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The Regular Meeting of the Mayor and Council of the City of Milton was held on July 20, 2009 at 6:00 PM, Mayor Joe Lockwood presiding.

INVOCATION

Councilmember Bill Lusk gave the invocation.

CALL TO ORDER

Mayor Lockwood called the meeting to order

ROLL CALL

Councilmembers Present: Councilmember Thurman, Councilmember Zahner Bailey, Councilmember Lusk, Councilmember Hewitt, Councilmember D'Aversa, Councilmember Tart

PLEDGE OF ALLEGIANCE

Mayor Lockwood led the Pledge of Allegiance

APPROVAL OF MEETING AGENDA

City Clerk Marchiafava read Agenda Item 09-888.

Staff recommended the following changes to the Meeting Agenda:

1. Under Reports and Presentations, remove the Presentation by the Milton Bicycle and Pedestrian Trial Committee and place it on the August Worksession Agenda.
2. Remove Item No. 1 under new Business, approval of a Resolution Adopting the Partial Plan update, the Community Assessment and the Community Participation Plan of the City of Milton 2008-2028.
3. Add an Executive Session to discuss Potential Litigation.

Motion and Vote: Councilmember Tart moved to approve the meeting agenda, as amended. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously (7-0)

PUBLIC COMMENT

Mayor Lockwood:

- Public Comment is a time for citizens to share information with the Mayor and the City Council and to provide input and opinions on any matter that is not scheduled for its own public hearing during today's meeting.
- There is no discussion on items on the Consent Agenda or First Presentation from the public or from Council.
- Each citizen who chooses to participate in public comment must complete a comment card and submit it to the City Clerk.
- Please remember that this is not a time to engage the Mayor or members of the City Council in conversation.
- When your name is called, please come forward and speak into the microphone stating your name and address for the record.

- You will have 5 minutes for remarks.

Jerry Allen, 1064 Union Center Drive:

He recently submitted an application for a sign permit for a customer at 12990 Highway 9. He has been in the sign business since 1981 and has done signs in other states and he has never had a sign permit cost \$750. The structure permit was \$480 and the last one he did was in Gwinnett County and cost \$30. He has permits for Forsyth County, Cobb County and Douglas County which are basically the same sign and none were more than \$150. He is not trying to be adversarial and his customer is reimbursing him for the permit but this is unbelievable. He asked Council to take a look at the issue to see what is right and what is wrong.

CONSENT AGENDA

City Clerk Marchiafava read the Consent Agenda Item.

1. Approval of the July 6, 2009 Regular Meeting Minutes.
2. Approval of Financial Statements for the period ending June 2009.

Motion and Vote: Councilmember Alan Tart moved to approve CONSENT AGENDA Councilmember Burt Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously (7-0)

REPORTS AND PRESENTATIONS

Transferred to the August Work Session by Motion and Vote

1. Presentation by the Milton Bicycle and Pedestrian Trail Committee.

PUBLIC HEARINGS ALCOHOL BEVERAGE LICENSE APPLICATIONS

Approval of Alcohol Beverage License Application for Marquis Restaurant Group Windward d/b/a CHA CHA BONGA Cuban Grill located at 5250 Windward Parkway, Suite 111, Milton, Georgia. The applicant is Ivonne Cranford for consumption on the premises of wine/malt beverage. (This item was postponed on July 6, 2009.)

Finance Director Stacey Inglis:

The applicant has followed all of the City's rules and regulations and staff recommends approval.

There was no public comment.

Motion and Vote: Councilmember D'Aversa moved to approve the Alcohol Beverage License Application for Marquis Restaurant Group Windward d/b/a CHA CHA BONGA Cuban Grill located at 5250 Windward Parkway, Suite 111, Milton, Georgia for consumption on the premises of wine/ malt beverage. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously (7-0)

Approval of Alcohol Beverage License Application for J and D Restaurant Corp. d/b/a The Red Hen located at 5310 Windward Parkway, Milton, Georgia. The applicant is David Rutledge for consumption on the premises of wine/malt beverage.

Finance Manager Stacey Inglis:

This applicant has also met all of the requirements of the City, therefore staff recommends approval.

There was no public comment.

Motion and Vote: Councilmember Lusk moved to approve the Alcohol Beverage License Application for J and D Restaurant Corporation d/b/a The Red Hen located at 5310 Windward Parkway, Milton, Georgia for consumption on the premises of wine/malt beverage. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously (7-0).

ZONING AGENDA

City Clerk Marchiafava read the Zoning Agenda 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.

(Zoning Agenda items typed verbatim.)

City Clerk Marchiafava read agenda item 09-890.

ZM09-01/VC09-03 - 13940 Atlanta National Drive by Aliaune Thiam, represented by Stephen Rothman, Wilson Brock & Irby, LLC Rothman for a modification to Condition 1.e. (Z85-181) to reduce the 100-foot perimeter setback to 33 feet and a concurrent variance to reduce the minimum setback from 100 feet to 33 feet for a private court (Article 19.3.8.B.1). (First Presentation on July 6, 2009.)

Community Development Director Alice Wakefield:

The subject site is a single family resident and the applicant is requesting a modification of condition 1e

to reduce the perimeter setback from 100 feet to 33 feet. The applicant is also requesting a concurrent variance to the minimum setback from 100 feet to 33 feet for the installation of a private recreation court. The recommendation of staff is approval conditional of both the modification of the approved condition of zoning and the concurrent variance. I will now turn it over to Ms Robyn MacDonald to expand upon.

Senior Planner Robyn MacDonald:

Good evening Council. As Alice had indicated this is a zoning modification and concurrent variance. I will go through some of the staff recommendations and observations. This lot as you can see is a triangular lot in shape with two of the three property lines adjoining streets. One being New Providence Road as well as the primary street frontage within the subdivision Atlanta National Drive. Based on the fact that the lot is triangular in shape with multiple front yards, a 20 foot drainage easement and septic drainage field limits the location of the proposed recreational court which is basically a basketball/tennis court. Staff recommends approval conditional of ZM09-01 to modify condition 1e to provide a 33 foot building setback. In addition staff will restrict a reduction in the building setback to where the recreation court is located. In regards to the current variance to reduce the minimum setback from 100 feet to 33 feet for private recreational court. Article 19.3.8.B.1, the City of Milton Zoning Ordinance requires that private recreational court be located outside of any minimum yard. Based on the Zoning Ordinances requirement, the applicant is seeking this concurrent variance. It is staff's opinion that this request to reduce the setback for a private recreational court does not offend the spirit or intent of the ordinance or in this case the condition required in Z85-181 to provide a building setback which is to reduce the negative impact that the proposed development on surrounding properties. With this specific property, the adjacent property to the CUP is Capital City Golf Club golf course. The portion of the golf course is a largely heavily wooded area that is not utilized by the golf course and any activity from the recreational court would not be heard or seen by the clubs members. This past Friday we received a note from the vice president of the Board of Directors of the Capital City Club indicating they were not opposed to these zoning mod or variances. Based on the triangular shape and size of the property which requires two frontages, a drainage easement and septic fields limit the location of the recreational court on the lot and creates an unnecessary hardship. Also if approved it is staff's opinion that allowing the recreational court and the minimum setback will not cause a substantial detriment to the public good and surrounding properties. Since the only surrounding property of the CUP is the Capital City Club, which again is heavily wooded as mentioned above. The proposed court should not be seen by residents or visitors passing the property. Lastly, it is staff's opinion that if this concurrent variance is approved, the public safety health and welfare are secured and substantial justice will be done because the proposed court is secluded and appears it will not have a negative impact on the adjacent property owners. Other single family residential homes are not adjacent to or nearby the court. Therefore staff recommends approval condition of VC09-03 to reduce the minimum setback from 100 to 33 feet for a private recreational court. The arborist and myself took a trip to the property and in your package you will see several pictures of lush and very nicely wooded lot and I was concerned about possible trees being affected and there will be trees affected but none of those trees are specimen size. In addition the site is heavily wooded and meets tree density requirements so the arborist has no opposition to this request of reducing that buffer. Also, I have a letter from the homeowners association, board of directors stating their support of this variance as well and modification. In conclusion, it is opinioned that the applicants request to modify condition 1E, to reduce the perimeter setback to 33 feet and for a private recreational court to 33 feet meets all of the variance considerations required for approval. Therefore staff recommends approval for ZM09-01 to modify condition 1E and VC09-03. That concludes staff's comments.

Mayor Lockwood:

Thank you Ms MacDonald. Are there any questions from Council to staff?

Councilmember D'Aversa:

Robyn, what is the distance between the property line of the owner to the golf course.

Senior Planner MacDonald:

I do not know. In the aerials it is nowhere nearby but I could not give you a specific distance. As I said we have support from the Capital City Club.

Mayor Lockwood:

Are there any other questions?

Councilmember Zahner Bailey:

Looking at the location map, there appears to be a stream on site.

Senior Planner MacDonald:

Also Mark Law looked at that and it goes in the front and parallels and it is not a stream, it is basin drainage and not a stream. He has been on site.

Councilmember Zahner Bailey:

It is depicted potentially as where water runs.

Senior Planner MacDonald:

Correct, many times the GIS indicate a stream but it does not necessarily mean that it is a true stream.

Councilmember Zahner Bailey:

Regardless of how we debate the definition of stream, are the setback and the variance request impacting this at all?

Senior Planner MacDonald:

No.

Councilmember Zahner Bailey:

Thank you.

Councilmember Tart:

Where is the nearest or closest single family residence to where this is?

Senior Planner MacDonald:

I would say it would be right across the street on the subject site street name, Atlanta National. She would say the nearest house would be that one because the house and the entrance to the actual subdivision so it would be across the street.

Mayor Lockwood:

Has staff received any negative comments?

Senior Planner MacDonald:

Not at all. We do send out notices in time for the individuals to be notified and nobody appeared at that meeting. The sign was erected in due time per the Ordinance as well as sent out.

Mayor Lockwood:

Thank you. Are there any other questions for staff before I open public comment?

Councilmember Zahner Bailey:

In just looking at this, the clearing, would that create a view from New Providence Road or is it all far enough off the road that you would not be able to see that?

Senior Planner MacDonald:

It is far enough off the road. It is very heavily wooded, in fact when we posted the sign from New Providence, you cannot see through, at least in the summer time you cannot see anything.

Councilmember Zahner Bailey:

So it is not going to negatively impact the scenic view.

Senior Planner MacDonald:

No.

Mayor Lockwood:

At this point let us hear from those speaking in support of the zoning modification.

City Clerk Marchiafava:

There is a document being distributed at this time that shows the location to the nearest house. There was no public comment.

Motion and Vote: Councilmember Tart moved to approve ZM09-01/VC09-03, 13940 Atlanta National Drive by Aliaune Thiam, represented by Stephen Rothman, Wilson Brock & Irby, LLC Rothman for a modification to Condition 1.e. (Z85-181) to reduce the 100-foot perimeter setback to 33 feet and a concurrent variance to reduce the minimum setback from 100 feet to 33 feet for a private court (Article 19.3.8.B.1). Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously (7-0).

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

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

Community Development Director Wakefield:

Staff is asking that this matter be deferred for sixty days until the September 21st Council meeting to allow the applicant additional time to provide a new survey site plan.

Mayor Lockwood:

Are there any questions for staff from Council?

