

Regular Meeting of the Sandy Springs City Council was held Tuesday, April 21, 2009, 6:00 p.m., Mayor Galambos presiding.

Invocation

Rabbi Brad Levenberg, Temple Sinai, offered the invocation.

Call to Order

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

Roll Call and General Announcements

Interim City Clerk Michael Casey reminded everyone to silence their cell phones and pagers at this time. Additionally, those wishing to provide public comments, either during a public hearing or before the conclusion of the meeting under the public comment section, are required to complete a public comment card. Cards are located at the back counter and need to be turned in to the Clerk before speaking.

Interim City Clerk Casey called the roll.

Mayor: Mayor Eva Galambos

Councilmember's Present: Councilmember Doug MacGinnitie, Councilmember Dianne Fries, Councilmember Rusty Paul, Councilmember Ashley Jenkins, Councilmember Tibby DeJulio, and Councilmember Karen Meinzen McEnery.

Pledge of Allegiance

Mayor Galambos led the Pledge of Allegiance.

Approval of Meeting Agenda

Motion and Vote: Councilmember Paul moved to approve the meeting agenda. Councilmember Fries seconded the motion. There was no Council discussion. The motion carried unanimously.

Consent Agenda

Agenda Item No. 09-087

1. Meeting Minutes:
 - a. March 3, 2009 Work Session
 - b. March 17, 2009 Regular Meeting
 - c. April 7, 2009 Regular Meeting*(Michael Casey, Interim City Clerk)*

Agenda Item No. 09-088

2. Section 108 Loan Guarantee Program Application Public Review and Comment.
(Chris Miller, Deputy Director Community Development)

Agenda Item No. 09-089

3. Consideration of Approval of the Acceptance of the Donation of the Temporary Construction Easement at the Intersection of Hammond Drive and Peachtree Dunwoody Road for the Fulton Perimeter Community Improvement District/ Peachtree Dunwoody Road LCI Streetscape Project.
(Angelia Parham, Director Public Works)

Resolution No. 2009-04-20

Agenda Item No. 09-090

4. Consideration of Approval of the Acceptance of the Donation of Temporary and Permanent Construction, Maintenance, and Utility Easements along Peachtree Dunwoody Road south of the intersection of Mount Vernon Highway for the Fulton Perimeter Community Improvement District / Peachtree Dunwoody Road LCI Streetscape Project.

(Angelia Parham, Director Public Works)

Resolution No. 2009-04-21

Agenda Item No. 09-091

5. Consideration of Approval of the Acceptance of the Donation of Temporary Construction Easement north of the intersection of Hammond Drive and Peachtree Dunwoody Road for the Fulton Perimeter Community Improvement District/ Peachtree Dunwoody Road LCI Streetscape Project.

(Angelia Parham, Director Public Works)

Resolution No. 2009-04-22

Agenda Item No. 09-092

6. Consideration of Approval of the acceptance of the Donation of Permanent Construction, Maintenance, and Utility Easement and Temporary Construction/ Driveway Easements along Peachtree Dunwoody Road north of I-285 and South Concourse Parkway for the Fulton Perimeter Community Improvement District/ Peachtree Dunwoody Road LCI Streetscape Project.

(Angelia Parham, Director Public Works)

Resolution No. 2009-04-23

Agenda Item No. 09-093

7. Consideration of Approval of the Acceptance of Right-of-Way for the River Valley Road Sidewalks Project (T-0005).

(Angelia Parham, Director Public Works)

Resolution No. 2009-04-24

Agenda Item No. 09-094

8. Consideration of the approval of a Right-of-Way Acquisition Contract with the Georgia Department of Transportation for the Roswell Road Streetscape Project (Johnson Ferry to Abernathy) Project (T-0012).

(Angelia Parham, Director Public Works)

Resolution No. 2009-04-25

Motion and Vote: Councilmember Paul moved to approve the consent agenda. Councilmember Fries seconded the motion. There was no Council discussion. The motion carried unanimously.

Presentations

AVA Award – Public Works and Communications Team

Mayor Galambos congratulated Angelia Parham, Jon Drysdale, David Chastant, Judy Parker, Tisa Moore, Nathan Crenshaw, Katina Lear and Dan Coffey on receiving the AVA Award for production of their video “Stormwater & You”.

Public Hearings

Interim City Clerk Michael Casey read the zoning rules into the record.

Alcoholic Beverage

Agenda Item No. 09-095

Consideration of approval of Alcoholic Beverage License Application for Parman's Wine & Spirits at 6623 Roswell Rd Sandy Springs, GA 30328. Applicant is Charles A. Moesser for Retail/Package Wine, Malt Beverage and Distilled Spirits.

Director of Administrative Services Tarsha Patterson stated that this application is relative to a change of ownership. She stated that staff has reviewed the application and all the administrative requirements have been met. The public hearing has been advertised as required and staff recommends approval.

Mayor Galambos called for public comments. There were no comments from the public.

Motion and Vote: Councilmember Jenkins moved to approve Agenda Item No. 09-095; Alcoholic Beverage License Application for Parman's Wine & Spirits at 6623 Roswell Rd Sandy Springs, GA 30328. Applicant is Charles A. Moesser for Retail/Package Wine, Malt Beverage and Distilled Spirits. Councilmember Fries seconded the motion. There was no Council discussion. The motion carried unanimously.

Councilmember Fries shared a commercial video that has been playing all week advertising the second annual Sandy Springs Cycling Challenge Event that takes place on Sunday, May 3, 2009. This is an all day event which includes a 5K Run, 62 mile bike ride, Art Festival, kid's area, dining, USA CRITS Speed Week Final, and Finale Men's Pro Race.

Rezoning

Agenda Item No. 09-096

U09-001/U09-002 - 5855 Riverside Drive, Applicant: St. Andrew's Presbyterian Church - A use permit to allow construction of a 2,000 square foot addition to the existing church and a use permit to expand enrollment at the existing special school facility.

Community Development Deputy Director Chris Miller stated that this is use permit to allow a 2,000 square foot expansion of the St. Andrew's Presbyterian School for the purpose of expanding enrollment at the Foreign Language Private School in the R-1 District. A use permit was previously approved in 2007 to allow the Foreign Language School to have a maximum of 60 students.

This item was heard by the Planning Commission on March 19, 2009. Both staff and the Planning Commission are recommending deferral to provide the applicant and staff additional time to review issues related to school enrollment, traffic patterns and a proposed use which is a private school.

Ellen Smith, Holt Ney Zatzoff & Wasserman, LLP, 100 Galleria Parkway, Atlanta, representing St. Andrew Presbyterian Church and Tabula Rasa, The Language Academy, stated with respect to two use permits, 5855 Riverside Drive, one is for a 2,000 square foot expansion of the church and the other is to increase enrollment at the Academy.

Ms. Smith stated the applicant is requesting a deferral and that City Council should have received a letter from her last week explaining the reasons for the request for deferral. She provided the following background information:

The subject property is approximately 10 acres at the southeast intersection of I-285 and Riverside Drive. It is zoned R-1. The Academy moved to this property. It was previously operated in Cobb County. The Academy applied for and received a use permit from the City of Sandy Springs. One concern that was raised by the Planning Commission and that I would like to clarify is that the Academy currently operates within their existing use permit. The use permit has a number of limitations on it. The two primarily that have been raised by opposition are whether or not we are operating within the condition that states: 10,000 square feet of existing church building to be used for a Foreign Language School with a Pre-School/Kindergarten component. This is a quote from the use

permit approval. All of the programs that the Academy offers are focused on teaching its students, irrespective of their age, a targeted foreign language, whether that language is French, Spanish, Mandarin, Chinese, Italian or otherwise. Their activities include but are not limited to: song or dance, play time, story time, pre-science, pre-math and physical education. The express language of the 2007 use permit does not limit the academy to offer only pre-school or kindergarten classes. The Academy has a component that offers afternoon classes for elementary age students who will attend from 3:30 p.m. to 5:00 p.m. This is currently allowed by our existing use permit. Another condition of the 2007 use permit is for a maximum of 60 students. More than a year ago, before the Academy made this application, staff advised the applicant that no more than 60 students are allowed on the property at any given time. The reason the maximum number for student enrollment is different from Epstein School or one of the other private schools is because they are pre school age children. The children attend classes for example on Monday or Wednesday, Tuesday or Thursday, or Monday or Friday. No more than 60 children are being taught at the academy at any given time. This complies with staff's interpretation.

The primary reason the applicant is requesting deferral is so the applicant, in conjunction with staff and input from the neighbors, can draft a set of proposed conditions for the use permit that are clear from a Code Enforcement standpoint, so that everyone will know what is allowed on the property.

The use permit request currently before City Council is twofold. The first is for 2,000 square foot expansion. This is to allow the church to relocate its offices and the library, which is shared by both the school and the church. Currently the church offices are in the existing building and this will allow the school to expand and have class rooms in this area.

Secondly, the use permit application is to increase enrollment. The applicant is requesting deferral and gave reasons why this application should be approved. She stated that the Planning Commission also recommended deferral. The Zoning Ordinance gives ten criteria to consider when looking at a Use Permit. In looking at all of the criteria, an analysis of what the school does and what the church does, all 10 criteria are met. The proposed use is consistent with the Comprehensive Land Use Plan and other plans adopted by the City Council. The church and academy uses of the property are consistent with the Comprehensive Land Use Plan and the future Land Use map. The property is designated as residential and community use. That includes churches, schools and other similar institutions. The northern boundary of this property is the I-285 exit ramp onto Riverside Drive. The school use is in the large area of the subject property, the 10 acres. This provides an appropriate transition from I-285 to the lower density single family residential uses to the east and south of the property. With respect to the school uses on the property, the state of Georgia classifies this as a private school. Private School defined in the Sandy Springs Zoning Ordinance is an educational use, having a curriculum at least equal to a public school that is not operated by the Fulton County Board of Education. That is what this school is. The International Baccalaureate curriculum is being offered. This is a private school specializing in foreign language education. The Zoning Ordinance distinguishes between institutions being defined as schools, colleges, hospitals, places of worship, etc. and commercial use of the property. The definitions in Sandy Springs Ordinance, of commercial uses, do not include a private school, irrespective of whether they charge money, whether students come from other metropolitan areas, a private school is not a commercial use of the property. Table 6.1 of Sandy Springs Comprehensive Plan confirms that it is appropriate to have some public, institutional and park uses in protected neighborhoods. The Comprehensive Plan further states that quality public and private schools are an important component of a successful community. In addition to their role in the education of young people, their location and integration into the community can position them as important resources, not only for their individual neighborhoods but for the community at large. The Academy at this location is a definite asset to the City of Sandy Springs. The applicant is requesting deferral of this application, to allow the applicant to work with staff further on the proposed conditions.

Mayor Galambos called for public comment in support of the application. There were no comments from the public.

Mayor Galambos called for public comment in opposition of the application.

Claire Brown, 120 Foxridge Road, stated that her home is the closest to the proposed expansion plan of this church. She was the only one in the neighborhood to attend the original information session concerning this use permit. She asked many questions and was assured that the language school was for pre-school children with a maximum of 60 students. At the information meeting for the new use permit application, she was shocked and disappointed to learn the academy has an enrollment of 157 students, some of them of elementary school age. She would like the City to clarify how they can operate a school like this with the original use permit. She does not oppose the original use permit for the school. She does feel that if it is expanded to include elementary school children, plans should be made to move the elementary school section to another campus in Sandy Springs.

Matthew Eads, 5790 Riverside Drive, submitted a speaker card in opposition of this application.

Robert S. Eads, 640 Fair Oaks Manor, submitted a speaker card in opposition of this application.

