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**The Regular Meeting of the Mayor and Council of the City of Milton was held on October 19, 2009 at 6:00 PM, Mayor Joe Lockwood presiding.**

**INVOCATION**

Tass Welch, Community Minister, Community of Christ Church, led the invocation.

**CALL TO ORDER**

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

**ROLL CALL**

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

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

**PLEDGE OF ALLEGIANCE**

**Mayor Lockwood** led the Pledge of Allegiance

**APPROVAL OF MEETING AGENDA**

Staff recommended the following changes to the meeting agenda:

1. Add an Executive Session for potential land acquisition.
2. Add a Resolution amending Resolution No. 08-01-09, a Resolution appointing members to the City of Milton Design Review board for District 3, after the Consent Agenda.
3. Add a Resolution Amending Resolution No. 09-01-75, a Resolution appointing members to the Stakeholder Advisory Committee for the City of Milton Transportation plan for District 3, after the Consent Agenda.
4. Under Public hearing, remove agenda item 09-959, Approval of Alcohol Beverage License Application for Casa De Tontos LLC d/b/a/ Sip Wine Tapas Restaurant located at 12635 Crabapple Road, Suite 110, Milton, Georgia. The applicant is John foster Smith for consumption on the premises of wine/malt beverage/distilled spirits.

**Motion and Vote:** Councilmember Lusk moved to approve the meeting agenda, as amended. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously.

**PUBLIC COMMENT**

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

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

### **PUBLIC COMMENT**

**Joy Ferguson**, 1211 Whitshire Way, Milton Georgia

- Thanked Council for all they do.
- Requested they consider the road Deerfield Parkway as it crosses Webb Road, there are two center islands in the road that have never looked nice and now is the time to plant trees and to beautify those two islands.
- It is right across the Bowen and Villages of Devonshire.
- Asked them to consider the possibility of water runoff in looking at better way of supporting the environment by the fertilizers used in the community.
- There are some natural options that are not expensive.

### **CONSENT AGENDA**

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

1. Approval of the September 28, 2009 Special Called Meeting Minutes.
2. Approval of the October 5, 2009 Regular Meeting Minutes.
3. Approval of Financial Statements for the period ending September 2009.

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

*Added by motion and vote*

**A Resolution Amending Resolution No. 08-01-09, A Resolution Appointing members to the City of Milton Design Review Board for District 3.**

**RESOLUTION NO. 09-10-106**

**Councilmember Lusk**

- James Brown is a member of the American Institute of Architects and a registered architect in the state of California.
- He has been in architecture for over 30 years.
- He was director of design and architecture for Opus Architects and Engineers.
- He proposed him to serve as a replacement on the DRB since the previous member Vic Jones has elected to roll off due to the fact that he has a contract with the City.

**Motion and Vote:** Councilmember Tart moved to approve a Resolution Amending Resolution No. 08-01-09, A Resolution Appointing Members to the City of Milton Design Review Board by adding James R. Brown for District 3. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

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

*Added by Motion and Vote*

**A Resolution Amending resolution No. 09-01-75, A Resolution to Create a Stakeholder Advisory Committee for City of Milton Transportation Plan by adding Committee Member for District 3.**

**RESOLUTION NO. 09-10-107**

**Councilmember Lusk**

- Proposed Joshua Barnes.

- He is replacing Doug Hand who left for assignment outside the City.
- He is the manager of real estate operations at Orkin Associates LLC.
- He is a Georgia native and graduated cum laud from the University of Georgia with a bachelor's business administration degree real estate.
- He is currently pursuing a CCIM designation.

**Motion and Vote:** Councilmember Thurman moved to approve a Resolution Amending Resolution No. 09-01-75, A Resolution to Create a Stakeholder Advisory Committee for City of Milton Transportation Plan by adding Joshua Barnes for District 3. Councilmember Hewitt seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

### **Oath of Office**

**Mayor Lockwood** administered the Oath of Office to James Brown for the Design Review Board District 3 and Joshua Barnes for the Transportation Stakeholder Advisory Committee for District 3.

### **REPORTS AND PRESENTATIONS**

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

**A Proclamation recognizing Milton High School Marching Band's 60<sup>th</sup> Anniversary.**

### **Councilmember D'Aversa**

- Announced there will be a celebration October 30<sup>th</sup> at Milton High School recognizing the band and music.
- Read and presented the Proclamation to Mr. Borger and members of the band.

### **ZONING AGENDA**

*(Zoning items typed verbatim.)*

**City Clerk Marchiafava** read the zoning rules and agenda item 09-926.

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.

