In The Matter Of:

City Council Meeting

City of Doraville, State of Georgia

Special-Called Meeting with Public Hearings

April 27, 2009

American Court Reporting Company, Inc.

52 Executive Park South

Suite 5201

Atlanta, Georgia 30329-2217

(404) 892-1331 - (800) 445-2842

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CITY COUNCIL MEETING

CITY OF DORAVILLE

STATE OF GEORGIA

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SPECIAL-CALLED MEETING WITH PUBLIC HEARINGS

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Transcript of the proceedings held in the City Council Room at Doraville City Hall, 3725 Park Avenue, Doraville, Georgia, Mayor Ray Jenkins presiding, before Theresa Bretch, Certified Court Reporter, commencing at approximately 7:00 p.m., on Monday, April 27, 2009.

* * *

APPEARANCES:

Doraville City Council:

Hon. Ray Jenkins, Mayor

Councilmember Maria Alexander
Councilmember Brian Bates
Councilmember Robert Spangler
Councilmember Donna Pittman
Councilmember Bob Roche
Councilmember Pam Fleming

Murray J. Weed, City Attorney

Ms. Sandra Bryant, Assistant City Clerk

Scott Haeberlin, Planner

P R O C E E D I N G S

- - -

(Executive Session)

- - -

MAYOR JENKINS: Motion to come out of Executive Session?

COUNCILMEMBER ROCHE: So moved.

MAYOR JENKINS: Second?

COUNCILMEMBER PITTMAN: Second.

MAYOR JENKINS: Call the roll, please.

ASSISTANT CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

ASSISTANT CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

ASSISTANT CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

ASSISTANT CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

ASSISTANT CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

ASSISTANT CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MAYOR JENKINS: Meeting come to order. Call the roll, please.

ASSISTANT CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Here.

ASSISTANT CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Here.

ASSISTANT CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Here.

ASSISTANT CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Here.

ASSISTANT CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Here.

ASSISTANT CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Here.

MAYOR JENKINS: All right. Number 3 is old business, and I think it's the Text

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Amendments. Scott, will you take it over at this point.

MR. HAEBERLIN: Mayor, I'll just introduce it. This is recessed from March 23rd, 2009. This is regarding Sections 401, 1402 and 1603. This is part of the initiative that Councilmen Bates and Fleming initiated. We did have a P.C. public hearing April 9, 2009, and they did recommend approval of the draft which was prepared by Mr. Weed. So at this time, I'll pass the item over to Mr. Weed for his discussion.

ATTORNEY WEED: Mayor and Council, I don't have anything further to add. This item has been pending for some time. Essentially, during the process of making modifications to 2-40 dealing with the Planning Commission, I believe it was Councilman Fleming that pointed out that it would be important after the Planning Commission had the ability to consider variances, to make sure that they were educated and aware of legislatively how to go about conducting the process.

What the ordinance does, it modifies the Variance section of 1402 and also 1603 to

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clearly delineate what the standards are that are to be applied in consideration of variances, but more importantly, to whom those standards apply. So I really can't add anything on that. You've had the ordinance for some time.

MAYOR JENKINS: Do I get the audience first?

MR. HAEBERLIN: Well, I can't recall -- and Mr. Weed, you may clarify this for me -- did we actually do the public hearing at the previous Council meeting that we had this?

ATTORNEY WEED: I have not looked that up, and my memory is that this item appeared on an actual zoning --

MR. HAEBERLIN: Yes, sir.

ATTORNEY WEED: -- meeting --

MR. HAEBERLIN: Yes, sir.

ATTORNEY WEED: -- that we had a public hearing --

MR. HAEBERLIN: Yes, sir.

ATTORNEY WEED: -- that was concluded, and that tonight it would be --

MR. HAEBERLIN: Correct.

ATTORNEY WEED: -- up for Council vote.

MR. HAEBERLIN: Correct. I was just

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checking with you as well. That's what I recall as well.

ATTORNEY WEED: I am entirely -- you know, the Council can choose to open up again the public hearing if you so choose. I have no problem to err on the side of the caution and do that. But Mr. Haeberlin and I both agree, I think that the public hearing was completed at the last meeting where you addressed it.

COUNCILMEMBER ROCHE: Have people signed up to talk on this one?

MAYOR JENKINS: Yes, on item number 4. And I'm a little confused. You want to speak on Item Number 3 which is the zoning ordinance text amendment? Is that correct?

MR. ANDERSON: I am.

ATTORNEY WEED: Mr. Mayor, if you are going to open it up to public commentary, I would just say you open it up to the public hearing officially and just do it again.

MAYOR JENKINS: Okay. I'll open it up to the public hearing.

The first one on the agenda is Stuart Anderson. Three minutes, please.

MR. ANDERSON: Three minutes per page?

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Stuart Anderson.

MAYOR JENKINS: Three minutes, please, sir.

MR. ANDERSON: Yes, sir.

ATTORNEY WEED: Mr. Mayor, in compliance with the Zoning Procedures Act, I believe that we need to follow the minimums set forth therein, so I'd let Mr. Anderson go however -- pretty much however long he wants to as long as he'll use good judgment.

MAYOR JENKINS: And then, well, I've got (counting) one, two, three, four --

ATTORNEY WEED: We've got other items on the agenda.

MR. ANDERSON: Got a big smile out of me.

MAYOR JENKINS: We've got seven of them here. You want to give them all the time they need, Murray?

ATTORNEY WEED: No, sir, but I mean I do want to make sure we follow the Zoning Procedures Act there. That's all.

MR. ANDERSON: It's the public hearing part of the deal.

