Regular Meeting of the Sandy Springs City Council was held on Tuesday, July 13, 2010, at 6:00 p.m., Mayor Eva Galambos presiding.

INVOCATION

Pastor Will Zant, North Springs United Methodist Church, offered the invocation.

CALL TO ORDER

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

ROLL CALL AND GENERAL ANNOUNCEMENTS

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

City Clerk Casey called the roll.

Mayor: Mayor Eva Galambos present.

Councilmembers: Councilmember John Paulson, Councilmember Dianne Fries, Councilmember Chip Collins, Councilmember Ashley Jenkins, Councilmember Tibby DeJulio, and Councilmember Karen Meinzen McEnerny present.

PLEDGE OF ALLEGIANCE

Mayor Galambos led the Pledge of Allegiance.

(Agenda Item No. 10-157)
APPROVAL OF MEETING AGENDA

Motion and Vote: Councilmember Fries moved to approve the Meeting Agenda. Councilmember DeJulio seconded the motion. The motion carried unanimously.

CONSENT AGENDA

(Agenda Item No. 10-158)

1. Meeting Minutes:
   a) February 16, 2010 Regular Meeting
   b) February 16, 2010 Work Session
   (Michael Casey, City Clerk)

(Agenda Item No. 10-159)

2. Plats Identified for Ratification since April 20, 2010, City Council Meeting
   (Nancy Leathers, Director of Community Development)

(Agenda Item No. 10-160)

3. Resolution Reappointing Members to the City of Sandy Springs Public Facilities Authority
   (Wendell Willard, City Attorney)

(Agenda Item No. 10-161)

4. Deeds for Relocation and Exchange of Right-of-Way regarding Central Park West
(Wendell Willard, City Attorney)

Motion and Vote: Councilmember Fries moved to approve the Consent Agenda. Councilmember Jenkins seconded the motion. The motion carried unanimously.

PRESENTATIONS

1. Proclamation for Sandy Springs Society Day

Mayor Eva Galambos presented the Sandy Springs Society Day Proclamation. She proclaimed Tuesday, July 13, 2010, Sandy Springs Society Day. Mayor Galambos stated the Sandy Springs Society paid for the parks when they were transferred to the City from Fulton County.

2. Proclamation for SSYS ten-year-old All Stars

Mayor Eva Galambos presented the Proclamation for SSYS ten-year-old All Stars. The players stated their name and the baseball position or positions they play.

Director of Operations Wayne Wright announced the retirement this fall of Director of Community Development Nancy Leathers. Assistant Director Building and Development Blake Dettwiler will be promoted to her position.

Mayor Eva Galambos announced the opening of Overlook Park on July 28, 2010, from 4 p.m. – 7 p.m.

PUBLIC HEARINGS

City Clerk Michael Casey read the Zoning Rules for the Public Hearing Section of the meeting.

(Agenda Item No. 10-162)

1. **RC 10-01SS** (6700 Riverside Dr. "The Ignatius House")

Environmental Compliance Officer David Schmid stated the agenda item he is addressing is for submittal for a Metropolitan River Protection Act Certificate. The application was submitted to the Atlanta Regional Commission and was approved by ARC as the site being consistent with the Metropolitan River Protection Act.

Mayor Eva Galambos called for public comments in support of or opposition to the application. There were no comments from the public. The public hearing was closed.

Motion and Vote: Councilmember Fries moved to approve Agenda Item No. 10-162, RC 10-01SS (6700 Riverside Dr. "The Ignatius House"). Councilmember Jenkins seconded the motion. The motion carried unanimously.

(Agenda Item No. 10-163)

2. **RC 10-02SS** (8060 Habersham Waters Rd.)

Environmental Compliance Officer David Schmid stated the agenda item is for a Metropolitan River Protection Act Certificate, which has been submitted, reviewed and approved by the Atlanta Regional Commission (ARC).

Mayor Eva Galambos called for public comments in support of or opposition to the application. There were no comments from the public. The public hearing was closed.

Motion and Vote: Councilmember Fries moved to approve Agenda Item No. 10-163, RC 10-02SS (8060 Habersham Waters Rd.). Councilmember Jenkins seconded the motion. The motion carried unanimously.

Rezoning

(Agenda Item No. 10-164)

3. **RZ09-006/CV09-015** - 1155 Mount Vernon Highway, *Applicant: MDT Perimeter Pointe LLC*, To rezone the subject property from C-1 (Community Business District) conditional to C-1 (Community Business District) conditional, with concurrent variance(s), to allow a new fast food restaurant

Assistant Director Planning and Zoning Patrice Ruffin stated the petition was heard at the March 16, 2010, City Council Meeting. Council decided to defer the application at that time to allow additional time for the applicant to work with the neighbors and to revise some elements of the proposed plan. The item went back to the June 17, 2010, Planning Commission hearing. The Commission recommended approval. Staff is recommending approval conditional of the rezoning and concurrent variance request.

Woody Galloway, Dillard and Galloway, stated he is representing the applicant, Wendy's/Arby's Group, in this application for rezoning of the Perimeter Pointe shopping center at Mount Vernon Highway and Perimeter Center West. The City Council is familiar with the issues at this site. The application seeks to change the site plan and some of the conditions as they relate to the development that was approved in 1993, and has been constructed at the site, to allow a Wendy's fast food restaurant to be located in the southeastern portion of the site. The applicant has updated work on the application since Council last saw it. The approval from Planning Commission is based on the fact they addressed issues raised by homeowner's associations in the area. There are issues that relate to the Wendy's site and to the shopping center overall. On the Wendy's site itself, the pedestrian access was one issue that was raised. On the application it now reflects the applicant added a sidewalk that would connect Perimeter Center West to the existing sidewalk that is located along the eastern portion of the shopping center today, and therefore, there will be connection between Perimeter Center West and the shopping center. The applicant has also changed the access along Perimeter Center West, expanding it both at its base and the top. The top will have four lanes and the base will have three lanes, addressing the traffic problem that exists. In doing this, the applicant moved the access over to the west, allowing additional green space to be added to the east and the west of the entrance drive. At the Wendy's site, they assured there was adequate stacking distance to ensure there wouldn't be a repeat of the problem that exists at the Chick-Fil-A site, which was another issue raised by the community. On the Chick-fil-A site, everyone is familiar with the congestion of cars and pedestrians in that area. In looking at ways to change the access, they are proposing to reorient the access drive, so that it separates the restaurant traffic from the shopping center traffic. The shopping center traffic will travel along the green route, but if you want to enter the restaurant area, you would turn at the two-way restaurant entrance indicated in yellow on the map; that would be both an entrance and exit. This would provide additional stacking for Chick-fil-A. It also separates the problems that occur at the restaurant from the shopping center at large. The exit, which is on the southern end of the Chick-fil-A site, will be a one-way exit only. One can exit the site in two different places, but can only enter the site at one place. DDR, the shopping center owner, has been helpful in working with the applicant and working through the issues. Wendy's is paying for the majority of the improvements in an effort to make this site function better. They have increased the total amount of green and open space, which is hard to do when adding square footage to a 30 acre fully developed site.

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

Mayor Galambos called for public comments in opposition to the application.

Tochie Blad, Greater Branches Neighborhood Association, 7320 Hunters Branch, stated the Association has been meeting with the applicant, Dunwoody Homeowners Association, and the Sandy Springs Council of Neighborhoods. They have looked at designs and traffic concerns. There are conditions of zoning that were implemented that the owner agreed to abide by on this site. She quoted "Maximum of three out-parcels shall be allowed on the subject site as shown on the site plan. No more than one fast food restaurant on the total site." The City planners don't see this new application as an out-parcel. They define it as in-line space. The other problem is the interpretation if there is counter service, that constitutes fast food. That condition of zoning has been forfeited, because there are sandwich shops located in the shopping center and there is only one drive-thru. She checked the Clear Air Campaign website and there have been nine bad air days this summer season. She believes Georgia doesn't have a handle on the air quality and we're adding a drive-thru that stacks 16 cars. You have to ask yourself, Chick-Fil-A already has a stacking problem. In summation, their concern is if the City doesn't uphold the conditions of zoning that were already in place, the City will have other applications come before them and the floodgates will open.