Councilmember Thurman:

I guess my only question is, how many times can we defer this before we have to take some kind of action on it or do we just defer it every sixty days.

City Attorney Jarrard:

It can be deferred subject to the requirement that justice delayed is justice denied. At some point we do have to hear it, but we can continue to defer it so long as all of the proper procedures are applied.

Councilmember Lusk:

Alice, will this site plan anticipate addressing existing stream buffer situation?

Community Development Director Wakefield:

Yes sir.

Councilmember Zahner Bailey:

Alice, can you just confirm, is this the third deferral or better said, can we verify how many deferrals we have had at this point including this request for deferral.

Community Development Director Wakefield:

I think this will be the fourth, if deferred.

Councilmember Zahner Bailey:

I have asked this Council and our staff in the past, when we have gotten into a situation when we have continual deferrals to consider what we might want to do so we are not wasting tax payer dollars or the time of our staff or this body. I do think at some point we need to have some parameters, if we do not get the data we need then perhaps we need to move along. Again this is not the first time we have been asking for this information and this is the fourth deferral, I would ask that if indeed we defer it this evening that we give careful consideration that whether or not we would defer it yet again and if so that we would have evidence as to why we have had to continue to defer given the amount of time that has transpired.

Mayor Lockwood:

Are there any other questions for staff:

Councilmember Tart:

I guess my question is what is taking so long?

Community Development Director Wakefield:

Basically, this is a person who is not familiar with the process and we have asked for a survey and site plan with some clarity that he has been unable to provide to us. The site plan that was submitted since the June 15th meeting did not meet staff's expectation. It did not address the concerns we have showing the exact locations of the building and the buffer so we have provided the applicant with a list of surveyors that he can pick and choose from and told him these are some folks you might need to talk to bring us back a site plan in which we can make a good recommendation.

Councilmember Tart:

So it is not something we need to get from another municipality or anything.

Community Development Director Wakefield:

No.

City Attorney Jarrard:

Mr. Mayor may I ask a question?

Mayor Lockwood:

Go ahead.

City Attorney Jarrard:

Ms. Wakefield, do we anticipate that by the time this comes around again that they will likely have the information to your satisfaction.

Community Development Director Wakefield:

We do.

Mayor Lockwood:

Ok, do we have anyone here to speak?

City Clerk Marchiafava:

I have no one speaking in support of or in opposition on this item.

Mayor Lockwood:

We will close the public hearing then. Is there any more Council discussion?

Motion and Vote: Councilmember Hewitt moved to defer U09-01 / VC09-01, 13120 Arnold Mill Road, by Frank Schaffer, The Landscape Group, Inc. - To obtain a use permit for a landscaping business on 1.74 acres at a density of 3,908.04 square feet per acre (Article 19.4.27). Applicant is also requesting 3-part concurrent variance: Councilmember Tart seconded the motion. The motion passed unanimously 7-0.

City Clerk Marchiafava read agenda item 09-836.

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

Community Development Director Wakefield:

This is also an applicant requesting a use permit for a landscape business and I am happy to say that this applicant provided staff with everything that we need. This applicant has been before this body several times and mainly because of the need for concurrent variances so therefore it had to go back to the Planning Commission. The recommendation of the Planning Commission is approval of the use permit, approval of parts 1 through 3 of the concurrent variance and that is the recommendation of staff with the exception that staff's recommendation is denial of parts 2 and 3. Now I will turn it over to Ms MacDonald.

Senior Planner MacDonald:

I just wanted to go over some items since the last time that this was before you. Basically as Alice said we went back to include some concurrent variances as well as for the applicant to complete an updated survey. This was the original survey that was based on a survey from 15 years ago and there is one in your packet of one that was just conducted. Let me just go through the staff report and report to you our findings. First I want to go through the site plan analysis, part 1 of the concurrent variance to allow access from Taylor Road, a local street. Due to sight distance, volume, speeds and safety concerns, the Taylor Road Driveway is the recommended entrance/exit rather than the Birmingham Highway Driveway for this landscape business. Attached to the report is the public works report on this issue. Public Works recommends the use of the driveway on Taylor and recommends that the owner provide a line of sight easement and a vegetation and fencing that may encroach on line of sight. Since the time of this writing, staff, public works as well as Mark Law, the arborist and myself have gone out to the site and determined that the area of line of sight, there is no specimen sized trees and that basically 10 feet inside of the right of way should be cleared so we have that all taken care of as far as what needs to be done and it will not affect any specimen trees. Based on the fact that the access is not considered safe, the small number of trips per day and the applicant's agreement to having all of the trips related to the business use Taylor Road entrance, staff recommends approval conditional part 1 VC09-02. Going on to the landscape strip and buffers. Article 12h3 section A1 states that all property shall provide a minimum 10 foot landscape strip along all public streets. It appears the applicant meets this requirement, furthermore Article 12h31

section C1 of the Northwest Overlay District requires a 50 foot wide undisturbed buffer and 10 improvement setback which shall be located adjacent to all AG 1 zoning districts and all property zoned to user developer residential uses. Part 2 of the concurrent variance is a request to allow the existing structure gravel drive and septic system to encroach into the 50 foot undisturbed buffer and 10 foot improvement setback along the south property line as shown. Part 2 of the concurrent variance was added on April 18, 2009. The applicant submitted a new survey on May 26th to the Community Development Department and the survey indicated that the building used as storage adjacent to the parking and the septic field is outside the 50 foot undisturbed buffer and 10 foot improvement setback. At the time the applicant thought that was going to be inside the buffers so once the new survey was done it showed it was outside of it, therefore a variance is not needed for the main storage building and septic tank or as well as the septic tank and the septic tank is the cross hatched area if you look at your site plan in your packet, this is not the correct site plan, I do not have a good blow up of it right here but I know the Planning Commission was trying to figure out what everything was but basically the septic tank and the main building is not in the 50 foot setback buffer or 10 improvement setback but the small shed greenhouse is located, it is bisected by about 5 feet on either side. It straddles that 50 foot setback. Although this encroachment does not appear to have a negative impact on the adjacent property to the south, that is the greenhouse shed. Based on the revised variance considerations approved by the City Council on January 21, 2009, this request does not meet all of the variance considerations to support this reduction in the buffer for an improvement setback. Staff notes that it appears the structure could also be relocated outside the 50 foot undisturbed buffer and 10 foot improvement setback therefore staff recommends denial part 2 VC09-02 to allow the shed greenhouse to encroach. If the Mayor and City Council chooses to approve this part of the concurrent variance a condition to allow could be included in the recommendations. This is the portion that the Planning Commission recommended to approve based on further discussion with the applicant, the greenhouse is a custom greenhouse made of glass, it is not your plastic over a frame type of greenhouse, also the applicant has a letter indicating from the adjacent property owner that most affects support for that greenhouse encroach at possibly 5 feet. The building in regards to building setbacks, the zoning ordinance requires a minimum front yard of 60 feet along Birmingham Highway and Taylor Road and a side yard of 25 feet is required along the south property line. Staff notes that triangular lots do not have a rear yard. The new survey indicates that the existing home encroaches into the side building setback. It is considered a grandfathered nonconforming structure since it was built in 1951 prior to the Fulton County Zoning Resolution. Article 12h of the Northwest Overlay District requires a maximum 30 feet building setback from the edge of the required landscape strip and/or easements for all properties and lots located adjacent to public rights of way and from 0 to 400 feet intersection. In staff's opinion it appears that the applicant has met this requirement for existing structures. Article 19 of the zoning ordinance use permit standards requires all use area structures other than parking and pedestrian parkways shall be located at least 50 feet from any adjoining residential district or AG1. Part 3 of VC09-02 is to allow the existing structures along the south property line as shown on the site plan to remain within the 50 foot setback adjoining AG1. Again this variance was added on April 28, 2009 and once the new survey was submitted it indicated the building used as storage is outside of the 50 foot setback adjoining AG1 therefore variances is not needed for the main storage building. Since the home and associated driveway has access from Birmingham Highway is not utilized by the landscape business, they can remain in the 50 foot setback adjoining AG1. Staff notes the house shall not be used as an office for the business but remain a residential use which will be reflected in the recommended conditions. The small shed greenhouse encroaching in the 50 foot setback adjacent to AG1 by less than 5 feet. Although this encroachment does not appear to have a negative impact on the adjacent property, based on the revised variance considerations approved by the Mayor and City Council on January 21st, this request does not meet all of the 4 variance considerations to support this reduction in the setback. Staff notes that it would be difficult to relocate the custom glass greenhouse but could be removed completely therefore staff recommends denial part 3 VC09-02 to allow the shed greenhouse to encroach into the 50 foot setback. If the Mayor and City Council chooses to approve this part of the concurrent variance condition to allow it could be included into the recommended condition. Again this

was the second part that the Planning Commission supported approval of the part 3 of the variance. Based on the observations that staff made that it does not appear to have an impact and this business has been existing for 15 years. Screening and fencing, a gate fence is located along Taylor Road. The fence is permitted pursuant to Article 12h3 which allows opaque fence for loading areas. Design Review Board recommended additional planting along this area but the public works department required the applicant to clear the vegetation along fence and to relocate the fence along Taylor Road. After the transportation engineer, arborist and planner visited the site it was determined that the portion of the fence furthest from the gate could be removed and additional plantings would provide the necessary screening of the landscape business from the road. Staff notes that there are no specimen sized trees in this area. Basically what could happen is the 10 foot right of way, within 10 feet would be a clear zone but Mark Law has said that there could be additional plantings past the 10 foot clear zone to help in the winter time because in the winter time it could show something but it is still very heavily wooded but they need some evergreen type planting in that area. The site plan meets all of the parking requirements, again the arborist in his statement says the applicant has no plans to remove any trees on the subject site as far as specimen size. Overall the site is heavily vegetated with small caliper hardwoods and pines. Where the plantings are sparse, plantings will be required to meet the buffer standards. There are two specimen trees on the southeast portion of the site. One 28" oak and one 37" oak. They are both in healthy condition and will not be affected by the project. The use overall is consistent with the land use or economic development plans adopted by the Mayor and City Council and it is consistent with encouraging development, consistent with the surrounding scale, transition of densities and uses and comprehensive plan policies were appropriate. It is compatible if developed with staff's recommending conditions and the zoning ordinance is compatible or it is compatible with land use and zoning districts in the vicinity. Staff notes that on August 17, 2007 Milton City Council approved a use permit for landscaping business at 1536 Birmingham Highway pursuant to U0701. The effect of the proposed use on traffic flow vehicular and pedestrian along adjoining streets, the proposed use will not generate a significant increase in traffic. In addition the applicant has agreed to limit the number of deliveries to the site to 2 per week. This is also shown in the recommended conditions. The public works staff recommends that only one entrance be utilized at Taylor Road based on sight distance volume speed and safety concerns along Birmingham Highway. If part 2 of VC09-02 is approved it is staff's opinion that the amount of protective screening will provide adequate screening for the business. Staff notes that the property is heavily planted along all property lines. Hours of operation range from 7 to 9 am and 6 to 6:30 depending on the season. This business has 6 to 8 employees. The applicant states this location is merely a holding place for plants materials and 2 trucks used for jobs. Regarding street scape lighting, it appears that the site is in compliance with 12h3 for the Northwest Overlay District regarding outdoor lighting. Staff notes the subject site required buffers and existing screening will help mitigate the impact of any possible light from the adjacent property. Staff notes the applicant does not have any plans for additional lighting on the property. Ingress and Egress to the property, the site plan indicates one curb cut on Birmingham and one curb cut on Taylor. If the concurrent variance is granted, staff recommends the landscape business be able to only access the site on the Taylor Road entrance. This will be reflected in the recommended conditions. Again, this went before the Design Review Board on March 3rd and they stated replacing the wood privacy fence with four board horse fence and gate, green fence with a mix of Evergreens, no additional curb cuts along Birmingham Highway, no expansion of current use, no additional clearing. Business should not be opened to the public and their signage. The applicant has met the requirements and the public participation plan. I just want to go over the Planning Commission meeting on the 23rd and their recommendations. One of them was, all materials stored on the site shall be placed in three sided bens not to exceed more than 300 feet. Replace existing opaque privacy fence along Taylor Road after the required clearing of plant materials as required by the public works department for sight distance. Limit the site to one dumpster. There is already a dumpster on the site. Limit the number of deliveries to two per week. They are not to exceed four landscape vehicles on the site aside from the personal vehicles when they come, just four landscape vehicles. The greenhouse and potting shed may encroach into the fifty foot undisturbed buffer and ten foot improvement setback. The greenhouse and potting shed may encroach