What I wrote concerning this adopt the

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1 zoning ordinance -- and I'll just read what I
2 wrote; it's easier -- quotes, Adoption, Zoning
3 Ordinance. Section 402 should not be adopted
4 until a compiled set of definitions is removed
5 and assembled from M-1/M-2, C-1/C-2, O-I,
6 et cetera, documents where it has been woven in.
7 1402 should be revised as I indicated
8 above, which we'll talk tonight about. It's a
9 zoning addition or revision.
10 Our 1603, which is our Zoning Criteria,
11 is good. It needs very little adjustment.
12 I guess my real question about this
13 item is if the City Council passes a revision,
14 the passage vote makes it an item voted on and
15 part of the Zoning Ordinance of City of
16 Doraville as revised. Why are we voting on the
17 adoption of things we've already adopted? I'm
18 sure Murray will help us with that.
19 And once again, I ask what the purpose
20 of this document is. The first paragraph states
21 to adopt the Zoning Ordinance of the City of
22 Doraville. We have an adopted Zoning Ordinance,
23 City of Doraville, so it kind of doesn't make
24 sense.
25 402, once again, definitions should be

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1 compiled and reviewed as a text revision,
2 reviewed by the Planning Commission. Then when
3 it is thought to be done by Scott or whoever --
4 well, whoever -- or snuck into the Zoning
5 Ordinance, City of Doraville, and Municodes
6 without review, piecemeal.
7 If this is to make us legal because
8 we're not, then I guess I recommend to pass it,
9 but processing 402, 1402 and 1603 should be done
10 separately.
11 And please, if all the ordinances are
12 in Municode and it has precedence, then why have
13 a zoning ordinance? To qualify as a city for
14 funds? If we don't have to have a redundant
15 Zoning Ordinance, then the City Council doesn't
16 have to waste time on these matters.
17 Passing this -- or this whole document
18 just seems redundant if the City Council has
19 already passed these things. And if we're
20 putting them into the Municodes, is, then, the
21 Zoning Ordinance of the City valid? Is it of
22 any use? I guess is the question I'm asking.
23 And once again, those three items,
24 1402, 1603 and 402, should be handled
25 separately. Thanks.

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1 MAYOR JENKINS: Thank you.
2 Ben Crawford?
3 Scott --
4 MR. HAEBERLIN: Yes, sir.
5 MAYOR JENKINS: Go ahead, Ben.
6 Come up here, Scott.
7 MR. CRAWFORD: Ben Crawford, Oakcliff
8 Estates.
9 And I'd just like to say that there's
10 been a lot of back and forth on this, on the
11 zoning, and I'm speaking tonight as a resident
12 of Doraville. And I think that we made a lot of
13 great strides to pull our zoning and our
14 ordinances together, and it's time for us to
15 move forward as a city. It's time for all the
16 different points of view to come together and
17 get some kind of consensus so we can move
18 forward as a city, and I'd like to see these
19 things get adopted.
20 MAYOR JENKINS: Adam -- somebody. I
21 can't read the last name.
22 MR. HOIPKEMIER: Mr. Mayor, I'll waive
23 my right with respect to this section.
24 MAYOR JENKINS: Very good. Thank you.
25 Bonita Hoffmeister?

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1 MS. HOFFMEISTER: Bonita Hoffmeister,
2 Oakcliff Estates.
3 The City Council, the Mayor and Scott
4 have done a wonderful job crafting the M-1, the
5 M-2, the C-1 and the C-2. I urge you to adopt
6 these as you already have in the past. Thank
7 you.
8 MAYOR JENKINS: Thank you.
9 Tom Hart?
10 MR. HART: Tom Hart, Gordon Heights.
11 I'm a little confused there. I thought
12 we were talking about Section 402, 1402 and
13 1603. I didn't know we were talking about C-1
14 and C-2.
15 But Section 402, we worked with the
16 Planning Commission on definitions and I thought
17 we came up with a pretty good list of
18 definitions that are being appropriated in the
19 Code, and I notice that virtually none of those
20 made it to the Code book. I don't have a
21 current copy of the Code book.
22 I thought if we had a zoning hearing,
23 that people would be made aware of what you're
24 voting on or what you're going to pass so we can
25 make intelligent comments. But since no one's

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1 got a copy of it, or at least I haven't been
2 able to get a copy of it, we're dependent on the
3 City Council and the Mayor to make a decision
4 without any of the businesses or without any of
5 the citizens having copies of the ordinances
6 you're about to pass and a copy of the old
7 ordinances versus the new ordinance and what has
8 been changed.
9 And to just willy-nilly adopt, you
10 know, a hundred pages worth of documents sight
11 unseen without reading every page and having an
12 understanding of what the problems are I think
13 is a little reckless at this point. I think the
14 City's gotten itself into a lot of trouble in
15 the last three or four months, indicated by
16 business groups and people in the city having to
17 deal with extraordinary circumstances. I think
18 when you actually zone out a Porsche dealer and
19 a Lexus dealer and say, "Oops, I forgot," then
20 don't go back to rectify the situation, I think
21 moving forward to put in even more problems
22 without first addressing the problems you've
23 already created is, at best, reckless.
24 So I mean until I see a copy of all
25 these things, I mean, you know -- and the

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1 businesses in the community as well as the
2 citizens see copies of these things and be able
3 to make notes, I mean we're just flying blind
4 here. It's just like you have a -- the City is
5 made up the Mayor and the City Council and an
6 attorney and you guys go meet at the Holiday
7 Inn. We're just -- we're left out in the cold.
8 Thank you.
9 MAYOR JENKINS: Adam Hoipkemier?
10 MR. HOIPKEMIER: Are we still on Item
11 3?
12 MAYOR JENKINS: You signed twice?
13 MR. HOIPKEMIER: (Inaudible)
14 MAYOR JENKINS: Okay. That's all on
15 Item Number 4. Scott, what do you need to do?
16 COUNCILMEMBER FLEMING: No. We're
17 still on 3, Mayor, are we not?
18 - - -
19 (Inaudible discussion at Council table)
20 - - -
21 MAYOR JENKINS: Old business is Number
22 3. Scott, can you get this straightened out for
23 me, sir?
24 MR. HAEBERLIN: Yes, sir. We were in
25 the public hearing --

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1 MAYOR JENKINS: We were on --
2 MR. HAEBERLIN: -- which you chose to
3 do, yes.
4 MAYOR JENKINS: -- Number 4, according
5 to what you told me; is that correct?
6 MR. HAEBERLIN: No. We're actually on
7 -- the Council agenda, it's listed as Old
8 Business, Sections 402, 1402 and 1603.
9 MAYOR JENKINS: Is that Number 3?
10 MR. HAEBERLIN: Yes, sir. And we were
11 hearing from those who would like to speak
12 either for or against, and so we'll need to find
13 out whether there's anybody else that needs to
14 speak either for or against that item and then
15 close the public hearing.
16 MAYOR JENKINS: Is there anybody else
17 that needs to speak for or against?
18 What are you? For or against?
19 MR. FRANK: I'm against.
20 MAYOR JENKINS: Come on up, sir.
21 MR. FRANK: Joe Frank, 6300 Buford
22 Highway.
23 Honorable Mayor, ladies and gentlemen
24 of the City Council, we have been going back and
25 forth for a long time about all these rezoning