Barbara Malone, Sandy Springs Council of Neighborhoods, 240 Colewood Way, stated Trisha Thompson couldn't attend this evening, so she asked Barbara to read a letter. On behalf of the Council of Neighborhoods, supporting and assisting Greater Branches Neighborhood Association, they would like to point out that it appears a deal is being struck to overturn prior neighborhood protective conditions of zoning in return for a remedy for a much older traffic safety issue caused by the Chick-fil-A design. It would have made more sense to protect the neighborhood and remedy this traffic safety issue by having the Public Works department and the applicant years ago remedy the public safety issue. The applicant is not Wendy's. It's not as if the traffic safety problem just came up over night. The applicant is well aware of the traffic problem and chose to ignore it. It is due to Sandy Springs Council of Neighborhoods insistence that the Chick-fil-A issue was addressed, and without them it would not have gotten solved. It was a deliberate action taken by Fulton County to limit the fast food drive-thru out-parcels in this area by a very specific condition of zoning. No one wants to junk up this major intersection, this major entry point into Sandy Springs. This protection might be thrown away tonight and we will be condemned to a fast food strip that will dominate the gateway to the City. Her most important point is she wants Council to look at the empty footage directly west of the proposed Wendy's site. It is the other side of the new driveway. That will be the next application for another out-parcel; it's too small for anything else. Look what you will be condemning us to. Please think before you vote.

Mr. Galloway stated the applicant negotiated in good faith and thought there was an agreement as of Friday, two weeks ago. The issues the applicant has addressed are the concerns the homeowner's associations have raised. Wendy's is stepping forward to address the access issues on both the entrance near the movie theatre and the Chick-fil-A issue. The applicant is addressing the aesthetics issue by adding green space. Unfortunately, it's not true there was an agreement seventeen years ago. In the transcript of that hearing, Dunwoody Homeowners Association, as indicted by the chairman of an umbrella group representing the subdivisions, opposed all aspects of the shopping center. What was approved was what the applicant requested at the time; an out-parcel location for fast food. The City's Ordinance defines fast food as counter service. There are many fast food restaurants at Perimeter Pointe. Staff has changed these conditions to address that issue by indicating the number of drive-thru restaurants. They are asking for one additional drive-thru at this location. There have been a lot of changes in this area in the last seventeen years. There is a substantial need for an additional fast food restaurant. The reason why Chick-fil-A has a traffic problem is because it's their leading site, because the demand is so

strong. There isn't another drive-thru until you get to Ashford-Dunwoody or Hammond Drive. Wendy's would like to meet the additional need for a drive-thru. In addition, Chick-fil-A isn't open on Sundays. There are all the retail users and employees that need to go out and get something to eat and don't have any option on Sunday. The applicant worked through the access issue, worked through the Chick-fil-A issue, and any Wendy's issues. They came up with a design that was greatly negotiated and submitted those changes in good faith. He believes it's a very attractive design. The Wendy's/Arby's Group headquarters is located directly across the street. The employees, along with the chairman, will be visiting the new Wendy's site to make sure everything is done correctly. This Wendy's will be the first LEED certified in the Country.

Mayor Galambos closed the public hearing.

Motion and Second: Councilmember Jenkins moved to approve Agenda Item No. 10-164, RZ09-006/CV09-015 -1155 Mount Vernon Highway, *Applicant: MDT Perimeter Pointe LLC*, To rezone the subject property from C-1 (Community Business District) conditional to C-1 (Community Business District) conditional, with concurrent variance(s), to allow a new fast food restaurant, subject to the conditions distributed at this meeting and the July 1, 2010, drawing. Councilmember Fries seconded the motion.

Councilmember Ashley Jenkins stated there is a substantial need for another fast food restaurant in this corridor. She is happy that Wendy's has chosen this site across from their headquarters. It will be the best maintained and fastest service. She doesn't believe that Wendy's will do anything to hurt the neighborhoods. She would like it clarified by Mr. Galloway when the Chick-fil-A driveway construction can begin.

Mr. Galloway stated there are blackout dates during the Christmas holiday. The blackout dates span before Thanksgiving and past Christmas; that no construction can occur on the site. If the application is approved tonight, they will go forward with architectural drawings. He confirmed that it appears construction will begin at the beginning of the year, if this is approved tonight.

Councilmember Tibby DeJulio asked if Mr. Galloway checked the business cards to confirm they read Sandy Springs and not Atlanta.

Mr. Galloway stated he has not yet checked the business cards. He has raised that issue and knows that is a concern for the City. The landlord is also addressing this issue.

Councilmember DeJulio asked to have a point clarified for him. It was brought up there was a contract or an agreement between the developer and the residents about what was going to be located at that site. He tends to take these agreements made years ago, seriously. When the residents have gone into an agreement, they should have some sort of an assurance or guarantee that these conditions will be lived up to. He stated that Mr. Galloway stated an agreement did not take place.

Mr. Galloway stated there was never an agreement. On the screen is part of the transcript of the 1993 hearing. The Dunwoody Homeowners Association President was speaking in opposition to the prior developer's proposal to put a shopping center on this property. What was approved was what the developer asked for. It wasn't that the neighborhood negotiated and reached an agreement. Staff wrote conditions based on that. Mr. Speague opposed it and wanted it to go back to the prior zoning, which would have been office space. What we are dealing with are conditions of zoning, which are subject to change. Agreements are subject to change as well. These development agreements typically have a lifespan that's intentional, because things change and the ability for the market place to change to address

the needs of the new market place need to be able to be addressed. If you saw an aerial photo of this site in 1993, versus the area in 2010, it's a stark difference.

Councilmember DeJulio stated then it was a condition of zoning, and not a contractual agreement between the developer and the neighborhood.

Mr. Galloway stated yes.

Councilmember Dianne Fries stated she gets worried when she hears there are deals being made from a few years ago. She watches those carefully. Just to remind everyone, the City can't enforce agreements people have with developers, if they aren't in the City's conditions of zoning. She did notice that a good number of things in discussion with DeKalb County Neighborhood are within the Sandy Springs City's conditions of zoning.

Councilmember Chip Collins asked if Mr. Galloway can address the concerns on what will happen on the west side of the driveway.

Mr. Galloway stated that by looking at the slide, you can see that MARTA owns a substantial amount of property along the frontage. There is a grass area to the west of the drive that is all under the same height restrictions and weight restrictions, because the MARTA line is underneath. What they have agreed to do is to landscape a substantial portion along the western side of the drive.

Councilmember Collins asked is there enough area to develop?

Mr. Galloway stated he thinks it would be difficult, if they had that right. If they did, they would have to go through the entire zoning process. It may be appropriate in twenty years. That's not the issue before Council tonight. The issues before Council is a very limited increase in square footage, adding green space, adding open space, opening pedestrian access, dealing with existing traffic problems at Perimeter Center West, and for the Chick-fil-A. They tried to deal with all the issues raised in this process. City staff and Planning Commission have recommended approval. He asked for Council's approval of the application.

Mayor Galambos asked if any of that signage on the facade of the existing building is in bold bright colors.

Mr. Galloway stated he's been pretty limited to looking at the site. Their proposal is to have the Wendy's red toned down from working with the Homeowners Association in good faith. They took out a lot of red that was originally proposed for the site, put in wood, stone, seamless glass very high end materials. They did all this to create the corporate showplace it's intended to be, but also in order to address neighborhood concerns. Regarding the color red, Chick-fil-A has an entire roof that is red.

Mayor Galambos stated she was involved in the negotiations, not at the Dunwoody Homeowner's Association, but with the Sandy Springs group at the time the shopping center was approved. She was very much aware of the conditions that are being discussed. She seems to remember that one of the major points that was made at the time was the City doesn't want garish, bright colored signage in that shopping center. She believes that even though the red was toned down, it still seems awfully red.

Mr. Galloway stated it is Wendy's red. It will be front lit and back lit, but it won't be internally lit. It will be in keeping with the City's Sign Ordinance. The applicant worked on this a great deal during the discussions. You can imagine, when the CEO is bringing down Wall Street folks to go to the Wendy's

across the street from headquarters, this is the showplace. They certainly want to be able to have their red, their trademark, on the site. They have worked with the area residents to reduce the red greatly. **Councilmember John Paulson** stated he believes this is an improved site plan compared to what it was two months ago. He gives the applicant credit for improving the entrance and taking care of the Chick-Fil-A.