into the fifty foot setback adjoining the AG1 district. In inclusion, staff finds that the proposed landscape business does not have a negative impact on the surrounding uses and may be compatible with surrounding uses if developed with the attached conditions. Staff is in support of part 1 of the concurrent variance to allow access to a local street Taylor Road due to the safety and the high volume traffic on Birmingham Highway. Although staff recommends denial parts 2 & 3 based on not being able to satisfy all four variance considerations, staff is of the opinion that the existing structures do not have a negative impact on the adjacent property, therefore staff recommends approval conditional of U09-02 and approval conditional of U09-02 part 1 and denial parts 2 & 3. In conclusion that is staff's recommendations.

Mayor Lockwood:

Do we have any questions from Council to our staff?

Councilmember Thurman:

The information that was for the Planning Commission that would make their decision, has any of that information changed?

Senior Planner MacDonald:

Not since the 23rd of June, no.

Councilmember Thurman:

They had access to all this information.

Senior Planner MacDonald:

Right, I believe the site visit, I cannot remember if it happened before or after, but we were just finalizing and I think it happened after the Planning Commission because we wanted to finalize how we were going to handle the sight distance as far as what needed to be removed.

Councilmember Thurman:

I just want to make sure we all have the same set of facts.

Senior Planner MacDonald:

Yes, it is exactly the same.

Mayor Lockwood:

Do we have any more questions for staff?

Councilmember Tart:

The first one and I do not know if this needs to go to Mr. Jarrard or Ms MacDonald, but the staff's report mentioned a 3 part variance and I am cognizant of the fact that the agenda only mentions the one part of the variance that has to do with access to a local road.

Senior Planner MacDonald:

They have all been advertised. As far as sending the notices and the sign has the correct advertising.

Councilmember Tart:

But it is not on our agenda.

City Attorney Jarrard:

So the issue is that the agenda only identifies one of the variances but the others have been advertised.

Senior Planner MacDonald:

Correct.

City Attorney Jarrard:

Give me just a minute.

Councilmember Tart:

I guess I am just wondering out of the abundance of transparency, why we did not put all of the variance requests on the agenda itself. The other thing is, can staff speak to the location of the proposed elementary school in conjunction with that local road entrance. We have had a lot of concern from residents that live in Taylor Glenn subdivision about the proposed elementary school and potentially kids walking to and from school and to be a business entrance right there.

Senior Planner MacDonald:

I can address that if you want me to. The elementary school is located even off this map, it is below where Wood Road comes into Birmingham, it is just above Wood Road, so there is no sidewalks, there is no, I do not think people would be sending their kids to walk from Taylor Glen is off of this map. It is not even on this map. They have to go all the way up Taylor and all the way back down and the elementary school is further down to the south.

Councilmember Tart:

As far as school buses or school stops, we do not even know about those yet?

Senior Planner MacDonald:

No.

Councilmember Tart:

I want to go back to Mr. Jarrard. I know that you had mentioned in part D as far as the number of deliveries that will be made and this might be a question for the applicant, I do not know if you know the answer to this but I will ask the applicant. Do we know the number of vehicles that will be coming in and out of that exit? Not just deliveries, I am talking about personal vehicles, deliveries coming to the landscaping business and exiting from the business. What kind of traffic are we going to have?

Senior Planner MacDonald:

I think the applicant can answer that more thoroughly.

City Manager Lagerbloom:

I would like to jump in if you flip to where the public works department made their recommendations, which is after the package, it will show the driveway data as 8 in and 2 out and in reverse in the afternoon.

Councilmember Tart:

Ok, I see that now, that consideration is not made in the additions from staff. Deliveries are made and there is a condition regarding the number of vehicles on site but as far as the density of use and the fact that this special use permit can be transferred to someone else, there is no consideration for the amount of vehicular traffic period that will come in and out of that entrance. I will defer to everyone else. Do we have an answer on that other from the City Attorney?

City Attorney Jarrard:

The facts are fairly clear and the answer is that if it was advertised as far as, and what I mean by advertised it was a legal ad in the paper.

Senior Planner MacDonald:

Yes, I have the legal notice and there was a sign posted on both frontages.

City Attorney Jarrard:

It is not optimal to have identified all of the variances in the actual agenda publication but I do not think that would render it fatal to this action being taken by this Council being firm. So long as you have a lawful and legitimate public notice as well as a signage on the property, I think the agenda, again it is not optimal but I think you could go forward tonight if the Council wanted to defer to publish another agenda to make sure it was on there, that would be ok too, but I do believe if the Council took action tonight it would not be forward or reaffirm action based on the agenda not being exactly precise.

Councilmember D'Aversa:

Robyn, staff made note that there was a landscape business on Birmingham Highway, is that entrance on Birmingham Highway?

Senior Planner MacDonald:

It was.

Councilmember D'Aversa:

How many vehicles?

Senior Planner MacDonald:

It was a very small office and I do not even know if they do very many, I do not think that he really stored a lot on his property, so it was more for an office.

Councilmember D'Aversa:

I just wanted to point that out because...

Senior Planner MacDonald:

The site distance would have been different, it is just a part of Birmingham Highway. It is still not great but I think it was a better sight distance than this property.

Councilmember D'Aversa:

Right, I know that staff puts into the report that there was not much public comment regarding this.

Senior Planner MacDonald:

Right, there was a gentleman came in, an adjacent property owner and he had some questions, and there was property owner, not this one, but he is a developer and he just had some questions and I clarified what the variances were and he was not in opposition after it was clarified what was going on.

Councilmember D'Aversa:

So staff has not received any comments other than the comments from the community that was here. They felt that this was going to be a challenge for the kids from the elementary school getting on the school bus.

Senior Planner MacDonald:

Right, and as I said Taylor Glen is not even on this location, it is further south down Taylor. It is even off this map. It is not adjacent to it at all. The Planning Commission did a thorough job looking at all of the issues and I think the reasoning too for them to approve the variances was that they felt like if this was a

new proposed business that they would not have voted the way they did but based on the fact that everything was existing and it has been there for fifteen years, they felt it was a hardship in their eyes to allow those particular parts of the variances to be approved.

Councilmember D'Aversa:

I think the reason that the variances are coming before us is it has been operating but not properly. My concern is because staff seems to have gotten the same information as Council and I believe a lot of us have gotten a lot of information from citizens about their concerns so I wanted to point that out.

Senior Planner MacDonald:

I have not received anything.

Mayor Lockwood:

Ok, are there any other questions?

Councilmember Zahner Bailey:

I guess I am a little confused about our process this evening. I am typically accustomed to the applicant provide us a presentation as opposed to just a summary from our staff so I am not sure where we are in the process. I feel like we are already in the applicant's presentation so I would ask as a point of order to clarify.

Mayor Lockwood:

I will clarify right now, we are having questions for staff and then the applicant can make his presentation.

Councilmember Zahner Bailey:

Thank you Mayor. I would like to go back to the first question that was raised which is really about legality. I wrote down when you said, City Attorney that it was not fatal that we do not have a proper agenda. I would hope that this body does not have to have something that is fatal before we make good decisions that represent public transparency. I recall when we were here before and our staff had not appropriately identified all three variances. The reason it was deferred at that point was that the agenda only identified one variances and I believe that much of our public sometimes goes to our web site in order to identify what the items are in fact are and I believe that we in fact promote our web site as a mechanism as a really strong positive mechanism for public information and if what is being told to us this evening is that in fact that we do not have a consistent amount of advertising between the agenda and what was perhaps publicized on site, I will combine that with the fact that we also heard in the chamber from citizens before that the signage was not appropriately posted historically because I think of the color of the sign and how it was posted, if you combine those two things I would just ask us with caution and with public transparency always hopefully being at the forefront of how we make decisions that we are willing to defer another case because the applicant has not provided enough information that it would be in the best interest of all citizens that are interested. We took caution and simply gave the appropriate amount of time for our staff to appropriately collect the variances on our agenda and to me that is something we need to decide before we even get into this case. I realize that it is now been publically advertised but it has not been advertised correctly so I will just speak for this one Council Member. I would not be comfortable pursuing and making a decision this evening knowing that it may not be fatal but the fact that we are going to use fatality as a decision about making good decisions as a member of this body I could not possibly continue to make a decision on a case that has not been properly advertised.

Mayor Lockwood:

Thank you. If there are no other questions to staff we will let the applicant make their presentation.

Councilmember Thurman:

Mayor, I just have one quick question. I just checked our city web site and when I clicked on the agenda it

brought up all of the variances with the agenda just like we have. I assume that had been posted.

City Clerk Marchiafava:

That is correct it is posted on our website. There is a difference as stated between the actual wording of the item on the agenda with the...

Councilmember Thurman:

If they click on that item on the agenda they can look at all of the detail with all of the variances.

City Clerk Marchiafava:

Yes, all of the items are attached.

Councilmember Thurman:

So if there was anyone who was really interested would have all of that information.

City Clerk Marchiafava:

Yes, it was available.

Councilmember Tart:

So the agenda that is on the web site is correct and the agenda that we have is not.

City Clerk Marchiafava:

No sir.

Mayor Lockwood:

I would like to move forward with this presentation.

Councilmember Tart:

Well I would like some clarification as far as how this...

Mayor Lockwood:

After the presentation, I will give staff time to clarify that.

Applicant Robb Nestor 15150 Birmingham Highway:

I am confused about a few things. The sign was given to me by the City so as far as the color I had nothing to do with it. The signs were posted where they were told to be posted. Everything was advertised. The new issues that have come up since the last two meetings were brought up by your attorney and like Robyn said after the site plan came through, those were not even necessary because the building structure was within the 50 foot buffer so I do not understand the big concern or discussion. As far as the school, I work in a lot of subdivisions around there and I have to tell you, every parent picks their kid up either at the school or at the entrance of their neighborhood. If you have been to my site and on Birmingham Highway as a parent, if you let your child walk from that school to your house, you are taking your child's life because you do not want them walking on Birmingham Highway.

Mayor Lockwood:

At this point do we have public comment?

City Clerk Marchiafava:

That completes public comment in support. I do have one in opposition.