Sara Eads, 640 Fair Oaks Manor, submitted a speaker card in opposition of this application.

Robert Crewdson, 135 Foxridge, spoke on behalf of Foxridge residents. The neighborhood is concerned with the amount of students allowed at this location. For the last couple of years we have been approaching this as a 60 and then 200 and then now it is 390. In the future it is going to be 500 and then 700 or 900 students at this location. The school advertises this as the first phase of a building plan for the campus. The neighbors believe this will be a school that will have between 500 and 1,000 students ultimately and needs to be looked at in that context. The neighbors have two questions. Is a for profit commercial foreign language training academy a permitted use in an R-1 zoning district? Secondly, if a commercial foreign language training academy is a permitted use in an R-1 district, should the City exercise its discretion under the use permit criteria and allow the use that has been applied for? The first question is simple. The only theoretical permitted use for the applicant under the Zoning Ordinance is as a private school. Right now, Tabula Rasa is a day care, a pre-school, an after-school program, a language training program in the afternoon, but does not actually have classes at this point in time that are equivalent to a Fulton County Elementary School. The reason for the definition being worded the way it is is because the drafters of the Zoning Ordinance intended if there was going to be a private school; it would be the type of school that would serve the immediate neighborhoods. All the neighbors agree that Tabula Rasa sounds like a wonderful business they would like to have in Sandy Springs, like all of the other businesses that are here in the commercial district that do wonderful things in terms of training and education; Sunshine House, Crème de-la Crème and a number of wonderful businesses that do these types of things. We want Tabula Rasa to succeed but want it in the right location as provided by the Zoning Ordinance. Secondly, even if it were a permitted use, there are a number of criteria that City Council has to consider in terms of whether it would allow a permitted use in this location. There are a couple of factors I would like to focus the Council's attention on. Number one, whether it is consistent with the Comprehensive Land Use Plan? The Comprehensive Plan does seek to distinguish residential and commercial neighborhoods. It keeps them separate and distinct and does not mix the uses together in order to protect the residential neighborhoods from co-mingling with commercial business, to not make traffic hot spots worse, that currently exist in Sandy Springs. One hot spot is at the intersection of I-285 and Riverside Drive where the driveway of this school lets out. We believe that particular criteria mitigates against approval of this kind of application. The second criteria is whether or not it is compatible with land uses in the immediate vicinity. It is near the Interstate, but it is also adjacent to single family housing. There is not another commercial business within a mile of this location. This is in the middle of a residential area. The I-285 Interchange has been guarded by the governments and residents for a long time from being a commercial intersection despite the attractiveness of these parcels for that. One of the concerns the neighborhood has is if there is a profit training academy at this location, will we be able to turn back the clock in the event the church does fold? If it does not succeed, will we have a situation where a commercial business is now allowed? The third issue is traffic. This intersection is a zoo during rush hour. The driveway of Tabula Rasa is a roadway during rush hour in which the cars coming off I-285 are turning around in that driveway in order to get in a better position going north on Riverside. The one entrance to this property is actually blocked at rush hour and you cannot get out of the parking lot. This would add 100 to 200

cars to what is already on the road now at this location. The neighbors thought this would be a 60 student school. Now, as they understand it is, the applicant wants 390 total students, some of which will come at different times. There is a concern on whether the school needs to operate within the permit it has, as worded, as the Planning Commission intended, for some period of time before getting approval by something six times larger than that. The applicant should obey the rules and follow them before expanding if, in fact, the City believes that is a good idea. Staff has raised concerns regarding the state requirements which they may be scrambling to fill. This has been a surprise and in some ways betrayal to the neighbors who thought the applicant would be doing as he first stated. Now that everyone knows that it will be hundreds of students, we believe City Council should treat it that way.

Barbara Malone, 240 Colewood Way, Sandy Springs Counsel of Neighborhoods, supported deferral.

Ellen Smith stated that the applicant did attempt to work with the neighborhood and with the Sandy Springs Counsel of Neighborhoods. The applicant is willing to work on the enrollment number. The 390 number is a maximum put forth by the applicant. When the applicant made application for 200, she based it on the interpretation received from staff a year ago. This number is not the maximum number for enrollment. The applicant is willing to reduce the 390 number for enrollment. This is part of the reason the applicant is requesting deferral. The Academy's Pre-K and Kindergarten are accredited and have a curriculum that is at least equal to Fulton County.

Councilmember Paul questioned what the corporate structure of the school is; Subchapter S, Subchapter C, 501C(3)?

Ms. Smith stated that it is a C Corporation. The two principals of the corporation reside in Sandy Springs.

Councilmember Paul asked the City Attorney if church property is non-taxable and off the tax rolls. To operate a commercial enterprise on a non tax exempt property, does that jeopardize the church's tax exempt status as far as property taxes goes within Fulton County and City of Sandy Springs?

City Attorney Wendell Willard stated that it is possible and he would need to do further research.

Ms. Smith stated that representatives of the Church have recently been before the Fulton County Board of Assessors and the applicant's tax exempt status is not an issue in respect to the schools operation on the property.

Councilmember Paul stated should City Council allow deferral of applicant, he would like for the City Attorney to check with the County assessor office and verify this.

Councilmember Meinzen McEnerny stated that it was mentioned there are different phases of development. She assumes the first phase of expansion is what is before City Council now. She questioned what is the second phase? Is there a second phase?

Ms. Smith stated yes, the phases of expansion are not the school's phases of expansion. They are the church's phases of expansion. Phase I is to move the church offices and library. Phase II is to remodel the kitchen in the church. Mr. Crewdson mentioned the school having possibly 1,000 kids. That is not something she has heard. The applicant's request before City Council is very limited and the 390 number is a goal the school has. It is not something that will happen tomorrow. The schools plan is to add one grade per academic year. If a use permit is approved by Council, then in the fall there will be a first grade with six children. The school is proposing to limit the elementary school classes to no more than 60 students enrolled. Of that 390, they are talking 60 children. That would be 10 children per class over the next five years.

Mayor Galambos stated that it was mentioned the school is accredited. If a child attends this school in first grade and then switches to a Fulton County School, will the child receive credit for having gone to first grade in the applicant's school?

Ms. Smith stated the child would. The children would have a curriculum at least comparable to Fulton County. It is a total immersion program. The hours of the school will be from 8:30a.m. - 2:30 p.m.

Councilmember DeJulio questioned Mr. Crewdson if the school having 157 students, rather than 60 students, has caused problems in the neighborhood?

Mr. Crewdson stated that there are traffic problems. Yes, with the 157 students spread out, you don't see it as much as you would if all 157 students were there at one time. The neighbors were trying to help the school get started and work with the school. If they had known that the whole plan is not to start here and go to a commercial district where they think the businesses would thrive, they would have responded differently. That is what the Planning Commission thought in March, too.

Councilmember MacGinnitie questioned how long of a deferral the applicant proposes and if staff feels there is some value in deferring this.

Deputy Director of Community Development Chris Miller stated that staff does believe that deferral will provide staff, the applicant, Planning Commission and the neighbors enough time to go through the same issues Council discussed this evening. This would go back before the Planning Commission at next month's May hearing, and come back before City Council June 16, 2009. This would be a 60-day deferral and staff feels this would be appropriate.

Councilmember Jenkins stated that it was mentioned that a private school in the City's Code is not listed as a commercial use. She would like for the legal staff to review it and come back with a definition for "private school" to be included in any other information that comes back before City Council.

City Attorney Wendell Willard acknowledged Councilmember Jenkins request.

Motion and Vote: Councilmember Meinzen McEnerny moved to defer (Agenda Item No. 09-096), U09-001/U09-002, 5855 Riverside Drive, Applicant: St. Andrew's Presbyterian Church – A use permit to allow construction of a 2,000 square foot addition to the existing church and a use permit to expand enrollment at the existing special school facility to the June 16, 2009 Regular Council meeting. Councilmember Fries seconded the motion. There was no Council discussion. The motion carried unanimously.

Zoning Modifications

Agenda Item No. 09-097

ZM09-002/CV09-002 - 1140 & 1150 Hammond Drive, Applicant: Senior Care Development, LLC - A request to modify condition 2.a. of zoning case RZ08-032 to amend the approved site plan as follows: A) Add the approximate location of the retaining wall and proposed sign location for the continuing care retirement community. B) Adjust the building footprint for the hotel. C) Modify the shared entrance drive for the continuing care retirement community and hotel. D) Remove the 10,000 sq. ft. freestanding retail building in front of the continuing care retirement community building on Hammond Drive. With concurrent variances. Ordinance No. 2009-04-18

Deputy Director of Community Development Chris Miller stated that this is a request for concurrent variance of the zoning modification and a variance to allow for a minor site plan revision for the corporate campus development. The specific request is to eliminate a 10,000 square foot free standing retail building from the

approved site plan; add the location of a proposed retaining wall; adjust the building footprints for the hotel; modify the shared entrance drive; and add two 32 square foot entry wall signs on the retaining wall for the use of Senior Care. Also, extend the land disturbance permit's expiration date to a time not to exceed 36 months.

Staff is recommending approval of the zoning modification request and concurrent variances provided the applicant is agreeable to the condition which would prevent the applicant from undertaking any clearance or land disturbance activity for the improvements described in the prior issuance of the building permit. Staff wants to be sure that no dirt is turned on the land until the applicants gets all permits in place.

Carl Westmoreland, 1245 Peachtree Street, representative for the applicant, stated that in December City Council approved a modification to allow the continuing care retirement community to go in the Hammond Center Development, a portion of the development. This application covers all of the property because it's an integrated development. As Mr. Miller stated, there are three requests. First, a site plan modification to adjust the footprint of the hotel which is not part of this applicant's development, but a part of the overall development. Secondly, to reconfigure the entrance drive at the request of the City's traffic department. The third request is to show a retaining wall along the Hammond frontage and to remove a retail building that was left on the final site plan and not deleted in December. City Staff has recommended approval.

There are two variance requests. The first request deals with allowing two 32 square foot signs. They are described as free standing signs and in fact are in the retaining wall. They are freestanding because under the City's Code definition they are not on a building, but they are in the retaining wall and on the curb so that one can be seen in each direction for the entrance coming along Hammond. The request is justified because the Senior Care development uses a separate entrance from the balance of the development which has its own sign. Again, staff has recommended approval. The second variance has had more discussion and involves a request that the applicant extend the initial term of the land disturbance permit to 36 months. Earlier, he provided City Council two documents; a memorandum from the Attorney who is working with the Senior Care on their State Regulatory process which makes it clear that it would take about eight (8) months to get a Certificate of Authority from the Insurance Commissioner and they cannot begin pre-sales until that is received. Secondly, a letter from a lender which states applicant cannot get financing until they have 70% pre-sales and it is estimated that would take three years. The first thing to point out about his request is that this is a variance and depends on a finding by Council that this is an unusual circumstance. It is not a change of any wider applicability than that. The second issue of concern is what happens if someone goes out there and acts under the land disturbance permit to disturb the property and then does not start on the improvement. The applicant proposes a condition which provides the land disturbance permit, while it would have an initial term of 36 months, would not allow any clearance or any land disturbance activity until a building permit is issued. Jay Addison of Senior Care will address City Council at this time.

Jay Addison, Senior Care Development, Harrison, New York, stated that Mr. Westmoreland has explained the requests. The unique set of circumstances that surround this project are what resulted in this special request, with respect to the variance asking for a duration to exceed the current duration of a land disturbance permit. A representative of Kimberly Horn, their Civil Engineer, is here to answer any questions City Council may have with respect to this application. It ultimately comes down to the fact that this is not a typical project, but a very unique project that requires a greater number of permits and a greater number of thresholds than any other type of real estate development.