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1 additions and changes. As you know, it's -- and
2 we are back again to the same situation we've
3 been before. We are not given the opportunity
4 to review anything. You guys are just passing
5 things. You have passed -- you have rezoned,
6 technically rezoned from -- the C-2 is the
7 overlay that you have passed. That has already
8 created a considerable problem.
9 We have been trying to work with the
10 City. I've personally called as many people as
11 I could on the City Council. I requested that
12 we sit down and we discuss it. You are now
13 adding some more changes to it. I think it
14 would be reasonable and prudent that we all sit
15 down, that this motion be tabled for today, for
16 this meeting, and that we all sit down and know
17 what is being passed and given the opportunity
18 to sit down around the table to get with the
19 City Council and see how we can work this whole
20 thing out in a businesslike and amicable manner
21 rather than having something railroaded and
22 shoved down our throats.
23 This is all going to cause nothing but
24 huge problems for everybody. So I would like
25 you to consider, like I said, to table it for

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1 today. Let's sit down and let's know what is in
2 those meetings because we have not received a
3 copy, nobody has received a copy of this.
4 Thank you very much.
5 MAYOR JENKINS: Thank you.
6 Anybody else for or against?
7 MR. HAEBERLIN: Close the public
8 hearing if there's nobody else.
9 COUNCILMEMBER SPANGLER: Mr. Hart's got
10 his hand up again.
11 MAYOR JENKINS: For or against?
12 MR. HART: Against. I had one more
13 thing.
14 We just finished the volunteer sidewalk
15 project, and had we read this ordinance, we
16 would have found out, silly us, we were building
17 an illegal sidewalk, because, according to this,
18 if you look at the definitions, you can't have a
19 brick sidewalk in the city. It makes my
20 driveway -- it's not legal, either, because I
21 have a brick driveway. Okay. It has to be
22 concrete.
23 So we just -- we pass the LEEDS
24 ordinance, and then on the next page we don't
25 use a LEEDS type of construction. It's like on

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1 the tree ordinance. You can build within five
2 feet of a major arterial, but if you look at the
3 tree ordinance, you can't build within 150 feet.
4 There's a 150-foot tree buffer on 141.
5 So every other page in this document
6 conflicts with another. It's like the defi-
7 nition of a basement. Any exposed wall in a
8 basement is a complete story?
9 I think that you need to have this
10 document gone through by the pub- -- you're
11 fighting the businesses here, you're fighting
12 the citizens here, and you don't -- with no
13 regard.
14 If you publish this document on the
15 Internet to give people a chance to review the
16 document, then make proposals, or, at best, edit
17 the material so we don't run into a problem like
18 we've got right now. But you can't -- I mean if
19 you take a typical house built in Buckhead or a
20 typical house built in Dunwoody, you can't build
21 them here. Can't have a gravel driveway, can't
22 have brick driveways, can't have brick
23 sidewalks.
24 Good thing that Perimeter Mall isn't
25 located here. They wouldn't be able to build

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1 the place. And it's all because no one is
2 looking at the documents. You're just rubber-
3 stamping this stuff through. And then when it
4 blows up in everybody's face and everybody's
5 taking to the streets and they're yelling and
6 screaming and forming business associations and
7 what-not, it's because no one knows what's going
8 on here. You can't run the city in a closet.
9 Thank you.
10 MAYOR JENKINS: Anybody else for or
11 against?
12 - - -
13 (No response)
14 - - -
15 MAYOR JENKINS: I'm going to bring it
16 up to the table. Any comments?
17 COUNCILMEMBER FLEMING: Yes. I need to
18 ask Mr. Weed a question, please.
19 Mr. Weed, on Section 402 Definitions,
20 the specific definition of zoning proposal will
21 be included in Municode under Section 402 of our
22 current Code; is that correct?
23 ATTORNEY WEED: Yes, ma'am.
24 COUNCILMEMBER FLEMING: Thank you;
25 because it does not delete any of our defini-

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1 tions that we presently have in our zoning book.
2 It's just an addition to what we presently have.
3 ATTORNEY WEED: Yes, ma'am.
4 COUNCILMEMBER FLEMING: So that the
5 issue of this particular ordinance is adding to
6 Section 402 the definition of zoning proposal.
7 ATTORNEY WEED: That's one of the three
8 purposes, yes, ma'am.
9 COUNCILMEMBER FLEMING: Correct.
10 The second item of this particular
11 ordinance is Section 1402, which is the variance
12 criteria. We had variance criteria prior to
13 this ordinance. It just had not been given to
14 the authority of the Planning Commission, and
15 this is giving them the authority to take care
16 of -- to properly give the Planning Commission
17 criteria to look at to make a decision.
18 ATTORNEY WEED: Yes, ma'am.
19 COUNCILMEMBER FLEMING: All right. And
20 then 1603 is the standards for review for zoning
21 for both the Planning Commission as well as City
22 Council and any other city planner or staff or
23 whatever else.
24 ATTORNEY WEED: That is correct.
25 COUNCILMEMBER FLEMING: Okay. So those

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are the three issues. We're adding 402 definitions of zoning proposal only to the existing; we're addressing 1402, the criteria for variances, and 1603, the criteria for zoning.

ATTORNEY WEED: Yes.

COUNCILMEMBER FLEMING: Thank you. Any other discussion?

COUNCILMEMBER ROCHE: Yeah. On this particular item, I realize it may be a little confusing to people because, again, this is just kind of cleaning up after we fixed 2-40, I believe. And the problem we had before was that, you know, our Planning Commission was not able to look at text amendments or whatever, and this is kind of just the tail end of that.

I will say, though, for the record, that if it was up to me, all of these draft proposals would be on the Web site available for everyone to see in plenty of time before we actually voted on them. So I think that point -- that particular point is well taken.

