
This summary is provided as a convenience and service to the public, media, and staff. It is not the intent to transcribe proceedings verbatim. Any reproduction of this summary must include this notice. Public comments are noted and heard by Council, but not quoted. This document includes limited presentation by Council and invited speakers in summary form. This is an official record of the Milton City Council Meeting proceedings. Official Meetings are audio recorded.

The Regular Meeting of the Mayor and Council of the City of Milton was held on September 21, 2009 at 6:00 PM, Mayor Joe Lockwood presiding.

INVOCATION

Councilmember Thurman led the invocation.

CALL TO ORDER

Mayor Lockwood called the meeting to order.

ROLL CALL

City Clerk Marchiafava called the roll and made general announcements.

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

PLEDGE OF ALLEGIANCE

Brett Ball with troop 3000 led the Pledge of Allegiance.

City Clerk Marchiafava read Agenda Item 09-936

APPROVAL OF MEETING AGENDA

Motion and Vote: Councilmember D'Aversa moved to approve Agenda Item 09-936, Approval of the Meeting Agenda. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

PUBLIC COMMENT

Mayor Lockwood

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

There was no public comment.

CONSENT AGENDA

City Clerk Marchiafava read the Consent Agenda items.

Approval of the September 9, 2009 Regular Meeting Minutes.

Approval of Financial Statements for the period ending August 2009.

Motion and Vote: Councilmember D'Aversa moved to approve the Consent Agenda. Councilmember Zahner Bailey seconded the motion. The motion passed unanimously 7-0.

REPORTS AND PRESENTATIONS

City Clerk Marchiafava read the first item.

A Proclamation Designating October as Crime Prevention Month.

Councilmember Tart and Councilmember D'Aversa shared in the reading of the proclamation and presented it to the City Manager.

City Clerk Marchiafava read the next agenda item.

Proclamation to honor Caitlin Davies and Heather Kipniss for their charity work in Support of Camp Kudzu.

Councilmember Thurman

- Caitlin Davies and her best friend Heather Kipniss put together a softball tournament called Camp Kudzu Classic.
- It benefited children with type 1 diabetes that go to Camp Kudzu.
- Read the Proclamation and presented it to Caitlin Davies and Heather Kipniss.

City Clerk Marchiafava read the next agenda item.

Proclamation for the Sportsman Award for the 2009 Dizzy Dean Tournament.

Councilmember D'Aversa

- These guys represented the City of Milton proudly as do all of the young athletes that play sports throughout the city.
- They won the Dizzy Dean Tournament for seven and under for the state.
- More importantly, they won the Sportsmanship Award.
- She read the Proclamation and presented it to the HYA seven and under Hopewell Storm Baseball team.

PUBLIC HEARINGS

City Clerk Marchiafava read the first item.

Public Hearing on an Ordinance to adopt adjustments to the Fiscal 2009 Budget for each fund of the City of Milton, Georgia.

Finance Director Stacey Inglis

- This was first presented on September 9, 2009.
- The budget is increasing \$32,320.
- The general administration department was being split out and reallocated into separate departments.
- This is an end of the year budget adjustment bringing everything in line with actual to date.

There was no public comment.

City Clerk Marchiafava read the next item.

Public Hearing on Ordinance to Adopt the Fiscal 2010 Budget for each fund of the City of Milton, Georgia.

Finance Director Stacey Inglis

- There were some changes made from the first presentation.
- There was increase in the property tax collections of \$15,000 to account for re-appropriating funds for the Highway 9 Design Guidelines.

- An increase in the IT Department of \$15,120.
- There is a decrease in the Municipal Court salaries to bring numbers in line with the actual court sessions that are scheduled for the next fiscal year.
- There is an increase in the Fire Department of \$4,000 for the annual cost of medical direction.
- There is a decrease in the unallocated account for other finance and uses of \$14,471.
- There is an increase in the Public Works Department of \$75,000 to account for the cost of hiring a consultant to assist with the possible transition to a self performing department.
- This is offset by a decrease in the funding for the NPDES project in the capital projects fund.
- Those are all of the changes made since the presentation made on September 9, 2009.

There was no public comment.

City Clerk Marchiafava read the next item.

Public Hearing on an Ordinance of the Mayor and Council of the City of Milton, Georgia, to fix the Ad Valorem Tax Rate of the City of Milton for Fiscal Year 2009; and for other purposes.

Finance Director Stacey Inglis

- According to the Official Code of Georgia, 48-5-32, we are required to hold three public hearings on the establishment of the millage rate.
- This is the second public hearing.
- The first was held today at 5:45 pm and the third will be held September 28, 2009.
- The adoption of the millage rate after that public hearing.
- According to the City's Charter we are required to use the same billing and due date that Fulton County uses.
- They are projecting that they will be able to send bills out by October 15th with a due date of around December 14th.
- The total tax digest is \$2,131,102,674.
- The total taxes levied are \$10,802,274 and property tax equals to a little more than 9.5 million with motor vehicle taxes at \$546,000.
- This is a property tax decrease of 2.29% from last year and there are 4.731 mills that are presented as the millage rate for this year.

There was no public comment.

City Clerk Marchiafava read the Agenda Item 09-939.

Approval of Alcohol Beverage License Application for the Manor Golf & Country Club located at 15952 Manor Club Drive, Milton, Georgia. The applicant is M. Doug Meredith for consumption on the premises of wine/malt beverage/distilled spirits.

Finance Director Inglis

- The applicant is in compliance with all of the state laws and City ordinances and staff recommends approval.
- They already have a license for the main club house but this is for the second building.
- It is a different address so they need a separate license.

There was no public comment.

Councilmember Zahner Bailey

- Because this is with proximity to a residential area, asked about the proximity to bus stops and those requirements.

Finance Director Inglis

- There is nothing in the Ordinance that states it has to be within a certain distance with a bus stop.
- It deals with schools and churches and it definitely meets those distance requirements.

Motion and Vote: Councilmember Zahner Bailey moved to approve Agenda Item 09-939, approval of Alcohol Beverage License Application for The Manor Golf & Country Club located at 15952 Manor Club Drive, Milton, Georgia. The applicant is M. Doug Meredith for consumption on the premises of wine/malt beverage/distilled spirits. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

City Clerk Marchiafava read agenda item 09-940.

Approval of Alcohol Beverage License Application for Vintage Pizzeria – Milton, LLC d/b/a Vintage Pizzeria located at 12540 Broadwell Road, Suite 1103, Milton, Georgia. The applicant is Kara Gonzalez for consumption on the premises of wine/malt beverage/distilled spirits.

Finance Director Inglis

- This applicant is also in compliance with state and city regulations and staff recommends approval.

There was no public comment.

Motion and Vote: Councilmember D'Aversa moved to approve Agenda Item 09-940, Approval of Alcohol Beverage License Application for Vintage Pizzeria – Milton, LLC d/b/a Vintage Pizzeria located at 12540 Broadwell Road, Suite 1103, Milton, Georgia. The applicant is Kara Gonzalez for consumption on the premises of wine/malt beverage/distilled spirits. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

ZONING AGENDA

(Minutes for all zoning agenda items typed verbatim.)

City Clerk Marchiafava read Zoning Rules and Agenda Item 09-925.

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.

ZM09-02 – West Side of Birmingham Highway (SR 372) Land Lots 1096, 1096, 1098 1135 of the Second District/Second Section - Braeburn Subdivision – By John Wieland Homes and Neighborhoods, Inc. represented by William Woodson Galloway, Dillard & Galloway, LLC. A request to modify the following conditions:

- 1) To modify condition 1.d, which currently allows up to 54 townhomes at a maximum density of 0.86 dwelling units per acre, to allow up to 38 townhomes at a maximum density of 0.61 dwelling units per acre based on total acreage zoned.**
- 2) To modify 1.e, which currently allows up to 45 single-family residential units at a maximum density of 0.72 dwelling units per acre, to allow up to 61 single-family residential units at a maximum density of 0.98 dwelling units per acre based on total acreage zoned.**
- 3) To modify the required minimum lot size in condition 1.f from 18,900 square feet such that no more than 15 lots shall have a minimum lot size of 10,890 square feet (approximately ¼ acre) or above, at least three (3) lots (Lots 11-13) shall have a minimum lot size of one (1) acre or above, and the remaining lots shall have a minimum lot size of 14,500 square feet (approximately 1/3 of an acre) or above.**
- 4) To modify condition 2.a to replace the revised site plan received by the Fulton County Department of Environment and Community Development on June 7, 2006 with the revised site plan received by the Milton Department of Community Development on July 7, 2009.**
- 5) To modify condition 3.e to reduce the 15-foot building separation to a 10-foot building separation with a 5-foot side yard setback for lots less than one (1) acre.**

Senior Planner Robyn MacDonald:

This item, staff report is to recommend deferral until the October 19, 2009 meeting, to allow the applicant to resubmit a revised site plan and legal description to include the entire property that was included in the Z0917 zoning petition.

Mayor Lockwood:

Do I have any questions for staff first before I let the applicant speak?

Councilmember Zahner Bailey:

I guess my question is just going to be whether or not staff wanted to comment separate from the advertising that is being requested for deferral. If you wanted to speak to the actual variances that are being requested. I am accustomed to even when it is a deferral that there is still a review.

Senior Planner MacDonald:

From my understanding, the applicant is going to ask for a withdrawal completely of the application so unless you want me to go into all of the details, I do not want to waste anybody's time.

Councilmember Zahner Bailey:

I guess that is the first that I heard there was a request for a withdrawal as opposed to a referral.

Senior Planner MacDonald:

I just found out today as well from Tom Wilson.

Councilmember Zahner Bailey:

So as a matter of order since it is a request for a deferral, how would our City Attorney request that we proceed?

City Attorney Jarrard:

My recommendation would be if the Council feels like they need the staff presentation after the applicant speaks they could do that but they may want to hear from the applicant.

Mayor Lockwood:

First we will hear from those in support of the zoning modification.

Woodson Galloway, 3500 Lenox Rd, Suite 760, Atlanta, Georgia:

On behalf of the applicant, John Wieland Homes and Neighborhoods, we are requesting that this application be withdrawn. We want to take some time to look at the request in light of some public comment that we had received and evaluate how to proceed. At this time we would ask that you allow withdrawal of this request.

Mayor Lockwood:

Is there any additional public comment for support?

City Clerk Marchiafava:

I have some in opposition.

Mayor Lockwood:

If we have all in support then go ahead with the opposition.