**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 or historic districts; to provide for issuance of Certificates of Appropriateness; to provide for an appeals procedure; to repeal conflicting ordinances; and for other purposes.**

**Interim Community Development Director Tom Wilson:**

Mayor and Council the Historic Preservation Ordinance represents a lot of really hard work from a very dedicated committee, The Historic Preservation Committee. I am really grateful for the hard work they have put into that and to graph this document. It has been reviewed by the Planning Commission and you have seen this document at two work sessions. At the last work session there was a lot of very good comments that came out of that discussion. Since that time the city attorney has added a number of other comments to this and in light of those very meaningful comments I would recommend to you that we refer this back to the Planning Commission and to the Historic Preservation Committee so that they can all integrate those comments into their document. What I am really proposing is that we defer this to come back to City Council on December 21<sup>st</sup> Council meeting. It would go to the Planning Commission on November 18<sup>th</sup> and that will also allow us enough time to advertise an amendment to Article 29 which is the violations article in the Zoning Ordinance so that we can add and increase the penalty for failure to maintain these properties. I respectfully request that we defer this until those dates.

**Mayor Lockwood:**

Do we have any questions for Mr. Wilson?

**Councilmember Tart:**

Mr. Wilson, is there going to be an opportunity to include in this revision some incentives that were discussed in the last work session and let those go back through the process as well or are we just looking at penalties moving forward?

**Interim Community Development Director Tom Wilson:**

At this moment we were just looking at the penalties. We think it will take longer than that to come up with some incentives and that was going to be one of the first things that the Historic Preservation Commission would do is look into those incentives. If we wanted to look into it now we certainly could do that but it would delay this for some time.

**Councilmember Tart**

I understand.

**Councilmember Zahner Bailey**

Just very quickly and very briefly, could our city attorney, could you just speak to the things that you felt in a general way were important just so we could put our attention into those?

**City Attorney Jarrard:**

I could, there are a lot of sections of the proposed ordinance that we made comment on and just so you will know and the Council will feel comfortable with what is going on we provided those. I know Robyn circulated it to the entire Planning Commission and they have looked at them and they had some questions. Our representative of the Planning Commission has gotten with me and we are going to go over their concerns and questions about my comments this week and the objective is going to be to harmonize everything and get everybody speaking the same language and everyone comfortable with it. Some of my concerns were very technical. Some of them were not so technical and more substantive for instance to give an example in one of the definitional sections, the way the Planning Commission modified it was to take the definition of historic, it used to say it had to be a structure of at least 50 years old and the way it was modified is that is no longer the case. It does not have to be that way. We pointed that out and raised it as an issue and that is just an example of the sort of thing I need to get with the Planning Commission to make sure that their vision and my concerns from a legal standpoint blend together. That is all it is. I will not try and change it from a policy perspective. I am going to try and change it from an enforceability and rational understanding of the perspective, so that is what we are going to do and we have a plan.

**Councilmember Zahner Bailey**

Thank you and your meeting with the Planning Commission is next week?

**City Attorney Jarrard:**

Actually, Mr. Ragsdale has already provided me some comments but what we want to do is get on the phone first and go over each point, point by point. Once we get comfortable then as Mr. Wilson said it goes to the Planning Commission and they can look at it but I suspect once we get comfortable with it that will be a very quick process because we will already be there.

**Mayor Lockwood:**

Ok, are there any other questions? Do we have any public comment on this?

**City Clerk Marchiafava:**

No public comment in support or opposition.

**Mayor Lockwood:**

Ok, I will go ahead and close the public hearing. Is there any questions or discussion that Council has?

Ok, do I have a motion and a second?

**Motion and Second:** Councilmember Thurman moved to defer 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 or historic districts; to provide for issuance of Certificates of Appropriateness; to provide for an appeals procedure; to repeal conflicting ordinances; and for other purposes. Councilmember Lusk seconded the motion.

**Discussion on the Motion:**

**Councilmember D'Aversa:**

Are we deferring it to a certain date?

**Councilmember Thurman:**

Thirty days, is that what we need?

**Interim Community Development Director Tom Wilson:**

December 21<sup>st</sup>.

**Mayor Lockwood:**

Ok, we have a motion and a second to defer this until December 21<sup>st</sup>.

**Vote:** The motion passed unanimously 7-0.

**City Clerk Marchiafava** read agenda item 09-952.

**ZM09-03 - Northwest corner of Webb and Morris Roads, Land Lots 1044, 1045, 1046, District 2/2. The application is Precision Design and Development (Bowen Family Homes) by Corbitt Woods to modify the following conditions:**

1) To modify Condition 1.d (RZ05-022) - Site development shall be substantially consistent with the rendering and elevation submitted to the Fulton County Department of Environment and Community Development on June 27, 2005 except for lots identified as 136 through 216 on the revised site plan submitted on September 11, 2009 to the City of Milton Community Development Department.

2) To modify Condition 1.f. (RZ05-022) - The minimum heated floor area for a townhouse unit shall be 2,000 square feet except for those lots identified as 136 through 216 shall be a minimum heated floor area of 1,850 square feet. All units shall have a rear entry 2-car garage except for those lots identified as 136 through 216 on the revised site plan submitted on September 11, 2009 to the City of Milton Community Development Department.

