

**Regular Meeting of the Sandy Springs City Council was held on Tuesday, November 18, 2014, at 6:00 p.m., Mayor Rusty Paul presiding.**

**INVOCATION**

Pastor Henry Bush, Sharon Community United Methodist Church, offered the invocation.

**CALL TO ORDER**

Mayor Paul called the meeting to order at 6:00 p.m.

**ROLL CALL AND GENERAL ANNOUNCEMENTS**

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

City Clerk Casey called the roll.

**Mayor:** Mayor Paul present

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

**PLEDGE OF ALLEGIANCE**

Mayor Rusty Paul led the Pledge of Allegiance

**APPROVAL OF MEETING AGENDA**

**Motion and Vote:** Councilman DeJulio moved to approve the Regular Meeting Agenda for November 18, 2014. Councilman Dishman seconded the motion. The motion carried unanimously.

**CONSENT AGENDA**

**(Agenda Item No. 14-258)**

1. Meeting Minutes:
  - a) November 4, 2014 Regular Meeting
  - b) November 4, 2014 Work Session
  - c) October 27, 2014 Special Called Meeting*(Michael Casey, City Clerk)*

**(Agenda Item No. 14-259)**

2. Ordinance Amending Chapter 30, Article III, Sec. 30-70 of the City of Sandy Springs Code of Ordinances Relating to Court Procedure; and for Other Purposes  
*(Wendell Willard, City Attorney)*

**Ordinance No. 2014-11-38**

**(Agenda Item No. 14-260)**

3. Acceptance of the Donation of a Permanent Drainage Easement Associated with the Glenforest Road Stormwater Improvements Project  
*(Garrin Coleman, Director of Public Works)*

**Resolution No. 2014-11-107**

**(Agenda Item No. 14-261)**

4. Update and Proposed Intergovernmental Agreement Revision between the City of Roswell and the City of Sandy Springs to Address Increased Preliminary Engineering/Environmental Costs for CIP Project T-0035, SR-9/Roswell Road Pedestrian and Bicycle Bridge over the Chattahoochee River

*(Garrin Coleman, Director of Public Works)*

**Resolution No. 2014-11-108**

**Motion and Vote:** Councilman Sterling moved to approve the Consent Agenda for November 18, 2014. Councilman Paulson seconded the motion. The motion carried unanimously.

**PRESENTATIONS**

1. Proclamation for Sharon Community United Methodist Church 125<sup>th</sup> Anniversary – Mayor Paul

**Mayor Rusty Paul** read the proclamation which states, “The Sharon Community United Methodist Church was founded and organized by a group of Sandy Springs residents in 1889. Sharon Community Church is a place of worship, with community members coming together to focus their attention on God. The Church is a place of friendship, building lasting bonds between members and sharing in the joy of Christian friendship. Sharon Community Church is a place for learning, providing instruction and guidance for daily living. The church is also a place for enrichment, sharing in the wealth of opportunities, special programs and ministries for children, youth and adults. Sharon Community Church is a place of Service, providing for those within the church family and outside our fellowship. Today the Church has more than 300 members representing more than 10 countries. The City of Sandy Springs commends the Sharon Community Methodist Church for its 125 years of service.” He proclaimed November 18, 2014 Sharon Community United Methodist Church Day in the City of Sandy Springs.

**PUBLIC HEARINGS**

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

**Alcoholic Beverage License**

**(Agenda Item No. 14-262)**

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

**Assistant City Attorney Cecil McLendon** stated he was not at the last Council meeting. He understands a public hearing was conducted on this item. Finance Director Ellis will present the staff report based on the information obtained after the last meeting.

**Finance Director Karen Ellis** stated this application for consumption on the premises for Taboo 3000 came before Council on September 16<sup>th</sup>. It was announced this was to be a change of ownership for an alcoholic beverage licensee application for consumption on the premises of wine, malt beverage, and distilled spirits for Taboo 3000. After having reviewed the application, the City Attorney noted the documents required to be part of the package had not been included by the applicant and accordingly a 60 day temporary license was issued. Since September 16<sup>th</sup>, the applicant has provided additional documentation to the City. After further review of those documents, staff noted that within the application the business was to begin on July 1<sup>st</sup> and the change of ownership was effective at that time. Based on testimony at the September 16<sup>th</sup> hearing, it does not appear the sale had taken place as stated in

the application. Pursuant to Section 671 of the Sandy Springs Code of Ordinances, an alcoholic beverage license may be suspended or revoked for any material misrepresentation or omission in the application for a license. Based upon this information, staff makes no recommendation at this time.

**Cary Wiggins, representative of the applicant**, stated he was at the meeting on September 16<sup>th</sup> where there was some question about the sale of the business. They provided supplemental information. The sale has not occurred, is in process and is contingent on the liquor license being obtained. His law firm prepared the alcohol license application and indicated July 1<sup>st</sup> as the transfer date. His office prepared the application in April 2014 and filed the application on July 21<sup>st</sup>. That is not a material discrepancy, but the date his office thought Mr. Durden would begin operating the business. His office provided everything to the City.

**Ken Sokolov, representative of Certa Enterprises**, stated Certa Enterprises is the current holder of the alcohol beverage license for this facility at 6075 Roswell Road. There has been a suggestion that there has been a transfer affecting the operation or the ownership of this licensed facility. That has not occurred. Certa Enterprises has been the exclusive owner and in complete control of the facility. Neither Dr. Durden nor Durden Business Development has had anything to do with the operation or the sale of alcoholic beverages at this facility. The suggestion there has been a transfer of beneficial ownership altering the status of the licensee at this facility is incorrect. His client, Certa Enterprises Inc., has and continues to remain the holder of the alcohol business license in good standing. There has been no change in that status.

**Mayor Rusty Paul** asked who prepared the documentation for submission to the City.

Mr. Wiggins stated his law firm prepared the application.

Mayor Paul asked if Mr. Wiggins was under the assumption when he prepared those documents and gave those dates on the documents that the close of sale had occurred.

Mr. Wiggins stated his law firm knew the case, or had the impression, that the sale had not taken place. When the application was delivered to the City and speaking to Mr. Suggs in the licensing department: one question on the application is the applicant's employment date with the present business and his law firm indicated July 1<sup>st</sup>; the date the business would begin in Sandy Springs, again his firm indicated July 1<sup>st</sup>; and transfer/change of ownership again was indicated as July 1<sup>st</sup>.

Mayor Paul asked if Mr. Wiggins knew those dates were false.

Mr. Wiggins stated that is not false.

Mayor Paul stated there has not been a transfer and none of those things occurred on July 1, right?

Mr. Wiggins stated the applicant was employed with his business.

Mayor Paul asked if all the requirements necessary to effect the transfer of the liquor license occurred, as submitted by Mr. Wiggins, on July 1<sup>st</sup>.

Mr. Wiggins responded no. On the last question, if the transfer/change of ownership effected...

Mayor Paul asked when Mr. Wiggins found out this was an erroneous submission.

Mr. Wiggins stated in the process of...

Mayor Paul asked when Mr. Wiggins found out it was an erroneous submission.

Mr. Wiggins stated first of all...

Mayor Paul asked when it came to Mr. Wiggins' attention, if he prepared the documents, that the materials he provided to the City of Sandy Springs were false.

Mr. Wiggins stated he did not provide false documents to the City of Sandy Springs.

Mayor Paul asked if Mr. Wiggins signed any affidavits.

**Councilman Graham McDonald** asked who signed the application on page 8.

Mr. Wiggins stated Dr. Durden is the applicant.

Councilman McDonald asked if Dr. Durden gave sworn information to the City on the application.

Mr. Wiggins responded that is correct. Dr. Durden signed the application on April 21, 2014.

Mayor Paul stated this is November and Dr. Durden submitted a false document in April.

Mr. Wiggins stated Dr. Durden did not submit a false document.

Mayor Paul asked how he is supposed to interpret that.

Mr. Wiggins stated the code and questions....

Mayor Paul stated if Dr. Durden swore on the 25<sup>th</sup> of April that he was the applicant and that he met all the requirements, and this is November 18<sup>th</sup> and that still has not occurred, then that is a false document.

Mr. Wiggins stated he disagrees. The liquor license application process is somewhat of a fiction.

Mayor Paul stated it is a very well understood process that happens in this community on a regular basis.

Mr. Wiggins stated in general the idea that one person... When you have a company that is selling, where you have a seller and a buyer and you make the sale contingent on the liquor license, which is normal protocol in this industry, there is sort of a funk. If the transfer of ownership is effective, what is the effective date of this change; his office wrote down July 1<sup>st</sup>. His office understood this to be the date the prorated share would kick in. Hind sight being what it is his firm should have put a parentheses and stated "change effective upon obtaining the license".

Mayor Paul asked how long Mr. Wiggins has been practicing law.

Mr. Wiggins responded a little under twenty years.

Mayor Paul stated this is a standard process that most lawyers understand, correct?

Mr. Wiggins stated it is a process. He has filed other applications with the City that have the same issue and have never encountered such flack on a routine liquor license application, notwithstanding the events that are surrounding in the federal court. If Council were to consider this to be a material misrepresentation, not knowingly, he would prefer to withdraw the application, make the notation in parentheses, and then refile the application. His client has invested too much money, time, and effort to

have the City reject the application for that reason. It is not material. For example, if there were a group of three to four investors and one of the people in the group had one or two felony convictions, and on the application the felony convictions were failed to be listed, he would submit there would be an inference that the reason the convictions were not listed was to hide it, because it would disqualify the group. In this situation, it does not matter when the sale was consummated. It is not material. The seller and buyer were disclosed, the companies, and the bank records were disclosed. The purchase date was a little murky. When he was at the last Council meeting, he stated he was not sure about the sale of the business being contingent on the alcohol license, which he was since able to confirm. That is not fraudulent or fraud.

Mayor Paul stated he did not use either term.

Councilman McDonald asked if the applicant is in attendance. He would like to speak with him. He asked Dr. Durden where he lives.

**Dr. Kenneith Durden, applicant,** stated he lives in Savannah, GA, but he has residence and businesses in the Atlanta area. He comes back and forth between the two locations to oversee his businesses.

Councilman McDonald asked what the businesses are Dr. Durden has in Atlanta.

Dr. Durden stated he has other counselling agencies in Alpharetta and Augusta, GA as well as other businesses throughout the whole state.

Councilman McDonald asked if Dr. Durden has experience anywhere in the state operating a bar or nightclub.

Dr. Durden stated he has stock in the Shark Bar located on Green Briar Parkway. He has been learning how to operate businesses based off that information. This business is an investment he made over two years ago.

Councilman McDonald asked if Dr. Durden by occupation is a psychiatric counselor.

Dr. Durden responded yes, he is a licensed therapist.

Councilman McDonald asked if that is a full time job.

Dr. Durden stated he runs the businesses and has other people working for him. He actually has a trucking company as well. This is America, so he can run as many different businesses as he wants to run.

Councilman McDonald asked what the name is of the psychiatric counseling company.

Dr. Durden responded Durden Consulting Services.

Councilman McDonald asked where the counseling center is located.

Dr. Durden stated there are locations in Alpharetta, Savannah, and Augusta, throughout the state.

Councilman McDonald asked if he is familiar with the requirements pursuant to a liquor license in Sandy Springs with the number of hours required to be at the establishment.

Dr. Durden stated he is aware of it, that he is required to be at the establishment ten hours a week. He will be in the Atlanta area roughly every weekend overseeing his other businesses at the same time. Sometimes he will be in the Atlanta area during the week.

Councilman McDonald asked if Dr. Durden is aware of the public safety issues that have arisen at this property in the past.

Dr. Durden stated he heard some news about the issues. He is looking to run the business in a totally different set up. If the City gives him the opportunity, he can make some changes. Instead of just looking at what happened in the past, he would like to do something different with this business in the future.

**Councilman Tibby DeJulio** stated when this petition was originally presented to Council, Dr. Durden represented at the time that the closing had already taken place.

Dr. Durden stated the closing is based on two things. One is the lease assignment and the other is the liquor license. He is not going to purchase a business until all the closing items are completed. He asked how he can make money if he has not totally closed on the business. He wants to make sure everything is done and taken care of, so when the closing occurs he receives the key and money.

**Councilman Gabriel Sterling** stated he asked the attorney at the last City Council meeting if the closing was contingent and Mr. Wiggins was not sure. Mr. Wiggins words of murky and unclear make the Council a little on the leery side about the application at this point. It is not just about a date, but the representations made of that, and the ten hour a week requirement of an owner who lives in Savannah.

Dr. Durden stated you can look at the mileage on his vehicle, which has thousands of miles. He drives to his businesses and flies to different places. He was absent at the last Council meeting because he was in Florida taking care of things. He believes in going out and making money and he's trying to make a business grow. He loves Sandy Springs and this is a great place to be and he may actually purchase real estate in the City one day. There are different things he is looking to learn through this whole process, if given the opportunity.

