

Regular Meeting of the Sandy Springs City Council was held on Tuesday, September 16, 2014, at 6:00 p.m., Mayor Rusty Paul presiding.

INVOCATION

Rabbi Josh Heller, B'nai Torah, offered the invocation.

CALL TO ORDER

Mayor Paul called the meeting to order at 6:02 p.m.

ROLL CALL AND GENERAL ANNOUNCEMENTS

City Clerk Michael Casey reminded everyone to silence all electronic devices at this time. Additionally, those wishing to provide public comment during either a Public Hearing or the Public Comment segment of the meeting are required to complete a public comment card. The cards are located at the back counter and need to be turned in to the City Clerk.

City Clerk Casey called the roll.

Mayor: Mayor Paul present

Councilmembers: Councilman John Paulson, Councilman Ken Dishman, Councilman Graham McDonald, Councilman Gabriel Sterling, Councilman Tibby DeJulio, and Councilman Andy Bauman were present.

PLEDGE OF ALLEGIANCE

Mayor Rusty Paul led the Pledge of Allegiance

APPROVAL OF MEETING AGENDA

Motion and Vote: Councilman DeJulio moved to approve the Regular Meeting Agenda for September 16, 2014. Councilman Dishman seconded the motion. The motion carried unanimously.

CONSENT AGENDA

Meeting Minutes

(Agenda Item No. 14-206)

1. Meeting Minutes:
 - a) August 6, 2014 Special Called Meeting
 - b) August 27, 2014 Special Called Meeting
 - c) September 2, 2014 Regular Meeting
 - d) September 2, 2014 Work Session

(Michael Casey, City Clerk)

(Agenda Item No. 14-207)

2. Recommendation to enter into contract agreement with Optech RWM, LLC for traffic sign maintenance and emergency road services
(Garrin Coleman, Director of Public Works)

Motion and Vote: Councilman Sterling moved to approve the Consent Agenda for September 16, 2014. Councilman Paulson seconded the motion. The motion carried unanimously.

PRESENTATIONS

1. Proclamation for Sandy Springs Reads – Mayor Paul

Mayor Rusty Paul called Christine Heller with Sandy Springs Reads to the front. He presented the Proclamation to her and declared September 16th as Sandy Springs Reads Day in Sandy Springs.

2. Proclamation Declaring September 16, 2014 as The American Legion Day – Mayor Paul

Mayor Rusty Paul presented the Proclamation to Councilman John Paulson and Police Chief Ken DeSimone. The Mayor proclaimed September 16, 2014 as American Legion Day in Sandy Springs.

Councilman John Paulson stated he and Chief DeSimone are members of American Legion Post 140 and Chief is the Post Commander.

3. Heritage Trail Presentation - Heritage Sandy Springs Historic Committee

Heritage Sandy Springs President Phil Beeson introduced Susan and Bob Beard and Danny Martin from the Historic Resources Committee. He started the presentation on a proposed Heritage Trail and how it can be of value to the City and the new City Center.

Heritage Sandy Springs Historic Resources Committee Chair Susan Beard continued the presentation with pages 5-18.

Heritage Sandy Springs committee member Bob Beard presented pages 19-23. He suggested the “Our Town Grant” program in order to fund the recommendations. The Committee would like to work with the City in doing this project.

Mayor Paul thanked the Committee members and affirmed the City is interested in working with them on this project. There is a tremendous amount of history in Sandy Springs that will continue with this project.

PUBLIC HEARINGS

City Clerk Michael Casey read the rules for the Public Hearings segment of the meeting.

Alcoholic Beverage License

(Agenda Item No. 14-208)

1. Approval of Alcoholic Beverage License Application for Taboo 3000, 6075 Roswell Rd, Sandy Springs, Georgia 30328. Applicant is Kenneth Durden for Consumption Wine, Liquor, and Malt Beverage

Revenue Technician Shaun Suggs stated this item is a change of ownership for an alcoholic beverage license application for consumption on premises of wine, malt beverage, and distilled spirits for Taboo 3000. Staff is deferring recommendation to the City Attorney.

City Attorney Wendell Willard stated there are questions about this application, because documents were not included that are a requirement of the application package. He suggested that Council approve a temporary license for sixty days while staff researches the issue. Staff will come back to Council during that period of time for a final recommendation.

Cary Wiggins, representative of the applicant, stated he understands there was a favorable recommendation from the City Manager and the legal department for this application. He was not told anything was missing from the application package.

City Attorney Willard stated he reviewed the application package yesterday.

Mr. Wiggins stated about four hours ago he received a letter from residents and an employee of the business who are opposing the application. There are salacious allegations in the letter. There is an ongoing civil dispute in Federal Court. If that has any bearing on what is needed for this application, then he objects to any continuance.

City Attorney Willard stated what was raised in the letter has no bearing. Staff is looking at the question of items that were not included in the package. There is concern of when did the real estate closing take place, since there was no closing statement in the package. The asset purchase agreement (APA) speaks to the closing occurring December 27, 2013, effective January 1, 2014. The condition of closing calls for an assignment of the lease. The lease assignment was made effective as of April 21, 2014. The assignment states the assignee required all assets as of April 1, 2014, including the lease. The City does not have a copy of this information. The application for the alcoholic beverage license was not filed until July 27th.

Mayor Rusty Paul stated if the owner closed on the property in April and they have been operating since then, they have been doing that illegally.

City Attorney Willard responded that would be correct.

Mr. Wiggins stated the change of ownership is subject to the closing and obtaining the alcohol license.

City Attorney Willard stated these are things he needs to find out. The APA refers to certain exhibits being attached to the APA and they were not included in the package. Staff needs a complete copy of these. The license application calls for the submission of the APA and closing statement. Staff has a portion of the APA, but no closing statement or a copy of the check. The date on the application is April 21, 2014, which was signed by a notary, but the application was not filed until July 24th. Staff is trying to gain an understanding of why there are time gaps.

Mr. Wiggins stated the paperwork he received from the City states the City Attorney reviewed the application and approved it.

City Attorney Willard stated he did not approve the application and he just saw it yesterday.

Mayor Paul called for public comments in support of the application. There were no public comments. Mayor Paul called for public comments in opposition to the application.

Chip Collins, 171 17th Street, Atlanta, GA, stated he represents eleven people consisting of ten females and one gentleman who have a lawsuit in federal court. He is opposed to a temporary license. The sale may not have occurred and if so, the current license is still in effect and will be until the end of the year. There is no harm done to the seller while the City Attorney reviews the documents. If the sale of the property did occur, then the buyer has been operating illegally, which is another reason to deny the application. Eleven of his clients have an FLSA claim and six of them are represented by the EEO in a sexual harassment claim. The legal basis for this opposition is that there is no reason to believe the applicant, Mr. Durden, will be on the premises of the property for the minimum of ten hours a week required by City ordinance Section 6-60. Mr. Durden lives and works 250 miles away outside of Savannah, GA. He owns and operates a family counseling business in Rincon, GA. He is a self-