3) To modify Condition 2.a. (ZM07-03) To replace the revised site plan submitted on July 2, 2007 to the City of Milton Community Development

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**Department with the revised site plan submitted on September 11, 2009 to the  
City of Milton Community Development Department.**

**Interim Community Development Director Tom Wilson:**

Mayor and Council the changes that are being requested by this applicant are not particularly land use issues they are more community value issues. When I look for policy surrounding this request I can tell you that you have established no policies about rear entry garages. The only policy that really exists out there is the policy set by the Board of Commissioners when they rezoned this in 2005 and therefore our recommendation is for denial. I would be glad to answer any questions you might have about that. Recently as of tonight I did receive a letter from Mr. Corbitt Woods asking for deferral while he did some re-engineering to see if he could actually accept the conditions of zoning as they are written by staff. Maybe Mr. Wood would like to explain his request for deferral.

**Mayor Lockwood:**

I would be glad if Mr. Wood would like to speak.

**City Clerk Marchiafava:**

Moving to comments in support and Mr. Corbitt Woods.

**Corbitt Woods, 6650 Sugarloaf Parkway, Duluth Georgia**

Good evening, I am here on behalf of Owen Family Homes. I am the applicant for this particular change for the Deerfield Green project and we...

**City Clerk Marchiafava:**

Please state your address.

**Corbitt Woods:**

6650 Sugarloaf Parkway, Duluth, Georgia and basically we are asking for a deferral because we are in support of the staff's recommended conditions in order to support our application however we need to take some time to figure out the engineering implications of what they want to change specifically there are some underground utilities that are already in and some request that we have had through interaction with the neighborhood, community people like Heidi Sowder and our neighbors within our community with respect to making sure it stays pedestrian friendly in the driveway and the front entry units. The primary reason for the changes as staff has asked at 136 through 163 appeared to something that maybe you all would support. We have a hardship with the allies as it relates to being right next to a large retaining wall and a pond. I do not want anybody backing into the retaining wall or worse into the pond so that is our justification for this. I think you have seen as we have been trying to get going over there that we have it here to all the standards and done everything and I think the community is very happy with it. I wish we could sell them faster and so does everyone else but I appreciate your consideration if we could have a deferral to work on this and see if we can find something that everyone can agree on.

**Mayor Lockwood:**

Thank you, do we have any more public comment?

**Teresa Poole, 520 Twinrose Way, Milton, Georgia**

Good evening, I live in the Deerfield Green community. I am in support of the change. I think it will add value to the community as it will offer of variety of townhomes for future homeowners to choose from. Thank you.

**City Clerk Marchiafava:**

That is all the public comment I have in support and opposition sir.

**Mayor Lockwood:**

Ok, I will close the public hearing. Is there any Council discussion or questions again for staff?

**Councilmember Tart:**

I have one question. I am a little confused by what the changes might be on the horizon because I respect the opinion of staff regarding the fact that it will change the look and feel of that community as originally proposed and planned for and certainly we do not want to do that and I am wondering what kinds of changes will come forward to us in the near future to I guess justify a change of anything other than denial of this and do we know those. I see the community representatives, they have met with community representatives and they support those. I do not know who the community representatives that they have met with are.

**Mayor Lockwood:**

If Mr. Wilson or Mr. Woods could address that or if you do have an answer at this point.

**Interim Community Development Director Tom Wilson:**

Let's let Mr. Woods answer that.

**Corbitt Woods:**

We had the CZIM meeting last month. Heidi Sowder was here on behalf of the, she was involved in the original zoning when it was a Fulton County zoning. Met with her a couple of times, residents from our neighborhood were here. As far as the changes it would be to have a front loaded, more of a front entry townhome and those units that are impacted by a retaining wall and the pond. Ms Heidi has gone and looked at the units we are planning to do. I brought them to the DRB a couple of weeks ago and they were in favor of it provided that we meet the overlay standards specifically as we need to get some landscaping in front of the large retaining wall which is impacting my ability to do the alley probably there anyway, so that is pretty much the extent of it. They are brick townhomes, no change in quality of them they just do not have an alley entrance.

**Mayor Lockwood:**

Are there any other questions?

**Councilmember Zahner Bailey**

In terms of the timeframe that you are looking at that would allow you to re-engineer or to reevaluate based on staff's recommendation for denial and what you would need to do to be in compliance with the overlay and with citizen input, what sort of time table are you envisioning?

**Corbitt Woods:**

That is a good question. I was hoping to be done today but I will certainly be done if there is a 30 day deferral. I think that is no problem and check to make sure with my engineers if they could finish it in a

week or two so I can get back in here are revisit with staff and then circle back around to the community folks and the product type has already been looked at by DRB so I think I cannot come back before them unless I need to.

**Councilmember Zahner Bailey:**

What variances would you be looking for at that point or do you not yet know?

**Corbitt Woods:**

Yes, I look to do a limited number of units. I think the application was for 136 to 216 and staff has indicated that they could support 136 through 163 which 136 is at the Morris Road end of the project. 163 is coming back toward the middle. If you take a left off of Webb Road onto Morris you will see the large retaining wall I am talking about. It is at the very end of the project and we will go from there if you allow us to, to where the pond ends then pick back up at the alley townhomes around our proposed amenity. The other changes are in the application. There are two others, one is the square footage change which is driven by the fact that there is an alley loaded townhome with a little more square footage in the basement that we do not have on a two story front loaded townhome, same number of bathrooms and bedrooms as originally built.