Mr. Sokolov stated the word Mayor Paul used was misrepresentation. There was no misrepresentation. He personally has been in constant contact with Mr. Willard who communicated with his office and asked for documents, checks, and documents in writing. Everything has been provided to Mr. Willard that includes bank statements showing the operations of the facility. He has been completely forth coming with Mr. Willard and even went to Mr. Willard's office and explained exactly how this situation had happened and why. The situation was coterminous on obtaining an alcohol beverage license to facilitate the transfer of the operation, but that his client still continued to be in control. He has endeavored to answer all questions from Mr. Willard and communicated with him on several occasions. Mr. Willard never told him that he considered him or Mr. Wiggins to have misrepresented anything to him.

Mayor Paul stated when documents are submitted that state certain things have occurred, and they have not, that is the term that he would use for it.

Mr. Wiggins stated he is not completely clear what documents are included with the application at this point. Given the staff's recommendation or lack of recommendation at the beginning of the hearing... When he used the word murky that is not a glowing word.

Councilman Sterling stated that word is very accurate in this case.

Mr. Wiggins stated the introduced documents were drafted by the clients, the seller, and the buyer and not by him or Mr. Sokolov or attorneys. There was an amendment to the asset purchase agreement which

came into his hands later in the day. Part of the application did not have some of the exhibits to go with the amendment. That is not a material issue.

Mayor Paul stated he asked the question who prepared the documents and Mr. Wiggins stated his firm did, and Mr. Wiggins just now said that he didn't.

Mr. Wiggins stated he prepared the liquor license application.

Mayor Paul stated he asked who prepared the documents.

Mr. Wiggins stated he did not prepare any of the documents. There are a string of lease assignments stretching back to 2003 or 2004. He is not a corporate lawyer and he does not have the brains to do that, apparently.

Councilman Sterling asked about the leases to 2003 and 2004.

Mr. Wiggins stated the leases are included in the application.

Councilman DeJulio asked if Mr. Wiggins can tell Council who prepared the documents. First, it was stated Mr. Wiggins firm prepared them, and now Mr. Wiggins is saying his firm did not prepare them. He asked if the discussion is about the sale documents or the liquor license documents.

Mr. Wiggins stated his law firm prepared the alcohol beverage license application, and that is it. The alcohol license application asks for the lease and his firm provided the lease and history of the lease assignments. Subsequent, Mr. Willard asked for banking documents and asset purchase agreement and his firm provided all of that. He did not prepare any of those documents, because he is not competent to draft any of that stuff. The clients did that, and it is less than stellar work product. He should not use the word murky. It is very clear what their intent was and he can only say he agrees 100% with Mr. Sokolov. If the Council needs the amendment to the asset purchase agreement, he asked they tender it tonight.

Councilman Sterling asked if Mr. Wiggins just received this documentation today.

Mr. Wiggins stated he was referring to later in the day when he did receive it.

Mr. Sokolov stated all this documentation was provided to the City Attorney by his office about over two months ago. What was requested was provided, all of the checks and bank statements. Everything they asked for documenting the entire transaction, explaining the entire chronology of what happened. Any discrepancies were explained personally by himself to Mr. Willard upon examination at his office about 1 ½ months ago.

Assistant City Attorney McLendon stated all of the documentation that was provided was included with the memo and is part of the record. If it was already provided to Mr. Willard, it has already put into the record.

**Motion and Vote:** Councilman McDonald moved to deny Agenda Item No. 14-262, Alcoholic Beverage License Application for Taboo 3000, 6075 Roswell Rd, for Consumption of Wine, Liquor, and Malt Beverage, due to material misrepresentation in the application relating to when the business began operation. Councilman DeJulio seconded the motion. There was no Council discussion. The application was denied unanimously.

Mr. Wiggins stated he did not know the grounds for the denial until they were raised by Councilman McDonald. He would like to present his objections. He has them in written form, so he can just tender the objections.

Assistant City Attorney McLendon stated he is fine with the objections being tendered.

Mayor Paul stated the objections can be given to the City Clerk.

### **River Corridor**

#### **(Agenda Item No. 14-263)**

#### **2. RC-14-02SS (6375 River Chase Circle NW)**

**Community Development Director Angela Parker** stated this is a river corridor application. Staff recommends approval. The Atlanta Regional Commission (ARC) Board has also recommended that a certificate be approved and issued for this property.

**William Royal, 30 Bonnie Lane**, stated he is the applicant and he is looking forward to joining the community of Sandy Springs.

**Councilman John Paulson** asked if there is a house on the property currently.

Mr. Royal stated the property is currently under construction.

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

**Motion and Vote:** Councilman McDonald moved to approve Agenda Item No. 14-263, RC-14-02SS (6375 River Chase Circle NW). Councilman Paulson seconded the motion. There was no Council discussion. The motion carried unanimously.

**Councilman Graham McDonald** stated he did not make his motion of approval with the qualification that it is consistent with the Chattahoochee Corridor Plan. He asked if that needs to be done.

**Assistant City Attorney Cecil McLendon** stated the application itself sets forth the plan which is consistent with that.

### **Rezoning**

#### **(Agenda Item No. 14-264)**

- 3. 201300687 (DRI)\*\* - Tax Parcel 17-0019 - LL-059 (Abernathy Road, Peachtree Dunwoody Road, Mount Vernon Highway, GA 400), Applicant: Hines**, to rezone the subject property from O-I (Office and Institutional District) conditional to MIX (Mixed Use District), with a use permit to exceed the maximum district height and concurrent variances

**Community Development Director Angela Parker** stated staff initially recommended deferral of this item. However, earlier in the week staff received a letter from the applicant indicating they are seeking withdrawal of this application.

**Nathan Hendricks, representative of the applicant**, stated he submitted to staff the letter requesting the withdrawal. This application has been in the process for quite some time, since March 2013. There were issues with GDOT and those issues were worked through. In March 2014, the application was before

Council for consideration. There are issues now pertaining to the scope of this application and as it interfaces with development in the PCID corridor. If this application evolves, there may be a sizeable tenant for market use. Then, if it seems appropriate, the applicant will revisit with Council on the multifamily component.

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

**Tochie Blad, 7320 Hunters Branch Drive**, stated she is speaking on behalf of the Sandy Springs Council of Neighborhoods. The concerns from the community are that the corridor on Peachtree Dunwoody Road from Hammond to Mount Vernon is about to be oversaturated with apartments. The residential component will place a strain on water and sewer services as opposed to office use. More housing means an impact to the surrounding schools. The integrity of the current traffic flow from the surrounding neighbors on evenings, weekends, and holidays would be impacted with the new uses of apartment and retail. The project's proximity to MARTA has no benefit for vehicles coming from or headed towards the west. There would be no easy route for people to cross Peachtree Dunwoody Road to get to the Sandy Springs MARTA station. There is no positive impact to the surrounding neighborhoods or the City with this massive development adding MIX use retail and apartments. Under the MIX guidelines, the old zoning would be superseded by the new MIX. Under the new MIX rules, it does not dictate which item is built when. The 1987 zoning is still in place and the neighbors appreciate Hines diligence with this project. It was very helpful for Hines to meet with staff and the City of Dunwoody earlier this month and she hopes to see more coordination between the two governments.

**Ken Klatt, 415 Otter Creek Court**, stated he is the soon to be president of the Glen Meadows Neighborhood Association. His subdivision is about half a mile north of Abernathy Road and will be directly impacted by the proposed development. The neighborhood is deeply concerned about the infrastructure and traffic that the plan will contribute to and they agree with the comments that Ms. Blad stated.

**Melissa Mular, 258 The South Chace**, stated she lives in Autumn Chace, which is a community of 172 townhomes. The residents are very concerned about the traffic. There is already oversaturation with apartments in progress and already built. The residents do not want the rezoning, because the increased traffic will impact the community.

Mayor Paul closed the public hearing.

**Motion and Second:** Councilman Sterling moved to approve the withdrawal of Agenda Item No. 14-264, 201300687 (DRI)\*\* - Tax Parcel 17-0019 - LL-059 (Abernathy Road, Peachtree Dunwoody Road, Mount Vernon Highway, GA 400), *Applicant: Hines*, to rezone the subject property from O-I (Office and Institutional District) conditional to MIX (Mixed Use District), with a use permit to exceed the maximum district height and concurrent variances. Councilman Dishman seconded the motion.

**Councilman Gabriel Sterling** stated one good thing that can come out of this is that Dunwoody, Brookhaven, and the PCID are working together. Mayor Paul showed strong leadership to make sure that the corridor is functional for the long term. He asked staff to move quickly to come up with development standards to make sure the connectivity can be done. This area is the heart of the employment area for the entire southeast. Hines has the ability to build the fifty story office building. He is hopeful when they have a tenant they will come back to Council for the variances to try and make the project better than what exists on paper now. He would like to see the connectivity with the MARTA rail line.

Mayor Paul stated one set of infrastructure is over utilized and one set is underutilized. There are too many people on the streets and not enough people on MARTA. There needs to be a balance in order to maintain mobility in this area. We want to move as quickly as possible to get design and development

standards in this area to preserve the quality of life. He thanked the City of Dunwoody, PCID, and Brookhaven.

**Vote on the Motion:** The motion carried unanimously.

**(Agenda Item No. 14-265)**

4. **201401601** - 5950 Mitchell Road, *Applicant: Rockhaven Homes*, to rezone from R-1 (Single Family Dwelling District) to R-4 (Single Family Dwelling District) for the development of a 15-lot subdivision, with concurrent variances

**Community Development Director Angela Parker** stated this item was deferred at the last Council meeting. The direction was to make a correction to an error on the site plan and to continue to work with the community. The recommendation by staff is fifteen lots and the community indicated they want fourteen lots. The applicant continues to work with the community. This afternoon, around 3:30 p.m., staff received a revision to the landscape plan. The current staff conditions call for condition 3.a. that references a landscape plan that was received on August 18<sup>th</sup>. However, the applicant has submitted a revised landscape plan today that reflects concerns the community has in regards to landscaping along the frontage. In the event Council approves this application, staff would like to see condition 3.j. reflect the landscape plan that staff received today.

**Nathan Hendricks, representative of the applicant**, stated from the subject property going towards Hammond Drive, the density transitions down while moving along Mitchell Road. The application is in compliance with the required density. The difference is between fifteen lots and fourteen lots. The applicant has committed to underground detention. If one lot were to be removed, the developed lot is a value of about \$350,000. The difference between above ground detention and below ground detention is about \$200,000. If the underground detention is required, that would be a total cost about \$500,000. On November 12<sup>th</sup> a meeting was held with the community.

**Brad Hughes, applicant**, stated the concerns from the neighbors were taken into consideration. They wanted to increase the tree density. Street trees have been added to the plan along the property. A second row of trees of red maples have been added to the front entrance. He referenced the revised landscape plan per the meeting last Wednesday with the community.

Mr. Hendricks stated there is also a letter submitted by Rockhaven committing to sixteen different points of conditions for enhancement to the development.

**Brent Story, 4000 N. Stratford Rd.**, stated he is the broker in the transaction. The applicant met on twelve occasions with the neighborhood. This is not a case of a greedy developer and not listening to the neighbors. The applicant has given many concessions on a deal of this size. Many of the concessions are costly items. He has been working with Lucy McAllen, who is the owner of the property on this transaction. If the applicant could have worked the deal out with fourteen lots, he would have. Due to a family situation with Ms. McAllen she does not want to do that. Rockhaven is trying to do everything they can to make this the best community it can be for Sandy Springs.

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

**Laurie Robbins, 24 Ridgemere Trace**, stated she is a thirty-five year resident of Sandy Springs and a fifteen year business owner in Sandy Springs. She opposes the density. The neighborhood originally wanted thirteen houses and the number is now at fourteen. The neighbors would be happy with fourteen. This would be trying to squeeze too much in the 5.09 acres. The neighbors would like the density similar to the homes in Manchester Place, which is 2.4 units to the acre, and Long Island Walk at 2.32. The

neighbors support fourteen lots, not fifteen. There are single family homes on Mitchell Road, including the historic Mitchell House built in 1870, on one acre of land. This is a zoning issue and not to negotiate a sale. She understands the land owner has an issue with the price, but that is not an issue for discussion. The neighbors are in favor of the underground detention. It should be further away from the adjacent neighbors. The neighbors support the City's recommendation for sidewalks for the development along Mitchell Road. She is happy the landscaping will be closer together, but still does not think it will be a sufficient amount. The landscape screening is needed to screen the detention pond. The pond will be visible from Mitchell Road to all the neighbors. The documents show the City is requiring entrances on the lots that are on the corner of the development on Mitchell Road in order to have access on Mitchell Road. She was told at the last meeting that is an error, but that has not been corrected yet. She has attended every meeting with Rockhaven. After the City Council meeting in October, the neighbors did not hear from Rockhaven, so she contacted the City. Linda Abaray sent her the plans that were submitted on October 22<sup>nd</sup>. She emailed Ms. Abaray on October 29<sup>th</sup> and she then heard from Rockhaven to arrange a meeting that was held last week. She thanked the Mayor and Council for their time and patience.