Jeff Kish, 545 Kensington Farms Drive, Milton, Georgia:

Good evening, I know this is being deferred for this evening however as this moves forward I know that many of you have been out to my house and the surrounding area and seen the devastation caused by the development behind my house. I want the Council to be aware of the ongoing damage that is being caused by the development of John Wieland and John Wieland's homes. Wieland has already come to you and gotten a variance the conditions of which have not been met and that has been almost two years ago. If they are not willing to meet the conditions of a previous variance, I am not sure why you should consider any variance going forward. They have allowed the entire development to become overgrown and I know that they have not had any development there ongoing but they are still required to have stabilization in place for the soil. We have continuing erosion control problems on site. Certainly with the rains we are having here, where they have put in measures or conditions of the developments such as bricking up the walls, the bricking is now coming off. It represents a hazard to anyone around it. It leaks outside through the walls during heavy rains so water coming through a wall is not really a properly constructed site. I have been in my house for eighteen years and the erosion that we have seen in the last two years far exceed anything we have ever seen before and it continues, certainly on a day like today where we are seeing heavy rains and flooding throughout, but without any erosion control measures being put into place we are not certainly going to see it get better. I know that in the past there have been several work stoppages on the site. I believe four by the city, two by the state and one by the EPA. Those certainly are not pointing to the quality of the development and the quality of the standards to which the developer should and must meet in order to continue forward. If they are not willing to do what they have in the past please do not let them move forward and do more destruction to our community and our property.

Laura Longfellow, 755 Owens Lake Road, Milton Georgia:

My comments are more just questions. I cannot find the figures anywhere where it has comparison of non porous surface where water can flow through in the porous material. In comparison I just see the lot sizes so due to all of the rain and the flooding we have in six hills which has all the water coming through from this development, it is bright red, we are also wondering how much more damage this is going to cause and I also cannot find numbers that have the approximate density numbers of people that will live in the houses.

Mayor Lockwood:

Thank you and maybe our staff members could address Ms Longfellow tomorrow or whatever to get answers to those questions for her.

Joan Wynderle, 765 Owens Lake Road, Milton Georgia:

Good evening Mayor, Council and staff and I sent you all and e-mail but I just wanted to read this into the record for my position. When we inherited the original zoning approval of the Wieland property from Fulton County we were told there was nothing we could do about it. It was a done deal. Now Wieland is back requesting a modification of the plan they agreed too. I refer to this as a do over to wear down change in our existing ordinances. My original vision of Crabapple was changed in one weekend. Who can forget the devastation that was wrought by Mr. Wieland's crews when it looked like a bomb went off and all of the trees were bulldozed down for the Braeburn subdivision. Many years of tree growth gone in just a few hours. John Wieland has a fine reputation as a developer and a builder but reducing lot sizes and setbacks is not a vision or a precedent that I want for Milton. Please uphold our existing ordinances that you will preserve, protect Milton. Please do not compromise on these issues and deny the variance. Thank you.

City Clerk Marchiafava:

That completes public comment but there is time to rebut.

Woodson Galloway:

I am not going to go into the issues since we are requesting withdrawal. Thank you.

Public Hearing Closed

Mayor Lockwood:

I will close the public hearing and open it to Council discussion or questions to staff.

Councilmember Zahner Bailey:

Mr. Galloway this might be a question best suited for you. You mentioned that you had a request for withdrawal because you wanted to evaluate options. Could you speak to what it is that you hope to accomplish during a withdrawal that would be different than these variances.

Woodson Galloway:

The issues that we have talked about were with the community. We have had several meetings with Kensington Farms. We have had meetings with interested property owners, a number of different meetings and some of the comments have ranged from the lot sizes to the setbacks, those setback variances which really are not variances, it is just a change in the condition where that might occur etcetera. That would involve a re-look at the site plan itself because of advertisement issues the matter was going to have to be deferred anyway tonight. I think we need a longer period of time to evaluate things than a deferral period so that is why we would like to have the opportunity to withdraw tonight.

Councilmember Zahner Bailey:

Thank you very much Mr. Galloway. I would like to ask our city attorney, the distinction between a time frame if the variance is denied this evening versus a withdrawal, it is my understanding that a denial would mean that for a one year period of time these variances could not proceed which would give of course adequate time for this applicant and the citizens to come up with if indeed changes were needed. Can you distinguish the time frame of a denial versus a withdrawal or conversely an approval?

City Attorney Jarrard:

I believe if the withdrawal is without prejudice I believe the applicant could submit a new application immediately and yes there is the prohibition on refilling if there is in fact a denial so it is a significant distinction but it is one that has been presented squarely to the Council and that is for your discretion as to whether you want to authorize the withdrawal.

Councilmember Zahner Bailey:

I guess just for consideration this Councilmember is concerned that if we proceed with a withdrawal it continues to take some of the citizens that have continued to voice concerns for multiple years through a continued process that really does not definitively address the fact that variances on this property and that smaller land lots and that further degradation of our streams is a non issue, so I perhaps if it be the pleasure of the Mayor I would like to know whether or not these citizens that have been dealing with this, what their perspective is about a withdrawal versus a denial of these five variances this evening. Ms Wunderle I know that you were just up to the microphone, whether it be yourself or the gentleman, Mr. Kish from Kensington Farms and again the distinction being the withdrawal can be withdrawn with no prejudice and obviously a denial provides a definitive decision as to whether or not these variances are acceptable.

Mayor Lockwood:

Point of Order Mr. City Attorney - is this acceptable to bring somebody up for comment again after we have closed the public comment.

Councilmember Zahner Bailey:

I guess it is to answer a specific question so it would not be to open up the public comment.

City Attorney Jarrard:

I think that would be a matter for the discretion of the Council. I think the public hearing is closed or rebuttal I think is what we are in right now. If the Council has no objection to it then there is no prohibition on it but I think you would then get to respond to those comments.

Councilmember Zahner Bailey:

Again Mayor if it be your pleasure because these are the citizens that have dealt with this and this is the first that they have heard of a request for a withdrawal which is very different that what has been advertised which was a public hearing so we have before several things to make a decision on. Whether or not to accept a withdrawal, whether or not to proceed with this case, whether to accept the variances before us and or to deny so that is why I would like to ask for the input from these citizens. Actually they did not have a chance to rebut and they had I think some time left if their ten minutes.

Mayor Lockwood:

If either of you would like to step up and give comment.

Jeff Kish:

While I certainly enjoy coming to the meetings and I enjoy seeing your faces and so forth, I have a varied schedule and it is difficult for me to come to these meetings. I do not have them into my schedule as it is so in looking at this I have made arrangements to be in town tonight. I do not know if I will be here every single time just at the whim of whether we see opposition or whether we do not. I do not know whether that is their intent or not but we have been fighting this for a long time, ever since they started the development. Yes we watched the trees just go away, one every fifteen seconds. We know that is not going to change. What we do expect is that they be held accountable for the development that they do and they do it in a responsible manner that follows the guidelines of our city. If we do not do that then I really do not see the purpose and I ask the City Council please understand, this is of vital importance to my family. We live there and we have lived there for eighteen years. We see it every day but we are seeing the continuing destruction of it by choice. It really is their choice. They knew the rules coming in and they are not abiding by them. I do not want to see this go away just so that when I am not here they bring it up and pass it along. I think that is not fair to those of us who are surrounding the property. Thank you.

Councilmember D'Aversa:

I would like to ask staff a question. Ms MacDonald, what is the mitigation of the damages that are being done right now. We have heard several home owners talk about challenges that have been imposed by the development. Is there something that is ongoing now as far as clean up or restoration. I know that I have seen quite a number of meetings, one off meetings that have happened between John Wieland and

Council Members and staff members and what not but I am not sure exactly what is going on as far as mitigation of the damages that have been done.

Senior Planner MacDonald:

The issue that I believe that Mr. Kish has been referring to is a variance decision that was made before the Board of Zoning Appeals and that is a separate issue from this zoning modification and I am really not the person to ask all of the specifics of what was agreed upon between the homeowners and what the variance decision was made.

Councilmember D'Aversa:

So that is not something that the City is monitoring?

Senior Planner MacDonald:

We are but I am not the staff person that knows everything. Maybe one of the Wieland representatives would be more informed about what has gone back and forth between one of the other staff people that have to do with the engineering portion of it and I was not involved in the Board of Zoning Appeals decision and all of those issues that were agreed upon that would be done so I cannot give an informed decision.

Councilmember D'Aversa:

Would that be Mr. Wilson?

City Manager Lagerbloom:

Probably Mr. Sanders would be the best situated to answer that question. Regretfully I am not capable of answering your question either and I know I was going to be the next one you asked.

Mayor Lockwood:

Maybe through Mr. Sanders our City Manager can...

Councilmember D'Aversa:

Unfortunately, I would really like to have that answer tonight.

Mayor Lockwood:

I understand but maybe he can at least update us on that since it is a separate issue but it is tied in. Chris if you could get Mr. Sanders through you get us a response from the city side.

Woodson Galloway:

As it relates to Mr. Kish and Mr. Anderson, believe me we are not trying to pull the wool over anybody's eyes. They have certainly been aware of where we are. Mr. Anderson has been very involved in the multiple meetings that we have had with your staff, with members of the Council etcetera and he has kept Mr. Kish involved and informed. Attorneys for Mr. Wieland and Mr. Kish and Mr. Anderson have been going back and forth on getting approval to go on to Mr. Kish and Mr. Anderson's property to do the stream bank restoration and we have to get their approval in order to get on their property. Wieland has done the things that they can do on their property. He has brought up a couple of new items tonight that we will have to go back and look at but in terms of the agreement to do various things that are involved with the variance and the stream bank restoration, we have to have their agreement to do that then once we get that agreement, which we have been responsive to his attorneys whenever they responded, Wieland's attorneys have responded in very quick fashion but once we get

that done then it has to go back to EPD to get approved before any work can take place so it is a complicated process that is ongoing that has to be done in order to proceed with the development. What is before you tonight was a request for a site plan change primarily no variances they were changes of conditions but in light of some public comment we are asking for withdrawal of that and as I understand it...

Councilmember D'Aversa:

I understand as far as the request tonight. My concern is for these property owners to have their damages mitigated before we proceed.

Woodson Galloway:

We are ongoing. Whenever they have responded, Mr. Wieland attorneys have responded and gotten it back very quickly to them so as soon as they authorize the work it will be done.

Mr. Kish:

I cannot let that one go. It was only within a week of the zoning application I believe that they finally reengaged us on doing this work. You can say oh yes we are very busy on it but it is only when they wanted something else that they actually came back to us. They previously had been there in November and that was the last time we could even get an e-mail from one of the attorneys so to say it has been ongoing is a little misleading. It is ongoing when they want it to be. Yes we want to move forward but we want it to move forward in a correct manner that follows the guidelines that will be of help to the stream and subsequent and erosion ongoing and also have a responsibility moving forward. That has been one our greatest concerns is that even their remediation of the site contemplates a plan that will only be in place for 3 to 5 years by their own consultants admission. Three to five years from now, what is going to happen when all that erosion control measures are gone and John Wieland is gone? Is it going to be left up to the homeowners association of Braeburn? I know that many of you belong to homeowners associations and the homeowners association is not going to have the funds, the time, the money, the effort to go into something that they did not create so you can either contemplate that now and find a way to make the system work so you do it right the first time or you do not do it at all.