**Councilmember Zahner Bailey:**

So you would still be asking for a reduction in the heated floor space?

**Corbitt Woods:**

In those units only, it is important to note that this is only for 29 units and the revised staff comments and the rest of it will stay as is. There are 256 that were zoned, intended to build 244. We are not asking for anymore increase in density or anything like that and as you have seen we have plenty more to build with the alley for people to want those. We are intending to start another building of the alley loaded townhomes before too long.

**Councilmember Zahner Bailey**

One other quick question, you mentioned two things that you were referencing as a potential hardship from your perspective, you mentioned a retaining wall and the other was the pond?

**Corbitt Woods:**

Yes, there is a, it is an unfinished portion of the neighborhood so you would have to walk back there but there is a pond with a concrete wall below the grade with a fence, a decorative fence on top of it and that is ok and meets all the guidelines of the city and the folks of the engineering have been out and looked at it and signed off on everything that we have developed but I can just see somebody backing out of their garage and right through the fence.

**Councilmember Zahner Bailey:**

Is that retaining wall one that you installed or is that on an adjacent property?

**Corbitt Woods:**

No it is part of our pond structure. The triangular shaped pond at the back of the community.

**Councilmember Zahner Bailey:**

So you as part of this development did put that retaining wall in place.

**Corbitt Woods:**

It was part of the original site plan. We had to build what was there and permitted and the other wall you will see a tremendous grade change between our property and the property behind this so it should not impact them at all. The wall is already there. As part of our original process we had to do some work for Morris Lake and we have done that, what they had asked us to do which was an owner's agreement of installing some parking spaces and we did that.

**Councilmember D'Aversa:**

Thank you for your development. Ms Sowder had recommended, she and I had met and discussed this and had recommended that I take a look at one of your other developments and it is very well done so I hope that you will continue that great development here in our community because I think you are probably trying your best to make sure that you meet those requirements. She is very supportive.

**Mayor Lockwood:**

Ok, do I have any more questions or comments or do I have a motion and a second?

**Motion and Second:** Councilmember D'Aversa moved to approve ZM-03 – Northwest corner of Webb and Morris Roads, Land Lots 1044, 1045, 1046, District 2/2. The application is Precision Design and Development (Bowen Family Homes) by Corbitt Woods to modify the following conditions: My motion would be to defer this for thirty days. Councilmember Thurman seconded the motion.

**Discussion on the motion:**

**Councilmember Tart:** Point of Order, could I request that the motion be restated because it was originally as an approval and then it was a deferral. So just for the record it needs to be restated.

**Councilmember D'Aversa:**

Who said approval?

**Councilmember Tart:**

You said approval of ZM09-03 and then later you said deferral so just restate it if you would not mind as a Point of Order and then we can vote.

**Motion Restated:** Councilmember D'Aversa moved to defer ZM09-03 – Northwest corner of Webb and Morris Roads, Land Lots 1044, 1045, 1046 in District 2/2. The application is Precision Design and Development (Bowen Family Homes) by Corbitt Woods to modify the following conditions: again deferral for 30 days.

**Second:** Councilmember Thurman seconded the motion.

**City Manager Lagerbloom:**

Is that deferral to the November 16<sup>th</sup> Council meeting? I do not know that we have 30 days between now and the next meeting so I want to make sure we make the advertising requirements etcetera so are we good with November 16<sup>th</sup>.

**City Attorney Jarrard:**

Now I have a question, why are we advertising?

**City Manager Lagerbloom:**

I do not know that we necessarily are. November 16<sup>th</sup> it is. Thank you.

**Vote:** The motion passed unanimously 7-0.

**City Clerk Marchiafava** read agenda item 09-813.

**U09-01/VC09-01**, 13120 Arnold Mill Road – The Applicant is Frank Schaffer, The Landscape Group Inc. is requesting 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) and a 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 40', (12H.3.1 Section C.1) and
- 3) To allow a sign located less than 10' from the right-of-way (Article 33, Section 21.C.)

**Councilmember D'Aversa:**

Can I have a point of order? I had asked our city attorney about recusing myself from this particular rezoning simply because I have a business relationship with the attorney that has been secured for the applicant. The Councilmember in our attorney's words, as party to litigation that is unrelated to the city's business, and the opinion was that there is no indication that the Councilmember has any hope of benefit or financial interest in or related to the zoning application matter so again my request was should I recuse myself because I have a relationship with the attorney in a relationship and the answer was no so I just wanted to make sure that was made for the record before we proceed.

**City Attorney Jarrard:**

Councilmember D'Aversa that is appropriate and you have identified the concern. You have identified the issue and with respect to this matter will you be able to make your decision with no bias and objectively.

**Councilmember D'Aversa:**

Absolutely.