Diane Maloney, 14430 Wood Road:

This has been an interesting evening. I am in opposition but I just want to bring up a couple of points. The biggest thing is I am worried about a precedent that might be set. If we are going to allow this, you can have businesses in any residential area and it is a can of worms I do not think we want to open but the other thing is I want to reach out because we live in Milton and I feel like we need to be good neighbors to each other and I do not want to come up and just oppose something and not offer a solution so I do not know if any of this is possible but just trying to find a solution. I do not know if it is possible, I think the big thing is the trucks going in and out of the business, I do not know if the City has any property where maybe he could store his trucks, I know that maybe sort of a farfetched thing but I think we need to try and work together to try and solve this and the other thing I guess just maybe I do not understand this whole special use permit thing and if that stays with the property the big thing is he only has a few trucks now and yeah they may not make a lot of trips but if that special use permit stays with that property, his business may grow, he may sale it and we do not know what is going to happen in the future and we really need to be aware of that and think about what might happen in the future so it is really the precedent that I am concerned about. The other thing is they whole site thing on Birmingham, it is just really unfortunate that he cannot have his entrance on Birmingham because I think that would solve a lot of the safety concerns but I am very concerned about the precedent that would be set. On the other hand I understand you have been there for fifteen years and like I said I just wish that there was some way we could work all of this out together because we are neighbors but as a citizen I look to my Council to really do what is right in the best interest of everybody and especially long term. I do not know, maybe if somebody could let him park the trucks somewhere, even on city property and maybe he could do some landscaping for the city at low cost or something but I do not know I just wish we could work something out but on the other hand that whole legal precedent issue is very scary. Thank you.

Mayor Lockwood:

Is there any other public comment?

City Clerk Marchiafava:

That completes public comment. Both parties have time if they would like to speak.

Applicant Robb Nestor:

I can appreciate her comments, as far as trucks routine what I have and do not have, there is less trucks coming out of my business than there are on Birmingham Highway on both ends of the property and semi trucks also. I do not think really the trucks are the big issue.

Bill Reynolds, 11770 Haynes Bridge Road:

I work with American Gardens. I think that some people do not understand and I appreciate her comments as well but we are already putting conditions on the property or agreeing to put conditions on the property to help with the situations for future owners of the property. For example, limiting deliveries to two times a week - Originally the Planning and Zoning or whatever the last meeting was, we have been to so many said two deliveries a day and we said, we do not even need that many. We said two a week is enough for us because we get deliveries to the job sites and also part of the condition is not to grow the business any more. I do not think there are many people including yourselves who are saying we are not going to grow our business so we are agreeing to do that and also as far as precedent, the precedent has already been set. I think that what the City wants to do is for future businesses is to say that they are trying to gear, it looks like toward landscape businesses in particular that if you want to say no more landscape business in agricultural areas and only commercial areas then create that but right now the precedent has already been set. We have been conducting business for fifteen years as good neighbors.

Applicant Robb Nestor:

To follow what he was getting at is we worked with Planning and Zoning in the last meeting to address

the future use of the property since the land use would stay with the property and we let them know what we were requiring and like he said they were offering more to us and we said no we do not need them. You could limit those things so later on down the road, twenty years, if I sold it or what have you it would still have to maintain as a small small business so we were trying to work with the City since we have been there and we can appreciate the City's concerns and the neighbor's concerns. That is why we have landscaped it the way we have, that is why we have not put the sign up because we are all concerned about aesthetics and traffic and I think if we limit some subdivisions that might help with traffic too.

Mayor Lockwood:

Is there any other public comment? I will close the public hearing and before I open back up for Council discussion I will ask the City Attorney if there are any different thoughts on your recap of the agenda.

City Attorney Jarrard:

Nothing different. I stand by my original recommendation. It is not fatal, I do not know the history as well as you may know it with respects to the satisfactory ads on the property but I am assuming that everything else was done appropriately and if that is the case then I think all three items are fair game. The purpose of the agenda is to produce reasonable notice on the subject matter to be discussed this evening and that coupled with legal ads and that coupled with the signage satisfying is optimal but you want your agenda to accurately identify everything but I am looking at it from the standpoint of defensibility and I am satisfied.

Mayor Lockwood:

I will open it for Council discussion.

Councilmember Tart:

For the applicant, I guess I am wondering why and I want you all to know that I am going to make my decision as if you were a new business coming before us to ask for a use permit but I would like to know why it is until now that you ask for this.

Applicant Robb Nestor:

Because I did not even know I needed this land use permit. I have been there fifteen years, I have dealt with Fulton County, I have had business licenses with them and no one has ever told me this is what I needed to have. If they did I would have applied for it a long time ago when the neighborhoods were not around and it would have been a lot smoother, trusts me. It is real frustrating to me and the other thing is what is amazing to me, we are getting upset because the other landscape company wants another deferral, why would you want to defer me again when I have been through nine meetings already and I have presented everything on schedule in detail so why would we want to continue this and I wish you would consider the fact that I have been there fifteen years and that I have not had any issues, with the City, with the neighbors, with nothing. I could have put a sign up years ago, I could be asking for a sign. I could have cleared trees, I could have done all kinds of things but the proof is in the pudding. You see my structures, you see what I have and how I have been operating. My track record speaks for itself so I wish you would consider the fifteen years. I think it is only fair.

Councilmember Tart:

I think from my perspective, this is not necessarily to you but to Council as well, what I have a problem with and I will consider this based on as if you were a new business coming before us with a special use permit. I guess the problem I am having is this discussion of the fact that it is a hardship that you need to have this entrance and exit onto Taylor Road and there are safety issues on Birmingham Road etcetera because I understand that no every piece of property in Milton is designed or intended for every use that

we can throw at it and just because you have been operating this business for a long time illegally, it does not necessarily give you special consideration because you have been doing that way for years.

Applicant Robb Nestor:

Ok, but I would like to address that because first of all, to me I have not been operating it illegally when I dealt with Fulton County and I have done what they required and I have paid my taxes to the City of Alpharetta which was the City then, not Milton, I do not see where I have been operating illegally as far as I see it. The other thing, I did come out of Birmingham Highway, when I opened that business fifteen years ago and the city grew and grew and grew and I had access to Taylor Road and that is why I went to Taylor Road. If you went to my site and you saw how the state department designed that road and laid it out it is safer to go out on Taylor Road. If you decide for me to come out on Birmingham Highway, I will do it.

Councilmember Tart:

I have been to the site and I also know that our standards have been designed to ensure public health safety and welfare of all of the residents in Milton and not just your business or the businesses around you and in terms precedent, what I am looking for is that you have a hardship that prevents you from operating as if you were a new business, you would come to us and say, City Council I would like to operate a landscaping business. I want to use this piece of land but in order to do that I am going to have to enter on this local road and our Ordinance clearly says that because of health, safety and welfare of all of the citizens of Milton, you cannot have an entrance onto a local road and have a special use permit for landscape businesses. It is not that we do not like landscaping businesses or anything like that it is specified in our Ordinance that that is a requirement. There is a reason for that so if I am looking for that variance request for the business, my answer would be, you know you do not have a hardship. Maybe that is not the piece of land that you need to be using to operate that landscaping business because there could be safety issues. One of the questions that I asked staff leading up to this is, is there a way for you and in the interest of trying to figure out a solution, is there a way for you to operate safely and use Birmingham Highway as an entrance or exit and the answer that was given by staff and I do not know whether staff wants to speak to that or not is, there could be ways but yes you would have to go get GDOTs approval if they would even give you that and you would have to come across with some money to make that road safe for you to exit and enter. That would allow you to meet our standards and it would allow you to operate the business legally within our standards and it would not set a negative precedent going forward for any other landscaping business in Milton that wants to enter into a local road. The answer they gave was yes, you could do that but you would have to get other approvals and you could potentially come out of pocket some expense to make that safe and I was wondering whether City staff could speak to that opportunity.

Carter Lucas, Principal Engineer:

That opportunity does exist. If the access to Taylor Road were denied, the primary access onto Birmingham would have to be improved to commercial standards so you would be looking at approval from GDOT. Whether they would require that to be a right in/right out only or installation of a left turn lane into the facility would be subject to their judgment and so it would cost associated with both construction and engineering to obtain that permit.

Councilmember Tart:

Your report says that the turning off, the sight distance to the left meets the requirement but it is the right that does not, correct?

Principal Engineer Carter Lucas:

That is correct.

Councilmember Tart:

So what potentially could be done at the intersection to make that safe?

Principal Engineer Carter Lucas:

Again, one alternative would be a right in/right out with a figure eight where you can make a left into the facility from Birmingham Highway and you can make a left out of the facility but you are only making that right turn movement in and out of the facility. The other alternative could be installation of a left turn lane which would provide you some refuge, making an exit, go and turn left on Birmingham Highway and would allow vehicles turning left into the site to move out of the through lane.

Councilmember Tart:

So if they turned right out of the landscaping business and they could not turn left into it off of Birmingham Road, they have to take a right, then they would meet the safety as it is now.

Principal Engineer Carter Lucas:

It could.

Councilmember Tart:

Without having a variance that could potentially set a precedent going forward.

Principal Engineer Carter Lucas:

It is all subject to GDOTs review and approval.

Councilmember D'Aversa:

Potentially my concern quite frankly is I do want to support local business and you continue this business in Milton but my concern is Taylor Road entrance and I am really more concerned because I think our staff should have recommended that you have your entrance on Birmingham Highway. It sounds like it is not as difficult as was thought as Councilmember Tart has very well articulated. I know that GDOT has an approval time frame for these kinds of things but I am very concerned about that entrance from Taylor Road and we do not have the folks here tonight but that is because we deferred and I am not sure we deferred based on the Council's needs to defer. We deferred this when we did have the public here from that area with their concerns about it being on a local road. My concern has always been and not just for Taylor Road but because it may set a precedent that other local roads and other landscape businesses and we have a lot of those in Milton, may choose and our staff may choose to ask that they have an entrance and an exit from a local road.

Applicant Robb Nestor:

I am open but I am also very cautious because you get more state and city people involved and I just cannot afford that.

Councilmember D'Aversa:

I understand that.

Applicant Robb Nestor:

I have already spent so much money now and time.

Councilmember D'Aversa:

Again, I am asked to make decisions for our citizenry and I know you are concerned too, we are trying to make this work and I think Ms Maloney articulated very well we want to make this work.

Applicant Robb Nestor:

I am confused because down the street where there are retail businesses and having semis pull of Birmingham Highway causing traffic tie ups and slow ups and having to cross the main highway there and here I am just two little landscape trucks pulling out taking a right turn, always pretty much a right turn. In the twelve years I have been on Taylor Road I do not think I have ever taken a left turn.

Councilmember D'Aversa:

That is my point, on Birmingham Highway, that is why I asked about the other landscaping business too, it does not seem to me that is such a challenging situation to ensure that the entrance to this business from a highway that is adjacent to...

Councilmember Hewitt:

I can understand everybody's comments about Birmingham Highway. I am personally not so sure that would be a, even from a right in/right out would be a safer entrance and exit. I think something that we are perhaps missing is that going off Taylor Road we are able to get some pretty good restrictions here with limiting deliveries etcetera. We may be missing the forest for the trees and be able to restrict this by coming off a local road versus having less reign over it coming off of Birmingham.

Applicant Robb Nestor:

That is a good point.

