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**The Regular Meeting of the Mayor and Council of the City of Milton was held on February 2, 2009 at 6:00 PM, Mayor Joe Lockwood presiding.**

**INVOCATION**

Reverend Brett Cottrell, Crabapple First Baptist Church, led the invocation.

**CALL TO ORDER**

Mayor Lockwood called the meeting to order.

**ROLL CALL**

City Clerk Marchiafava called the roll and made general announcements.

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

**PLEDGE OF ALLEGIANCE**

Mayor Lockwood led the Pledge of Allegiance

City Clerk Marchiafava read agenda item 09-791.

**APPROVAL OF A RESOLUTION APPOINTING CHRISTOPHER J. LAGERBLOOM AS ACTING CITY MANAGER**

**RESOLUTION NO. 09-02-77**

**Mayor Lockwood**

- Thanked Chris Lagerbloom for stepping up to the plate.
- Proud to have him in that position.

**Motion and Vote:** Councilmember Lusk moved to approve a Resolution Appointing Christopher J. Lagerbloom as Acting City Manager. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously.

**APPROVAL OF MEETING AGENDA**

City Clerk Marchiafava read agenda item 09-779

Staff recommended the following changes to the meeting agenda:

1. Move item number 4 on the Consent Agenda, Agenda Item 09-783, Approval of the following task order: January 12, 2009, task order 09KHA 03 from Kimley Horn and Associates for gravel road with a total cost of \$7,718.72, to New Business.
2. Remove the update on performance measures program under Reports and Presentations to be added to the March 2, 2009 regular Meeting.
3. Remove agenda item 09-784, Approval of an Ordinance adopting the local emergency operations plan for the City of Milton to be added as an agenda item on the February 18, 2009 Regular Meeting Agenda as a Resolution.
4. Move items 1, 2, and 3 under unfinished business to before the zoning agenda.
5. Add Executive Session to discuss potential litigation and personnel.

### **Council Thurman**

- Would also like to add to Executive Session to discuss possible land acquisition.

**Motion and Vote:** Councilmember Tart moved to approve the Meeting Agenda as amended by staff along with the addition of discussing possible land acquisition in Executive Session. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously.

### **PUBLIC COMMENT**

**Mayor Lockwood** read the rules for Public Comment.

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

### **Rise Hershoran, 1170 Nix Road, Milton, Georgia**

- She was here close to two years ago asking for a resolution to the problems of the gravel road.
- She was asked to read three letters from residents there that say everything she would have said.
- The first letter is from Gordon Teel.
- One of the main selling points when the city was put forth was the services would be better.
- Fulton County performed maintenance on Nix Road quarterly.
- Maintenance included placing additional gravel on the road when needed.
- Since City's inception, he has not seen any maintenance except the refilling of potholes.
- City officials stated they are looking for ways to care for the road so they can practice deferred maintenance and do not want service to exceed two visits per year and limit spray treatments to one time per year.
- Last fall, the city engaged a contractor who compounded simple maintenance into an ongoing problem, which included scraping all the gravel off the road to the extent that red mud was showing and then coming back with "sand or dust like material."
- There was so much water absorbing material placed on the road that it had to be removed by the truckload for an entire day which resulted in the road being made dangerous to travel, impassable in some areas and has damaged our personal assets.
- The residents of Nix Road expected to receive the same level of service or better than they received from Fulton County.
- The problem has been going on for months and not once has the city contacted any of the residents of Nix Road to get input about a resolution to this.
- They are happy with the results and worked performed on the test strip last week but would rather wait two more weeks to make a final recommendation.
- Other items needed for Nix Road are replacement of the "no through traffic signs" and posted speed limit signs.
- The time for patience has expired and the time for action and solution is at hand.
- The second letter is Gerald Ashenbraunen.
- He has lived at the corner of Nix and Freemanville since 1985.

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- Cares for an advanced Parkinson's patient and this past year could barely get out of his drive on a couple of severe medical occasions.
  - He thinks it is time to get over the hype and stupidity of living on a gravel road instead of a hard surface dirt road.
  - At present the road is in the best condition since he moved here 24 year ago.
  - The hard surface is perfect and they do not need gravel or other materials on the road again.
  
  - The third letter was from Lisa McNabb.
  - As an eight year resident of Nix Road she was delighted to see any attempt to improve the driving surface had been made.
  - The test area seems to be a great improvement.
  - The prior condition of the road was damaging to vehicles as well as dangerous to anyone traveling on it.
  - Another concern is how the problem is affecting the property value.
  - That was the last letter.
  
  - She cannot add much more than that except that her parents drove their car off the road during the holidays and now no one in her family will come and see her anymore until this is resolved.
  - She has been trying to get this resolved for two years.
  - She wants a commitment and a time frame and she is tired of hearing that there will be more meetings and discussion.
  - Asked if Council could give her a time frame.

**Mayor Lockwood**

- Explained public comment was not the proper time to engage Council for discussion and they would address her concerns.

**Bill Schellhorn, 225 Orchard Bend Trail, Milton, Georgia**

- He read an article that the city is considering changing and is actively testing the new material on Nix Road.
- He walked Nix road from Freemanville to Birmingham and back and his initial impression of the test area is that it seemed he was in the midst of a construction zone.
- It did not look and feel like a gravel road.
- Although the base was firm, the brown color made the road appear as if it were mudded, unkept and unfinished.
- It did not look like a natural rural gravel road.
- It also smelled like a petroleum diesel based product that was being laid.
- It was not a pleasant smell.
- There were countless divots and pitted areas which may get much larger as rain and cars occur on the road.
- Need to investigate before move forward that this material will not become worse in time than what is currently there.
- It appeared as though the contractor had taken the existing gravel and scraped it off and made Nix Road wider than it was before.
- The road seems to have lost some of its charm and looks less rural.
- He thinks we need to preserve and protect our creaking, winding narrow roads, like Nix, Westbrook, Summit, Wood and some of the others.
- He is not comfortable recommending chemicals for our trail system.
- They should find out what Fulton County has been putting on the gravel roads for the past fifty years and continue the preservation plan like before.

- He also noticed there was four pieces of equipment and a porta potty being stored on the side of the road and a considerable amount of land disturbance that the contractor had caused where the equipment was sitting.
- It seems they plan on being there for some time compared to what he has heard about road gravel maintenance being completed by Fulton County in an afternoon or so.
- How long does it take for a dump truck to spread gravel along a mile long stretch of road.
- This has worked well in the past but we are hiring consultants and changing our gravel roads which have been in place for decades.
- He asked that Council consider getting some perspective on all of this.
- These old charming roads have somehow existed in our community for decades upon decades without the need to spend thousands of dollars on consultants and deploy unknown chemicals on our old country roads.

**Michael Basil**, 1200 Nix Road, Milton, Georgia

- Nix Road is a sixteen foot gravel road according to the plat but he measured on his way here and it twenty eight feet, stake to stake.
- He is a developer in the area and his roads, curb to curb are twenty three so it is a little wide, the traffic has picked up and he thinks his biggest concern is the speed.
- We have to do something to keep the traffic down.
- When the school opens in August it will get out of control.
- He would like to draw it back into the sixteen feet.
- They can pave it if they like, paving seals in the goodness but the width is the critical thing.
- Someone will get hurt.
- The wider it is the faster they go, so getting the speed down is his biggest concern.

That completed public comment.

**Mayor Lockwood**

- He will have staff respond to the people that spoke tonight.
- He would also be happy to meet with them on the site.
- The entire Council took a trip out there this past Saturday and reviewed the roads and talked with staff. They are formulating a plan.

**CONSENT AGENDA**

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

- (Agenda Item No. 09-780)
1. Approval of the January 12, 2009 Work Session Minutes.
- (Agenda Item No. 09-781)
2. Approval of the January 21, 2009 Regular Meeting Minutes.
- (Agenda Item No. 09-782)
3. Approval of a Separation Agreement and full and final release of claims.

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

**Mayor Lockwood**

- Items under Reports and Presentations and First Presentation have been moved to a future Council meeting.
- We will now move to committee appointments.

**City Clerk Marchiafava** read agenda item 09-786.

**Approval of a Resolution Amending Resolution No. 09-01-73, A Resolution to Create a Committee to Serve as the Highway 9 Design Guideline Committee for Potential Revision to the Highway 9 Overlay District of the City of Milton Zoning Ordinance.  
RESOLUTION NO. 09-02-78**

**City Clerk Marchiafava**

- There are no nominations at this time, but there is a revised Resolution.

**Community Development Director Wakefield**

- They were asked to bring some clarity to the membership where it says that a member of the committee can be a resident or property owner in the Highway 9 corridor area.
- In order to bring clarity to the word area, they are proposing to amend it to City Council districts 4, 5, and 6 and also adding a whereas the chairman of the City of Milton Design Review Board shall serve in an advisory capacity to the Highway 9 Design Guideline Committee consistent with his or her term on the board.

**Councilmember Tart**

- Asked if they were considering places like Bethany Road part of the Highway 9 area.

**Community Development Director Wakefield**

- Yes.
- There was an appointment made for someone who resides off Hopewell Road in District 4, but his major point of access is Highway 9.
- She felt that was in the Highway 9 corridor.
- Some concerns were raised about not having definition to the word area so she included District 4.

**Councilmember D'Aversa**

- Asked if the Highway 9 Overlay map included portions of District 4.
- It was already included in the map that was established.

**Councilmember Tart**

- He gets the Highway 9 Overlay area, but he was not aware that Bethany Road was in that area.
- Arguably, it is almost in the middle of Milton.

**Councilmember D'Aversa**

- That area of Bethany Road that is a part of the Highway 9 Overlay.
- It is not the entire District 4.

**Councilmember Tart**

- For clarification asked if they were proposing to add all of District 4 to that stakeholder group or just the portion of District 4 that is in the Highway 9 overlay district.

**Community Development Director Wakefield**

- It proposes all of District 4.

**Councilmember Zahner Bailey**

- She had asked if they could consider some areas along Highway 9 that were in district 4 and at the time this body approved a Resolution that was only district 5 and 6.
- She would concur that if they are going anywhere beyond district 5 and 6 then they need to include all of District 4.
- It becomes difficult and subjective in terms of what is or is not adjacent too.

**Councilmember D'Aversa**

- For the record, when they approved that original Resolution, she specifically stated that portions of District 4 were originally in the Highway 9 Overlay and those portions were the ones where we were actually adopting those and that that portion of District 4 and the Highway 9 Overlay should be included.
- She would support that Highway 9 Overlay map being the one they adopt.

**Mayor Lockwood**

- Thinks the best way would be to add the entire District 4.

**Councilmember Hewitt**

- Would like to see district 4 included in there.

**Motion and Vote:** Councilmember D'Aversa moved to approve a Resolution Amending Resolution No. 09-01-73, A Resolution to Create a Committee to Serve as the Highway 9 Design Guideline Committee for Potential Revision to the Highway 9 Overlay District of the City of Milton Zoning Ordinance with the proposed changes to the Highway 9 Design Review Committee to extend into all of District 4 along with adding the Design Review Board Chair. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously.

**Mayor Lockwood**

- At this time, he would like to ask Lauren Holmes to come forward to receive the Oath of Office for the TARA Committee.

**Mayor Lockwood** administered the Oath of Office to Lauren Holmes for the Solid Waste Management Plan Advisory Committee (TARA) for District 4.

**City Clerk Marchiafava** read agenda item 09-787.

**Approval of a Resolution Amending Resolution No. 09-01-74, 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. 09-02-79**

### **Councilmember Thurman**

- She is honored to nominate James Farris.
- He had an eighteen year career in the law and finance department of Fortune 500 Company.
- He opened his own practice in 1989 dedicated to serving the legal needs of Georgians.
- He is a former member of the Board of Directors and legal counsell for the Georgia Chapter of the March of Dimes Birth Defects Foundation.
- A member of the National Trust for Historic Preservation, the Natural Law Life Foundation, Antiques Automobile Club of America, Horseless Carriage Club of America, the Milton Garden Club and the Alpharetta Historical Society.
- He collects and restores antique automobiles.
- In 1984 he purchased his first historic home in Monticello, Georgia.
- He purchased his current home built in 1899 in Milton and his Victorian farm house style and restoration efforts are ongoing.
- He is seeking and restoring furnishings for that house.
- He has a keen interest in the restoration and preservation of historic objects.

**Motion and Vote:** Councilmember Lusk moved to approve a Resolution Amending Resolution No. 09-01-74, 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 James Farris for District 1. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously.

**City Clerk Marchiafava** read agenda item 09-788.

**Approval of a Resolution Amending Resolution No. 09-01-76, A Resolution to Create a Citizen Advisory Committee for City of Milton Concept Plans for the Intersections of Birmingham at Providence and Arnold Mill at New Providence by appointing Committee Members.**  
**RESOLUTION NO. 09-02-80**

### **Councilmember Hewitt**

- Nominated Wilson Borden.
- He is the president of an erosion company.
- He ran for Georgia Soil and Water District this past election and has a desire to preserve this community.
- He was unable to be at this meeting.

**Motion and Vote:** Councilmember D'Aversa moved to approve a Resolution Amending Resolution No. 09-01-76, A Resolution to Create a Citizen Advisory Committee for City of Milton Concept Plans for the Intersections of Birmingham at Providence and Arnold Mill at New Providence by appointing Wilson Borden for District 4. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously.

### **Councilmember Lusk**

- At the last meeting he nominated Ronnie Rondem, but he was unable to attend that meeting.
- He would like to introduce him at this meeting.
- He has been a resident of North Fulton County since 1988.

- He has served on two HOAs.
- He is a retired Colonel from the United States Army and served two tours in the Republic of Vietnam.
- He is a retired Human Resource Manager for a pipeline company.
- He is very familiar with both intersections and is well qualified to address any problems.

### **Oath of Office**

**Mayor Lockwood** administered the Oath of Office to Ronnie Rondem for the Intersection Concept Plan Committee for District 3.

### **ZONING AGENDA**

*(Zoning Agenda items typed verbatim)*

**City Clerk Marchiafava** read agenda item 09-785.

### **Public Hearing for Rescission of Previous Council Approval of Zoning Application RZ08-10, and for Possible Additional Zoning Action.**

#### **City Clerk Marchiafava:**

This meeting will be a little different because this was an advertised meeting for today.

**City Clerk Marchiafava** read the Zoning Rules.

At the second regularly scheduled meeting of the month, the Mayor and City Council consider a Zoning agenda. These items include rezoning petitions, modifications of zoning, use permits, and associated concurrent variances, in addition to ordinances, resolution, and text amendments.

The petitions will be heard in the sequence listed on the posted agenda. I would like to acquaint you with some of the rules and procedures for this meeting.

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

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

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

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

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

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

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

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

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

**Mayor Lockwood:**

I am going to allow staff to make this presentation, but I would like to make a couple of statements before we begin. The reason this case is coming before us again, let me give a little background. On December 15, 2008, this applicant came before us and presented their case. There was a motion made which passed and which basically changed drastically from what the applicant had been asking for. This applicant was not the owner of the property, but was someone that was looking to purchase the property if it was rezoned. So when this motion was made and passed, the applicant walked away, did not have any input, but basically just walked away and said they could not live with that. So in essence what happened was, this property owner had a piece of property, was not represented, did not have a chance to even see what the conditions were or address it and found out the next day that their property was rezoned. After the meeting, I was approached by staff, explaining to me the problem with that. I was also approached by Council Members that had initially supported that with their concerns, as well as our City Attorney. Not to put our City Attorney on the spot but in his words, he told me this was the right thing to do, that this case needs to be re-heard so the owners can be present and it can be discussed. With that being said, I am seeing e-mails and certain groups talking about the Mayor is doing this because there were certain Council Members missing or not here. It has nothing to do with that. It is about doing the right thing for a Milton citizen and property owner. So all I am asking for is that this case can be re-heard, but also that the owner can be represented here and that way they would either have the opportunity to withdraw, defer, or it could be approved. But again, I think the right thing is to have the owner represented and we hear this case. With that being said I would like to give it to Alice Wakefield.