Councilmember D'Aversa:

Thank you. I would like to see our staff and I know that our staff has been working diligently. I have watched this process going but hearing these comments tonight, I think we need to take care of this even if it does mean waiting on EPD and I know they work very slowly from time to time but you guys come together and take care of this situation before we move forward and to something in addition and especially creating additional request for the property. I would support taking care of the mitigation and mediation of this property before we move forward with something else.

Mayor Lockwood:

I would say this and unfortunately we have two or three things moving and different issues here and they are all important and I would say whether we choose to deny, defer or allow this applicant to withdraw, even if the applicant brought another plan forward in 60 or 90 days from now, we certainly would have the ability to get answers to the questions that you guys were asking for staff and make sure they are doing what they are supposed to do legally, again we could go on all night.

City Attorney Jarrard:

Mr. Mayor if I could just make a point, I think to the extent that Mr. Galloway needs an opportunity to rebut, I think that would be appropriate because we have gotten into a back and forth and I think he does get the last word.

Mayor Lockwood:

Ok, Mr. Galloway do you have anything else.

Woodson Galloway:

I do not want to belabor this issue. First of all I am not sure and Mr. Jarrard would have to address this as to whether or not you can actually take any action other than withdrawal tonight or deferral but as it relates to Mr. Kish, we have every intention of trying to work that out. It has been ongoing, they did not get approval from EPD to do anything until April and then they had to do the revise plans etcetera. It has been going back and forth. That will proceed and they will continue to work on that and get that done. As it relates to the issues that we were bringing before you tonight, we thought they would be well received. They were well received by the vast majority of people. There were some issues that were raised with regard to a couple of the items, in particular the setback and in particular the transition of the size of lots. Those are things that have big consequences as they relate to the bottom line as you might expect. Banks and other parties are involved that have to be consulted and that takes some time, so again we ask that this be allowed to be withdrawn and if in fact we come back before you then we will have had a lot of time to address those issues and to address the public comments that have been raised thus far.

Mayor Lockwood:

Ok, thank you and if our city attorney has any comments...

City Attorney Jarrard:

Mr. Mayor the only comment I would have is that with respect to this agenda item I think that the Council has options with what it wants to do but it does have to take options within this agenda item.

Mayor Lockwood:

Obviously, we have the option of denying, deferring or allowing the withdrawal so at this point if someone wants to bring forward a motion.

Councilmember Zahner Bailey:

Mayor, I will make a motion and before I do I have a question of our city attorney. Mr. Galloway asked for your consideration as to whether or not there was an option other than withdrawal, deferral, could you please legally confirm that we do have an option other than a withdrawal or deferral.

City Attorney Jarrard:

The code that I was just looking at with Robyn anticipates that after the public hearing has occurred that the decision whether to allow withdrawal rests with the Council which the necessary inference of course is that you would not have to in the exercise of your discretion. At this point you have had the applicant ask you to withdraw, you have had a staff recommendation of deferral or you can proceed.

Councilmember Thurman:

I have a Point of Order. It was my understanding this was being administratively deferred because it was not properly posted.

City Attorney Jarrard:

That was the staff recommendation of deferral and I think in a minimum to the extent you want to go forward particularly if you were contemplating granting it you would not be able to do that this evening because of the problems with the legal ad but the more prudent course if you are not going to allow withdrawal would be deferral to get the legal ads correct.

Councilmember Zahner Bailey:

Let me confirm that again then, during a deferral we would be advertising separately. If we were to proceed with a request for denial which is separate from the other issues at hand but for a reduced lot size for the reduced requests for buffers, legally can we proceed with a denial of those that are before us this evening.

City Attorney Jarrard:

The concern that we had with the ad was an infirmity also with the legal description.

Senior Planner MacDonald:

Actually it was with the signage. The posting of the sign of the parcel in Crabapple.

City Attorney Jarrard:

So again you are talking about notice to other individuals. That is why I was concerned with respect to going forward and approving but if you chose to deny this evening I think you would be within your rights to do that.

Councilmember Zahner Bailey:

I appreciate that input and the reason that I believe and I will put forward a motion, the reason for my motion is that we just had an hour long conversation from our city attorney about variances and I heard Mr. Galloway say that he does not perceive these to be variances but that they are a change in condition. I am very concerned and I am mindful of the citizens that have been dealing with this for a long time. We have citizens that have asked us this evening and have asked many of us prior to tonight to ensure that the density does not increase within this Wieland development. We have heard that separate and distinct from the EPA issues that there is a risk of increased storm water runoff and increased surfaces that would add to the damaged to this community and whether we were to defer this or whether not we were to hear it again, the reality is that we have citizenry that have said that they do not want to see ten thousand square foot lots in this area. That they do not want to see a reduction of buffers from 15 to 10 feet. As a result and knowing that by law a withdrawal does nothing more than allow this to continue to proceed whereby given the amount of time that has gone on to date, I am prepared to put a motion forward and I will do that now.

City Attorney Jarrard:

Councilmember may I interrupt you very briefly, let me just offer this up as well and here is the only concern I have and I did say that denial would be appropriate procedurally but let me just point one thing out and that is this, I believe that with staff's recommendation of deferral and I know that we have done back and forth with the Wieland folks about the need for deferral based upon the signage, I do have a concern with respect to whether or not they came prepared to make an argument for their case in chief, if you will, because of the notice they had gotten from planning staff and even my office that there were

problems with the ads so I just want to caution the Council that probably they came tonight thinking that at a minimum they would get deferred and did not put on their and maybe make some of the arguments that they might not otherwise make tonight because they thought at least at a minimum one thing was going to happen and that was a deferral. I hope you all understand what I am saying to you. They may have had an expectation of at a minimum this was going to happen and therefore they did not bring the full dog and pony show they might have otherwise brought. I just wanted to give you that caution.

Councilmember Zahner Bailey:

I appreciate that commentary. My only question in response to that was that I believe that when a case is brought forward even when staff may recommend a deferral is that once it has been publicly advertised and once we have citizens come and once we have a public hearing which we have now had this evening is that all applicants and I think especially those that are with us this evening who are quite well versed in zoning laws would know full well that when they come before a body for decision making that that is indeed an option so I am mindful of that. I am also very mindful that if we do nothing other than to withdraw this evening I believe that we are setting up our citizenry to go back through a process which quite candidly is inconsistent for the land use policies for that area and it is inconsistent with the density that was approved under Fulton County.

Motion and Second: Councilmember Zahner Bailey put forward a motion that would be to deny variances or the applicants request for this zoning modification including number 1, 2, 3,4 & 5, which included a request for increased density, which included a request for going from 18,900 square feet lots to 10,890 square feet lots but also included a reduction of the building separation on all lots other than those that were one acre and the majority of these are indeed less than one acre so this would have otherwise allowed for the 15 to be reduced to the 10 foot in all instances and because we have had continued input from citizens and because this would be inconsistent with our land use policies, inconsistent with the Crabapple Master Plan, inconsistent with storm water runoff best practices and also consistent with citizen expectations both those that live near as well as downstream, that is indeed my motion this evening. For the record that is item ZM09-02. Councilmember D'Aversa seconded the motion.

Mayor Lockwood:

We have a motion and a second to deny this application. Are there any questions from Council?

Discussion on the Motion:

Councilmember Thurman:

I would like to make a couple of comments. Number one, if we deny this then they can build exactly what they have already had the approval to build and I have heard and I have been involved in several of the meetings and I have heard from a lot of the citizens that live around there that there is really something else that they would rather them do. Wieland has been trying to work with them to come up with a different plan that citizens would prefer and by denying this we are basically not giving them that opportunity to come back for another year and citizens may get something that is not what they want. With a withdrawal they could come back with a plan that is much better, that is less dense, that everyone around there was much happier with and we are preventing that from happening by denying their request rather than allowing them to withdraw it and work with the citizens around there to come up with a plan that they are happier with. I have worked and talked with many of the citizens there and I believe we are doing them a huge disfavor by denying this request.

Councilmember Zahner Bailey:

And if you would Mayor, I would like to just point out that I want to be very clear that my intent with a motion to deny is not to preclude communication and continued effort but instead to set a very definitive time frame that indeed allows Mr. Galloway, that allows John Wieland to proactively go and embrace this community and to come up with a plan but to do it in a time frame that allows the citizens and that effectively requires the citizens and this applicant to come together to also then make clear that more density is not in fact what is going to be the purveyor of more time but that by requiring these parties to come together it would allow adequate time to resolve the EPA issues while simultaneously having proactive dialogue that puts everybody on the same playing field as opposed to as we heard from citizens them not knowing when is the next meeting that they have to come to that could potentially allow for an approval that is countered to what they expect so I just want to make very clear that my expectation is not to preclude conversation. It is to embrace the opportunity for this applicant to work with the citizens and do it in a way that is fair to all parties and that does not give the advantage to those who are paid effectively to work through a plan.

Councilmember Thurman:

By denying it you are precluding it for one year's time so whether or not you like to think of it that way, by denying it you are precluding them of working out a solution for at least a year's time.

Councilmember Zahner Bailey:

I respectfully disagree. There is nothing that would preclude these parties from coming together and having proactive dialogue.

Mayor Lockwood:

All right, I am going to move on.

Councilmember Lusk:

Unless I am mistaken I did not hear any plea for increased density in this application. Like Councilmember Thurman said if we deny this I believe the applicant is entitled to go back to his original application which is not the best in the west from my perspective so I think a withdrawal provides an opportunity to tweak this plan one more time and come up along with community input something that is more attractive than what was originally proposed so I would find it hard to deny their application at this point and let that 63 acres lay fallow for another year or more. I do not think pipe farms are very attractive. They are not productive either, they do not grow more pipes so I find it difficult to understand the reasoning to deny it this time and I would propose that we send them back to the drawing boards and come up with something that is a little more attractive with the input of the neighborhoods out there. The neighborhoods have already been meeting with the Wieland group and I thought they had made some progress and I think they will continue to meet with them hopefully to come up with something that is a lot more attractive.

Mayor Lockwood:

Unfortunately, we have a couple of different moving pieces. I believe this application really has nothing to do technically with the first variance and certainly I have been to Mr. Kishes property and Mr. Andersons and back there and I know there are some problems and you guys have worked on some of it and you have more to do but again I do think they are two separate things and also I would support withdrawal of this before denying it because I think anything that the applicant brings back to us we will still going to have the same authority or opportunity to allow and make sure that everything is cleaned up on the first part with the EPA so again, I feel the same as the others that I would certainly support withdrawal versus deferral.

Councilmember Hewitt:

I cannot support a denial of this or if we were looking at approval of it I would much rather withdraw or defer if we put a time limit on it versus it coming up every month, where the citizens would know what their meeting schedule is like. I think that gives a little better definition of when this can come to some mutually beneficial agreement.