**Jeff Mitchell, 8 Braemore**, stated he represents thirteen homes in the Braemore subdivision. Although each speaker brings up different points, all are in agreement and unified. The City received 100 opposition letters from seven different neighborhoods. The neighborhoods are very concerned about the precedence of allowing variances just to maximize density. He asked that the density be similar to Manchester and Long Island. Rockhaven claims to mirror Manchester Place with the same R4 zoning. However, the site plans show more homes than Manchester has along the border. On each of Rockhaven's site plans the fifteen homes do not fit without numerous variances. Forty-seven percent of the site needs two separate concurrent variances and a forty percent reduction in lot width to maximize density. He asked that Council ask Rockhaven what their hardship is for the requested variances. There are still two issues brought up last month that have not been addressed. They asked that if staff includes information in support from the September Planning Commission meeting package, that staff also include all information in opposition. That important information is missing from Council's decision. Council would be voting on two separate variances to allow for the maximum density. What Mr. Hendricks submitted does not match what is in the Council package on page 7. Staff only shows the approval of one variance and not two, and there is a front yard setback reduction from thirty-five to twenty-five feet. The fourteen homes at a density of 2.75 would be a better transition. It is the obligation of Mayor and Council to approve something appropriate for this property.

**Nelson Kramer, 5942 Mitchell Road**, stated he lives immediately contiguous to the subject property. He asked that staff display the photo of the detention pond. The proposed detention pond will be about ten feet from his property line. Because the pond is at a lower elevation than his home, he would look down upon it when looking out his windows. The developer has graciously said they would consider underground detention and that is great. They included a condition that it would have to be underground if fifteen homes were constructed. The neighbors are opposed to fifteen homes and fourteen is a reasonable compromise. He is afraid the discussion may end up at fifteen homes with above ground detention.

**Hal Whiteman, 985 Manchester Place**, stated he lives south of the subject property. Residents are concerned about developers pushing the limits and trying to infill as much as they possibly can, which is happening here. Thirteen homes would be a perfect number. The density that staff agreed with was 5.09 and 13.08 homes. Since then the neighbors have agreed to fourteen homes. He asked that Council deny the application for fifteen homes.

**Tony Powers, 935 Manchester Place**, stated he supports the limit of fourteen homes. The water runoff from these properties is a concern. The more homes there are, the more water issues there will be. He asked that Council only approve the fourteen homes and underground detention.

Mr. Mitchell stated he has documentation regarding the discrepancy on the staff report.

Mayor Paul asked those documents be given to the City Clerk.

Mr. Hendricks stated what is so frustrating is to have folks in the 3.88 units per acre development complaining about the density being proposed at 2.94 or 2.95 units to the acre, given the fact the density is supposed to transition down Hammond Drive and the subject property will. On this proposal there are six lots planned against five lots in Manchester Place. He would like staff to confirm that the variances requested have no effect on density. The variances stemmed from contiguous property owners to the west of the property that asked for an adjustment to the lots on the cul-de-sac. The applicant will have the opportunity to move the houses closer to the cul-de-sac and further away from their property. Council and staff have a letter of this. The applicant prefers the underground detention and the ability for fifteen lots. There are financial ramifications regarding the decrease in lots. His law office was the venue for the meetings held on August 14, 27, September 10, 17, October 1, 14 and November 12th.

Mr. Hughes stated the requested zoning of R4 is what fits in this area. The proposed plan is not too dense. The reason Manchester Place has less density is because of the shape of the property and the way it was developed. Regarding the variances, those are because the neighbors desired increasing the setback from twenty-five feet to thirty-five feet. He agreed to the underground detention and the number of homes is not him pushing the limit. The fifteen homes is in the future land use plan of 2 to 3 units to the acre. The site engineer, Wayne Matthews, is in attendance and can attest to water quality or stormwater issues. The proposed development will improve the stormwater on the property drastically.

Mayor Paul closed the public hearing.

**Motion and Second:** Councilman Sterling moved to approve Agenda Item No. 14-265, 201401601 - 5950 Mitchell Road, *Applicant: Rockhaven Homes*, to rezone from R-1 (Single Family Dwelling District) to R-4 (Single Family Dwelling District) for the development of a 15-lot subdivision, with concurrent variances, and with an amendment to condition 3.j. to reflect the planting plan submitted to staff on November 18<sup>th</sup>. Councilman Paulson seconded the motion.

Staff Conditions:

1. To the owner's agreement to restrict the use of the subject property as follows:
  - a. Residential units at a density of 2.95 units per acre or 15 units, whichever is less.
2. To the owner's agreement to abide by the following:
  - a. To the site plan received by the Department of Community Development dated November 12, 2014. 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. The applicant shall be required to complete the concept review procedure prior to application for 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. Variance from Section 6.6.3.B. to reduce front yard setback from thirty-five (35) feet to twenty-five (25) feet as shown on the site plan with corresponding lot width. (CV201401601 #1)

- b. All lots along the west property line (5-11 and 15) adjacent to the Long Island Walk subdivision shall have thirty-five (35) foot rear setbacks, as shown on the site plan dated September 19, 2014.
- c. The detention pond shall be located underground in the general location identified as "stormwater management facility" as shown on the site plan dated September 19, 2014.
- d. Area around underground detention facility shall be landscaped, subject to the approval of the Sandy Spring Arborist.
- e. The existing magnolia trees along Mitchell Road as show on the site plan dated received September 19, 2014 shall remain. If said Magnolias die during the development, the Owner/Developer shall install new Magnolias in their current place, subject to the approval of the Sandy Springs Arborist.
- f. Plant an alternating mix of Magnolia trees and Cryptomeria trees staggered every ten (10) feet on center around the perimeter of the property as shown on the site plan dated September 19, 2014. Said trees shall be planted at a minimum height of eight (8) feet, subject to the approval of the Sandy Springs Arborist.
- g. The perimeter plantings referenced in condition 3.f. above shall be planted prior to the issuance of the first building permit on the property, subject to the approval of the Sandy Springs Arborist. The Homeowners Association covenants shall have requirement for perimeter trees to be replanted if any of the perimeter trees die for any reason. Said covenants shall be recorded as part of the plat.
- h. Install an irrigation drip system within the entire perimeter planting are referenced in condition 3.f. above to maintain plantings. Irrigation system shall be maintained by the Homeowners Association.
- i. Install an irrigation system at the subdivision entrance along Mitchell Road. Said irrigation system shall be maintained by the Homeowners Association.
- j. The subdivision entrance shall be landscaped as shown on the landscaped plan dated received August 18, 2014, subject to the approval of the Sandy Springs Arborist.
- k. Sidewalks shall be installed along the Mitchell Road frontage from the southern property line to Hammond Drive, subject to the approval of the Director of Public Works.
- l. All retaining walls shall have a decorative façade of brick or stone.
- m. Upon completion of the interior street, construction parking along Mitchell Road shall be prohibited.

**Councilman Gabriel Sterling** asked if staff could follow up on Ms. Robbins' question. At the last Council meeting staff did point out the error regarding the driveway connections to Mitchell Road. He asked if he needs to amend the motion to reflect that.

Community Development Director Parker stated the site plan is conditioned and the site plan does not show any driveways accessing Mitchell Road.

Councilman Sterling stated there is a concern if the language is left and someone develops the property at a later time. He asked if the ordinance needs to be amended.

Community Development Director Parker stated she does not think that is necessary.

Councilman Sterling stated the point of a compromise is not everyone walks away extremely happy. He has heard that no one wants to look at a detention pond, yet they do not want fifteen houses, but at the same time sixteen of the conditions have been agreed to. There will be enhanced planting and sidewalk all the way to Hammond Drive, which results in a better outcome. He is in favor of this agenda item.

**Councilman Tibby DeJulio** stated his office used to be across the street from this neighborhood. This neighborhood is a gem. He does not like seeing people approaching Sandy Springs stating this density is needed because the seller needs a certain amount of money. That is not a rationale for Council to approve this application. The neighbors have increased their preferred home number from twelve to thirteen and now to fourteen. The developer has refused to move at all on this. It is not the job of the City to help sellers make money. He is opposed to this item.

**Councilman John Paulson** stated he is not a big fan of open detention basins, because they look ugly. There are expenses involved with an underground detention basin. This is a good plan. The difference between fourteen or fifteen homes is not that significant to him. This will be a good development, once it is completed.

**Councilman Andy Bauman** stated it is a great neighborhood where there is walkability. He is sympathetic to Councilman DeJulio's comment. He disregards the developer and the applicant making the comment regarding the cost. He also discounts the comment regarding greedy developers. There are other more prudent arguments for and against. This plan is consistent with the Future Land Use Plan. The neighbors would be fine with fourteen homes. He is not sure how to negotiate from fourteen to fifteen homes. The issue is about a single home and that is no reason to deny this application.

**Vote on the Motion:** The motion carried 4-2, with Councilmen McDonald and DeJulio voting in opposition.

**Ordinance No. 2014-11-39**

**(Agenda Item No. 14-266)**

5. **201401682** - 6079 Boylston Road, *Applicant: Southtech Homes, LLC*, to rezone from R-4 (Single Family Dwelling District) to A (Medium Density Apartment District) for the development of a 17-lot townhome development, with concurrent variances

**Community Development Director Angela Parker** stated this item was deferred by Council at the last meeting to allow the applicant to continue to work with the surrounding neighbors on this project. Staff recommends approval of the project, but denial of variance request #4. That variance is a request that the on street parking called for in the City Center Master Plan not be constructed. Staff supports construction of the on street parking per the City Center Master Plan. At about 3:30 p.m. today staff received a document from the applicant, which included a site plan and two pages of conditions he wanted to add to the case. Staff has not had a chance to review the conditions and they have not been added.

**Mayor Rusty Paul** stated he intended to make this statement before the zoning cases were heard. Council and staff have had to deal with an awful lot of submissions on the day of the public hearings. The City has had a rule that all submissions must be completed and filed two weeks prior to the Council meeting. In trying to be cooperative and open to the negotiations that go on, this has been allowed to continue until the point of absurdity. The submission process is now going back to the two week deadline. It is not fair to ask Council to legislate on the fly when they don't have all the information. This process is also not fair to the public when they expect one thing and see something else. From this point on, if the applications are not submitted in total by two weeks from the upcoming City Council meeting, then they will not be placed on the agenda. This is not to discourage negotiations and conversations between developers in the community. This process results in better projects for the community. There has to be a cut off point for Council and staff to review the package.

**Mark Shaw, representative of Southtech Homes**, stated he reached an agreement with the neighbors on all conditions, but it was about fifteen minutes ago. The following revised conditions have been agreed upon:

- 1) We have reduced the number of units from 22 to 17 and we now comply with the Comprehensive Land Use Plan at 7.94 units per acre:
  - 20' min. lot width
  - 2000s.f. min. lot area
  - Setbacks: 40' from existing right-of-way
    - 0' interior side setback
    - 10' exterior side setback
    - 50' rear buffer with 10' improvement setback
- 2) **The property shall be developed and built as shown on the attached site plan.**
- 3) Townhomes to be limited to 40' in height measured from the finished lower level grade to the roof peak. Townhomes to be limited to three (3) stories.
- 4) The rear of the townhomes shall be constructed of either brick or stone, or a combination thereof. Accents of cedar shake siding may be used **only** for bay windows, fireplace chases, and gables where brick or stone is not feasible, **but no more than 25% of the rear facade may be cedar shake siding.**
- 5) A contiguous six foot high black(wrought iron style) ornamental aluminum fence shall be placed along the east property line of property.
- 6) A contiguous earthen berm shall be constructed at the rear of the units within the 50' buffer, as shown on site plan per the following:
  - a) The center of the berm shall be no further than 20 feet from the property line, unless determined by City Arborist that certain trees need to be saved. If determined by City Arborist certain trees are required to be saved, the center of the berm will be allowed to be placed more than 20' from the property line.
  - b) Units 1-5 berm shall be a minimum of 3 feet in height, with 4' bench top for plantings
  - c) Units 6-17 berm shall be a minimum of 6 feet in height, with 4' bench top for plantings
  - d) Detention Pond berm shall be a minimum of 5 feet in height, with 4' bench top for plantings
  - e) A 2:1 slope for the berm shall be permitted and shall be mulched with pine straw or equivalent
  - f) The berm to be planted with two (2) **staggered** rows of a mix of cryptomeria, magnolia and hollies to be a minimum of 10 feet in height (each row plantings shall be spaced a maximum of 14 feet on center)as shown on attached landscape plan.
  - g) All planting on berm shall be subject to approval of City Arborist
  - h) All plantings shall be installed prior to the issuance of the first building permit.
  - i) **The remaining areas of the buffer which are disturbed during the construction of the berm and development of property shall be stabilized with sod and mulch.**
- 7) The rear decks of units 11-17 shall be allowed to encroach within the 10' improvement setback.as shown on site plan. There shall be no decks or balconies allowed above the second floor.
- 8) Subject to the building codes and ordinances and approval of the building department, there shall be no exterior lights above the second floor. Any spotlights shall be pointed down at an angle not to exceed 45 degrees.
- 9) The detention pond shall not encroach within 25 feet of the east property line as shown on the site plan.
- 10) The townhome covenants shall prohibit the construction of individual lot fencing within the 50' buffer. However, a 6' high privacy fence no greater than 12 feet in length beginning at

the rear of unit shall be permitted to provide privacy between units. There shall be no structures or sheds placed in the back yards.