**Community Development Director Wakefield:**

This re-zoning proposal was for a retail home furnishing design store. It was re-zoning from a C-2 to a C-1. Soon after the approval by this body on December 15, 2008, staff received a detailed letter from the property owner with an attached set of conditions where he had major concerns with what was imposed. Staff had a series of meeting with the property owner to discuss these concerns and staff prepared a recommended condition based on the desires of the property owner and also the results of the

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meeting with Community Development and the Public Works Department. A set of condition was e-mailed to the Mayor and City Council on Friday and this represents the results of those many meetings. What has taken place since then is staff has received a lot of concerns and inquiries regarding some of the conditions that were imposed and this afternoon we submitted a revised set of conditions amending condition 1a to add language that breaks out the square footage of the storage from the total density. This gives clarity to how the parking was calculated. Also condition 1a where the property owner asked for certain deleted uses to be restored, we basically did the reverse and gone back to having those uses that were deleted on December 15<sup>th</sup>. We also added a condition to ensure compliance with the Highway 9 Overlay district. There was concern raised with this development complying with the overlay district and that has been added. I also want to point out to you is that there were several other items or issues that were raised and I want to go through those and give you staff's perspective. The first one is the four board fencing along Highway 9 and particularly those re-zonings in those areas that have developed that are north of Windward parkway. When staff looked at this condition and looked at the location of this proposed site it just did not seem feasible because the site is largely contiguous with the City of Alpharetta so that is why that condition was not included. There was also an issue raised regarding vegetation along the retaining wall. The Highway 9 Overlay District, section 12g.4.c3 requires vegetation along retaining walls over 3 feet and you cannot just have the cinder blocks exposed. Those have to be covered. The other matter that came up was regarding a restaurant. If say, they decided they were not going to do the home furnishing store and they want to do the restaurant that it would meet the parking. That is correct because the parking requires a substantial more parking than what a retail would require, so even if a restaurant is allowed, if they cannot meet the parking they would have to seek re-zoning, at the very least, he would have to seek a modification so that would have to come back before this body. Another matter that came up was the proposed detention pond and adding the condition that it be earthen and natural in design. The staff put that condition in as a catch all. The property owner proposed an underground detention so we really have no problem with adding that language regarding the earthen and natural design to the condition. The last matter that came up was the recompense of the trees to recompense on site or not on site and I am sure there will be questions and Mark Law can correct me if I am wrong here but the applicant proposes that trees be recompensed on site or off site and shall be two and one half inch caliper in size. I know that this is a much smaller tree than is often supported, however, the tree preservation ordinance allows recompense to be that small of a caliper so we will leave it up to this body to increase the size or leave it as is. With that said, staff's recommendation is that this will be approved.

**Mayor Lockwood:**

To our City Attorney, have you reviewed these conditions and worked with our staff on that?

**City Attorney Jarrard:**

Mr. Mayor, I have reviewed some of them. I do not review every condition but I have reviewed some of the ones that have come up today and some of the e-mails but I understand they are getting at. I do think we need to go ahead with respect to the procedure and once the Council is ready to go forward, they need to go ahead and have the public hearing prior to taking any votes.

**Councilmember**

**Zahner**

**Bailey**

As a Point of Order, do we need to break this down into two different items. I was a little confused that we went into the re-zoning without discussing the rescission first. Could you comment as a Point of Order as to what our procedure should be?

**City Attorney Jarrard:**

There are two parts to this agenda item, but the first part is the rescission of the previous Council action in the first place and the public hearing does have to occur first because the rescission of a previously approved zoning, to rescind that is in fact another zoning action so the public hearing has to occur first. If the zoning approval is rescinded then the matter is back before you. The zoning matter is back before you and that will take a separate vote this evening, so that is our two steps.

**Councilmember Zahner Bailey:**

If I may ask this question, are therefore the two different public comments, one is as it relates to the rescission and then separately there is public comment as it relates to the rezoning itself if it gets reheard? That was my understanding.

**City Attorney Jarrard:**

No, the public hearings will be consolidated. There is only one public hearing this evening so individuals speaking will need to speak on both topics.

**Councilmember Zahner Bailey:**

Thank you for that clarification.

**Mayor Lockwood:**

Is it appropriate for our questions to our staff before we let the applicant speak?

**City Attorney Jarrard:**

Questions to staff before is appropriate.

**Mayor Lockwood:**

Do I have any questions for Ms. Wakefield or our City Attorney?

**Councilmember Lusk:**

Ms. Wakefield, in the conditions and specifically article 5, 5b, I think it is technical, but it called for above ground detention facility shall have a six foot high five board equestrian style fence with two inch by four inch welded wire. I suggest we add the word mesh between wire and constructed.

**Councilmember Tart**

Just a Point of Order, I need some clarification here because I am not understanding why we are even talking about conditions of zoning. We have an approved or a decision to make regarding whether we are actually going to hear this again or not so is it even kosher for us to be talking about what we could change with conditions of zoning when we have not even made a decision if we even want to re-hear this case or not.

**City Attorney Jarrard:**

I concur that that is the case. To me it was just a matter of functionality of that is why I was insistent that there has to be a public hearing for the motion to rescind. It is however you all want to do it. I concur Councilmember Tart. It may make more since to see whether the rescission is going to go first before we actually have the discussion on the conditions, but I was going to yield to whatever the Council wanted.

**Mayor Lockwood:**

If it is the will of Council, I will be glad to do that first if you want to guide us in that procedure. Is it the will of the Council to separate these two and look at whether or not a rescission is warranted.

**City Attorney Jarrard:**

The only think I was thinking since we are consolidating the public comment, the gallery might benefit hearing the interplay between the Council and staff to help them better frame their comments. That was my only thought but we can go ahead and do the...

**Mayor Lockwood:**

That makes a lot of since and again I will be glad to go either way. At this point we started the public hearing and going down this path, would Council be ok with continuing that per the City Attorney's comments.

**City Attorney Jarrard:**

I understand his comments though they certainly make since from the stand point of we do have a validly passed zoning.

**Councilmember Zahner Bailey:**

We are making a presumption that there is a vote to rescind.

**City Attorney Jarrard:**

I understand that. Mr. Mayor in light of that I am perfectly comfortable recommending to go ahead and open the public comments for the gallery and then taking your vote.

**Councilmember Zahner Bailey:**

As another point of order Mayor, if I understand that as an option, the rescission request or question allows for public comment and then we would close public comment, we would then discuss rescission and depending on that vote we would then move into a rezoning case if that rescission were to pass?

**City Attorney Jarrard:**

Yes Ma'am.

**Councilmember Zahner Bailey:**

So if someone has a comment on one, then they would still have an opportunity for comment on the other.

**City Attorney Jarrard:**

No Ma'am, what I am saying is that the public comment section, there is one public hearing to accomplish both actions.

**Councilmember Zahner Bailey:**

I think that is what is confusing.

**Mayor Lockwood:**

So at this point we have started our presentation from our staff, can we move forward and move into making a decision whether this warrants rescission or not.

**City Attorney Jarrard:**

We can.

**Mayor Lockwood:**

What procedure do we need to follow?

**City Attorney Jarrard:**

I think what you need to do now is make a motion to open the public hearing on the topic of rescission and further Council action on this matter.

**Councilmember Zahner Bailey:**

Mayor, only because I am always concerned about public comment and I want to make sure we are clear and this is the first time we have had this sort of procedure. I am concerned about the fact that we are saying now we would only have one public comment period, so if we are now going to open for public comment. We have not heard from the applicant about the rezoning. I think that short changes the premise of a rezoning case. To me there are two options, if we had a rescission, if we are going to separate that, I would ask that we have the opportunity for comment on that item and then separately remove into a rezoning. If that is not going to be afforded this body with this public audience, I think we should proceed with the rezoning and the rescission together, but I think that by separating those public comments we do a disservice to those that may be here to speak about one or the other.

**City Attorney Jarrard:**

Mr. Mayor, if the Council wants to here from the applicant and then go ahead and open up for public comment, maybe that addresses both issues. The applicant gets to speak, then you will make the motion to open the public hearing, have that and then all the other discussion amongst staff.

**Councilmember D'Aversa:**

Mr. Jarrard, is the rescission process a separate process to this rezoning case?

**City Attorney Jarrard:**

Yes.

**Councilmember D'Aversa:**

Ok, then I would disagree and I would suggest we go ahead and from a legal perspective cover ourselves, if we will, that since we have never done a rescission before to re-hear a case and take a vote on it, does that then open up for public comment because we have a public comment section. This is not a rezoning case. This is a rescission. Does rescission allow for that public comment process?

**City Attorney Jarrard:**

But, a rescission is a zoning case.

**Councilmember D'Aversa:**

Ok, so I would like the Council to hear those separately.

**Mayor Lockwood:**

I think it would make since to look at this as a rescission first to see if there is the desire to do that, but

then number two, it sounds like the only concern from there is public comment. I think at the will of the Council, possibly with legal's advice, can we let anyone that has filled out a public comment card on one of the other, allow them to speak on both issues.

**City Attorney Jarrard:**

That is fine. I am not used to doing it that way, but there is never going to be anybody to criticize for allowing more people to speak.

**Mayor Lockwood:**

Sure and we want to hear everybody. At this point, I believe we go back to a motion to open the public hearing for possible rescission.

**Motion and Second:** Councilmember D'Aversa moved to open a public hearing for possible rescission of the decision made on December 15, 2008 for the rezoning case RZ08-10. Councilmember Thurman seconded the motion.

**Mayor Lockwood:**

I have a motion by Councilmember D'Aversa and second by Councilmember Thurman.

**City Clerk Marchiafava:**

All in favor of the motion please say aye.

**Vote:** The motion passed unanimously.

**Councilmember Zahner Bailey:**

I apologize, the motion passed but are we having open public comment?

**Councilmember Thurman:**

Can we vote before we have public hearing?

**Mayor Lockwood:**

Do we need to have public comment and public hearing first?

**City Attorney Jarrard:**

Right, that was just the motion to open the public hearing.

**Mayor Lockwood:**

Do we need to have public comment now? We keep the applicant separate from this, correct?

**City Attorney Jarrard:**

Yes.

**City Clerk Marchiafava:**

Mr. Mayor at the present time I do not have any public comment cards submitted but I have received today and forwarded to the Council this afternoon, this letter dated February 2, 2009.

Re: Item 10 No. 09 – 785

**Public Hearing for Rescission of Previous Council Approval of Zoning RZ08-10 and for possible additional zoning action**

**Laura Bentley**  
2500 Bethany Church Road

I am not able to be at the meeting tonight, but I would like the following read into the public record:

I appreciate the desire of the Mayor and Council to welcome this business to our city. I too, would like to see a viable business prosper at the proposed location. I am not in favor of any additional zoning action if it increases the already agreed to density decided on December 15, 2008.

Of even more concern to me is the fact that on December 15, 2008, I witnessed case RZ08-10 be presented, discussed, debated and voted. A great deal of time was devoted to this application by city staff, Council and the citizens that were present that night. In my opinion, a vote was taken in December which is valid and must be honored. Please take into serious consideration the precedent that will be set if a rescission is allowed tonight.

Respectfully submitted,  
Laura Bentley

**City Clerk Marchiafava:**

Also on my e-mail at about 6:11 this evening, I have an e-mail from Sandy Kluttz who says, as I cannot attend the meeting tonight, I would like to forward my statement and concerns to you as City Clerk, thank you. This was sent to the Elected Officials with CC to Mr. Lagerbloom at 3:25 this afternoon. It says that we are residents of Milton County. I would request on behalf of our family that you retain the decision made at the December 8, 2008 regarding case number RZ08-10 whereby the density being requested is to dense for the 2.26 acres as evidenced by clear cutting of the entire property if approved for the full twenty eight thousand, two hundred sixty and no ability to recompense any trees on the site. The decision to lower the approved square footage should stand. Why must the City of Milton redesign GA Highway 9 to resemble Windward Parkway or even worse, Roswell Road. How can anyone shop as much as the current businesses require? Does the beauty of our trees and rural landscape have to be sacrificed because the city is running low on tax received funds? How many cleaners, nail salons, shipping stores and design groups can the community support. Look at Highway 9 from the old Ingles north to Windward. Nothing but empty strip malls. My neighborhood is a beautiful eighteen year old rolling landscape with tons of stately trees and our family has been in the same home for sixteen years. This is why most of us move here. Also why do you think we voted for the new City of Milton, to stop the rape of this area by Fulton County? Thank you for your time and consideration. Sandy Kluttz at Lakegrove Subdivision.

**Kim Horne, 415 Wade Glen Court, Milton, Georgia**

On the subject of the rescission, I have a real problem with it since the fact that on December 15, 2008, this body voted legally to approve a lower density for this applicant. Maybe not all of the members of the Council was present, but there was a legal quorum. If the applicant did not represent the land owner, that is a problem but it is not a reason to go back and re-vote. I think if Milton were to approve this

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rescission, you guys are opening yourselves up to major legal problems. Anybody could come back if they do not get what they want, come back and lobby the Council and say, I want a revote. Just because the land owner did not feel he was represented correctly that is incumbent upon himself to have representation at the meetings that are prepared and know what they are doing. If the person was not prepared they should have gotten someone else. It does not seem right that we should be asking for a revote and I do take exception to some of the comments in the beginning as to why the revote is being taken. It has been quoted in numerous papers that the reason the revote is being taken is because Council Members were not present, even though there was a quorum, the City Attorney was not present and that the applicant was not fully prepared. I do not see that is a legal reason to ask for a rescission.

**George Ragsdale, 540 Treyburn View, Milton, Georgia:**

I am not here to speak for or against. I just have a procedural question. The City Attorney has characterized this rescission vote as a zoning matter. As such, I would expect that the zoning case and the rescission would then go back through the Planning Commission before it comes back to City Council and I would just like to understand if that is not the case, why it is not the case.

**City Clerk Marchiafava:**

That completes public comment.

**Mayor Lockwood:**

At this point, the open hearing with public comment on the rescission or not - at this point do we open for a motion or discussion?

**City Attorney Jarrard:**

It would be discussion and then a motion.

**Mayor Lockwood:**

Is there any discussion?

**Councilmember Tart:**

I have some. As has been pointed out by several citizens and we received that over the e-mail and we have had several people talk about this case was considered on December 15<sup>th</sup>. We did have two Council Members that were not in attendance at that meeting, however, that case was deliberated legally procedurally and a decision was made. We came prepared to discuss the case. To Ms. Horne's point, if the developer did not come prepared to discuss the case or was not adequately represented, I do not think that is a good reason for a rescission in this case. I do not agree to the rescission for the following reasons: One, I do not think in looking at the conditions that have been put before us coming into this meeting, I think that the conditions of zoning which are before us are even less lenient than what was the original application which tells me that we are getting more of the same of the same type of thing that we try to avoid when we considered this case on December 15<sup>th</sup>. The density that was asked for was almost twice the density that was approved under Fulton County and I know that there has been some effort to reclassify the density to make it clear that a lot of the density would actually be storage versus the actual density of the building, but I want to speak to the footprint of the building because the footprint of the building is what is causing the developer to have to get retaining walls, to get an administrative reduction in parking, to be able to accommodate the huge foot print of the building, to be able to clear cut the entire land lot with no recompense on the site whatsoever, to be able to accommodate the footprint of the building. The DRB and staff both made comments on December 15<sup>th</sup>

that the plan was to dense. That the density was greater than any surrounding development in the area and to me to make a decision to allow that level of density when both the DRB and staff said it was a higher density than what is typical for that area is really, to me, is not encouraging transition development that we need along Highway 9. It is a mish mash of development along Highway 9 now and the last thing we need is for the development along Highway 9 to no be transition because we have huge density in one area and not density in another area. I do not think it is in our best interest to consider the case given that the conditions are even less lenient than when we considered it before. Not to mention the fact that I think this sets a very bad precedent for our city. Any time someone, whether it be a developer or someone on this council does not like the vote when somebody is absent, they are going to ask for a redo. I think that calls into question our ability as a Council when we have a quorum to make a good decision on behalf of the city and quite frankly given that I was prepared to discuss the case and I expect the developers to also be prepared to discuss the case, if we proceed in this manner and in the future if we have Council Members that are absent, I would just rather us do a service to the citizens that want to attend the meeting, do a service to City Council that has to attend the meeting, the City staff, the Police Officers that we have to pay overtime to protect us during this meeting, I would just rather us re-schedule the meeting because it is always going to be a question of what if the other Council Members had been there. Would the outcome have been different?