Councilmember D'Aversa:

The reason why I support the denial is because a year's time frame is going to fly by. I have watched the e-mail conversations go back and forth between the homeowners. I have had dozens of communications from homeowners that have been meeting with John Wieland. I respect John Wieland as Ms Wunderle said, greatly and I think it is going to be a tremendous development that the community can work together with them. So far that has not happened. It has been a year already. It has been two years since that original variance. The two may not have anything technically to do with each other but they have tremendous amount to do with the overall picture. The community is not happy and it is very hard for a community to come together and work with John Wieland on coming to a happy decision that everybody is going to support when there are these lingering challenges so my opinion would be that if we could during this year's timeframe and everybody's open to work with because we all want to see the community be beautiful. John Wieland wants to see it as much as these folks that have been homeowners for years want to see it. I think it would be ridiculous of us to think that anything is going to happen in less than a year's timeframe. Damages have to be mitigated. EPD has to get involved and we have watched what happens when we were involved in the past. Then the work has to be done. We have to come together as a community and determine what this site needs to be. There are a lot of economic challenges and a lot of things that enter into this. To defer this time and time again which we have seen happen in the past just takes us nowhere. This is going to force us to come together as a community. I would like to see that happen. I am not confident that it really as happened. I think people have had meetings but I am not sure that the community and John Wieland have come together so that is why I support the denial. I think it will force you guys to come together and really come up with something that makes us proud in that Crabapple area and that meets not only the Crabapple Master Plan but there is a plea for density increase here. You can disguise it as anything you want to but there is a plea here and there is a lot of things that are entering into this plan so I would urge us to all come together, the city staff as well to make this a plan we could all support and be proud to say that this is the right development for the community.

Councilmember Tart:

For brevity, I still have some questions myself. I have questions regarding, yeah I do think it is an increase in density. I think overall it is a claim that it is not an increase in density but there is shifting in the property, some increase in density in one part of the property, some decrease in another. Regardless of that shift in this plan he is asking for a withdrawal and I have seen what withdrawals can do. The timeliness of that withdrawal is interesting. I guess my question is why, what can be worked out in 30 days to where we could get something back before us during a deferral period.

Woodson Galloway:

We feel like it would require at least 60 to 90 days to work through the planning process, get that approved with the banks, etcetera, and we would also need to have community input and that may take it longer and longer. This has already been deferred several times, not because of anything we have

requested but because of advertising deficiencies so those are the issues. We do not want to keep coming back and having to ask for deferrals over a period of time. I disagree it will take a year because as we can go forward with construction of the homes as soon as they choose to pull permits so that is not an issue. What has to go through EPD are the mitigation measures within the stream banks so those are two separate issues from a legal standpoint but in terms of deferral, we do not really know how long it will take so I do not want to say it will be 30 days and then come back and have another deferral etcetera, we have to work through some planning issues, work through the site plan issues and then they may choose to not bring it back at all. That is certainly a distinct possibility because of the approvals that they have today. We never sought an increase in density. It was a shift between townhomes, multi family and single family to decrease the multi family, increase the single family but the total density was never increased and we never proposed that. Most of the community has looked at it and said, we would prefer more single family and less multifamily but that does involve lot sizes so those were the tensions so we were trying to work through those issues. We respectfully feel like it would be best to withdraw it and then allow that to come back if and when it is appropriate to bring it back. There will be adequate notice and opportunity to know what the schedule is going to be far in advance just like there was in this case so there is plenty of time to deal with that.

Councilmember Zahner Bailey:

As a Point of Order and I know our City Attorney left, I need to confirm a legal Point of Order Mayor. Was he coming right back?

City Manager Lagerbloom:

He was. He got a call from home that he had to take and said he would be back in a moment.

Councilmember Tart:

I have a question. In keeping with that same thing and the deferral being recommended by staff and you asking for a withdrawal and there being a motion on the table to deny it, I have a question regarding the deferral in general and if you knew this was coming before us tonight, I guess I am still wondering why there was not a better effort on the part of John Wieland Homes to engage the homeowners to work this out before tonight.

Woodson Galloway:

Well, I think there was a big effort to engage the homeowners. We had two meetings with Kensington. We had one with the board, one with the Kensington Farms residence. They publicized the meeting, there was the community zoning information meeting. There was also numerous meetings with representatives of the community including Mr. Anderson, including Buck Bell, staff, members of the commission, Council. One of those meetings occurred last Thursday and it was particularly negative in its tone in terms of responding to a proposed compromise and as a result of that there were seemingly lines drawn in the sand where it appeared that there would need to be some substantive changes in order to get at least that particular groups approval of the revised plan so that is why Mr. Wieland made the decision to ask for the withdrawal because efforts to proceed as things were going along were not seeming to be successful so it would require a more substantive change which needs more thought and more decisions on their part prior to re-engage in the community if in fact they choose to do that.

Mayor Lockwood:

I think Councilmember Zahner Bailey had a question for our city attorney and then I will move forward.

Councilmember Zahner Bailey:

I did, thank you Mayor. My question for you Mr. Jarrard is that if I am not mistaken if we were to approve a denial this evening of these five changes which included increased density per lot size and also included reduction of separation from 15 to 10 on virtually all of the land lots, that if we do deny this, this evening that we have as a body the authority if there was progressive movement and consideration from the community with some different plan other than what is before us this evening that we would have the authority to allow this applicant to come back sooner than a year and in fact we could according to our zoning laws allow a decision if it be the pleasure of this body to bring it back sooner than a year and if fact I believe could bring it back as soon as six months from now, is that correct?

City Attorney Jarrard:

I think that is correct.

Councilmember Zahner Bailey:

So I just want to mitigate the concern that was noted that we could not somehow bring back a plan if it was a correct plan that the citizens supported sooner than a year, indeed we could and we just heard Mr. Galloway say that we might need 60, 90, 120 more days so knowing that a denial, it sets a very specific parameter in place that says more density per lot will not be allowed but does nothing to preclude the applicant from having conversation that is meaningful but the citizens from whom I have heard time and again is that they are not looking for lot sizes to increase and to go to 10,000 square foot lots which is effectively a quarter of a lot, that is not what the citizens that I hear from, that I represent, so knowing that a denial tonight simply says that these requests before us this evening are not appropriate, it does nothing to preclude this from coming back in a different format in six months so with that my motion to recommend denial of these particular elements that include higher density lots and that include a reduced separation of buffer and take into consideration the concerns of citizens, not only here this evening from those whom we have heard time and time again and I believe our tax payer dollars need to be better at work than continuing to see these cases come before us inconsistently with our land use policies.

City Attorney Jarrard:

Councilmember Zahner Bailey, can I ask you a question with respect to that? Is the distinction you are making is the thought that the Council could waive the year but would only have to honor the six months of state law?

Councilmember Zahner Bailey:

We can deny it and of course that gives the applicant effectively a year but if we find that there is substantive progress on a completely different plan that does not negate the densities that currently the master plan requires that we could say to ourselves if we hear from citizens and from not only the representatives of Wieland but from Mr. Wieland that they have found a mutual approach that allows this to be redone, we can say that is awesome. We look so forward to saying please come back sooner than a year, but again as Councilmember D'Aversa clearly pointed out between everything that is before us to think that there is going to be a solution any sooner than six months, I think is not looking at the facts before us and what is before us, what has been before the community were requests for increased density in terms of lots and I know that Mr. Galloway shakes his head and says no the overall density is not impacted. I am not speaking to overall density, I am speaking to the land lots that this would set a negative legal precedent for, it would set in motion 10,000 square foot lots that currently are not allowed by the Crabapple Master Plan. A master plan that certain people even on this Council embraced. To go from an 18,900 square foot lot down to a 10,000 square foot lot is inconsistent with what our citizens

expect of us and by denying this, this evening it does not preclude conversation, it encourages it but it says it encourages it without increasing the density so my motion stands and I appreciate the opportunity to make those comments.

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

Motion and Vote: Councilmember Thurman moved to allow the applicant to withdraw ZM09-02 in hopes that they will go back and work with the community to come up with a solution that is better than their original plan and much better than what is currently been advertised. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed 4-3, with Councilmember Zahner Bailey, Councilmember D'Aversa and Councilmember Tart opposed.

Mayor Lockwood:

Will the City Clerk please sound the next item?

City Clerk Marchiafava read agenda item 09-926.

RZ09-04 – An Ordinance to create Article 13 of the Milton Zoning Ordinance; to establish a historic preservation commission in the City of Milton to provide for the designation of historic properties for historic districts; to provide for issuance of Certificates of Appropriateness; to provide for an appeals procedure; to repeal conflicting ordinances and for other purposes.

Senior Planner MacDonald:

Good evening again. This item is before you after you have heard it as it has been summarized in the memo. It went before you on August 10th at a work session. It was recommended that it continue on through the process. You were requesting that it be heard before the design review board. There is at the end of the memo the action report from that Design Review Board. I will not go through every single one. I believe that you all have reviewed or if you have any questions I will do my best to answer them. After the Design Review Board reviewed it, it went before the City of Milton Planning Commission and at that point and time the Planning Commission reviewed it and they had asked for a deferral based on the item that are listed on page five of your memo. Basically staff is recommending deferral as well based on these comments from both the Design Review Board and from the Planning Commission so if you have any questions I will be happy to answer those.

Mayor Lockwood:

Any questions from Council for Ms MacDonald?

Councilmember Thurman:

I guess my only question is, is the thirty day deferral you feel like sufficient?

City Manager Lagerbloom:

Let me interject here real quickly. I do not know that would necessarily be sufficient. My intent at this point is to allow this item to come forward at the work session in October. A request of Councilmember Tart if you all think that is appropriate. A sixty day deferral so that we have that opportunity in October may be more appropriate.

Councilmember Zahner Bailey:

What date then would that come before us?

City Manager Lagerbloom:

If you will give me just a second, I apologize.

Councilmember Zahner Bailey:

You are saying it would come to us at the October work session, correct?

City Manager Lagerbloom:

Right, it would come to you for discussion in the October work session and depending on how it emerged from that work session, whatever steps it needed to take at that point. If you were to defer it tonight I would ask that you defer until November 16th.

Councilmember Zahner Bailey:

I just have a question for Ms MacDonald. Could you speak to what it is that the Design Review Board and the Planning Commission, some of the thing that they spoke to and the reason Mr. Lagerbloom is that when we have a work session some of the things that we talked about at least in the minutes of the two meetings that I have read in terms of where people's concerns are with the current ordinance. Could you speak to where those concerns lie?

Senior Planner MacDonald:

I guess the general between both the Design Review Board and the Planning Commission there was concerns regarding the prior use recognition. They did not believe it should be in the Historic Preservation Ordinance and what would happen if that would happen. For instance if the store on the corner of, I am sorry, the main store, if that was considered a prior use, now it has to go through a lot of different motions as to go back to you. It is not just an automatic thing and representatives from the Historic Preservation Committee also explained that but in the end there was just concern about how could we control what was going to be put there. Again, you cannot move the building. The buildings have to stay there. It is not like you could move it away from the road or in a better spot to provide for more parking, that is very clear but the problem is if for instance if that was general retail store well what could really be there if this was approved in the future. Again I do want to say that it is not like it is an automatic yes about it. It would have to go back to you and there would have to be a lot of research done and the property owner would have to prove that the use that it had been originally so that was a big issue for them.