- 11) The covenants shall also state the homeowners' association, **for as long as it is in existence**, shall be responsible for the maintenance of the berm, landscaping, fencing and detention pond.
- 12) **Detention pond to be located as shown on the site plan. There shall be no off-site detention facilities for the site.**

Mr. Shaw stated the applicant has been detailed in negotiations with the neighbors and met all the conditions they have asked for.

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

**David Osborn, 6090 Harleston Drive**, stated he owns the property directly behind the proposed development. The neighbors agree with all the conditions, but are not sure about the decks on the back of the property. The main concern is the screening. The Pulte homes on Glenridge are used as a good example for plantings on the berm. The plantings are to be ten foot tall if they are planted directly at the start of the project. He turned in documentation to staff that is included in the agenda package. The neighbors support the development.

**Doug Falciglia, 5925 Brookgreen Road**, stated he is the President of the Glenridge Homeowners Neighborhood Association. He concurs with what was just stated. Staff has not been able to review the recommended changes. Once this application is submitted and if it is accepted, if from the staff's standpoint there is anything that needs to be corrected he asked that verbiage corrections be allowed. One issue that was discussed is that the neighbors want brick in the rear of the buildings. The applicant would like to use cedar shake around the fireplace and windows due to structural issues and use 25% in that area. He was concerned that this could be interpreted as the whole back of the building be 25% cedar shake and not just around the windows and fireplaces. He is concerned that if this application does not move forward, there may be major changes to the plan.

Mayor Paul asked if staff has had a chance to look at the conditions.

Community Development Director Parker responded no, the conditions that staff has are not the version that Council has.

Mayor Paul stated Mr. Falciglia's concerns are valid. Council needs to know what they are voting on before moving forward. The only way to do what is being asked and to allow for the proper time to review the proposed conditions is to defer this item.

Community Development Director Parker stated deferring this item is staff's recommendation at this time. Staff wants to be sure the conditions that are being asked for can be incorporated and that the changes do not result in a need for additional variances.

**Motion and Second:** Councilman DeJulio moved to defer Agenda Item No. 14-266, 201401682 - 6079 Boylston Road, *Applicant: Southtech Homes, LLC*, to rezone from R-4 (Single Family Dwelling District) to A (Medium Density Apartment District) for the development of a 17-lot townhome development, with concurrent variances, to the December 16, 2014 City Council meeting. Councilman Paulson seconded the motion.

**Councilman Gabriel Sterling** stated this development is in the City Center and is an area that should be extremely walkable. He is not happy with three curb cuts or variances that remove on street parking or discourage safe walking. He prefers a driveway that extends to the back of the property and having a nice

large courtyard in the back. This is an area where street engagement would be. Having a road that removes these items does not accomplish that.

**Councilman Ken Dishman** stated overall he likes the project. He echoes what Councilman Sterling stated about the investments regarding the City Center. He finds it difficult to support the project as is, with the road in the front.

**Councilman John Paulson** stated this is an interesting situation where the developers and neighbors have agreed, but what they have agreed on has not been seen by staff

**Vote on the Motion:** The motion carried unanimously.

**(Agenda Item No. 14-267)**

6. **201402052** - 120 & 130 West Wieuca Road, *Applicant: JW Homes, LLC*, to rezone the subject property from A-O (Apartment Office District) conditional to A (Medium Density Apartment District) for the construction of a townhouse development, with concurrent variances

**Community Development Director Angela Parker** stated this item was deferred by Council to allow the applicant to submit one site plan. At the last Council meeting there were several versions of the site plan. Staff recommends approval. Staff has submitted a revised set of conditions based upon meeting yesterday with the applicant. The conditions focus on the construction of the left turn lane on West Wieuca towards Roswell Road that is part of the GRTA conditions and for the JLB project. The condition focuses on ensuring there is adequate land available to get the left turn lane in. The turn lane will be a portion of the frontage of the project. Conditions 3.d., 3.e., and 3.n., have been revised to ensure this occurs.

**Nathan Hendricks, representative of the applicant**, stated the application is to rezone the subject property for the development of twenty-six townhomes on the property. The reason for the deferral was that the applicant was trying to respond to issues raised by staff. What is being proposed is a high quality residential development that will handle the surface water.

**Bryan Musolf, representative of John Wieland Homes**, stated he is the Vice President of Acquisitions for John Wieland Homes. JW Homes is excited about this opportunity in Sandy Springs. This would be a walkable infill piece to not only Chastain Park, but also to the Gateway Project. There are four curb cuts, one for the JLB project and three for this office complex. These four curb cuts will be decreased to one. Currently, the property has sixty-three different office units. The average unit has 2.2 employees in it. The proposed project will decrease the traffic by half compared to what is being generated today. The applicant will install a sidewalk on West Wieuca. There will be the removal of two buildings that are eyesores. Most importantly are the environmental improvements that will be made. The impervious pavement on this property will be reduced. Currently, there is no detention facility on site. All of the water is running off the hot asphalt into the creek. The applicant will install water quality and detention. The amount of pavement in the buffer will be reduced as well.

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

**John Stoj, 4565 Mystic Drive**, stated he is in attendance in two capacities. This area is adjacent to his backyard and he is a representative of the Cherokee Park Civic Association. The HOA approved the project subject to the supplemental conditions. This is a great opportunity to improve the neighborhood while removing outdated buildings.

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

**Motion and Second:** Councilman Bauman moved to approve Agenda Item No. 14-267, 201402052 - 120 & 130 West Wieuca Road, *Applicant: JW Homes, LLC*, to rezone the subject property from A-O (Apartment Office District) conditional to A (Medium Density Apartment District) for the construction of a townhouse development, with concurrent variances, and subject to the alternative staff recommended conditions that were distributed this evening. Councilman Dishman seconded the motion.

Staff Conditions:

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

Townhouses at a density of 12.81 units per acre or 26 units, whichever is less.

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

To the site plan received by the Department of Community Development dated November 4, 2014. 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. The applicant shall be required to complete the concept review procedure prior to application for 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.

To the owner's agreement to provide the following site development standards:

Shared access streets shall be designed and constructed to public street standards.

Shared access street with Development of Regional Impact (DRI) 2290, Chastain Mixed Use. As such, the Georgia Regional Impact (GRTA) DRI conditions from the Notice of Decision (NOD) dated January 30, 2013 shall apply to the West Wieuca Road access.

Shared access street shall align with proposed apartment building on the east side of access road within the Sandy Springs Gateway project.

Driveway depth shall have a depth of a minimum of eighteen (18) feet. be approved as shown on the site plan dated November 4, 2014

To reduce the required front yard setback from forty (40) feet to fifteen (15) feet as measured from the property line shown on the site plan dated November 4, 2014. (CV201402052 #1)

To reduce the required side yard setback from twenty-five (25) feet to zero (0) feet. (CV201402052 #2)

To reduce the required rear yard setback from twenty-five (25) feet to zero (0) feet. (CV201402052 #3)

To reduce the forty (40) foot landscape strip to zero (0) feet along the West Wieuca frontage and the ten (10) foot landscape strip to zero (0) feet along the east property line. (CV201402052 #5)

To reduce the stream buffer to allow the encroachments as shown on the site plan dated November 4, 2014 (CV201402052 #6)

Residential units shall have a height limit of forty (40) feet.

There shall be no common trash dumpsters. Trash shall be picked up from individual units one day per week.

Building lighting shall not be located above the first floor except Coach lights at the back doors of units which shall be screen and directed downward.

Building exterior treatments shall be brick and/or stone.

The Owner/Developer shall provide adequate right of way frontage along West Wieuca Road for installation by a third party of a left hand turn lane northbound into the Gateway Project being developed by JLB Partners. (This is the same left hand turn lane required by GRTA, page 3 of its Notice of Decision for DRI 2290 Chastain mixed use dated Jan 30, 2013 for the JLB Gateway project).

**Councilman Andy Bauman** acknowledged John Stoj. Regarding this application, he has corresponded with Rick Mayfield, Karen Meinen McEnery, and the developer. This is a model of working together and is an example of positive and responsible redevelopment. He likes the idea of walkable quality housing to the Gateway Project and Chastain Park.

**Councilman Gabriel Sterling** stated this is a win-win for all across the board, especially in an environmental aspect.

**Councilman Tibby DeJulio** stated he cannot see the retention facility on the site plan.

Mr. Musolf stated the retention will be underground in the green area on the site plan, located in the courtyard, with grass on top.

**Vote on the Motion:** The motion carried unanimously.

**Ordinance No. 2014-11-40**

**(Agenda Item No. 14-268)**

7. **201402051** - 4735 Roswell Road, *Applicant: The Providence Group of Georgia, LLC*, to rezone from A-1 (Apartment Dwelling District) conditional to A-L (Apartment Limited District) for the construction of a mixed townhouse and multifamily dwelling unit development, with a use permit to exceed the maximum district height and concurrent variances

**Community Development Director Angela Parker** stated this item request is for 325 multifamily units and 162 townhomes for redevelopment of the existing Park 225 apartment complex. The existing complex has approximately 312 apartment units. This case was deferred by Council to allow the applicant the opportunity to continue to work with the surrounding communities. Staff met with the developer on this Friday and on Monday. Staff received the revised site plans on Monday and received another site plan today. Staff also received revised zoning conditions around 2 p.m. today and another revised set around 3 p.m. The developers are working diligently to resolve issues. Staff recommends approval of this application, but denial of the special use permit for height. That was due to the fact the applicant was proposing six story units on Franklin Road. The site plan submitted on Monday modified the height. Due to this change, staff recommends favorably now on the height use permit. She presented a PowerPoint regarding connectivity in the area. (*see attachment*)

**Nathan Hendricks, representative of the applicant**, stated the use permit is to increase the building height to sixty-seven feet as opposed to sixty feet. The property is a 19.9 acre tract with a current zoning of 16.76. The applicant moved from an initial request of 30.10 units to the present request of 27.2 units to the acre. What will be given to Council are the applicant's rework of the conditions and a requested set of conditions that have come from the Westfield Park Community. The concern is regarding the inter-parcel

access. There was a previous separate application request on Glenridge that was a request for access onto Glenforest Road. Staff then raised questions about land use policies associated with transitional areas that discouraged or prohibited inter-parcel vehicular access between signal family and high density residential areas and more intense or nonresidential land uses. Vehicular access/egress from businesses onto residential streets is strongly discouraged or prohibited. The applicant provided a revised site plan that includes a stub on the south property line to show where inter-parcel access is to be engaged. He requested there be a limitation that any uses that are mutually accessed by the inter-parcel access be no more intense than the uses on the property. One of the supporting neighbors does not want inter-parcel access and the applicant is requesting to not have the access.

**Warren Jolly, applicant**, stated he was told directly by the Planning Commission, Mayor, and Council to work with the neighborhood. Some agreements with the neighbors are not always what staff wants and that is the issue this evening. This will be a single family owner occupied development with an apartment complex. All of the proposed conditions and site plans adhere to the GRTA conditions.

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

**John Sternbridge, 4725 Huntley Drive**, stated he lives in the Westfield Park neighborhood. This process has been difficult. The City has not provided any clear guidance. The City's Comprehensive Land Use Plan is seven to eight years old and the neighbors are relying on this plan. There is also the Economic Development Initiative that was released by the City about two years ago and the developers are looking at that. There is no clear guidance in what the height and density bonuses are. It has been difficult working with the developers in order to come up with something that is very good for the neighborhood. The neighborhood does support the revised development that was submitted today. He does not represent the whole neighborhood's opinion on this. One requested stipulation is Council approve this application with the conditions that were agreed upon with Mr. Jolly. The second stipulation is the neighborhood is completely against the inter-parcel road of the north/south connectivity, unless it has the condition that the property it will connect to will be owner occupied residential only.