**Interim Community Development Director Tom Wilson:**

Mayor and Council this application has been around for quite some time and during that time we have had a number of site plans, each one a little different than the one before but I do believe during this last deferral period we have a site plan that clearly depicts what is going on, on the property there. This is a request for a use permit and two variances. Variances to reduce the required buffers and the third part of that variance was regarding location of a sign. Let's just take care of the sign issue right off. The applicant has said that he will comply with all our regulations so he has asked for that to be withdrawn and I am recommending withdrawal on that third part regarding the sign. The other two parts of the reduction of the buffers, let me say it like this, while a landscape business may be an appropriate use in an agricultural district, it is only an appropriate use if it can meet the standards of that use permit. In this

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case the site plan cannot meet that standard for providing the buffers. It is staff's opinion that this does not provide for appropriate transition of uses due to the reduction of those buffers along Arnold Mill Road. It is not compatible with land uses in the vicinity based on the need for the reduction of the undisturbed buffers that would provide the necessary protection to adjacent properties. The northern portion of the site, the part north of the stream does not provide sufficient open space base on the applicant's variance request to reduce the buffers and the proposed use is too intense for the particular property based in part on the amount of equipment stored on this property. Be glad to answer any other questions you may have.

**Mayor Lockwood:**

Do I have any questions for Mr. Wilson before we move to public comment? OK, do we have any public comment for support on this application?

**Attorney Stuart Teague:**

If it pleases this Council my name is Stuart Teague. I represent Frank Schaffer in the landscape group in connection with their application for a use permit and concurrent variances. I briefly just want to state my constitutional objections for the record. It would violate to process clause, equal protection clause of the Georgia and Federal constitutions by failure to grant the use permit and/or the concurrent variances. Basically this application involves an existing building in front of along Georgia Highway 140, there is a 34,000 square foot warehouse that is behind the building that sits along the 25 foot stream buffer. There is a stream that bisects the middle of the tract and the consequence of that stream and the stream buffers greatly reduce the usable size of the tract and where structures can be placed. We would seek a use permit for a landscaping business and we will talk about that in a minute as to how that is a minimal type of use in relation to the character of the area plus some concurrent variances. I believe that there has been a lot of focus on the type of variances requested but what I want you to focus on is the actual impact and the practical nature of these variances because we are not asking for much when it comes down to it. Down the street there is the sweet apple vet center. There is another landscaping business behind the Methodist church on the corner of Cox. Crabapple Kroger is within two miles and the waste management landfill is within two miles. There is also another pine straw and timber supply business in the area and Highway 140 is a corridor to the City of Woodstock. My client bought this property from an existing commercial type of user when the property was still within Fulton County. That user used the property for a furniture business apparently and that is when the warehouse was built. There has been some question with regard to how the warehouse got there under the Fulton County regulations which the City of Milton has picked up on. My clients have investigated that and we have found that there is a certificate of occupancy issued upon a building permit for the landscaping business and I have a copy of that. I am not sure who to give it to, so there is no issue with regard to the legality of the 34,000 square foot warehouse that is on the property. My client bought this property believing that because landscaping was allowed within the agricultural use district that they could have a landscaping business on the property. They did not realize at the time they purchased it that you have to have a use permit in connection with a landscaping yard is what I call it under the old Fulton County regulations. Basically that give the Council the opportunity to exercise their discretion and look at the application in relation to the surrounding and nearby uses in what the applicant proposes and see whether or not it is consistent with the land use policies that the City of Milton. We believe that it would be consistent and the Planning Commission did recommend approval of the application. First of all the use permit would be consistent with the economic development plan for the City of Milton. It is consistent with the surrounding scale transitional uses and densities in the area. The existence of this type of business on this property in this area actually avoids blight in the area because prior to the time that Mr. Schaffer