COUNCILMEMBER SPANGLER: I agree.

COUNCILMEMBER ROCHE: That's all I have to say on this.

COUNCILMEMBER SPANGLER: I agree with

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Mr. Roche. I agree with what Mr. Frank said. You know, we do have a newly-appointed business association in Doraville. We were all able to attend their first meeting last week, and I think there was a lot of the business people there. There was a few people that were not there that I'm sure will be there at the next meeting.

I think we need to work with these people. I think we need to postpone any voting on any of these ordinances until we've had an opportunity to review and make sure these people have seen the materials that we're going to vote on where they can give us any and all input that they want to give us, and then we take it from there.

COUNCILMEMBER BATES: This was first presented to Council over a month ago. So it's been on multiple agendas; is that correct?

MR. HAEBERLIN: That's correct.

COUNCILMEMBER BATES: And this text amendment that we're looking at has been available since March 26th and it's not changed since; correct?

COUNCILMEMBER FLEMING: And it was at a

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public hearing of March 23rd, as well.

ATTORNEY WEED: I believe that is correct. I believe the first draft that I've got, there were some e-mail communications with regard to commentary on it as early as March 19th. I'm looking through my e-mail chain. I think those are the first e-mail communications I've got with regard to commentary, but obviously you had it, you know, before March 19th.

COUNCILMEMBER ROCHE: Okay. And again, we're just talking about this one particular item. But I guess the question I have is, if I was a citizen, how would I get a copy of this during that period of time?

ATTORNEY WEED: Councilman, what I do from my office is obviously I make a draft of the ordinance. It is submitted to City Hall. At that point, whoever wants a copy of it as far as I'm concerned --

COUNCILMEMBER ROCHE: I understand.

ATTORNEY WEED: -- can get a copy of it.

COUNCILMEMBER ROCHE: I wasn't directing the question at you. That was kind of

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a question at large.

I think we have an issue that needs to be dealt with, but I realize that that's not the particular agenda item we're talking about right now.

But when we say something is available, we're not really saying it's available. We're saying it's available to members of the Council, and what's unclear is how someone that's not a member of the Council would get a copy of this.

And again, maybe that needs to be a separate menu -- separate menu -- separate agenda item or something else, but still --

But anyway, as far as this particular thing, this is just cleaning up after the 2-40 and making sure the Planning Commission does review variances, does review text amendments, does review these. This is just kind of the clean-up. So this particular menu -- agenda item -- I've been doing computers all day -- I mean I'm basically okay with this.

I realize there's a lot more to come, though, farther down the agenda.

COUNCILMEMBER BATES: I move to adopt the text amendments regarding 402, 1402 and

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1603.
COUNCILMEMBER FLEMING: Second.
MAYOR JENKINS: Anymore discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll, please.
ASSISTANT CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
ASSISTANT CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
ASSISTANT CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
ASSISTANT CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
ASSISTANT CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
ASSISTANT CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: No.

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MAYOR JENKINS: Okay, Scott. New business is the next one, and the first applicant is cancelled; right?
MR. HAEBERLIN: Yes.
I do apologize. I didn't get to hear. The last one passed?
COUNCILMEMBER FLEMING: Yes, 5-1.
MR. HAEBERLIN: Okay. Thank you.
The next item under new business is Mr. and Mrs. Stephen and Carol Adams. This was 3903 Flowers Road. It was a rezoning from C-1 to R-1 with variances.
The P.C. did hold a public hearing on this, as they did on the previous text item, on April 9th, 2009. They did not support the petition. However, since that time, April 20th, we did receive a request from the applicant to withdraw their rezoning petition, and that has become part of not only the e-mail chain regarding this report but also to the staff report.
So at this time, there is no action required on the Adams petition at all, so we can actually move on to the next item. There is no action required because it's been withdrawn by

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the applicant.
MAYOR JENKINS: Yes. Okay.
MR. HAEBERLIN: So it is essentially a dead issue.
The next item was an applicant-initiated variance, which was Mr. Kingport Kuo, 3693 through 3695 Stewart Road. This was an accessory structure variance. The property is currently zoned O-I.
At this time, I'm going to request that based on the written request of the applicant and the payment of the tabling fee which postponed this -- the P.C. again postponed it because Mr. Kuo was out of the country, so they have not yet acted on it; they will act on this on May 7th -- so I'm going to need for you guys to recess or postpone this item till May 26, which is a Tuesday. That will be where your fourth meeting falls because there is a holiday. So I'm going to request that the item be postponed or recessed to May 26, 2009.
MAYOR JENKINS: Do I have a motion?
COUNCILMEMBER ROCHE: I'll make a motion that we recess this particular item until May 26, 2009.

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COUNCILMEMBER SPANGLER: Let's do it a different date. I'm going to be out of town on the 26th.
MAYOR JENKINS: Is that during the convention?
COUNCILMEMBER SPANGLER: No, it's not, but I'm still going to be out of town on that particular date.
MAYOR JENKINS: Do you have another date you could set it?
MR. HAEBERLIN: No, sir. There are a number of items that have already been advertised, duly advertised for that date, and we will not be able to cancel that meeting.
MAYOR JENKINS: We've got a motion and a second.
COUNCILMEMBER ROCHE: I don't know if we have a second.
COUNCILMEMBER BATES: I'll second it.
MAYOR JENKINS: Okay. Call the roll.
ASSISTANT CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
ASSISTANT CLERK BRYANT: Councilmember Bates?