described psychiatric counselor with no known history in the bar and restaurant business. The moral and practical basis for this opposition is that Mr. Durden is nothing more than a straw buyer. He believes the purported sale of assets by the current owner is nothing but a sham and a fraudulent conveyance to avoid the consequences of two inevitable judgments that will be rendered against Taboo 2 in federal court for the mistreatment of their employees. Granting the requested license in these circumstances would be the City facilitating a scheme that will allow the principles of this nightclub to continue operating business as usual while making it extremely difficult, if not impossible, for the aggrieved former employees to be compensated for what they almost certainly will be awarded. The facts are set forth in his letter to Council and the supporting documents, which are the exhibits. Taboo 2 has a history of inaccurate representations to the City. The current license holder is Ishmael Serta. In a brief that Mr. Serta filed in federal court, his lawyer said that Mr. Serta has not set foot in the club in years. Yet, the requirement is for the applicant to be on the premises at least ten hours a week. Thomas and Sherry Dixson are names that float around the club. They appear to be heavily involved in the operation of the club, but for some reason they choose to be removed from the paper trail. They have been held out as owners of the club and the federal court recognizes that Thomas Dixson has supervisory authority and made hiring decisions, yet they do not appear on the application or business license. There are two lawsuits and one lawsuit is a Fair Labor Standards Act. In late 2012 his clients, represented by Peter Golden, filed suit in the Northern District Georgia Federal Court, alleging violations of the Fair Labor Standards Act. The allegation is the waitresses and bartenders were forced to work for tips only, in violation of the Federal Minimum Wage Laws. A motion for Summary judgment was filed in September 2013. Federal Judge Hunt issued an order granting the motion for summary judgment against Mr. Serta and Serta Enterprises holding that they did in fact violate the Fair Labor Standards Act and they are liable for damages in an amount to be determined. The briefing of damages has been completed. The damage summary claimed by Mr. Golden is approximately \$400,000 against the current owner of the license and he expects this judgment to be rendered in 60 days. Six of his female clients filed charges for sexual harassment with the EEOC. The EEOC investigated these things and based on the results of the investigation filed suit against Taboo 2 Bistro and Club. The allegations consist of incidents of repeated groping, unwelcome sexual comments, requests for sexual favors, and indecent exposure by Taboo 2 management. A representative of the EEOC and an attorney are here to report briefly on the status of that case. The damages for that claim are also over \$400,000, bringing the total potential exposure to Taboo 2 up to \$1 million. There is evidence in the record of deceptive conduct by the Taboo principles showing they are willing to do whatever they can to thwart justice for his clients. The EEOC, or Mr. Golden, obtained an affidavit of a former employee that reported several examples of deceptive conduct. She is the former girlfriend of Taboo 2's manager. The former employee stated a story was fabricated regarding the sexual harassment claim that the employees are prostitutes, but they are not. This employee stated the principles of the bistro got her to lie and sign an affidavit. Thomas Dixson was in the room with the attorney when she signed the previous affidavit. She claims that Mr. Dixson told her he was transferring the club to the manager, Mr. Scholeneck, in an attempt to avoid liability from the lawsuits. She also said that Taboo 2 is a front for a drug distribution business run by Mr. Serta. When she said she was tired of lying for Taboo 2, they reduced her weekly working hours. There is not much known about Mr. Durden except what can be found on the internet, which says he lives in Port Wentworth, GA. The only party that should be allowed to continue to run the nightclub is the one that owes his clients the money. He wants the business to continue to operate a legal operation in order to make money to compensate his clients. The City should not be a party to Taboo 2's scheme to avoid liability.

Sairalina Montasino, 100 Alabama St. SW #4R30, Atlanta, GA, stated she is an attorney for the Equal Employment Opportunity Commission. The EEOC investigated the allegations made by several of the ladies who are suing under the FLSA. The allegations were very serious. The status of the case is that it is in the discovery process. The discovery period is set to end on December 16th. The case is also in the middle of noticing the positions for witnesses as well as third parties who may provide sufficient information on the real ownership of Taboo 2. Her firm issued a subpoena that has not yet been served

for Mr. Durden's deposition. She asked that Council deny this application. The damages the EEOC is requesting are \$402,521 in back pay, compensatory, and punitive damages.

Mr. Wiggins stated he heard Mr. Collins asked the club not to be closed in order to be able to collect the judgment money. He would be remiss if he did not say this sounds very much like an effort to bring the civil lawsuit into this forum. Mr. Durden is a legitimate purchaser. He has the right to due process for the alcohol license application. He knows he will not get anything besides a 60 day continuance.

Mayor Paul closed the public hearing.

City Attorney Willard stated the City does not address what was heard during public comment as far as processing the alcoholic beverage application. Staff looks at the moral character, police records, arrest records, and conviction records of people that are applying for a license. Staff will determine if the appropriate paperwork has been submitted to receive a license. If the applicant meets all of the criteria of the ordinance, the City is then obligated to issue a license. There may be lawsuits involved, but that is not something that should affect Council's decision making process.

Mayor Paul asked Mr. Collins to return to the microphone. Mr. Collins alleges that if the City issues the alcohol license that in essence it forecloses their legal avenues.

Mr. Collins stated the judgment will be against the owner that is currently operating the establishment. Once the new owner is allowed to have an alcohol license, his clients become one step removed from the money that could potentially compensate them. While it is an objective standard, he would guess that Council does not take everything submitted at face value. This is fraudulent conveyance. He believes within 60 days a judgment will be issued and the EEOC will be able to complete its investigation by talking to Mr. Durden and Mr. Dixon and determining how this business operates. Irreparable harm will be caused to the ladies if Mr. Durden from the southern part of Georgia is allowed to represent that he will be in the nightclub ten hours a week. He is not sure what happened when Taboo 1 became Taboo 2, but he can guarantee there was probably a lawsuit involved. He requested a deferral for sixty days to allow the EEOC more time to gather facts.

Mayor Paul asked if it is correct that staff does not have all the documentation needed to show an actual transaction has occurred.

City Attorney Willard responded yes.

Mayor Paul stated if Council is in doubt that a transaction has occurred, can the license be left as it is.

City Attorney Willard stated Council is making the decision on whether a license should be issued or not. The paperwork in the file that has been submitted is incomplete. He does not know until he sees the paperwork if there truly was a transaction that transferred ownership. If a transaction has occurred, it would be improper to leave the current license in place. He suggested a sixty day temporary license, which Council has the ability to do.

Mayor Paul asked if the file is incomplete and Council does not have adequate information to make that determination, then how can the license be considered provisional.

City Attorney Willard stated that is the reason for the sixty day temporary license.

Mayor Paul asked what the City's liability is if Council denies this application.

City Attorney Willard stated if the application is denied and a closing has occurred, then the current alcohol license that has been in place cannot be used.

Councilman Andy Bauman asked if the business would be shut down.

City Attorney Willard stated if the business had a sales transaction, that information will be brought to the attention of the Council as part of the application.

Mayor Paul asked if there is no alcohol license, could the business still operate, but not serve alcohol.

City Attorney Willard responded yes.

Councilman Tibby DeJulio asked if the City ordinance requires a new application for a business license when a business transfers ownership.

City Attorney Willard responded yes.

Councilman DeJulio asked if a new application for a business license was applied for.

Revenue Technician Suggs responded yes. It was filed for on July 24, 2014 and they were granted a business license.

Councilman Gabriel Sterling stated since there is the question of when the business did or did not transfer, has the business been making the alcohol tax payments to the City.

Revenue Technician Suggs answered no, because the alcohol license has not been approved.

Councilman Sterling stated the business owner would be paying on the old alcohol license.

Revenue Technician Suggs stated he believes that Taboo 2 does pay every month.

Councilman Sterling stated it looks like there is evidence the business has been operating illegally.

City Attorney Willard stated those are things the City does not know, yet, and he will be investigating this. He suggested Council approve a sixty day temporary license while the investigation continues.

Councilman Bauman stated it seems that Mr. Collins is requesting injunctive relief.

Mr. Collins stated that is where we might be, but he does not believe the question has been answered as to whether a closing occurred. The business has been operating under Taboo 2 and has been making the tax payments. He thought he heard Mr. Wiggins say the closing was contingent upon the alcohol license and if that is the case, then it has not closed and they are still able to operate under the old license.

Councilman Bauman stated Mr. Collins wants the business to stay open, but he feels a case has been made for a denial of the application.

Mr. Collins asked for the denial of the Taboo 3000 application, but to continue letting Taboo 2 operate.