Vote on the Motion: The motion carried unanimously.
Ordinance No. 2010-07-29

1. To the owner's agreement to restrict the use of the subject property as follows:

    a. Retail, service commercial and/or office and accessory uses, including all exterior food and beverage service areas, at a maximum density of 12,002 gross square feet of total floor area per acre zoned or a total floor area of 364,972 gross square feet, in no more than seven buildings, whichever is less, but excluding adult entertainment establishments, car washes, convenience stores, service stations, grocery stores, commercial amusements and billboards or any uses which are 24 hour operations.

    b. A maximum of three outparcels shall be allowed on the subject site as shown on the site plan referenced in condition 2.a. The total gross square footage of the outparcel development, shall be calculated as part of the total floor area allowed in condition 1.a.

    c. No more than two (2) fast food restaurants, having drive-through windows, on the total site.

    d. Limit the height of the buildings to no more than two stories or 60 feet, excluding entrance features and roof-top screening, whichever is less.

    e. The hours of operation of the fast food restaurant located in the southeastern corner of the Property as shown on the site plan referenced in condition 2.a. shall be limited to 6:00 a.m. until midnight on Sunday through Thursday and 6:00 a.m. until 2:00 a.m. on Fridays and Saturdays.

2. To the owner's agreement to abide by the following:

    a. To the overall site plan and Wendy's site plan detail and Chick-Fil-A site plan detail received by the Department of Community Development dated May 26, 2010. Said site plans are 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.

    b. To be substantially similar to the three (3) elevation renderings received by the Department of Community Development dated July 1, 2010.

3. To the owner's agreement to the following site development considerations:

    a. The owner/developer shall dedicate fifty-five (55) feet of right-of-way from centerline of Mount Vernon Highway and Perimeter Center West 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.

    Such right-of-way as may be coordinated and agreed to between the owner and MARTA.

b. No more than two exit/entrances on Mt. Vernon Highway. The southernmost curb cut shall be limited to right-in/right-out traffic only. Curb cut location and alignment are subject to the approval of the Sandy Springs Traffic Engineer.

c. No more than one exit/entrance on Perimeter Center West. Curb cut location and alignment are subject to the approval of the Sandy Springs Traffic Engineer.

d. No direct access from Mt. Vernon Highway to service the outparcels. The permitted outparcels shall gain access via internal drives. Said access points to the outparcels from the permitted curb cuts shall be located at least 100 feet from the new dedicated right-of-way of any public street.

e. Each outparcel which abuts a public right-of-way shall have a minimum of 200 feet of frontage on said public right-of-way, except the outparcel labeled on the site plan as "B", shall have a minimum of 160 feet of frontage; however, direct access to said right-of-way shall be prohibited (CV09-015).

f. Variance from Article 33, Section 26, Subsection F(2) of the Zoning Ordinance to allow a third wall sign (CV09-015).

g. Light sources of any exterior illumination on the site shall not be directly visible from any adjoining residential property lines.

h. Any lighting of the parking lot shall be limited in height to a 30 foot mast.

i. Provide 100% opaque screening around all trash dumpsters subject to the approval of the Director of Community Development. Said dumpsters shall not be located within buffers, landscape strips or parking and loading areas, nor within 150 feet of property zoned or developed residential. Pick-up service shall be limited to the hours between 8:00 a.m. and 8:00 p.m., Monday through Saturday.

j. Provide 100% opaque screening around all delivery truck bays subject to the approval of the Director of Community Development.

k. Provide screening of any roof top mechanical equipment from adjacent properties subject to the approval of the Director of Community Development.

l. The owner/developer shall provide two dedicated outbound lanes for the full throat length of the entrance onto Perimeter Center West.

m. Window signage shall not be placed inside the glassed-in area above the main entrance of the fast food restaurant located in the southeastern corner of the Property as shown on the south and west elevations of the building referenced in condition 2.b.

Use Permits

(Agenda Item No. 10-165)

4. **U10-003** - 5500 Dupree Drive, *Applicant: Verizon Wireless*, To allow the location and operation of a 119-foot monopole and related ground equipment adjacent to the existing water tank

Assistant Director Planning and Zoning, Patrice Ruffin stated this is a Use Permit to allow a 115-foot monopole on the existing City of Atlanta water tank site. The staff is recommending approval conditional of the request. The petition was heard at the June 17, 2010, Planning Commission hearing and the Commission recommended denial.

Attorney David Kirk, Troutman Sanders L.L.P., representing Verizon Wireless, presented the latest version of supporting documents for this application. He stressed a few critical points. First, this facility is needed; second Verizon Wireless has evaluated all other options; third, they have done their best to minimize any impacts; and fourth, the application meets all the standards in the Zoning Ordinance. A couple quick facts, the CDC reports that 1 in 4 American households rely entirely on wireless service. This trend shows no signs of reversing or not applying here in Sandy Springs. Second, last month ChattComm received more than 86% of its 911 calls from wireless devices. Wireless devices have become a necessity and may even be a matter between life and death. They submitted affidavits, letters, maps, and other documents attesting to the lengthy and detailed process of evaluating the service in the area and determining the needs. This slide shows the site in blue. The dark boxes indicate current Verizon Wireless locations. Areas with generally good voice service are shown in green, fair service in yellow, limited service in red. With the topography in the area, surrounding sites can't provide adequate service in the area, once you get south of the Mt. Vernon Highway ridgeline. The quality of service is spotty and not reliable throughout the area. He then showed the depiction of how the proposed facility would improve wireless service in the area. Regarding the second point, they have exhausted all possible co-location opportunities in the area. All carriers, including Verizon Wireless, prefer to co-locate on existing towers instead of building new facilities. This process takes less time, costs less money and is often less complicated. The documentation they submitted shows there are very few opportunities in the area. The area is zoned residential. There are no other suitable towers in the area. There is one tower in the area that Verizon is not on and it's located behind St. Andrews Church. That's located one mile away from the location where the radio frequency engineer says the site needs to be to serve the area. It's too far away to do any good, even if room was available on it. If this tower would meet their needs, Verizon would utilize it. The proposed tower would still be needed at this location. They also looked at increasing the height of an existing tower at Riverwood School, and at abandoning the tower at the Country Store and going across the street to the tower at Holy Spirit Academy. Neither of those options work. They examined the very few parcels with institutional or utility uses that could be used from a technical standpoint and their efforts led them to this site. It's the best and most suitable facility for this service area. Third, they've done everything they can to minimize the impact of this facility on the surrounding community. Before they submitted the application, they met with Councilmember Meinzen McEnerny and with staff to explore ways to minimize the impact of this needed facility. As a result of those discussions, they reduced the proposed tower height by more than 25% to meet the district setbacks and agreed to use low profile antennas to reduce the silhouette and scale of the tower. They have sacrificed some coverage for the sake of reducing the impact. The photo simulation shows the orginal proposal. The proposals they submitted reflect Council's comments and suggestions showing the height reduction and low profile antennas. As an alternative, in response to some community members suggestions, they are willing to disguise the facility as a tree. It would be similar to the ones beside the Country Store, the toll plaza on GA 400, or in Buckhead around the corner from the Governor's Mansion. Several emails received by staff from people in the neighborhood support this alternative. This is in addition to the requirements in the Ordinance and the proposed condition for the applicant to consult with the City's arborist regarding landscaping. They recognize there are still concerns. From the Planning Commission there are accusations that the applicant wants the tower so they can lease space on it to another carrier. The applicant is willing to forgo that opportunity, even though it's contrary to the City's policy and Zoning Ordinance, which encourages co-location. Finally, they meet the standards in the Ordinance. The staff report concludes that this application has met all applicable requirements for the Zoning Ordinance. The location is suitable for the proposed facility and the petition conforms with the intended future land use map. The applicant agrees with the staff's conclusion, which they reached after a

very extensive and unbiased review of the thousand page record in this case. He respectfully requests Council accept professional staff's findings and recommendations. He'd also like to suggest one other condition that relates to the opponents efforts to depict Verizon Wireless as a bad neighbor based on photographs taken of existing wireless facilities built 15-20 years ago. These photographs had the intended effect at the Planning Commission meeting to embarrass Verizon Wireless and sway the decision of the Planning Commission. These photographs clearly illustrate that the standards of the past are not consistent with the standards in Sandy Springs today. The maintenance of these facilities, despite their age, has not lived up to their expectations. The Verizon Wireless site manager has now performed clean up, maintenance, and painting at these sites. They have looked at each site to see how they might add additional screening for the base equipment, such as opaque fencing and landscaping. He proposed a condition to City staff that would allow this effort to move forward with the end result being an improvement to the conditions on all these sites.