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

**Jane Kelley, 4590 Windsor Park Place**, stated she is the president of her homeowners association. She is representing Windsor Park, Hedden Street, and the Windsor Buckhead townhomes. Her neighborhood is across the street from the Gateway project and less than one quarter mile south of the subject property. This is terribly frustrating to have a proposal change within a week of Council's vote. Staff member Linda Abaray confirmed the City received more letters of opposition on this issue than any other application. Her neighborhood is not against redevelopment, but just against over development. This application is adding sixty percent more density to the existing property. According to the Comprehensive Land Use Plan, this density belongs in a live/work/regional area near I-285 or a MARTA rail station, not in a residential neighborhood. This area is zoned live/work/neighborhood. In August, the Planning Commission stated the density for this project is just too high and they deferred their vote encouraging the neighborhood to work with the developer on density and building heights. The Planning Commission stated they would deny the application if it came back to them the same. Three months later the same density and request to exceed building height is before Council. The Gateway project has only two stories on Roswell Road. This applicant is proposing a five story apartment with a six level parking deck, according to the last site plan. This will be towering over brand new townhomes and the single family neighborhood behind the property. She asked why this application should be granted at unreasonable heights. The five story apartments are in a zoning category meant for four. The neighborhood supports the original staff recommendation of twenty-five units per acre. This is a generous bonus of twenty-five percent over the existing allowed density. The third variance should be denied as well as the use permit to exceed building heights. The A-L zoning allows for four stories or sixty feet. The neighborhood has compromised on density from the original request of twenty-two. The

developer has not compromised at all since the Planning Commission meeting. This height does not provide a proper transition to the townhomes or the single family homes behind. The applicant is also requesting seven variances. There is no hardship for these variances. She has the Fulton County School's zoning impact study, which was included in the package that shows the development will not reduce students, but could add up to 450 students. Doubling traffic and adding hundreds of students does not sound like an improved quality of life. The Steinberg Act requires Council to consider whether the zoning proposal will result in a use which will or could cause an excessive burdensome use of existing streets, transportation facilities, utilities, or schools. On page 2 of the current staff report regarding building height is a resolution that the developer has agreed to reduce the Roswell Road frontages and part of Franklin Road to three stories. Yet, the developer's latest plan clearly shows four levels. She asked if Council will be voting on three or four stories on Roswell Road. This issue should be deferred for all to review the latest plan. She asked that Council deny the use permit to exceed the height limit and limit the density to the original staff report level of twenty-five units per acre. This density does not belong in this area on Roswell Road.

**Pam Shipley, 365 Franklin Road NE**, stated she opposes a fifty percent increase in density and a 550% increase in the 5 units per acre. The City's Comprehensive Land Use Plan was created to guide the future of the City. The City is ignoring guidelines by increasing apartments and exceeding build heights and density. The burden is then placed on the citizens to try and fight for what is right for the future of the City.

**John Stoj, 4565 Mystica Drive**, stated he is a representative of the Cherokee Park Civic Association. He is concerned about the increased density of the project and the height.

Mr. Jolly stated the proposed project will be a thirty-five percent decrease in bedrooms. Sixty-five percent of the project will be owner occupied and a protected neighborhood. The height along Roswell Road will be four stories, because a portion of the building is being eliminated. The plan does meet the GRTA requirements providing the stub. The height of the building meets the condition of zoning.

Mayor Paul closed the public hearing.

**Motion and Second:** Councilman Sterling moved to approve Agenda Item No. 14-268, 201402051 - 4735 Roswell Road, *Applicant: The Providence Group of Georgia, LLC*, to rezone from A-1 (Apartment Dwelling District) conditional to A-L (Apartment Limited District) for the construction of a mixed townhouse and multifamily dwelling unit development, with a use permit to exceed the maximum district height and concurrent variances; including the "Conditions for Redevelopment of Park 225 Proposed by Westfield Park Neighborhood November 14, 2014"; and the document titled "Staff Recommended Conditions", with the exception of keeping item l. and amending item j. to state, "Developer shall provide a stub-out along the southern property line as shown on the site plan dated November 17, 2014. The stub-out shall be for the future inter-parcel connection for a development of residential or lower intensity use than the existing project in place today." Councilman Paulson seconded the motion.

**Councilman Gabriel Sterling** stated one of the priorities the City has set is to redevelop aging and dangerous apartments. There was a 19.4 unit entitlement to begin with. Council has discussed that a twenty-five percent bonus can be given for the sole sake of moving those apartments. A strong positive is the owner occupied housing at 162 units on the current site plan. This is positive overall, considering there are a walkable section, sidewalks, and cooperation with the neighbors. The reason for the height variance is because the neighbors requested a pitched roof. The reason for the height move over is because the neighbors did not want the intensity of the tail of the building there. The developers are working with the neighbors in moving pieces around to make this plan work. Inter-parcel connectivity is important for the long term. There are apartments in the West Belle Isle Node that are 70 units to the acre. The proposed is a better development and will be better for the City in the long run by establishing the grid system.

**Councilman John Paulson** stated what interests him with this project is that part will be owner occupied. This is a departure from what has been seen with other developments and as a City this should be encouraged. He is in favor of this plan. He supports Councilman Sterling's comment about connectivity. The neighborhood does not want the road connectivity, but the City needs it. This is a good compromise.

**Councilman Tibby DeJulio** stated he has had mixed emotions and received mixed emails about this project. He was glad to see that the High Point Civic Association spoke on their opinion. One thing that has been emphasized in the last nine years is owner occupied residential. One of the things he pays attention to is the number of bedrooms. On this plan the number of bedrooms will be decreased and the owner occupied number will increase. He is a huge fan of inter-parcel connectivity. He asked if the City has ever required inter-parcel connectivity for pure residential property.

Community Development Director Parker stated she is trying to recall how many residential developments the City has had where there could have been inter-parcel connectivity. There have not been many developments where there could be connectivity. There have primarily been new homes on single family lots.

Councilman DeJulio stated there are two townhome developments on Glenridge and the property behind Midas Muffler. He cannot think of inter-parcel connectivity with anything other than commercial. If inter-parcel connectivity is placed here, he wonders if this opens up strangers coming through the area.

Community Development Director Parker stated as part of the plan there is already a loop road from Roswell Road to Franklin Road. The loop is not shown on the plan as a private road where there will be no access. Staff is asking there be access to the south of the property. The loop road is set up for public access.

Councilman DeJulio asked to be shown on the site plan where the inter-parcel connectivity will be and where it will go to. If the connectivity is to the homes, then he is opposed to it.

Mr. Jolly referenced the gated entranceway. The gate was widened and there is a stub out.

Councilman DeJulio asked if the rest of the townhome community will have gated access to where it would be more secure.

Mr. Jolly stated all of this area would be gated.

Councilman DeJulio asked how there can be inter-parcel connectivity with a gate.

Mr. Jolly stated if the development continues, the homeowners association could place a gate in between the two parcels. If the property were an office instead, it would be an issue.

Councilman DeJulio stated he assumes the apartment complex will be secure as well.

Mr. Jolly stated the apartments will be secure at the deck.

Mayor Paul asked if the City plans on building a road in this area anytime soon.

Community Development Director Parker stated at this point staff will look at the connection to be made once there is development on the property to the south. The property to the south is an existing apartment complex.

Mayor Paul stated the purpose of the inter-parcel connectivity is to reserve the opportunity to connect the properties in the future, if it makes sense.

Community Development Director Parker stated that is correct.

Mayor Paul stated there is no mandate from the City for building a road. This action will preserve the option if the community feels like they need the ability to get through this project to the Gateway or other locations. He asked if the City is reserving that ability to provide that amenity in the future.

Community Development Director Parker stated she recommends this be done as part of redevelopment of the property to the south.

**City Manager John McDonough** stated there was a stipulation placed on the property to the south as a limitation on the rezoning.

Councilman Sterling stated it was not a stipulation on the road. The stipulation states, "A stub out shall be for future inter-parcel connection for a residential development or less intense use only." Less intense use is compared to the existing zoning.

Councilman DeJulio asked if less intense would be based on units per acre or the type of units.

Councilman Sterling responded both.

**Councilman Andy Bauman** stated for now this is a private street. This is not a dedicated right-of-way, but instead a stubbed out street. He asked how it would work if at a later point the City would need to acquire the right-of-way and have it dedicated. If a future Council examines the conditions with public comment, there would be an opportunity to make a final determination at that time.

Community Development Director Parker stated this issue could potentially be reconsidered with any action on any proposed development on the south that might require rezoning. That development plan would have to provide the connection for the plan to work. The City would not be able to in the future ever make this connection for the next seventy or eighty years or how long the development would be here. In terms of the logistics, it could be done with a public street or private street that has public access. In the JLB project it was important in the GRTA notice of decision that there be connectivity from Roswell Road to Wieuca, but there is still the ability to access it.

Councilman DeJulio stated at the end of High Point Road there are townhomes that were built, but the builder stopped constructing the project and Pulte Homes purchased the project. There is a road at the back of that area where Blue Moon Pizza is located. There is a stub in that area that is gated off.

Community Development Director Parker stated there is a stub out on a property north of High Point, possibly at Kayron, that dead ends into an apartment complex.

Mayor Paul stated he wants to clarify the effective result of Councilman Sterling's motion. When Councilman Sterling stated for residential use or less intensive use, would the effect of the motion preclude the City from being able to do what staff is recommending?

Community Development Director Parker stated staff would prefer not to have the constraint.

Mayor Paul stated a road will not be at this location anytime soon, but why tie the hands of a future Council with a restrictive motion when Council is trying to preserve an opportunity for the future.

Councilman Sterling stated he disagrees with the statement that this ties Council's hands. This will allow staff to do this in a new zoning that will be equal or less intense than the existing zoning. The City is saying to the neighbors and the developer that in the future the value of your homes could be dramatically affected, if there is an office building or anything else constructed in this location. This motion clarifies if a zoning is here for equal or less intensity that road connection can be put in, but not if you go higher. This will preserve it for the future. This gives some level of protection for the development and neighbors.

**Councilman Graham McDonald** stated he needs clarification on equal or less intense zoning.

Councilman Sterling stated looking at traffic planning, if it is more than twenty-eight units per acre, it is more intense than twenty-seven units per acre. It can be up to future Council and staff to examine. The intent is to not allow a higher intensity use to be able to cut through on this road.

Mayor Paul stated Council is trying to make sure we understand any potential consequences. This is a private road because it is gated. What Councilman Sterling is stating is there cannot be a higher intensity than what is there right now. One will not be able to do what staff is requesting, because it is a private road. Therefore, it will have to remain a private road.

City Manager McDonough asked staff what the road dedication process is and how it would work in this case.

**Assistant City Manager Bryant Poole** stated the DRI talks about it being a public road north/south. Once the southern property is developed, you could not have a gate there, but instead an open road. He understands the concern for the stub out condition. Council would be preparing for the future to allow for a public road north/south when the south side is developed.

Councilman Sterling stated the agreed upon condition between the neighbors and the developers especially stated the stub out shall be for future inter-parcel connection for a residential owner occupied development only. His motion goes beyond that, since there is no way to know what the future development will be. In the future, if there is an increased level of intensity above and beyond what exists on the parcel, he does not want a public road that dumps above the current level of traffic. This protection meets the DRI request as well and allows some sense of protection for the neighbors and developers. There has to be some way that staff can look at a future plan to determine if it is equal or less intense.

Mayor Paul stated the current intensity is that of the gated community.

Councilman Sterling stated he is referring to the parcel next to the subject property.

Mayor Paul asked how Council can condition a future zoning.

Councilman Paulson stated this is not conditioning a future zoning, but saying that this neighborhood will not have to have inter-parcel connectivity if the future zoning is office or a higher density than this development.

Councilman McDonald stated he does not believe that stating "less intense use" provides enough clarification as to what Council is trying to do.

Councilman DeJulio asked if the plan can be kept the way it currently stands.

Councilman Sterling stated if the plan is left the way it is, it will cut off future use. He asked if there is a way to condition with staff on this item, in order to clarify the intent.

Community Development Director Parker asked if it would be sufficient to speak to just office or commercial uses.

Councilman Sterling stated he would agree to that, since it would be more restrictive. That is not what staff wants or what the City wants long term.

Councilman DeJulio suggested removing the last sentence from the motion.

Councilman Sterling stated that would open the road up to everyone.

Mayor Paul stated no road will be built today or in the next five years. If the road is ever utilized, it will be voted on by Council for the usage. This should be vetted at the time by the public and Council. Therefore he agrees the stub out for future inter-parcel connection be left for the future residents and Council to figure out what they want to do with it.

**Amendment to Motion and Second:** Councilman Sterling moved to approve Agenda Item No. 14-268, 201402051 - 4735 Roswell Road, *Applicant: The Providence Group of Georgia, LLC*, to rezone from A-1 (Apartment Dwelling District) conditional to A-L (Apartment Limited District) for the construction of a mixed townhouse and multifamily dwelling unit development, with a use permit to exceed the maximum district height and concurrent variances; including the "Conditions for Redevelopment of Park 225 Proposed by Westfield Park Neighborhood November 14, 2014"; and the document titled "Staff Recommended Conditions", with the exception of keeping item l. and amending item j. to state, "The stub-out shall be for the future inter-parcel connection." Councilman Paulson seconded the motion.

