:** Councilmember Thurman moved to approve agenda item 09-838, an Ordinance of the Mayor and Council of the City of Milton, Georgia, to allow a waiver of the penalty of the base amount of past due ad valorem taxes on a case by case basis, to allow for payment of past due ad valorem taxes in installments, and for other purposes. Councilmember Hewitt seconded the motion.

### **Discussion on the Motion:**

#### **Councilmember Zahner Bailey**

- On the second page at the top where it says, whereas for a temporary period, asked if we need to say at what point we would come back and revisit this.

### **Councilmember Thurman**

- It says it shall terminate August 31, 2009.

**City Attorney Hamilton**

- Section four puts a sunset clause on it.

**Councilmember Lusk**

- He is happy to see us heading in this direction rather than following the course of reconstituting debtor's prison.

**Note:** After no further discussion, the motion passed unanimously 7-0.

**NEW BUSINESS**

**City Clerk Marchiafava** read Agenda Item 09-848.

**Consent for the Extension of the Consulting Agreement with Latta Enterprises for Six Months and in Accordance with the Established Terms of the Contract.**

**City Manager Lagerbloom**

- Prior to the meeting he spoke with Ms Latta and he really would not make a recommendation to extend this contract beyond three months from today as opposed to the six months that was required.
- He believes we can get done what is in the scope of work within the next ninety days and Ms Latta agreed to that.
- He can tell them some of the things that will be in the self evaluation and transition plan notebook but the work up to this point reviews our policies and procedures, our job announcements for ADA compliance, our web site, provide some training to the staff and we have put together a training curriculum for staff.
- There are some emergency items that still need to be addressed as far as those in the community that we might have to get to in a state of emergency that otherwise not be handled on a day to day basis.
- They need to complete the alternative communication plan and a complete review of the transportation plan if it is done within the next 90 days which would be the period of the remainder of this contract.
- He thinks we are far enough along that three months will get us done.
- He is not comfortable that we need an additional six months.

**Councilmember Thurman**

- Thinks three months should give us enough time to accomplish what we want to accomplish.
- Obviously she is an invaluable resource to the City but we are paying approximately \$65 per hour so we have to be cognizant of the resources we are using for this.

**Mayor Lockwood**

- When they talked to Marie and she understands our situation financially and how we are looking to maximize everything and she did agree to work as diligently as she can to get as much done as possible in this three months.
- If we need to continue services or engage her at a later time then we can do that.

**Councilmember D'Aversa**

- They have been seeing Marie's report so they know what has been accomplished.
- She is not sure if they understand what has yet to be accomplished and it would be helpful to have that information as well as the original scope of services that were in place when she was engaged.

**City Manager Lagerbloom**

- There is a second part in Council's packet titled Professional Services Agreement between Marie B. Latta and the City of Milton that has that.
- The scope of services is contained in that document.
- Marie has updated it as to what has been done and what still needs to be done on the last three pages of the document.

**Councilmember Zahner Bailey**

- As it relates to that with the suggestion that it be reduced from 6 to 3 and she agrees we need to look at every dollar expended, asked if Marie feels she can accomplish the rest of this within that 3 months.

**City Manager Lagerbloom**

- He thinks it can be done.

**Councilmember Zahner Bailey**

- Knowing the price, asked if part of the discussion whether or not maybe a monthly fee could have been reduced.

**City Manager Lagerbloom**

- He did have those thoughts and in speaking to Marie he elected to push the time line as opposed to talking about cost.
- It is budgeted for the entire 6 months but the Mayor and he elected to make an initial pass with the 3 months without affecting the monthly cost.
- He thinks than they can work smarter than they have worked thus far with this particular contract.
- He thinks we need to get back on task and work smarter with the hours available and we can accomplish what is in the scope within those three months.

**Councilmember D'Aversa**

- We have the Co-Chairs of the Milton Disability Awareness Committee here and she asked if they would like to comment on the services they have worked with Ms Latta on and where they are going with it and how long they need to complete it.

**Ann Coggins, Chairman of the Milton Disability Awareness Committee**

- She has found it a pleasure and an extreme benefit to work with Marie.
- The City has benefited.
- She respects the City Manager's opinion and she likes what she is hearing as far as training for staff.

**City Manager Lagerbloom**

- The plan with staff the Marie put together is going to kick off May 1<sup>st</sup> and it also follows a 90 day timeline for completion.
- It is a great program she put together and he is excited to unveil it to the staff.

**Chairman Ann Coggins**

- She knows there is ADA training and asked if anyone was going to that type of training.

**City Manager Lagerbloom**

- He has his first one on Thursday.

**Laura York**, 3362 Galleon Drive, Milton, Georgia

- Her question is about the transportation piece.
- If that is not done in 90 days and she is not able to review it, asked if there could be several hours devoted to her coming back to review that plan and provide advice not only to staff but to the Disability Awareness Committee.