City Attorney Willard stated he is not sure that Taboo 2 can continue to operate, since he does not know who is legally owner of that property.

Councilman Graham McDonald stated if the applicant's paperwork is incomplete, he does not understand why the City would issue a sixty day license as opposed to a denial. He asked if the City could face liability if there was a denial.

City Attorney Willard stated an application has been submitted along with some documents, but not all of the documents. The closing statement indicates when a closing occurred for the sale of the business. The closing could have occurred as early as January 1, 2014, or up to sometime in April. He is concerned, but he does not have enough information to make a recommendation to Council. If the ownership changed and Council denies this application, there could potentially be the right for action against the City. Their application, although incomplete, could be deemed sufficient for the City to recognize moving forward.

Councilman McDonald stated it does not strike him as a strong cause of action, when it is based on incomplete paperwork by the applicant.

Councilman Sterling asked if the sale is contingent on the transfer of the liquor license or not.

Mr. Wiggins replied he is not sure, but he believes it is contingent.

Councilman Bauman asked if the applicant is in attendance this evening.

Mr. Wiggins stated the applicant is on his way here and will be here at about 7:30 p.m. The downside of denying the application this evening is that Council will violate basic fundamental due process rights of O.C.G.A 33-2B. He had no notice before Mr. Collins spoke regarding the allegations. That is not due process.

Councilman McDonald asked if the application was complete.

Mr. Wiggins stated if it was incomplete, the City did not let him know. Council heard that the package is incomplete at the same time he heard this.

Councilman McDonald asked if due process requires advance notice of telling him that the application is incomplete.

Mr. Wiggins stated he came here thinking the application was fine. Mr. Collins wants to keep the club open so he can collect on a federal judgment, and that is improper.

City Attorney Willard stated Council is not making a recommendation on things that were said by anyone who appeared at the podium. Those are arguments why someone feels there should or should not be a license issued. He is basing the recommendation to Council on what is in the filed application.

Councilman Sterling stated if the application is contingent on the sale of the property, and there has been no transfer yet, then the business would be operating under the old license. If there is a straw buyer situation at the end of the sixty day trial, can Council deny or approve the application.

City Attorney Willard stated at that time he will provide the necessary information to Council. An alcohol license is a privilege in this State and not an entitlement. The question is whether what is in the City ordinance and the application package meets the requirements to be granted a license.

Councilman John Paulson stated staff believes this application is incomplete and what is being asked of Council is to provide a temporary license for up to sixty days while the City Attorney does research on the application.

Mayor Paul stated one thing that confuses him is the contingent sale. If the transfer of the business is required before applying for a liquor license, how can you have a sale contingent on the liquor license?

City Attorney Willard stated people apply for a license when the sale occurs. The pending of the license grants them the continuation of the use of that property while the license is under review. When there is a pending license, the assumption is that a sale has occurred.

Mayor Paul stated then it could not be a contingent sale.

City Attorney Willard stated he does not believe there is an agreement that the sale is contingent upon the license, but upon the lease transfer which occurred in April.

Mr. Wiggins stated he is not the corporate attorney who prepared the closing docs. He does not know if the sale is contingent.

Motion and Second: Councilman Sterling moved to grant a temporary Alcoholic Beverage License Application for up to 60 days to Taboo 3000, 6075 Roswell Rd, Sandy Springs, Georgia 30328, to allow the City Attorney to review the application documents. The applicant is Kenneth Durden for Consumption Wine, Liquor, and Malt Beverage. Councilman McDonald seconded the motion.

Councilman Paulson asked if Council is approving or deferring the application.

City Attorney Willard stated Council is granting a temporary up to sixty day license.

Councilman McDonald asked the City Attorney if he is comfortable with this action.

City Attorney Willard responded yes.

Councilman Sterling asked, if the business was sold and the new owner has been operating on the old alcohol license before filing with the City, are there some compensatory damages for the new owner violating the law.

City Attorney Willard stated if the new owner violated the law, this is something to consider when Council reviews the license request after the time period of up to sixty days.

Vote on the Motion: The motion carried 5-1, with Councilman Bauman voting in opposition.

Rezoning

(Agenda Item No. 14-209)

2. **201300687 (DRI)**** - Tax Parcel 17-0019- LL-059 (Abernathy Road, Peachtree Dunwoody Road, Mount Vernon Highway, GA 400), *Applicant: Hines*, to rezone the subject property from O-I (Office and Institutional District) conditional to MIX (Mixed Used District), with a use permit to exceed the maximum district height and concurrent variances

Manager of Planning and Zoning Patrice Dickerson stated this item was deferred from the July City Council meeting and Council requested additional information related to the traffic impact of the project. Staff has not modified the recommendation from approval conditional and the Planning Commission recommended approval subject to staff conditions as amended.

Nathan Hendricks, representative of the applicant, stated the property is 14.3 acres on the west of GA 400 and east of Peachtree Dunwoody Road. The request is to rezone to a MIX classification. There are

issues and concerns regarding traffic and uses. The applicant has tried to be responsive to the checklist of concerns. The proposed zoning is under the live/work/regional and under Node 6 PCID.

Mark Ferris, applicant, stated he works for Hines. Since the City Council meeting sixty days ago, there have been several conversations regarding areas of concern. A letter was provided last week by Hines attorney Josh Belinfante in which the applicant received further feedback. Some options have been exploring reduction in density. He has not had a chance to review the latest investigation on the reductions with staff and he asked Council how to prepare for the investigation.

Mayor Rusty Paul asked if Mr. Ferris is putting forth a new proposal.

Mr. Ferris stated he would like to discuss a potential reduction in the density.

Mayor Paul stated this would not be the forum for that discussion. If changes are being made to the proposal before Council, that would need to go back to staff first.

Mr. Ferris stated he would like to discuss the option for reduction in response to concerns that were voiced. He then presented a slideshow showing a summary of the existing application compared to the proposed reduction. The reductions include 175 less apartments units, 150,000 less square feet of office space, and 50,000 less square feet of retail. There is no reduction in hotel rooms. There has been concern with the traffic trip generation. When looking at the AM peak time and the PM peak time, the reduction in density has a difference in trip counts that compares to the current zoning. Hines is still willing to make all of the road infrastructure improvements around the site that were recommended by staff.

Mayor Paul asked how Council should deal with this new information.

Mr. Ferris stated he would like Council to look at this as a significant movement to address the concerns that were brought to Hines attention. He hopes that this addresses the concerns, so the application can be approved in order to proceed. He understands that staff may need to evaluate this presentation and he requested a deferral for thirty days.

Mayor Paul called for public comments in support of the application. There were no public comments. Mayor Paul called for public comments or in opposition to the application.

Tochie Blad, 7320 Hunters Branch Drive, stated she is the Sandy Springs Council of Neighborhoods District 4 Zoning Chair. This application started in March 2013 when the DRI review was completed, which included an expedited review with a flawed traffic plan. She emailed the planning department last week asking if there was any new information for the package and she was told no. This is actually new information.

Mayor Paul stated staff has not seen this presentation until this evening.

Ms. Blad stated this is frustrating as she is someone who has watched rezoning occur. The Council of Neighborhoods has previously worked with Hines.

Mr. Hendricks stated the applicant has tried to be responsive to the concerns. He requested a thirty day deferral.

Mayor Paul closing the public hearing.

Motion and Second: Councilman Sterling moved to defer Agenda Item No. 14-209, 201300687 (DRI)** - Tax Parcel 17-0019- LL-059 (Abernathy Road, Peachtree Dunwoody Road, Mount Vernon

Highway, GA 400), *Applicant: Hines*, to rezone the subject property from O-I (Office and Institutional District) conditional to MIX (Mixed Used District), with a use permit to exceed the maximum district height and concurrent variances, to the October 21, 2014 City Council meeting. Councilman Paulson seconded the motion.