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

Mayor Galambos called for public comments in opposition to the application.

Ina Clark, Old Powers Ferry Road, stated she represents over 1400 people from their unorganized neighborhood, which includes historic CrossRoads, Perimeter Baptist Church, Mt. Vernon Baptist and Temple Sinai. They are protecting neighborhoods of families and retirees and the gateway into Sandy Springs. There has never been a new cell tower approved in Sandy Springs, since it became a City. Verizon Wireless is a private telecom company for the benefit of their shareholders, not a public utility. Atlanta Watershed Management reams them with a surcharge already and will seek lease income from Verizon. More billboards on Roswell Road would be eye pollution and they know Council is against that. Imagine the eye pollution from a twelve story cell tower. A twelve story cell tower will cast unnatural shadows on their homes that can't be hidden. Verizon has a pattern of being an irresponsible neighbor. She showed pictures of several Verizon tower locations as examples. Verizon can confirm that the equipment sheds that support these towers blow up from backup generator fuel accidents. One of Verizon's equipment sheds just exploded in Iowa a month ago. Headlines show that thieves steal copper cables, vandals climb them and fall to their deaths, weather topples them, and they burn down. If the tower falls, it can land in the street or puncture the water tank. Squirrels and birds often flock to these towers to nest. Please don't invite safety, security and sanitation risks to Sandy Springs. At the Planning Commission the applicant complained to our commissioners about the heartache of trying to get this site. The neighbors are the ones that have gone through the heartache in this situation.

Jaime Kleber, 986 Old Powers Ferry Road, stated Verizon doesn't have a lease. The only person from the City of Atlanta that has spoken to them is David St. Pierre, the new Deputy Commissioner of the City of Atlanta Watershed Management. David St. Pierre had the same safety and security concerns as the neighborhood. A cell tower doesn't fit into the comprehensive land use plan. This is a protected neighborhood. Protecting neighborhoods is why they made Sandy Springs a City. Approval of the tower would be a threat to public safety. The water tank could be punctured, flooding the neighborhood. Certainly Verizon doesn't care about safety and in their new ad campaign "Rule the Air", cell towers force buildings to collapse and cars to implode, all within inches of pedestrians. Ordinances require citizens to be protected from blight. You can't hide a twelve story cell tower in a 115 foot fake tree. The equipment will sit on Dupree, less than one hundred feet from homes. It will be noisy and will require service at all hours of the night. Automation doesn't mean never needs to be serviced. The cell tower will negatively impact the property values in the area at least 25%. Would you look to buy in this neighborhood if you saw this sign? This is the signage on various Verizon cell tower sites. The Telecommunications Act expressly preserves State and Local government authority to approve or deny cell towers. In 2009, the FCC issued a declaratory ruling expressly stating that City and local

governments are in the best interest to evaluate these cases and determine if the citizens concerns are legitimate. The 11th Circuit Court has held aesthetics, coupled with safety concerns, as well as a decrease in property values, warrants a City's denial of cell towers. In the Pickens case, the cell tower was denied based on the adverse impact it would have to historic property. According to the State Historic preservation office, the tower will have an adverse impact and the memorandum doesn't change that. Ironically, on July 13, 1864, 146 years ago today, General Howard and his troops aligned along this same 1.5 mile stretch to establish Sherman's headquarters before heading to the Battle of Atlanta. Please preserve this historic site and beautiful neighborhood by denying this application.

Barry Lebowitz, 996 Old Powers Ferry Road, stated when they first began discussing this project the need was originally characterized as voice service problems due to dropped calls. Within the last few weeks Verizon Wireless has produced maps indicating enhanced services also exist in the area. Effective July 1, 2010, its illegal in the State of Georgia to use data services on smart phones while driving. Verizon's goals are about 3G and 4G to enhance already existing service. The area of impact is only 1 ½ to 2 miles. 9-1-1 calls aren't threatened. 9-1-1 calls are carried by all cell carriers, regardless of service provider, whether there is a contract or not, whether the phone is active or inactive, with or without a SIM card. Verizon's dropped call data has changed frequently since the beginning. The Verizon Wireless attorney finally answered "The dropped calls in this area are less than 1%". Coverage overlaps because cell towers cover a five mile radius; none are more than three miles apart. Verizon's website says they have 100% digital service throughout the area. Antenneasearch.com, which is a database provided by the FAA, says there are 111 cell towers and 322 antennas within a four mile radius. The tower's size has changed from the optimal height of 160 feet, which would have never met the setback requirements, and was lowered to 119 feet, because they thought it met setback requirements. Verizon then lowered it to 115 feet. Perhaps the Verizon formula for cell tower height is one times the setback requirement. The co-location opportunity does exist. The tower at St. Andrews is 160 feet tall. An administrative permit could be issued to raise the height of the tower at St. Andrews and enhance the co-location. That site has two acres in frontage on I-285. There are existing technology alternatives. The Next G technology uses small antennas on existing utility poles and Verizon is already a customer of Next G. Next G's case study was done specifically for Atlanta, due to its unique geography. The City of Atlanta is a user of Next G. Verizon's own technology, the Verizon network extender for in home use, solves geographic or weak signals. In summary, our ordinance protects health and safety, federal law allows City Council authority to deny the tower, and no need has been proven by Verizon Wireless. This will negatively impact our property values. Verizon is not and has not been a good neighbor.

Lloyd Blair, Pastor of CrossRoads Baptist Church, stated he represents the Church in opposing this commercial intrusion in their neighborhood. The Church is across the street from the proposed tower site and has been at this location since 1870. They don't want the tower across the street from the Church. He is sure no one would want a tower across the street from their home. He asks Council to deny the permit request.

Carol Matz, 120 Parc de Chateau, stated they oppose the cell tower. There is no need for a cell tower. Verizon has less than one call dropped per hour. There are many reasons for dropped calls, which include weather, solar flares, and bad CPE in terms of hardware phone problems. Thank you.

Attorney Kirk stated he would like to respond with his remaining time. Antannesearch.com, which says 300 towers are so close, also says there is a 150 foot tower on that site today. It says there's another tower equally as tall, a quarter of a mile away down Mt. Vernon. That tower is actually in Cobb County, more than five miles away, off Atlanta Road. It's not an accurate depiction of alternatives. No business, whether Verizon Wireless or a Mom and Pop store, would make such significant investment unless there's a business justification. It comes down to a policy matter whether Council wants people in this area to have adequate wireless service. When someone picks up their phone for a 9-1-1 call, if they can't

connect to any network, they are in big trouble. Ms. Clark, Ms. Kleber and Mr. Lebowitz all live at the top of the hill where there is good service. Once over the Mt. Paran ridge, the service drops off. The applicant's appraiser indicated the cell tower would have no impact on the marketability of houses in the area. The neighborhood hasn't produced a professional opinion from the radio frequency engineer that works with Mr. Dillard's tower consultant firm to rebut the applicant's assertion the facility is needed. The quotes from Verizon headquarters came from a salesman in Illinois. He stated in his email to Ms. Clark, "things such as topography of the land and obstructions between the location of the tower could interfere with your service". The coverage map the neighborhood referred to on Verizon's website has an explicit disclaimer on it saying there may be areas with little or no coverage on these maps.

Mayor Galambos closed the public hearing.

Motion and Second: Councilmember Meinzen McEnerny moved to deny Agenda Item No. 10-165, U10-003 - 5500 Dupree Drive, *Applicant: Verizon Wireless*, To allow the location and operation of a 119-foot monopole and related ground equipment adjacent to the existing water tank. Councilmember Jenkins seconded the motion.

Councilmember Karen Meinzen McEnerny stated she'd like to make two points that are a concern to her. The City Council is aware there was a lot of information submitted on this application from both sides, over 800 pages. One, the fact that it is a historic site. The facts are correct that on July 16, 1864, Sherman crossed from his encampment from Ivy Paces in Vinings. He encamped on this site surrounded by Howard's corps. He wrote memorandum number 38, his battlefield orders directing his three Generals on how to attack the Battle of Atlanta. There is a cemetery across the street where the founding families, the Kates and the Abernathys, are buried. Also located across the street is a Church located there since the 1870's. Supported by case law in Pickens County, the Telecommunications Act does require Council to look at the historic impacts of a cell tower. You may think a forty foot high water tower is already polluting the site. From two sides you can't see the water tower on Old Powers Ferry. Adding a 115 ft. monopine would be even worse. There hasn't been any demonstrated need. She appreciates the Planning Commission asking for the universe of dropped calls. She has reviewed a third party survey that was done of over 4,000 nationwide phone subscribers. It was done by ClearWatch and they asked what percentage of dropped calls you experience. Verizon had the least amount of nationwide dropped calls, per this survey, of 1 1/2 %. She is not overwhelmed with the applicant's demonstration of need.