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COUNCILMEMBER BATES: Yes.
ASSISTANT CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
ASSISTANT CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
ASSISTANT CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
ASSISTANT CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: No. And for the record, I did ask that it be postponed or another date set because I am going to be out of town that meeting.
ATTORNEY WEED: Mr. Haeberlin, let me just clarify something. You've already advertised this matter for the next zoning agenda as well out of an abundance of caution or -- I just want to clarify what we're doing with regard to the advertising.
MR. HAEBERLIN: Yes, sir. There are a number of items coming up, obviously, on May 26, but this has been officially recessed by the

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Planning Commission till May 7th. So naturally then it will fall to the May 26 meeting for hearing.
ATTORNEY WEED: As long as we've got the ad run, I'm happy --
MR. HAEBERLIN: Yes, sir.
ATTORNEY WEED: -- or going to get it run. Thank you.
MR. HAEBERLIN: The next item we have on the agenda is an appeal which is pursuant to Section 1401 of the Zoning Code. Zoning Denial of Proposed Business, Mr. Whit Selke for Royal Moving Systems, 3684 Clearview Avenue, Zoned O-I.
Because this is an appeal, this does not require P.C. action, so you do not have a recommendation from the P.C. So we will bring and invite Mr. Selke to come up and speak as the applicant, then I will speak as staff, and then you can proceed into your public hearing.
Mr. Selke?
MR. SELKE: Mr. Mayor, City Council, I'm here as the landlord for 3684 Clearview Avenue. Mrs. Fried is here as the owner of Royal Moving Systems.

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On November 21st of last year, we appeared before one of the business license moratorium meetings on a Friday to ask an exemption for Mrs. Fried's business to get a business license at this location. We were very clear that the business license was for 2009, January of 2009. She had a current lease that would run through the end of 2008.
When she applied for a business license in 2009 -- We were approved by the committee on the November 21st date. When she applied for that license in January, she was not approved by the City Council's office.
We would like -- We are appealing that decision. In good faith as the landlord and as the tenant, we signed the lease. We did everything we could to get her in. She did everything. Her business is operating at that location, and then she was told that she would not get a business license after our understanding was that she would get a business license.
So our appeal would be that that business license that was granted to us or approved by the City Council on November 21st be approved now.

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MAYOR JENKINS: Okay. We've got a number of people that need to speak on this item. Do we go with those first, Murray?
ATTORNEY WEED: I believe that Mr. Haeberlin wanted to make comments from staff and then he was going to ask the Council to open up the public hearing.
MAYOR JENKINS: Okay.
ATTORNEY WEED: If the applicants are done.
MR. SELKE: Uh-huh.
ATTORNEY WEED: And you'll be given an opportunity to come back if you want to make further comment.
MR. HAEBERLIN: As I say, this was an appeal under Section 1401, and this provides an opportunity for people who feel they're aggrieved parties to appeal decisions of city officials -- I, being as the City Planner, the individual who reviews for you occupational tax license applications in order to facilitate the permitting process and of course make things move smoothly as far as our operations.
The property is currently zoned O-I. We came about this petition because we actually

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had a Quality of Life action on the property regarding some citations. Essentially, the individuals were in the building and they didn't have occupancy from us, the City, or a valid business license or occupational tax license as it correctly should be referred to.

So I went through and gave you kind of my City Planner position statement. In Ordinance 2008-23, which is the M-1 Light Industrial district, and by way of a conditional use, moving and storage companies were provided, and there's some very specific language in there, as you see. We approved that ordinance on October 27th, 2008.

The petitioner first appeared before the Mayor and Council at a moratorium hearing on November 21st, 2008. Therefore, at the time the individual appeared before the Council, there was already an ordinance that controlled where they were to locate in the city, and that was under M-1.

Now, the decision which was rendered by the City Council during the moratorium hearing I do believe to be in error. And the reason why I think that was an error is perhaps that the City

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Council believed the property was M-1, as many of the properties are on Clearview, but this specific property is O-I and not M-1.

As I said, moving and storage companies were already provided for in the light industrial district, and that's where they were placed within the Zoning Code and within no other location.

Now, if the discussion was at time that any other use as may be determined by the City Council to be similar and compatible with above-listed permitted uses, if that was the genre that the Council was using to approve this item, it was not made clear at that hearing. That was a saving clause that was in the previous zoning code which is no longer there. So if you would turn to O-I or light industrial, you don't see that clause in there that allows the Council to place items which are not fully identified in a specific district.

There is some discussion that our decision was based on Ordinance 2009-001, which is O-I, and that is incorrect because arguably there was already a location for moving and storage companies, and it was not within O-I; it

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was in light industrial.

So my recommendation -- and this is based on the parameters of other items which had lapsed during the moratorium period and based on previous decisions that have been rendered -- is that the recommendation of the staff be upheld. I don't believe that the decisions rendered in the moratorium period, number one, were correct or that forever grant rights to the petitioners. You know, I see no real vesting in this situation or expenditure on behalf of the applicant.

We do have an Exhibit D, which was provided by Mr. Selke, which outlines the time frame of the investment. You also have a property map. I did also too make a copy for you of 2008-23 which clearly identifies where moving and storage companies are to be located.

I know we had a long discussion about business and professional offices. This is exactly the reason why we did, because there are many things that applicants would like to say are business and professional offices which are clearly not.

Are there any questions from the

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Council?

COUNCILMEMBER SPANGLER: Yes. I would like to ask who attended that -- which Council attended that November 21st meeting?

MR. HAEBERLIN: If I recall, it might have been Councilman Alexander, Councilman Bates, and I think Councilman Pittman. I think. I'm questionable on you. And then of course the Mayor presided.

COUNCILMEMBER SPANGLER: Okay. And if we told -- if we as the majority told these people that they would be able to get a business license as of the first of the year, why can we not honor what we told them?

I mean, you know, I wasn't there. I'm just asking.

MR. HAEBERLIN: Well, that's really a question for the attorney.

But again, my argument is that that decision actually was an error at that time. The decision was an error, which it was contradictory to your Zoning Code that existed on that date which placed it in light industrial district rather than O-I district.

COUNCILMEMBER SPANGLER: So what you're

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saying, since we, the Council, told this gentleman and this lady perhaps that we would give them an occupational license as of the first of the year even though --

Well, just never mind. I wasn't any part of that. I would never tell anybody that I was going to do something and then not be able to do it.

MAYOR JENKINS: What is your recommendation, Scott?

MR. HAEBERLIN: Again, my recommendation is uphold the code that existed. I mean it's plainly clear that the moving and storage companies were specifically provided in the M-1 Light Industrial district and they were provided there as early as October 27, 2008. And on November 21st, 2008, which was after that time frame, I believe there clearly was an error. And it's not uncommon because much of Clearview is zoned light industrial. There are just a few properties that are zoned Office/Institutional.