Councilman Gabriel Sterling stated Council has made it a policy that we want to see good quality mixed use come into this particular area. The sixty day deferral was given in order for the City to better understand the traffic in the area from the North Springs MARTA station to south of Hammond Drive. The applicant should have been working on clearing up any issues forty-five days ago instead of five days before the Council vote. He hopes this deferral will be beneficial. He does not want to turn down a project that is important, if it can be done the right way. The applicant needs to work with staff to get the traffic numbers at the right level.

Councilman Paulson stated the property is already zoned to a given height, density, and square footage as an office building. He likes the application as it takes the property from an office building to a mixed use development with residences in it. This is a great direction for this property and potentially other properties to go. The idea of modifying and reducing traffic by having people live where they work is a great idea. Traffic is an important issue for him and many others. It would be ideal if the traffic counts are unchanged from what is currently zoned. He supports the deferral.

Vote on the Motion: The motion carried unanimously.

(Agenda Item No. 14-210)

3. **201401170** - 400 Carpenter Drive, *Applicant: Holt Persinger*, to rezone the subject property from C-1 (Community Business District) conditional to A-L (Apartment Limited District) to allow for a 45-unit residential building, with concurrent variances

Manager of Planning and Zoning Patrice Dickerson stated this item was deferred from the July 15th City Council meeting back to the Planning Commission to allow the applicant and staff to continue to work on items including questions about two proposed driveways on the property and also the elevations for the building. Staff and the applicant have worked out the driveway issue. Staff is comfortable with the two driveways and the applicant also provided the elevations requested. Staff is recommending approval conditional and Planning Commission is recommending approval.

Holt Persinger, applicant, stated he is requesting to rezone .66 acres located at 400 Carpenter Drive to A-L for 45 for sale condos. On item 3.a. of the conditions, part of the cross section requires an eight foot parking lane adjacent to the travel lane. He did not think about the three dimensional aspect of the parking lane. Because the lane would be on the inside curve on the subject property, if there are vehicles in the parking lane, it will greatly reduce the site distance along the driveways from 290 feet to forty feet. He is requesting from staff a way to remove the parking lane, since it will cause a severe safety conflict.

Assistant City Manager Bryant Poole stated there was a similar case in the City. This would be evaluated on a case-by-case basis. The applicant would seek a variance as part of the permit review process. Staff is not prepared to completely remove the parking lane. This will be part of the evaluation.

Mr. Persinger asked if staff can handle that administratively.

Assistant City Manager Poole stated it depends on the magnitude of what he is seeking. If it is just shortening the parking lane, then staff can handle it administratively. If the request is to seek a total change from the City Center Master Plan, it would then come before Council, similar to what was done at Cliftwood and Allen Road.

Mr. Persinger stated the way the driveway is set up would only allow for about three parallel parking spaces and he is providing fourteen off street parking spaces that can be accessed by the public from the street.

Mayor Rusty Paul called for public comments in support of or opposition to the application. There were no public comments. Mayor Paul closed the public hearing.

Motion and Second: Councilman DeJulio moved to deny Agenda Item No. 14-210, 201401170 - 400 Carpenter Drive, *Applicant: Holt Persinger*, to rezone the subject property from C-1 (Community Business District) conditional to A-L (Apartment Limited District) to allow for a 45-unit residential building, with concurrent variances. Councilman Bauman seconded the motion.

Councilman Tibby DeJulio stated if he understands correctly, this property is .63 of an acre. This would be 71.43 units to the acre. He asked if Council has approved anything in the City with such incredible density.

Manager of Planning and Zoning Dickerson stated the only project she can recall is the formerly Pacific Life project at Hammond and Roswell Road.

Councilman DeJulio stated that was approved by Fulton County before Sandy Springs became a City. The number of 71 units per acre is too high of a density and makes no sense.

Councilman Gabriel Sterling asked what the Planning Commission recommended.

Manager of Planning and Zoning Dickerson stated they recommended approval subject to staff conditions. The vote was 6-0.

Councilman Sterling stated this property is in the live/work/regional area on the future land use plan. He is trying to understand the legality. The density is high and disjointed from everything nearby. This is a particular issue on the master plan in this section of the City. He is concerned about a denial of the application, since it is in the live/work/regional zone.

Councilman Andy Bauman asked about the drawing.

Mr. Persinger stated the drawing is not the actual building, but was created to shown the elevation. The plan has to go back to the Planning Commission for them to review it.

Councilman Bauman stated the deferral was in order for the applicant to work with staff in order to provide elevations. This plan is not ready and he opposes the plan.

Mr. Persinger asked staff what the maximum allowed density is for this area on the future land use map. Live/work does not have to be all inclusive in one property. If there are adjacent office buildings in the area, his project would be providing residences for the area.

Councilman Sterling asked what the highest maximum density is that will be allowed.

Manager of Planning and Zoning Dickerson stated the property is designated as live/work/regional which does not have a minimum or maximum density level. This is a part of Node 7.

Vote on the Motion: The motion carried unanimously.

(Agenda Item No. 14-211)

4. **201401628** - 85 Johnson Ferry Road, *Applicant: Waterford Homes*, to rezone the subject property from R-3 (Single Family Dwelling District) to R-5 (Single Family Dwelling District) to allow for the development of two (2) single family residences, with concurrent variances

Manager of Planning and Zoning Patrice Dickerson stated this is a request to rezone the subject property to R-5. She apologized that the original document stated three single family residences, but it is for two. The applicant is proposing to incorporate the two lots into the existing Belmont Trace subdivision. Staff is recommending approval conditional of the rezoning and concurrent variance request. The Planning Commission heard this item at the August 21st meeting and is also recommending approval subject to staff conditions.

Drew Clough, applicant, stated currently the home fronts onto Johnson Ferry. His proposal is to reorient the frontage into the Belmont Trace subdivision and subdivide the property into two conforming R-5 lots. He proposes acquiring a nearby landscape strip in order to install the driveways and rearrange the frontage into the subdivision. The current home at 85 Johnson Ferry Road is an unsightly rental property. He proposes to build a new entrance monument and new fencing at the entrance. He is also proposing construction of a fence over four feet in height that does not have a picketed design, but instead is a solid fence.

Mayor Rusty Paul called for public comments in support of the application.

Janie Weeks, 100 Belmont Trace, stated she is the President of the Belmont Trace homeowners association. She supports this project, which she previously expressed to the Planning Commission. She requested that Council approve this application.

Mayor Paul called for public comments in opposition to the application. There were no public comments. Mayor Paul closed the public hearing.

Motion and Second: Councilman McDonald moved to approve Agenda Item No. 14-211, 201401628 - 85 Johnson Ferry Road, *Applicant: Waterford Homes*, to rezone the subject property from R-3 (Single Family Dwelling District) to R-5 (Single Family Dwelling District) to allow for the development of two (2) single family residences, with concurrent variances. Councilman Dishman seconded the motion.

Staff conditions:

1. To the owner's agreement to provide the following site development standards:
 - a. Variance from section 4.11.G.3.b to allow a fence over four (4) feet in height to not have a picketed design on the south side of the Belmont Trace entrance.
 - b. Variance from 4.11.F to reduce the fence setback from three (3) feet to zero (0).
 - c. Variance from 33.22.c to reduce the sign setback from ten (10) feet setback to zero (0).
 - d. No vehicle access shall be permitted on Johnson Ferry Road.

Vote on the Motion: The motion carried unanimously.

Ordinance No. 2014-09-30

(Agenda Item No. 14-212)

5. **201402051** - 4735 Roswell Road, *Applicant: The Providence Group of Georgia, LLC*, to rezone from A-1 (Apartment Dwelling District) conditional to A-L (Apartment Limited District) for the

construction of a mixed townhouse and multifamily dwelling unit development, with a use permit to exceed the maximum district height and concurrent variances

Manager of Planning and Zoning Patrice Dickerson stated this is a request to rezone the subject property to allow for a mixed townhouse and multifamily dwelling unit development. At the Planning Commission hearing staff recommended denial and at the time the Planning Commission recommended deferral of the case. Staff is supportive of that deferral.