Councilmember Jenkins requested he speak about the race for the sewer permit.

Mr. Addison stated that the applicant was advised by the Engineers of Kimberly Horn that DeKalb County has set a strict limit on the capacity of sewer lines that they will have to tie into. Despite the fact that there is an intergovernmental agreement between Fulton County and DeKalb County which provides for an ample amount of capacity for future developments in Sandy Springs or Fulton County. This limiting capacity suggests right now that

there is only room for one or two projects of similar size to that of the applicant. There are a number of projects contemplated on the DeKalb side of the line. They are right on the line of Fulton and DeKalb on Hammond Drive and this necessitates them tying into that problem line that DeKalb has identified as having a limited capacity. They are currently performing a study on this line and what that ultimately means is, the applicant is in a race to secure a sewer permit to preserve the capacity for the applicant's project with any other projects that may be in line to try to secure that capacity. The Fulton County agency that issued the permit has the authority to do so, despite the capacity limit. The applicant is required to submit it to Fulton County department that issues sewer permits the LDP. This is one of the reasons the applicant is accelerating steps to submit an application to the city for a Land Disturbance Permit. A representative from Kimberly Horn can answer any specific technical questions with respect to that protocol.

Mayor Galambos called for public comment in opposition of this application. There was no public comment.

Mr. Westmoreland stated that he failed to mention earlier that there is a contractual obligation for the sewer capacity which requires the applicant to go ahead and submit the Land Disturbance Permit. The applicant does not have an option but to go ahead and file. He hopes City Council's concerns have been addressed in regards to disturbing the land and leaving it vacant with the condition proposed by the applicant.

Councilmember Jenkins requested Mr. Moreland read the proposed condition.

Mr. Westmoreland read the condition.

- 3.u. The Land Disturbance Permit issued for the continuing care retirement community portion of the property shall have an initial term of 36 months. Notwithstanding issuance of a Land Disturbance Permit, Applicant shall not undertake any clearance or land disturbing activity for the improvements described in conditions 1.b. and 1.c. prior to issuance of a building permit for such improvements.

Councilmember Meinzen McEnery questioned the City Attorney if this would create a precedent for future development and is this is the proper place to address the extension?

City Attorney Wendell Willard stated that he does not believe this will set a precedent. There are times when things come up that may be peculiar to a particular project. Council can make a decision on and allow an extended time.

Motion: Councilmember DeJulio moved to approve (Agenda Item No. 09-097), ZM09-002/CV09-002 - 1140 & 1150 Hammond Drive, *Applicant: Senior Care Development, LLC* - A request to modify condition 2.a. of zoning case RZ08-032 to amend the approved site plan as follows: A) Add the approximate location of the retaining wall and proposed sign location for the continuing care retirement community. B) Adjust the building footprint for the hotel. C) Modify the shared entrance drive for the continuing care retirement community and hotel. D) Remove the 10,000 sq. ft. freestanding retail building in front of the continuing care retirement community building on Hammond Drive; with concurrent variances; and add a Condition 3.u. The Land Disturbance Permit issued for the continuing care retirement community portion of the property shall have an initial term of 36 months. Notwithstanding issuance of a Land Disturbance Permit, Applicant shall not undertake any clearance or land disturbing activity for the improvements described in conditions 1.b. and 1.c. prior to issuance of a building permit for such improvements and subject to the following staff conditions:

1. To the owner's agreement to restrict the use of the subject property as follows:
 - a. Retail, service commercial, and/or office and associated accessory uses, including all exterior food and beverage service areas, at a maximum density of 38,759.69 gross square feet per acre or 753,000 gross square feet, whichever is less, but excluding convenience stores with gas pumps, commercial amusements, and freestanding fast food restaurants, except for bagel, pastry and coffee shops, and ice cream parlors.
 - b. No more than 479 senior housing independent living units at a maximum density of 24.67 units per acre, whichever is less. (U08-014)
 - c. No more than 92 skilled and assisted living beds.
 - d. To a maximum 160-room hotel.
 - e. The maximum building height shall be 30 stories for the two residential towers. (U08-015)
 - f. The maximum building height shall be 10 stories for the hotel. (U08-014)
2. To the owner's agreement to abide by the following:
 - a. To the site plan submitted to the Department of Community Development dated received February 3, 2009. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy.
3. To the owner's agreement to provide the following site development standards:
 - a. The minimum design standards are:

Minimum front yard (Peachtree Dunwoody Road): 20 feet
Minimum side corner yard (Hammond Drive): 12 feet
Minimum side yard: 10 feet
Minimum rear yard: 10 feet
Minimum heated floor area per dwelling unit: 850 square feet
Minimum internal setbacks, separations, landscaping and buffering between uses is as shown on the site plan which shall comply with the local governing building codes.
 - b. The owner/developer shall dedicate fifty-five (55) feet of right-of-way from centerline of Peachtree-Dunwoody Road along the entire property frontage or ten and one-half (10.5) feet from back of curb, whichever is greater, to the City of Sandy Springs.
 - c. The owner/developer shall dedicate fifty-five (55) feet of right-of-way from centerline of Hammond Drive along the entire property frontage or ten and one-half (10.5) feet from back of curb, whichever is greater, to the City of Sandy Springs.
 - d. To reduce the required twenty-five foot (25') impervious stream buffer to zero feet (0') and the required fifty foot (50') undisturbed natural stream buffer to five feet (5') to permit an encroachment of 6504 square feet of impervious surface into the twenty-five foot (25') impervious setback and 16,935 square feet of disturbed pervious and impervious area into the fifty foot (50') undisturbed buffer. (CV08-027)

- e. To delete the required twenty (20) foot landscape strip along the area adjacent to the retail building and existing parking along the west property line as shown on the site plan dated October 7, 2008 (Peachtree-Dunwoody Road frontage) (CV08-027).
- f. To allow for an additional freestanding sign on the Peachtree-Dunwoody Road frontage (CV08-027). Said sign shall be no larger than seventy-two (72) square feet with a maximum height of eight (8) feet.
- g. To allow internal signs throughout the site to be used as directional signage (CV08-027). Said signs shall be no larger than twenty (20) square feet with a maximum height of six (6) feet.
- h. The owner/developer shall install a westbound right turn lane from Hammond Drive onto Peachtree-Dunwoody Road. Said improvement shall be installed at such time a new Land Disturbance Permit is approved by the Department of Community Development.
- i. No more than two (2) curb cuts on Peachtree-Dunwoody Road; one to align with existing median break and the other restricted to right-in/right-out. Said curb cut location and design shall be subject to the approval of the Public Works Department at time of LDP.
- j. No more than three (3) curb cuts on Hammond Drive. Said curb cut location and design shall be subject to the approval of the Public Works Department at time of LDP.
- k. The owner/developer shall provide intersection improvements and signal upgrades as may be required by the Public Works Department.
- l. Prior to issuance of an LDP, the owner/developer shall attempt to provide interparcel access with adjacent properties to the north and east. Should the owner/developer not come to an agreement on interparcel access at this time with the adjacent property owners, the owner/developer shall provide documentation of such. In addition, if an interparcel access agreement is not obtained, permanent easements shall be recorded allowing for future interparcel access along the entire boundary of the adjacent properties, prior to the issuance of an LDP.
- m. Housing shall be designed, constructed and operated in accord with the Fair Housing Amendments Act. On an annual basis, the controlling entity shall verify compliance with all provisions of the Fair Housing Act related to occupancy in a manner deemed acceptable pursuant to policies and procedures adopted by the Director of Community Development. Dwelling units shall have a minimum heated floor area of 850 square feet.
- n. Each senior housing development shall have at least one (1) unit designated as guest quarters for visitors of residents, but the total number of guest units may not exceed 1% of the total number of units within the development. Guest units shall have a maximum heated floor area of 500 square feet.
- o. Not less than 20% of the total acreage shall be maintained as common outdoor open space for the use and benefit of the residents. Said common outdoor open space shall be marked by appropriate signage and must be accessible via a road or walking trail to the rest of the development.
- p. The senior living portion of the property shall be deed restricted to senior housing except as provided for by Fair Housing laws. Each senior housing development shall post on its premises notice of its status as a senior housing development in a manner readily visible to and accessible to the residents. Such notices shall be to the approval of the Department of Community Development.

- q. The property shall comply with all applicable local, state, and federal regulations and copies of any applicable permits shall be provided to the Department of Community Development. Home occupations shall be permitted in accordance with Section 4.12, Home Occupation, of the Zoning Ordinance.
- r. Any change in the use of a senior housing project that does not comply with the Fair Housing Amendments Act shall conform to all current zoning and density requirements. Any such conversion shall be considered a zoning modification and be brought into conformance with city standards.
- s. Not less than 20% of the site shall be maintained as Open Space of which 15% shall be Green Space.
- t. To allow for two (2) additional freestanding signs on the subject property. Said signs shall have a maximum sign area of thirty-two (32) square feet and a maximum height of eight (8) feet and located along the Hammond Drive frontage, on the most eastern entrance to the development, as shown on sign elevation plan dated February 3, 2009. (CV09-002)
- u. The Land Disturbance Permit issued for the continuing care retirement community portion of the property shall have an initial term of 36 months. Notwithstanding issuance of a Land Disturbance Permit, Applicant shall not undertake any clearance or land disturbing activity for the improvements described in conditions 1.b. and 1.c. prior to issuance of a building permit for such improvements. (CV09-002)

Second and Vote: Councilmember MacGinnitie seconded the motion. There was no Council discussion. The motion carried unanimously.

Text Amendments

Agenda Item No. 09-098

TA09-002 - An Ordinance to Amend Article 33, Signs Ordinance No. 2009-04-19

Deputy Director of Community Development Chris Miller stated that this is an amendment to incorporate multiple changes to the City's Sign Ordinance. The item was heard by the Planning Commission on March 17, 2009, and voted 6-0 for approval. Staff is also recommending approval. The significant changes are:

1. No LED Signs are permitted. Existing LED signs cannot be repaired.
2. No changeable copies for any sign except for gas stations.
3. Significant change for signs that advertise vacant space or units may be permitted for a maximum of twice a year for a ninety (90) day time period each. The size of each sign is 16 square foot with a maximum height of five (5) feet. You will not be able to use a vacant advertising space sign at the same time that either informational sign or a temporary banner is utilized on the same property. Informational and directional signage will be permitted within multiple zoning districts. For monument signage the base of the monument sign must be the same width as the sign so there is no clear space underneath the sign cabinet.

Mayor Galambos called for public comment.

Joe Padilla, 110 Susobell Place, Woodstock, Greater Atlanta Home Builders Association expressed the Greater Atlanta Home Builders Association concern regarding the two (2) 90 day limits in a calendar year on signs during vacancy. The Association would request Council to reconsider this condition. There is an issue with developments with the number of vacant lots. The Association feels that signage will be much more valuable than the standard informational sign that can be on each lot. The ability to have the sign up 12 months, instead of six (6) months through the year, would be beneficial. This will be a great advantage to everyone who is trying to move product

right now. Other than that, the Ordinance has some solid changes and has a lot of valuable aspects to it and he commends staff on their efforts.

Councilmember Jenkins questioned what the Association would recommend on signs during vacancy.

Mr. Padilla stated that their recommendation is to allow a permitted sign for the full year instead of being limited to two (2) 90 day periods through a calendar year.