Councilmember Tibby DeJulio stated this is an issue where you can build a case on either side. Council received probably over 100 emails regarding this issue. When looking at most of the emails, they came from iPhones and BlackBerrys. Since Apple just came out with G4, there is more of a demand on cell service and data every day. On the other hand, no one wants a cell tower in their backyard. He wouldn't want one in his backyard either. It seems to him over the last twenty years there has been incredible change in technology. On one of his former visits to Europe, the cell phone tower was almost as big as this room. Cell phone towers keep getting smaller and smaller. The cell phone towers are now going on top of telephone poles and high transmission utility poles. Isn't the technology changing to the point now where we don't have to have 150 foot cell towers everywhere?

Attorney Kirk stated no. When cell phones were first starting out, there was a comment that one day we'd all have satellite phones and wouldn't need cell towers. Technology has changed dramatically. As technology gets refined, there are uses for DAS technology. In fact, Verizon Wireless does use those in places like the Georgia Dome, Hartsfield Atlanta International Airport, and Arizona State University. Verizon Wireless is partnering with Next G, but those are specialized situations where there is a tremendous load in a very concentrated space. There are repeaters that look like speakers, mounted in different places within the building, connected by fiber optics, linked to a HUB, which is then linked to a cell tower for the ultimate signal. In certain instances, one can use the DAS technology. DAS technology

simply hasn't advanced to the point where Verizon is confident they can provide the reliable service that they are known for. There is nothing wrong with wanting to provide the best service and decrease dropped calls.

Councilmember DeJulio stated if you're talking about a specific problem, with the cell phone users on the ridge getting very good service, but the ones in the valleys not getting good service, it seems the other technologies which are more conducive to specific problems might be something to be considered.

Attorney Kirk stated it might be something that might work 15 years down the road. The way Next G works is through a third party. Verizon Wireless would not be in control of its own network. The service is not as reliable at providing in-building and in-home coverage. It's not advanced to that point where Verizon can provide that type of service in home.

Councilmember Dianne Fries stated Mr. Kirk said there are different categories in the coverage map. What is the percentage of dropped calls within each color zone?

Attorney Kirk stated he can't say with specificity the percentage of dropped calls.

Councilmember Ashley Jenkins stated she needs him to address this. On this map, good is in green, fair is yellow, and limited is pink. It is relevant and she would like him to respond.

Attorney Kirk stated good service means you have good in-building coverage.

Councilmember Fries stated these are residential areas. How is the coverage if you're in your home; upstairs, downstairs, basement?

Attorney Kirk stated that you should have reliable service.

Councilmember Jenkins asked what does that mean, zero dropped calls?

Attorney Kirk stated Verizon Wireless can't guarantee zero dropped calls.

Councilmember Jenkins asked what do you guarantee to paint that area green.

Mayor Galambos asked for a numerical difference between the various colors.

Attorney Kirk stated the shading of the map colors has to do with the signal strength.

Councilmember Fries stated the pink area is not too large. She is familiar with this neighborhood, because her brother lives there. She can talk on her phone in this area. Her brother is not a Verizon customer, and he can't talk there. For the cost of putting up the cell tower, you can buy 10,000 of these things. She is not convinced all options have been considered. She is a believer in technology. Maybe the Church's steeple isn't a good location for the tower. Maybe you could build a new steeple. The National Park area near Indian Trail at Northside is the highest point in the area. Have you talked to them about putting in a cell tower? What about using the micro cells?

Councilmember Chip Collins stated he is concerned about placing a cell tower in one of the few historic sites in Sandy Springs. He understands there is already a water tank there, but it doesn't justify further scarring that corner. He'd like Mr. Kirk to specify the other institutional alternatives that were looked at in this area, specifically Mt. Vernon Church and Holy Innocents. Who did you speak with and when did you speak with them?

Attorney Kirk stated Leslie Dietz, the Site Acquisition Specialist, is with him. He spoke with Holy Innocents twice.

Councilmember Collins asked who he spoke with.

Attorney Kirk asked Ms. Dietz to come up and speak on the issue.

Leslie Dietz, Verizon Wireless Acquisition Specialist, stated when Verizon looked at Holy Innocents, she met with John Porter.

Councilmember Collins asked what year was that.

Ms. Dietz stated it was two years ago. They again revisited it, per staff's request, in the last 6 months. As far as the Church is concerned, there is there is no viable ground space. Verizon did look at the flat part of the roof near the steeple. There are structural problems with the Church. The congregation is trying to raise the money to rebuild that area.

Councilmember Collins asked if she is aware the Church is discussing plans to build a new sanctuary. Is placing the tower on part of the new sanctuary's steeple an option?

Ms. Dietz stated if the plans ever become viable, then yes. She met with Curt Duncan and they walked the school property. All of their available ground space is sited for expansion and a new high school. She also met with Bryan Pillsbury regarding Mount Vernon Baptist Church across the street, and again ground space was a concern. Verizon usually tries to start with a space 60X60 for a cell tower and all the available ground space for co-locations. In this particular instance, that has become smaller. They did discuss the possibility of going in the steeple across the street. The steeple wasn't built to put a cell tower in there. The whole steeple would have to be reconstructed. They looked for options in the area for which topography and zoning were favorable. That is what took them to the area near the water tank. This is the high point of the ridge and it's zoned appropriately.

Councilmember Collins stated he's not convinced of the need for the cell tower. He's concerned for the residents. He received an email yesterday from Richard Clark, who lives on Rebel Trail, has no land line and relies entirely on his Verizon Wireless service. Mr. Clark stated he has no cell phone problems in his home or neighborhood. Mr. Clark said, "Believe me, if my teenagers couldn't send or receive text messages, or make or receive calls on Verizon, we would have a different service provider". He believes this truly isn't a need for residents of Sandy Springs. He thinks it's more of filling in the blanks on the TV commercials. Councilmember Collins asked do you have anything to add on the question of the need of Sandy Springs residents in this area. He asked to hear from actual residents or statistics on complaints.

Attorney Kirk stated if you look at where Mr. Clark lives on Rebel Trail, he is actually quite fortunate to be in opposition to this when he has good service. Attorney Kirk didn't have anything else to add to the "need" discussion.

Councilmember Collins stated if he'd gotten two hundred emails from folks off Powers Ferry, Rebel Drive, and Northside Drive regarding the Verizon issue, it would be a different discussion.

Attorney Kirk stated his concern is the City has standards in its Ordinance.

Mayor Galambos stated they are not going to argue the case anymore.

Councilmember John Paulson stated he has an observation, not a question. He believes the cell phone service in this area can be improved. Once you get in the hollows where the houses are, the service is poor. He thought the applicant would come in with a handful of people stating they need this service. Have you got complaints from people saying they don't receive good service in this area?

Attorney Kirk stated of course there are complaints. There are complaints that Verizon Wireless receives. The most accurate predictor of service quality is what you're looking at on the map. Dropped calls are one tree in the forest. The fixation on dropped calls is looking at one tree and not seeing the whole forest.

Councilmember Fries stated it's not a need issue for her. She's not sure the applicant has covered all the options.

Councilmember Jenkins stated there is less than 1% dropped calls for Verizon Wireless. She thinks they have excellent coverage, that's why she has their service. She isn't sure that the need was demonstrated and that's required for the Use Permit. Back to Councilmember Fries point with the booster boxes, we are trying to go to better technology everywhere. To be able to hang the boxes on the light post that are non-invasive is the way to go. She would encourage the applicant to focus on the smaller technology, especially in residential areas with topography issues.

Vote on the Motion: The motion to deny carried 5-1, with Councilmember Paulson voting in opposition.

(Agenda Item No. 10-166)

5. **U10-004/CV10-007** - 85 Mount Vernon Highway, *Applicant: Sandy Springs United Methodist Church*, To allow a daycare and afterschool program at the existing church, with concurrent variances

Assistant Director Planning and Zoning, Patrice Ruffin stated this is a use permit to allow expansion and operation of the daycare at Sandy Springs United Methodist Church. Staff is recommending approval conditional of the Use Permit and Concurrent Variance. The petition was heard on June 17, 2010, by the Planning Commission and they recommended approval subject to staff conditions.