Mayor Lockwood:

My comments are unlike Councilmember Tart, I am looking at this as not being a new business, will certainly look at it differently and make sure it meets our Ordinances but as a fifteen year property owner, good neighbor, tax payer who is trying to operate his business. Maybe I have more experience personally than some people here dealing with GDOT, no offense to them but I do not know that I would ask my worst enemy to get involved with that and then you have to go to the expense. It may be easier to put a helicopter pad in there and deliver the materials.

Councilmember Lusk:

I have three different things here. I am somewhat confused by Councilmember from district 6 mentioning hardship. We did not read anything in the report that addresses a hardship but be that as it may. I refer to the report in recommendation by our own public works department in particular to the analysis of a Birmingham Highway entrance and exit and the last statement on the Birmingham analysis reads sight distance to the right or south on Birmingham Highway is limited by the vertical line sight grade of the roadway. Talk about health and public safety and welfare, GDOT and public works are concerned about sight distances. The sight distance to the south on Birmingham Highway. It does not conform to design standards and we certainly would not want to recommend that we do something contrary to GDOT and the design standards. I can understand the residents on Taylor Road maybe not wanting a commercial driveway coming off of Taylor Road, however, when public works recommends the use of the driveway on Taylor Road based on good engineering, sound traffic engineering principals, I find it difficult to recommend against public works recommendations.

Councilmember Zahner Bailey:

First I would like to just verify the comment earlier about the deferral ties to the fact that the public process at least from my perspective always should be to most transparent and the fact that tonight we were made aware of the fact the agenda was not appropriately publicized. That is not an applicant issue. That is an issue for our staff and for us to be able to access legally. I will always air on the side of caution to public notification. Secondly I would like to address the point and the question about the sign. The last time that we were here and when we had some citizens that mentioned their concerns with not having seen signs that were posted. Again it is not that the applicant did not post the appropriate signs, it is that

we had citizens before us that asked that the signs be modified so that they would be more readily readable because I think that many people felt that they were not and that they continue to not be as readable whether those be this application or others. So, those are two separate issues that from my perspective still deserve attention. To the case at hand, I remain concerned that we have an agenda that is inconsistent with what was publicized. We do not know what is on the web site, what was not, when it was actually posted, when it was not and again I will always air on the side of having the most transparency possible. To the point that I just heard about hardship, I would agree that the analysis of our staff does not speak to hardship and more to the Planning Commission and I listened to the web stream of that site. There is no hardship on this site and in the past, hardship has typically been the basis, if it can be proven hardship when variances for special use permits needed to be applied so I would like to say that indeed there is not a hardship here, the analysis does not speak to a hardship so any assessment of variances from my perspective would be void of hardship because this is not a hardship, so just to make sure we are being clear. In terms of underlying special use permits and the standards that are in place, it is part of section 19.4, at least that was always the section that Fulton County and I believe we adopted that same standard in terms of special use permits is that it is very clear that a special use permit can be considered only when certain development standards are in place and I think the difficulty with this that unfortunately this particular application does not necessarily meet those standards and that is why there is three variances is because the applicant as much as individually we feel for you from a legal perspective I think there is an issue. I hear from a number of Council Members is the fact that the application before us does not meet the legal representation and legal requirements as put forth in our special use permits which is a legally binding policy that this body has adopted. I struggle with that because I think I am known for consistent application of the law. Where I have a difficult with this application is that it does not meet those standards. Primarily it is asking for access to a local road. One of the first things under that special use permit requirement is that a special use permit will only be allowed if it does not access a local road. I struggle with that. I think it does indeed set legal precedent. It concerns me and I do believe that while I do indeed appreciate the fact that there has been a business operating there, the realities that those requirements were in place with Fulton County as well so those are not new requirements. Those are requirements that have been in place and have been a requirement of the law. In terms of public safety weighing in, I do not read the interpretation of public safety that saying special use permits should be approved. I read that to say if it was going to be approved the only way they felt would be safe short of going to GDOT would be off of Taylor Road. I do think in trying to seek a solution is that it would be helpful to have sought the input of the Georgia DOT because that would remove that as a variance. We have heard from our staff that they recommend denial of the other variances in terms of encroachment of the buffer and I would support denying those variances because I think again when we look at a special use permit it needs to meet the standard. It needs to meet the law. When it does not meet the law we are not upholding our policies. Part of my question going back to Mr. Lucas, if we wanted to pursue a dialogue with GDOT, what would that process look like, how much time would it take and could we get an answer from them before we make a final decision so that we could really better access what options might be there for this applicant and still be consistent with the law.

Principal Engineer Carter Lucas:

I think we could put a conceptual plan before them. How long it would take them to respond to that is really subject to their own workload. There is no set timeframe for them to reply to some sort of conceptual plan. Part of the problem is how we have defined local roads. Taylor Road is a 45 mph road, almost all of our roads within Milton are generally considered local roads although they are not all residential roads so you have a local road designation on a road that is not necessarily a residential subdivision type road and a lot of those Ordinances are subject to restrict access. So, from public works standpoint when we reviewed it, while there are things that could be done to make the Birmingham Highway entrance safer, the better entrance was from Taylor Road and GDOT will sometimes look at those different alternatives and say, short of other alternatives access to this property, here are some things that could make that driveway on 372 a safer access point. They may look at it and say, you have access

and you have had access from Taylor Road, therefore, you have an alternative access to this property and you do not need access to 372 so it is possible they could deny it just straight out.

Councilmember Zahner Bailey:

I believe we have some other situation whereby we have taken a conceptual site plan to GDOT, we have something I think over between Frances and Highway 9 and we have embraced the opportunity to take a conceptual site plan in that instance so again in the hope of being a consistent body it would seem that we established some policies for ourselves whereby we said, gee if we think there is an alternative that could be a positive solution for applicants but also a positive solution for public safety, health and welfare for the greater community. I heard Councilmember D'Aversa talk about that as I did Councilmember Tart and I think that is really important is that we are here having to look not just as individual property right but at collective property right and the impact of all of those which is why we have policy and development standards. As an example if we were to ask for some input from the Georgia Department of Transportation and if we were to defer based on good legitimate data that we would need to acquire, I am assuming that obviously things would remain, the process would continue, the applicant would continue to operate until we got sufficient information. Is that accurate?

Principal Engineer Carter Lucas:

As far as them operating?

Councilmember Zahner Bailey:

Yes, it is my understanding that they can continue to operate even though they were in violation of code enforcement but that code enforcement basically is stayed until there is resolution by this body. Is that correct Mr. Jarrard?

City Attorney Jarrard:

I would defer to the City Manager but I think it would be fine from my standpoint.

City Manager Lagerbloom:

That is correct.

Councilmember Zahner Bailey:

So if there was a willingness by this body to try to look for a solution that would avoid having access to a local road primarily because our development standards and policies is adopted by this board so that we should not have a special use permit off of a local road. It would be reasonable that we pursue that dialogue because I hear you saying that we have not yet done that.

Principal Engineer Carter Lucas:

That is correct.

Councilmember Zahner Bailey:

Also I do want to speak to the comment just made about Taylor Road. I think that the folks that had addressed us here in this chamber previously and those from whom I have received a lot of letters and phone calls, they consider Taylor Road a residential road. There are subdivisions, there are farms, and there are residences so I just want to be true to the folks that live on Taylor Road who believe that that is their residential road. I would not want to give the impression that we do not consider that a valuable local residential area of our community because indeed it is. Consistent application of the law, I really believe we need to pay attention to consistent application of the law. Staff sited a special use permit on Birmingham Highway. I am a little perplexed that there was not mention of a special use permit that was denied on Hopewell Road across from Champion's View. Hopewell Road is probably less of a local road than Taylor Road and yet you could make the argument that it had access to a road, my point being that is a special use permit was denied for a similar business because it had variances being requested but in part

there are consistent applications from that perspective that those variances were in place and therefore it was denied because it did not meet the development standard so I would hope both tonight and going forward that our staff would look at all of those scenarios for similar applications. I am concerned, I do feel for the applicant. I understand that there has been a situation, unfortunately according to the law it has been illegally operating. I understand that you do not like that word but in terms of code enforcement that is the situation that we have to deal with and the reality is the precedent is a grave concern to a lot of citizens that live in Milton.

Councilmember Thurman:

Just a couple of things, number one, I would like to see us, next time we update our zoning ordinance look at what a local road is. I think that is causing a lot of issues here. I believe there are houses and farms on Highway 9, on Birmingham Highway, on Arnold Mill, so does that determine what is a local road and what is not. I really think we need clarification. I believe the initial intent of a local road was more of a subdivision type road but not a road that had any kind of through traffic which this road does have. Personally we talked about how we want to make sure maintain the rural character of the area. That is something we hear over and over and over again, how important the rural character is and this kind of small landscaping business is very much rural character. This is what you see when you go to any true rural part of the area. I think that the Planning Commission went to great lengths to make sure that this business maintained that rural character and it was not allowed to grow to become a huge commercial business that could lose that rural feel to it that it would have. I wish it did not have to have the variances, to be honest bothers me more than anything because I do not see any real hardship as much to the variances even though there is really not any, they really are not hurting anything, it would just be a lot easier if we did not have to have the variance considerations as part of this. I can very easily see how you can operate fifteen years, I am sure Fulton County has been giving you business licenses and everything else and dealing with them I am not surprised that they suddenly realized you had a business when you have had a business license for years. That happens in Fulton County and I think we are seeing over and over again where we are catching these things that Fulton County never did and you are right it would have been a lot easier fifteen years ago to be able to go through Fulton County and get it. At that time there was not nearly as many people up there and we would not have had a lot of these issues.

Mayor Lockwood:

Ok, do we have anyone that would like to make a motion?

Councilmember Zahner Bailey:

I will put forward a motion. I would put forward a motion that we defer, but before I do this, Mr. Lucas how long would it take to take a conceptual site plan to Georgia DOT? To take it to them and then to get something, thirty days, sixty days, we will be back in sixty days talking about another case for different reasons but would thirty or sixty days...

Principal Engineer Carter Lucas:

We could contact them but time for a response, I am not sure I could give you an accurate time.

Councilmember Zahner Bailey:

Would you be more comfortable with a thirty or sixty day period for GDOT?

Principal Engineer Carter Lucas:

I do not know that we would need any more than thirty.

Councilmember Zahner Bailey:

And the thirtieth day Ms Marchiafava, which meeting would be our next meeting after thirty days?

City Manager Lagerbloom:

I do not think that thirty days would get us to our next zoning agenda.

Councilmember Zahner Bailey:

The next zoning agenda would be which date?

City Manager Lagerbloom:

September 21st.

Councilmember Tart:

She is talking about August 17th if she is doing a thirty day.

City Manager Lagerbloom:

August 17th does not get you thirty days from today's date. That was my concern.

Councilmember Zahner Bailey:

My question for our City Manager would be, would you be more comfortable with a sixty day deferral if we were to go and seek input from Georgia DOT?

City Manager Lagerbloom:

I am more comfortable if we go that route that it just stay on the zoning agenda. I really do not have any preference about the 17th or September 21st.

Councilmember Zahner Bailey:

Mr. Nestor if we were to defer, would a thirty or sixty day period be anymore preferable to you. Either August 17th or the 21st of September based on your schedule – September - Based on the applicant's input that between those two that September 21st would be his preference.