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took ownership of the property the neighbors had a problem with this particular house. They did not like it because it was vacant. He has actually had people stop by since putting the business there and commending him on the appearance of how he has taken care of the property and I think that speaks volumes with regard to what the actual impact is with relation to the goals that the City of Milton has for this area. It has actually improved the area. Without the use there would be no use for the property by my client in the current economic environment. Essentially they would just have to vacate the house. It would lie vacant and that is not within the type of goals and policies that the City of Milton should be pursuing at the current time. We believe it is compatible with other land uses in the area. On May 17, 2007 Milton okayed landscaping business at 15386 Birmingham Highway. That was U0701. The surrounding area here has similar uses as to that which was existing in Birmingham Highway. Landscaping yards are not active uses. What is important to recognize is that trucks come in, in the very early morning hours and they go out to their destination where they perform their business. The business is not performed on site. It is essentially a place where you put a storage yard for your plants and it is consistent with residential uses and the type of uses that you would have in an agricultural area. Trucks come in, in the evening and that is pretty much it in terms of the activity. It is mostly vacant in the day time. It is not a customer intensive or business intensive use where people and traffic are coming at all hours of the day. The other criteria for granting a use permit is whether the propose use violates statutes or laws and there are none that it violates. Traffic is a criteria that my client has consulted the DOT and they say you do not even need a turn lane for this type of business in this particular area. There is no significant vehicle traffic as I stated before. The trucks would come in the morning, they would leave and go about their business at off site locations and they would come back. No significant customer traffic during the day time. The location and the number of off street parking spaces, I believe that the staff has recognized the six spaces shown on the site plan are permissible. The open space requirement, now this is one of the issues that the staff has focused on, we respect their opinion however if you look at the stream that bisects the middle of the property you can see that more than half of this property is reserved for open space. It is a stream that exists in the back of it. That is a non usable area that is basically a public area. The next criteria is protective screening, the property is not visible from surrounding areas. If you look at it from the street all you can see is the front of the building and to the extent that there needs to be more vegetative buffer, my client as a landscaper is more than willing to spend some money because they can easily and cheaply plant plants and they can restore any kind of buffer that needs to be placed on the property. With regard to the hours of operation, the hours that it primarily operates are 7 to 9 am, 6 to 6:30 pm. They only have 6 to 8 employees, they have just plants there and plants do not take up much space and they do not hurt other people. The lighting, there are no plans for additional lighting. The property is not going to be used at night, it would just be used in the day time. The ingress and egress is another factor, my client is fine with whatever the staff would recommend as a condition for ingress and egress. I believe that is one of their proposed conditions in the event that the City does grant the application. We would like to note that the neighbors in the immediate area have expressed support for the use. They have commended the applicant for the type of improvements that they have already made on the property. The primary focus of the staff's comments I believe relate to the side yard buffers and setbacks. The reason that we need a buffer and setback reduction on this property is primarily so that traffic and trucks can get around the side of the structure to get into that area between the warehouse and the existing residential office type house that is on the front side of it so the buffer reduction is essentially so that area for the turnaround in traffic, the trucks that would transfer landscape materials on the west side of it, on the east side the buffer is primarily needed just to have a turning radius for the parking spaces that would exist between the existing warehouse building in the back of the residential structure. There is no great buffer reductions that are needed other than the fact that the traffic would have to come through in these areas.

It is not that we have to have any additional buildings. My client will not seek a land disturbance permit that would seek new construction or a site plan to replace the existing structures as they are non-conforming and whatever capacity they were placed there, they are grandfathered so it is not that the structures themselves need the variance. It is simply because the trucks and traffic would have to come around the house. In addition my client is ok with the conditions of replanting along any area of the existing 50' buffer that would need to be replanted so they could put trees and vegetation in those areas except the cross hatch areas that you see where it says variance on the site plan. The need for the variance, if you apply the buffer requirement strictly to this particular tract, given its size shape and topography there is almost no useable area that is left. You end up with a little square in the middle of the front part of the property that is about 50 by 50' which means that the way the buffers impact with the 10' improvement setback on each side, you have 60' taken on each side with a narrow strip left down the middle because the stream is there you have to push everything toward the front of the property and that is why it is configured the way it is. If you strictly apply the buffers it would basically take the use of the property so we request that the City Council allow this application, they allow the concurrent buffer reductions and setback improvement setback reduction so that my client can make useable use of this property and we believe it would be good for the neighborhood. I have Mr. Schaffer if you have any particular questions that you would like to ask him.

**Mayor Lockwood:**

Before we get into questions I want to get all the public comment. Do we have any more public comment?

**City Clerk Marchiafava:**

Other than Mr. Schaffer, that is all the public comment cards I have received.

**Mayor Lockwood:**

Ok, are there any questions that Council may want to ask of the applicant?

**Councilmember Lusk**

I have a question for Mr. Wilson. I have been out and walked this site and I am a little bit fuzzy on the previous or grandfathered conditions. What are we going to do about the stream buffer that does not exist on the north side of the stream?

**Mayor Lockwood:**

Excuse me if you could hold that thought, procedurally wise.

**City Clerk Marchiafava:**

Mr. Teague does have and Mr. Schaffer has 30 seconds if they want to say anything else before we close the public hearing.

**Mayor Lockwood:**

Ok, I will close the public hearing now and then if we have questions we will ask them. Bill, go ahead with your question for Tom.

**Councilmember Lusk:**

I have walked this site and I have noticed a lack of a stream buffer on the north side of the stream. How does enter into this application?

**Interim Community Development Director Tom Wilson:**

Mr. Lusk with your permission, I am going to ask Mark Law whose is familiar with that to explain the history of that violation and what can be done about it.

**Mark Law, Arborist:**

Initially a citation had been issued for the encroachment in to that buffer on the north eastern portion of that stream. They did appear in court and pled nolo. They still have been asked to submit a litigation plan for that area and we have not seen that yet but if this gets approved we can still capture that at the LDP process. If it does not get approved we can still go through with the citation or the violation of citations will still require them to get that area replanted.

**Councilmember Lusk:**

I understood there was no LDP, they were not going to do anymore disturbance. Is that correct?