Jeff Connell, Sandy Springs United Methodist Church, stated they respectfully request this Use Permit. They have an existing 45,000 square foot facility on Mount Vernon Highway. The facility has a gymnasium, classrooms, offices and other support facilities. The Church recently hired a Leisure Ministries Director. They currently have a preschool operating in the Church. They are looking to explore after school youth programs. To get an accredited program, they have to get a Use Permit. When the building was built, there was an administrative permit in 1986 from Fulton County that stated it had to be for church use. It's still for church use, but to have an accredited program they need the Use Permit.

Mayor Galambos asked if the afterschool program would include gymnastics. The City is looking for space for gymnastics.

Mr. Connell stated possibly. That's up in the air now. The Leisure Ministries Director has opened conversation with Sandy Springs regarding recreational activities.

Mayor Galambos called for public comments in support of or opposition to the application.

Barbara Malone, Sandy Springs Council of Neighborhoods, stated this application is not within a neighborhood, and not bordering a neighborhood. It has good access from Sandy Springs Circle and Mount Vernon Hwy. There is plenty of parking and green space. They would like confirmation from Community Development that the applicant meets all the Board of Education and Fulton County

requirements. If so, then the Sandy Springs Council of Neighborhoods would like to support this application.

Mayor Galambos asked Assistant Director Planning and Zoning Ruffin if staff investigated whether or not they meet all of the State requirements.

Assistant Director Planning and Zoning Ruffin answered they currently have their permits that are required from the state and there is a condition recommended by staff that they supply that information to the City annually

Mayor Galambos called for any other public comments. There were no additional comments. The public hearing was closed.

Motion and Vote: Councilmember DeJulio moved to approve Agenda Item No. 10-166, U10-004/CV10-007 - 85 Mount Vernon Highway, *Applicant: Sandy Springs United Methodist Church*, To allow a daycare and afterschool program at the existing church, with concurrent variances Councilmember Collins seconded the motion. The motion carried unanimously.
Ordinance No. 2010-07-30

UNFINISHED BUSINESS

There was no Unfinished Business.

NEW BUSINESS

(Agenda Item No. 10-167)

1. Consideration of Approval of the Appropriation of the Property Located at the Morgan Falls Athletic Field through the use of Eminent Domain

City Attorney Wendell Willard stated this application deals with an easement that first was a temporary easement given by Classic Cadillac for the ability to improve the ball fields located on the park area above Classic Cadillac. The Mayor and the City Attorney spoke to Mr. Dominico to get his approval. Nothing has happened with that, yet. They were told GMAC, which holds the security interest, was given the papers, and the papers have not come back. There were other communication issues and there is a need to bring this to conclusion.

Assistant City Attorney Cecil McLendon stated the City has been trying to work with the property owner to acquire the required rights. He believes the property owner is having a difficult time getting the lender to sign off on consent to the rights. The property is encumbered by a loan and you have to have the lender agree to the acquisition.

Councilmember DeJulio asked how much property are we talking about.

City Attorney Willard stated it's about one acre. It's an elongated piece of property. The City isn't trying to take full fee simple title, only acquire a permanent easement. The property's ability to consider land area for development is not diminished.

Assistant City Attorney McLendon stated it's 1468 square feet of temporary easement and 3662 square feet of permanent easement.
City Attorney Willard asked the Mayor to invite public comment, since this is a public hearing for condemnation. This item was advertised as a public hearing.

Mayor Galambos called for public comments in support of or opposition to the application. There were no comments from the public. The public hearing was closed.

Motion and Vote: Councilmember Jenkins moved to Approve Agenda Item No. 10-167, Approval of the Appropriation of the Property Located at the Morgan Falls Athletic Field through the use of Eminent Domain. Councilmember Fries seconded the motion. The motion carried unanimously.
Resolution No. 2010-07-46

(Agenda Item No. 10-168)

2. Consideration of the approval of a consulting engineer contract with The LPA Group for the design of Sandy Springs Circle Streetscape Phase II/III, Hammond Drive to State Route 9/Roswell Road (T-0014/T-0015)

Transportation Planning Manager Garrin Coleman stated that the City went through the RFP process on this application. Staff reviewed nine proposals and short listed three firms. Staff interviewed those three firms and recommends the LPA Group. The cost for that firm to complete the design is $336,772. That includes $241,706 streetscape design and $95,066 intersection improvement at Sandy Springs Circle and Mount Vernon Highway. The current budget for these two items is $410,000.

Motion and Vote: Councilmember Jenkins moved to Approve Agenda Item No. 10-168, Approval of a consulting engineer contract with The LPA Group for the design of Sandy Springs Circle Streetscape Phase II/III, Hammond Drive to State Route 9/Roswell Road (T-0014/T-0015). Councilmember DeJulio seconded the motion. The motion carried unanimously.
Resolution No. 2010-07-47

(Agenda Item No. 10-169)

3. Consideration of Approval of a contract to construct Project T-0026, Peachtree-Dunwoody at Spalding Improvement Project Subject to Validation and Approval by the Legal and Finance Departments

Capital Program Director Marty Martin stated on June 28, 2010, the City received eight bids for the work at Peachtree-Dunwoody and Spalding Drive. Staff asked for two components to the bid. Pending the receipt of a state stream buffer variance, there is one area that could be omitted that constitutes the bid alternate B. Staff recommends the bid be awarded to JJE Constructors, Inc.

Mayor Eva Galambos asked if this includes adding the turn lane.

Councilmember Ashley Jenkins responded yes.

Motion and Vote: Councilmember Jenkins moved to Approve Agenda Item No.10-169, Approval of a contract to construct Project T-0026, Peachtree-Dunwoody at Spalding Improvement Project Subject to Validation and Approval by the Legal and Finance Departments. Councilmember Meinzen McEnerny seconded the motion. The motion carried unanimously.
Resolution No. 2010-07-48

(Agenda Item No. 10-170)

4. Consideration of Approval of the 2011 Capital Paving Contract

Field Services Manager Ron Adderley stated bids were received for the Capital Paving Contract on July 7, 2010. The list in its entirety was presented to Mayor and Council. The low bid was from Allied Paving for $1.3 million, which was within the budget.

Councilmember John Paulson asked what was budgeted for this.

Field Services Manager Adderley stated the budget for the entire program for this year is $2.5 million.

Councilmember Ashley Jenkins stated that includes reconstruction, too.

Councilmember Paulson asked Field Services Manager Adderley if he had this part as a separate subtotal.

Field Services Manager Adderley stated staff received bids separately for the resurfacing and the next agenda item is for reconstruction.

Mayor Eva Galambos asked the amount in the budget for reconstruction.

Councilmember Karen Meinzen McEnerny asked how much is in the budget for reconstruction and how much for paving?

Councilmember Dianne Fries stated they were combined.

Field Services Manager Adderley stated we have a total of $2.5 million.

Motion and Vote: Councilmember Jenkins moved to approve Agenda Item No. 10-170, Approval of the 2011 Capital Paving Contract to Allied Paving. Councilmember Fries seconded the motion. The motion carried unanimously.
Resolution No. 2010-07-49

(Agenda Item No. 10-171)

5. Consideration of Approval of the 2011 Capital Reconstruction Contract

Field Services Manager Ron Adderley stated bids were also received for Capital Reconstruction as presented in the June meeting. The low bid was Baldwin Paving with an amount of $821,000. This bid is below estimates and within the City's budget.

Motion and Second: Councilmember Jenkins moved to Approve Agenda Item No. 10-171, Approval of the 2011 Capital Reconstruction Contract and award it to Baldwin Paving. Councilmember Meinzen McEnerny seconded the motion.
Resolution No. 2010-07-50

Councilmember Dianne Fries stated since Council has both of these agenda items in front of them at the same time, she sees that a lot of the same companies bid on the items. Is there ever a thought of having the companies bid on them together, as well as separately?

Mayor Eva Galambos asked if the City would receive a better price if the company was bidding the two items together.

Councilmember Fries stated this is something we should think about.

Field Services Manager Adderley stated staff will consider that. They have kept them separate, because they are different specifications.

Mayor Galambos stated we could give the companies the option to submit the bids separately or submit bids for both at the same time. That way the City will have a comparison of the numbers.

Councilmember Fries stated that the company may say while I have my equipment out, I'll go ahead and do both projects at the same time and save the City $100,000. She just wanted to present the idea for consideration.