**Mayor Lockwood:**

The only comment I want to say about that, again with this whole rescission is this it is not because certain Council Members were not here. I would very comfortable to open the vote to only the Council Members that were here if that were the case, if we could do that.

**Councilmember Lusk:**

I have a question for the City Attorney. Since we are treading new ground here, as far as this body is concerned, as a legal point here, has this rescission or zoning issue as Mr. Ragsdale brought up, has it been posted properly for the appropriate time period, and does it need to be?

**City Attorney Jarrard:**

It does need to be Councilmember Lusk and I am of the opinion that it has been. I am sure Ms. Wakefield has placed the legal ad in the paper and posted it properly.

**Councilmember Lusk:**

Good, I just wanted to make sure.

**Councilmember Thurman:**

We have had Council Members bring up the case of the precedent. We have also had e-mails from organization talking about giving us their legal opinion that this was setting a precedent and community members. Would you mind addressing that issue please?

**City Attorney Jarrard:**

Yeah, a couple of things. It has not been done before so I suppose to the extent that there is a precedent established by doing it one time that is true. I will tell you the reason that I do not know that I would be to terribly troubled because your rules provide that rescission is only appropriate when additional acts have not been done in furtherance of your prior action that it is impossible to be undone. Let me give you an example. Let's say that a zoning is approved and a lot of zonings have contingencies based upon the acquisitions contract. The zoning gets approved after thirty days and it is too late to appeal

then the contract is closed between the private developer and the land owner. That is very customary. That would be a situation where now something has occurred that is impossible to now undo and in that sort of situation, rescission would be impossible. Whenever a party would change their position based upon your, whatever the action is, it does not matter whether it is zoning and that is why I am not terribly concerned here because this is one where I believe it is the property owner that is the affected property that is actually coming to you and seeking this relief as well. I am not aware of anything that is occurred that is impossible for the Council to undo, so your normal situation where I think someone raised the point that someone could come in, you know, the specter is there or months or years after the fact and want a do over, extraordinarily unlikely because the reality is your criteria and your rules would not allow that. If something has been done that is impossible to undo as a result of your action then rescission is not an option.

**Councilmember Thurman:**

So, as our laws currently are we can rescind whatever cases we wanted to as long as there had not been any action.

**City Attorney Jarrard:**

That is true and I see your point. That is the kind of thing where I will advise you though because obviously there is a lot value in finality and when this Council makes a decision, people I think should legitimately be entitled to rely upon that decision and that is the kind of thing where I would ask that we treat that on a case by case basis. This does happen in other jurisdictions. I have watched it happen and I give them the same counsel. We need to be very circumspect and very careful about how often this is used.

**Councilmember Thurman:**

I know when I served as Chairman of the Fulton County Board of Zoning Appeals we probably one or two cases a year where things were brought back to us where there was addition information or the decision we made may not have included all of the facts we really needed to have in order to make that decision and we vote whether or not to do it. I assume this is sort of a similar situation here, is where one of the parties that were affected by the decision was not here to give their input on how it was going to affect them which could have affected our decision.

**City Attorney Jarrard:**

I have heard various things and that is one of the things that I have heard. Yes Ma'am.

**Councilmember Zahner Bailey:**

In response to that, and those are some great questions from Councilmember Thurman as it relates to what I heard earlier in terms of the basis for the request for the rescission. The fact that the property owner was not represented by the applicant, that confuses me because what was before us was a case and an application with at letter of intent where the applicant was Larry Singleton representing the property owner David Burre, so for us to claim here this evening that the basis for rescission is because the applicant and or the property owner were not legitimately represented, that would indicate that what was before us properly on December 15<sup>th</sup> somehow had not been properly before us so before I can go forward with my other comments about a rescission, I would like to come back to a question that I asked of you the last time that we had a discussion on this when there was a reading into the record by the Mayor of a request of a rescission. And my request of you that evening was, is there anything legally or

procedurally that you are aware of as our City Attorney that means that a rescission is required based on what occurred on December 15, 2008.

**City Attorney Jarrard:**

In discussing this since post December 15<sup>th</sup>, I have taken the position consistently that that is not the basis for this rescission. This is not a legal error issue.

**Councilmember Zahner Bailey:**

So there is not a legal error and procedurally there was no error. I think that is important to state again this evening before a vote is taken is that this body has had some conversation in the last few minutes as to whether or not the property owner was somehow not appropriately represented and that would be inconsistent with the statements you have just made as our City Attorney. It would also be inconsistent with how the case was advertised and brought before us back on December 15<sup>th</sup> so I would like to make it very clear for the record, that indeed the property owner and the applicant both were adequately and legally and procedurally represented on December 15, 2008. That case was publicly heard, as has just been stated by our City Attorney, so that again going forward just to make sure that we are very clear in terms of what has or has not happened. I think the facts need to speak for themselves. I also hear the question that was just asked by Councilmember Thurman about finality, as I hear your response to your question is that indeed a precedent could be set if there is a case that perhaps a land disturbance permit has not yet been issued but if a case had been decided and this body and the community had assumed that there was finality. Yet that particular applicant or land owner decided not to take action in the immediate, they could indeed come back and under the same basis indicate that they had not done anything yet to that property that could not be undone and therefore they would like another redo.

**City Attorney Jarrard:**

First of all let me address it this way. The basis and the mechanism for rescission are in your rules. Your rules reach out to Robert's Rules which anticipate rescission so if that is something this Council has already duly adopted. Secondly, anything like that would have to be done the same way we are doing it here which is the full spectrum of rights including public hearings. You have to bring these things right back before the Council and my experience has been with these that most boards and Councils are very loath and reluctant to use this process more often than what they believe are reasonably compelling circumstances because, but, they want to have that finality. So, yes it is correct that is possible, but again most of the boards and council that I see using this wield this power very lightly.

**Councilmember Zahner Bailey:**

I agree and I appreciate those comments because I think we should wield it extremely cautiously. I am not convinced that there has been evidence brought forward to this body that any of the exceptions that would allow for rescission to be legally necessary had been presented. With that I will just make my statement for the record and that is that I do not support a rescission of the previously decided case. Case number RZ08-10. That case was legally before this Council on December 15, 2008 and was appropriately sounded in a legally appropriate and procedurally correct process was indeed followed as affirmed again tonight by our City Attorney. Our City Attorney Mr. Jarrard has said into the record at an earlier Council Meeting and again this evening that when the notice to rescind was read that indeed everything was legally and procedurally in place. Furthermore, I believe a rescission of a legally and procedurally accurate zoning case sets a negative precedent for the City of Milton. This Council should not be about rehearing a case simply because an applicant did not get the maximum density requested

and I do indeed believe that is the reason for the rescission this evening. I do support appropriate development for the Highway 9 area. Let me restate, I do support appropriate re-zoning and re-zoning development on the Highway 9 area but as I stated on December 15<sup>th</sup> and as I will state again here this evening, I believe that twenty eight thousand, two hundred sixty square feet of density is too dense for this 2.26 acre parcel. It is important to note that the site plan for this case has not changed at all since December 15<sup>th</sup> so if this body were to decide to rescind, what is going to come before us again is exactly the same site plan that was legally and procedurally before us on December 15<sup>th</sup>. For those who claim the rescission will allow the applicant to rethink their application or provide a revised site plan that addresses concerns, concerns raised during the public hearing and from the Design Review Board members, this has not been the case here. Instead again this site plan is the same site plan. The applicant has not modified their site plan at all despite meetings with our staff which we just learned about on Friday. Please note too that in good faith I reached out to the applicant and the land owner on several occasions to request a time to review their plan and intentions and did not get a return phone call at all despite multiple attempts, nor was there any attempts to address the concerns raised during the December 15<sup>th</sup> rezoning case when this case was legally and procedurally decided. Additionally, earlier claims be some and is noted in the paper was that a rescission was needed because the entire Council was not present. I realize that has been discussed here this evening and there seems to be different opinions but I would again like to state for the record that a legal quorum was indeed present on December 15, 2008 and the case was legally before us and legally decided. Finally, the current economic environment is not a reason to ignore the comprehensive land use plan nor the densities that are deemed appropriate for the area based on former board policy or the land use plan for this area. Comparable densities for this area of Highway 9 clearly demonstrate that twenty eight thousand, two hundred sixty square feet is too dense for this parcel and that it is higher than the comparables for the area, setting a dangerous negative precedent for the Highway 9 corridor relative to densities. This is a corridor that we claim should rise to a higher standard of development than it has to date, including the need for tree recompense on site, tree saves on site, appropriate buffers and more. For all of the reasons stated I do not support a rescission of this rezoning case.

**Mayor Lockwood:**

Thank you. Moving forward I am going to allow those that have not spoken to speak if they so desire. The only additional comments I am going to make is number one, in reference to people talking about what was in the papers and the press, and no offense to any reporters sitting back there but, you do not always get word for word in the press, so that is no reflection on Jason, but some of the headlines were certainly, and I think the reporters know they were off. That being said and I agree with some of Councilmember Bailey's comments and I want to ask our City Attorney because I was guided by our staff and our City Attorney and I would agree and you would agree that it was not a legal reason to rescind this or look at rescinding it or rehear this case, but do you still feel it was the right thing to do as you had stated earlier.

**City Attorney Jarrard:**

Well if there are concerns with the way the Council voted Mr. Mayor there is no criteria for what demands a rescission. There just is not. There is no check list that you have to go through. If the Council believes that the decision made was a bad decision, it would not have mattered if the full Council was here and in fact what I am used to seeing is not a matter where absences have anything to do with it, it is simply a matter of for whatever reason it was believed that the vote taken previously was inappropriate and not the right outcome. What has been made clear to me is that members of the Council have come and said, this is not where we think this needed to have ended, so the response back

was there are tools to remedy that and if that is the purpose that you all want to achieve, here is the road map on how to do it, so yes to that affect this is the correct thing to do.

**Mayor Lockwood:**

Ok, again I will just reiterate your statement that this is not based on Council Members that were absent it was based on conversation with the Council Members that were here.

**City Attorney Jarrard:**

That is correct.

**Councilmember Hewitt:**

I wish we were not hearing this again. I like finality on a lot of things and I obviously voted the other way on December 15<sup>th</sup>. I do not think this body will use this tool as an ongoing thing every other week, we are going to be hearing that. With that said, we have a right, no matter who it is, if we do not think it was a good decision to bring this up and the majority of this body vote on it. I heard the term used earlier that it is not a good decision for the City. I think that on the contrary, it is a good decision for the City. Thank you.

**Councilmember D'Aversa:**

First of all, I would like to say that I in no way shape or form support rehearing a case because Council members were not present. I have missed a meeting during my two years and most everyone has missed at least one meeting and we rely on our colleagues to make the proper decisions. When it came to my attention after the meeting, of my own volition as well as in discussions with the Mayor that possibly there could have been some changes in this facility or site plan that would have allowed this business to open and thrive in Milton, I really did reconsider my actions that evening. During the vote, actually reconsidered my actions but needed to actually ask for legal counsel and unfortunately Mr. Jarrard was out of town an unable to attend our meeting. He is normally here and certainly on a rezoning meeting. We should not be without legal counsel and that was one of the mitigating circumstances that I felt drove my opinion that we should rehear this case. I felt like and feel like the applicant and the owner of the property needed a little bit better representation. I also felt like that had a case rezoned where they were not prepared, now that is their responsibility to be prepared and I understand that but we also became a City so we would have local control and we would have a City Council that could make these types of decisions under the law that would allow for our citizens and our business owners to come before and ask for relief. For those reasons I support rehearing this case. I love the law. I would like nothing more than to be able to rely on the law and I think we are relying on the law. We have heard from our City Attorney that it is certainly within our right as a Council and within our Ordinance and our law to rehear this case, I like Councilmember Hewitt would rather that we not have to be rehearing the case but I felt like it was the prudent thing to do. There are mitigating circumstances here. The Council is not going to agree on this, we have had e-mails flying since the papers suggested we were having a redo. I certainly would have never used that terminology. Not redo, not re-whatever certainly I thought that we were reconsidering and re-reviewing a case at the request of an applicant, citizens and business owners of our community. With regard to the parcel, I do think there are some things that have been done since that session. I think that my concerns with the parcel and it adhering to the Highway 9 Overlay, as well as the Design Review Board's concerns about it adhering to the Highway 9 Overlay have been met. I also read the Planning Commissions comments on the parcel and if I am not mistaken, they unanimously supported the parcel. That said, having listened to Mr. Ragsdale's comments, I would like to make sure that the Planning Commission has weighed in this if that is acceptable. There are

some things with regard to this parcel that make it A-typical with regard to the density that it allows, including the basement. I am not the expert. Ms. Wakefield is an expert. She has been doing this long than anyone else up here and I think she has reviewed it pretty closely. We have had a lot of discussion this past week end as well as the last week or so on the parcel and the request that the applicants are making. I am sorry to be so long winded but I felt like for the record I wanted you guys to hear my thought process. This is not, to me, a redo. I would never support that and I would never support rehearing a case just because certain people were not here. I think as long as there is a quorum of this body that we will make a decision that is appropriate for this community.

**Councilmember Lusk:**

I would just like a Point of Information, if you would please. Ms. Wakefield, I have three sets of recommended conditions and I believe your read this earlier so is this the latest one on the table?

**Community Development Director Wakefield:**

Yes.

**Councilmember Lusk:**

So it actually reduces the net actual footprint of square footage per acre to nine thousand three hundred and eighteen feet per square acre?

**Community Development Director Wakefield:**

Yes, if you are talking about the retail component.

**Mayor Lockwood:**

I think right now we are talking about whether to take a vote on a rescission or not and then we will discuss the case. That being said, I have given everybody an opportunity to talk and if there is no more discussion I would like to ask for a motion and second.

**Motion and Second:** Councilmember D'Aversa moved to rescind and re-review this case and I will read specifically so that we are following public hearing, I would like to make a motion that we approve agenda item 09-785, a public hearing for rescission of previous Council approval of zoning application RZ08-10 and for possible additional zoning action. Councilmember Lusk seconded the motion.

**Mayor Lockwood:**

Is there any discussion?

**Discussion on the Motion:**

**Councilmember Tart:**

Just a Point of Order, I understand what Tina is trying to do. I just do not know if the reading of that motion actually prescribes what exactly we are doing. In other words if you approve a public hearing for rescission, I do not know that that actually rescinds anything, so maybe we need to restate the motion to rescind the December 15, 2008.

**Councilmember D'Aversa:**

Yes, that makes since. Thank you.

**City Attorney Jarrard:**

I have written one.

**Mayor Lockwood:**

Let's have the City Attorney read a motion and then Councilmember D'Aversa can except it if you agree.

**City Attorney Jarrard:**

I was not sure who the reader was going to be, but let me just read this and then if anybody wants to embrace this as their own that can be what the record will allow.

In accord with the notice I provided at the Council's January 5, 2009, this is my motion to rescind Council approval of zoning application RZ08-10. This matter came before the Council December 15, 2008 for rezoning from C-2 to C-1. On December 15, 2008 RZ08-10 was approved by the council but with the addition of certain Council added conditions and restrictions, it utterly defeated the ability of this zoning applicant to undertake the project for which they had sought the rezoning in the first place. Specifically at the December 15<sup>th</sup> Council meeting, this Council added language to the zoning approval that reduced the maximum density of gross floor area per acre zoned on the parcel from 12,504 to 8,262 and that reduced the total gross floor area from 28,260 square feet to 18,673 square feet. The insertion of these significant reductions of floor area operated to fundamentally reconfigure the zoning site plan that had been tendered by the applicant and rendered the zoning applicant unable to accomplish the contemplated build out on the property. At a time of nation wide economic hard ship and uncertainty, it seems peculiar that the City of Milton through its actions would literally turn away a local resident's high quality commercial development on a whim. The restrictions placed on RZ08-10 were unjustified and unfair. Consequently I move that Council approval of RZ08-10 be rescinded so that the board may then take different and hopefully more reasonable action with respect to this zoning item. That is my motion.