Nathan Hendricks, representative of the applicant, stated the Planning Commission directed that the applicant and community representatives meet to go through the application to see what modifications and amendments could be made to the application. The first meetings were held on September 10th and 11th at City Hall. If Council sees fit to defer this item, the applicant will continue the dialogue with the community.

Mayor Rusty Paul called for public comments in support of the application. There were no public comments. Mayor Paul called for public comments in opposition to the application.

John Steinbridge, 4725 Huntley Drive, stated he lives next to the proposed development and represents the entire Westville Park neighborhood. He asked those in the audience from his neighborhood to raise their hands. The neighbors chose to live in Westville Park due to the character it offers. The proposed development risks destroying the character of his neighborhood. The neighborhood supports a deferral. Neighborhood meetings were held prior to the Planning Commission meeting, but the neighbors did not receive revisions to the plan prior to the Planning Commission meeting held. The neighborhood does want to continue discussions with the applicant. The neighborhood has concerns with the original plan and continues to have concerns with the proposed revisions, including the density. The new apartment complex and parking deck will sit on thirty percent of the development. The density is over 66 units per acre and it located on 5.4 acres. The project will include townhomes, which decreases the density to 30 units per acre. This is well outside the City's vision for this area, which is a living working neighborhood. The height proposes four, five, and six story apartments and a five story parking deck. The existing development is two stories and the comprehensive plan recommends the height in this area be no more than two stories. The third concern is the decreased setbacks. He knows that the City allows density and height bonuses for curb cuts and increased green space. There are two curb cuts on Roswell Road currently that are being reduced to one at the expense of an additional curb cut being proposed on Roswell Road.

Jane Kelley, 4590 Windsor Park Place, stated she is in attendance representing Windsor Park Place and Residents on Hedden Street, which is south of the property. She has attended five meetings regarding this issue and as of those meetings the applicants have not addressed the density and building heights. Both heights are appropriate for a live work regional location which is near mass transit and major commercial areas, not in a live/work neighborhood which is strictly residential. The neighborhood is willing to support deferral for further negotiations, assuming the developer is willing to discuss density, building height, buffers, and setbacks.

Mr. Hendricks stated the applicant does not have finished checklist on the refinement and modifications. It does not make sense to take time now to go through the several modifications and amendments that were presented.

Mayor Paul asked how much time is needed.

Mr. Steinbridge stated a sixty day deferral should be fine.

Mayor Paul closed the public hearing.

Motion and Vote: Councilman DeJulio moved to defer Agenda Item No. 14-212, 201402051 - 4735 Roswell Road, *Applicant: The Providence Group of Georgia, LLC*, to rezone from A-1 (Apartment Dwelling District) conditional to A-L (Apartment Limited District) for the construction of a mixed townhouse and multifamily dwelling unit development, with a use permit to exceed the maximum district height and concurrent variances, to the November 18, 2014 City Council meeting. Councilman Bauman seconded the motion.

Councilman Tibby DeJulio stated Westpark is one of the better neighborhoods in Sandy Springs and is also one of the better kept secrets in the City. The character should not be changed. During an earlier agenda item he discussed density. This density needs to be reduced. Something needs to be done with this property, because it has deteriorated. He received a lot of feedback from the residents and all involved would like to meet and discuss what occurred last week. He encouraged this deal to be worked out so everyone is a winner and everyone is happy. He or staff would be happy to help with this deal. There has been no mention of changing the speed limit on Franklin Road or removing the speed humps.

Councilman John Paulson asked if the applicant would meet with staff and the neighborhood early and work through the issues, so by the time it comes back to Council there is a good proposal.

Mayor Paul stated he echoes what Councilman DeJulio said. There are way too many blighted apartments in Sandy Springs. If they are not removed and new ones reconstructed, they will begin to deteriorate. When he first moved to Sandy Springs he moved to an apartment complex that was deteriorating. For the first three years everything was fine and then one night he and his family heard a gunshot. The next month there were two gunshots and then one every week. They were putting their children on the floor to protect them. His wife refused to live like that, so they moved their family. If the apartments are allowed to deteriorate, there is a concern for quality of life.

Vote on the Motion: The motion carried unanimously.

Zoning Modification

(Agenda Item No. 14-213)

6. **201401133** - 305 Carpenter Drive, *Applicant: Masoud Zahedi*, to delete all conditions related to senior living in Sandy Springs zoning case RZ08-012

Manager of Planning and Zoning Patrice Dickerson stated this was a request to modify the existing conditions to remove the senior living requirement and to reduce the number of units proposed. Staff is recommending approval conditional of the request.

Masoud Zahedi, 5801 Roswell Road, stated the original application is for a 170 unit retirement home. The bank did not approve financing for the proposed senior living project. He lives and works in the neighborhood near the subject property. He is requesting approval to construct a 100 unit apartment, which was originally set at 120 units. He was told by Councilman DeJulio that 100 units would be too many units. He spoke to nearby residents who are looking forward to the proposed apartment units. He would like to make this property useful for this area. He has heard no opposition regarding his proposal. He requested that Council approve his application.

Mayor Rusty Paul called for public comments in support of or in opposition to the application. There were no public comments. Mayor Paul closed the public hearing.

Councilman Andy Bauman asked if the proposed development is for 100 units.

Mr. Zahedi responded yes, 100 units.

Councilman Gabriel Sterling stated the proposal specifies 120 units or 104 units per acre.

Manager of Planning and Zoning Dickerson stated staff does not have the number 100 mentioned by the applicant.

Mr. Zahedi stated he included the 100 units in his letter of intent. He referenced the sketch of what he proposes to build.

Councilman Graham McDonald asked if Mr. Zahedi asked for the property to be zoned senior living.

Mr. Zahedi responded back in 2008.

Manager of Planning and Zoning Dickerson stated prior to 2008 it was zoned A-L.

Mayor Paul stated the current zoning has a condition which requires senior living. Mr. Zahedi is requesting the removal of the senior living condition so that the zoning can be general usage.

Councilman Sterling stated there are a series of items that Council is being asked to remove from the conditions, which include items c, d, e, f, g, h, i, and j. The new conditions would take the application to the new apartment standards that include the streetscape for the City Center plan. The new conditions would be an interior ceiling height of a minimum of nine feet, 15% green space, and an additional 5% open and/or green space.

Manager of Planning and Zoning Dickerson stated there will also be a reduction in the number of units allowed from 170 to 100 units. The current zoning is for 170 units at 142 units per acre.

Motion and Second: Councilman DeJulio moved to deny Agenda Item No. 14-213, 201401133 - 305 Carpenter Drive, *Applicant: Masoud Zahedi*, to delete all conditions related to senior living in Sandy Springs zoning case RZ08-012. Councilman Bauman seconded the motion.

Councilman Tibby DeJulio stated in 2008 the reason why Council granted such a high zoning and high density was because Mr. Zahedi wanted to create a senior living project. Senior living by definition is smaller units and more compact living and can handle higher density. By changing the plan to apartments at 100 units per acre, it would be a precedent that Council would be setting. If Mr. Zahedi changed the density to 30 or 40 units, it would be more in line with what should be in this area.

Mr. Zahedi stated he agrees with Councilman DeJulio. The financing changed, so he changed his proposal. He spoke to staff about the Comprehensive Land Use Plan and asked if his new proposal would be allowed and he was told yes by staff. This evening Council approved another high density development in a high traffic area while his proposal is in a low traffic area.