**Interim Community Development Director Tom Wilson:**

Well there possibly is an LDP required in order to restore that buffer. There is a large retaining wall that has to be built on that property and development of a gravel driveway might trigger a land disturbance permit. If it does not trigger the land disturbance permit, it would not hamper us from getting compliance on the replanting. We would just have to do it through a citation.

**Councilmember Lusk:**

On the site plan, did you get a larger scale?

**Senior Planner Robyn MacDonald:**

Yes.

**Councilmember Lusk:**

So this 25' stream buffer that is noted on the plan in fact does not exist. Is that correct?

**Arborist Mark Law:**

That is correct.

**Councilmember Lusk:**

Nor does the 50 foot.

**Arborist Mark Law:**

On the eastern side that is correct.

**Councilmember Lusk:**

Nor does the 75 foot.

**Arborist Mark Law:**

That is correct.

**Councilmember Lusk:**

Thank you.

**Councilmember Tart:**

I have a couple of questions and then I potentially have a motion. First Mr. Jarrard, can you speak to the constitutional issues that were brought up by the applicant's attorney. I know that is standard language.

**City Attorney Jarrard:**

Well, they are, I believe exactly what Mr. Teague said they were which is the standard constitutional objections that he believes he has to put on the record. As just a matter of course in order they not be deemed waived if in fact there is litigation after this. I would not want to speak to the constitutionality of it in this open forum if we are in fact going to go into litigation except to say that I will acknowledge that he has said those on the record and that is appropriate and I do not believe that Mr. Teague did that in a way to be over adversarial. I think he did that just as a function of his job in trying to make sure he preserved them. I would not be overly alarmed and I would still exercise your discretion the way you feel appropriate.

**Councilmember Tart:**

My other question has to do with the Certificate of Occupancy, just making sure, this is their Certificate of Occupancy for the building on the property and not necessarily any permission whatsoever from the city to have the intensity of use that we currently see on that property. Is that correct?

**Interim Community Development Director Tom Wilson:**

That is correct. That is probably a duplicate Certificate of Occupancy issued at the completion of the construction of that warehouse building.

**Councilmember Tart:**

Can staff please speak to the claim by the applicant that because of the buffer requirements and the stream that is on the property that there is a claim of hardship due to the shape and topography of the land that would result in an unusable 50x50 feet piece of land? Can you speak to that?

**Interim Community Development Director Tom Wilson:**

Well I believe the property may very well have a reasonable economic use even with those buffers and the stream in the back of that property.

**Councilmember Tart:**

With that said I would like to make a motion.

**Mayor Lockwood:**

Let me make sure, are there any other questions of staff?

**Motion:** Councilmember Tart moved to deny U09-01 and VC09-01 parts 1 and 2 and allow withdrawal of part 3 of VC0901. My motion for denial is based on the fact that the application does not meet the minimum standards for issuance for a special use permit for landscaping business that includes but not limited to the minimum buffers and improvement setbacks as specified under 19.4.27 of the City of Milton Zoning Ordinance and also the requested concurrent variances do not meet the requirements of needing to exhibit a hardship as specified in 22.3.1 of the City of Milton Zoning Ordinance.

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

**Mayor Lockwood:**

I have a motion by Councilmember Tart and a second by Councilmember D'Aversa. Is there any discussion?

**Discussion on the Motion:**

**Councilmember Zahner Bailey:**

Just for the record, I would like to state for the record that staff obviously recommends denial and that also under the use permit conditions very specifically says that this use permit is inconsistent with the intent in following the policy of the comprehensive plan and it also goes on to reiterate how this particular request does not meet the development standards as put forth by our ordinances.

**Mayor Lockwood:**

I have a question for either our City Attorney or Mr. Wilson. If this motion for denial is passed, what does that mean for the applicants existing business?

**City Attorney Jarrard:**

To the extent that portions or all of the existing business are in contravention for the rules of Milton then appropriate enforcement action will have to be taken and whether that means the issuance of citations or additional action over and above that that will be for staff and probably myself to work on.

**Mayor Lockwood:**

Is there any part of this applicant's business that they can still do amongst this property or would that pretty much cease.

**Interim Community Development Director Tom Wilson:**

No part of a landscape business would continue on this property.

**Councilmember Tart:**

Mr. Wilson would it be possible for them to have an office on this property and then have to do the loading unloading storage etcetera which is characteristic of a landscaping business on another property that would be more appropriate?

**Interim Community Development Director Tom Wilson:**

No. If the office use is landscape in nature then it would not be allowed unless you approve a use permit for a landscape business.

**Vote:** The motion passed 6-1, with Mayor Lockwood opposed.

**NEW BUSINESS**

**City Clerk Marchiafava** read agenda item 09-960.

**Approval of a Resolution to Adopt Amended Solid Waste Management Plan.**

RESOLUTION NO. 09-10-108

**Carter Lucas, Principal Engineer**

- In August we adopted the original Solid Waste Management Plan for submission to the state.