**Councilmember Tart:**

And you came up with that?

**Councilmember Zahner Bailey:**

And you did not know who was going to be the maker of that motion? That was mighty opinionated for an attorney. I did not know you had a stake in it.

**Mayor Lockwood:**

Councilmember D'Aversa you are welcome to amend that.

**Councilmember D'Aversa:**

No offense, but I am not sure this would be my motion. I am not approving the rescission for quite those reasons.

**Mayor Lockwood:**

This could be a very simple motion, so if you want to take another stab at it, go ahead.

**Councilmember Thurman:**

Why not just use the first paragraph because it sounded pretty good without an opinion.

**Motion and Second:** Councilmember D'Aversa moved that the Milton City Council rescind Council approval of zoning application RZ08-10, this matter was before the Council on December 15, 2008 for rezoning from C-2 to C-1. On December 15, 2008 RZ08-10 was approved by the Council. I would like to rescind this motion and have the application reheard this evening. Councilmember Lusk seconded the motion.

**Discussion on the Motion:**

**Councilmember Thurman:**

I think in the long run, what is most important is that we make the right decision for the City of Milton and if a decision has been made an additional information has come up or maybe all of the facts were not available, then hopefully we will not do this on a regular basis but if it is not the right decision then I do not see a problem with us making sure we have the right decision. We may rehear the thing and we may decide exactly what was decided on December 15<sup>th</sup> but if we are not sure that was the right decision then I support rescinding the previous decision and making sure we do what is best for the City in the long run.

**Councilmember Zahner Bailey:**

Thank you Mayor, I would like to make a couple of quick points. I concur with Councilmember Thurman's point about additional information being necessary. To hear this case any differently, I do not believe there is any additional net new information because the site plan is still the same but we will rehear this case potentially in a moment. I also would take exception with some of the comments that were read into the record by our City Attorney. That was quite an extensive motion that did seem to be riddled with personal opinions. I am going to state for the record, since that was a matter of record, even though it was not approved, is to say that it utterly defeated the ability of the zoning applicant to undertake the project, that is not true. At the 18, 673 square feet, absolutely the home fashion center could indeed be built. It just could not be built at the density that was being requested. Secondly I would like to state that often in other jurisdictions as well as in this jurisdiction a case can be requested at a certain density level and yet that density often is conditioned to a different density level that is more consistent with the policies of the area, so I think it is important to say that the decision on December 15, 2008 did not preclude a business from operating and it did not preclude a home fashion center. I support a home fashion center at that location. I do not support it at a twenty eight, two hundred sixty square foot density. The zoning case that was heard on the 15<sup>th</sup> and decided did not preclude this applicant nor the property owner from using the property as currently zoned nor as it was rezoned. It simply spoke to the issue of tree recompense on site and the potential ability to better have this case consistent with Highway 9 design guidelines as has been expected and communicated to us by our Design Review Board, as well as by citizens in the area, so with that I will close my comments.

**Councilmember Lusk:**

I am doing some research if you do not mind skipping over me.

**Mayor Lockwood:**

Ok, and again I just want to make one quick comment. This applicant came before us, whether it was the property owner or not in December, but basically with a full approval from staff and full approval

from the Planning Commission so I think they were caught off guard and surprised too that there was that much change. Councilmember Hewitt, do you have any comment?

**Councilmember Hewitt:**

I would like to see some finality to this rescission.

**Councilmember Tart:**

I had one additional comment to the issue of precedent setting and I think we are going back to whether it is a legal precedent. I would like to clarify that I am not talking necessarily a legal precedent. I am talking about, I guess I would like to frame it as precedent setting versus abuse setting because this Council on two other occasions have actually done things that were considered a onetime thing and I will give you an example, adding agenda items to our agenda less than seven days out which is specifically prohibited in our Ordinance yet we have done it now because we needed to do it for that one time thing for that emergency but we have done it now three or four times. So, it seems like, even though we might say that this is a onetime thing and it is not precedent setting and we will not do it again, it seems like this body, that, adding district members that do not belong in your district in committees and things like that, it just seems like we do things one time and then we keep doing it because it is a convenience.

**Councilmember Lusk:**

I noticed originally the submittal was approved the Planning Commission with conditions and in the text, the conditions and comments by community development it references the 2025 focus Fulton land use plan and people that talk about consistency or inconsistency, it appears from the commentary from community development and the Planning Commission that as this project was proposed originally that it did conform to the 2025 Focus Fulton Plan. I find it curious that some folks are, and in fact in the original approval in December that it varied the requirements or conformity of this plan to the Focus Plan so as far as I am concerned it complied when it was originally presented.

**Mayor Lockwood:**

Ok, at this point let's discuss the rescission and you can add that if we look at this again. The only thing I want to say is that there seems to be some concern about setting a precedent, well, as our City Attorney said we do have the legal ability to make a rescission or make a change as the majority of the Council would like. The good thing is we are new city and everybody up here and on this dais with me and everybody on our staff wants to do the right thing for Milton. Some people have different opinions that others but we all in our heart want to do the right thing, so there may be times that we have to do something different or change something or relook at it but the good news is we are not doing it maliciously, it is in the best interest of our City and our citizens. That being said, I have let everybody comment on it and I would like to move forward on the vote of the motion and second.

**Vote:** The motion passed 5-2, with Councilmember Zahner Bailey and Councilmember Tart opposed.

**Mayor Lockwood:**

Ok, City Attorney.

**City Attorney Jarrard:**

What needs to happen given the ground rules we agreed to at the beginning of this is to go ahead and have the presentation by staff which is your way of announcing, because now what has happened is the

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zoning is back in front of you. The December 15<sup>th</sup> action has been undone. I think I would treat this as a typical zoning as it was on December 15<sup>th</sup> and that is to go ahead and have the staff presentation followed by the applicant.

**Community Development Director Wakefield:**

This is a rezoning request from a C-2 to a C-1 for, the applicant proposes a home fashion business. The applicant is requesting a density of 28, 260 square feet. The Planning Commission reviewed this back in November and their recommendation was approval. Since the prior action was taken. The staff has reviewed the conditions with the applicant and made some changes so staff supports the density as requested but further restricts the density to 21,060 square feet of retail and 7,200 square feet for basement and storage space. The staff continues to support restricting the uses on the site. Staff further restricts the property to comply with the Highway 9 Overlay district standards and with that said, staff's recommendation is approval.

**Mayor Lockwood:**

Are there any questions for staff before I let the applicant speak?

**Councilmember Zahner Bailey:**

I will hold my questions.

**Councilmember Tart:**

I will hold mine too.

**Mayor Lockwood:**

Ok, I would like to hear from those speaking in support of this application, beginning with the applicant.

**David A. Burre, 11660 Alpharetta Highway, Suite 100 Roswell, GA 30076**

I am the owner of the property of 612 and 622 and I will explain that to you first. 612 North Main is in my IRA account held in custodian by Edward Jones in St. Louis. It is about 3/10 of an acre and the other 1.8 acres. It is titled in my personal name. I would like to give you a little bit of back ground. I think it is very important to understand that there is some concern on behalf of the Council that there were not any things that happened in the last meeting that did not give me correct representation and I am going to start off by telling you that after that zoning the communication that we have had with the perspective purchasers. This is an e-mail that I received from Mr. Sonenberg who is the Real Estate Agent that represents my property. David as a follow up to our conversation Friday, January 30, 2009 in accordance with amendment number one special stipulation two, dated June 24, 2008. EDT development coming in purchaser is in default of the contract by not closing on or before January 21, 2009. After my discussion with EDTS real estate representative agent Mr. David Wilson, with regard to their default, he informed me and subsequently sent a termination agreement because of the previous zoning/conditions by the City of Milton. As you know you have not signed this termination agreement because the contract was in default prior to my receipt of their request to terminate. I look forward to seeing you at the rezoning meeting tonight. That was an e-mail that I received this morning and I then sent an e-mail to Robyn at the City of Milton. The purchaser's real estate agent Mr. Wilson informed Mr. Sonenberg they were unable to use the property based on the December zoning condition imposed by City Council. We intend to re-address their interest in the property after the meeting hopefully with something more appropriate concerning density requested and more acceptable in the stipulated conditions. Should the end user be willing to build at this location we will make every effort to get them

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back. I want to thank each of you for fine efforts concerning this matter. I want to tell you a little more history about this rezoning application even started. When the purchasers came to me, they gave me a contract through Mr. Sonenberg. That contract did not have a stipulation for rezoning of the property. The property was already zoned in Fulton County for gross square footage of 18,000 square feet and when I read the contract draft, I called Mr. Sonenberg and said do these people intend to pay me this price and they do not need to rezone the property and the answer was yes. I have been in the development engineering surveying business and I was surprised to hear that answer so I said Mr. Sonenberg please inquire of them that they are assured that they are not have in this contract if I execute the opportunity to rezone because I did not think it would be fair to them not to confront them with the question because I thought there must be some misunderstanding. Very seldom do you find the exact zoning from a different jurisdiction that you are looking for. Mr. Sonenberg, they were assuring us they did not need a rezoning so then we called for a face to face meeting and I explained to the gentlemen that was putting it under contract that if the zoning we had in Fulton County to my best recollection was for multiple buildings and they wanted to build one building. I said the way this works is if you change the configuration of the site plan, at a minimum you will have to rezone whether the density is going up down or sideways, it will not matter, you will have to rezone with Milton. At that point and time with no additional cost for the property and they informed me they wanted to increase the density, I allowed them to revise the original contract with an amendment to include the right to zone the property. I did not change the price of the property. I felt it was an honest mistake. They really in my opinion did not understand the rezoning process for any jurisdiction. In that agreement, I asked and should have put into the contract, it is my fault, but I said, since you are going to have to rezone the property and I am going to allow you to buy it for the same price that we negotiated, I need you to promise me that you will hire an attorney, specifically Mr. Don Rolader to represent you in the zoning effort. We agreed but it was a verbal agreement. WE shook hands on it and it did not happen. I would like to ask, I think Robyn, in the pre-zoning application meeting, Mr. Don Rolader came to this office at my request to attend the meeting for him to sign the rezoning application document and I would like to ask Robyn if she can remember the fact that was true.

**Senior Planner Robyn Macdonald:**

Yes that is true. Mr. Rolader was present at that pre-application meeting.

**David Burre:**

After we signed the pre-application documents and we walked out into the parking lot, Mr. Sonenberg had a very serious conversation with the applicant and encouraged them to go ahead execute a retainer to Mr. Rolader to represent them and they assured us that they would. A week later Mr. Rolader called me and he said, I have talked to them on two different occasions and they want to negotiate my fee. They are not willing to hire me. I had Mr. Sonenberg contact the applicant and reminded them of our conversation and their assurance to me that they were going to hire an attorney and I was informed to read my contract, they did not have to do that. So, what happened was when they came up here, they went through the preliminary meeting and the Planning Commission and they were not having any problems, I really could not fuss about it because staff recommended approval. Planning commission voted it unanimous approval as written. It came to the City Council that night without legal representation, I was not present because I was upset about the fact that they were not doing what we agreed to do. When they got to the point where they heard the condition about the density which did not work for them, they made no objections to any of the other uses that were listed in the conditions. They made no effort to further understand the conditions that they were accepting that might be in conflict with existing DOT permit that had already been issued. The only thing they cared about was their

control of the property or use of the property for what their building was designed to do because they had an end user that they had already contracted with to use that building, so I come here tonight, I am embarrassed because I let something slip through the crack. I trusted someone, we shook hands on it and it did not happen. I do not know if I can get them back. I do know that if I do not get the density back up to what they requested in the original application, they are not going to come back. I would like to address some of these other conditions with you at the appropriate time and I can do it at this time or maybe you would like to ask me a question. I want to do whatever pleases the council.

**Mayor Lockwood:**

Ok, are there any questions for Mr. Burre?

**Councilmember Zahner Bailey:**

Mayor, would it be appropriate to have Mr. Burre speak to the conditions now?

**Mayor Lockwood:**

Or, if he wants to save the time, if there is anyone else that is approval of this, if they want to speak also.

**David Burre:**

I am more than willing to do the conditions. It will only take a short time and I would like to save for time for later for rebuttal if that is possible, or final comments.

**City Clerk Marchiafava:**

You are at seven, twenty three right now.

**David Burre:**

Thank you, under item 1a, I have a density listed of 12,504 for a total gross floor of 21,060, 7,200 hundred square feet for a basement and storage and 28,260 total feet. I am in agreement with that, I have no problem with that the way it was rewritten. I would like to ask the Council to consider some of the uses that the applicant did not address and those are that I would like to have gas stations and gas pumps included, fast food included and I will comment further on that. Cinemas, nail salons, stand alone beauty salons, stand alone barber shops and discount retail. I will be glad to do those again.

**Councilmember Tart:**

Please do that.

**David Burre:**

Gas stations and gas pumps, fast food restaurants, motels and hotels, nail salons, beauty salons, stand alone barber shops and retail. If you all consider those and you will allow those to be corrected into the record, I do not under any circumstances expect that item 5d which talks about a parking reduction to be applicable to any of those uses. If a motel or hotel or restaurant comes to this site and it is not the fashion home design place, what is in 5d and the way it is written now, it is only applicable to the fashion store where there is a reduction for pervious pavers. I do not know how to word that but 5d, the second half of 5d only applies if this becomes the 28,000 square foot fashion store. I am ok with 3f as written. The overlay district is a jurisdictional requirement and that is really all I have at this time but I will be more than happy to answer any questions at your pleasure.

**Mayor Lockwood:**

At this point, do we need to take other comments first from anybody opposed before we go into questions with the applicant or would it be proper procedure to take questions for the applicant now?

**City Attorney Jarrard:**

Usually, questions for the applicant now and the public hearing has not been opened yet.

**Councilmember Zahner Bailey:**

This is the applicant and the public hearing. This is part of the applicant's ten minutes so I think we have to go to anybody else.

**City Attorney Jarrard:**

I do not remember a motion on that point.

**Mayor Lockwood:**

If we need to make a motion and second to open this as a public hearing, we can do that.

**City Attorney Jarrard:**

Mr. Mayor I am comfortable going forward without it.

**Mayor Lockwood:**

So at this point would you recommend we add questions to the applicant?

**City Attorney Jarrard:**

Yes sir.

**Mayor Lockwood:**

Ok, I will start with District 1, Councilmember Thurman.

**Councilmember Thurman:**

I guess a main question that I have of the applicant and I was not here on December 15<sup>th</sup>, is it appears to me that we do have a lot of uses that are being excluded here and none of those uses were excluded in your original in Fulton County, is that correct?

**David Burre:**

Some of those uses were excluded, but I would not be able to tell you tonight exactly which ones.

**Councilmember Thurman:**

I was asking specifically about the ones that you asked not to be included in this, if any of them were excluded in your original zoning.

**David Burre:**

My recollection and that was quite a few years back, but my recollection, exclusions were fast foods and gas stations but that is from memory.

**Councilmember Thurman:**

Does staff know?

**Community Development director Wakefield:**

I just verified with Robyn there was no exclusion of use on the property, it was just conditioned to the density for retail.

**Councilmember Thurman:**

So actually what was done December 15<sup>th</sup> restricted the use of the property much more so than what he originally had in some ways?

**Community Development Director Wakefield:**

Yes, in terms of uses.

**Councilmember Thurman:**

Ok, I just wanted to make sure I was clear on that.

**Councilmember Zahner Bailey:**

Yes sir and I may have some more questions later because it seems unusual to me that we are asking the applicant before we have had comment from both sides. It is a different procedure so I am going to reserve that I may have some more questions for you sir and I do appreciate you being with us this evening and as always we appreciate hearing from our constituents. I would like to clarify that at the original rezoning under Fulton County, that density was for 18,673 and it was c-2. What was before us on December 15<sup>th</sup> was quite a different rezoning so it was to go from c-2 to c-1 and it was to increase the density by over 10,000 square feet so prohibited uses obviously were part of that rezoning and I would like to just state for the record that those are consistent with other prohibited uses that had been applied for similar scenarios along Highway 9. It is a rezoning and obviously with a rezoning with increased density prohibited uses are typically the process, at least that this body has pursued with regards to Highway 9.