Councilman Bauman stated using the basis of the existing zoning of senior housing is not comparable to this request. He is concerned about the proposed density at this location.

Mr. Zahedi stated he is trying to come up with a good project for this area that will please everyone. His plan is in agreement with the land use plan. If Council does not agree with the density, they should change the land use plan.

Councilman Sterling stated he cannot disagree with Mr. Zahedi. The Comprehensive Land Use Plan states high density is allowed in this area. That is what Council passed in 2007. He is having a very hard time agreeing to deny this application. Mr. Zahedi stated the plan is now at 100 units per acre.

Manager of Planning and Zoning Dickerson stated the property was zoned Apartment Limited in 2002 for a 45 unit residential development.

Councilman Sterling stated the proposed plan is doubling the amount of units that would have been there originally. Looking at the staff report it states the conditions for senior housing would not cause a detriment to the public and the proposed uses are consistent with the Future Land Use Map showing LWR (Live, Work, Regional), which recommends a density of over 20 units an acre. The applicant is proposing 104.33 units per acre, but due to the reduction it will be 89 units to the acre. He would like Mr. Zahedi to meet with the neighbors to come up with a plan. Mr. Zahedi has followed everything the City has asked him to do. Some coaching and counseling could have come into place to have a lower number of units. He would be more comfortable at 50 or 60 units. Council needs to revisit the Future Land Use Map and make revisions.

Councilman John Paulson stated he is uncomfortable denying this application. He asked if there is a way of comparing the 175 unit senior living facility to apartments.

Manager of Planning and Zoning Dickerson stated she does not have an answer to that now, but staff can research this if Council would like.

Amendment to Motion and Second: Councilman DeJulio amended his motion to defer Agenda Item No. 14-213, 201401133 - 305 Carpenter Drive, applicant Masoud Zahedi, to delete all conditions related to senior living in Sandy Springs zoning case RZ08-012, to the October 21, 2014 City Council meeting. Councilman Bauman seconded the motion.

Councilman Bauman stated Council is making zoning decisions to fix economic problems that have generational impact on the City. Council should show a level of thoughtfulness.

Mayor Paul stated the land use plan for this area is out of keeping with what Council has in mind. It is Council's fault that this has not been corrected.

Vote on the Amended Motion: The motion carried unanimously.

Mr. Zahedi thanked Mayor and Council.

(Agenda Item No. 14-214)

7. **201402339** - 540 Trimble Lake Court, *Applicant: Chituru Adele*, to modify condition 3.d. of Z99-0063 to allow temporary construction access from South Trimble Road to allow for a pool

Manager of Planning and Zoning Patrice Dickerson stated this item was before Council earlier this year to allow a pool on a double frontage lot. At the time, there was a condition limiting access to South Trimble Road. The applicant is requesting temporary construction access and staff is recommending approval conditional.

Danny Franke, 4776 Mystic Drive, representative of the applicant, stated he operates Custom Pools of Atlanta. He received approval for the variance earlier this year and then found out a temporary access is required for South Trimble Road in order to build the pool. Both of Mr. Adele's neighbors have a swimming pool and were approved for the same access from South Trimble Road.

Mayor Rusty Paul called for public comments in support of or opposition to the application. There were no public comments. Mayor Paul closed the public hearing.

Motion and Second: Councilman DeJulio moved to approve Agenda Item No. 14-214, 201402339 - 540 Trimble Lake Court, *Applicant: Chituru Adele*, to modify condition 3.d. of Z99-0063 to allow temporary

construction access from South Trimble Road to allow for a pool. Councilman Sterling seconded the motion.

Staff Conditions:

1. To the owner's agreement to restrict the use of the subject property as follows:
 - a. Single family detached dwellings and accessory uses and structures.
 - b. No more than 49 total dwelling units, at a maximum density of 1.54 dwelling units per acre, whichever is less, based on the total acreage zoned.
 - c. The minimum lot size shall be 18,000 square feet.
 - d. The minimum heated floor area per dwelling unit shall be 2,500 square feet.
 - e. At no time ever will there be a golf driving range, clubhouse, swimming pool, tennis courts or parking lots associated with the impending golf club and no more than three (3) full golf holes and two (2) partial golf holes will reside on the Property. (Private Agreement)

2. To the owner's agreement to abide by the following:
 - a. To the revised site plan received by the Department of Environment and Community Development on July 2, 1999. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Resolution and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in ace prior to the issuance of the first Certificate of Occupancy.

3. To the owner's agreement to the following site development considerations:
 - a. Development standards:

Minimum perimeter setback: 40 feet, except on lots #18 and #46, as depicted on the site plan referenced in condition 2.a., and Lot 47 will be 22 feet where the swimming pool encroaches, and except Lot 45 13 will be 15 feet where the swimming pool encroaches as shown on the site plan dated received October 22, 2013 by the Department of Community Development.

Minimum front yard: 30 feet
Minimum side yard (interior): 7 feet
Minimum side yard (adjacent to a street): 10 feet
Minimum rear yard: 40 feet
Minimum lot width at the building line: 70 feet
Minimum street frontage: 30 feet
 - b. No more than 2 exit/entrances on South Trimble Road with the closest curb cut to Peachtree Dunwoody Road to be located a minimum of 300 feet from the right-of way of Peachtree Dunwoody Road. Curb cut locations and alignments are subject to the approval of the Fulton County Traffic Engineer.
 - c. No access shall be allowed from Peachtree Dunwoody Road.

- d. No lot shall be allowed direct access from South Trimble Road or Peachtree Dunwoody Road except Lot 13, which shall be permitted temporary construction access for installation of a pool as shown on the site plan dated received June 27, 2014 by the Department of Community Development. Prior to issuance of a Certificate of Completion for the swimming pool, the owner/developer shall restore the fence and landscaping to existing standards subject to the approval of the Director of Community Development.
 - e. Sidewalks shall be provided along Peachtree Dunwoody Road and South Trimble Road.
 - f. Provide 40-foot wide building setbacks measured from the centerlines of pipelines.
 - g. No grading, except as required for access crossings, and no new structures shall be permitted within the existing pipeline easements and additional setbacks, as required in Condition 3.f. Silt fencing and other protective measures shall be permitted in accordance with the Fulton County Tributary Protection Resolution, Fulton County Soil Erosion and Sedimentation Control Ordinance, and the Georgia Soil Erosion and Sedimentation Control Law.
 - h. Prior to the approval of a Land Disturbance Permit, the applicant shall clearly delineate the pipelines, the easements, and the additional setbacks, as required in Condition 3.f., on Land Disturbance permit construction drawings, and shall stake the boundaries on site, based on the additional setback required in Condition 3.f. Boundaries shall remain clearly marked throughout land disturbing activities on the site.
 - i. All recreational and other areas which may be held in common shall be maintained by a mandatory Homeowners Association, whose proposed documents of incorporation shall be submitted to the Director of the Department of Environment and Community Development for review and approval prior to the recording of the first final plat.
 - j. For all exterior lots, if metal poles are used as deck supports, said poles must be enhanced with brick, stone, stucco, or other facing which would be architecturally consistent with the house. (Private Agreement)
 - k. Decks should not extend into the required perimeter setback. (Private Agreement)
 - l. Internal private streets must be constructed and maintained, at a minimum, to Fulton County standards.
 - m. Should Fulton County ever be petitioned to assume ownership and maintenance of the private streets, that prior to dedication of the streets, they must be brought to acceptable standards of Fulton County for similar roads of similar age, subject to the approval of the Director of Public Works.
 - n. Applicant will provide necessary easements for ingress and egress for police, fire, emergency vehicles and all operating utilities.
4. To the owner's agreement to abide by the following requirements, dedication and improvements:
- a. Dedicate at no cost to Fulton County along the entire property frontage, prior to the approval of a Land Disturbance Permit, sufficient land as necessary to provide the following rights-of-way, and dedicate at no cost to Fulton County such additional right-of-way as may be required to provide at least 10.5 feet of right-of-way from the back of

curb of all abutting road improvements, as well as allow the necessary construction easements while the rights-of-way are being improved:
30 feet from centerline of South Trimble Road;
45 feet from centerline of Peachtree Dunwoody Road or as may be required for intersection improvements at South Trimble Road and Peachtree Dunwoody Road.