Councilmember Zahner Bailey:

So in terms, I hear...

Senior Planner MacDonald:

That they would rather not have the prior use recognition in the Historic Preservation Ordinance.

Councilmember Zahner Bailey:

Ok, so the Design Review Board has recommended that language be removed and can you tell me what the Planning Commission recommended?

Senior Planner MacDonald:

Right and also the Planning Commission had the same concerns with the prior use recognition and they were not very comfortable with that and what that would possibly mean for the future of those two sites that were recognized as possible sites for that prior use.

Councilmember Zahner Bailey:

Thank you, so I guess part of my question Chris is just as it relates to the, and I know the Planning Commission had some other perspectives beyond that but in my reading of not only the ordinance and the comments that I had made historically at our work session but also looking at the comments that came out of both the Design Review Board as well as the Planning Commission, my question Mr. Lagerbloom to you is, do we not want to have a discussion about that item tonight which is the prior use or are you suggesting that we do not have enough data to have that discussion? I am just trying to make sure I understand what we would accomplish at the work session.

City Manager Lagerbloom:

I am suggesting that before we have the discussion I would like for it to have vetted and actual official issued from the Planning Commission since they ultimately asked to defer it. It is my opinion that we should give them the opportunity to officially provide their comments and then we should take it up for consideration.

Councilmember Zahner Bailey:

So it would go back during this process before it comes to our work session, it would go back to the Planning Commission, that was unclear to me, I am sorry.

Senior Planner MacDonald:

Yes, they are meeting tomorrow night because of the way the meetings are landing in the month it just happens to be that they will be taking up this item tomorrow at their planning meeting.

Councilmember Zahner Bailey:

That helps a lot. I did not hear that in the presentation. So the Planning Commission would get to hear it tomorrow evening and then it would come to us Mayor, at our work session, is that correct? In our next work session, we have one in October?

City Manager Lagerbloom:

That is correct, we do.

Councilmember Tart:

I am supportive of it coming before us in a work session because I would not really call us having a discussion of it in our last work session. I was kind of presented to us and we did not really have time to react or digest it but we would at the next work session but my question is why do we need to wait until November? I do not see any reason why we could not have it on the work session on the 12th and then defer it until the October 19th council meeting.

City Manager Lagerbloom:

That is certainly an option. I guess I err on the side of making sure that whatever comes out of that work session we have enough time to do. I do not mind tonight if you defer, this is just again in the spirit of not repetitively deferring things at Council meetings. If you want to defer it until October, I am fine with that. The worst case scenario is that we would call the item in October and have to defer it for an

additional thirty days if something came out of the work session on the 12th that required more than seven days worth of work for us to accomplish so either/or is fine with us.

Mayor Lockwood:

I certainly support the City Manager putting it on the schedule when he feels comfortable with it with our time restrictions and what not so if we look at it in our October work session then wherever you feel comfortable. If you want to leave a little cushion in there I would certainly support that but I would leave that up to you.

City Manager Lagerbloom:

It is kind of a double edge sword because number one I want to make sure we have time to accomplish the work you want us to accomplish and number two I realize that this is an ordinance that I have heard from several of you that is important that is important to get into place because every day we wait we run the risk of losing the historic structure. That having been said, why do we not in the sake of being cautious in that regard, lets defer it until October 19th and the worst case scenario is now I have told you all that I do not want to make a practice of repetitively deferring things but this might be one of those circumstances that warrants it. Going ahead and placing it on the calendar will force all of the proper notifications and if it does not happen to work that night there is no harm in deferring it that night to the November date.

Mayor Lockwood:

Ok. Are there any comments?

Councilmember Lusk:

I would agree with his recommendation and I propose a motion to reflect that.

Mayor Lockwood:

Let me see if we have any public comments on this first.

City Clerk Marchiafava:

I have none in support sir but in opposition I have Ms Joan Borzilleri.

Joan Borzilleri, 540 Kings County Court:

This may be a mute point if you go ahead and defer and hear from the Design Review Board and the Planning Commission because I am sure they will be able to refine the wording as it currently exists. I would like to communicate my concerns about the Historic Preservation Ordinance draft coming before Council tonight. My specific concern is regarding the prior use recognition section. I feel it would give unrestricted access of certain properties to commercial development and these views are apparently shared by the Design Review Board and the Planning Commission. My hope is the vote be deferred until the language is worked out especially the prior use recognition section. My first preference would be to have it removed and the second preference would be to have the Ordinance state specifically what the sites could be used for. Have the use comply with the current zoning and do not provide a loop hole for expanding any type of commercial development. As it stands now the wording is wide open to interpretation. A property that would be affected by this section if located four tenths of a mile from my home. The last time the country store on the corner of Hopewell and Thompson came up as a zoning issue there was much public comment against expanding commercial to this currently AG1 zoned lot. A majority of homeowners in our subdivision signed a petition to deny the rezoning. Thank you.

City Clerk Marchiafava:

That completes public comment.

Public Hearing Closed

Mayor Lockwood:

I will close the public hearing now and if there are any Council discussions or questions? OK, do I have a motion and a second?

Motion and Second: Councilmember Zahner Bailey moved to defer as recommended by our staff and as recommended by our Planning Commission to defer our Historic Preservation draft ordinance and during that deferral that it would return to the Planning Commission on Tuesday September 22, 2009, returning then to a work session of the Council, I believe I heard our City Manager say October 12th to then be back on our Council agenda for October 19th. Councilmember Thurman seconded the motion.

Mayor Lockwood:

I have a motion by Councilmember Bailey, second by Councilmember Thurman for deferral. Are there any comments or questions?

Discussion on the Motion:

Councilmember Zahner Bailey:

A question for our City Attorney, did we cover all the dates as we needed too?

City Attorney Jarrard:

You did.

Vote: The motion passed unanimously 7-0.

Mayor Lockwood:

Will the City Clerk please sound the next item?

City Clerk Marchiafava read agenda item 09-813.

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

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

Senior Planner MacDonald:

Good evening again. This item, The Landscape Group, we had asked for a deferral at the July meeting on July 20th to be deferred until tonight to allow the applicant adequate time to provide a new survey. The community development department provided them the information and a list of surveyors again. This was actually done previously as well but the survey that was submitted to us and reviewed by staff, both in community development and public works was that the survey and accompanying site plan was inaccurate to the point that there was no way to really know exactly what was needed on the site so Mr.

Tom Wilson and Mr. Jimmy Sanders met with the applicant, with his attorney as well as his surveyor. I think it was about two weeks ago and they went again on the site and talked about the issues and showed them the differences between the two surveys and the issues that staff had with them and not knowing where the stream truly was and then therefore where stream buffers could encroach into different various parts of the site so Mr. Wilson instructed their surveyor and their attorney of exactly what we needed again so the applicant had promised to get another site plan to us. I believe it is on its way but it obviously did not come in time for us to make any decision so therefore staff is recommending another deferral. I know it sounds redundant but we do really want to give another opportunity for the applicant to make things right on the survey and therefore staff recommends deferral until the October 19th meeting.

Mayor Lockwood:

Are there any questions for Ms MacDonald?

Councilmember Lusk:

Do you know if the applicant has engaged a registered land surveyor to do that work?

Senior Planner MacDonald:

The surveyor that is actually doing the work is not a licensed surveyor but he is doing work under a licensed surveyor that can sign his work.

Councilmember Lusk:

I have seen the plan that he submitted and obviously this applicant is not sophisticated enough to understand or had not been sophisticated enough previously to understand what was required. I understand the process that you are going through now, the guidance that you have given him to get it right this time.

Mayor Lockwood:

Are there any other questions for Ms MacDonald before we hear public comment?

Councilmember Tart:

Can you confirm for me how many times this has been deferred?

Senior Planner MacDonald:

First of all the Planning Commission had recommended deferral to allow more time for them to review it. I believe it went before them the first time in February of this year and then they deferred it to March and in March they made a recommendation that was forwarded on to you for the April 19th meeting and then it was deferred until the May 18th meeting and at the May 18th meeting it was deferred until the June 15th and then it was deferred on July 20th and then ultimately for a two month deferral to this meeting tonight on September 21st.

Councilmember Tart:

So basically give or take four months we are working on a year of deferrals with a business that has been operating illegally. The second question, the information that has been given to us to date, do you have any reason to suggest that one or more of these three variances will not be needed or do we even have enough information...

Senior Planner MacDonald:

To be honest the survey was so inaccurate to the original survey that I would not even want to answer that question because we do not have accurate information.

Councilmember D'Aversa:

Was there a situation with the septic?

Senior Planner MacDonald:

Regarding the septic there has been one of the items that was needed was a testing of the water. Fulton County Health Department has tested the water since the last meeting and it has come back to be appropriate. There are no problems with the actual water. As far as with the septic there is really nothing more that we have progressed on as far as the septic and the size and everything.

Councilmember D'Aversa:

There was a request that the well be moved.

Senior Planner MacDonald:

Right. The well, they did talk to a plumber who said that even if you move the tank of the well into the garage or into the warehouse, there still would be a pump there so it did not accomplish what they thought it would accomplish.

Councilmember D'Aversa:

So they still need these variances?

Senior Planner MacDonald:

Correct.

Councilmember D'Aversa:

Given our recent discussion, I do not know if you remember the discussion but how would you say that these variances fall into the discussion we had earlier today with Mr. Jarrard. Would those classify hardship that the applicant had no control over or one where we are trying to corset something into this property?

City Attorney Jarrard:

Now the scenario I received earlier makes all the sense to me. I will not change my opinion if there has been a question with respects to the legality of the appropriateness of the facility and the business thus far, I certainly do not believe that granting a variance in this situation would be required. I think you have all kinds of discretion in this matter.

Councilmember Hewitt:

Just to make sure I understood the question that Alan asked a few minutes ago of Ms MacDonald is that perhaps or perhaps not, one way or the other based on the lack of an accurate survey some of these may or may not be necessary or more may be necessary after you get an accurate survey. Is that correct?

Senior Planner MacDonald:

Yes, I guess I will change a little bit. They will need variance to some of the buffers that have already been requested. More concisely there could be additional variances needed once we confirm and accurate survey.

Councilmember Tart:

I have a question. I am not sure who the right person, it maybe Ms MacDonald or it may be Mr. Jarrard, assuming and this a hypothetical, assuming that a special use permit was granted for the property and all of the variances were denied, what would be the, what would that business be able to do? Would they have to cut back on the potential use of the property to be able to operate within our laws?

Senior Planner MacDonald:

Correct. If you denied all of the current variances that are before you, I would think it would be very difficult to operate a landscape business because the trucks would not be able to get in and out of the property and to be parked in the right location and to have turn around. I think it would be very difficult to operate unless he just used it purely as an office and not have trucks and not have other things.

Councilmember Tart:

Which would reinforce the theme that not every property is designed for every purpose.