Vote on the Motion: The motion carried unanimously.

(Agenda Item No. 10-172)

6. Consideration of Approval of the Appropriation of the Property located on Dunwoody Place as part of T0025 - Dunwoody Place Improvements, referred to as parcel number 7 and the property owners are Northridge Owner LLC and Northridge Irwin LLC

Presented by Transportation Planning Division Manager Garrin Coleman stated this item is for consideration of 5902 square feet of temporary easement and 203.76 square feet of fee simple right-of-way. The appraised value of this property is $4,350.

Mayor Eva Galambos asked if this is a temporary easement.

Transportation Planning Division Manager Coleman answered yes. It is 5900 square feet of temporary easement and 203 square feet of right-of-way. The right-of-way is at an intersection.

Councilmember Karen Meinzen McEnerny said part of it is fee simple and part of it is temporary.

Transportation Planning Division Manager Coleman stated correct. There are two pieces.

Councilmember Dianne Fries asked to hear the cost numbers again.

Transportation Planning Division Manager Coleman stated it's $4,350 total. He doesn't have the break out, but he believes the majority of that is for the right-of-way.

Mayor Galambos asked if the Northridge Property is something the Council should be familiar with.

Transportation Planning Division Manager Coleman stated it's an office complex. It's currently run by a property manager and they have a lien holder as well. The lien holder has not been responsive to the City in trying to negotiate.

Mayor Galambos asked if it's another one of these situations where the City is putting in a sidewalk, doing an improvement, and they are holding us up.

Transportation Planning Division Manager Coleman answered yes. The City is widening one lane there, too.

Councilmember Meinzen McEnerny stated there is nothing like eminent domain to get the lenders attention. It's not on their priority list.

Transportation Planning Division Manager Coleman stated staff is continuing to negotiate with them. **Assistant City Attorney Cecil McLendon** asked the Mayor to open this agenda item for a public hearing.

City Attorney Wendell Willard stated there are two different kinds of appropriation. Some are right-of-way takings, which don't require a public hearing. The other, which is under Title 22, does require a

public hearing, but may not always require a public hearing. He said the City is going to have all acquisitions include a public hearing, so there is no question about it.

Mayor Galambos called for public comments in support of or opposition to this agenda item. There were no comments from the public. The public hearing was closed.

Motion and Vote: Councilmember Fries moved to approve Agenda Item No. 10-172, Approval of the Appropriation of the Property located on Dunwoody Place as part of T0025 - Dunwoody Place Improvements, referred to as parcel number 7 and the property owners are Northridge Owner LLC and Northridge Irwin LLC. Councilmember Meinzen McEnerny seconded the motion. The motion carried unanimously.
Resolution No. 2010-07-51

(Agenda Item No. 10-173)

7. Consideration of Approval of the Intergovernmental Agreement (IGA) For the Partnership between the Cities of Roswell and Sandy Springs to Design and Build a Pedestrian/Bicycle Bridge across the Chattahoochee River

Transportation Planning Manager Garrin Coleman stated the agenda item was brought to Council about two months ago. It was decided that Sandy Springs will go forward with a portion of the design costs. At that time, the City of Roswell declined to move forward at all. The City of Roswell wanted to make sure there was a 50% cost share commitment. Public Works placed the line item in the budget and it did rank high enough to make it into the Capital Improvement Program for this year. Staff is recommending proceeding with this IGA.

Motion and Vote: Councilmember Fries moved to Approve Agenda Item No. 10-173, Approval of the Intergovernmental Agreement (IGA) For the Partnership between the Cities of Roswell and Sandy Springs to Design and Build a Pedestrian/Bicycle Bridge across the Chattahoochee River. Councilmember Jenkins seconded the motion. The motion carried unanimously.
Resolution No. 2010-07-52

(Agenda Item No. 10-174)

8. Consideration of Approval of Acquisition Support Services to Assist with the Preparation of General Government Services Procurement

City Attorney Wendell Willard stated Council has a memorandum on what has taken place by the City Manager with the work of the evaluation committee. The committee consists of Noah Reiter, himself, and the Mayor of Social Circle, Jim Burgess. The three of them served as an evaluation committee and received the request for qualifications from four groups. They did a full study review of them based upon a ranking which determined qualifications and experience of a proposed applicant. There was an oral presentation by the applicants. The committee opened the bid proposals after the evaluations. With all the information, they came up with the best qualified, which was PTSI/Glenn Kempf, LLC. There were four applicants and it was based on qualifications, experience, oral presentations, and cost of their proposals. From that cost, the amount from PTSI/Glenn Kempf, LLC is not to exceed $250,000. They will be working with the staff in the City for about the next year assisting in putting together the request for proposals and defining all the services expected to be delivered to the City and the price for those services.

Motion and Second: Councilmember Jenkins moved to approve Agenda Item No. 10-174, Approval of Acquisition Support Services to Assist with the Preparation of General Government Services Procurement. Councilmember Paulson seconded the motion.

Councilmember Tibby DeJulio stated he had a disclosure to make. One of the principles of the company PTSI is a personal friend and client of his. He made the initial introduction of him to the committee on a pro bono basis. The committee, without Councilmember DeJulio involved, requested that he submit a proposal on this RFP. Councilmember DeJulio stated he hasn't had contact with the principle since the RFQ went out, and hasn't been involved in the evaluation. He will refrain from voting on this agenda item.

Vote on the Motion: The motion carried 5-0, with Councilmember DeJulio recusing himself.

(Agenda Item No. 10-175)

9. American Recovery and Reinvestment Act - Energy Efficiency and Conservation Block Grant (EECBG) Installation of Solar Photovoltaic and Solar Water Heating System

Assistant Director Building and Development Blake Dettwiler stated an invitation to bid went out in March of this year. The construction project would involve installation of solar photovoltaic systems, solar water heating systems, and upgraded mechanical systems on Fire Station #1 and #2. This is the second of two projects by Council to use funds granted to the City by the American Recovery and Reinvestment Act, more appropriately the EECBG program. This item is a recommendation from staff to award this project to Morgan Constructors, LLC. They are the lowest, most responsive bidder with a bid of $280,000 of the $421,000 allocated for this contract. The second part of this is a recommendation based on the extra money that's available through EECBG to seek approval of a no cost budget adjustment through the department of energy. This would be to install a Cool TPO Membrane Roof on each of these facilities that will further increase the energy efficiency of the mechanical systems inside the building and a solar array on the roof.

Mayor Eva Galambos asked if this will be a part of what was already appropriated.

Assistant Director Building and Development Dettwiler stated it's a part of what's already appropriated, but the roof portion will have to go back to DOE for approval prior to reletting as a separate bid.

Councilmember Karen Meinzen McEnerny stated Fire Station #3 is relatively new. Fire Station #4 is leased from the City of Atlanta for $1 per year. The City of Sandy Springs is required to maintain Fire Station #4, which includes capital items. Can you share why no funds were allocated from this agenda item to go to that property? When we took it over it was in serious shape.

Assistant Director Building and Development Dettwiler replied because this station is leased and is not owned by the City. This program is specifically for renewable energy projects on City owned buildings. City staff did look at all four fire stations. Fire Station #4 is not a good candidate for the solar PV project because of tree cover, but the main reason is because it's a leased property.

Councilmember Meinzen McEnerny asked if the terms of the grant are just for facilities owned by the City.

Assistant Director Building and Development Dettwiler stated yes, that is his understanding.

Motion and Vote: Councilmember Jenkins moved to approve Agenda Item No. 10-175, American Recovery and Reinvestment Act - Energy Efficiency and Conservation Block Grant (EECBG) Installation of Solar Photovoltaic and Solar Water Heating Systems and award the grant money to Morgan Constructors. Councilmember Paulson seconded the motion. The motion carried unanimously.

(Agenda Item No. 10-176)

10. Heritage Bluestone Construction Project

Director Recreation and Parks Ronnie Young stated the bidding process has been completed for Phase II of the Bluestone Renovation and Construction. The renovation and construction over the past year; the design and specifications; and bid documents have been prepared by the Sizemore Group. The work includes the basement renovation, adding a veranda, adding a storage building, and adding exterior stone and columns to the existing Bluestone building. The bid information was released in April, 2010, and was due in May, 2010. The City reviewed the bids and recommends the award be given to JHC Corporation at $1,358,600, which is the lowest and most responsive bid.