Mr. Hendricks stated the letter submitted by Mr. Steinbridge was at a density of 27.2 units to the acre and the revised conditions are at 27.2. The staff report is at 25 units per acre.

**Senior Planner Linda Abaray** stated the document in front of Council labeled staff recommendations was provided by the applicant. Staff did not write those conditions.

Community Development Director Parker stated the developer is proposing a gated community. As soon as the property is developed it would be almost impossible to make the connection with the gate.

Councilman Sterling responded that may be Council's intent at this point. If Council wants to in the future, they can condemn the property.

Mr. Hendricks suggested that Council continue with the agenda while the developer and staff discuss the conditions.

**Motion and Vote:** Councilman Sterling moved to table Agenda Item No. 14-268, 201402051 - 4735 Roswell Road, *Applicant: The Providence Group of Georgia, LLC*, to rezone from A-1 (Apartment Dwelling District) conditional to A-L (Apartment Limited District) for the construction of a mixed townhouse and multifamily dwelling unit development, with a use permit to exceed the maximum district height and concurrent variances. Councilman Paulson seconded the motion. The motion carried unanimously.

**(Agenda Item No. 14-269)**

8. **201402368** - 4967 & 4969 Roswell Road, *Applicant: Dewberry Capital*, to rezone the subject property from C-1 (Community Business District) conditional to MIX (Mixed Use District) for the construction of a mixed commercial and multifamily dwelling unit development, with a use permit to exceed the maximum district height and concurrent variances

**Community Development Director Angela Parker** stated this item is a request for the construction of 231 multifamily units and 80,700 square feet of commercial daycare use with concurrent variances. There are a number of variances that have been requested. The first variance is to allow the existing parking lot to remain in the twenty-five foot buffer and the ten foot improvement setback. The second variance is to reduce the fifty foot buffer and ten foot improvement setback along the south property line to a ten foot landscape strip. There is another variance to delete the streetscape requirements. The fourth variance is to reduce the requirements from five spaces per 1,000 to four spaces per 1,000. Staff recommends denial of this application as well as the concurrent variances.

**Kent Brown, representative of Dewberry Capital**, stated this is a request to redevelop a portion of the site. A portion of the site is viable and successful and a portion of the site is not viable. At the corner of Roswell Road and Belle Island Road are a shopping center and several restaurants that have been mentioned this evening. At the time of development of this property, Belle Isle Road was closed at the

request of the neighborhood and City. The portion of the site the applicant is seeking redevelopment for is twenty-five feet in elevation below Roswell Road. This area was developed for a grocery store that long since departed when Kroger was built across the street. This area does have one valuable tenant which is a day care facility. This proposal is to change the zoning from commercial to a mixed use. The proposal has a lot of pedestrian walkability and a true mixed use with the residential over the top and connected to the retail portion. At the Planning Commission meeting there were a number of items with issues. The applicant is willing to work out any of the concerns. Density is an issue. This area is already dense and is surrounded by multifamily developments that are in excess of 32 units per acre. Placing five units per acre on the property makes this unviable. The applicant engaged Kimley-Horn to complete a traffic study. Compared to the current zoning, there will be less than a two percent increase in total daily trips. This is on a dead end street at a traffic light onto Roswell Road. The height was an issue. The applicant requested a use permit for height, but has since withdrawn that request. There was a request from the neighbors that the property be only two stories. There are seven properties within this Node with seventeen buildings that are three or four stories in height. The front of the subject property is a building on Roswell Road that is retail with a setback of thirty-seven feet behind the setback line. The four story portion of the project is the residential over the retail with a setback of an additional twenty-five feet. The four stories are sixty-two feet behind the building setback line. A walking trail and a dog park will be added. The applicant proposed pedestrian connectivity to all three properties adjacent to the subject property. The concurrent variance for streetscape has been withdrawn. For the parking and retail the applicant is proposing four spaces per 1,000 square feet instead of five. The applicant is trying to discourage the use of the automobile and encourage the use of walking. There is a proposed structured parking deck covered with the retail. Since the Planning Commission meeting, the applicant proposed to wrap and conceal the parking deck from view from all sides. This plan is a great enhancement over what is currently there. He requested that Council approve this item or provide a chance to continue working with the neighbors to keep improving the plan.

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

**Tom Wakefield, 4967 Roswell Road**, stated he is the owner of The Chastain School. He is neither in favor nor against the proposal. He wants to make Council aware they are a viable business that has been in operation since 2007 that employs forty people with 180 children that attend the school. The Chastain School is the only business impacted by this development. It is the school's wish to continue to serve the City in its current capacity.

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

**Kim Russell, 7865 Lansbury Drive**, stated she was under the impression that C-1 development was being put on a moratorium and not being approved for one year. The second issue is the height of the building and the concurrent zoning variances. If this item is approved, it will be almost 1,200 apartments with a significant increase of about \$1,500 to \$2,200 per month in rent in less than a one mile radius. In conjunction, on the Atlanta side at Nancy Creek, there is a brand new apartment complex called the Residence at Chastain with 300 to 400 units. This will be almost 1,500 to 1,600 units of apartment rental within a two mile radius. This area does not have enough parking and people do not want to park near the daycare, because there is no sidewalk and because it is a dark area. When looking at the whole project, she asked that Council please keep in mind there is a lot of dense zoning in the area. Looking at Roswell Road between Belle Isle and Windsor Parkway there are two traffic lights. The Windsor Parkway light will move north about 300 feet. That will help with the Wieuca traffic light, but another light is needed. A traffic light will probably need to be installed at Long Island.

**Jane Kelley, 4590 Windsor Park Place**, stated she represents Windsor Park Place, Hedden Street, and Windsor Buckhead townhomes. The neighborhoods agree with staff that this application should be denied. The density and building height are inappropriate for this location. The last plan she saw was about seven stories total. This is a huge increase in rental units. If there is worry about the balance between the rental and owner occupied, this project would throw the area further out of balance. The

additional greenspace is not visible from Roswell Road and is on the back of the property. She asked that staff deny this application.

**Renee L'Emplattanier, 1634 Omara Lane, Smyrna, GA**, stated she and her husband are leasing space in the current Belle Isle shopping center. They are not in support of or opposition to the application. The Belle Isle shopping center is already under-parked. There are individuals that want to come to her existing business. If more retail is created and there is less parking, it might cause more issues on the existing Belle Isle site and affect her business.

Mr. Brown stated the request is over the maximum number of stories for the live/work neighborhood. The traffic study was submitted to staff and there are also three and four story properties along Roswell Road. He is proposing the same amount of parking for retail as the current development. The parking for the daycare will not be utilized all day, but the restaurant parking will be used all throughout the day. The applicant is trying to discourage use of the car and promote walking. There are over 900 single family residents currently within a five minute walk. He requested Council approve this item or allow the chance to continue working on the application.

Mayor Paul closed the public hearing.

**Motion and Second:** Councilman Bauman moved to deny Agenda Item No. 14-269, 201402368 - 4967 & 4969 Roswell Road, *Applicant: Dewberry Capital*, to rezone the subject property from C-1 (Community Business District) conditional to MIX (Mixed Use District) for the construction of a mixed commercial and multifamily dwelling unit development, with a use permit to exceed the maximum district height and concurrent variances. Councilman Dishman seconded the motion.

**Councilman Andy Bauman** stated this property is challenge. He frequents businesses in this shopping plaza and sometimes he has to park at the back of the building. There is a certain amount of zoning and development fatigue in this community. He is not prepared to move forward on a project when there are other projects to take into consideration. There are potentially compelling reasons for some of the other projects for redevelopment and there are other good reasons for the denial of this application. The application is not ready to move forward in its current state.

**Councilman Gabriel Sterling** stated he will echo Councilman Bauman's concerns on this and follow staff's recommendations. There was a sixty day moratorium on C-1 for apartments. Subsequent to that, Council eliminated the ability to put in an apartment in a C-1 zoning by placing retail at the front. The applicant would be required to come in for a full rezoning, which is why this is happening. An applicant can rezone from a C-1 to an apartment, but before the applicant could put a fig leaf of retail with 300 apartment units behind it and submit it through the administrative approval process.

**Councilman Ken Dishman** stated there are projects the City will approve because there is a redevelopment component. This application is not reducing the number of bedrooms and he will not support the application.

**Councilman Tibby DeJulio** stated he has mixed emotions on this item. On one hand there are great restaurants in the area such as Food 101 and Cibo E Beve. The subject property is probably one of the worst properties on Roswell Road. Food 101 is one story with retail. He has a problem with the apartment complexes, because there a lot of apartments and a lot more to come. He wished that the developer would redesign the current site. The retail on the back of the property is horrible retail, because businesses do not seem to stay at that location very long. This applicant needs to come up with a much better plan. The apartment portion of the plan is not appropriate right now.

Mayor Paul stated he salutes Mr. Brown's creativity by attaching an apartment complex to an existing retail center and calling it mixed use. This does not fit the definition of mixed use that Council aspires to. Mixed use would have all those elements inside the set of units. The moratorium was placed on the City

ordinance in order to give developers an opportunity to look at their projects and propose real mixed. The proposed plan needs more work.

**Councilman Andy Bauman** stated he is not inclined to make a motion to deny this case. If there is discussion for withdrawal, he would be open to that.

Councilman DeJulio stated if the applicant wants to withdraw the application that would accomplish the same thing.

Councilman Bauman stated a withdrawal is no delay and a denial would require the applicant to wait one year to submit a new application. Those that live in the area are affected by the units being built in Buckhead as well. He is amenable to a suggestion of withdrawal.

Mayor Paul stated Council should take each case as it stands alone.

**Substitute Motion and Vote:** Councilman DeJulio moved to allow the withdrawal of Agenda Item No. 14-269, 201402368 - 4967 & 4969 Roswell Road, *Applicant: Dewberry Capital*, to rezone the subject property from C-1 (Community Business District) conditional to MIX (Mixed Use District) for the construction of a mixed commercial and multifamily dwelling unit development, with a use permit to exceed the maximum district height and concurrent variances. Councilman Sterling seconded the motion. The motion carried unanimously.

**(Agenda Item No. 14-270)**

9. **201402835** - 0 Glenlake Parkway (17 0034 LL037), *Applicant: Dominion Partners, LLC*, to rezone from O-I (Office and Institutional District) conditional to O-I (Office and Institutional District) for the development of a senior housing, assisted living, and memory care facility, with use permits for senior housing and to exceed the maximum district height and concurrent variances

**Community Development Director Angela Parker** stated this is a request for a 200 unit senior housing, assisted living, and memory care facility. The property is currently zoned office, but it is undeveloped. The City's Comprehensive Land Use Plan calls for live/work/community. Staff is recommending approval of the application. Additionally, the Planning Commission recommended approval.

**Nathan Hendricks, representative of the applicant**, stated 128 of the 200 units will be for senior housing and 72 units will be for memory care assisted living. There is also a request for an associated use permit on the height and concurrent variances. There is a set of protective and restrictive covenants on the property that dictated that for this use the applicant had to seek everyone within the 123 acres to get a sign off on this particular use. This application had widespread support. He requested that Council approve this item.

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

**Motion and Second:** Councilman Sterling moved to approve Agenda Item No 14-270, 201402835 - 0 Glenlake Parkway (17 0034 LL037), *Applicant: Dominion Partners, LLC*, to rezone from O-I (Office and Institutional District) conditional to O-I (Office and Institutional District) for the development of a senior housing, assisted living, and memory care facility, with use permits for senior housing and to exceed the maximum district height and concurrent variances. Councilman DeJulio seconded the motion.

Staff Conditions:

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

- b. Senior living facility and accessory uses at a density of 19.70 units per acre or 128 units, whichever is less.
  - c. Assisted living/Memory care facility and accessory uses at a density of 12,134.59 square feet per acre or 78,887 square feet, whichever is less.
  - d. To a maximum building height of six (6) stories or ninety (90) feet, whichever is less,
5. To the owner's agreement to abide by the following:
- a. To the site plan received by the Department of Community Development dated August 26, 2014. 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. The applicant shall be required to complete the concept review procedure prior to application for 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.
6. To the owner's agreement to provide the following site development standards:
- a. The owner/developer shall dedicate right-of-way for proposed Collector-Distributor System parallel to SR 400 per Georgia Department of Transportation, to the City of Sandy Springs.
  - b. The owner/developer shall install complete sidewalk and streetscape along the entire property frontage Glenlake Parkway from north property line south to intersecting sidewalk on Abernathy Road (as referenced in Zoning Case Z88-160, which required sidewalks along the entire property frontages of Abernathy Road and Glenlake Parkway).
  - c. To reduce the required twenty (20) foot landscape strip to five (5) feet. (CV201402835 #1)
  - d. To reduce the required front yard setback from forty (40) feet to twenty (20) feet along GA400 frontage. (CV201402835 #2)
  - e. To reduce the required minimum unit size from 850 square feet to 620 square feet. (CV201402835 #3) To allow parking to be located in a front setback. (CV201402835 #3)
  - f. To allow parking to be located in a front setback. (CV201402835 #4)

**Vote on the Motion:** The motion carried unanimously.

**Ordinance No. 2014-11-42**

### **Zoning Modification**

**(Agenda Item No. 14-271)**

10. **201401133** - 305 Carpenter Drive, *Applicant: Masoud Zahedi*, to delete all conditions related to senior living in Sandy Springs zoning case RZ08-012

**Community Development Director Angela Parker** stated this item was deferred by Council to allow for property posting of the property. At a prior Council meeting when this item was heard, staff recommended denial of the application. The applicant is requesting a zoning modification. The applicant is seeking to modify the zoning condition that specifies the property be developed with senior housing. The applicant submitted a request to develop the property as apartments by removing the senior housing provision. On October 30<sup>th</sup> the applicant submitted a brand new site plan showing eighteen townhomes. However, this is a completely different application. This is not a minor site plan change that results in moving a building or reducing the height or adding a buffer. The previous plan was for a 100 unit

multifamily building. Given the difference in the application, it needs to be reviewed by the Fire Department and Public Works as if it is a new application. For that reason, staff is recommending deferral for sixty days.