**David Burre:**

May I comment on that please?

**Councilmember Zahner Bailey:**

Well, I have a specific question for you, sir.

**David Burre:**

I am sorry.

**Councilmember Zahner Bailey:**

That is ok. With regards to asking that we allow for gas stations, fast food, cinemas, nail salons, stand alone beauty and discount retail, hotels and motels on this 2.26 acres, what strikes me is that that is quite different. All of those uses are distinctly different than what was presented to us on December 15<sup>th</sup>, which was a very specific and intended use for a home fashion center. None of these uses respectfully seem to fall in line with a home fashion center. Could you speak to that?

**David Burre:**

Maybe I misunderstand your all rules and regulations but the density change was actually from 18,000 and some change to 21, 000. A basement under a building is not an effective foot print density. If fifty percent of the walls of that structure are daylight, they do not count as density. The way that you have written condition 1 now with the density is acceptable to me because the density went from 18,000 gross foot print to 21 which is 14%. The other building did not have a basement and this one has a basement but we are restricting the use and I additionally filed a covenant for you all to review and your city attorney has already done that.

**Councilmember Zahner Bailey:**

I appreciate that but for those of us that were here that evening and what was before us and what was advertised was for 28, 260 square feet with no distinction. It was 100% retail and it did not distinguish between basement or otherwise. It was 28, 260 square feet so I just want to be very clear and I realize that you may not have been here that evening but that is the distinction.

**David Burre:**

Let me talk about what you second question was, the uses. The applicant only had one interest in putting that specific building on this specific property and when they went to the Planning Commission, everything was approved and they did not care about the fact that if they did not close on the property, the uses that they did not address that might allow me at some later date to utilize the property to its highest and best use. Their only interest was what they were asking for, the Planning Commission said it was fine. They came to City Council, they saw all these exceptions of uses but they did not care so they excepted them and did not make any comments. Is that Council's fault? No. Is it my fault? Yes, because I believed they were going to be properly represented and had they been properly represented, Mr. Rolader would have had those discussion of use with the Planning Commission and the Council.

**Councilmember Zahner Bailey:**

I appreciate that clarification very much. I would like to state and again I think we will need to address this once we close public comment. My perception and what I am hearing is what was presented to the Planning Commission was for a very specific use. It was for a home fashion center and I believe the majority of the discussion the night of the Planning Commission having reviewed some of those minutes, specified that the use was intended to be a home fashion center. If based on this rezoning that we are now hearing again this evening is that it is not necessarily going to be conditioned to a home fashion business, I would like to take up what Mr. Ragsdale mentioned earlier and this is a little bit of a tangent from asking the applicant a question but I think that this body would perhaps need to consider having this case go back to the Planning Commission, because I am hearing form this applicant that indeed it may not be and again no fault and no offense taken from this Councilmember but what I hear this applicant now indicating is that the home fashion center may or may not be the intended end use simply because it may now be more of a speculative tenant so I do think this body needs to consider that this case with all of the changes that may have been brought forward need to return to the Planning Commission for review. Let me get back to the question at hand and that was what questions I have for the applicant. With regards to the Highway 9 area and Mr. Burre you may or may not be familiar with the Highway 9 area increasingly, this body has put things in place for the Highway 9 area that include aesthetics such as four board fencing. Earlier our staff mentioned that form their perspective maybe that four board fencing may or may not be consistent. I as one Councilmember, I believe that the four board fencing is consistent with the sort of design guidelines that we are looking to proceed with. Whether it be this evening or some future time when we hear this case, would you be at all opposed to those sorts of

aesthetics as we try to create a design approach for Highway 9 with four board fencing along the frontage being one such aesthetic.

**David Burre:**

I am inclined to agree with your staff. I am sorry, no offense, but I believe with 200 foot of frontage and 2.2 acres and me being isolated, I am the only piece of property Ma'am that is not developed. I am surrounded by a mini warehouse. They park trucks out in the front of their property trying to rent them and on the left I have a building over there that half the time is not even occupied. I do not think that we are going to have any continuity by me being the only person, because I am coming last to put up 200 feet of fence and interrupt it with an entrance on a DOT route.

**Councilmember Zahner Bailey:**

I appreciate your response and I have a different perspective, but I appreciate the fact that we can all have different opinions. With regard to the density that is being requested, it was presented to us back on December 15<sup>th</sup> and I believe it is still the case that based on the 28,260 square feet that is being proposed for those 2.26 acres that based on that density there is an inability to save any of the specimen trees and/or to recompense on site. I just wanted to make sure that you understood that that is our understanding that there is no ability to recompense on site.

**David Burre:**

That is not true. I might be wrong, but my understanding is there is the ability to recompense but not all of the trees. I have inspected the site development plan and I think the issue when you go back to item 5d that is written into the conditions as we have them before us this evening will allow the compensate to occur on the property. You would not have to plant anything off. The ability to analyze that parking and to the calculations for it and to the pervious pavers and the future development is going to open more area for planting in the back. There would be no reason and I will stipulate there would be no reason to go off site unless we can prove to your staff, Mr. Mark Law, that we cannot put all of the trees on this property.

**Councilmember Zahner Bailey:**

Thank you for that input. And again what I would ask this body consider is that seems to be new information. Based on the site plan that is before us and base on our comments from our arborist, that is not what has been indicated as possible and again I think I have heard from some folks this evening that our desire is to get this right and given that our design Review Board has indicated a desire for tree recompense, I believe we heard pretty strongly from citizens in the area that they want tree save on the area. I think I just heard another reason that perhaps we need to consider an opportunity for the applicant, the owner to maybe revisit that site plan and be able to reflect what tree recompense could occur because I think right now that appears to be an unknown. Thank you for your comment on that. With regard to underground or above ground detention, I know that currently the site plan reflects underground detention. Does that contend to be your intent is to continue to have that be underground detention?

**David Burre:**

I believe that this project is approved as a site plan has now been submitted that underground detention would be the only appropriate methodology.

**Councilmember Zahner Bailey:**

For now, I think my only final question for you Mr. Burre would be that it is my understanding the applicant that was originally before us on December 15<sup>th</sup> may or may not proceed with this project. Is that correct?

**David Burre:**

Actually, that is not exactly correct. What we have is we have an end user that is in place with a contract with a third party. The people in the middle, the applicant and developer are the people that have let their contract expire. I have the ability to develop the property for the end user. We have not made that contact because the zoning has not been established, other than it was deficient of the square footage that they were requesting. If we are successful tonight in getting the square footage density and hopefully some of these conditions more appropriate for their use, we intend to make communications not only with where we started with the developer and those people, but if that is not successful, I have the right to develop the property myself. I will make sure I make that effort because we looked long and hard to find this user for Milton. When you are next to a many warehouse, you get a lot of propositions that I did not want to bring before you all. When I get a really good one, I will make every effort to make this happen because I am proud of it.

**Councilmember Zahner Bailey:**

And I appreciate that, my question specifically though was that and I think I heard your response is that we do not have a definite contract at the moment with that end user and I think that is why you were asking that some of these other prohibited uses still be considered, because I think if we knew it was a home fashion center the potential for consideration for other prohibited uses would not be necessary for us to consider this evening.

**David Burre:**

I understand your concern. My only answer is no I do not have the home user finalized and for the reason that I named earlier in the e-mail transmission.

**Councilmember Zahner Bailey:**

Thank you so much and Mayor I will hold any other questions based on the rest of the commentary.

**Councilmember Lusk:**

Just to be perfectly clear, what you are asking for, these various uses to be included, contrary to what the recommendation is.

**David Burre:**

I think they were excluded and I would like to have them removed from the exclusions.

**Councilmember Lusk:**

Ms. Wakefield, in the original Fulton County, was these uses included or excluded for this.

**Community Development Director Wakefield:**

There was no restriction on uses in Fulton County's rezoning.

**Mayor Lockwood:**

I would like to clarify that so I guess Ms. Wakefield what you are saying is prior to December 15<sup>th</sup> those uses would have been acceptable on his prior zoning.

**Community Development Director Wakefield:**

That is correct.

**Councilmember D'Aversa:**

I do not really have any questions other than I am glad that we were able to rehear your case because it sounds like you may possibly need a different rezoning than what we originally heard and if that is the case I would again as I said earlier support us going back to the Planning Commission and having them relook at your application especially if we are looking at some other uses that would not have been allowable under this rezoning going to the c-1 and the higher density on the property. What the Planning Commission approved was a specific usage on the property. A specific facility on the property which was a design studio and I think if we are going to open it up for additional uses under the new zoning of c-1 and the higher density then I think we have to be mindful of the fact that is their role, to have it go back to them to look at before this Council approves it. Those are my only comments.

**David Burre:**

May I address that please? This is the first time I have been to a zoning meeting in Milton so I am not as familiar with your regulations but I have been to numerous meetings in other jurisdictions. May I address Alice please? I am accustomed to other jurisdictions when you zone a piece of property and the site plan holds a specific use, but other uses are allowed. It is usually up to the director of the planning and zoning department when a land disturbance meeting starts and you are saying you do not really want to do this building any more, I want to do this building or a restaurant or something different, Alice the planning and zoning director has to make a determination of the substantial change.

**Councilmember D'Aversa:**

Actually, I will disagree with you. What has come before us is a rezoning and under a condition of that rezoning is where we are precluding usage. I understand what was allowable under Fulton County under a different zoning and I am not suggesting that the Planning Commission, what their decision would be and what would come back before us but having heard from Planning Commission Chairman, I would suggest that is probably something they would like to rehear.

**David Burre:**

If I might expand on that, if for some reason we cannot work this out with the home fashion people and down the road someone comes to me that is not a home fashion building size and geometry and we decide to bring forth a project in Milton that has one of these other allowable uses named as that and I have a much smaller, say I have a six or seven thousand square foot building and you might want to put that building at another building on the property, I would have to come back before this Council for a rezoning anyway because you are going to have multiple buildings of different sizes so if we can zone tonight to get the opportunity to revisit with the home fashion people and that does not work out then in six months or a year from now, two other people want to go there but they are much smaller because you will not see a greater density of any user that I can imagine that wants this many square feet. I can imagine the property at some later date might be developed with two buildings or three buildings or

something but they will be a lot smaller buildings. You might be talking about a total density less than the original Fulton County density.

**Councilmember D'Aversa:**

I understand, but what is before us tonight is, and our understanding is for the home design facility so it would be a little stretch for us so my opinion is that if we are going to start to take into account a rezoning with conditions that the Planning commission did not approve, I would like them to go back and review it. That would just be a deferral back to them to review that so you could take it back to your home fashion.

**Mayor Lockwood:**

Can I break in and ask not only a question with Mr. Burre but also staff to direct us because this is somewhat new information as of today with your letters you said you got. When we first heard this case it was a specific applicant and the reason I felt it was prudent for us to look at this was for that applicant and thought he was still wanting to move forward. Is there any way to structure this that this zoning because that has been through the Planning Commission and that was approved, that has been approved through staff that if the Council were to elect to approve the zoning as per these conditions and what not assuming that you would get that applicant, then obviously if that applicant did not come back or that end user, then like you said, six months from now, three months from now, a year from now, you may want to come back and rezone it for something else. Would that make sense? Would that work? Do you understand what I am saying Ms Wakefield? I am saying what was submitted previously and approved by staff and the Planning commission and that there still sounds like a possibility that that end user would use it, if we were to rezone the property based n that end user, that allows the applicant to go back to the end user and say hey, this can be done if that is not the case then obviously if you were to develop it at a later date or whatever, you would have to come back then and with a plan or whatever to rezone it.

**David Burre:**

I am agreeable to that. It is exactly what I am saying except I do not know who the next player might be.

**Mayor Lockwood:**

Right, but I think what the concern and the heartburn we might have is approving the density and then all of a sudden thinking gas stations, motels, retail and nail shops that type of thing. What I am saying approve it based on what you hope to happen and if it does not come to fruition then obviously at the time when you are ready to do something you bring it back anyways.

**David Burre:**

I have no problem with that.

**Mayor Lockwood:**

Does that make sense Ms. Wakefield?

**Community Development Director Wakefield:**

Yes sir, I understand what you are saying.

**Councilmember Thurman:**

I think the real issue is, it used to be that people would bring property forward to be rezoned and then they would go out and try to figure out what was going to go on the property based on the rezoning that they had and in prior years even before we became a city, Fulton County was taking a little different view of things and typically any rezoning or site plans specific, certain conditions, whatever was going to go there, you almost knew what was going on the property before you rezoned it. I think that is why it is causing us a little bit of heart burn is because we thought we were looking at a very specific use for this piece of property and now you are wanting to take stuff out that the Planning Commission has not looked at that says it would allow a different use for the property but yet it would still be site plan specific so you really could not use it for that anyway without coming back before us so if the purpose of this is to try and get these people back on there then I think we have to look at it as if that is who the end user is going to be and if it does not work out then you would have to bring it back before us anyway.

**David Burre:**

I totally agree.

**Mayor Lockwood:**

I think that is where I was going and probably the heartburn is having.

**David Burre:**

I just cannot go back to them if we cannot address this tonight to get the density up.

**Mayor Lockwood:**

I think either way you come back to the same situation but that assures the Council that you do have to come back if you have a different use at some point later.

**Councilmember Zahner Bailey:**

Just as a matter of point of order, since we really have diverged from what we typically do, can we just confirm where we are in our public process?

**City Attorney Jarrard:**

We are finishing up the comments from the Council and then opposition will get to speak.

**Councilmember Zahner Bailey:**

ok, it just seems like we are starting to have discussion that typically would be outside of public comment.

**Councilmember Tart:**

As a point of order, it seems like we have allowed the applicant 40 or 50 minutes to argue his case. We did ask him questions but there was a lot of none asking questions too.

**Councilmember Zahner Bailey:**

Again just as a matter of order, I just wanted to make sure that I was clear we were in a public hearing.

**Mayor Lockwood:**

Ok, so at this point I think we open it up to, first anyone else that is public comment...

**David Burre:**

I was not at the Planning Commission, but Robyn said that when the Planning Commission voted for unanimous approval that they wanted to restrict use.

**Councilmember D'Aversa:**

Thank you Robyn, ok next.

**Mayor Lockwood:**

I think the attorney said procedure was to listen to public comment, so is there any other comment in approval for this?

**City Clerk Marchiafava:**

Mr. Sonenberg, did you wish to make a comment?

**David Sonenberg, 11155 Stroup road, Roswell, Georgia:**

We have a commercial real estate brokerage firm and have had for almost thirty years in North Fulton back before we had anything except grass and a few roads. I think the point we were trying to make about the site is and I have worked with David on this site for a long time is this site, the good thing about it is where it is and the bad thing about it is what is around it. You cannot change what is around it. We do have to the rear a mini warehouse, we have a non-descript that is ¾ empty next to us and we are trying diligently, we have had many calls about this site. Things we do not even consider but this happens to be and some other things if required will have to come back through if the site plan changes anyway so I think that it is valuable to give the opportunity to try and make something out of this site that we do not have now. Thank you.

**Mayor Lockwood:**

At this point, is there anyone who would like to speak in opposition of this zoning?

**Cary Schlenke, 490 The Hermitage Drive, Milton, Georgia:**

I guess I am neutral on this issue. I do not want to say that I am opposed or supporting but I am glad that you began to discuss the opportunity for this to go back before the planning commission because I think that just the comments that I heard, I understand what the applicant is trying to accomplish and try to retain the home fashion center but if that is outside the realm of possibility now or is not what the planning commission looked at, I think the planning commission should rehear that case. Thank you.

**Mayor Lockwood:**

Ms. Schlenke, would you confirm you are speaking just for yourself?

**Cary Schlenke:**

Yes, I am speaking just as a citizen. Thank you.