Motion and Vote: Councilmember Jenkins moved to approve Agenda Item No. 10-176, Heritage Bluestone Construction Project and award to JHC Corporation. Councilmember DeJulio seconded the motion. The motion carried unanimously.

K) REPORTS AND PRESENTATIONS

There were no reports from Council or staff.

L) PUBLIC COMMENT

Henry Schwab, 37 N.W. 28th Street, stated he would like to make a comment about a business license application at 5920 Roswell Road, Suite A-101. He would like the City to review this application very carefully. The application lists Dr. Michael Thompson as the owner and T + T Mykono's, LLC, as the corporation. The application is incomplete because corporations much provide the names of all officers and this has not been done. Previous building application documents list Jimmy Tselios as the owner. If Mr. Tselios is the real owner, he would urge special caution. Mr. Tselios is a business man of questionable practices. He has a trail of bad checks and unpaid bills all around the Atlanta area. A simple check of the court records in the counties around Atlanta will reveal some of these business practices. At this location, construction went on for weeks without obtaining a building permit. A stop work order was issued. The Building Department can give you more information about that matter. A banner permit was issued, but two banners were installed. The Code Enforcement office can provide more information about this. He understands this application is for a business occupational tax and the Council may have little authority to deny such an application. However, he suspects there will be an application for an alcohol pouring license soon, and the Council can review this applicant for that with the same careful scrutiny. He thanked the Mayor and Council for their service to the City.

Mayor Eva Galambos stated that the City staff will be diligent in making sure everything is correct.

Councilmember Chip Collins asked where this business is located.

Councilmember Dianne Fries stated it's in the Parkside Shopping Center.

(Agenda Item No. 10-177)

M) EXECUTIVE SESSION – Potential Litigation

Motion and Vote: Councilmember DeJulio moved to enter into Executive Session to discuss potential litigation with the Assistant City Manager, City Attorney, City Clerk, and Chief of Police included. Councilmember Fries seconded the motion. The motion carried unanimously, with Councilmember Paulson, Councilmember Fries, Councilmember Collins, Councilmember Jenkins, Councilmember DeJulio, and Councilmember Meinzen McEnerny voting in favor of the motion. Executive Session began at 8:32 p.m.

Motion and Vote: Councilmember Jenkins moved to adjourn Executive Session. Councilmember Fries seconded the motion. The motion carried unanimously, with Councilmember Paulson, Councilmember Fries, Councilmember Collins, Councilmember Jenkins, Councilmember DeJulio, and Councilmember Meinzen McEnerny voting in favor of the motion. Executive session adjourned at 9:10 p.m.

City Attorney Wendell Willard stated the issue is the matter of the use of right-of-ways by various utilities in the City of Sandy Springs. The City has embarked upon a program of construction of sidewalk and landscaping. Projects will not always involve the widening of the road, although the work will be done in the right-of-way. Legal staff has had discussions with Comcast. Andy Mack with Comcast is here tonight and would like to speak to Council and present a proposal for Council's consideration.

Andy Mack, Representative of Comcast, stated that Comcast has enjoyed a great relationship with the City. Comcast has done it's best to be a responsible corporate citizen engaged in the community. They have held Comcast Care Safe project at Heritage Sandy Springs and made the effort to pay franchise fees going back to December 1st, versus the April or May date when the City and Comcast first entered into the franchise agreement. When Comcast entered the franchise agreement with the City, it was their intent they would be treated similar to other users of the right-of-ways. With road widening, it is the standard that the utilities do indeed pay for the movement of the facilities. However, with streetscape and sidewalks projects, it is the standard that the community pays for the relocation of the facilities. Given that we are at a crossroads here, it's the company's desire to not engage in any sort of litigation or to take this issue beyond the consideration of this Council. Comcast is prepared to move their facilities and can have this done within a week's time. In the future, Comcast would expect to be reimbursed for the movement of their facilities as other users have been. He offered that Comcast absorb the cost of the movement of this project and maybe extend beyond this project to another project or two. Then, as a consideration for that, Comcast and the City would amend the franchise agreement to exactly reflect the understanding.

Mayor Eva Galambos stated she believes this is a very complicated issue. She and Council heard some positions from the City Attorney while in Executive Session. Now she is hearing a good message from Mr. Mack. The consensus was that Council needs full understanding of these issues before any long term decisions are made. This is not something that can be decided tonight. However, the citizens on Windsor Parkway are suffering and aren't happy with the City or Comcast.

Councilmember Ashley Jenkins stated she thinks the Mayor hit the nail on the head. If the Mayor and Council can get past this issue, then it gives them time to hear arguments on both sides and create a policy that is fair.

Mayor Galambos stated we don't understand enough tonight to come to a final decision.

Mr. Mack stated Comcast doesn't want the impression of his company as being the one that holds up the completion of the City's sidewalk project. Comcast also has some equity considerations and what their expenses are.

Mayor Galambos stated it's possible that once Council has a fuller understanding of this issue, they will understand Comcast's position better. At this point, Mayor and Council don't fully understand and Mr. Mack is asking them to make a decision tonight. Mayor and Council like his offer to solve this thing for tonight and see where we can go in the future.

Mr. Mack stated ok. Similarly, he's not in a position to say whether Comcast can or cannot move forward with that understanding. He appreciates the City's suggestion was made in good faith. He will take this information back to Comcast and advocate appropriately.

Councilmember Tibby DeJulio asked, so you're not in a position to speak for the company in this matter?

Mr. Mack stated he's in a position to speak for the company, but he has certain parameters that he comes to the City with. Before he makes a commitment to the City, he wants to make sure he's not overstepping his boundaries. He thinks he can have an answer to Council in a short time.

Councilmember Jenkins asked how short of a time to get an answer. We need to have the utilities moved, so the City can continue on this project.

Mr. Mack stated Comcast can have the facilities moved within a week, give or take a day.

Councilmember Dianne Fries asked if Mr. Mack can let the City know by the end of the week.

Mr. Mack stated certainly. His ideal situation is to move past this with at least some letter of understanding within a few days.

Mayor Galambos stated Council would like to have a full exposition of Comcast's position, just like the City will give Comcast a full exposition of the City Attorney's position. At this point, Council doesn't understand it.

Mr. Mack stated fair enough. It's not Comcast's desire to enter into a litigious situation with the City for $25,000. Comcast could eat that up in legal bills, and that's certainly not their plan.

City Attorney Willard stated he would like Public Works Director Tom Black to address what his time schedule is regarding the need to go forward. The question is, if we don't get an understanding back from Comcast, we're waiting until the next meeting before we can address Council again on this point.

Public Works Director Tom Black stated it will hold up the project significantly if we can't get a decision before August. He stated maybe the City can do something the way GDOT does. When there is an impasse like this, so the project doesn't get slowed down, the City can move forward as a force account. Comcast can keep track of their expenses and document their expenses and at some point in time, it will be included in an agreement or the City and Comcast will litigate to see who owes the money. This way the project will move forward.

Councilmember Jenkins asked Mr. Mack if this can be done. You said it's about $25,000?

Mr. Mack stated it's about $26,000. That sounds like a reasonable solution.

City Attorney Willard stated he wants to be sure the City has an understanding from Comcast. Comcast will go ahead and do a removal and relocation of their utilities on the Windsor Parkway Project, and that will be something the City will consider with whatever change of policy the City may undertake with Comcast.
Councilmember Fries added and Mr. Mack will let us know by Friday.

Mayor Galambos stated she feels confident that the City will receive an authorization from Comcast.

City Attorney Willard recommended a motion by Council with the condition if Comcast should fail to give the City word by Friday July 16, 2010, that it is going to, at its current expense, make a removal and relocation of its utilities with regards to the Windsor Parkway project, then Council authorizes City staff to proceed with obtaining contractors to make that removal. If that's necessary, the City will then address the costs with Comcast at a future time.

Motion and Vote: Councilmember DeJulio moved to approve a verbal resolution utilizing the language provided by the City Attorney. Councilmember Meinzen McEnerny seconded the motion. The motion carried 5-1, with Councilmember Fries voting in opposition.

(Agenda Item No. 10-178)

N) ADJOURNMENT

Motion and Vote: Councilmember DeJulio moved to adjourn the meeting. Councilmember Jenkins seconded the motion. The motion carried unanimously. The meeting adjourned at 9:25 p.m.

Date Approved: August 17, 2010

Eva Galambos, Mayor

Michael Casey, City Clerk