City Attorney Jarrard:

Which to the extent that there has been a significant expenditure of funds on this property which would then therefore be forwarded, that gets us back to the issue of whether that significant expenditure of funds was done with the lawful use.

Councilmember Thurman:

I have a question. Obviously this keeps getting deferred and it sounds like it does get deferred for legitimate reasons. Getting the survey right and we do want to make sure we get it right but at what point in time, we have allowed them to continue to operate the business for the eight or nine months since it has been deferred, at what point in time do we say enough is enough, we have to make a decision.

City Manger Lagerbloom:

Let me jump in with that Councilmember Thurman because I was waiting to be able to make this comment tonight because I have thought about this case a lot as it has come forward and continues to come forward and every time I get ready to put it on an agenda, what I have gone back to in the back of my head is that I truly believe that it is our staff's responsibility to operate in a citizen friendly and customer service type of environment and as long as the applicant is continuing to make steps forward and continuing to work with us which I believe they are in this case, it will consistently be our staff recommendation for deferral. Although I have to tell you that I like you at some point say enough is enough but I do not know that it is staff's decision as to when that enough occurs. I think you have a staff in place that will continue to work with our citizens here in Milton until the elected body makes a decision as to when enough is enough.

Councilmember Thurman:

So that really should be a decision that comes from the seven of us and not from staff.

City Manager Lagerbloom:

Absolutely, we will continue to work with any of our citizens who want to continue to work with us and we have not had that door shut to the extent that I would come before you tonight and say, you know

Mayor and Council we have just tried and tried and tried and we cannot get this person to respond to us. That has not happened in this particular case so I do not want to paint the picture that they have stopped working with us but we will stop working with them when you all tell us that enough is enough.

Councilmember Thurman:

Well I would think if we made a decision to defer it this last time, in my opinion it needs to be that last deferral and we need to make a decision on it because by that time it will have been a nine or ten month time period in which they have been continuing to operate the business. At some point in time you have to gather what facts you can and make a decision.

Mayor Lockwood:

Is there any public comment on this?

City Clerk Marchiafava:

There is no public comment.

Public Hearing Closed

Mayor Lockwood:

Ok, I will close the hearing.

Councilmember Zahner Bailey:

I just wanted to confirm when you were going through the dates Robyn, I counted up seven deferrals so we have had seven deferrals. I cannot say that I am accustomed to being party to a seven deferral process. I would like to confirm also that I think I heard Ms MacDonald say, and again I am all for deferrals when it means that we are going to produce something in the end that is significantly different than what is before us but I believe I heard Ms MacDonald say that these three variances to the buffers would still be required and that during a deferral period what we would see would be additional variance requests. Taking that into consideration in conjunction with what we heard from our city attorney between 5 and 5:45 this afternoon is that we do indeed have a business that was cited for illegal activity. These variances are not a hardship. It is self imposed and therefore it does not meet the standard of our law so my question for all of us would be and to our city attorney and staff is that even if we were to give then yet a one more thirty day deferral, what would be different at the end of that period and again I think at some point the decision becomes when is enough enough and I also heard in response to the question about, is there a surveyor that is producing the results that we need and thus far that has not come forward. I do not believe that surveying company is a different surveying entity. I am concerned that we are continuing to delay the inevitable and I think that sometimes we just have to come to a decision when we have the data that we need. I am not convinced that another deferral would produce anything different that would allow us to make a different decision than what we would make here this evening.

City Attorney Jarrard:

Mr. Mayor, may I ask a question of Ms MacDonald? I am assuming there has been no professional engineering or any sort of as built done on this property, that is the problem, right?

Senior Planner MacDonald:

Correct.

City Attorney Jarrard:

At a minimum Mr. Mayor to the extent that this is obviously causing the Council concern, many time in court the court may allow something to be postponed with direction and it would seem to me if what we are missing here and with Councilmember Zahner Bailey's concerns about the merits, the substantive not withstanding which I fully get, at a minimum the thing that you would expect from someone operating in good faith is, ok, we will give a deferral but the deferral is with a direction and the direction is you must go out and have a professional surveyor do some sort of professional plat because to keep getting apparently what we are getting, here is my concern, I am not even sure how the Council could act on the variance because the key to a variance is you need to know exactly what is needed to know if it is the minimum required. We do not know, is what I think I heard as well.

Councilmember D'Aversa:

Ken they have gotten direction that is where our concern lies. Seven time deferrals even with regard to referrals that were caused by some of our boards, the direction from our staff we have to rely on has been solid and yet they have not complied with that direction. They have stood before Council and we have made comments to them and recommendations to them and they know they have been operating illegally so at this point I think that we are wasting other tax payer dollars in continuing to allow our staff, even though I support greatly customer service and Mr. Lagerbloom that is absolutely the first steps taken. I am glad to hear every time you say that you support that because I certainly do but in this instance this is not about customer service this is about the fact that we have challenges from the group that has been operating an illegal business and now trying to force fit something into a property that does not meet our laws.

Mayor Lockwood:

I do think though that I heard our city manager and the applicant is working with him and it sounds like you have given direction. At this point to come back with professionally done plans, I guess he is in the process of that?

Senior Planner MacDonald:

Right, I got a message from their office manager that the surveyor was sending it through the mail. Again you do not have to have a CAD drawing to be accurate, you have to be accurate, it has to be correct so that is what we are waiting for so that is going to be coming to us any day now.

Councilmember Thurman:

Is the applicant here?

Senior Planner MacDonald:

Yes, he is.

City Clerk Marchiafava:

Mr. Mayor, if it pleases you and the Council and you would like to give him permission he has notified me, Mr. Frank Schaffer that he does wish to speak. That would be your decision.

Mayor Lockwood:

I am fine with that.

Frank Schaffer, 13120 Arnold Mill Road, Milton, Georgia:

Mayor and Council good to see you tonight. As far as the deferrals, most of them I do not believe were our fault. There were things that came up that you all asked us to provide and that is all we are doing.

We are trying to provide the right information. As far as the site plan, we hired somebody that we thought was competent and I understanding was that they knew what they were supposed to be doing. Looking back on hindsight we would probably go with a different surveyor. That is as honest as I can answer it. I think meeting with Mr. Wilson and with Dave the surveyor, meeting them together I think hopefully the site plan should be accurate. We want to get through this just as well as you guys do too. We are not trying to hold this up and I think we have been meeting with everything that you all have asked us to do. We are trying to be compliant and that is really where we are. We are ready. We were ready or trying to be ready on the last date. Unfortunately the site plan did not meet the criteria which was unfortunately I did not realize that when it was ready so I believe we will have it ready for the next meeting. We are just asking for a deferral and hopefully we will have a vote and we hopefully be a compliant citizen of Milton. That is all.

Mayor Lockwood:

Thank you. Are there any other questions?

Councilmember Zahner Bailey:

Because the applicant was given the opportunity to speak, if you could just answer one question and that was you indicated you were ready, can you speak to whether or not you will still seek variances on the 1.74 acreage?

Frank Schaffer:

Yes, the variances are the same. They will not change. We will not need any more.

Councilmember Zahner Bailey:

But you will continue to need the three variances that are before us.

Frank Schaffer:

Well the sign variances in speaking with Robyn, I think we are just going to let the sign variance go. We are just going to ask for the two and we have changed the one from a fifty foot buffer to a 30 foot so we have changed that.

Councilmember Zahner Bailey:

So you still need buffer variances.

Frank Schaffer:

On the two sides, that is correct.

Mayor Lockwood:

Do I have a motion and a second?

Councilmember Tart:

I have a question. Mr. Jarrard, you said that, and I want to make sure that I hear you clearly, because I am prepared to make a motion on this but then you also brought up the issue about needing more information to even rule on the variances, can you speak to that a little bit more? I am seeing it that we have allowed that opportunity to provide that documentation.

City Attorney Jarrard:

Again, I have not reviewed the file. I am listening to what Robyn is telling the Council and hearing what the Council's concerns are. A variance is supposed to be specific to the property. A variance is supposed to be exact. What you need as far as the applicant needs to be the bare minimum that is needed to make whatever the project is work and what I think I was hearing was at this point staff did not even have a site plan or a plat that was exact enough to know exactly the minimum amount of variance that was required and of course until that information is known, you cannot act upon it because you have to grant the variance that is peculiar to a specific piece of property granting only the amount of variance that is the minimal amount needed. Until Ms MacDonald has that you cannot act on it.

Councilmember Tart:

You are saying grant variances, but we can deny variances.

City Attorney Jarrard:

Of course, you can deny it as well. My only concern would be that again that you are acting and let's go back to that quasi judicial capacity, until you know the information that is being asked of you it is difficult for you to rule and your record would arguably be incomplete.

Councilmember Tart:

In thirty days from now when we do a deferral for another thirty days and if they were not to have the information we need then, when do we stop and under what basis would be ever vote to deny this if we never get the information we need to do that. That does not make much sense to me.

City Attorney Jarrard:

No of course it does not and I think the Council would be within it's right, for instance, not to lead the Council but if you were in the mood to say you would grant another variance with the understanding that if the record is not complete upon the next time it comes to your agenda, you will seek a denial.

Councilmember Zahner Bailey:

I assume you meant a deferral is what you meant to say.

City Attorney Jarrard:

Exactly, that is not the least bit out of line. The reality is it takes city resources and time and expense to deal with this in addition to what I am hearing is that you have an illegal use on the property that is being allowed to perpetuate with each month that it is not acted upon so I have no concern for the Council taking, no court is ever going to say you did not give anybody the requisite amount of time to get this application completed. I heard the gentleman say, the Mr. Schaffer indicate that he was only providing what has been asked from staff. Again I am hearing that, I do not know what has been asked but I will only say is that my experience with staff is they typically ask for things that are required under your zoning code to be provided. I do not suspect they are asking for something that is outside the realm of what our code required in the first place so to the extent you wanted to condition the deferral on that bases that the record must be complete the next time it gets to you, that is a very fair condition.

Councilmember Lusk:

Further to Alan's point, if we were to make this deferral, this motion conditional on compliance with all of the requirements of providing a proper site plan, could we at the same time condition it that if it is not presented properly, could we further condition it that we would suspend his operation at that time, or is that too harsh?

City Attorney Jarrard:

It actually is not. The reality is if you have an illegal use on the ground, you have the ability to go ahead and force compliance now so no that would not be inappropriate at all. You have the ability to direct the city manager to request code enforcement or personnel to go out there and begin taking the actions they can take. That is the whole problem with having an illegal use.

Councilmember D'Aversa:

Ms MacDonald, there was a question asked and you made a statement with regard to how the business could operate legally this time without this variance. Is there any way that Mr. Schaffer can leave here and get his business in order to the point where he can operate on that site now without this variance and operate legally, or would he be shut down at this point?

Councilmember Thurman:

Or do we need a correct site plan?

Senior Planner MacDonald:

I cannot make that decision. You would have to ask him what he thought he could...

Councilmember D'Aversa:

Tell me from your perspective as our staff expert, what the illegal operation is at this time.