- After adoption of that plan it was brought to my attention that some changes had been made that were not required by ARC or DCA.
- Those changes were to section 3 that did not give full credit to Milton Grows Green and the services that they provide under this Solid Waste Management Plan.
- We worked with the consultant to go back through and make sure that the changes were made as well as some administrative changes throughout the document to get it back into compliance with what TARA approved and what was originally submitted to ARC and DCA.
- In addition to that the chair of the TARA committee had an opportunity to go back through the document and make sure the changes were back to what the committee had felt like they were submitting.
- Those changes are mostly administrative in nature.
- If Council chooses to adopt this plan he asked that they also adopt the changes outlined in the memo provided that take care of the chairman's additional comments on the document.

**Councilmember Zahner Bailey**

- Asked if he could confirm at the time they put this forward, the chairman had contacted both the city manager and him and at the time that first was approved everyone thought there had not been some additional changes made, asked him to state for the record what his position is and if he supports the changes that came out of the TARA committee.

**Principal Engineer Carter Lucas**

- That is correct.
- These changes reflect the efforts that the Milton Grows Green provides under the Solid Waste Management Program and reflect what was approved and submitted by TARA.

**Motion and Second:** Councilmember Tart moved to approve agenda item 09-960, A Resolution to adopt amended Solid Waste Management Plan. Councilmember Lusk seconded the motion.

**Discussion on the Motion:**

**Principal Engineer Carter Lucas**

- Asked if that would include the changes as provided in the memo.

**Friendly Amendment to the Motion:** Councilmember Tart moved to approve a Resolution to adopt the amended Solid Waste Management Plan agenda item 09-960 with the edits proposed by staff in the October 19, 2009 memo.

**Second:** Councilmember Lusk seconded the revised motion.

**Vote:** The motion passed unanimously 7-0.

**City Clerk Marchiafava** read agenda item 09-961.

**Approval of a Resolution adopting the Community Assessment and the Community Participation Plan of the draft City of Milton 2008-2028 Comprehensive Plan.**

### **Interim Community Development Director Tom Wilson**

- The community assessment and the community participation plan are two of the three parts that make up your comprehensive plan.
- The community assessment is essentially that data set which is considered when formulating the third part which is the community agenda.
- The public participation plan was our plan for how we were going to involve the public and the stakeholders in the development of the third part the community agenda.
- These are two very important parts of the comprehensive plan.
- Council approved transmittal of these two documents to the ARC and DCA in April, 2008.
- There were a number of comments and edits that came back which was incorporated and presented to Council.
- He had asked at that time to go ahead and transmit these documents to the ARC and the DCA and that there would be time to review the documents before they were adopted.
- They should have been adopted soon after they came back from ARC and DCA and they did come back with approval without any changes to them.
- It recently came to his attention we never provided Council that document for review.
- He recommends this be deferred so they can print the documents and provide them to Council for their comments before they adopt them.
- It is not urgent and a delay of 30 days would not hamper the process.

### **Councilmember Lusk**

- Asked what the deadline is.

### **Interim Community Development Director Tom Wilson**

- The actual deadline for the comprehensive plan is October 31, 2011.
- That is the deadline for all cities in Fulton County, as well as Fulton County.
- We have been working on this for a very long time and we are in advance of that.

**Motion and Vote:** Councilmember Hewitt moved to defer until December 21, 2009 agenda item 09-961, Approval of a Resolution adopting the Community Assessment and the Community Participation Plan of the draft City of Milton 2008-2028 Comprehensive Plan. Councilmember Tart seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

## **MAYOR AND COUNCIL REPORTS**

### **Mayor Lockwood**

- We had a great Roundup.
- We probably would have had a better turnout if not for the weather.
- Thanked everyone involved.

### **Councilmember Tart**

- Asked about the plans for tree planting.

### **City Manager Lagerbloom**

- We plan for 2:00 Thursday to start the site preparation.
- It is scheduled for 10:00 Saturday.
- There will be a tree lighting once the holiday season is closer.

**Councilmember D'Aversa**

- Asked if they could put in the press release that they had invited the area schools, their environmental clubs, etcetera.

**EXECUTIVE SESSION**

*Added by Motion and Vote*

**Executive Session to discuss potential land acquisition.**

**Motion and Vote:** Councilmember Zahner Bailey moved to adjourn into Executive Session at 7:26 p.m. to discuss land acquisition. Councilmember Thurman seconded the motion. There was no Council discussion. The motion passed unanimously 7-0.

**RECONVENE**

**Motion and Vote:** Councilmember Thurman moved to reconvene the Regular Meeting at 7:40 p.m. Councilmember Tart seconded the motion. The motion passed unanimously 7-0.

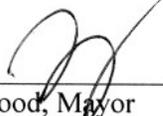
**ADJOURNMENT**

After no further business, the regular meeting adjourned at 7:43 p.m.

**Motion and Vote:** Councilmember D'Aversa moved to adjourn the Regular Meeting. Councilmember Tart seconded the motion. The motion passed unanimously 7-0.

**Date Approved:** November 2, 2009

  
Jeanette R. Marchiafava, City Clerk

  
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Joe Lockwood, Mayor