**City Manager Lagerbloom**

- Absolutely, one of the things they talked with her about was the fact that even if they got the bulk of the scope of service done in the next 90 days, that if we need her on an as needed basis, she was willing to help us that way.

**Councilmember D'Aversa**

- If the committee sees anything that is left untouched that is really needed, please let Council know.

**Motion and Vote:** Councilmember D'Aversa moved to approve Agenda Item 09-848, Consent for the Extension of the Consulting Agreement with Latta Enterprises for Three Months at the revised payment schedule as per the original agreement and in Accordance with the Established Terms of the Contract. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

**City Clerk Marchiafava** read Agenda Item 09-851.

**Approval of (a) Storm water Projects including Contract with Qual-Con Construction Services, Inc. for \$6,338.20; (b) Right of Entry Agreements with Starnes, Rock, and Denness; and (c) Cost Share Agreement between Rock, Denness, and the City of Milton.**

**Interim Public Works Director Carter Lucas**

- This is an approval of two drainage projects.
- One is in the Crooked Creek Subdivision at 720 Greenview Terrace and the other in the Wood Valley subdivision at 1810 Highgrove Club Drive.
- Qual-Con Construction was the low bid of the 3 received.
- The work at 720 Greeview Terrace is a pipe repair and it has been identified as joint separation in that pipe.
- It runs from the street right-of-way between two residences and discharges behind them.

- The work at the Highgrove Club Drive project is a pipe that was installed originally in Fulton County adjacent to an existing headwall so there are two catch basins in the street that discharge right next to the existing headwall.
- One tree has already fallen because of that discharge and this project would be to extend that headwall to incorporate that pipe.

**Councilmember Thurman**

- Asked if this was in the budget.

**Interim Public Works Director Carter Lucas**

- Yes this is coming out the storm water project budget.
- Not these projects specifically but storm drainage repair is included in the budget.

**Councilmember Lusk**

- Asked if this was a joint agreement shared with the property owners.

**Interim Public Works Director Carter Lucas**

- Yes it is.

**Councilmember Lusk**

- On page two the cost sharing agreement, it list in paragraph 9b Roger and Holly Rock as sharing 25% of the cost and on page 4 of the agreement it list Roger Rock and Michelle Rock.

**City Attorney Hamilton**

- That is a scrivener error and he will fix that.
- He believes that Holly Rock is the correct name and he thinks he got Michelle Starns which is on another right of entry mixed up.

**Councilmember Zahner Bailey**

- For the record, given different folks that have been involved over time, this issue goes back quite a while and historically, two City Attorneys ago there was some concern about whether or not that we as a City were to do work within certain districts from the right-of-way we would be taking on greater liability.
- She wants to make sure the City Attorney's office has reconciled an earlier assessment with our current assessment and we are all clear with that history so we do not have any differences of opinion.

**Interim Public Works Director Carter Lucas**

- It is a discussion that needs to be had globally.
- What we would generally look at on a case by case basis is how the system relates to either public property, the public right-of-way and private property owners that surround it.
- We look for a logical terminate point of the storm water system, whether it is a headwall or another structure off the right-of-way there has to be someplace where that system can logically terminate or transfer from public ownership to private ownership.
- In both of these cases there is a distinct line where there is right-of-way that is being drained to a catch basin.

- It is not that you are off onto private property and it connects to another system and there is some vague reality about who owns that.
- He thinks it is pretty clear that this is draining right-of-way and reasonably considered the responsibility of the City in this particular case.

**Councilmember Zahner Bailey**

- She will jump to the conclusion that he personally was part of this evaluation and are comfortable that the demarcation between one and the other as well as our City Attorney.

**Interim Public Works Director Carter Lucas**

- Yes, he has seen both of them.

**Councilmember Zahner Bailey**

- Projecting forward for anybody else that finds they might have a similar situation, she is assuming they can delineate the distinguishable elements versus other global issues.

**City Attorney Hamilton**

- The situation with the Greenview Terrace being further away from the right-of way was a trickier question because of the way the plat was worded and was recorded in Fulton County back when Crooked Creek first came into existence, it delineated and easement for drainage but did not say who was responsible, whether it be Fulton County, Crooked Creek or the land owner for maintaining the drainage.
- Also the language within the plat said that the public works director could make a determination that based upon an emergency, and they gave a broad definition to emergency to include damaged private property could make a determination that repairs could be done on the premises.
- He is comfortable recommending this because not only do we have their permission and we put in limiting language and we are not expanding or adopting a forever maintenance agreement but our water is coming onto the property and because it is creating a sink hole and perhaps we could get synergy going with the property owners and share the cost of fixing this particular drain.
- On the other one, the drainage comes from the city street and there is never a disconnect.
- He is comfortable in both situations especially putting in the limiting language that we are doing this for this one particular purpose.

**Councilmember Zahner Bailey**

- It sounds like it is a good balance between solving their issue but also protecting the City going forward.

**Councilmember Lusk**

- Asked if we still maintain a drainage easement on all of these conduits.