MAYOR JENKINS: Okay. You want to open it up for a public hearing; is that correct?

MR. HAEBERLIN: Yes, sir.

MAYOR JENKINS: Stuart Anderson.

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MR. ANDERSON: I'll waive my time.

MAYOR JENKINS: Adam?

MR. HOIPKEMIER: I'll waive it.

MAYOR JENKINS: Ben Crawford?

MR. CRAWFORD: I'll waive mine.

MAYOR JENKINS: Bonita Hoffmeister?

MS. HOFFMEISTER: I'll waive mine.

MAYOR JENKINS: Anybody for it?

MR. HART: (Gesturing)

MAYOR JENKINS: Come on up, sir.

MR. HART: I know this building. We were going to run a Porsche race team out of there at one time.

There are a couple key issues. One is the map. We've talked about this probably a couple thousand times to get the map straight.

MAYOR JENKINS: Are you for it, Tom?

MR. HART: Yes, I'm for it, but I'm making my point.

That this man is not charged with the zoning map of the City; the Council and the Mayor are, and the Clerk is supposed to take care of this item. And again, the map's wrong. Now, you made a decision made on a zoning map that's incorrect. So it's not his decision to

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figure out what's M-1, O-I or whatever it is. It's the Clerk of the city, the Mayor of the city and City Council figure that out. Our zoning map does not match the tax map of Dekalb County. God knows how many hundreds of thousands of dollars we're missing here because we can't get our map correct.

Second of all, when you had these meetings -- and I went to a couple of these things where we had three Councilmembers and the Mayor voting willy-nilly for everything from eight massage parlors to whatever, you can't come back later and say, "Oh, gee, we made a mistake." Well, you made a mistake on this guy, then you need to go back and close those eight massage parlors you put in at the same time.

And the last thing is the saving clause which is missing from our zoning document. When these people, like, for example, these people in C-1 or whatever that have been moved out, whether it's a car dealership, where are they going to go? There's no provision for them to move to M-1, M-2. You know, you can't wash a vehicle in M-2? You can't wash it internally using modern conveniences?

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So what it is is the Mayor and Council have -- they've made a mistake -- it's not this guy's fault -- because y'all didn't look at what you were doing. It's like you issued permits to people, then the next day you want to grab them out of somebody's hand and say it didn't happen, and then if you don't agree with them, you throw them in jail.

MAYOR JENKINS: Gentleman in the back, come on up, sir. State your name, please.

MR. SELKE: Yes, sir. Whit Selke.

The October 27th ordinance that's referenced as what should have been the ruling ordinance is not what was online as of 11/21, because I've got a download of what was the ordinances at the time. So that's all I had to go on. And according to that, we were within our rights and the zoning was correct for us to ask permission for this to be an accepted use.

This tenant has done everything that they thought was proper, I have done everything that we thought was proper, to make this happen. They are a good tenant. They'll be good citizens of Doraville. It would just be, I feel, wrong to them to go back now and take away

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1 their livelihood when they've made a real effort
2 at moving to Doraville.
3 I hope the City Council will take their
4 business into account and then make their
5 decisions as to how this should be handled and
6 in the positive nature that they can bring to
7 this city. Thank you.
8 COUNCILMEMBER SPANGLER: This is
9 another example of us not getting with the
10 business members of the city and giving them the
11 right information. I mean the man just said
12 that as of 11/21, you pulled that off the
13 Internet?
14 MR. SELKE: That week, yes, sir.
15 COUNCILMEMBER ROCHE: I think we're
16 still in the public part, but I mean --
17 COUNCILMEMBER SPANGLER: I'm sorry. I
18 just --
19 MAYOR JENKINS: Okay, Ben. Are you for
20 it or against?
21 MR. CRAWFORD: For it.
22 MAYOR JENKINS: Okay.
23 MR. CRAWFORD: Ben Crawford, Oakcliff.
24 What I'd like to say is I believe the
25 landlord should have known what the property was

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1 zoned. I understand that the business owner
2 also had some Quality of Life issues, so I think
3 those things should factor into it. And also
4 what City Planner -- his recommendation is, I
5 think should be followed, because if there was
6 an error made it goes into his hands to review
7 it, and upon review, if he finds an error, it's
8 his job to bring it back to City Council's
9 attention. So I think that his recommendation
10 should be followed.
11 MAYOR JENKINS: Anybody else?
12 MR. SELKE: Can I respond to that?
13 MAYOR JENKINS: You have to come up,
14 sir.
15 MR. SELKE: We were aware of our
16 zoning, that it was O&I, and that was one of the
17 things that we brought up at the appeal --
18 during the moratorium hearing. We were, I
19 believe, specifically asked what our zoning was,
20 and we said it was O&I, business and office use,
21 for this company. It seems like it was
22 appropriate use for that area. So we were very
23 cognizant of what our zoning was and how that
24 fit into it, and it's a good fit under the
25 rules.

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1 MAYOR JENKINS: All right, Stuart.
2 MR. ANDERSON: I passed earlier because
3 I haven't driven up there and hadn't seen public
4 notice, wasn't aware of the property per se.
5 I'm aware of the neighborhood.
6 Mr. Selke, what kind of trucks are
7 going to be in and out of there?
8 MS. FRIED: Two 24-foot trucks.
9 MR. ANDERSON: 24-foot trucks.
10 Straight trucks, basically.
11 How close is your business to R-1?
12 MS. FRIED: Residential?
13 MR. ANDERSON: Residential.
14 COUNCILMEMBER BATES: I'm sorry. If
15 one of y'all could come up and . . .
16 MR. ANDERSON: And the reason I'm
17 asking questions is because I think there's
18 confusion.
19 MR. SELKE: As to the truck question,
20 that was specifically asked. The number of
21 trucks and the length of trucks was specifically
22 asked at the November 21st meeting, and we said
23 two 24-foot trucks at that meeting.
24 MS. FRIED: And also, we were
25 addressing then that basically we are a moving