**Kim Horne, 415 Wade Glen Court, Milton, Georgia:**

A lot has been said so I will be very brief. I agree that it needs to go back before the planning commission. I think as I said earlier, I did not think this case should be reheard and I think this is just an example of where it was a true bait and switch. For him to say that he wants to add gas stations and wants to do other things on the site, I think he is just trying to get more out of it than what he deserves and I do not think that you guys should be even voting on the current case. I do not know what legally you can or cannot do but one of the things you possibly could do is just tell him he has to go back and withdraw or defer and come back after he has gone through the appropriate channels for what he actually wants to use the zoning for. What he is talking about is purely speculative and Milton should not be in the business of approving speculative zonings. Thank you.

**City Clerk Marchiafava:**

Mr. Mayor that is all of the public comment I have. The time is up for those in support.

**Public Hearing Closed**

**Mayor Lockwood:**

Ok, I will say that the public hearing is now closed and open the floor for Council discussion. We will start at Councilmember Tart.

**Councilmember Tart:**

I just want to clarify a couple of things because a lot has been said and I just want to make sure I have all of my facts straight. I am not sure whether the applicant or staff would be the most appropriate persons to address this. I want to be clear that the applicant is asking for us to add, and you can just nod your head, fast food, gas stations, nail salons, motels and hotels and stand alone beauty shops back to the uses of the property. Ok. The second thing is, I do realize that some of the density that is accounted for in 1a the conditions of rezoning include storage space, however, I want to be very clear on given even the fact that 72 square feet of that would be storage space. Is there still a need to clear cut the entire land lot?

**Community Development Director Wakefield:**

I will have to rely on Mark. That will be difficult to say until he comes in for land disturbance permit but based on the addition to condition 5d and what Mr. Burre just stated you may not have to clear cut the entire site.

**Councilmember Tart:**

To that point, I am confused because you call a pig a pig regardless of how you reconfigure 1a to read different square footages or whatever it is still the same building and when we considered this case on December 15<sup>th</sup> a statement was made for the record that the entire property would have to be clear cut and that there would be no space whatsoever to recompense on the property at all, so I am confused as to why that might be different now when we are presented with the same concept.

**David Burre:**

The second part of 5d was not part of the original conditions when they were here on December 15<sup>th</sup> which would allow the additional planting area.

**Councilmember Tart:**

So it is the thirty feet of...

**David Burre:**

It is thirty parking spaces that are not going to have to be built to support the building so therefore what we talked about a few minutes ago, you would have more room to plant trees on the property.

**Councilmember Tart:**

Ok, just to clarify, you do not have any contracts or any identified tenants for any of this?

**David Burre:**

We have a contract in default.

**Councilmember Tart:**

Ok, you have identified no prospective tenant whatsoever.

**David Sonenberg:**

Yes. The three or four spaces in the front, no. That would be something they would mark but the end user, the home fashion center is identified in a contract that is presently in default.

**Councilmember Tart:**

If it goes through. Ok. This is a question for Alice. With regard to the black four board equestrian style fence, I understand what you are saying as far as the property being contiguous with Alpharetta but help me look at this because we need to be thinking in terms of the future and not necessarily what it is now and so assuming that this property owner were to erect that equestrian style fence and there were to be rezoning north of that towards Milton.

**Community Development Director Wakefield:**

Well if you look at the boundary of Milton, north of that is the City of Alpharetta, you do not get Milton until Windward parkway.

**Councilmember Tart:**

Ok south of that then.

**Community Development Director Wakefield:**

South of that is the City of Alpharetta. Are you talking about across the street?

**Senior Planner MacDonald:**

There is only one property on each side and they are both developed currently so even if they were redeveloped you would only get that span of fence for approximately 4 or 5 hundred feet but then once you go north you have the old Ingle redeveloped and there is nothing in Milton on that side of 9 until you get all the way up Windward Parkway and on the opposite side, everything has just been developed with the Watercrest development and that was not required to have a fence. So, you have this newly developed area on the east side of 9 which will be 40 years from now that might ever get redeveloped, who knows so it was staff's opinion that it would still no matter what, it would just be a single fence for a very very long time south of Windward. That is what our thinking was.

**Councilmember Tart:**

Thank you for that clarification. This would actually probably be for Mr. Drake because I know that in the original rezoning the conditions 4b/a to provide some road improvements. Can you speak to why those were deleted and given the uses of the property the applicant is asking for fast food, motels, hotels, nail salons, gas stations, are none of these road improvements needed?

**Public Works Director Drake:**

All of those road improvements are included, it is just that we were able to reword it that it was conditioned to the permit number 08-2008-061-121 provided by GDOT. All of those are included in there. There was an exception about the location and the width of the sidewalks, which we would be talking with GDOT. That is in paragraph c.

**Councilmember D'Aversa:**

My only comment is that I would support going back to the Planning Commission and have them look at this just because of the changes that we are hearing tonight and I am just giving them that opportunity especially since Mr. Ragsdale asked us to.

**Councilmember Tart:**

What would have to happen for that to happen, either from a motion perspective or for the applicant to even ask for that, what would have to happen?

**City Attorney Jarrard:**

Well the Council needs to think of this as you are back in December 15<sup>th</sup> and you have heard something new or something that has made you uncomfortable with the zoning again, you could simply move to remand it back to the Planning commission for further consideration and then bring it back to you when they are done with it.

**Councilmember D'Aversa:**

It would not take very long for that to happen. What is the time frame for that?

**Senior Planner MacDonald:**

We would have to do the proper notification and advertising. It could very well be in March for the March meeting because there is not enough time to advertise.

**Councilmember Zahner Bailey:**

When is our March meeting? March 2<sup>nd</sup>.

**Senior Planner MacDonald:**

I am just saying to hear it at the February meeting, I have to advertise within fifteen days and we only publish once a week with the Milton Herald so I would have to do some calculations. I do not think it would meet the requirement if I published a week from Wednesday which is as soon as I could not meet the fifteen day requirement for publishing, if that is correct Mr. Attorney.

**Mayor Lockwood:**

I understand logistics and what not and I would like for the applicant to listen to this too. At this point, we have been presented with a case that on the 15<sup>th</sup> as well as now that staff and the Planning Commission have looked through and approved. If that is the case and again if there was a different use or a different building the applicant would have to come back before us again anyway and have to go through the Planning Commission. That being said I understand that there is probably an issue, that there is a chance that they can have this one end user. Obviously if it goes through the Planning Commission again even though the Planning Commission has already seen that, that opportunity will probably be gone for the applicant, so again what I suggested before, if it would be all right with the applicant and staff... I will give them a second.

*(Discussion between Council not picked up by the recorder.)*

**Mayor Lockwood:**

My question was, again, what has been through the Planning Commission and approved and what staff has approved is for this one end user. If we were to approve that one end user and what has already been approved by staff and the Planning Commission, allows the applicant to move forward with the possible purchaser end user. If the applicant two weeks from now or whatever or a month from now realizes that that end user is not going to work out, he would have to come back anyway if he was going to change something or go for another use or a different building or whatever, then obviously it would need to go back before the Planning Commission, but I am saying is, do we need to go back before the Planning Commission if we are discussing the thing that has already been through the Planning Commission now.

**Community Development Director Wakefield:**

Of course that is up to the discretion of this body, but what is before this body is what was considered by the Planning commission. The only difference is the prohibited uses.

**Mayor Lockwood:**

Again, I could even support not changing that because again like I said if this end user does not go in there then the applicant has to start over from scratch anyway so I do not see where that would change anything either way.

**Councilmember Zahner Bailey:**

Did staff have an answer on the dates that Alice and Robyn were working on? Just to the question of Councilmember D'Aversa that did not get answered.

**Community Development Director Wakefield:**

There is no time to meet the requirement to get it advertised and posted for the February meeting of the Planning Commission which would normally be. We do have an agenda item but there is not enough time to advertise this matter to meet the fifteen days.

**Councilmember Zahner Bailey:**

Twenty four minus fifteen, does it include week-ends or not?

**Community Development Director Wakefield:**

It is a little different than just counting back the fifteen. You have to allow time, you have to submit it to the paper and then they have to have some lead time to publish it.

**Senior Planner MacDonald:**

It is too late to do it for this Wednesday. The deadline has past so it would be publishing for next Wednesday.

**Councilmember Zahner Bailey:**

Could we make it just as a matter of order, what has passed? Today is Monday. There is still time to get it into the new paper by Wednesday. I am unclear. City Attorney could you speak to that? I would like to get that answered in terms of dates. The 24<sup>th</sup> minus fifteen days, I am unclear as to why that could not be.

**City Manager Lagerbloom:**

I think I can answer as I am sitting here listening. It sounds as though there is a deadline we have to meet that is pre the distribution date for the particular paper that we use which is a weekly paper, so I think what I am hearing them say that is in order to get it in the paper and actually have the paper publish and advertise to the community even though we are further than fifteen days out we still have to provide the sufficient notification to the public fifteen days and what I am hearing is that we cannot meet the deadline to physically get it into the paper. We can meet the deadline to get it to the paper's office just not in the paper.

**Councilmember Zahner Bailey:**

With all due respect I question because today is Monday and I think we all know how the Milton Herald works. If we got them an ad tomorrow, they would still be able to run the ad.

**Senior Planner MacDonald:**

No, they have already printed for this Wednesday. For next Wednesday is too late to be heard on the 24<sup>th</sup>.

**Councilmember Zahner Bailey:**

So a week from Wednesday is what you are referencing.

**Mayor Lockwood:**

I am going to redirect this. I was going for comments down the row so Councilmember Hewitt has a question.

**Councilmember Hewitt:**

I do not want to keep beating this but if it does cause all of us heartburn if we do include gas stations and associated gas pumps, fast food restaurants, barber shops and the like. If I have seen the nods and read them correctly from the applicant, if he is willing to go forward, if we do not hear those I think that might then also make it where the Planning Commission does not have to hear it. If you do not like that then I think it does need to go to the Planning Commission.

**David Burre:**

I will be more than willing to put back whatever the Planning Commission voted on with the identification of a single user. I think that is the only fair thing to do. I am trying to make it work and not shoot it in the head.

**Councilmember Lusk:**

I thank Mr. Burre for that. It really clarifies it but I had one question for staff and it was on condition 5d, the first sentence, would someone interpret that for me please?

**Community Development Director Wakefield:**

Five d was basically dealing with trying to preserve open space where it would not have to pave the entire site and also to address some hydrology concern was that thirty of the proposed parking lot will be pervious pavers and he will designate where the pervious pavers will be at the LDP and document as hash for future parking because we are trying to meet the required parking, provide for the open space, allow for maintaining some trees on the site, so that was the condition we were trying to deal with that.

**Councilmember Lusk:**

I understand the second sentence. It is the first sentence, are there some words missing?

**Public Works Director Drake:**

Are you asking if that is different than our standard?

**Councilmember Lusk:**

Provide a maximum seventy five percent impervious. Impervious of what?

**Public Works Director Drake:**

It would be material.

**Councilmember Lusk:**

Thank you.

**Councilmember Zahner Bailey:**

I do hear that there may be some of this body that would like to proceed as though we have not heard any new information and yet I am very mindful that we have indeed heard some new information this evening and that is that the property owner came forward this evening and indicated that there is a contract in default with that home fashion center. That is a new fact. The other fact that we have heard is that it is the preference of this property owner that we actually include gas stations, hotels and motels and while when asked if they would at least be willing to allow us to proceed as though we had not heard that other information the answer was yes but I would be remiss if I did not acknowledge that I had heard new information tonight. I think I heard that when this body said that they wanted to rescind the earlier decision, it was to hear from the property owner. We have now heard from the property owner and the property owner very clearly and factually stated that that contract is in default. It does not mean that that property owner Mr. Burre might not go back and speak to those individuals but we have heard that there is new information. We have also heard from our Planning Commission members even though they spoke as residents. We heard from Mr. Ragsdale who is on the Planning Commission, I am not sure if he was speaking for the Planning Commission or as a resident but he does serve on that

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Planning Commission. We have heard from Ms Schlenke who serves on that Planning Commission, she spoke as a resident and mentioned that they too have heard new information. We have heard from residents that say there is new information. For us to pretend that we have not heard new information, I think would be irresponsible. If indeed that contract is in default and if the body and I will go back to Councilmember Thurman's statement earlier this evening before the vote to rescind is to do the right thing. If doing the right thing and the best interest of our citizens including Mr. Burre means that we really need to take all these new facts, hear that our Planning Commission said there were some facts that they did not have and allow a deliberative process to go through the process, I think that is what we should do. I think there was a majority that voted to have it rescinded but it was predicated on hearing from the property owner which we have heard and we have new information. I also believe that the site plan as currently reflected does not necessarily reflect all of the conditions that staff has recommended. WE have heard about the need for tree recompense and even though we have heard some dialogue that maybe tree recompense can occur on site and maybe it cannot. We do not have any facts to support that tree recompense can occur on site. The Highway 9 overlay today, and I will quote chapter and verse if I need to for you but within the current Highway 9 overlay it talks about open space. It talks about the need to preserve the natural environment. It talks about the need to have a mix of specimen trees. It talks about the need for open space, local aesthetic and functional qualities and to improve, not to diminish and right now what is before us and what has been indicated by staff that if we proceed under the presumption that we have heard nothing different which is not true, but if it was nothing different, the site plan that is before us shows effectively clear cutting and no recompense on site. At a minimum, if there is an opportunity to see how this new language of 5d would reflect on a site plan, I would urge this body to work with the property owner and potentially those applicants that might want to rezone to relook at that site plan so that we all know what we are looking at and what we are speaking about as opposed to the uncertainties that have now been presented this evening. I believe that the Planning Commission, if they felt historically that that was a potentially good end user, I suspect that those are some folks that are going to take the data presented to them and make a good decision based on their recommendations and again I will speak to the fact that this is still the deciding body regardless of what recommendations have come or not. I think this needs to go back to the Planning Commission, in the spirit of a rescission and in the spirit of wanting to hear this case appropriately I ask that we do that. Separate from that I would like to point out that in the actual analysis from staff when it talks about comparisons of densities that comparable densities are not densities that are other than the c-1. A comparable density is when you look at a c-1 and retail use. Comparable densities are not at 28,260 square feet. Comparable densities and I will use number 9, on page 9 of 18, within staff's analysis. Item number ten which says south, Z0675 which is a c-1 community business and it is at 14,000 total square feet or a square foot per acre of 6,698 square feet that is directly across the street from this rezoning. That is a comparable density. 28,260 square feet is not a comparable and the fact that the storage facility was being referenced as a comparable, an m-1 is not comparable to a c-1 zoning. The other is that I did ask because our analysis does not include a analyses from Alpharetta and yet there were ten items within the analysis that highlighted rezoning within the City of Alpharetta claiming that those were comparables and yet we have no data. So, I sought that data because it was not provided and in looking at those other densities, the actual density that is the average density is closer to, on a per acre bases is 8,293. A comparable is not, when we get closer to 14 and 15 thousand square feet per acre, so if we indeed look at the City of Alpharetta densities, the densities in the area a c-1, there is an 81,019 square feet per acre. There is an 8,000 square feet per acre, there is a 9,600 square feet per acre, there is a 7,300 square feet per acre, all of which are comparables. My point being is that if tonight we were to approve something that we have already heard from the applicant and from the property owner, may or may not be speculative because we have a contract in default, let's go back to the basics and that is that

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some of these comparables highlight the fact that 28,200 square feet is more dense than the comparables in the area. I also went back to the minutes from December 15<sup>th</sup> and I will quote from those minutes when Robyn MacDonald stated that she wanted to go back through since it is a fairly high density proposal more than the 10,000 typical of the area and other parts of Highway 9. Our own staff on December 15<sup>th</sup> stated that this is 10,000 square feet higher than is typical for Highway 9. That fact did not escape me. It did not escape me December 15<sup>th</sup> and it does not escape me this evening so if we are going to be honest with one another, the densities that are proposed, 28,260, it is more dense than what is the comparable for the Highway 9 area, whether you look at the City of Milton or the City of Alpharetta. From my perspective, if we were to rezone this to a higher density, 10,000 square feet more which is a significant change from what is currently in place and what was approved under the board policy of Fulton County and to do it without a known end user, it is not as simple as saying well if that end user does not come back, because effectively we will have rezoned to a significantly higher density than what is standard for this area of Highway 9. That would be inconsistent with our comprehensive land use plan and it is inconsistent with the process that we put in place to compare c-1 to c-1. With regards to trees, I believe that the site plan needs to be re-evaluated and it needs to go back to the Planning Commission, not just as it relates to the end user but also as it relates to what I think I have heard over and over from this body is that we want tree recompense to occur on site and we do want to as evidenced by our prior decisions to see specimen trees provided on site and that we want to see alternatives. We have seen no alternative for this site plan that demonstrates tree save on site. In terms of the conditions that were revised and provided to us this evening, I do appreciate the fact that some of those modifications were necessary. I am still unclear and I want to ask our City Attorney this question, I had raised the question about how parking had been calculated historically and what was before us on December 15<sup>th</sup> was a parking calculation that identified 110 spaces and that was predicated on being able to segment part of the retail and claim it to be storage. Looking at our code I am not familiar with any language that allows us to calculate in that way but instead, and again I checked with other jurisdictions and what appears as that parking is typically looked at the retail component as a whole. I realize that this recommended condition before us highlights that 7,200 square feet could then be deemed storage. With the storage facility in order to designate it separately, is there ever a use permit or special use permit or another designation that is needed to rezone it to a storage component of the building.