Councilmember Fries stated that she is not interested in changing the two (2) 90 day periods in a calendar year, as staff has proposed, because the signs would end up being permanent. She has an issue with the section regarding "abandoned signs" when a business goes under and then moves and decides not to lease a piece of property anymore. She has an issue with the timeframe of 60 days. The City is trying to do things to help out businesses and it feels like the City is kicking them in the teeth on this one. It is difficult to lease property right now. The City has several restaurants and businesses that are trying to actively lease their property. If the City goes with the 60 days with no one on the property, then this change in the ordinance says the sign has to come down. Granted, Council would like for all the signs to look better and this could be an opportunity to get a few down that we don't love but, it has to be across the board. She believes that the 60 day time period is problematic. She has talked with the Assistant City Attorney about this and questioned if there are legal issues that might come up with this.

Assistant City Attorney McLendon stated that based on their discussions, it is calling in the abandoned sign for the business ceasing. There could potentially be some issues raised based upon the facts and circumstances of that particular case. This could be challenged based upon the facts.

City Attorney Wendell Willard stated in Section 26, Provision 8, signs during vacancy of a building shall be allowed for a period not exceeding ninety (90) days. It would not be a problem to say the same thing for both types of signs.

Mayor Galambos stated that if the sign is a non conforming sign when the movers come in, it has to come down because it is no longer conforming. She questioned Councilmember Fries if it was her position that a non conforming sign should be allowed to stay up.

Councilmember Fries explained that the timeline the City is giving is so short that the owner can hardly have time to do the paperwork.

Councilmember Jenkins stated that Alpharetta offers 10 days.

Councilmember Meinzen McEnery stated that as a Landlord in a shopping center there is value once a tenant moves out to keep their lettering up above their space because it makes it look more leased. The sign is no longer applicable once it is released.

Councilmember Fries stated that they are not speaking about the same thing. Example, LaStrada has a non conforming sign. Are we making this so that we can get rid of that non conforming signs? LaStrada cannot rent that building in 60 days. This ordinance is requiring that the sign come down to the ground.

Councilmember Meinzen McEnery stated that would be appropriate if it is non-conforming. The sign is not adding any value to the landlord or to the citizens.

Councilmember Fries disagreed.

City Attorney Wendell Willard stated that a motion can be open to amendment by a council member wanting to remove something.

Motion and Vote: Councilmember Meinzen McEnerny moved to approve (Agenda Item No. 09-098), TA09-002 – An Ordinance to Amend Article 33, Signs. Councilmember Jenkins seconded the motion. There was no Council discussion. The motion carried unanimously.

Agenda Item No. 09-099

**TA09-007 - An Ordinance to Amend Article 4, General Provisions, of the Sandy Springs Zoning Ordinance (Setback for Outdoor Play Equipment)
Ordinance No. 2009-04-20**

Deputy Director of Community Development Chris Miller stated that this is for the approval of an Ordinance to allow outdoor play equipment to be located in the rear yard setback and be limited to a maximum height of 15 feet and setback no less than 10 feet from any side or rear property line.

The Planning Commission heard this item at the March 19, 2009 Planning Commission hearing. The Commission recommended approval of the amendment as presented. Staff is also recommending approval at this time.

Mayor Galambos called for public comment.

Howard Kim, 6370 Aberdeen Drive stated that on March 27, 2009, he installed a brand new play set in the right hand corner of his property. Code Enforcement came by that same day and told him he was in violation of the setback restriction. He questioned the Code Enforcement Officer about installing a bird house using a 2 x 4 in the ground and was told it would also be in violation of the code restriction.

Councilmember Jenkins asked how far the play set is from the property line

Mr. Kim stated that it is about six (6) or seven (7) feet.

Mayor Galambos explained to Mr. Kim that if the play set is difficult to move, he can request a variance from the Board of Appeals.

Councilmember Jenkins stated that the way this is structured, it says 10 feet, and he would still be in violation because his is only six (6) feet from the property line.

Motion and Vote: Councilmember MacGinnitie moved to approve (Agenda Item No. 09-099), TA09-007, An Ordinance to Amend Article 4, General Provisions, of the Sandy Springs Zoning Ordinance (Setback for Outdoor Play Equipment) and grandfather existing swing sets in ground as of April 21, 2009. Councilmember Fries seconded the motion. There was no Council discussion. The motion carried unanimously.

Agenda Item No. 09-100

**TA09-008 - An Ordinance to Amend Article 12B, Sandy Springs Overlay District, of the Sandy Springs Zoning Ordinance (Street Tree Update)
Ordinance No. 2009-04-21**

Deputy Director of Community Development Chris Miller stated that this is a text amendment to revise and expand the list of approved street trees in the Overlay District. A list of the approved trees in the next batch includes new cultivated vines, tolerant species and trees appropriate for use underneath power lines. Trees not suited for the environment have been deleted.

Staff was assisted by Wayne Thatcher of the Planning Commission. The Planning Commission heard this item at the March 19, 2009 meeting and recommended approval. Both Design Review Board and staff are in support of this amendment.

Mayor Galambos called for public comment. There were no public comments.

Motion and Vote: Councilmember Paul moved to approve (Agenda Item No. 09-100), TA09-008 – An Ordinance to Amend Article 12B, Sandy Springs Overlay District, of the Sandy Springs Zoning Ordinance (Street Tree Update). Councilmember Fries seconded the motion. There was no Council discussion. The motion carried unanimously.

Agenda Item No. 09-101

TA09-014 - An Ordinance Amending Section 3.3.1, Section 3.3.5, Section 3.3.18, Section 3.3.19, Section 4.3.1, and Section 19.3.20, and repealing Section 19.3.21, of the Zoning Ordinance of the City of Sandy Springs. Ordinance No. 2009-04-22

City Attorney Wendell Willard stated that at a Work Session Council had discussions with outside counsel as well as the City's counsel that is handling the litigation on the adult entertainment. There have been some matters raised and staff feels it is necessary to look at amendments to the City's Zoning Ordinance. There are also three other sections that might be beneficial to have presented by the attorneys, Scott Bergthold and Coleen Hosack. Mr. Bergthold will make a presentation which includes all four changes.

Scott Bergthold, Attorney stated that his presentation will apply to all the ordinance amendments that are on the table. First, will be the Zoning amendments that require a public hearing to be held. Later on in the agenda are amendments to the Obscenity, Alcohol and the Adult Establishments Ordinances.

The predicate for regulating adult establishments in this area of the law are the adverse secondary effects of sexually oriented businesses. This Council is very familiar with those adverse impacts. When the City became a City in 2005, Council adopted these ordinances and had extensive presentations from a number of individuals on the adverse secondary effects of sexually oriented businesses in general, as well as those in the City of Sandy Springs.

In readopting these ordinances, no specific case law says you have to go through this material again, but it is always helpful to talk about those adverse effects and to make it clear in the record that it is the legislative predicate for these types of ordinances. The Supreme Court of the United States has made it clear that local governments can rely on these types of studies and adverse impacts, crime reports from around the United States, as well as those occurring in their local jurisdiction.

The preeminent case is from the City of Renton, Washington, outside of Seattle and is called Renton v. Playtime Theatres, Inc. The mug shot of this Supreme Court holding in 1986 is that a local government doesn't have to wait until all the adverse impacts occur in its jurisdiction to proactively regulate to address those secondary effects. When a Council does that, there are a wide variety of adverse impacts, sources of information that the Council can consider.

Sources of Secondary Effects Information

1. Land Use Reports
2. Crime Impact Reports
3. Judicial Opinions
4. Expert Reports
5. Anecdotal Data

Several weeks ago, as well as back in 2005, and then some in 2008, Council received copies of many of these Langley studies; Crime Index Reports; Extra Witnesses; Investigative Reports; an Expert Report from a PhD, a criminologist that was retained by the City in the midst of the litigation, even prior to my involvement to opine on the issue of adverse secondary effects in general as well as in Sandy Springs. Those are basically the sources of information that a local government can rely upon; Land Use Reports, Judicial Opinions, Expert Reports as well as the Anecdotal Data which would be, for example, the eyewitness testimony of investigators in the establishments.

What you need to know about the term Secondary Effects is that it encompasses five major adverse impacts in the community.

Some Types of Secondary Effects

1. Negative impacts on surrounding properties - often translates into lower property values but also includes the problems that occur when patrons from nearby businesses are accosted by patrons of the adult establishment. There is a lot of evidence like that in the case law as well as litter, sexually explicit materials being strewn about in the parking lots and in neighboring areas.
2. Personal and property crimes, public safety risks, confrontations
3. Lewdness, public indecency, illicit sexual activity and potential spread of disease
4. Illicit drug use and trafficking – (One case from Warner Robbins, Georgia, talks about 23 FBI arrests for drug related transactions within an adult establishment.
5. Litter, aesthetic impacts, blight

Secondary Effects Rationale

Sexually oriented businesses, as a category of commercial uses, are associated with a wide variety of adverse secondary effects including, but not limited to, personal and property crimes, prostitution, potential spread of disease, lewdness, public indecency, obscenity, illicit drug use and drug trafficking, negative impacts on surrounding properties, noise, traffic, urban blight, litter, and sexual assault and exploitation.

What is really important to understand is the secondary effects rationale for legislation like this that controls the time, the place, and the manner of adult business operations. These uses as a category of establishments, this is not a targeted thing towards one particular business, but is a land use category of establishments whose uses are associated with a wide variety of adverse secondary effects. Those are laid out in the ordinance as well as in the text of the slide here.

The City has a substantial governmental interest in regulating such businesses to prevent each of these adverse secondary effects. That interest exists independent of any comparative analysis between adult and non-adult businesses.

The case that the City is currently involved in results from annexation of the businesses that were formally in Fulton County and had litigated against Fulton County and they kind of got set up in this thing where if you don't prove we are the worst place in town, then you cannot establish a regulatory rationale for controlling our types of businesses. This is not based upon a comparison of this biker bar down the street or this establishment with an under 21 night spot and the number of calls for service to an adult book store. The rationale is there are adverse secondary effects associated with these and regardless of the comparative greater or lesser amount of adverse impacts from other types of businesses; there are legitimate reasons to regular adult establishments.

Specifically, the court has said that when a city does rely on this type of evidence, it can rely on evidence from other jurisdictions and it does not require when a court looks at this to review that evidence to see who has the better of it. It only questions whether there is some reasonable basis for the regulation. We feel that there is more

than enough reasonable basis. One of the cases that is added in these text amendments that wasn't in existence in 2005 is a case our firm litigated for the City of Daytona Beach called, *Daytona Grand, Inc. v. City of Daytona Beach*, that dealt with some of the same expert feelings and rationale that are involved in the Sandy Springs case. Basically, the 11th Circuit Court of Appeals said that when you have eyewitness testimony, when you have observations that document adverse secondary effects, it's not sufficient for a PhD on the other side or someone to come in with statistics and work a numbers game and say "if you do this complicated hierarchical regression it shows that our adult businesses don't have any problems." To the contrary, the 11th Circuit of Appeals, which is of course our appellate jurisdiction in my Daytona Beach case, said the opposite. They said that the observation of investigators, police officers and things like that, of illicit conduct going on inside the establishment may be some of the strongest evidence, because not only the eyewitness, but also the 911 calls that adult business tend to use around the country do not reveal vice crimes that are typically not discovered through a call to the police or the 911 system.

The second case is another case that we litigated that was decided less than a year ago for Hillsborough County, Florida. This is an important case because it establishes that even though someone may come in with computing evidence; the standard is not who has more on one side or who has more paper weight, so to speak, on either side of the equation. The question is if there is a legal basis of legislating for the City Council. That judgment is going to be upheld because the City Council is entitled to make judgments about what policies will best prevent the secondary effects.