**Masoud Zahedi, 5801 Roswell Road**, stated when he began the application process he was told by staff that he could have single family homes on this lot. He thanked Councilmen Bauman and DeJulio who met with him on the subject property a few times. The subject property is a vacant lot surrounded by a parking lot and the property is very challenging. He is speaking not as a developer, but as a resident of Carpenter Drive. Carpenter Drive is a very congested street. There are quite a few apartment complexes in this area and senior living housing. Residents in this area seem to not care about the community. He cares about the community and is trying to improve the area. There are sidewalks in the area that do not have handicap access. In the last fifteen years he may be the only person who constructed two projects in the area that added landscape and sidewalks. He is afraid the window of opportunity will be closed again and for the next sixteen years development will not be possible on this lot. He asked that Council allow him to develop these two properties. He would like to develop the sidewalks to be handicap accessible. The City recently did not put the yellow stripes on the street. Carpenter Drive has 190 units of senior living, office buildings, single family homes, and hotels. For safety reasons, the yellow stripes should be painted on the street. He referenced a photo of Carpenter Drive where this is no sidewalk. He asked Council to consider allowing him to move forward with this application for 18 townhomes.

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

**Motion and Vote:** Councilman Paulson moved to defer Agenda Item no. 14-271, 201401133 - 305 Carpenter Drive, *Applicant: Masoud Zahedi*, to delete all conditions related to senior living in Sandy Springs zoning case RZ08-012, to the December 16, 2014 City Council meeting. Councilman Bauman seconded the motion. There was no Council discussion. The motion carried unanimously.

**Councilman John Paulson** asked that staff look into adding the yellow striping on Carpenter Drive.

#### **Text Amendment**

##### **(Agenda Item No. 14-272)**

11. **TA14-009** - An Ordinance to Amend Article 28, Rezoning and Other Amendment Procedures, of the Sandy Springs Zoning Ordinance

**Community Development Director Angela Parker** stated this ordinance amendment focuses on allowing the Planning Commission to defer zoning cases for one time. From staff's perspective it will help facilitate dialogue between the developers and the community. The process will split up the notification, because part of the issue is the ad. There is a proposed change to the sign posting. Some time ago a report was given to Council with suggested items to be changed. The City has been requiring that applicants post signs earlier, so the community residents will see the signs prior to the Community Zoning Information (CZI) meeting. Currently, staff mails out postcards to properties within 300 feet of the subject property. There are also developer mailed postcards that are mailed to properties within a quarter of a mile or as directed by staff. Since the City's inception, the developer postcard standards are 300 feet as well. Staff is recommending that the developer and staff mailings be increased to 500 feet. Staff is recommending wording changes related to traffic studies. When staff receives plans that are illegible, staff will require a new plan be submitted. The item that staff recommends Council not take action on has to do with the impact analysis referred to as the Steinberg. The Steinberg should be referred back to the Planning Commission.

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

**Tochie Blad, 7320 Hunters Branch Drive**, stated she represents the Sandy Springs Council of Neighborhoods. The Planning Commission voted on the minor changes, but on the zoning analysis change they expressed concerns. The zoning analysis would eliminate whether the property has economic value as currently zoned. There is value knowing whether the current zoning has economic value. If that portion comes back to Council, she asked that Council leave that portion of the ordinance as it is.

Mayor Paul closed the public hearing.

**Motion and Second:** Councilman Sterling moved to approve Agenda Item No. 14-272, TA14-009 - An Ordinance to Amend Article 28, Rezoning and Other Amendment Procedures, of the Sandy Springs Zoning Ordinance. Councilman Dishman seconded the motion.

**Councilman Gabriel Sterling** stated he wants an explanation on Ms. Blad's question regarding the economic analysis. He understands that the City does not have the staff in place to say yes or no, if a property is economically a good thing or a bad thing.

Community Development Director Parker stated staff does not conduct any economic analysis to determine if a property has reasonable economic use as zoned. There has been dialogue with the City Attorney regarding this. That section of the ordinance could be left in and allow staff to make a conclusion on that.

Councilman Sterling stated we keep referring back to the Steinberg items. He understands that those were eliminated at the State level, but the City chose to adopt them in the City ordinance. This level is well above what the State calls for.

Community Development Director Parker stated that is correct.

Councilman Sterling asked if staff considers this a good way to analyze the process.

Community Development Director Parker responded yes.

**Councilman Tibby DeJulio** stated he is glad that staff is giving the zoning signage the attention it deserves. The residents need to know further in advance about rezoning items. He asked how far in advance the notifications are sent by the developer and the City. The residents should be notified of that as far in advance as possible.

Community Development Director Parker stated the mailings are sent out very early in the process.

**Senior Planner Linda Abaray** stated staff typically sends the mailers out two weeks before the CZI meeting and the postcard lists the dates of all meetings regarding that item. After the Community Zoning Information meeting, staff sends a letter to the developer. The developer can use a portion of that letter to mail out to the list of addresses of the properties within the 300 feet as well as anyone that attended the CZI meeting. These letters are sent two to three weeks prior to the Community Developer Resolution meeting. The zoning signs are up two weeks after the filing deadline, but before the CZI meeting.

**Councilman John Paulson** asked about the bottom of page 3 of the mark-up, the paragraph that discusses deferral of a land use petition.

Community Development Director Parker stated part of the reason that was deleted was because there have been a number of cases where it has not been posted. Everyone knew about the case. It is up to the developer to make the change and from staff's perspective, this is hard to keep track of. There have been a number of cases that Council has not been able to take action, because the sign had not been changed. If Council defers an item for less than fifteen days, a reposting of the sign is not required. By the time the

item gets before Council, the neighbors know about it. There has not been a case before Council where people complained about the sign and stated they did not know about a rezoning item.

**Vote on the Motion:** The motion carried unanimously.  
**Ordinance No. 2014-11-43**

### **UNFINISHED BUSINESS**

There was no unfinished business.

Council took a break at this time from 9:39 p.m. – 9:52 p.m.

**Motion and Vote:** Councilman Sterling made the motion to take Agenda Item No. 14-268 from the table for further consideration. Councilman Paulson seconded the motion. The motion carried unanimously.

**Motion and Second:** Councilman Sterling moved to approve Agenda Item No. 14-268, 201402051 - 4735 Roswell Road, *Applicant: The Providence Group of Georgia, LLC*, to rezone from A-1 (Apartment Dwelling District) conditional to A-L (Apartment Limited District) for the construction of a mixed townhouse and multifamily dwelling unit development, with a use permit to exceed the maximum district height and concurrent variances; including the “Conditions for Redevelopment of Park 225 Proposed by Westfield Park Neighborhood November 14, 2014”; and the document title “Staff Recommended Conditions”, with the exception of keeping item l. and amending item j. to state, “Developer shall provide a stub-out along the southern property line as shown on the site plan dated November 17, 2014. The stub-out shall be for future inter-parcel connection.” Councilman Paulson seconded the motion.

Staff Conditions:

1. To the owner’s agreement to restrict the use of the subject property as follows:
  - a. Residential units at density of **27.2** units per acre or **487** units, whichever is less.
2. To the owners agreement to abide by the following:
  - a. To the Rezoning Site Plan submitted to the Department of Community Development dated received **November 17**, 2014. 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.
  - b. To the rendering received by the Department of Community Development dated **November 17**, 2014. Said rendering is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Building Permit. The applicant shall be required to complete the concept review procedure prior to application for a Building Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy.
  - c. Height shall be limited to no more than **four (4) stories on Roswell Road and four (4) stories along Franklin Road, and five (5) stories internal to the development with a maximum height of sixty-six feet six inches (66’ 6”) to permit compliance with Conditions #b and 3d below.**
3. To the owner’s agreement to provide the following site development standards:

- a. All project improvements required by Georgia Regional Transportation Authority (GRTA) and outlined in the Notice of Decision for DRI #2419, shall be completed prior to the issuance of the first apartment unit certificate of occupancy.
- b. Interior ceiling heights should be a minimum of ten (10) feet.
- c. All units shall be individually metered and/or submetered.
- d. Building shall have a pitched roof of articulated asphalt shingles (i.e., no flat or parapet-type urban roof).
- e. Streetscape along **all of** the Roswell Road and Franklin Road (**along the apartment frontage**) shall consist of a six (6) foot planted strip, an eight (8) foot sidewalk, and a three (3) foot planting zone.
- f. No more than two (2) curb cuts on Franklin Road. Said curb cut location and design shall be subject to the approval of the Public Works Department at time of LDP.
- g. The structured parking deck shall be screened from all public right-of-way by building façade.
- h. The parking structure shall be entrance only from Franklin Road.
- i. All building and parking deck lighting shall be shielded so that the light source is not visible from existing residential properties and the light is directed downward.
- j. **Developer shall provide a stub-out along the southern property line as shown on the site plan dated November 17, 2014. The stub-out shall be for future inter-parcel connection.**
- k. Green space and open space shall be maintained as shown on site plan dated **November 17, 2014.**
- l. Fencing shall not be permitted along the Roswell Road and Franklin Road frontage.
- m. Detention pond landscaping shall be subject to the approval of the Sandy Spring Arborist.
- n. Variance from Section 4.23.1 to eliminate the required fifty (50) foot rear buffer and ten (10) improvement setback along the east property line permit removal of existing encroachments, re-grading, clearing of undergrowth, installation of required utilities, and replanting of Zoning Buffer to buffer standards as shown on the site plan dated received November 17, 2014. (201402051 Variance #1)
- o. Variance from Section 4.23.1 to eliminate the required twenty-five (25) foot side buffer and ten (10) improvement setback along the east and north property line to permit removal of existing encroachments, re-grading, clearing of undergrowth, installation of required utilities, and replanting of Zoning Buffer to buffer standards as shown on the site plan dated received **November 17, 2014.** (201402051 Variance #2)
- p. Variance from Section 7.4.3.B to reduce the front yard setback (Roswell Road) from forty (40) feet to ten (10) feet as shown on the site plan dated received **November 17, 2014.** (201402051 Variance #3)

- q. Variance from Section 7.4.3.C to reduce the side corner yard setback (Franklin Road) from forty (40) feet to twenty-five (25) feet as shown on the site plan dated received **November 17**, 2014. (201402051 Variance #4)
- r. Variance from Section 33.26.CC.1 to allow one (1) additional sign on Roswell Road and Franklin Drive as shown on the site plan dated received **November 17**, 2014. (201402051 Variance #5)
- s. Variance from Section 103.75.b.7 to reduce the required fifty (50) foot setback for new private streets adjacent to residentially zoned property as shown on the site plan dated received **November 17**, 2014. (201402051 Variance #6)
- t. Variance from Section 103.75.a.1 to reduce the required fifty (50) foot right-of-way width to forty (40) feet as shown on the site plan dated received **November 17**, 2014. (201402051 Variance #7)
- u. The developer/builder shall use a variety of techniques to avoid the monotonous appearance of identical townhomes. Such techniques may employ among others the use of differing front elevations, architectural styles, design features, materials, building staggers to provide a more pleasing appearance to the townhomes. Exterior of townhomes constructed on the property must be brick, stone, cedar shake, or cement based material such as hardiplank. The developer/builder agrees to construct homes with a minimum of four (4) sided brick or stone water-table. A water-table shall be defined as brick or stone up to the ceiling height of the lowest level of the home. Earth tones to be used for brick color.
- v. Developer/builder agrees to the creation of a mandatory homeowners association. The mandatory homeowners association shall be responsible for the upkeep and maintenance of all the landscaping associated with the townhomes, including but not limited to the entrance areas and detention pond area. The pool area for the townhomes shall be controlled access. The homeowners association will also be responsible for the upkeep and maintenance of the median being built on Franklin if it is approved by Sandy Springs to the entrance of Westfield Park. The homeowners association shall also maintain and keep in the good repair any perimeter fencing originally installed by the Developer of the Association, whether or not such fencing is on a lot, privately owned property or public right-of-way.
- w. The detention pond shall be fenced with a black aluminum fence, or wood privacy fence, minimum of six (6) feet in height, with the landscaping to the exterior of the fence for purposes of visual screening, subject to the approval of the Sandy Springs arborist.
- x. Exterior of all buildings shall be limited to earth tone brick, stone, hardcoat stucco, fiber cement siding/trim, PVC (trim and windows only) or fiberglass (windows or doors). Wood shall be allowed as a trim element only. Exterior material combinations shall be consistent with the attached Conceptual Elevation and architecturally consistent with institutional-grade, Class "A" multifamily communities.
- y. Roof shingles shall be fiberglass asphalt architectural style shingles in dark earth tones, non-primary colors.
- z. All permanent dumpsters and trash containers for building as well as service areas shall be located within the building or garage.