**City Attorney Jarrard:**

I am not aware if there is any kind of SUP or CUP required for that.

**Community Development Director Wakefield:**

Not for storage that is an accessory to a primary use. If you are going to do a self storage facility then yes there is a use permit. If you are going to do an industrial type of storage facility then there is a rezoning. Every business that I know of has related storage.

**Councilmember Zahner Bailey:**

The difference being that historically at least based on my experience and I think even based on what we have done here in Milton before, some buildings have storage, schools have storage facilities, Target has storage facilities, we have never allocated a different parking allocation for a storage component and based on the Mr. Jarrard is it possible that a different advertising was necessary because of the calculations that were used originally and I will specifically say even as it was advertised in front of the Planning Commission because this is different than what the Planning Commission had seen.

**City Attorney Jarrard:**

What I was concerned with or what I had seen in the e-mails was that if this was un-tethered to that kind of conditioned I would have concerns but when you add that condition to it and make that as a requirement of rezoning, I felt like the parking was going to be adequate. The only thing I had also felt was perhaps there might be an interest in making sure the conditions are clear that the 7,200 square feet was the basis for the parking accommodation because what you want to prevent is the situation where perhaps some future date the condition is modified without the parking being picked up this way.

**Councilmember Zahner Bailey:**

Thank you I appreciate that clarification. With regard to discussions that had been about whether or not this should go back to the Planning Commission, from my perspective that in concert with 5d which talks about parking being handled differently as well as the question for tree recompense would deem it from my perspective important to go back. I do not see that would be a negative for the property owner. It surely would not preclude the property owner continuing to have dialogue because there is currently a contract that is in default so there is not currently a contract in place that is predicated on a decision this evening. I do also need to ask this question of Mr. Sonenberg, knowing that you have been in commercial real estate in this area, is there any reason or anyone within this entity that you have done business with that would need to recuse themselves in terms of ever having any...

**Mr. Sonenberg:**

Are you talking about on the Council?

**Councilmember Zahner Bailey:**

Yes sir. Just when you stated that your relationship had been in commercial development for the last thirty years.

**Mr. Sonenberg:**

J.K. Lockwood has built over the past years, there is nothing in the last five years to projects that we were involved with but nothing in the last five years. In fact this is the first time I have seen or heard from anyone else on the Council.

**Councilmember Zahner Bailey:**

I felt it necessary to ask the question since you stated that you had done real estate in the area for the last thirty years.

**Mayor Lockwood:**

And I will just clarify that, I do believe you called me when you got your office and needed someone to put carpet in and we gave you some names of carpet guys.

**Mr. Sonenberg:**

I will say today, I did call around to three contracting firms, J.K. Lockwood being one to get some insulation blown into a jazzercise that is going in if that qualifies as being a questionable but I did do that because in order to satisfy the sound requirements in the City of Alpharetta we have to find someone that can blow in insulation.

**Councilmember Zahner Bailey:**

Again it is not about whether it is appropriate or not but from a recusal stand point, I think all of us would want to be sure we had at least addressed the question. I do not know if our City Attorney, do you need to speak to that?

**City Attorney Jarrard:**

Based on what I just heard, there has been no activity with Lockwood Enterprises or your Corporation for over five years. I am not terrible concerned about it.

**Councilmember Zahner Bailey:**

I just want to make sure we have that on the record. That way it is a non issue.

**Mayor Lockwood:**

Have you had any landscaping done?

**Councilmember Zahner Bailey:**

I wish. I wish that was the case. Just to make sure that we are actually keeping order, with all due respect Mayor it was a reasonable question and I think the applicant has noted that they have in fact done business that provided financial gain and based on our Ethics Ordinance and based on the requirement for recusal, I felt compelled to ask. I surely did not know whether or not this individual had done business with you or not and it was not directed at you Mayor. There are other people on this Council that have operations from a commercial perspective and I would not have been doing my duty had I not asked that question.

**Councilmember Thurman:**

I hope that if any of us had that issue, we would have brought it forward and it would not be a question that would need to be asked.

**Mayor Lockwood:**

Let's keep in order. Ms Bailey, you want to go ahead and finish your questions.

**Councilmember Zahner Bailey:**

In terms of four board black fencing, just for the record, I do not agree that it has to be adjacent to or setting design guidelines and I think that everything in Milton needs to include that. With regards to sidewalks, I know that in other Highway 9 developments we had as recently in fact as the bank that we just talked about at our last council meeting there is a requirement that there be concrete with brick pavers every fifty feet. I did not see that as a condition that had been highlighted.

**Community Development Director Wakefield:**

That is part of article 24 of the Zoning Ordinance to require sidewalks and also it is if it comes under play of the trail ordinance then that takes precedence so that is already in the Zoning Ordinance that they need to...

**Councilmember Zahner Bailey:**

I appreciate that clarification but I am not familiar, let me put it this way, I know in other cases we have had to specify as a condition of zoning that the sidewalks every fifty feet had to have brick pavers and we had stated that and so I just want to be clear that we stated that in the past.

**Community Development Director Wakefield:**

If it is the discretion of this body, ok.

**Councilmember Zahner Bailey:**

Because it has not been clear in the past that is always a requirement. I continue to be concerned that tree recompense and tree save is not a consideration of this site plan and I will conclude my comments by saying that I firmly believe that this should go back to the Planning Commission as has been requested by the Planning Commission based on the changes and the fact that there is a contract in default.

**Mayor Lockwood:**

I want to ask one question of our City Attorney. Based on Ms Bailey's comments and Mr. Sonenberg as far as a conflict of interest, we did build some buildings for clients that those clients searched us out, we bid the project and we built the building for those clients. Mr. Sonenberg was only the selling agent of the buildings and again there was no tie in between us and them but like I said we were independently hired and paid so I wanted to make sure that is clear for the record and it has been at least five years or longer. I want to make sure that if you think there is any kind of conflict of interest, I certainly want to do what is right.

**City Attorney Jarrard:**

All financial activity with respect to that transaction has been over for at least five years so I am not concerned.

**Mayor Lockwood:**

And again there was no financial activity between Mr. Sonenberg's company and my company.

**City Attorney Jarrard:**

That further reinforces it.

**Councilmember Lusk:**

Since a veil of suspension has been foisted here in the interest full disclosure, I am an general contractor. I have never met Mr. Sonenberg before. I have never done any work with him and the only contact that I have had with him is that I have read his name on some real estate signs throughout the area. Thank you.

**Councilmember Zahner Bailey:**

I would like to clarify that there was no veil of suspension and if it was perceived, please accept my apology.

**Councilmember Lusk:**

Apology accepted.

**Councilmember Zahner Bailey:**

It surely was not directed at any one person. As a member of this body we have a requirement, when we believe that a question needs to be asked and it was asked so that nobody later composed the question and I take that responsibility seriously so thank you for being respectful of the need to ask the question. I think that is what open government is all about.

**Councilmember Thurman:**

It appears to me that the changes in this sense it went before the Planning Commission are changes that make it more restrictive than less restrictive the use of the property so if there are any changes that are substantial and where the use of the property is substantially different that what the Planning Commission previously approved I would agree that it needs to go back before the Planning Commission. Personally I do not see that there are any that are substantially different and I would like clarification from staff if there are some that are substantially different from what was already approved by the Planning Commission.

**Community Development Director Wakefield:**

As you mentioned they are different in that condition 1a adds a restriction to some uses that was not what was before the Planning Commission but that is more restrictive not less restrictive.

**Councilmember Thurman:**

I am not really concerned if we are making it more restrictive than what they approve but just less restrictive than what they approved.

**Community Development Director Wakefield:**

It is more restrictive.

**Councilmember Thurman:**

It is also my understanding that what you have done in 1a which is what has changed the amount of parking required is to actually separate what is considered their basement or storage area from the original square footage they requested total was?

**Community Development Director Wakefield:**

That is correct.

**Councilmember Thurman:**

And according to our Zoning Ordinance it says the floor area net. It says the sum of all floors of a structure as measured to the outside surfaces of exterior walls excluding halls, stairways, elevator shafts, attached and detached garages, porches, balconies, attics with less than seven feet of head room, basements, patios and decks are excluded, so in this case the storage area is actually underground so really what they had asked for before really was not quite right. It was over stated the square footage because it included what was actually basement and did not need to be included in that square footage.

**Community Development Director Wakefield:**

Yes but to be cautious because he said that fifty percent of it was daylight, we asked that they include the square footage but yes you are right.

**Councilmember Thurman:**

Ok, so that is why the parking was able to be reduced was because – does this adequately take care of the fact that the storage space is storage space and will not have customer access to it. Is that pretty clear in this?

**Community Development Director Wakefield:**

I believe so.

**Councilmember Thurman:**

As far as the tree recompense, is that something that you feel like that you and arborist and the applicant could work through?

**Community Development Director Wakefield:**

Again I would ask Mark to chime in, it is something that is worked on at the time of land disturbance when you get actual engineering plan. It is difficult to determine exactly what can be recompensed on site and what has to go to some other site but that is something that we can deal with at the time of land disturbance.

**Councilmember Thurman:**

And, that is something that is typical, to be dealt with at the time of the land disturbance so this is not anything that is going to set any kind of precedent.

**Community Development Director Wakefield:**

Correct.

**Councilmember Thurman:**

Ok, I think then, I would not be in favor of approving this except all of this being site plan specific so that he could go ahead and go forward with trying to get the tenant back that he had previously used and I am assuming this would be pretty site plan specific but would give him that opportunity and then if it did not work out with pursuing that previous arrangement then he would have to come back before us to make any modifications with any new or future person that may be purchasing the property and using it.

**Community Development Director Wakefield:**

That is correct with the restrictive uses, yes.

**Councilmember Thurman:**

You said restrictive uses but is this site plan specific or could he move the building around to other places or put two buildings instead of one.

**Community Development Director Wakefield:**

It is site plan specific in that he shows one building so when he comes in to land disturbance he will have to show one building and it says it is conceptual because it is not unusual for the building to move a few feet one way or the other but any significant change of the site plan would at the very least require a modification to come back before this body.

**Councilmember Thurman:**

But if he decided to put in a gas station, if we did not exclude it, he would have to come back before us anyway.

**Community Development Director Wakefield:**

Yes.

**Councilmember Thurman:**

And, I am assuming then he basically just lives with these conditions that we are giving him, if this does not work with the current arrangement he will come back before us in the next year or so when he has a different one because he could come back before us a year from now and ask the same thing he originally asked, the way our Zoning Ordinance works, is that correct?

**Community Development Director Wakefield:**

That is correct.

**Councilmember Thurman:**

So this whole redo thing maybe is a redo of a couple months after it was originally heard but you can really redo it a year later at any time.

**Community Development Director Wakefield:**

If it is approved, yes.

**Councilmember Thurman:**

Even if we denied it they can come back a year later with whatever.

**Community Development Director Wakefield:**

Yes.

**Councilmember Thurman:**

So that is not unusual for us to rehear something. I know in the BZA we had people that came back once a year, every year, same time of the year. They always got denied but they always came back. I think that most of my questions are answered. It appears to me that really there is nothing new for the Planning Commission to consider that they have not already considered, that would be more restrictive than what they had already considered.

**Community Development Director Wakefield:**

That is correct.

**Mayor Lockwood:**

I appreciate everyone's comments and let me make a suggestion. We have got new facts, things have changed, the contract is in default as we know and found out and that is because the existing conditions did not work. At this point with what we came in here with today was an application that the Planning Commission had looked at and approved, staff had approved. I believe staff just tweaked it a little bit since the 15<sup>th</sup>. Again, any of the other conditions, if this end user does not use this property, the applicant will have to start from square one anyway with his development or property and come back so my only suggestion is maybe consider approving this application based on the site specific of what it has

been in here in the past for and what the Planning Commission has seen and approved, what staff has approved and we can also add in tree recompense and let the staff work on that to see what the boundaries with the engineering and staff, what they can do to save trees on the site or recompense on the site. We are certainly open to doing more than that and then again not add any of these other uses because that does not really hurt the applicant anyway because if he wanted to have one of the other uses he would have to come back and start from scratch anyway. My suggestion might be a motion to approve it as it has been approved by staff, Planning Commission and what the applicant submitted with the exception of adding in that we try to recompense some more trees on site and try to keep some more green space on site within reason with our staff, Mr. Law and Ms Wakefield.

**Councilmember Zahner Bailey:**

Mr. Mayor, If I may, there was also discussions about the parking information and I believe that the City Attorney spoke to some more specific language to clarify that the 7,200 for storage and any parking associated with that would not be considered at any future time for anything other than storage.

**City Attorney Jarrard:**

That was like an internal cross reference. You just want to make sure that in the future that there is a zoning condition amendment pertaining to storage requirement that it is necessarily implicates the parking as well because that was the basis, as I understand it for the parking.

**Councilmember Zahner Bailey:**

The other thing I wanted to ask Mayor, when you mentioned adding tree recompense on site, that is not currently what the recommendation from staff indicates. It indicates on site or off site, so I think specifying that tree recompense would occur on site.

**Mayor Lockwood:**

You would use every effort to do that but I am not sure, we would have to ask staff to look at it and see but obviously, worse case would be off site they would have to fulfill the requirements for them.

**Councilmember Zahner Bailey:**

I think that indeed that would be the worst case. I would like to make a final clarification Mayor. Based on the comments of Councilmember Thurman, when it was mentioned that in a year this applicant could come back and ask for the same thing, I would just like to point out that the distinction here is that this rezoning before us this evening is 10,000 square feet greater than what was approved in Fulton County, so that is significantly different. It is not the same and it is not as though, if this home fashion center does not go through then it goes back to what it had been, obviously at that point it will be 28,260 square feet without a specified user, so effectively I do view it as us rezoning a property in a speculative way because there is a contract under default, I still would strongly support this going back to the Planning Commission because we did hear new information this evening.

**Mayor Lockwood:**

Ok, do I have a motion to approve or deny this application?

**Councilmember Zahner Bailey:**

Is deferral still an option? In other words do we still have the option to put forward a motion to defer?

**Mayor Lockwood:**

Obviously, someone could do that.

**Motion:** Councilmember Thurman moved to approve agenda item 09-785 for rezoning 08-10, based on the recommended conditions on the latest hand out that we received from staff dated today, with the further condition that staff and the arborist work with the applicant to have as much recompense on site as possible and that it is site plan specific, how do you say site plan specific without saying they cannot move it a foot or two?

**Community Development Director Wakefield:**

We can condition that the said plan is site plan specific and I will get with Ken to clarify, it meets and exceeds the requirement of the Zoning Ordinance and the condition as approved by the director, so I can have some discretion but I will get with Ken to clarify that language.

**City Attorney Jarrard:**

How about the zoning shall be site plan specific subject to modification per the director. It is going to be controlled by the code, what she has the discretion to provide.