Number three is a case that is also a recent case that deals with retail adult book stores that document the adverse secondary effects of those establishments. The last case, *High Five Investments, LLC v. Floyd County*, also deals with that category of establishment that upheld a regulation like the one that is under consideration.

The City is not only relying on those cases, but a number of cases from the U.S. Supreme Court. The licensing ordinance before City Council tonight basically streamlines the processes and clarifies some issue to make it a very robotic process for obtaining a license or denying a license if the objective criteria for obtaining the license are not satisfied. Those are based in part on the City's Littleton case that went to the U.S. Supreme Court in 2004. We were involved in that case and basically tried to adopt some of the things from that case into the City's ordinance.

There are a number of other cases as well. I want to get specifically towards the end of the presentation the secondary effects that are in the legislative record for these ordinances. Council had a chance to look at these in 2005 and later 2008 as well as over the last several weeks. I want to summarize what each of them found.

In the Tucson, Arizona, study, this is from May 2001; it documented illicit sexual behavior inside these establishments. Of course, New York City did an extensive study and the City staff has compiled that study included in the Council's packet as well. Dr. McCleary, who is the City of Sandy Springs retained expert criminologist in this case, did a study in 1991 regarding Grove, California, outside of Los Angeles and documented the crime risk as well as the crime risk that is associated when alcohol is in close proximity to adult entertainment.

The Houston case also upheld regulations of the sort that are under consideration tonight, to prevent the illicit sex acts going on in back rooms and private spaces within the establishments. In August of 2008, Dr. McCleary tendered his report. It was submitted in the federal court case which he very methodically wrote for each of the reports that were submitted in December 2005 by the plaintiff's litigation and explains why they do not undermine the legislative secondary effects rationale. It also goes on to explain point for point why the methodology they used is not only not accepted in the world of criminology but also has been recently in the *Daytona Grand* case and others rejected in court.

In Oklahoma City we have adverse impacts concerning properties that raise more of a zoning type study. In 2005 Sandy Springs Council heard from Dr. Holland, Dr. Clark and about the guilty plea of the Captain in the Fulton County Police Department, who was basically turning a blind eye for illegal activities in adult establishments. All

that testimony combined together is a very powerful and strong record to establish the adverse secondary effects in Sandy Springs establishments and the need to regulate those businesses.

McCleary Sandy Springs Report

1. Findings of secondary effects from sexually oriented businesses is scientifically robust, being confirmed in wide variety of data sources
2. Sandy Springs has a substantial government interest in regulating adult businesses to prevent the identified negative secondary effects.
3. Industry "studies" violate methodological rules: CFS (calls for service) are weakly correlated to actual crime; most vice crimes never result in CFS; See Daytona Grand & 5634 E. Hillsborough
4. All subclasses of sexually oriented businesses, including retail-only stores, have secondary effects

One of the problems is that they call for police service from the person's house and not at the bar where it happened. That is one problem inherent with the 911 call coding. Mostly vice crimes that are the target of secondary effects in a situation like this never result in a call for police service. These types of crimes are found out typically through undercover investigation and sting operations. In our Daytona Beach case the court recognized that. Often time's calls for police service are not accurate as to geo-coding. For example, the studies the plaintiffs used when litigating against Fulton County about these Sandy Springs establishments compared the calls for service at this address to our address. The adverse secondary effect encompasses a larger area than just the actual address. There is a lot more to it than just what occurs inside the business, although that is clearly a secondary factor as in any crime effected. It usually extends between 500 and 1,000 feet, one to two city blocks, that is documented in study after study and you cannot get a picture of secondary effects by just looking at address specific data. There are a number of reasons and they are addressed in Dr. McCleary's report. All the subclasses of sexually oriented businesses, including retail-only stores that sell adult material, have secondary effects. They have similar secondary effects. It's not that there can't be a qualitative difference between subcategories. Obviously, secondary effects from alcohol are not necessarily going to be present in an establishment where you don't have alcohol. They will attract similar types of individuals and have similar types of adverse secondary effects.

There are several cases that reject the challenges that have been made and this is important for the City Council's deliberations just to know that these people on this side say one thing. The folks that we hired say another. These are cases starting with the U.S. Supreme Court to the 11th Circuit in Daytona Grand and in a number of cases around the country that reject the feeling upon which these adult use challenges are predicated.

Finally, a couple of recent cases shown involve experts that are involved in the litigation for the plaintiffs against the City of Sandy Springs. This data was brought to Council's attention so that Council understands this is a well thought out approach. The secondary effects are valid, notwithstanding a large stack of paper that may be presented from time to time to the Council. .

There are a couple of minor modifications to the text we would like to bring to Council's attention. The first modification deals with Section 4.3.1. The version in Council's supplemental packet last week has new language at the end of the opening paragraph of 4.3.1. The last portion of that should now read: Nonconforming lots, uses and structures may continue in their nonconforming status with the following limitations and/or requirements. The amortization of nonconforming adult establishment uses, however, shall be governed by Section 26-37 of The Code of the City of Sandy Springs, Georgia. This modification was made because we wanted to make it clear. We could have said "except that" but we wanted to make it clear that adult uses are governed by all the limitations that apply to nonconforming uses and can expand, etc. We do not want there to be any confusion about the amortization provision that is in the licensing ordinance. This provision has been in the ordinance since December 2005. It is being updated tonight that adult uses cannot, according to the Zoning Code, say we are grandfathered forever as long as we follow those limitations of not expanding. We want to make it clear that they both have to comply with

those limitations as well as being subject to the amortization provision on December 31, 2010, which is in Section 26-37.

The second amendment deals with Section 19.3.20 D. We had specified some timeframes in the ordinance. The version we had in your packets, the last sentence reads: In the event that the Department of Community Development fails to act within the fourteen (14) day period the premises shall be deemed approved and permitted. This sentence has been changed and now reads: In the event that the *Director* fails to act within the fourteen (14) day period, the premises shall be deemed approved and permitted.

Mr. Bergthold stated that when Council makes the motion on this ordinance and to the Zoning Ordinance, I would ask that the motion be made to approve the Zoning Ordinance subject to the two changes identified.

Mayor Galambos stated that the Zoning Ordinance refers to the word *premises*. In the Adult Ordinance, the word *premises* is never mentioned. She is not sure if they need to be the same or not when defining these limitations. Staff may want to research this further.

Mr. Bergthold stated that he does not think it makes a difference because there is a specific way of measuring the distance between adult uses or a sensitive land use like a residential zone or a church or a school. It specifies that it is from the lot line, from boundary line to boundary line. He cannot think of a substantive impact this language would have. As this occurs it can be amended. The Adult Establishment Ordinance does define the word "premises". If there was only one place in the whole City of Sandy Springs Code that defined the term, it would be reasonable to use that one definition in both places.

City Attorney Wendell Willard stated that the ordinance dealing with the governance of adult businesses in Section 26-27 talks about "on premises operator required" meaning that property on premises. There may be some other places where we have used a different terminology.

Mayor Galambos requested the City Attorney to take a look at the language to make sure he is comfortable with it in both ordinances.

Mr. Bergthold stated that he has looked at the definition of premises and the Adult Establishments Licensing Ordinance does use the word "premises".

Mayor Galambos pointed out that on page 8 of 21; the word *premise* was taken out when referring to adult establishments.

City Attorney Wendell Willard stated that "establishment" means the business whereas "premises" means the property.

Mr. Bergthold stated that it reads "no license premises for an adult establishment features adult entertainment should be located any closer than 50 feet." This is a distance location requirement for adult establishments. We did not want that to hinge on whether it was licensed. If an adult establishment comes in they can say it is not a licensed adult establishment. Technically we are not in violation of the requirement to have a license.

Mayor Galambos stated that if the City Attorney is comfortable with the language then she is too.

Mayor Galambos called for public comment.

Cory Begner, 1280 W. Peachtree Street suggested that Council ask Mr. Bergthold whether he considers what he just said to Council to be legal advice. Also, has Mr. Bergthold has given the City advice on Georgia Law? And then I suggest, ask if he is licensed to practice law in the state of Georgia. She also suggested that Council ask Mr.

Bergthold about his past affiliation with organizations associated with the religious right. She pointed out to the Mayor and Council that they have not consulted Georgia attorneys on this, although changes have been made to the City's Adult Ordinances for three and a half years based on the pleadings of Georgia attorneys. Based on pleadings from her firm and pleadings from Mr. Wiggins firm, Council has made numerous changes to the ordinance and yet decided not to consult those firms on these changes, which she finds ironic. There are problems with this new ordinance.

City Attorney Wendell Willard stated that the City appreciates Ms. Begner's firm bringing things to the City's attention from time to time as it has gone through the litigation in order to help improve the ordinances of the City.

Mayor Galambos closed the public hearing at this time.

Motion and Vote: Councilmember Meinzen McEnery moved to approve (Agenda Item No. 09-101), TA09-014 - An Ordinance Amending Section 3.3.1, Section 3.3.5, Section 3.3.18, Section 3.3.19, Section 4.3.1, and Section 19.3.20, and repealing Section 19.3.21, of the Zoning Ordinance of the City of Sandy Springs subject to the following changes to the amendments: Section 4.3.1 NONCONFORMING LOTS, USES AND STRUCTURES. Within the zoning districts established by this Ordinance there may exist lots, structures, and uses of both land and structures which were lawful before this Ordinance was adopted or subsequently amended, but which would be prohibited, regulated, or restricted under the terms of this Ordinance as adopted or subsequently amended. *Nonconforming lots, uses and structures may continue in their nonconforming status with the following limitations and/or requirements. The amortization of nonconforming adult establishment uses, however, shall be governed by Section 26-37 of The Code of the City of Sandy Springs, Georgia.* Section 19.3.20 D. Permit Processing: Within fourteen (14) days of receipt of a completed application for an Administrative Permit, the Director shall grant or deny the Administrative Permit and shall mail notice of the granting or denial to the applicant at the business address on the application. The Director shall grant the Administrative Permit unless the premises to be used for an adult establishment fails to meet one or more of the standards specified in Section 19.3.20.D, in which case the Director shall specify the standard(s) that the premises fails to meet. *In the event the Director fails to act within the fourteen (14) day period the premises shall be deemed approved and permitted.* Councilmember Jenkins seconded the motion. There was no Council discussion. The motion carried unanimously.

New Business

Agenda Item No. 09-102 Update on E-911 Implementation

Assistant City Manager Noah Reiter stated that Kevin Kearns will give the presentation. Mr. Kearns is under contract with the Chattahoochee River 911 Authority for the design implementation and ultimate operation and management of the future 911 Center.

Kevin Kearns, iXP stated that he is working on behalf of the City of Sandy Springs and the City of Johns Creek for the Chattahoochee River 911 Authority to implement the 911 Center. He will give a brief update on where things are at and the progress being made on the facility and the operations.

Mr. Kearns gave a quick review of the organizational chart. Some of these positions are being filled and they will be filling more positions over the course of the next month and a half. The first official position is Joe Askey, iXP who has been relocated here. Mr. Askey is now a homeowner in Johns Creek. Mr. Askey will be the Deputy Director of Operations for the facility, essentially the lead person from iXP on a full time basis leading this organization forward. They are in the process of doing the recruiting, testing and hiring of the other positions and that will continue on until the center start up and maybe after, depending on how fast they can get all the positions filled.