Senior Planner MacDonald:

It is for a landscaping business that includes storage of materials, trucks, landscape vehicles.

Councilmember D'Aversa:

There is not enough room so at this point if we were to deny this, just help me understand completely that he would not be able to store those trucks which we have had those types' cases before us so he would not be able to store his trucks but he could still operate his business.

Senior Planner MacDonald:

It appears that he could operate an office but you would have to check with him. He would still need to have the use permit but it would be without the variances that he is requesting at this point in time. It appears that he could operate an office for the landscape business but without any of the other types of items that would be needed like landscape trucks and storage areas etcetera.

Councilmember Thurman:

He could not operate an office even without the use permit.

Senior Planner MacDonald:

Correct unless somebody lived there.

Councilmember Thurman:

So there is nothing he could do legally on that property without us giving him a use permit and/or variances.

Senior Planner MacDonald:

I have many situations where we have home occupations. People use their home as an office, purely as an office, where they do their accounting or scheduling or whatever and that could occur in a single family residence. At this point and time, that 800 square foot structure that sits toward the front of the road is purely only an office use. There is nobody residing there.

Councilmember Zahner Bailey:

But to your point, as currently zoned it can be used as a residence, it can be used as an office without a special use permit but it would be required to meet the standards and in order, and if I may I believe the question that was just asked is can this current activity continue without the approval of the variances and I think I have heard Ms MacDonald say that no it could not. We also heard the applicant say that even with the survey that is in the mail, they still need variances and again we heard at five o'clock from our attorney that those variances, there is not a hardship so my question remains, what would be different between now and in thirty days.

Councilmember D'Aversa:

That was the reason and basis for my question. My concern is that we not approve these variances because going on what we just had a discussion on earlier this evening, not approving these variances, is approval going to get him where he should be right now with his business on the site.

Councilmember Tart:

I do not disagree with either of the two of you and I certainly will not be approving any variances. This Councilmember will not be approving any variances without a hardship that is exhibited. However, I am also hearing our attorney say that we need to clearly state what it is that we need in order to rule on those variances and I understand that staff has worked with the applicant. I understand that but I do thing out of the abundance of caution on our parts I do think that it would be necessary at least from my perspective to provide them clear direction on the record from this Council on exactly what it is we need to rule against or for these variances. Given that this has been going on since February 09 and we are talking about another month, I am wondering why we cannot consider this at the next regular meeting. Does it have to be postponed until the zoning agenda meeting or can we postpone it until the next meeting?

Senior Planner MacDonald:

I do not think it would make the advertising because we are so tight with the newspaper ads, it is a week and half ahead so it has to have 15 days and 20 days posting of the sign. Fifteen days advertising in the Milton Herald and then the first time it could be published would be a week from Wednesday and that does not give you the allotted time for the first session in October I do not believe.

Councilmember Tart:

The first session in October is October 5th?

Senior Planner MacDonald:

Correct and it has to be 15 days prior so we are already there almost, this Wednesday.

Councilmember Zahner Bailey:

As a point of order, can I ask our city attorney one quick question? The dialogue right now about whether or not we know what is before us effectively, it has always been my experience in the past that what has been advertised and what has publicly before us is a request based on these variances and there

is some question as to whether or not that survey is accurate or not but what has been publicly advertised and what is publicly before us a legitimate request for these variances based on that property so lawfully does it preclude us from making a definitive decision this evening. I am perplexed by that because I do not think that it does.

City Attorney Jarrard:

It is a good question. My concern is a very pragmatic one. If the Council is intending to deny and I do not know what you are intending, I want to forecast that but if you were, my preference would be to have the full record, a complete record in front of you. I do not believe that the last deferral, the applicant was put on notice that if your application is not complete at this meeting we will deny it and take action. You can correct that this time for the next one and you may want to do that but I would like to have the record be complete from the standpoint of the integrity of any potential appeal.

Councilmember Tart:

Can we make the motion for deferral, can we make that contingent upon an automatic denial if it is not provided by that time?

City Attorney Jarrard:

I would not do that Councilmember and I will tell you why. I would not want you to make a motion where you in advance forecast the exercise of your discretion.

Councilmember Lusk:

Robyn, I am not familiar with your application routing sheet but are you assured that all of your requirements or the city's requirements are plainly, clearly and definitely articulated on any correspondence that you sent?

Senior Planner MacDonald:

This was transmitted to them the beginning of the summertime. It was actually in the application in the original zoning applications so yes.

Councilmember Lusk:

Ok, so the applicant, that has been clearly explained to the applicant and there is no doubt in his mind as to what is required?

Senior Planner MacDonald:

Right, I was not at that meeting but Mr. Wilson took this with him to show them so I am assuming he reviewed it with the surveyor and the attorney.

Mayor Lockwood:

What I am hearing from our City Attorney if someone wanted to make a motion to defer this but clarify that in the motion that the time is that the proper information is in and staff has time to...

City Attorney Jarrard:

I wanted to clarify Mr. Mayor, my comment to Councilmember Tart as well and that is this, what I do not want the Council to do is make a motion that if the application is not complete is that it will stand

automatically denied. I think it will be a motion to defer with the instruction that if it is not complete by the next time it comes back that Council will likely deny it.

Motion and Second: Councilmember Thurman moved to defer U09-01 VC09-01 13120 Arnold Mill Road by Frank Schaffer, The Landscape Group Inc. and the three concurrent variances for a period of thirty days to be heard on our October 19, 2009 meeting with the instruction that the application needs to be complete at that time including the survey performed and signed off on by a registered surveyor so that we may be able to make a final decision at that time. Councilmember Lusk seconded the motion.

Discussion on the Motion:

Councilmember Tart:

I would actually like to amend the motion to add to what Councilmember Thurman's original motion was to suspend the operation at that time if the information is not presented to us by that date.

Councilmember Thurman:

Can we add that to the motion?

City Attorney Jarrard:

My comment Councilmember Tart, could it be to amend to add that the City will immediately commence enforcement if it is not complete as opposed to suspend operation.

Councilmember Tart:

Let me change my amendment. The amendment would be to commence enforcement of the illegal activity on that date if the information is not provided to us.

Councilmember Thurman:

I will accept that friendly amendment.

Councilmember Lusk:

I will second that.

Mayor Lockwood:

Are there any other comments?

Councilmember Zahner Bailey:

I had one question Mayor. When you said that we needed to for the record make it clear that the next time we would take action, I just want to be certain that we are not setting in motion an expectation that when applicants come to us that there is any question, that we expect those packages to be complete the first time and I just want to make sure that what we are not doing is setting in motion that if we get into a scenario where folks are coming to us and say, oh but my data was incomplete therefore I need a deferral that this we are setting aside is an unusual circumstance but that our records as Councilmember Lusk pointed out are quite clear as to what is expected for the zoning process and that by law we are not required to let an applicant know that they might get a denial.

City Attorney Jarrard:

That is correct Councilmember and the only reason that I think providing that advance notice now would make since is because of the history of deferrals as opposed to this being, I would be much more comfortable if this was a onetime isolated event not worrying about that notice but given the history I think it makes since to put them on some sort of oral notice which I think the Council has more than done.

Councilmember Zahner Bailey:

I appreciate that confirmation.

City Clerk Marchiafava:

We are voting in the amended motion and the motion that was amended and accepted.

Councilmember Tart:

Point of order, I am sorry to have to do this because I made an amendment to the motion and that was a rightfully made amendment to the motion which could have been seconded but she actually made a friendly amendment to her original motion. I would not call that an amendment to the motion. That was a clarification to her original motion.

City Attorney Jarrard:

Your position being that now it is not an amended motion at all, it is an original motion.

Councilmember Tart:

It was an original motion which she clarified that was further seconded by the original motion.

City Attorney Jarrard:

I am comfortable with that clarification.

City Clerk Marchiafava:

Voting on the motion.

Vote: The motion passed unanimously 7-0.

That completed the Zoning Agenda.

City Clerk Marchiafava

- Charles Murphy is here asking to speak under general comment.
- He could not make it on time.

Charles Murphy – Hubbard, 535 Twin Rose Way, Milton Georgia

- He asked that the ordinance be considered in regards to the disposal of pet waste by pet owners.
- Not only because of the nuisance but also because of health hazards and it can affect our drinking water etcetera.
- If it is something that could be considered he could bring in a document to present.

UNFINISHED BUSINESS

City Clerk Marchiafava read agenda item 09-927.

Approval of an Ordinance of the Mayor and Council of the City of Milton, Georgia, to Adopt Amendments of the Fiscal 2009 budget for each Fund of the City of Milton, Georgia, Amending the Amounts shown in Each budget as Expenditures, Amending the Several Items of Revenue Anticipations, Prohibiting Expenditures to Exceed Appropriations, and Prohibiting Expenditures to Exceed Actual funding Available.

ORDINANCE NO. 09-09-50

Finance Director Inglis

- As we near the end of the fiscal year there are additional amendments that need to be made to bring everything in line with actual that have occurred so far.
- In the general fund, we request an increase of \$32,320 bring the total from \$21,380,576 to \$21,406,886.
- In the special events fund, we request an increase of \$6,400 to account for donations received for the Milton Round UP.
- In the confiscated assets fund we request an increase of \$43,763 to account for a portion of the money obtained through a drug seizure.
- In the capital projects fund we request a decrease of \$108,582 which brings the line items in line with actual.
- When the projects carry over from year to the next there were some expenditure that hit the prior year that decreased the budget balance that was supposed to carry over so this is correcting that.
- In the capital grant fund we request an increase of \$70,000 to transfer money out of the capital projects fund into the capital grant fund for the Crabapple study to combine it with the Transportation Master Plan.
- Staff request approval for these amendments.

Motion and Vote: Councilmember Hewitt moved to approve agenda item 09-927, Approval of an Ordinance of the Mayor and Council of the City of Milton, Georgia, to Adopt Amendments of the Fiscal 2009 budget for each Fund of the City of Milton, Georgia, Amending the Amounts shown in Each budget as Expenditures, Amending the Several Items of Revenue Anticipations, Prohibiting Expenditures to Exceed Appropriations, and Prohibiting Expenditures to Exceed Actual funding Available. Councilmember D'Aversa seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

City Clerk Marchiafava read agenda item 09-928.

Approval of an Ordinance of the Mayor and Council of the City of Milton, Georgia to Adopt the Fiscal 2010 Budget for each Fund of the City of Milton, Georgia Appropriating the Amounts Shown in Each budget as Expenditures, Adopting the Several items of Revenue Anticipations, Prohibiting Expenditures to Exceed Appropriations, and Prohibiting Expenditures to Exceed Actual Funding Available.

ORDINANCE NO. 09-09-51

City Manager Lagerbloom

- This budget is broken down into a maintenance and operating section.
- We explore operating initiatives as well as capital projects and the request that go along with them.
- They based the budget on three key financial factors.
- The sustainability of existing resources.