- aa. Parking deck shall be fully-wrapped by apartments and shall not be visible from Franklin Road or Roswell Road. The developer will construct permanent improvements to ensure access to the parking deck from Franklin Rd. is entrance only into the parking deck and that residents will not be able to exit the parking deck onto Franklin Road.
- bb. All HVAC and mechanical equipment shall be fully screened by evergreen vegetation for public rights of way, even if it is located on rooftops.
- cc. The pool and amenities shall be controlled access by electronic fob.
- dd. Except for work specifically associated with the Franklin Road street frontage improvements, all construction vehicles must enter/exit to Roswell Road and shall not be permitted to use Franklin Road or Windsor Parkway to access Roswell Road. This shall be a clause in any applicable construction contract.
- ee. The builder/developer shall construct a black, aluminum or wood privacy fence of at least six (6) feet in height along the eastern-most property line that abuts the residential homes on Huntley Drive.
- ff. If during the engineering design and development process, if any trees along the eastern property line have to be removed within the fifty (50) foot landscape buffer, the disturbed area will be planted back to the City of Sandy Springs "Landscape Buffer Standard" (the disturbed area will be planted back using cryptomeria (12'-14'), magnolia (10'-12'), or Nellie Stevens holly plants (10'-12')). This will be completed prior to townhome construction. The entire road frontage on Franklin Road will be replanted with a minimum of four inch (4") caliper hardwood street trees (where permissible due to overhead power lines.)
- gg. The builder/developer shall install a minimum of 3 traffic calming speed bumps or raised sidewalks along the spine road from the entrance/exit of the parking deck to Franklin Road. To be approved by Public Works Department at the time of LDP.
- hh. The builder/developer shall apply for permitting and install a median on Franklin Road west of Huntley Road that consists of a brick monument with a brass plate announcing the entrance to the Westfield Park subdivision to be approved by the Westfield Park Women's Club subject to Public Works Department. If permitting for this median is denied by the city, the developer shall install two (2) neighborhood monuments along Franklin Road west of Huntley Road and 2 at Highpoint Road and Franklin Rd. These monuments shall be consistent in design with the monuments on Cherrywood Lane/Windsor Parkway and Westfield Drive/Windsor Parkway. These monuments are subject to the Public Works Department approval and all easements and approvals from the property owners in which the monuments will be built on.
- ii. The builder/developer shall devote no less than sixty five percent (65%) of the property to fee-simple townhome units. Apartments shall be limited to thirty five percent (35%) or less of the property.

**Councilman Gabriel Sterling** stated this Council is attempting to look for future public access along this road for future traffic issues and residents. The developer said they are willing to install the stub out, but want a gate up on this section of the road. That would make the road private. Council has requested developers meet the street grid. In the future, the City will purchase this road if it is to be opened up for full public access. The question is if this item is approved now with inter-parcel access with a gate in

place, will that preclude future public access. He does not believe it would affect a future Council if they choose to open that road up. He does not know if a deferral of this item will allow for more movement on this section.

Mayor Paul stated staff is telling Council this is an important part of the future transportation grid and this needs to be reserved for the time it is being developed. The issue is the gate.

**Councilman John Paulson** stated if the property to the south ends up being developed as an office complex, he does not think there should be inter-parcel access. That is why the residential component and density makes sense to him. If there is higher density, there will potentially be the same problem, that this will be another cut through for drivers.

**Councilman Ken Dishman** stated those could be future challenges, but he also agrees with Mayor Paul that the future Council and citizens should be allowed to decide at that time.

Mayor Paul stated when that gate is installed, it will become a private road and public access has to be purchased.

Councilman Sterling asked if the City would purchase the road in either case, if it is a private or public road, if the City is requesting the road to be public access. This is similar to the Demetrops property.

**City Manager John McDonough** responded yes.

Councilman Sterling stated it does not make a difference if the road is public or private. If the road is open without the gate, the City would still purchase it, if the City needs inter-parcel access to the south.

City Manager McDonough stated the City will follow the same precedence as in other areas of the City.

Councilman Dishman stated he can envision a scenario where the citizens that live in the development decide they want connectivity, even if it is an office complex, and a future Council may agree with that. If there is another development that is similar that is gated on the other side the two can then make the decision to connect to allow both egress and ingress off Franklin Road.

**Vote on the Motion:** The motion carried unanimously.

**Ordinance No. 2014-11-41**

## **NEW BUSINESS**

### **(Agenda Item No. 14-273)**

1. Acceptance of Charge Georgia Rebate Award from the Georgia Environmental Finance Authority

**Assistant City Manager Bryant Poole** stated this item is for a potential grant through the Georgia Environmental Finance Authority. The City applied for the grant and it has been authorized in the amount of \$6,340. The City will be required to provide an exact match of \$6,340. The City is proposing installing charging stations for electric cars at Hammond Park. Four parking spaces will be required for electrical hookups to be restricted to five days a week and twelve hours a day. The City agrees to accept the funds from the Authority and provide matching funds for a total project cost of \$12,680.

**Motion and Second:** Councilman Sterling moved to approve Agenda Item No. 14-273, accepting the Charge Georgia Rebate Award from the Georgia Environmental Finance Authority. Councilman Bauman seconded the motion.

**Councilman John Paulson** asked if the City will pay the electric bill for charging the cars or will the car owner pay the bill with a credit card.

Assistant City Manager Poole stated the car owner will be required to pay the bill. Staff is still in the RFP process of selecting a vendor. The charges will be anywhere from \$1 to \$2 an hour. The level 2 station that staff is recommending will take a car four hours to charge. Typically, people do not charge their cars for a full four hours. Whatever fee is charged to the car owner, that amount will be divided between the City and the Authority. Staff will come back to Council at a later time to decide how to use the money.

**Councilman Gabriel Sterling** stated this will allow drivers to get off of I-285 to charge their cars. He hopes that the City will find other areas to install car charging stations.

**Vote on the Motion:** The motion carried unanimously.

**Resolution No. 2014-11-109**

**(Agenda Item No. 14-274)**

2. Intergovernmental Agreement for the Provision of 800 MHz Radio System Access between Fulton County, Georgia and the City of Sandy Springs, Georgia

**City Manager John McDonough** stated the proposed agreement will supersede the current agreement with Fulton County. The current agreement is for a term of ten years and it is near the end of the ten year period. The City is working with three other North Fulton cities to build a new state-of-the art 700 MHz radio system. Staff anticipates the new system will be running by April 1, 2015. This agreement will allow the City to exit the new agreement with Fulton County with a sixty day notice. The City currently has about 418 radio units. The agreement calls for four payments prorated and a cost for each radio to participate. The cost is \$34,485 and is budgeted for that purpose. Once the new system has been tested and is ready to go live, Fulton County will be given a sixty day notice.

**Councilman Tibby DeJulio** asked if when the new radio system is operating, our radios will no longer communicate with Fulton County's system.

City Manager McDonough stated the new radio system will have the capability to connect to the Fulton County system through use of technology. There will be a software connection between the two systems.

**Mayor Rusty Paul** stated the Department of Homeland Security requires those kinds of bridges for all radio systems to connect.

**Motion and Vote:** Councilman Paulson moved to approve Agenda Item No. 14-274, Intergovernmental Agreement for the Provision of 800 MHz Radio System Access between Fulton County, Georgia and the City of Sandy Springs, Georgia. Councilman DeJulio seconded the motion. The motion carried unanimously.

**Resolution No. 2014-11-110**

**(Agenda Item No. 14-275)**

3. Consider Approving a Recommended Short-list of Construction Management at Risk Companies for City Center Project

Mayor Paul recused himself from this agenda item. One of his clients is a construction industry association. He has not been involved in any conversation or meetings except for a meeting he accidentally walked into and immediately left.

**Ennis Parker, City Advisor**, presented a PowerPoint on the Construction Management Services Civic Facility RFQ. (*see attachment*)

**Motion and Second:** Councilman Paulson moved to approve Agenda Item No. 14-275, a Recommended Short-list of Construction Management at Risk Companies for the City Center Project. Councilman Dishman seconded the motion.

**Councilman John Paulson** asked that for part of this process staff elicits from the businesses how they as Construction Manager at Risk would interact and manage construction quality when there will be design services construction administration. He feels like both are duplication, but would like to understand how they both interact.

Mr. Parker stated during the interview process staff can ask any specific questions that Council would like asked.

Councilman Paulson stated he would like to know if all the construction quality control people and construction administrators are necessary.

**City Manager John McDonough** stated that question will be asked of all the companies that place a bid with the City. He does not believe that question needs to be added to the RFP process, but if needed, an addendum can be added.

**Councilman Gabriel Sterling** stated this does feel like there will be a lot of individuals doing similar jobs at the same time and this may be duplication.

Mr. Parker stated the way this process is designed is typical of the industry. Each element of the design team is only inspecting the portion of the work they designed themselves.

**Vote on the Motion:** The motion carried unanimously.

**(Agenda Item No. 14-276)**

4. Consider a Resolution Approving a Master Agreement for Program Management Services between the City and C&A Development, LLC, (owned by Carter & Associates, LLC) for the City Center Project

**City Manager John McDonough** stated a few months ago Council selected Carter for program management as well as the development partner. Staff is still working on the development agreement. Staff is recommending entering into a Master Agreement for program management services. These services are what Mr. Jokerst and his colleagues have been performing for the City for a number of months. Staff is proposing continuing their services throughout the duration of this project. The total sum of the proposal is \$2.45 million and is projected to last forty-five months that began on July 1, 2014 and will continue until March 31, 2018. If the duration of the project were to extend past that time he anticipates the same terms and conditions would apply on a month-by-month basis. This amount represents 1.34% of the \$190 million total budget for the project. Program management fees typically range from 1% to 2%, so this is a fair and reasonable proposal. He recommends Council approve the agreement.

**Motion and Second:** Councilman Paulson moved to approve Agenda Item No. 14-276, a Resolution Approving a Master Agreement for Program Management Services between the City and C&A Development, LLC, (owned by Carter & Associates, LLC) for the City Center Project. Councilman Sterling seconded the motion.

**Councilman Gabriel Sterling** asked if the program management services will be funded through the existing FY15 capital project funding and based on the contract, will the entire \$2.45 million be encumbered or rolling per each capital project year.

City Manager McDonough stated some of the budgets will need to be amended. Staff requested a cash flow analysis based on professional services, which is currently in process. Currently, the City owes \$25,000 for the months of July, August, and September; \$35,000 for the month of October; \$45,000 for both November and December; and thereafter the amount owed will be \$60,000 per month. The numbers will be corrected and discussed at the mid-year budget review.

**Councilman Tibby DeJulio** asked how much is currently in the City Center account.

Finance Director Karen Ellis responded about \$50 million.

City Manager McDonough stated there is about \$20 million in the account for land acquisition, professional services, road services, and parks.

**Vote on the Motion:** The motion carried unanimously.  
**Resolution No. 2014-11-111**

### **REPORTS**

1. Mayor and Council Reports
2. Staff Reports

There were no Mayor, Council, or staff reports.

### **PUBLIC COMMENT**

There was no public comment.

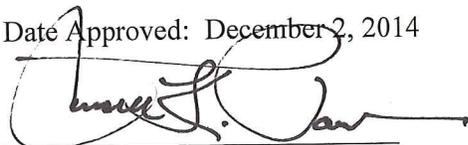
### **EXECUTIVE SESSION**

There was no Executive Session held.

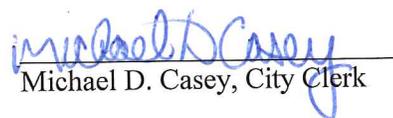
### **ADJOURNMENT**

**Motion and Vote:** Councilman DeJulio moved to adjourn the meeting. Councilman Paulson seconded the motion. The motion carried unanimously. The meeting adjourned at 10:25 p.m.

Date Approved: December 2, 2014



Russell K. Paul, Mayor



Michael D. Casey, City Clerk