He will provide City Council a handout on the project plan that shows a quick view of the plan at a very high level. This is just a general look at where we are at today, which is half way. The intended live operation date is the end of July. Several members of City Council came to the tour of the facility when in the pre-contract phase of things and saw the floor space, an empty floor plate. The core of the building had been finished out with rest rooms and electrical rooms and that type of things. The rest of it was sitting empty. The tables sitting in the middle of the floor is essentially the day one operation for the Chattahoochee River 911 Authority. Actual design work started taking place immediately following contract execution. The architect and general contractor are on board and all the design drawings for all of the systems for the facility have gone through the permitting process with the City. Construction started last week with loading the construction materials on the site in order to get the framing done. Literally, within seven days the framing was completed and about the sheetrock has been done on one side of all the walls. This facility has to get done in a short period of time.

He briefly reviewed some of the key activities that will be going on for the next two to three months in order to get the facility operational. The second week of June, they should be done with all the construction activity so that the office and dispatch furniture can be moved in, establishing and loading the systems into the furniture positions. The various technology systems are in various stages of being ordered, configured, and shipped to the site so installation can begin as soon as there is access to the facility. Recruiting and hiring will be done through the end of May and perhaps past May depending on the speed with which they can get the recruits in through the acceptance process and that type of thing. The operational training will take place during the months of June and July. The operational and procedural training will vary depending on the experience of the people. A number of people are expressing interest in these positions who would be laterally in from other organizations with existing Georgia Certified 911 experiences. Certainly the amount and type of training for some of them will be on local procedures as opposed to some of the core performance characteristics of the job because they are already certified dispatchers. The current scheduled cut over date is August 1, 2009, which happens to fall on a weekend. There are a number of reasons why you don't want to do a cut over of a 911 Center on the weekend. The choice is either start the week prior or perhaps the week or two after. He believes they can make it by the two days prior to the end of the month. The operations are moving very swiftly and they are having great success in getting all of the physical attributes into the facility. There is great interest in the employment prospects and a number of them are lateral from other organizations who appreciate the opportunity to come and work for a new organization that has the opportunity to do it right. He will be happy to answer any questions City Council may have.

If there is an interest by City Council to tour the facility before June it can be arranged. They should have full control of the space by the second week of June.

Mayor Galambos stated that she would prefer to tour the facility once the equipment is in so that everyone can see what it does. Also, there was a long story in the morning newspaper about 311. The point of the story was that there are too many calls coming in to 911 and therefore they needed a diversion to send them to 311 when they are not in an emergency. She asked his opinion of this.

Mr. Kern explained that he did not see the article. The observation he would make is that in some communities the use of 311 is very successful and using it as a way to get information in which is non emergency in nature but needs to be tracked and managed in a constituent management relationship type of fashion. Other communities handle it through ten (10) digit numbers and/or other approaches that can also be just as effective. His experience indicates that in communities that do good public education about the appropriate use of 911 and the appropriate use of other phone numbers to contact city services, don't have a problem with too many 911 calls. Based on everything they have seen in these two communities, they do not anticipate 911 abuses will be a huge issue or even an issue at all.

Mayor Galambos stated that the City could educate by way of the website.

Agenda Item No. 09-103

Update on Unresolved CH2M HILL Contract Issues

City Manager John McDonough stated that this is in follow up to a number of items that were raised at the Council retreat on March 27, 2009. Council had an interest in hearing an update on the status of several of these. We plan to talk about the shared insurance savings which Mr. Willard will give us an update. Also, Mr. Howell is here tonight and if he has anything to add, he can.

City Attorney Wendell Willard stated that sometime in March he brought to Councils attention some concerns since the establishment of Sandy Springs in working a contract with CH2M Hill. An issue arose with CH2M Hill regarding the amount of liability coverage in place. CH2M Hill felt we needed more protection or their Board of Directors would not allow them to employ the contract. The City agreed to go ahead and accept responsibility for providing excess coverage of what amounts to \$45,000,000 general liability. The contracts the City has with CH2M Hill call for coverage of \$5,000,000 which is built in as a cost of the contract for general liability and \$5,000,000 for professional liability coverage. Both of those coverages are provided by contract. The City then agreed to the \$45,000,000 general liability as excess coverage, which is also in the contract.

The understanding he had with Mr. Hirsekorn when this was being done is that the City would take on the responsibility with the understanding and agreement that when other cities came on line, they would share this cost as part of their municipal services. Once that happened, then Sandy Springs cost would be reduced. He spoke with the City's Finance Director, Steve Rapson about following up on this to see if this was occurring. Mr. Rapson advised him that he had inquired to get information and had trouble getting it. Since then, he has had other meetings. The most recent meeting he had was with Mr. McDonough and Herb Washington. He brought the subject up again in order to bring the matter to a resolution. From that point, he had discussions with various people of CH2M Hill. He was turned over to Katherine Lane, one of CH2M Hills counsel, out of Colorado. He expressed to her in emails the things he was trying to obtain as a means of doing the verification he felt necessary to determine what was the actual cost and responsibility of Sandy Springs and how the total cost is being spread out among the various entities. There are nine different entities now that receive benefits of municipal services from CH2M Hill. He does not know why Sandy Springs was having difficulty, but finally he received some data. CH2M Hill sent the break down of the insurance for each year. When he reviewed the data, he had a conversation with Ms. Lane and asked her about the professional liability cost that was being given to the City which was one half of the premium cost. The cost for the first year was \$182,806. The City was sharing this cost equally with CH2M Hill the first year and the amount was \$91,403. He questioned this and did not get a clear response. He also asked her about general liability. The fact is that there was a policy taken out of general liability called the base coverage which was a \$10,000,000 policy. His earlier comments about this were that the City has no responsibility for the first \$5,000,000, which is in the contract and therefore is the responsibility of CH2M Hill. The City is responsible for the excess which means from \$5,000,001 and up to the \$50,000,000. CH2M Hill had elected to take out a policy for \$10,000,000 called the base policy and were sharing the cost responsibility of one half that policy with the City. The cost of the premium was \$199,115 for the first year, 2006 which they were spreading the cost to us for \$99,558. He felt that was also inequitable. If CH2M Hill has the first \$5,000,000, then the exposure and risk decreases as the amount of coverage goes up. He looked at the other premiums and excess coverage on the next \$25,000,000 which the City paid for totally, was \$122,720. Then we had above that another excess policy for an additional \$15,000,000 which was \$31,500. He raised these questions with them and asked for the declaration pages of the insurance policies, which were finally provided to him. The declaration pages completed some of his concerns about how the premiums were divided up and confirming the fact that the City is getting the one half divisions he spoke about. CH2M Hill also included something else that he is concerned about, surplus line tax which amounts to 4% of the premium. CH2M Hill has elected to take their insurance to the Colorado office of Marsh, their Insurance carrier. He does not know if Colorado has a 4% charge but the charge in Georgia is 2 ¼ percent. It is not generally something billed separately but built in the premiums that are charged. Therefore, the insurance carrier pays it. He does not know why and how that has been established as a sum of money that would be part of the responsibility or wholly their responsibility, because it applies to the \$25,000,000 policy the City is

carrying as an additional 4% surcharge. What does this amount to? In discussions with CH2M Hill, they have acknowledged the fact that there is no legal or other responsibility for the City of Sandy Springs to provide anything as far as additional professional liability. The City is entitled to receive a refund for the last four years, a total of \$235,648.

Still unresolved is the general liability issue, splitting of the premium. Somewhere around 67-68 % would be the base policy and the rest of it should be excess. He has told Natalie Aldridge in Finance that it is very easy to go back and determine what that real responsibility is. In the first year when they made the determination to go forward with the City of Sandy Springs, CH2M Hill went to their insurer and told them to give the cost of a \$5,000,000 policy to put into the contract proposal. You would then take that figure received from their insurance provider, Marsh, and have that as being their cost and whatever the cost of the \$10,000,000 policies above that would be the City's responsibility. This should apply to each year the City has had the contract with CH2M Hill. There is a division of the policies among the various parties to which they provide coverage and he just recently has been provided the information. He still needs to verify, but it looks to be in line with what they charged. There are nine entities; Sandy Springs, Johns Creek, Milton, Chattahoochee Hills, Castle Pines, North, Central Louisiana, Centennial Colorado and Benita Springs, Florida sharing in the premium. The premiums will come down over time. There may be some additional monies due to Sandy Springs and he will report back to City Council on the amount at the next meeting.

Mayor Galambos questioned if he felt any progress is being made.

City Attorney Wendell Willard stated that gradual progress is being made but he has no idea why it is taking so long.

Councilmember Jenkins asked Don Howell if one week is a reasonable time to get this information from CH2M Hill.

Don Howell, CH2M Hill stated that it is.

City Attorney Wendell Willard stated that the second thing that needs clarification is the excess premium tax. He does not understand why it is or what jurisdiction it was charged to. CH2M Hill and Marsh have an office in Georgia. If they are passing the cost on to the City as the customer, then the logical thing would have been to take the coverage out in Georgia in order to get the least cost amount.

Don Howell stated that he would ask if it is possible to book the coverage in Georgia. The taxes are passed on because contractually this is what the contract says about the taxes.

City Attorney Wendell Willard stated that CH2M Hill has a duty to find the least expensive way to do it if the City is going to be passed on the cost. The City had no control over it.

Don Howell stated that it is bought as blanket type coverage for all the municipalities with four states involved. It would probably be difficult to place those in each state.

City Attorney Wendell Willard stated that the initial policy was in Georgia only and 2007 only involved Georgia cities. The point is that they put extra cost to the City and he wants to know why the City has to bear that expense.

In his initial discussion with Rick Hirsekorn there was never any ultimate decision about how the premiums would be divided or what formula would be used among the cities. Whatever is being divided by formula is based upon the income received by the cities or the charge to the cities. He asked Mr. Hirsekorn to look at several possibilities, look at population, tax digest and look at the case of income. Nothing was ever resolved as far as the City having a say so of what would be the appropriate way.

Mayor Galambos questioned if CH2M Hill has chosen a particular way to distribute it.

City Attorney Wendell Willard stated that CH2M Hill chose the way that is based upon gross revenue paid by the various entities to CH2M Hill.

Mayor Galambos questioned if there was a way to get a division of the cost based on these entities.

Don Howell stated that this has been provided to Mr. Willard. The premiums are priced based on the gross revenue of an entity. Liability coverage is typically quoted that way. We took the total revenues of the municipal services division and then proportioned it according to the individual contract revenues.

City Manager John McDonough stated that these items were discussed at Council's retreat and then had a follow up meeting last Wednesday. The City was represented by the Mayor, Councilmember DeJulio and him on the City's annual check up visit with the president of CH2M Hill OMI, which has responsibility for the municipal services business. We still have several unresolved issues. Perhaps Mr. Howell can give Council an update on some of these. The Human Resources deduction is not yet resolved. There is the issue of the timely filling of vacancies and a vacancy credit and methodology to determine what that credit would be. There is also an outstanding Assistant City Manager credit for Mr. Crace's position. We are in the process of trying to get the information on the scope of work for the subcontractors that are providing service to the City in order to help us develop the appropriate metrics to properly manage this service.

Mayor Galambos asked Mr. Howell if he wanted to discuss any of these items.

Don Howell stated that they are one document away from the shared insurance savings issue and they will be processing a refund to the City in the amount of \$235,000 for the difference in the professional liability premium. It was a verbal understanding which doesn't count and this is why the City is entitled to that. CH2M Hill has been billing the City since day one and the City has been paying it. When it was brought to CH2M Hill's attention that the \$5,000,000 was what was already built in the contract, then they are processing that refund.

CH2M Hill indicated previously that the HR deduction will be in the range of \$300,000 to \$325,000. CH2M Hill originally had calculated a deduction of \$235,000 representing two FTE's, \$300,000 to \$325,000 will represent three FTE's.