- Enhance on those services through operating initiatives as well as maintaining a quality of life through capital projects.
- Revenue comes from similar sources as last year with property tax leading the way at \$9,228,549.
- Expenditures move in a trend with fire first, police second, public works third.
- The salary and benefit detail at a total combined salary and benefit of \$6,732,453.
- Of that \$1.784 million is benefits making a benefit cost to salary ratio at 27%.
- This budget includes a cost of living adjustment for the employees of the City.
- We do have a CH2M Hill contract cost in this budget which is at \$5.515483 million.
- This is a dollar figure that will be used to provide the general government services that we are used to them providing.
- They have been issued to transfer away from their services this fiscal year and he wishes he could have budget that told exactly where every penny would go during this transition but that is just not possible.
- That budgeted cost represents a very conservative approach to being able to provide those services over the year.
- The Mayor and Council budget has been increased to account for the acquisition of an air card.
- City Manager's budget shows an increase because we have reallocated how we spread out the cost.
- The budget for legal services represents an increase.
- We have employed an IT Director as a city employee who will help with the transition of the IT to city services.
- It is budgeted to bring the Human Resources Department in house.
- We changed the way public safety is budgeted.
- In previous years there was a police, fire, public safety administration as well as an EMS budget.
- That has changed with the breaking apart of the police and fire department.
- There is a slight increase in police and fire and that is the breaking apart of the public safety admin.
- They went through a fairly rigorous and thorough process with the department heads if they wanted to bring forward anything that would be considered a new initiative.
- He received requests in the amount of \$1,995,566 so they attacked the initiatives from safety perspective number one.
- We looked at those items first and then looked at what was the right thing to do for our citizens.
- After thoroughly going through the initiative line item by line item we whittled the request down to \$429,870 and that is included in this budget.
- The network bandwidth ties into the public safety department and allows them to get the information they need in the field to respond to calls for service at \$32,500.
- They would like to extend the warranty on the computers which is \$8,000.
- Although we could stand to add six people to our police department in reality we can add only two at a cost of \$159,971.
- We would like to continue to pursue and enhance the heart ready city.
- We have an initiative for an exhaust extractor system in the fire bays and that still may be grant funded.
- We also applied for a grant for the rescue harnesses to be used in case they get trapped somewhere and that has not been grant funded and that amount is \$13,225.
- For public works we have a partnership to allow our citizens to use the recycling center at \$50,000.

- We asked for \$5,000 for a clean day in FY2010 as well as overhead trimming over the rights-of-way.
- There were several other operating initiative requests that we were able to find funding for.
- Capital request was at 4.324 million so we looked at what was mandated by law and what are the safety issues to citizens and staff and that is how he prioritized bring the recommendation forward.
- They included funding for the pavement management program and the NPDES.
- The bridges at Cogburn Road and Landrum Road are in the budget at \$675,000.
- We have three particular lines in the capital budget that could be brought into one line.
- They are park improvement, land acquisition and park enhancement.
- We re-appropriated \$500,000 of that.
- There is \$429,870 worth of request and operating initiatives.

Finance Director Inglis

- At the work session she went through department by department and there was a question about the stipend for the air cards.
- There are only 2 Council Members that have turned in expenditures for that so we could decrease those line items by \$720 each.
- In risk management the question was asked if there was a need for extended liability.
- As it stands right now the policies they have are sufficient for the City of Milton and carrying forward in the transition.
- Councilmember Zahner Bailey asked if there was enough in the budget for the Highway 9 Design Guideline.

City Manager Lagerbloom

- He wanted to bring it back to a level of funding that if you were to go to the budget today was determined by Council last year to be sufficient.
- He met with the Highway 9 Design Guideline committee and they talked about what was appropriate funding and \$15,000 at least gets them back to where they are today.
- He committed to them to allow that unspent money to roll into the unallocated fund balance that it rolls into for FY2010.

Finance Director Inglis

- Councilmember Thurman asked about the LCI applications and what that cost was for.
- It is for outsourcing the writing for the applications for the LCIs.
- We were asked about Arnold Mill corridor study and if it was a place holder.

City Manager Lagerbloom

- Yes, that was money was put in, in the past and they left it in there.

Mayor Lockwood

- Thanked the staff for all of the hard work.

Councilmember D'Aversa

- Asked if they had found someone for the Parks and Recreation Director position.

City Manager Lagerbloom

- They have not.
- There were a lot of applications submitted but they have not filled the position yet.

Councilmember Lusk

- In regards to the appropriations to a new fire engine, asked if that included outfitting it completely.

Fire Chief Edgar

- He provided a range from \$480,000 to \$600,000 and that gave them the opportunity to place equipment on the truck.
- There are demos that go from \$380,000 to \$600,000 so they could buy one of those and in the event they needed to put it in service they would have to transfer equipment from one truck to another to put the unit in service so his recommendation would be to buy the larger items such as hose and ladders.

Councilmember Lusk

- Asked where we would birth the additional vehicle.

Fire Chief Edgar

- There is enough room at Station #41 and Station #43.

Councilmember Zahner Bailey

- In terms of storm water and storm management initiatives, she asked if they thought they had enough out there.
- She thinks they need to look long and hard to ensure they have adequate funds assigned for storm water management throughout Milton.

Carter Lucas, Principal Engineer

- There are not any specific projects identified at this point.
- Part of the NPDES program is to do a proactive evaluation of the storm sewer system.
- As they went through the initial evaluation of about 2,000 structures they anticipated there would be a capital improvement program developed from that.
- They would begin to find the projects and problems that needed to be addressed.
- Right now things are in pretty good shape but they do have a lot of new storm water systems.
- They are budgeting for that capital program but there have not been any specific projects identified other than the bridge projects.

Councilmember Zahner Bailey

- In regards to the legal items, based on the items out there that they know of, asked if the City Attorney was comfortable that they have enough allocated to cover those.

City Attorney Jarrard

- Yes, they will make a concerted effort to come in under budget absence something unforeseen which we hope does not occur.

Councilmember Zahner Bailey

- Asked if they could confirm the Birmingham intersection is still funded as is the Arnold Mill, Providence.

Carter Lucas, Principal Engineer

- Both of them are funded.
- There were some funding issues on GDOTs end that had to go back to federal highway to get approved and they anticipated having that approval back in three to four weeks at which point they would issues us a notice to proceed on both of those projects.

Councilmember Zahner Bailey

- With the new Birmingham Falls Elementary School, because that is still not funded by GDOT and we have officers go out and make sure that is a safe entry way going and coming.
- Asked if there was anything more they needed to do to as far as funding to help the safety of that school entrance.

Carter Lucas, Principal Engineer

- We have made a formal request for that school zone to be signed and they are moving forward with that but he does not have a time frame on it but it is in process.

Councilmember Zahner Bailey

- With regards to reserves, asked how those would fair in terms of reallocating those funds back to the park land acquisition, making sure we have additional dollars for storm water management and making sure we are allocating dollars into the reserves.

City Manager Lagerbloom

- In order to deviate from the budget tonight and reallocate anything he would have to bring it back to them for approval.
- There is no way to affect this transition without anticipating a budget amendment during the fiscal year.
- He thinks he knows their priorities and he will be working along those lines.

Councilmember Thurman

- Asked if the Crabapple study under public works was just the transportation plan for Crabapple or the master plan.

Carter Lucas, Principal Engineer

- The original Crabapple study that was included in the budget was a project that was a holdover from Fulton County.
- It was a streetscape landscape aesthetic type project that was proposed in Fulton County and rolled over.

Councilmember Thurman

- Asked if that was what the \$48,217 is under public works Crabapple study in the capital project fund.

Carter Lucas, Principal Engineer

- That is the carryover from the Crabapple study that they are performing under the Comprehensive Transportation Plan.

Councilmember Thurman

- It was her understanding they were supposed to have money for the Crabapple Master Plan and she was not sure where that was.

Finance Director Inglis

- That has already been spent.
- She believes what was said was that there may be enough money left over in the comprehensive plan to use that money towards the Crabapple plan.

Councilmember Thurman

- Asked if this took into account any of the recommendations from CPAC or if it would be handled with the midyear amendments.

City Manager Lagerbloom

- That will be handled midyear.
- He has not seen any of that information from CPAC at this point.

Councilmember Thurman

- She had mentioned the credit card fees at the last meeting.
- She does not think the city should have to pay the fees for those who choose to use their credit cards.
- Fulton County makes people pay them as they charge.

Finance Manager Inglis

- She has not been able to find out anything yet but once they get through the budget and billing for the property taxes, it is one of her priorities.

Motion and Vote: Councilmember Tart moved to approve agenda item 09-928, Approval of an Ordinance of the Mayor and Council of the City of Milton, Georgia to Adopt the Fiscal 2010 Budget for each Fund of the City of Milton, Georgia, appropriating the amounts shown in each budget as expenditures, adopting the several items of revenue anticipations prohibiting expenditures to exceed appropriations, and prohibiting expenditures to exceed actual funding available with the following change, which is to move the \$20,000 relative to the LCI grant to the capital grant fund. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

NEW BUSINESS

City Clerk Marchiafava read agenda item 09-928.

Approval of a Memorandum of Understanding between the City of Milton and City of Alpharetta for SWAT services.

Captain McCarty

- This is an agreement between the City of Milton and the City of Alpharetta to establish a joint SWAT team.
- Alpharetta presently has a SWAT team.
- It would establish us to provide up to 4 officers to supplement that team.

-
- This gives Milton access to the full team at any time we would need their services.
 - It also allows us to get additional training for our officers.
 - These are volunteer positions they would take on in addition to their normal duties.
 - They will have 2 days a month to train specifically for this type of activity and they perform everything else on an on call basis.

Motion and Vote: Councilmember Lusk moved to approve agenda item 09-928, approval of a memorandum of understanding between the City of Milton and the City of Alpharetta for SWAT services. Councilmember Zahner Bailey seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

MAYOR AND COUNCIL REPORTS

Councilmember Zahner Bailey

- Annually, we have a Rivers Alive event that is about cleaning up the water ways of Milton and that is currently scheduled for October 10th but with the rains it is possible that may be delayed.
- If the rivers are too high and dangerous they will not do it then but if the waters recede they will proceed on October 10th.
- They will continue to work on some of the dumps at the park land which feeds into Little River.
- They will be working on Chicken Creek.
- Unless something changes, it will be October 10, 2009 from 8 am until around 1.

STAFF REPORTS

City Manager Lagerbloom

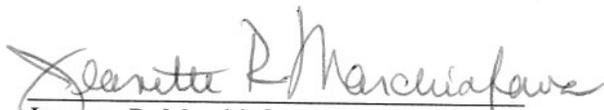
- Today, has been a trying day for people working outside, police, fire and public works.
- We are up to about 44 horses today being rescued.
- Also, there will be a new section at the end of the weekly reports.
- We will provide weekly transition updates.

ADJOURNMENT

After no further business, the meeting adjourned at 9:52 PM.

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

Date Approved: October 5, 2009



Jeanette R. Marchiafava, City Clerk



Joe Lockwood, Mayor