**Councilmember Thurman:**

Just give it a little bit more teeth is what I was trying to do.

**Councilmember Zahner Bailey:**

Were you also speaking about the parking or you had not gotten to that yet, based on the City Attorney's comment?

**Councilmember Thurman:**

How would you recommend on d that at if at any time the 7,200 square feet of storage space in the basement is used for anything other than storage that the parking would need to be modified correspondingly. That is my motion.

**Councilmember Lusk:**

Also if you would add material.

**Councilmember Thurman:**

After 75% impervious, we will add material to that also. Is staff ok with that?

**Community Development Director Wakefield:**

Yes.

**Second to the Motion:** Councilmember Hewitt seconded the motion.

**Mayor Lockwood:**

I have a motion by Councilmember Thurman and a second by Councilmember Hewitt. Do we want to clarify that motion and read it into the record again?

**City Manager Lagerbloom:**

I wrote it down if you want me to summarize it for you.

**Mayor Lockwood:**

Summarize it for the record.

**Motion Restated by City Manager Lagerbloom:**

I think I heard that Councilmember Thurman's motion was to approve RZ08-10 with the most recent conditions that staff provided the Council dated February 2, 2009, additionally to condition tree recompense on site where possible. To condition the site plan specific subject to modification by the director with the further condition that is the 7,200 feet of parking was used for anything other than storage, parking recalculations would apply and to add material after the word impervious in the conditions.

**Councilmember Thurman:**

That would be my motion.

**Second to the Restated Motion:**

Councilmember Hewitt seconded the motion.

**Discussion on the Motion:**

**Mayor Lockwood:**

I just want to clarify because of discussion and with the Planning Commission and what not to make sure I am clear and everybody else is, to me this allows the Planning Commission, we are approving what they had approved and if anything changes, obviously they have to bring it back and it goes to the Planning Commission. Also I am not sure if this motion, if that would work for the applicant or not. There is always the option of deferring this case or denying it. We would certainly allow the applicant to ask for deferral.

**Councilmember Zahner Bailey:**

Mayor, if I may, just as it was going through the various notes, I know that at one point that staff had indicated under section 5b with regards to above ground detention, it was noted that staff's support of the language of earthen and natural design and that did not seem to be captured when the motion was brought forward. Again as I have stated, I believe this should go back to the Planning Commission but based on the motion that was just read I just wanted to bring that to your attention for those that may support that motion.

**Councilmember Thurman:**

Ok, I will modify my motion to include that under b, earthen natural, per the director of the department.

**Councilmember Hewitt:**

I will modify my second.

**Mayor Lockwood:**

Is there any discussion?

**Councilmember Zahner Bailey:**

I have just a question in terms of four board fencing, again I support it going back to the Planning Commission but given the discussion I have heard different input and I do not know that there seems to be a consensus one way or the other, again it is not my motion but I just would ask you guys to consider the four board fencing since that is part of the Highway 9 design guidelines. I do not know any that put the design line committee together have input on that. I do not know that I heard input.

**Councilmember Thurman:**

I think that on this I will stick with staff's recommendation.

**Mayor Lockwood:**

Any other comments?

**Vote:** The motion passed 5-2, with Councilmember Zahner Bailey and Councilmember Tart opposed.

**NEW BUSINESS**

**City Clerk Marchiafava** read agenda item 09-789

**Approval of a Crooked Creek Amenity Area Right-of-Way Exchange.**

**City Manager Lagerbloom**

- We ask for a deferral until February 18, 2009.
- We provided Crooked Creek with a copy of the agreement that we are comfortable with.
- We asked for comments from them by 2:00 this day and did not receive any.
- The just came in and said they would like to have further discussion.

**Motion and Vote:** Councilmember Tart moved to defer until February 18, 2009 agenda item 09-789 Approval of a Crooked Creek Amenity Area Right-of-Way Exchange. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously.

**City Clerk Marchiafava** read agenda item 09-783.

***Moved by Motion and Vote***

**Approval of the following task order: January 12, 2009 – Task Order 09-KHA-03 from Kimley-Horn and Associates, Inc. for gravel road with a total cost of \$7,718.72**

**Public Works Director Drake**

- Staff asked for approval of a task order for work done by United Consulting Engineering through our contract with Kimley Horn and Associates for approximately \$7,700.
- It includes sampling of the material and engineering recommendations of our next actions based on complaints and issues with the gravel roads.
- The samples they collected came back showing the material that we put in the specs were not the ones that were specked.
- Because of the issues, it gave us the ability to not pay the \$80,000 and go from there.

**City Manager Lagerbloom**

- In addition, he thinks we need to pay this because it was work we used to our benefit to bring the contract back to the discussion table.
- The work has been done and we need to compensate for that work.
- It is a piece of work that we may need to use to our advantage in the future.

**Councilmember Lusk**

- It was mentioned that certain savings in the gravel road contract would pay for this.
- Asked if that was correct or if they were going to pay the full amount of the contract and then pursue a claim against the contractor.

**City Manager Lagerbloom**

- We had the discussion about the \$80,000 that was budgeted for the rock component not the other part that was budgeted for some infrastructure needs.
- We had indicated that \$60,000 would be material cost and roughly \$20,000 would be for engineering cost.
- This would have been part of the \$20,000.
- He is not convinced that this money is not recoverable in a different fashion.
- Therefore if that were to occur it would not come out of the \$20,000.

**Councilmember Lusk**

- Asked if this would provide further research on what they will do going forward on the rest of the roads.

**Public Works Director Drake**

- No, what they are doing on these roads and additional inspections testing and recommendations moving forward on this particular project.

**Councilmember Lusk**

- Asked if their findings in this certain situation going to determine what method they will use down the road.

**Public Works Director Drake**

- There are findings of things we should not do and some lessons learned.

**Councilmember Zahner Bailey**

- She is hopeful there is still some analysis to be done with regards to our gravel roads and they are not presuming that the \$80,000 for gravel is suddenly not necessary and instead we will spend the \$60,000 on a cement dust with the \$20,000 being allocated for engineering.
- Thinks we need to determine where the liability rest.
- She heard there were a number of things that have to fall out before we can make a decision to spend even \$60 of the \$80 or \$20 of the \$80.
- She would ask that the Design Review Board take a look at it because it is part of the rural character.
- She assumes there will be other approaches looked at so they do not replace the gravel roads with a surface they saw of the thousand feet.

**City Manager Lagerbloom**

- They are not agreeing to anything other than entering into this particular task order.
- There is not a consensus as to what the correct way to go forward is with the remainder of Nix Road as well as the other roads that are part of the project.
- We have a small window of time because they are still in the test period for what has been placed on Nix Road but they are not discussing that at this meeting.
- He will need direction from Council on that very soon.

**Councilmember Zahner Bailey**

- In order to determine what the next step might be they need data from Fulton County.
- They have never asked Fulton County what they put on the roads and what the frequency of maintenance was.
- Another question was what were some alternatives that would allow an approach to still have gravel on the road.
- They heard about some extended width of road and about some velocity storm water runoff issues so there is still quite a bit of data needed before they can make an intelligent decision on what to do or not to do.

**City Manager Lagerbloom**

- Does not disagree with that.
- They had a fairly productive staff meeting where they defined and assigned next steps.
- Look for updates coming soon.

**Councilmember Zahner Bailey**

- Asked if even though they may approve the payment it is predicated on the fact that they will be pursuing reimbursement of these funds potentially.

**City Manager Lagerbloom**

- He thinks that is a fair statement.
- He does not think they should withhold money for work that had been done.

**Motion and Vote:** Councilmember Hewitt moved to approve agenda item 09-783, approval of the following task order: January 12, 2009 – Task Order 09-KHA-03 from Kimley-Horn and Associates, Inc. for gravel road with a total cost of \$7,718.72. Councilmember D’Aversa seconded the motion. There was no Council discussion. The motion passed unanimously.

**MAYOR AND COUNCIL REPORTS**

**Mayor Lockwood**

- He met with Bob Munroe on our performance measures.
- He asked them to sit down with each Council Member individually for approximately 30 to 45 minutes and he asked Pat Crook to be available also to discuss what measures they would like to see and address any concerns Council may have.
- He just wanted to make sure that everyone would work diligently to make a point to meet with Bob and his staff.

**Councilmember D'Aversa**

- Asked if the Mayor knew what they had done so far.
- It has been about six months since they came before them.

**Mayor Lockwood**

- They can show what they have done when they meet with them.

**Councilmember D'Aversa**

- They did have a very successful Special Called Meeting on Saturday.
- She sent an update to Mayor Lockwood since he was unable to attend.
- It was an active Council meeting.
- Some of the comments they heard tonight with regard to the gravel roads, she thinks that had a productive review of those gravel roads.
- She is concerned they did not have more information when they toured the Bethel house and the Crabapple House.
- She thought the meeting at the gravel roads was extremely productive and they heard a lot from staff about what has transpired and why.
- She thinks it would be a great idea to have a meeting with the people from the gravel roads.
- She thinks it is important for the citizens to know that they went out there and they had opportunity to meet with them.
- Maybe it is a good idea for them to host a meeting that engages the people that live on gravel roads.
- She recommends that as a follow up from Saturday.

**Councilmember Zahner Bailey**

- She would like to second that suggestion.
- Having a gravel road meeting would be a great idea.
- It is important not to have gravel road residents that are only in front of a gravel road that for the last number of months have been completely messed up.
- She would ask if they do have a meeting that they open it up for anybody that live on a gravel road or has commentary about gravel roads.

**Mayor Lockwood**

- For informational purposes, he may not be in attendance for the next work session.

**STAFF REPORTS**

**City Manager Lagerbloom**

- Need to talk about Fulton County's animal control ordinance as relates to tethering.
- Commission Pitts asked for response from us before tomorrow.
- We are being asked whether or not we would support an extra paragraph in their law that basically says, it should be unlawful for the owner, custodian or harbinger to restrain or anchor such animal by means of a tether, chain, cable, rope, leash or cord unless the tether or other restraints are being held by a competent person.
- Exceptions shall be made for the limited purpose to temporarily restrain the dog by such means to allow the dogs needs to met such as time necessary to clean, feed and water the dog or clean the dogs living quarters.

- This becomes an issue because Fulton County would like to be able to enforce the animal control uniformly regardless of what jurisdiction they are enforcing it in.
- This is one of Commissioner Pitts is fairly passionate about this anti tethering section of this law.
- He is asking for feedback from Council so he interprets what their wants are to send back to him.
- He has had comments that indicated there would be support for anti tethering in the canine community.
- It truly deals with the safety aspect of the dog.
- Most of the people he received responses from have indicated that it is more of an aggression issue when a dog is on a chain or leash attached to something other than a human is they become more aggressive of the space around them than if they were not attached to something.

**Mayor Lockwood**

- He would venture to say that probably everyone in this room would be against tethering an animal.

**Councilmember Thurman**

- Asked what the other cities were doing.

**Mayor Lockwood**

- He does not know what the other cities are doing.
- Maybe City Manager Lagerbloom could reach out to some of the other cities tomorrow and see if they have recommendations on that.
- Asked if it would be safe to say that if they had to make a decision that it would agree with the ordinance.

**Councilmember D'Aversa**

- Her comment was going to be that there be exceptions to that rule especially in rural communities.
- There are always opportunities for leads that are considered tethers and they can stretch across runners.
- That is what she has been used to in the past.
- Because we did not allow fences we had to have a lead that can allow the dog to run.
- Seems like there would be an exception language for that in rural communities.
- She is guessing the Commissioner Pitts is referring to tethering dogs in a more urban area where there is not any space.

**City Attorney Jarrard**

- This is the new thing right now.
- Forsythe is considering this in two weeks.
- The dog community is very mobilized on this issue.
- The City Manager needs to know how to respond to Fulton County and the City of Milton needs to decide what they want to do with their own codes.
- When Fulton does this then they will have a different body of regulations than they do and we need to know if we want to be consistent with them or be different.
- It might be a matter to go ahead right now and put this on the next work session and start talking about it.

- When you starting putting animals on the agenda there will be a lot of people who want to provide input.

**Councilmember D'Aversa**

- It is a good idea to hear what people have to say to maybe that is the way to proceed.

**City Manager Lagerbloom**

- Would respond with something along the lines that said that the City of Milton are generally supportive of this initiative, however, to be fully supportive exceptions relating to more rural areas on large land would be necessary.

**Councilmember D'Aversa**

- Are runner leads considered tethering or is that a legal question.

**City Attorney Jarrard**

- He thinks he is hearing that Milton is against tethering abuse.
- You know it when you see it and it is very obvious.
- It is the nuances.
- When do you allow the dog to have the runner, we did this a year ago in Forsyth and they never could get past that.
- This is a mandatory fence law and a lot of people cannot afford it.

**Councilmember Thurman**

- The way it is written now, unless you are holding it then it is considered tethered.

**Councilmember Zahner Bailey**

- Asked if there would also be an opportunity that it is not just an exception within a rural environment on land but it is the exception where by some other means that we would define what that other means is but still consistent with non abuse.

**Mayor Lockwood**

- You would almost need an expert to visit the site to see if everything is fine.

**Councilmember Lusk**

- He is always craver for laws that are all encompassing and reaching like that and it gets to the point they are reaching into personal conduct.
- There is probably enough law out there to cover cruelty to animals.
- He is afraid of any rule that is trying to fit every situation out there.

**Councilmember Thurman**

- The problem is with the way the IGA with Fulton County, regardless of what we do they really can enforce their own laws whether or not we agree with them.

**Councilmember Tart**

- Asked what the penalty would be for doing this.

**City Attorney Jarrard**

- It would probably be up to a thousand dollars a day or sixty days in jail which is the maximum allowed but the likely result would be fifty dollars.

**Mayor Lockwood**

- It sounds like they are not prepared to make a definite decision.
- We could have work sessions and still might not come to an answer.
- He would like to ask City Manager Lagerbloom to find out as much information as he can and they can e-mail it to everyone.
- He had a good suggestion for a response that they cannot give a definite decision based on our community.

**City Manager Lagerbloom**

- He has a new statement that might capture what they are saying and that is that the Mayor and City Council are strongly against animal abuse and generally supportive of the anti tethering initiative, however, to be fully supportive exceptions relating to more rural areas should be considered.

**Councilmember Zahner Bailey**

- We are not making exceptions to the abuse in rural areas.
- Tethering may be defined slightly differently.
- Maybe non abusive tethering.

**City Manager Lagerbloom**

- He will craft something.

**Councilmember Zahner Bailey**

- There might also be language that they might want to contemplate about enforcement.
- Even if Fulton County proceeded and they had not yet come to a conclusion, they could include some sort of statement that would say that while they are in the midst of making a decision they ask Fulton County not to begin to enforce something that they have not yet adopted.

**City Attorney Jarrard**

- We can ask them to stand down with the enforcement of this but they do not have to.

**City Manager Lagerbloom**

- The Emergency Operations Plan that was on the agenda was on there as an Ordinance and after consulting with the City Attorney, he realized it more appropriately should be passed as a Resolution.
- It will be brought back as a Resolution on February 18<sup>th</sup>.

**EXECUTIVE SESSION**

**Motion and Vote:** Councilmember Thurman moved to adjourn into Executive Session to discuss personnel, possible litigation and potential land acquisition at 9:51 p.m. Councilmember Lusk seconded the motion. There was no Council discussion. The motion passed unanimously.

**RECONVENE**

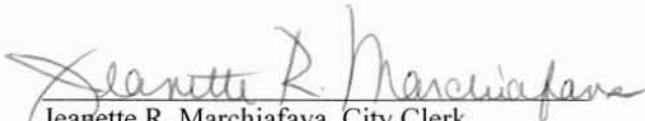
**Motion and Vote:** Councilmember Thurman moved to reconvene the Regular Meeting at 10:47 p.m. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously.

**ADJOURNMENT**

After no further business, the regular meeting adjourned at 10:49 p.m.

**Motion and Vote:** Councilmember Lusk moved to adjourn the Regular Meeting. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously.

**Date Approved:** February 18, 2009

  
Jeanette R. Marchiafava, City Clerk

  
Joe Lockwood, Mayor