City Manager John McDonough explained that staff is okay with the three FTE's. However, the caveat is we need to make sure the information provided is transparent and we are able to make proper deductions. Mr. Rapson and he will work with Mr. Howell on the particulars of how they arrived at that.

Councilmember MacGinnitie stated that since staff is asking Council to approve the contract and spend new money, he would feel a lot better if it were put to bed before the City starts spending additional money.

City Manager John McDonough stated that staff is working to get a resolution on this issue.

Don Howell stated that in filling future vacancies CH2M Hill submitted a proposal to the City Manager on March 24, 2009, that basically addresses vacancies that existed for 90 days for certain grades and above, management positions and below for 60 days with a penalty. CH2M Hill would self impose a penalty for failing to fill these vacancies. The outstanding issue is just agreeing to what the penalty is. CH2M Hill proposes the penalty to be equal to or greater than the actual calculation of the person's salary in the vacancy for that period of time.

As far as vacancy credits, CH2M Hill worked with Mr. Rapson and submitted a proposal to the City Manager and they will be meeting later this week to continue work on that. It included a reduction in the Stormwater Change

Order as well as a deduction for some IT services that had already been performed for the City that CH2M Hill will basically no charge those two items. Discussion was held on the Assistant City Manager Program Director credit. CH2M Hill has proposed a .55 FTE credit which amounts to approximately \$125,000 and that will also be on the table Thursday or Friday for discussion with the City Manager.

Councilmember Fries questioned how vacancies are being addressed when a person is moved from one position into a City position.

City Manager John McDonough asked if she was talking about Mr. Casey's position and explained that Mr. Casey is on a trial basis. If we anticipate that will work out, we will transition him over and then CH2M Hill would then fill his vacant position. Mr. Casey is basically wearing two hats and is doing a fine job.

Councilmember Fries stated that she is not questioning his doing a fine job. She is curious on how all that is planned since he was taken out of the contract position to fill a City position. It works both ways.

City Manager John McDonough stated that he is talking about one, perhaps two positions on the City side and probably in excess of 25 to 30 on the other side.

Councilmember Jenkins stated that it needs to be figured out what the multiplier is going to be and apply it to Mr. Casey or the 25 vacant. We need a drop dead date because we are about to go into budget negotiations. She would prefer all this be hammered out, signed, sealed and delivered by the second May meeting.

Don Howell stated that on that subject, FTE accounts; CH2M Hill has identified 138 FTE's that are contractually agreed to and subsequently agree to on October 2007, of those we show six (6) vacancies that exist. CH2M Hill also furnished all the subcontractors and individuals in the field services. It is clear in the contract that the head count does include these. CH2M Hill has never included those and has been providing 138 plus those.

One of the other outstanding issues is a Stormwater Change Order in the amount that would go forward for FY10. CH2M Hill has confirmed it at \$403,000 which is what City Council approved.

CH2M Hill has proposed a multiplier and believes it is acceptable as a reduction, a further reduction from an already reduced multiplier that has been provided to the City. This is also contained in CH2M Hill's letter of March 24, 2009.

CH2M Hill continues to work on technology innovation investment. This program is going to be rolled out at the May 12, 2009 Budget session, if not, at another session the City Manager may request. CH2M Hill is continuing to work on significant cost savings in the budget going forward.

Mayor Galambos stated that all of these issues were discussed in great detail with President Espiranza two weeks ago. She thinks tremendous progress was made on all issues with one exception and that is the Assistant City Manager position and what the compensation would be to the City of Sandy Springs. That was the only issue that could not be agreed upon. I see that CH2M Hill has now made a proposal on it.

Don Howell stated that two persons occupied both the Program Director at .15 for Rick Hirsekorn and Al Crace at 1.0 as Assistant City Manager. CH2M Hill has proposed to reduce the 1.15 to .60 for a combination Program Director. This has been discussed many times and it took a lot of persuasion in the corporation to get them to reduce what is normally a full time Program Manager position on a project of this size and magnitude to the .60 and they are not interested in going below that.

City Manager John McDonough stated that as discussed and a consensus of the Council this went out in an official letter to the company back in February. The City's position was that we had Mr. Hirsekorn at a .5 and now Mr.

Washington fills that position. We will be happy to continue to pay the City's prorata share of that. We had talked about the most efficient organization would be to combine the Director of Operations position which Mr. Howell used to serve in on the Sandy Springs project with Mr. Crace's position. We had availed ourselves with those services at start up and we have very capable people on this program and project today, two very capable Assistant City Managers and we simply did not need that position anymore. What we talked about and had talked with Mr. Hirsekorn about in June of last year and thought we were well on our way to get this issue resolved by simply combining Mr. Crace's position with the Director of Operations position. From his and Mr. Rapson's experience, an able body individual could adequately perform both of those duties. The City is willing to pay 1.15 and take a deduction of one FTE, which is Mr. Crace's former position. The City and CH2M Hill are at odds over one half of a FTE, which would essentially be half of Mr. Crace's salary, benefits, bonus and this type of thing which does amount to a significant amount of money.

Agenda Item No. 09-104

**TA09-015 - An Ordinance Amending Section 6-135 and Section 6-138 of the Code of the City of Sandy Springs Concerning Alcoholic Beverages.
Ordinance No. 2009-04-23**

City Attorney Wendell Willard stated this is part of the presentation made earlier by Mr. Bergthold regarding the four areas of our ordinances that were under his review and modified.

Motion and Vote: Councilmember Jenkins moved to approve (Agenda Item No. 09-104), TA09-015 – An Ordinance Amending Section 6-135 and Section 6-138 of the Code of the City of Sandy Springs Concerning Alcoholic Beverages. Councilmember Fries seconded the motion. There was no discussion. The motion carried unanimously.

Agenda Item No. 09-105

**TA09-016 - An Ordinance Amending Section 38-119 and Section 38-120 of the Code of the City of Sandy Springs Concerning Offenses
Ordinance No. 2009-04-24**

City Attorney Wendell Willard stated that this is the City's Offenses Ordinance which Council enacted when the State Ordinance was declared unconstitutional because of a glitch addressing advertising. The City elected to enact its own ordinance. It has been under review by Mr. Bergthold and suggested changes have been proposed.

Motion and Vote: Councilmember Fries moved to approve (Agenda Item No. 09-105), TA09-016 - An Ordinance Amending Section 38-119 and Section 38-120 of the Code of the City of Sandy Springs Concerning Offenses. Councilmember Paul seconded the motion. There was no Council discussion. The motion carried unanimously.

Agenda Item No. 09-106

**TA09-017 - An Ordinance Amending Chapter 26, Article II of the Code of the City of Sandy Springs Concerning Adult Establishments
Ordinance No. 2009-04-25**

City Attorney Wendell Willard stated that he has no new information on this item.

Motion and Second: Councilmember Fries moved to approve (Agenda Item No. 09-106), TA09-017 - An Ordinance Amending Chapter 26, Article II of the Code of the City of Sandy Springs Concerning Adult Establishments. Councilmember Paul seconded the motion.

Mayor Galambos requested clarification on the \$300 fee that is on page 11 of 21. She wants to be sure that the \$300 is not the total fee. In other words, that there is still a business license fee with it.

Mr. Bergthold stated that is correct. This does not have anything to do with the Occupational Tax Certificate or the revenue generating portion of the City's Code.

Vote: There was no further Council discussion. The motion carried unanimously.

Agenda Item No. 09-107

An Ordinance to Amend Article 11.4.3(i): Development Ordinance of the Code of the City of Sandy Springs Ordinance No. 2009-04-26

Assistant Director of Land Development Blake Dettwiler stated that this item is an Ordinance to amend Article 11.4.3 of the Development Ordinance. Specifically to define where a driveway may be located on a single family residential lot that is not part of the larger common development. As you may recall, this was brought before Council during the March work session and Council directed staff to establish criteria along with the building community that will align with building lot width and not with zoning classifications, which was previously proposed. As a result, the language before Council this evening proposes the following:

1. Lots previously developed as single family detached homes: driveway locations may remain in the existing location as was previously used to access the property (regardless of zoning class); or
2. Lots with front building setback width of less than 130 feet: Driveway can be located anywhere within the confines of the property, provided that each lot has only one (1) curb cut per public street.
3. Lots with front building setback width equal to or greater than 130 feet: If redeveloped lot: driveway may either be located in the previously used location or driveway must be located at least 10 feet from side property line. Vacant lots not previously developed as part of a platted residential subdivision: driveway must be located at least 10 feet from the side property line.

Councilmember Meinzen McEnerny stated that the whole idea of this revision was to protect vegetated buffers along property lines. In light of the fact that we are agreeing that they can use existing driveways, the Council could consider reducing the 130 feet to 125 feet so that more lots can actually fall into that. She sent everyone an email that described how that number was calculated.

Motion: Councilmember Fries moved to approve (Agenda Item No. 09-107), An Ordinance to Amend Article 11.4.3(i): Development Ordinance of the Code of the City of Sandy Springs.

Discussion on the Motion: Councilmember Meinzen McEnerny asked if Councilmember Fries would consider changing her motion to include reducing the 130 feet to 125 feet.

Councilmember Fries stated that staff has done a good job with this ordinance and does not want to make any changes.

Councilmember MacGinnitie stated that he does not care for this and is not interested in making it harder on people.

Councilmember Meinzen McEnerny stated that it would make it easier on people, not harder.

Councilmember MacGinnitie stated that this is just too much regulation and too much government for him.

Councilmember Fries stated that we are trying to make it realistic. This actually eases it up for them.

Second and Vote: Councilmember Paul seconded the motion. The motion carried unanimously.

Agenda Item No. 09-108

Consideration of Approval of a Human Resources operating agreement for a term of one year + 2 months, with (2) one year options for renewal, with Flex HR to provide Human Resource services for the City of Sandy Springs

Purchasing Manager Lynn Taylor stated that she would like to walk Council through the procurement. Council has the handout that shows the rankings of the evaluation committee. On March 11, 2009, the RFP was posted on the Georgia Procurement Registry as well as sent out to 11 local vendors whom had expressed interest in the HR proposal. On April 9, 2009 at 9:00 a.m. the City received 10 proposals. One proposal received from ADP was disqualified. ADP does the City's payroll services. ADP was disqualified because they were five minutes late. Staff was unable to open and read their proposal. Proposals have a strict time limit and must be date stamped with time as submitted.

Each member of the evaluation committee, which consisted of the City Manager, Assistant City Manager, Chief of Police, Fire Chief, Assistant City Attorney, herself and the City's Health Broker, Todd Bryant evaluated the proposals over the weekend and met again the following Monday and short listed it to three of the top vendors to interview. The committee interviewed these vendors the next day and made a unanimous recommendation for Flex HR.

Councilmember MacGinnitie stated that this is an additional cost to the City and at the same time we are trying to get a reduction from the CH2M Hill contract. He would like to know what the deduction is before agreeing to spend \$368,000. He questioned the City Manager if this range was acceptable to him.

City Manager John McDonough stated that it was staffs intent to have the HR deduct resolved before this date. Unfortunately, staff has not been able to get to that point. Mr. Howell did say that there is at least \$300,000. Mr. Rapson and he may differ slightly with that number, but it's getting close. Staff's recommendation here is for a 14 month term and to authorize the City Manager to enter into an agreement with Flex HR for up to \$368,900. The 12 month prorated taken off the two is for \$316,200. Essentially, this is a wash for City. It would be his recommendation to proceed. If you remember, the transition time is under 10 days. This service does transition out on April 30, 2009 so time is of the essence.