Motion and Second: Councilmember Zahner Bailey moved to defer case U09-02 with VC09-02 at 15150 Birmingham Highway, application by Robb Nestor to obtain a use permit for a landscaping business on 3.926 acres with a density of 387.92 square feet per acre according to article 19.4.27 along with three concurrent variances although all of those are not reflected in our agenda and that the purpose of that deferral would be to seek specific input from the Georgia Department of Transportation as it relates to access off of Birmingham Highway with the intent of seeing if we cannot come to a solution that would allow a special permit to be considered without variances. Councilmember Tart seconded the motion.

Mayor Lockwood:

We have a motion from Councilmember Bailey, a second by Councilmember Tart to defer this until September 21st. Do I have any discussion?

Discussion on the Motion:

Councilmember Tart:

I would just say that I am in support of this deferral because I do believe that our standards are in place for a reason and before we start giving variances to people who are, no real demonstration, I do think we need to pursue all legal avenues that we can possible expend before we start giving variances due to the fact that this could set a precedent.

Vote: The motion failed 3-4, with Mayor Lockwood, Councilmember Thurman, Councilmember Lusk and Councilmember Hewitt opposed.

Mayor Lockwood:
Do I have a motion?

Councilmember Hewitt:
I would like to make a motion to approve agenda item U09-02/VC09-02 to the staff recommended conditions.

Councilmember Lusk:
I second the motion.

Mayor Lockwood:
I have a motion for approval by Councilmember Hewitt, second by Councilmember Lusk. Is there any discussion?

Councilmember Thurman:
My only question, is this recommended based on staff's conditions, are you recommending staff conditions or the Planning Commission's recommendations?

Councilmember Hewitt:
I am recommending conditions that are set forth on page 19 and 20 and 23 of our packet.

Councilmember Thurman:
Because I think the Planning Commission added some additional things and subtracted some so I wanted to make sure.

Mayor Lockwood:
Could we clarify that with staff?

Councilmember Hewitt:
I believe it is the Planning Commissions.

Community Development Director Wakefield:
No, the Planning Commission, the only difference is that the Planning Commission recommended approval of parts 2 & 3 for the existing greenhouse to remain. It is not reflected in the conditions.

Senior Planner MacDonald:
So if your desire is to approve parts 2 & 3 then you need to make a motion to include the approval of that.

Councilmember Hewitt:
I would like to amend my motion to include parts 2 & 3 as approved.

Councilmember Zahner Bailey:
Can I verify Mayor? I just want to make sure that I understand the amended motion. It is to approve the special use permit with all three variances, even though staff has recommended denial of 2 of those 3?

Councilmember Hewitt:
It is to be in concert with the Planning Commissions.

Councilmember Zahner Bailey:

Including the recommendation for all 3.

Councilmember Hewitt:

Yes.

Councilmember Lusk:

I will second the amendments.

Mayor Lockwood:

I have a motion and a second for approval based on the Planning Commission approvals. Are we clear on that motion?

City Manager Lagerbloom:

Mayor, what I am gathering is that there is a motion and a second to approve U09-02 as well as VC09-02 parts 1 through 3. Is that correct?

Councilmember Hewitt:

Correct.

Councilmember Thurman:

Including staff's conditions to those?

City Manager Lagerbloom:

With the conditions as noted in the packets.

Councilmember Hewitt:

Correct.

Mayor Lockwood:

Any comments?

Motion and Vote: Councilmember Hewitt moved to approve Agenda Item 09-836, **U09-02/VC09-02 - 15150 Birmingham Hwy**, Application by Robb Nestor to obtain a use permit for a landscaping business on 3.926 acres at a density of 387.92 square feet per acre (Article 19.4.27). Applicant is also requesting concurrent variance to allow access from a local street (Article 19.4.27.B.1) including parts 1 through 3 as approved by the Planning Commission with conditions as noted by staff. Councilmember Lusk seconded the motion. There was no Council discussion. The motion passed 4-3, with Councilmember Zahner Bailey, Councilmember D'Aversa, and Councilmember Tart opposed.

NEW BUSINESS

Removed by motion and vote

Approval of a Resolution adopting the Partial Plan Update, the Community Assessment and the Community Participation Plan of the City of Milton 2008-2028 Comprehensive Plan.

Approval of a Resolution to appoint two members to the Stakeholders Committee for the North Fulton Comprehensive Transportation Plan.

Resolution No. 09-07-98

Principal Engineer Carter Lucas:

This is to nominate two members from the community to represent Milton on this stakeholder's advisory committee for the North Fulton Comprehensive Transportation Plan. This is being administered by ARC to develop a regional transportation plan in coordination with five municipalities with north Fulton County. An integral part of that is the establishment of a stakeholders committee. It is a 31 member committee made up of various members of each municipality and other participating chambers of commerce, DOT, other boards. Milton has two appointees they are permitted to make. Our members would be Clyde Johnson who is the Chairman of our transportation committee and Mathew Marietta is a staff member here with the City of Milton. This is the committee that will be shaping the plan and doing a lot of in-depth review of the data that is presented by the consultant Kimley Horn. There will be public meetings.

Councilmember Zahner Bailey:

Matt is a great part of our staff and is involved with a lot of things. She does not know if historically he has been involve in a lot of transportation and asked if the City Manager could speak to why they were nominating him.

City Manager Lagerbloom:

They wanted to present a balanced team to represent the City of Milton. The Mayor and he thought that it was important to have a staff member as well as someone who was not a staff member. Matt may not have the background in transportation but he has critical ability in thinking skill and interpreting data and can represent the City well. When you partner him with Clyde Johnson, we have a really good representation for the City of Milton.

Councilmember Zahner Bailey:

Asked how often they would meet.

Principal Engineer Carter Lucas:

The first meeting will be in August, but he does not know how often they will meet.

Councilmember Zahner Bailey:

If ever there was a conflict where one of the two could not be present, asked if they had a backup plan so they could be certain they would be represented.

Principal Engineer Carter Lucas:

He does not think so because if they have not participated in the entire meeting then coming in the middle will not be beneficial for that person or for the overall team. He thinks they will try and get the meetings scheduled so the entire group can attend.

Motion and Vote: Councilmember Tart moved to approve a Resolution to appoint two members to the Stakeholders Committee for the North Fulton Comprehensive Transportation Plan. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously (7-0).

Delivery of the Parks and Recreation Advisory Board Recommendation to the Mayor and Council on use of Bell Memorial Park for Travel Teams.

City Manager Lagerbloom:

Occasionally from time to time our committees or boards have recommendations to bring forward to Council for consideration. The summary of this recommendation will be presented by a member of the board that focuses on travel teams at Bell Memorial Park. He hopes they can have public comment after

the presentation.

PRAB Member Mark Shaw:

He is the Vice Chair for the Milton Parks and Recreation Department. He will be presenting recommendations the board unanimously approved regarding the field space and travel teams at Bell Memorial. HYA has done a phenomenal job at Bell Memorial in managing the baseball program. The growth and popularity of the park has put a strain on the field space and use as the park grows. Based on the returning players and the new players there may be no field space to accommodate travel teams. The travel teams do not comprise 100% of the City of Milton residents and we believe it is in the best interest to not assume what the signups will be but to wait until the end of January 2010 so they will know what they sign ups will be from the City of Milton residents.

The Board feels if there is space available for the travel teams there would be certain conditions the advisory board would like to recommend for the travel teams to gain approval. The recommendations are as follows:

Do not extend the travel team agreement with HYA at this time. It expires in December of 2009.

Recruit Milton residents to join the HYA board vacated by travel team parents.

The city should also appoint a rec league parent from Milton to serve as the City's representative on the HYA. They should play an important role in scheduling fees and other areas that require the City's approval.

Provide field space for high school theater team as needed.

Provide field space on Sundays to select teams.

The City should amend the rec league amendment to allow HYA to offer advanced rec players the chance to compete on Sunday select teams.

After the sign ups in January in the event there is excess field space available the board recommends the City should amend the rec league agreement to permit the use of excess field space by travel teams subject to the following:

The City should have the right to approve travel teams on a case by case basis.

Adequate field space should be allocated directly to select teams and theater teams.

Preference should be given to travel teams in the oldest age group first.

Travel teams should be subject to a 70% Milton residency requirement.

Travel teams should pay fees equivalent to those paid by rec players.

Travel teams and coaches players should be selected through an open and fair process based on standards pre-determined by the city.

He thanked them for allowing the board to present the recommendations. The board fully supports the HYA, the rec league and the travel teams to the extent there is field space available for those travel teams. They hope there is sufficient field space to accommodate both leagues during the year but their

responsibility to the board is to provide recommendations that will ensure the residents of the City of Milton have priority and full opportunity to the use of the City of Milton park.

City Clerk Marchiafava:

Scott Stachowski will be speaking on behalf of the Hopewell Youth Association and has filed the necessary affidavit.

Scott Stachowski, 3154 Chipping Wood Court, Milton Georgia

HYA has successfully operated for over fifteen years. The Council has heard the report from parks and recreation advisory board and their recommendations. The issue is the perception that the park is at or over capacity with the number of teams on each field. We agree that we have a busy park and we heard this same concern last year and a crisis did not occur this spring. We feel strongly that there will be no issues in 2010. We do not agree nor support the recommendations as they were currently read. We provide detailed analysis and facts from our last five years and registration data for the citizens who participate in this program and none of this information made it into the final recommendation. He wants to share some other comments that even though they do not feel there will be a field space issue, they are taking additional steps to ensure this does not occur but to address it should it happen. They are modifying the infield grass on field two and this will allow for overflow. They are currently in the process of obtaining field maintenance quotes for the baseball field at Hopewell Middle School. They feel very strong there will be no issues of overcrowding. They hope they can work together to extend and renew the existing travel agreement and they will move forward to deliver a successful program.

Jim Cregge, 1078 Colony Drive, Alpharetta, Georgia:

He has committed a great portion of his personal time in the last fifteen years serving this community in the youth athletic programs as well as a Sunday school teacher. He is not speaking in favor of the HYA or the Park and Rec Board. When he got here fifteen years ago there was 125 kids and they worked very hard to build it up. He has coached fifty teams in every age group. He runs a team mentoring program for kids 13 and up. They give them their first jobs and they make umpires out of them at Hopewell. For the last seven years he has served the City of Alpharetta on their Parks and Recreation Commission and for the last three years he has been Chairman. The point he is trying to make is we live together, we play together, we go to school together, we work together and he is offering himself as a resource to the City of Milton and to Hopewell. He recently presided over a one year effort in Alpharetta where they discovered their travel program for soccer had gotten out of line with the City's requirements. He understands the needs of the requirements of the City and the recreations. He would like to help. The current requirements of the City of Alpharetta were an Alpharetta sponsored program and it is at a level beyond recreation regardless of the sport. It is a 50% residency and it is only for programs that are run directly be Parks and Recreation.

Councilmember Zahner Bailey:

She applauds his efforts over the last fifteen years. When he mentioned the Alpharetta sponsored programs, a team that is managed by the Parks and Recreation Department, they have the 50% requirement but if it is a non city sponsored program it is a higher requirement. Asked if she heard that correctly.

Jim Cregge:

No, the park entities pre-existed the formation of a City of Alpharetta Parks and Recreation Department so they were embraced by the city and allowed to continue to operate with some modest guidelines to work with. They are encouraged to try and meet the City requirements but they do operate at their own level. When they start to get significantly out of line they sit down and have a talk.