**Interim Public Works Director Carter Lucas**

- The vague language that is currently on the plat will remain.
- There will be no change to the easement as it is currently shown.

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**Motion and Vote:** Councilmember Hewitt moved to approve Agenda Item 09-851, Approval of (a) Storm water Projects including Contract with Qual-Con Construction Services, Inc. for \$6,338.20; (b) Right of Entry Agreements with Starnes, Rock, and Denness; and (c) Cost Share Agreement between Rock, Denness, and the City of Milton. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

## **MAYOR AND COUNCIL REPORTS**

### **Mayor Lockwood**

- Wanted to thank everyone that helped at the Birmingham Park.
- They are having a party for the committee volunteers on May 15, 2009 and he wanted to make sure everyone is aware of that.

### **Councilmember Thurman**

- She knows the safe route to school grant got postponed another month because the DOT was discussing their jobs rather than grants, asked if we were continuing to follow up with them.

### **City Manager Lagerbloom**

- Yes, there are two people that watch the grants on a consistent basis.

### **Councilmember Thurman**

- She just wanted to make sure because it could be a very important grant for the City of Milton.
- It would take care of some much needed sidewalks.
- At the very end of Saturday she was talking with some of the people that had been there working all day and one of guys came up and said he really enjoyed being out here and he felt good about what he did and was glad he came and Brook asked him how he heard about it.
- He said to be honest he was there because he had to be for community service.
- He said he never dreamed how much he would enjoy being out and working but he felt so good about what he did that day and next year when they have one of those he would be there to help.
- He was there because he had to be there but yet he ended up being very appreciative and enjoying the time he spent with them.

### **Councilmember Zahner Bailey**

- There was so many people from so many different perspectives.
- It was a tremendous day and she thanked everyone.
- On a separate note, she heard earlier that there was a question about signage as it relates to zoning and special use permits and she wondered if we needed brighter signs so they could be seen.
- It is in that same theme of making sure our public is aware and that we are as transparent as possible and while beige works on this, maybe it does not work for signs that really need to stand out to citizens.
- If we can verify when signs are suppose to be noted in advance of when it comes to Council that would be very helpful.

### **Councilmember Lusk**

- As to Councilmember Zahner Bailey's remark, asked if we photograph the signs.

**Senior Planner Robyn MacDonald**

- We do, it is verified.
- Both signs were up and we have photographs and affidavits to when they were up.
- We will take into consideration to change the color of the use permit signs because there have been issues.

**Councilmember Zahner Bailey**

- She also thought she heard someone say they were affixed to a fence.
- Do we want to say that those need to be perpendicular to the road so when people are driving by they can see it.
- She thinks that after they are put up, at some point maybe 2 or 3 weeks we need to verify they are still up.

**STAFF REPORTS**

**City Manager Lagerbloom**

- As a reminder from last week, he has not received any questions, request, modifications, changes to the survey they discussed.

**Councilmember D'Aversa**

- She had made a comment at the meeting to have the other open ended question and they were going to check on it and that would be her only request.

**City Manager Lagerbloom**

- He will follow up on that.
- He knows Matt made the call the next day to find out if other was an option.
- There is a 2 hour block coming up sometime very soon where we need to talk about pavement management with Council.

**Interim Public Works Director Carter Lucas**

- Kimley Horn wanted to go through their pavement management proposal with everyone and one date was May 11<sup>th</sup> prior to the work session so we need some feedback on whether or not that is a good day for everyone.
- The presentation will take around 2 hours.
- There was talk about starting the work session at 5:00 and continuing on into the work session or trying to start the pavement management at 3:00 and completing it prior to the work session.

**City Manager Lagerbloom**

- He is purposefully trying to keep the meetings in May light because of the retreat.
- The work session is light so if Council would like to start at 5:00 we could still have some work session items afterward if we need them.
- To address the e-mail he sent that dealt with the contract management with the Hopewell Youth Association, his next step will be to put them on notice of some items and make a demand that there are some items that have not been received by the City that need to be and that letter will go out tomorrow or Wednesday.
- Asked if someone would move to remove the Executive Session because it is not needed.

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**EXECUTIVE SESSION**

The purpose of the Executive Session is to discuss potential litigation.

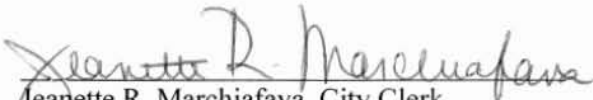
**Motion and Vote:** Councilmember Thurman moved to remove Executive Session from the agenda. Councilmember Lusk seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.


**ADJOURNMENT**

After no further business, the meeting adjourned at 9:35 pm.

**Motion and Vote:** Councilmember Lusk moved to adjourn the meeting at 9:35 p.m. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

**Date Approved: May 4, 2009**

  
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Jeanette R. Marchiafava, City Clerk

  
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Joe Lockwood, Mayor