Motion and Vote: Councilmember MacGinnitie moved to approve (Agenda Item No. 09-108), a Human Resources operating agreement for a term of one year + 2 months, with (2) one year options for renewal, with Flex HR to provide Human Resource services for the City of Sandy Springs. Councilmember Jenkins seconded the motion. There was no Council discussion. The motion carried unanimously.

Agenda Item No. 09-109

Consideration of Approval of a Resolution for the naming of Morgan Falls Overlook Park in the City of Sandy Springs

Resolution No. 2009-04-26

City Attorney Wendell Willard stated that staff has prepared a Resolution to have the Overlook Park given an appropriate title and name at the direction of the Mayor.

Motion and Vote: Councilmember Fries moved to approve (Agenda Item No. 09-109), a Resolution for the naming of Morgan Falls Overlook Park in the City of Sandy Springs. Councilmember MacGinnitie seconded the motion. There was no Council discussion. The motion carried unanimously.

Agenda Item No. 09-110

Consideration of Approval of a Resolution for the naming of Morgan Falls River Park in the City of Sandy Springs

Resolution No. 2009-04-27

City Attorney Wendell Willard stated that this is the other portion of the park and staff has prepared a Resolution for the naming of Morgan Falls River Park in the City.

Motion and Vote: Councilmember MacGinnitie moved to approve (Agenda Item No. 09-110), a Resolution for the naming of Morgan Falls River Park in the City of Sandy Springs. Councilmember Fries seconded the motion. There was no Council discussion. The motion carried unanimously.

Reports and Presentations

Water Conservation Strategies

Lee Duncan, 515 Rivercrest Court stated that this has been going on for roughly 18 months. We started out assembling the Stakeholders Group. To date, City staff that has been involved: Nancy Leathers, Chris Miller, David Schmid, John Wesserling among others. From the private sector: Joe Padilla, Home Builders Association, Jimmy Prince, Timmy Wilson, Donny Chapman and many more. A lot of meetings have taken place with a lot of folks.

Chris Miller, his team and others have provided a very effective program. He believes that City Council will be proud to adopt this program.

Deputy Director of Community Development Chris Miller stated that the presentation has three primary pieces to it. Essentially, what Council has in their packet is an incentive based innovative Water Conservation Program that Council requested a few months ago.

Staff has developed a webpage with the assistance of the Communications Department and has provided the ability for people who live and have businesses in the City of Sandy Springs to obtain water conservation kits from the City of Atlanta right here at City Hall. He believes this to be a very welcome addition. The City can accept the pledge cards right here at City Hall and the money will go to the City of Atlanta. We have the kits and they will be available here at City Hall and possibly at a Fire Station in the future to make it as easy as possible for the residents of the City.

Secondly, staff has a proposal to have an incentive based fee structure which provides credits or a break on building fees for a business owner, a developer or homeowner who uses a retrofit or a new technology to conserve water. Staff is proposing this evening a break between 30 and 50 percent. David Schmid is here this evening. He worked through some of the individual technology or techniques that are being proposed.

Environmental Compliance Officer David Schmid stated that at the request of City Council staff has put an incentive program together instead of requirements in order to help the building community with incentives in order to begin water conservation.

A Bronze Award will have two requirements that are basic requirements that are already in the Code. They are a little bit more restrictive than what is in the Code for water conversation. The Silver Conservation Award would allow for a 30% fee reduction in the building permit for a new home. They would have to choose three strategies from the blue section on the matrix which includes:

- Maintain large areas of vegetation/protect vegetative canopy
- Limit turf areas
- Utilize water efficient irrigation systems
- Use landscape based watering methods such as dry wells

- Install rain garden or similar catchment areas to filter rainwater
- Use pervious surfaces
- Protect soils from compaction during construction
- Raise storm water inlets in planting area

A Gold Conservation Award is a 50% reduction in the Building fee, which is a little more extensive but highly recommended in order to help conserve water for a new residential building.

For Land Disturbance Permits & Commercial Buildings Site, requirements fall right along in line with the residential but a little bit more restrictive concerning the actual development of the site.

Mayor Galambos questioned if this was a reductions in fees for the Land Disturbance Permit or Building Permit.

Environmental Compliance Officer David Schmid stated that for residential developments a reduction would be given in the building permit fee. There is also a reduction in fees for land disturbance and commercial permits. It is the same program and is for a subdivision or commercial property.

Mayor Galambos questioned if there are various fees on plumbing and electrical and all the different things.

Environmental Compliance Officer David Schmid stated that the packet has an incentive impact page that shows what the potential reductions would be for each award. It also discusses that along with the reduction in fees, depending on the award that they receive, they would also receive a plaque for the property in order to show the award they received.

Councilmember Fries questioned if there was any consideration about going one step further and having platinum and having them do all of these things.

Deputy Director of Community Development Chris Miller stated that is a consideration. Staff would propose to take the first six months to see what the reception is within the building and development community and see if these are really being embraced. If we properly pegged the percentages to what the costs are associated with these additional technologies.

Councilmember Fries questioned why wait the six months, the formula is in place. They may never do that but it would be nice to have it out there. Let it be the mother of all awards.

Deputy Director of Community Development Chris Miller stated that the one issue we still have at this point is to see how this rolls through the budget process, look at the City's budget to make sure this is something that works for the City's budget along with the private sector. Staff wants to make sure that it's not such an inducement that someone wouldn't pay any building fees at all.

Mayor Galambos stated that she is not clear on which fees are being reduced.

Deputy Director of Community Development Chris Miller stated that the fees included on the chart are the total permit fees if someone wanted to come by and pick up a permit for a new single family home. If one was roughly 2,400 square feet which is a very small house the building division estimated the fees for a home like that is about \$1,300. Staff is not sure yet if they properly pegged the cost of the technologies to the cost of the reductions. We hope that there is a positive incentive. Staff does not know at this time. Some of these things are expensive. If you do an internal gray water system meaning that you can use the shower refuse water to flush a toilet. That obviously is very expensive to add to a house. Staff could be open to the idea that if someone came through and did everything on the list then staff could come back with the permit fee schedule and give them a waiver of all the fees.

Lee Duncan stated that this is the first big step in this process and there are still other questions like; when the permit is issued, the permit for the plumbing is actually calculated by the number of holes you have dropping into a house. If you are running reuse in there, you are doubling up the number of holes that are going to be plugged into a house. The Stormwater utility is being discussed and the committee has not been able to touch on it at this point in time. Obviously, there is going to be benefit to the Stormwater Utility for the implementation of this, especially if it is done on a development wide program. We are trying to get the program started and trying to get it embraced. The committee expects push back on some of the issues and expects that people will be embracing other issues. Staff has come up with a realistic presentation at this point. It allows them to get out of the blocks and start moving forward with this.

Councilmember Jenkins stated that she likes the fact that the fees are cut in half and builders will only have to pay half the standard permit fee. She appreciates all the work staff and the committee has done on this.

Mayor Galambos stated that a Resolution will be implemented in a forthcoming meeting.

Deputy Director of Community Development Chris Miller stated that there is a proposed ordinance that would allow the City to enforce, if the City chooses to, any of the drought bans. In the event there is a drought that's a category 4 or above, that allows the Code Enforcement division to go out and enforce the watering ban. Staff has spoken with the Attorney's office and does not feel a resolution is needed to change the fee structure. However, staff did want to advise Council of this and make sure Council consents to the fee waiver of 30 to 50 percent.

Mayor Galambos stated that she would feel more comfortable having something that Council can vote on.

Deputy Director of Community Development Chris Miller stated that staff would provide a Resolution at the next meeting for Council's approval.

Mayor Galambos announced that at noon tomorrow, April 22, 2009, is Earth Day at Concourse. Staff will be out there at a booth handing out water conservation kits.

Vacant Property Enforcement Program

Assistant Director of Code Enforcement Marcus Kellum stated that he would like to outline some of the progress the department has made under the Vacant Property Enforcement Program. Last week he had the opportunity to present this program to 175 Code Enforcement Officers in the State of Georgia. They were very interested in the program that the City has established. A lot of cities and counties in the Atlanta metro area are experiencing issues with vacant properties. The success of the program is based on the strategic approach to dealing with vacant properties in the City. Unfortunately, Councilmember DeJulio is not here because the beginning of the program will be actually focusing on some of the vacant properties on the main corridor of his district.

Strategic Approach to VPEP

- Elected Official Support – initiative to leadership
- Well Trained Staff – orderly process
- Reasonable yet Rapid Compliance Timeframe – 30 days with potential extension after 75% compliance
- Follow-Up & Enforcement – re-inspection and issuance of citations for non-compliance
- Adjudication (Municipal Court) – Solicitor and Judge with sense of significance

Designating a Code Enforcement Vacant Property Coordinator is an individual who becomes the point of contact for the lending institution, for the community. This is someone who has the knowledge of what is happening to

these properties as they sit vacant and knowing what the enforcement process is. We coordinate the efforts between all the lending institutions and the police department if needed. We track on a monthly basis the status of each of these properties.

Result

- In July 2008, there were 53 known vacant properties with violations in the City
- As of February 2009, there are 8 known vacant properties with violations in the City
- As of February 2009, 8 vacant properties, that had significant violations, have been demolished
- 26 vacant property owners received citations to appear in Municipal Court
- 47 previously vacant properties are now occupied without violation
- 12 vacant property owners appeared in Municipal Court

Property Status as of February 2009

Researching Ownership 7 %

Vacant with Violations 13%

Vacant with No Violations 80 %

At one point in this program Code Enforcement was tracking almost 100 vacant properties in the City.

Technique

- Monitor periodicals for foreclosures, bankruptcies and receiverships
- Establish relationships with lending institutions and property management firms
- Establish a fair but firm approach to enforcement when dealing with property owners, agents and responsible parties

A Continued Effort

- The success of the program is based on a compliance approach more than one of enforcement
- An established "local government point of contact" to work with property owners, realtors, landlords, and neighborhoods experiencing derelict or vacant houses
- The VPEP program has assisted in creatively resolving some of the more complex and sensitive vacant property challenges

Consideration of Approval of an Amendment to the FY2008 Budget for Impact Fees Ordinance No. 2009-04-27

Mayor Galambos stated that Council needs to amend the budget for the FY2008.

City Manager John McDonough stated that this is an unresolved audit issue that was flagged by the audit team and needs to be addressed by City Council. It would be an amendment to the 2008 Budget.

Mayor Galambos stated that it is in the amount of \$5,693.00 and is impact fee that was received for a development that did not find itself into the books. In order to get the audit straightened, this needs to go into the 2008 budget. She asked for a motion to include the \$5,693.00 Impact Fee Funds into the 2008 Budget.

Councilmember MacGinnitie stated that he assumes it goes into the financial statements.

City Manager John McDonough stated that it does. When Council passed the 2008 Budget in the summer of 2007, the City did not have an Impact Fee Program; it came on subsequent to that. The City does not have a specific revenue line item to allocate those dollars to that we received.

Motion and Vote: Councilmember MacGinnitie moved to allocate \$5,693.00 into the FY2008 financial statements as appropriate to amend the FY2008 Budget. Councilmember Fries seconded the motion. There was no Council discussion. The motion carried unanimously.

Public Comment

Nathan Chan, 7665 Blardford Place spoke on sidewalk connectivity in District 1.

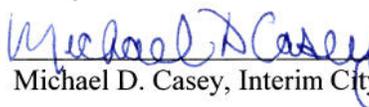
Adjournment

Motion and Vote: Councilmember Fries moved to adjourn the meeting. Councilmember MacGinnitie seconded the motion. The motion carried unanimously. The meeting adjourned at 9:18 p.m.

Date Approved: June 2, 2009



Eva Galambos, Mayor



Michael D. Casey, Interim City Clerk