Councilmember D'Aversa:

Thanked Mr. Cregge for all of his support and work. One of the things we are grappling with is all of this change. The City of Milton out of all of the new cities was the only city that had one sport recreation area entity of any sort that was owned by the city and run by the association. One thing that happened was that Fulton County had required that Wills Park not have an out of residency fee and not have those percentages and that is how they got to Wills Park not requiring those percentages. Obviously the City is grappling with how we ensure that City of Milton residents that are clamoring for additional baseball fields as well as sports fields altogether. She thought it was important to point out historically what had transpired when the City was formed. Those are some of the reasons why we got to the point of charging out of residency fees and having the percentages.

Jim Cregge:

To confirm, it was in 2002 that the City of Alpharetta first started making the decision to charge out of city residency fees. This was in response to some outcries they were getting from citizens. As citizens they were paying the burden of the bonds. It was also at that time they started saying the advanced level play should have a minimum citizen requirement which moved to 50% this past November. That was to be consistent and in line with other communities around us.

Councilmember Thurman:

She would have hated if her daughter had not had the opportunity to play and if all of the surrounding places had had a requirement of 70%, she may never have gotten the opportunity to play. It leaves very little space on a team. At the same time she understands that the City has to pay to keep things up and priorities should be given the city residents. There has to be a balance but she does not think we have found it yet. Asked Mr. Cregge felt based on what he has heard and the conversations he has had if this is something that can be worked out so they do not have to choose between A or B but that an agreement with HYA and the parks board can come together on with him helping mediate it and come up with a consensus that they both can live with and that works out best for our citizens.

Jim Cregge:

Absolutely. His plate is overflowing but he is here for a reason and this is important to him. He is not on Hopewell's board anymore. He does not have any children playing and he does not have a "dog in the fight" but this is important and yes this can be solved.

Councilmember Thurman:

That is what she wanted to hear.

Jim Cregge:

He neglected to say one thing at the beginning and that is his comments and actions here are as a private citizen and he is not speaking as a representative of the City of Alpharetta.

Mayor Lockwood:

Thanked Mr. Cregge for being here and all of the work he has done and the offer to help in the future. Although this does not call for Council action there are some recommendations and in they will have some Council action needed in the future to either renew or not renew a travel team agreement which comes up in December. It sounds like the biggest concern is field space and they are addressing that. He would like to get some head nods on if there is anyone that does not support the City moving forward and trying to work with HYA, Parks and Rec Board and staff to renew a travel agreement in the future.

City Manager Lagerbloom:

Where we have grappled with the situation is we have a travel permit that is set to expire in December of this year and the recommendation right now is not to extend the travel agreement. As being an equitable

and good partner with the Parks and Rec and the HYA, he thinks they need to give some direction to the Hopewell Youth Association probably before December. The HYA are making decisions on a permit they have every right to have through December, but as he is learning baseball scheduling is that decisions made today may potentially have complications that occur if something is not renewed at the end of the year. He looks for Council's guidance.

Mayor Lockwood:

He certainly would support HYA working with staff and the Parks and Rec Board and Mr. Cregge helping out to get to some common ground. He believes the additional field space will solve the problems. We are not taking any action tonight but he would like to give some direction for staff so they can take action at some point. Asked if there was anyone on Council that would not be in favor of everyone working together even if they need a thirty day extension to see what the signups will be.

Councilmember Zahner Bailey:

She knows staff has had some questions about compliance with the facility agreement, and she hopes everyone will work together, but in terms of compliance, we have a legal agreement and they had been provided some data that indicated that separate from moving forward, she thinks they need to address the compliance issue. She thinks we have some legal requirements that may not have been met and asked the City Manager to address that.

City Manager Lagerbloom:

We have spent some substantial time making sure that the compliance data matches against the contract. There is at no point in the future that he will be able to answer the question honestly and legitimately and say yes everything is 100% in compliance. The day that it was not in compliance was the day that some deadlines were missed and they had to go after some data to be able to close the loop. He does believe that there has been a substantial attempt to comply with the contract as it exist. He thinks we are in compliance with the substantive and material part of the contract. This has been a work amongst both parties. He and Brad were not part of the negotiations when the contract was implemented. In his opinion the contract is very cumbersome and difficult to comply with.

Parks and Recreation Representative Brad Chambers:

He agrees with everything that the City Manger has said about the difficulty of following the contract. The agreements are difficult. They have a lot of different deadlines that triggers other deadlines and one does not necessarily align itself exactly and particularly in terms of registration dates. In terms of being able to adhere to both contracts, there are probably points where HYA has not followed the letter of the contract and there may be places where the city has not either.

Councilmember Zahner Bailey:

She thinks the question happened to do with percentage of residency as well as fee structure. She thinks those are the areas that pertain most to taxpaying citizens and the greatest areas to have to respond to from a contractual perspective. She thought they were going to speak to that tonight.

City Manager Lagerbloom:

As far as the rosters and residency requirements is where we had some disagreement as to what was disclosable and what was not and what potentially would violate privacy issues and if in fact the HYA had collected this data but made it aware and we started to work through some privacy issues with our attorney as well as representation from the HYA as to what was disclosable by law. We came to the conclusion that information can be provided to the City of Milton. There is no point in doing a lot of work on something if you are not going to use the data collected at the end. He came to an agreement with the HYA that they could probably go back to the drawing board and produce all of this data that we had the privacy issues with and if he gets it after the fact then there is not a lot he can do with it anyway. Now

that they agree this data is not private it is something that can be acted on in the future. To answer the question about percentages he does not have that. That would have been work done by both parties and at this point would not have been material. They have come to an agreement that in the future that information is not challenged with privacy issues and it will be provided to the City.

Councilmember Thurman:

She is confused because the whole time her daughter played in Alpharetta they had to pay a fee. When they asked her address and they looked it up, they still said she was not within the city limits and she will have to pay a fee so she does not understand why that is so complicated.

City Manager Lagerbloom:

There was some concern that we were not allowed to have the information but we have worked through that and it is not an issue going forward.

Councilmember D'Aversa:

Asked how we would determine if we were in compliance.

City Attorney Jarrard:

In defense of the contract, it was a product of both sides working on it and he does not find it will be that cumbersome. This was the first contract that has been drafted of this kind. Some things work and some things do not and some things make more sense on paper and some do not. If the Council is not interested in going forward on this there could be some provisions made. The contract contains default mechanisms and that is if one party does not perform there could be legal consequences of that. Parties to a contract have the ability to say yes I realize that you did not do that but the substantial and material portions of what we are trying to do are being performed therefore I am going to wave that requirement. He is not suggesting there has been waver here but he is suggesting to them that he thinks the City Manager has collected the data and feels comfortable with it. The bigger question that he has is that maybe this form is not the right form for this but at some point Council needs to give the City Manager and him some direction.

Councilmember D'Aversa:

Her comment is that she supports the recommendations of our board. From her perspective they have appointed members to this board and she thinks they are doing a great job. She supports them working together and making the determination along with the City Manager and staff and the City Attorney if that is something they could agree to.

Councilmember Tart:

He supports the board because they did appoint them to provide Council with recommendations. What remains paramount to him is whether or not they make a decision to renew the contract would be if we have enough space to support the tax payers of Milton. He is hearing from the board that perhaps we do not. He also hears it is questionable whether there are provisions in the contract that have to do with the percentage of Milton players on the team and whether it is being adhered to and he would like to have that information. Do we have the contract in place that provides the needs to our citizens and given we have had a contract with HYA for the last year he wants to know if they have adhered to the provisions of that contract and specifically in reference to the 50%.

Councilmember Hewitt:

He does not want to be in the business of managing baseball. He would like to see everyone work together.

Mayor Lockwood:

He thinks the HYA has done a great job. He thinks they all would first say they want the citizens

of Milton to come first rather than outsiders and they want to meet the requirements, but they are not taking into consideration at this point we do not have the ability to provide to our kids in Milton all of their sports activities and we are a stickler to only have the citizens of Milton in this park or the huge majority, then what happens to our citizens in Milton that plays softball, lacrosse, football, they have to go elsewhere. If we embrace that attitude and all of the other parks embrace that attitude then we make think we are helping our citizens by putting high percentages to only Milton but what we are really doing is hurting all of the rest of the kids that live in Milton and want to play other sports. He thinks we need to reasonable with that. He knows the Parks and Rec Board has been talking to the HYA along with the City Manager and staff. We have to give staff direction on the travel team. He understand the Park and Rec Board has advised against that and he is not going totally against what they recommend but rather have everyone work together so there is a happy medium. He is in favor of all three entities working together to move forward and come up with an agreement on the travel teams that everyone is close to being comfortable with.

Councilmember Lusk:

He has the utmost faith and confidence in Jim Cregge. He thinks reasonable people can come to reasonable solutions. If arbitration is allowed within the contract he would like to see the parties get together with Mr. Cregge and work this out on a lesser legal plateau. There is enough experience with the two groups and Mr. Cregge to come to a solution.

Councilmember Zahner Bailey:

She agrees that good people can come up with good solutions. She supports the Parks and Rec Board and they have done a fabulous job with the things they have had to grapple with. Thanked the Board and the HYA. She thinks it is important that they have things in place that holds all of them accountable and we have some foundational values and first we must serve Milton citizens. Prior to having an agreement in place they really did not know if they were serving Milton citizens. She thinks there is some data that indicates they are not serving as high a percentage as we need too. When you have only one Milton resident on a team then we need to improve those statistics. She would strongly encourage us to look a little deeper and be a little more honest with ourselves about the need to make sure we are promoting recreational ball as well as more advanced ball. She thinks we should consider Milton citizens first and of course not turning away other kids but we do have an expectation from the citizens that we have to serve them. She thinks there is balance amongst us. Asked where we are from a timing perspective. She knows there are teams being formed and things being established. We have to sometimes make tough decisions. If we are going to have percentages, we need to decide that relatively soon so we do not end up with another year where we do not have teams in place that maybe do not even come close to that 50%. A lot of people gave a lot of thought to the facilities agreement. A lot of people thought that the 50% balance was where we needed to be at least as a beginning. We now see a recommendation for 70% and she thinks we need to figure it out soon. She does not see other cities having percentages less than 50%. We need to look at the data and make some decisions.

Councilmember Thurman:

She thinks they can all work together to come up with something everyone is happy with and she looks forward to hearing what that is. She would like to see more Milton residents on the HYA and she hopes that is something they will consider in the compromise.

Parks and Recreation Representative Brad Chambers:

In regards to timing, everyone says it needs to be as soon as possible and that is a given. A lot of it would depend on the schedules of the HYA and the Parks and Rec Board along with Mr. Cregge.

Mayor Lockwood:

We have three people that represent three different groups who filled out public comment cards and he

would like to have the comment on this.

City Manager Lagerbloom:

He needs to know from the HYA what is too late to know about the travel permit. If we are going to try and work toward an agreement at some point there becomes a "drop dead date" that we have waited too long to make a decision on whether or not we extend the travel permit beyond December 31st and he needs to know what that date is.