- a. Improve roadways along the entire property frontage with curb and gutter per Fulton County standards or as may be approved by the Fulton County Traffic Engineer and/or the Georgia Department of Transportation.
 - b. Provide a deceleration lane for each project entrance or as may be required by the Fulton County Traffic Engineer.
 - c. Provide a left turn lane for each project entrance or as may be required by the Fulton County Traffic Engineer.
5. To the owner's agreement to abide by the following:
- a. To contact the Director of Public Works, prior to the application for a Land Disturbance Permit with the Department of Environment and Community Development, to meet with the Fulton County Traffic Engineer. A signed copy of the results of these meetings will be required to be submitted along with the application for a Land Disturbance Permit.
 - b. Prior to the application for a Land Disturbance Permit with the Department of Environment and Community Development, arrange an on-site evaluation of existing specimen trees/stands, buffers, and tree protection zones within the property boundaries with the Fulton County Arborist. A signed copy of the results of these meetings will be required to be submitted along with the application for a Land Disturbance Permit.
 - c. To contact the Director of Public Works, prior to the application for a Land Disturbance Permit with the Department of Environment and Community Development, to meet with the Fulton County Drainage Engineer. A signed copy of the results of these meetings will be required to be submitted along with the application for a Land Disturbance Permit.
 - d. At the time of submittal for a Land Disturbance Permit and after the approval of the Preliminary Plat, the engineer/developer is required to provide written documentation verifying on-site evaluation and any other necessary downstream constraints.
 - e. Provide documentation (cross-section, profile, etc.) as to the existing conditions for all natural streams/creeks within the boundary of the project. Show, by documentation, the appropriate erosion protection of the stormwater conveyance system.
 - f. The developer/engineer is responsible to demonstrate to the County by engineering analysis, that the developed land use (proposed development) stormwater runoff conditions are controlled at the maximum predeveloped land use level, so that downstream properties/conveyance systems are not impacted or aggravates existing flooding/drainage nor creates new drainage/flooding problems off-site.
 - g. Prior to application for a Land Disturbance Permit, the developer/engineer shall submit to the Stormwater Management Section of the Department of Public Works a stormwater concept plan. The stormwater concept plan shall be preliminary drawings describing the

proposed location of storage facilities, discharge paths, downstream and upstream constraints and other matters with potential stormwater implications.

6. For relief from Section 19.3.15.B.1 of the Zoning Ordinance to allow a pool to be located in one of the lot's two front yards (Lot 13). (CV 201303511)

Councilman John Paulson asked why this item is before Council.

Manager of Planning and Zoning Dickerson stated when Fulton County originally zoned the subdivision in 1999, there was a condition that states no access is allowed from South Trimble. Without Council's approval, there is no way for staff to allow the access.

Vote on the Motion: The motion carried unanimously.
Ordinance No. 2014-09-31

(Agenda Item No. 14-215)

8. **201402352** - 9620 Huntcliff Trace, *Applicant: Robert & Linda Corr*, to modify conditions of Z70-0090 to allow a proposed deck to encroach in the required side yard setback

Manager of Planning and Zoning Patrice Dickerson stated this is a request to modify setback conditions for this property related to an existing deck on the property. The applicant is proposing to have the deck on the property line where currently the deck extends over the property line. Staff is recommending approval conditional of the request.

Robert Corr, 9620 Huntcliff Trace, stated the deck attached to his home is probably twenty to twenty-five years old and he is requesting approval to build a new deck. The previous owners built the deck 1 ½ feet over the property line. When the new deck is built it will be inside the property line while at the same time expanding the deck slightly on the left side.

Mayor Rusty Paul called for public comments in support of or opposition to the application. There were no public comments. Mayor Paul closed the public hearing.

Motion and Second: Councilman Dishman moved to approve Agenda Item No. 14-215, 201402352 - 9620 Huntcliff Trace, *Applicant: Robert & Linda Corr*, to modify conditions of Z70-0090 to allow a proposed deck to encroach in the required side yard setback. Councilman Sterling seconded the motion.

Councilman John Paulson asked if Mr. Corr has discussed the construction of the deck with the golf course next door.

Mr. Corr replied the golf course is not opposed.

Vote on the Motion: The motion carried unanimously.
Ordinance No. 2014-09-32

Resolution

(Agenda Item No. 14-216)

9. Resolution for the Adoption of Consolidated Annual Performance and Evaluation Report (CAPER) for the 2013 CDBG Program

Manager of Planning and Zoning Patrice Dickerson stated this is the annual report for the City's CDBG program for the 2013 program year. Staff recommends approval of the resolution.

Mayor Rusty Paul called for public comments in support of or opposition to the resolution. There were no public comments. Mayor Paul closed the public hearing.

Motion and Vote: Councilman Sterling moved to approve Agenda Item No. 14-216, a Resolution for the Adoption of Consolidated Annual Performance and Evaluation Report (CAPER) for the 2013 CDBG Program. Councilman Paulson seconded the motion. There was no Council discussion. The motion carried unanimously.

Resolution No. 2014-09-85

UNFINISHED BUSINESS

There was no unfinished business.

NEW BUSINESS

(Agenda Item No. 14-217)

1. Resolution in Support of High Capacity Transit in the SR 400 Corridor

Transportation Unit Manager Brad Edwards stated this item is a resolution of support for the extension of high capacity transit from the North Springs MARTA station. Staff was asked specifically to answer three questions. The questions include: what mode of transportation the City supports; should the alignment be east or west of GA400; and the station location. The resolution answers all three of the questions. The answers are heavy rail, west of GA400, and the station location should be around the Northridge Road Node. If this is adopted by Council, it will be considered the locally preferred alternatives (LPA). The LPA will be transmitted to the MARTA Board and they will vote on the adoption of all LPAs for the program in early January 2015.

Motion and Second: Councilman Paulson moved to approve Agenda Item No. 14-217, a Resolution in Support of High Capacity Transit in the SR 400 Corridor. Councilman Dishman seconded the motion.

Councilman Ken Dishman asked what the City of Roswell's opinion is on the extension of the MARTA rail.

Assistant City Manager Bryant Poole stated he does not believe that Roswell has taken a public position as of yet.

Friendly Amendment to the Motion and Second: Councilman Sterling offered a friendly amendment to the motion to revise the resolution to state, "Sandy Springs supports shifting the rail alignment to the west side of SR 400 at some point north of Spalding Drive where land use dictates..." and "Sandy Springs supports a future rail station north of Northridge Road on the west side of GA 400..." Councilman Paulson accepted the friendly amendment.

Councilman John Paulson stated one reason why Council should support this is because all of those that responded to the surveys and attended the public meetings have overwhelmingly favored the rail extension.

Vote on the Motion: The motion as amended carried unanimously.

Resolution No. 2014-09-86

(Agenda Item No. 14-218)

2. Consideration of North Fulton Regional Radio System Authority Contribution Agreement

City Attorney Wendell Willard stated this agreement will be between the City and the Radio Authority. An agreement of the same form is being adopted by each of the other three participating cities of the radio system. The obligation for payments is not in place until there is a need for that. The agreement originally created came to a conclusion once the authority was set up.

Councilman Gabriel Sterling asked if this agreement includes Johns Creek.

City Attorney Willard responded no.

Councilman Sterling stated the agreement includes the cities of Alpharetta, Roswell, Milton, and Sandy Springs.