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1 company but we are not a storage company. I
2 don't do storage there. There is no space for
3 storage, anything except the moving supplies
4 which are boxes and hand trucks and some --
5 MR. SELKE: This is a small building.
6 MS. FRIED: Exactly. It's a small
7 building, so it's not for storage.
8 The only thing that we do, we do our
9 sales out of there, and we have two trucks we're
10 actually parking behind the building so nobody
11 sees them. We don't have any garbage. We don't
12 throw out anything. We open the office at 9
13 o'clock in the morning and by 6 o'clock we're
14 gone. We don't give any noise, we are respect-
15 ful, and never, ever have any complaints from
16 any of the neighbors and nobody ever came out to
17 tell us we were bothering anyone.
18 MR. ANDERSON: That's the kind of
19 clarification I'm just asking for. The hearing
20 was done, and held and granted, I guess. I'm
21 just asking for clarification for the room.
22 How often do the trucks go in and out
23 during the day?
24 MS. FRIED: They leave at 7:00 -- it's
25 about 8:30/9 o'clock in the morning, and by the

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1 latest, 7 o'clock in the evening they are back.
2 MR. ANDERSON: That's what I was
3 thinking.
4 MR. SELKE: But not on a daily basis.
5 MR. ANDERSON: And not on a daily
6 basis.
7 MS. FRIED: We don't work on the
8 weekends. No Sundays whatsoever. The office is
9 closed and we don't work on Sundays. But we do
10 have probably about four days a week that we go
11 out.
12 MR. ANDERSON: There is O&I in that
13 area. I know that. And based on truck traffic
14 and based on us granting it in the first place,
15 I'm guessing I'm for granting their request.
16 MAYOR JENKINS: Anybody else?
17 Scott?
18 MR. HAEBERLIN: Yes, sir. At this
19 time, Mayor, you need to close the public
20 hearing, and the Council initiate discussion or
21 action.
22 MAYOR JENKINS: Okay. At this point,
23 it's O&I; is that correct?
24 MR. HAEBERLIN: Yes. The applicant has
25 not contested the fact that the property is

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1 zoned O&I. And O&I, as we've discussed at
2 length, even when we wrote O&I, we were very
3 specific that a number of things which people
4 would like to classify -- excuse me, if I could
5 have quiet in the back of the audience -- a
6 number of things that would be classified as
7 business and professional offices. We were
8 very, very specific on what was and what was
9 not.
10 However, moving and storage company was
11 specifically provided in a zoning district at
12 the time these folks came before the City
13 Council. And again, it is the feeling of staff
14 that an error was made because the Council may
15 have believed the property was light industrial.
16 Even if it had been light industrial, it still
17 would have been a conditional use so it would
18 still have come back to the City Council.
19 You have the representations before
20 you. Obviously the applicant did not feel it
21 was that important to have occupancy from the
22 city or to have a business license, because they
23 moved in the facility well in advance of ever
24 applying for those.
25 MAYOR JENKINS: How long?

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1 MR. HAEBERLIN: It was in early -- I
2 believe early January when we first started
3 speaking with the applicant. So they've
4 essentially been there for quite some time.
5 COUNCILMEMBER PITTMAN: So was this the
6 Quality of Life issue?
7 MR. HAEBERLIN: Yes, ma'am.
8 COUNCILMEMBER PITTMAN: So how long
9 were they operating without a permit -- a
10 business license?
11 MR. HAEBERLIN: I can't speak to this
12 particular, but basically they've been operating
13 ever since they've been denied for the business
14 license or the occupational tax license.
15 COUNCILMEMBER SPANGLER: So they did
16 apply first of the year for an occupational --
17 MR. HAEBERLIN: Yes, sir.
18 COUNCILMEMBER SPANGLER: -- license.
19 Okay. Assuming that they were going to get it
20 because of what they were told at that November
21 21st meeting, that they would be granted the
22 opportunity to purchase that occupational
23 license; is that correct?
24 MR. HAEBERLIN: That is correct.
25 That does not dispute the fact that

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1 they were operating in violation of the
2 Municipal Code of Ordinances.
3 COUNCILMEMBER SPANGLER: Well, I mean
4 if they applied, what were they told when they
5 applied for the occupational license at that
6 time?
7 We had a hearing not very long ago
8 where a lady had been operating her business for
9 what? seven years without a Doraville city
10 occupational license.
11 MR. HAEBERLIN: Uh-huh.
12 MAYOR JENKINS: Right.
13 MR. HAEBERLIN: It's not uncommon.
14 COUNCILMEMBER SPANGLER: So is that any
15 reason to not grant them their --
16 MR. HAEBERLIN: Again, I think your
17 documents were crystal clear at the time the
18 person came before you, and again it's my
19 opinion it was an error.
20 COUNCILMEMBER SPANGLER: Again, I was
21 not at this meeting --
22 MR. HAEBERLIN: I understand.
23 COUNCILMEMBER SPANGLER: -- but I
24 understand the majority of Council did vote for
25 this.

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1 MR. HAEBERLIN: And if the Council
2 grants this exception, this becomes yet another
3 legal nonconforming use on the facilities, so --
4 and that needs to be considered as well, if this
5 person should move out of the facility.
6 And I'm not disputing the opinions of
7 the Council, but I think the ordinance was
8 clear. And again, that's staff's perception of
9 it.
10 COUNCILMEMBER SPANGLER: But again, I
11 think he said -- the gentleman said that as of
12 November 21st, the ordinance had not been
13 changed on the Web site; is that correct?
14 MR. SELKE: Yes, sir. Based upon what
15 I'm hearing now, and I've just been given the --
16 MAYOR JENKINS: You're going to have to
17 come up, sir; the court reporter.
18 MR. SELKE: Sorry. I was just given
19 the City's report tonight, so I'm still trying
20 to digest it. But based on what I can get from
21 this, the new zoning rules that may have taken
22 effect prior to the November 21st meeting, that
23 were approved on October 27th, were not the ones
24 that were available to the public. So we were
25 basing everything on --