HYA Representative Scott Stachowski:

He will say last week, only jokingly but because the agreement in place triggers a number of events that have already started to occur. The travel teams tryouts started yesterday, they are occurring next week end and in August. The current facility use agreement allows for the formation of those teams until December and at the end of December we will be moving forward. If we are not moving forward with it then some 55 kids will be told that they are not welcome to play advanced baseball in the City of Milton. Once the season has begun for those kids they will not have a place to go. They have worked diligently since January so they do not get to this point. We are already on a course pursuant to our agreement to move forward with our teams. At this point the discussion that he has been hearing from the perspective teams are to extend the travel agreement to create a buffer to say, let us take a look at the issues, recreational versus travel. January 1st might not be the right date we may need until February to complete the spring registration but if they can come up with something that is within the thirty to sixty day time frame then we would be comfortable. We can extend the current agreement as imperfect as it may be and allows us to look to see if the teams that we have formed can coexist on the now five fields we have in the City.

City Manager Lagerbloom:

So if he heard correctly they are already beyond that "drop dead date" and the possibility of a short extension allows us to continue to work together.

Mayor Lockwood:

Asked Mr. Stachowski along with Mr. Shaw if within discussions to date in their opinion if they could work out something.

HYA Representative Scott Stachowski:

The opinion of their board, although the original recommendations conflict, the most recent discussions have indicated that they are willing to work together to find some new agreements. They have attempted to identify the terms of the agreement. He believes very strongly there are enough things on the table to move forward if they are moving forward with the travel terms existing. If it is the mindset of the Parks and Rec Board and the City Council is the travel program should not exist in the City of Milton then we do not have a reason to move forward.

Councilmember D'Aversa:

Asked Mr. Stachowski if it was just the travel teams and the percentages or if there were other things they should be mindful of.

HYA Representative Scott Stachowski:

They could talk about fees, residency composition, since that topic has been raised, those rosters were submitted pursuant to the contract in the spring to the Public Works Director of that time. There may be individual teams that have number that are out of whack but the sum total of the program may be just below 50%. As it relates to other issues of disagreement, the 50% residency requirement is a reasonable number, the players go where they are best rewarded and have the best opportunity. He cannot require baseball players with a lot of skill to play at Bell Memorial Park. To keep raising the threshold makes it

more difficult to play advanced level ball so he thinks that 50% is a very reasonable number and that is what is in the existing agreement. He does not think it is the City's business to set the standards for try outs.

Councilmember D'Aversa:

What she was trying to get at is if they are going to be so far apart with the board is recommending with what the HYA would like to see.

Mayor Lockwood:

A lot of these details are for our staff and board and legal to work out. Thanked Mr. Staghowski for his input and he would like to hear from Mr. Shaw the same question if they think they can work together to move forward with the travel team.

PRAB Member Mark Shaw:

He thinks it is the feeling of the board is that between all of the numbers and information and assumptions that have been made for them to make a decision based on the assumptions would be wrong. They are being asked to take those assumptions and assume these are the sign ups in January and why not wait until there are facts, until we know how many residents want to play at Bell Memorial. By the agreement that is the way it should work that recreational players take precedence and priority and only after that fulfillment then we can decide and the advisory board will know specifically how many travel teams can be allocated to each one of those ball fields. Right now there are two fields that are responsible for holding ages 9 through 15. It is a challenge and the board just wants to deal with facts. They put a lot of time and effort into trying to find some common ground. He thinks it is their responsibility to give the priority to the City of Milton resident ball players. He is hearing that they need to know now because their fiscal year is July to June and tryouts and signups are occurring now and their assumption is that they will have access to that park following December of 2009. If it is their understanding to take any action beyond December then let them assume the risk versus the City assuming the risk of having a ball team sitting out. The advisory board wants to work with the HYA and they look forward to finalizing an agreement but we need to know the facts and the number of players.

Mayor Lockwood:

To clarify the question and he will ask Mr. Cregge the same thing asked if he felt the board is willing to work with the parties to come up with a solution for this. He is not asking for long term but if they are willing to come up with something for the immediate future.

PRAB Member Mark Shaw:

They are more than willing. The problem is that they are taking some set of assumptions and the HYA has another set of assumptions. For the advisory board to offer advice to the Council is that they would like to have those numbers locked down and know specifically the number of registration participants in the City of Milton for that park. Outside of that a recommendation today would be not to extend the travel team agreement because we would be locking in the travel team for the following year which may affect a City of Milton sign up in January.

Jim Cregge:

When you set the budget do you have all of the money in hand? Has there ever been a financial situation result in a significant change in what you thought you were going to collect to what you actually collected. Do you not then adjust to make accommodations? What he is hearing is that there are two schools of thought as to what that number is going to be. If those two can agree to go down one path with a contingency. With that maybe HYA may be responsible to move a team out and with another one you run the risk that the existing teams may not be able to play. What is potentially the least painful? He suggest they use it more like a budget and you have to make predictions and then build into the prediction

the ability to adjust. The reality is in travel ball, you own the park and you want to say no travel ball then you can do that. As with any choice there are consequences. If you have a budget of what the players can be and what your contingency plan that is where you start to draw a compromise.

Mayor Lockwood:

He would agree that HYA may have their projected numbers and the Parks and Rec Board may have their numbers and sometimes you just have to use an educated guess based on numbers and adjust accordingly. He is trying to get some direction from Council and he would support moving forward with the groups and staff working together to promote the baseball including travel ball and move forward and we may have to make adjustments later. He thinks that after doing this for fifteen years the HYA would have a pretty good idea as to where they would be.

Councilmember Tart:

He is good with that.

Councilmember D'Aversa:

Yes, she supports them working together and the recommendation of the board.

Councilmember Hewitt:

Yes.

Councilmember Lusk:

He supports the Mayor's recommendation.

Councilmember Zahner Bailey:

She supports them working together and asked if they have tryouts right now and she is unclear based on the data provided to date whether or not those percentages on a team bases, her concern is if they are going to meet those requirements and have honest communication, at least this Councilmember would expect we would have each team level since tryouts are happening now that we would be able to meet a balance so we are representing Milton kids and we do not have teams that are 90 to 95% out of City.

Mayor Lockwood:

That is going to be decided among the Parks and Rec Board, HYA and our staff. My recommendation is for our Parks and Rec Board, Mr. Cregge, HYA and our staff to work together and I know it is a timing issue and he would like to see them work together on renewing a travel agreement amongst themselves.

Councilmember D'Aversa:

She would like to see them work together but she is not recommending anything because she has great concerns and they have not seen the numbers as to how we serve Milton citizens.

Mayor Lockwood:

He would take that on the surface as a no. Asked Councilmember Zahner Bailey for a yes or no.

Councilmember Zahner Bailey:

She wants them to work together but she is not prepared to throw out the recommendation of the board. She would like to see what they come up with and she hopes it can be quickly. She would not think we are meeting the value statement of the city if we end up with teams that do not have a balance of in city and out of city.

City Attorney Jarrard:

Just for purposes of clarification, until December 31, 2009 we have a contract still in existence and it still

requires the threshold you are discussing.

Councilmember Zahner Bailey:

She just thinks it needs to be clear and she is prepared to make some declarative statements so it is clear to both entities. She asked that when they talk to please make sure they talk about residency versus non residency and the percentage of kids that are city residents.

Mayor Lockwood:

That is the premise that they are moving forward on is the existing contract.

Councilmember Thurman:

She supports the recommendation and feels confident they will come up with something.

Mayor Lockwood:

He thinks he heard Councilmember Tart, Councilmember Hewitt, Councilmember Lusk and Councilmember Thurman say yes.

Councilmember Zahner Bailey:

They all said yes but she just thinks they need to get together soon. We are here because there has not been an affirmation on compliance and where we are.

Jim Cregge:

He made reference of the problem they had with the travel soccer. There are travel teams in Hopewell that have existed longer than the City of Milton so he understands. With the soccer there was a certain amount of grandfathering that was given. If Hopewell were to move forward and create a travel team that did not come out of the box at least 50% then he would be here saying shut it down. You want to set up and opportunity for advanced level play and he supports the City's right to make sure they are serving their citizens. If you form a new team and you are not at 50% then shame on them. That is the way it has to be. Sometimes you have to give it time to turn. With the soccer, it will take us three years to get it into complete compliance.

Mayor Lockwood:

Just to clarify there has been no talk of trying to change that but it will take some time to get to compliance.

City Manager Lagerbloom:

He does not know what direction to take this that will be any different than where we are now. We have spent countless hours working with these groups over the last couple of weeks and we have tried our best to get to something acceptable between both groups and we are just not there. Maybe introducing a neutral party into it will make a change. He does not want to waste anyone's time. Based on what he has heard so far he still does not know what direction to move toward.

Mayor Lockwood:

From what he understands the biggest issue is that HYA needs to know that in some format or form we are going to renew their contract and it sounds like everybody is on the same page with the rest of the issues.

City Manager Lagerbloom:

He is looking at the three waivers that the Public Works Director issued on February 26, 2009 for travel teams. There were three teams that requested waivers that did not meet the 50% requirement. Two was a waiver for 4 people and one was a waiver for 1 so we are talking 9 players.

Councilmember Thurman:

She agrees with Mr. Cregge that we should not have any wavers on the new teams.

Councilmember Zahner Bailey:

If we are having tryouts, hopefully new kids get an opportunity to try out.

Mayor Lockwood:

To City Manager Lagerbloom's point it was 9 kids and that is minuscule compared... He will be real clear and he wants to know with a yes or no, he is supporting staff moving forward with HYA to renew, whether it is an extension or renew a travel agreement understanding the Parks and Rec Boards recommendation but also understanding that it takes time to take a fifteen year program and melt it into an all Milton program. He is supporting staff to work forward on a travel team.

Councilmember Tart:

He is going to have to say no. We are making a decision and the decision says that we will proceed with renewing a contract and that is not on our agenda.

City Attorney Jarrard:

It is not a decision to renew or extend the contract. That is not the way he interpreted what the Mayor was saying. It is a decision to give staff direction, but a formal renewal would have to come before this Council. Whatever happens tonight, no one would be bound to vote yes or no on that renewal. This is administrative guidance to tell them what to do next.

Councilmember Tart:

Base on where they are and the formation of those teams we will have already set things in motion to be in a position to have to approve that or to mess up a bunch of people.

City Attorney Jarrard:

The contract expires December 2009 and people take action beyond 2009 then they do so on their own.

Councilmember Tart:

Then I will say yes.

Councilmember D'Aversa:

Yes, I support that.

Councilmember Hewitt:

Yes.

Councilmember Lusk:

Yes.

Councilmember Zahner Bailey:

Yes.

Councilmember Thurman:

Yes.

MAYOR AND COUNCIL REPORTS

Councilmember Thurman:

Thanked staff and the Council Members that attended the town hall meeting. There were approximately 175 people there. She thanked everyone who volunteered their time.

STAFF REPORTS

Added by motion and vote:

EXECUTIVE SESSION

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

Motion and Vote: Councilmember Thurman moved to adjourn into Executive Session at 9:56 p.m. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

RECONVENE

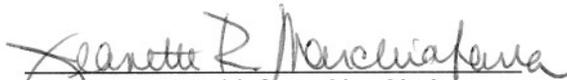
Motion and Vote: Councilmember Lusk moved to reconvene the Regular Meeting at 10:10 p.m. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously 7-0

ADJOURNMENT

After no further business, the meeting adjourned at 10:12 PM.

Motion and Vote: Councilmember Lusk moved to adjourn the Regular Meeting. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

Date Approved: 8/3/09



Jeanette R. Marchiafava, City Clerk



Joe Lockwood, Mayor