Motion and Second: Councilman Paulson moved to approve Agenda Item No. 14-218, the North Fulton Regional Radio System Authority Contribution Agreement. Councilman Dishman seconded the motion.

Councilman John Paulson asked about the cost of \$16 million.

City Attorney Willard stated that number has been modified. There was an appropriation of funds for each of the cities to equal that number. If the number changes, it will have to come back to Council for approval.

Councilman Sterling inquired, if the City creates a contract modification and Johns Creek decides to join the Authority, is there a way to allow Johns Creek to join. He asked how much is budgeted of the \$4.74 million.

City Attorney Willard responded yes, and he believes the whole amount was budgeted. The contracts were approved that relate to the construction of towers and installation of equipment for the system. There may be further buying of the radios that go into the police cars and handheld radios, but he is not sure where that funding will come from. He will check to ensure all has been funded and get back to Council.

Councilman Tibby DeJulio stated when ChatComm was created Sandy Springs had issues collecting money from other jurisdictions. He asked how the City will avoid the same problem so that Sandy Springs does not become the banker for other jurisdictions.

City Attorney Willard stated in the agreement in "Section 4 payment" there are penalties for failure to make a timely payment. Those cities will have an obligation to pay 6% interest on the funds if late. All the cities are approving the agreement this month.

Councilman Sterling asked if the payment structure is monthly or quarterly.

City Attorney Willard answered it will not be determined until there is a need for payment. Once a need is determined for funding to take place, the bills will be mailed out based upon the factor in Exhibit A.

Vote on Motion: The motion carried unanimously.

(Agenda Item No. 14-219)

3. Consideration of a Resolution to approve utilization of Construction Manager at Risk project delivery method for Public Works construction contracts including, but not limited to, City Center

City Attorney Wendell Willard stated this item is a form of construction which is being utilized more by local governments in primarily vertical construction, which deals with structures as opposed to roads.

This process employs a contract manager that utilizes a contract which limits the risk that cities would have. As the construction moves forward, the City will work with the contractor to find a subcontractor. **Georgia Technology Professor Ennis Parker** gave a presentation on the City Center Master Development Site project delivery methods. He recommended the City use the Construction Manager at Risk project delivery method.

Motion and Vote: Councilman Paulson moved to approve Agenda Item No. 14-219, a Resolution to approve the utilization of Construction Manager at Risk project delivery method for Public Works construction contracts including, but not limited to, City Center. Councilman DeJulio seconded the motion. The motion carried unanimously.

Resolution No. 2014-09-87

(Agenda Item No. 14-220)

4. Acceptance of Grant Award 2014-DJ-BX-0953 from the Office of Justice Programs, Bureau of Justice Assistance

Assistant City Manager Bryant Poole stated this item is to allow the City to accept grant money in the amount of \$16,499 at no expense to the City. This money will help acquire four more portable handheld radios for use by the Sandy Springs Police Department.

Motion and Vote: Councilman DeJulio moved to approve Agenda Item No. 14-220, the Grant Award 2014-DJ-BX-0953 from the Office of Justice Programs, Bureau of Justice Assistance. Councilman Dishman seconded the motion. There was no Council discussion. The motion carried unanimously.

Resolution No. 2014-09-88

(Agenda Item No. 14-221)

5. Resolution to authorize the City of Sandy Springs, Georgia, to purchase a portion of those certain lots, tracts or parcels of land located at 5899 and 5901 Roswell Road, Sandy Springs, Georgia, Parcel ID: 17-0090-LL-049-3 and 17-0090-LL-048-5

City Attorney Wendell Willard stated this resolution addresses the realignment of Carpenter Drive in order to be aligned with Cliftwood Drive. The property is subject to being redeveloped and is vacant and at this time it would be best to move forward with the realignment. The resolution is the approval of a sales contract to acquire the property and easements for which the City will pay \$1,200,000.

Motion and Second: Councilman Bauman moved to approve Agenda Item No. 14-221, a Resolution to authorize the City of Sandy Springs, Georgia, to purchase a portion of those certain lots, tracts or parcels of land located at 5899 and 5901 Roswell Road, Sandy Springs, Georgia, Parcel ID: 17-0090-LL-049-3 and 17-0090-LL-048-5. Councilman Paulson seconded the motion.

Councilman Andy Bauman stated the realignment is part of the City Center project. The realignment will have a meaningful and direct impact and improvement for the residents in this area. He is glad to see the City moving forward with this.

Councilman Gabriel Sterling asked if the money for this project was budgeted from the City Center project or Public Works funds.

Assistant City Manager Bryant Poole stated the funds are a combination of both. Staff asked for funds in the FY15 budget to cover the project that includes the acquisition of land. As part of the acquisition staff is requesting an additional \$900,000 to cover this project.

Vote on the Motion: The motion carried unanimously.

Resolution No. 2014-09-89

REPORTS

1. Mayor and Council Reports

Councilman Gabriel Sterling stated the 24 Hours of Booty Ride event will be held at Mount Vernon Presbyterian Church and Mount Vernon Woods neighborhood. During the last few years, the event raised over \$400,000, half of which goes to the AFLAC Cancer Center at Children's Healthcare of Atlanta and the other half which goes to LIVESTRONG to help cancer survivors. He encouraged all to attend.

2. Staff Reports

a) July 2014 Financial Report – Accounting Manager D'Wayne Hulbert

b) City Center Master Plan Update

Assistant City Manager Bryant Poole stated the development team continues to work hard moving ahead with Option 4. On September 11th a survey was posted on the City website for public feedback for the types of events they would like to see at the performing arts center (PAC). The survey will stay open until October 3rd. The survey has already received over 100 responses. The team is working on the issue of how many parking spaces will be needed. Staff has begun introducing the development team to the utility companies in order to begin dialogue. Maxine Hicks of DLA Piper has been hired to assist the City with the development of this site.

City Attorney Wendell Willard stated a meeting was held today to bring together the developer attorneys and the City's attorney in order to discuss the documents for development.

Councilman Graham McDonald stated he received feedback from residents in District 3 concerning the PAC survey. There is concern about the subcategories that the musical acts were given. Some think that Broadway musicals do not fall into the theatrical category. Suggestions were received that there should be more descriptive categories for the feedback responses.

Assistant City Manager Poole stated the survey was combined, but there are areas to include other suggestions.

Councilman Tibby DeJulio asked if staff is keeping track of the positive and negative comments.

Assistant City Manager Poole stated staff is tracking all comments submitted. There are some people that are not interested at all in events that might be held at the PAC.

PUBLIC COMMENT

Rebecca Remsen, resident of Sandy Springs, submitted a public comment card to the City Clerk's office that is on file. She is opposed to the MARTA expansion west of GA400.

John Terry, 4525 Powers Ferry Road, stated he is here this evening to discuss the construction work on Powers Ferry Road. He thanked Assistant City Manager Poole for visiting Powers Ferry Road about two years ago and identifying a safety issue. He thanked Councilman Bauman for identifying the opportunity. He thanked the City for the money they budgeted for this project.

Councilman Andy Bauman thanked Mr. Terry for his patience waiting to speak this evening.

Mr. Terry stated a member of City staff identified an issue with his lawn that has since been corrected.

EXECUTIVE SESSION

There was no Executive Session.

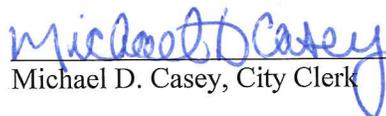
ADJOURNMENT

Motion and Vote: Councilman DeJulio moved to adjourn the meeting. Councilman Paulson seconded the motion. The motion carried unanimously. The meeting adjourned at 9:04 p.m.

Date Approved: October 21, 2014



Russell K. Paul, Mayor



Michael D. Casey, City Clerk