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1 COUNCILMEMBER SPANGLER: Prior to.
2 MR. SELKE: -- old public information,
3 in good faith doing that. So, you know, we did
4 everything, really, we thought, by the book.
5 COUNCILMEMBER BATES: Mr. Selke, hang
6 tight for me for a couple questions.
7 MR. SELKE: Sure.
8 COUNCILMEMBER BATES: Have they signed
9 a lease?
10 MR. SELKE: Yes, sir.
11 COUNCILMEMBER BATES: And how long a
12 lease have they signed?
13 MR. SELKE: Five years.
14 COUNCILMEMBER BATES: And that property
15 is adjacent to R-1. They're adjacent to a
16 house.
17 MR. SELKE: Correct. There's a rental
18 house. I believe, though, it may be a commer-
19 cial-use residential house.
20 COUNCILMEMBER BATES: It's residential.
21 So if it's being commercially used, it's being
22 commercially used incorrectly.
23 MR. SELKE: Okay.
24 COUNCILMEMBER BATES: Is there any type
25 of buffer on the back part of the buildings

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1 where the trucks, if approved, would be parked,
2 separating between the commercial property and
3 the residential property?
4 MR. SELKE: There's a fence, a drainage
5 ditch and a foliage line.
6 COUNCILMEMBER BATES: Thank you.
7 COUNCILMEMBER SPANGLER: I'll make a
8 motion, if it's proper at this time, to allow
9 the appeal since we already told this gentleman
10 back on November 21st, and then they can catch
11 up their occupational license from --
12 ATTORNEY WEED: You can make a motion
13 any time you want to.
14 COUNCILMEMBER SPANGLER: Okay. Well, I
15 make the motion that we grant this business the
16 appeal because we had already told them that we
17 were going to do this. And they just need to
18 catch up their occupational license from January
19 1 or whatever point that they started their
20 business.
21 COUNCILMEMBER FLEMING: Mr. Spangler --
22 COUNCILMEMBER SPANGLER: Yes, ma'am.
23 COUNCILMEMBER FLEMING: -- I realized
24 that you've made a motion.
25 But we closed the public hearing, is

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1 that correct, and now it's coming back up to us
2 for discussion?
3 MAYOR JENKINS: Yes.
4 COUNCILMEMBER FLEMING: Okay. So I
5 really wanted to ask a question of Mr. Weed
6 before. Would that be acceptable?
7 COUNCILMEMBER SPANGLER: That's fine.
8 COUNCILMEMBER FLEMING: So it's all
9 right if I ask Mr. Weed a question prior to?
10 MAYOR JENKINS: Well, we need to get a
11 second first.
12 ATTORNEY WEED: You can do it either
13 way. You can get a second for purposes of
14 discussion and --
15 MAYOR JENKINS: Well, let's go ahead
16 and get a second and we'll discuss it then.
17 COUNCILMEMBER ROCHE: I'll second the
18 motion.
19 MAYOR JENKINS: Okay. Discussion.
20 COUNCILMEMBER FLEMING: I wanted to ask
21 in regards to if we offered them a nonconforming
22 permit, can we put with an exception on there?
23 Would we run into after five years, for
24 instance, after they have finished the lease,
25 Mr. Selke would not be able to rent to -- he

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1 would have to abide by the O-I standards?
2 ATTORNEY WEED: My opinion of that
3 would be that is correct. There is a relatively
4 recent case which is BBC Land and Development
5 versus Butts County. It's a 2007 case. And it
6 essentially addresses that similar issue. I
7 believe that if you granted it in the way that
8 you have described, it would be applicable to
9 the current situation, and the landowner would
10 have no vested rights that would flow with the
11 property to utilize it in some other case with a
12 different tenant.
13 COUNCILMEMBER FLEMING: Okay. Would
14 Mrs. Fried be able to sell the business to
15 another owner?
16 ATTORNEY WEED: No, not --
17 Well, she could always sell the
18 business to another owner, but the permitting as
19 you're describing it, they'd have to come in and
20 seek another audience with Council. They
21 wouldn't be able -- she would not be able to
22 transfer a legitimate permit to some third
23 party.
24 COUNCILMEMBER FLEMING: Okay. So would
25 it be appropriate for the motion, then, to be

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1 that we're permitting a nonconforming permit
2 with the exception of putting no vested rights
3 after the initial time?
4 MAYOR JENKINS: After they move out.
5 COUNCILMEMBER FLEMING: I'm sorry?
6 MAYOR JENKINS: After they move out if
7 they were to move out.
8 COUNCILMEMBER FLEMING: With no vested
9 rights?
10 ATTORNEY WEED: If you're inclined to
11 do that -- and I'm going to turn to the Planner
12 here, too -- the way I would structure it would
13 be I would grant them a conditional use permit
14 which would have the effect that you're talking
15 about and couched in those terms, and one of the
16 conditions would be that it would last as long
17 as the lease lasted for that tenant. You could
18 make that a condition of the permit.
19 MAYOR JENKINS: Is that what you're
20 saying?
21 COUNCILMEMBER FLEMING: Yes, sir,
22 that's what. I wasn't sure whether we'd use the
23 terms "conditional" or "nonconforming," so --
24 ATTORNEY WEED: I would call it a
25 conditional use permit.

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1 COUNCILMEMBER FLEMING: Thank you.
2 ATTORNEY WEED: Unless the Planner has
3 got a better idea, which I'm certainly --
4 MR. HAEBERLIN: Yeah. I'm thoroughly
5 confused because there is no provision under O-I
6 to grant a conditional use for this business, so
7 I'm thoroughly confused at this point.
8 The property is O-I. It is not M-1.
9 If it was M-1, they certainly could apply for a
10 conditional use to have a moving and storage
11 company there.
12 COUNCILMEMBER FLEMING: So noncon-
13 forming permit.
14 ATTORNEY WEED: Well, the way I under-
15 stand the framework of this is that there was a
16 decision rendered at a previous meeting, and the
17 procedural framework is that the applicant is
18 appealing that decision.
19 If you rule in favor of the applicant,
20 then I would say to you what you are in effect
21 doing is deciding that this is an appropriate
22 use for O&I. That in and of itself would deal
23 with this particular person. However, if it's
24 an appropriate use for O&I, that use can
25 continue and it is part of the bundle of rights

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1 that the landlord would then have. He could
2 continue to put moving companies in there ad
3 infinitum. So that's something else to
4 consider.
5 COUNCILMEMBER ROCHE: So you're saying
6 moving companies could go anywhere in O&I.
7 COUNCILMEMBER SPANGLER: No.
8 MAYOR JENKINS: If you allow this.
9 ATTORNEY WEED: If you allow this one,
10 yes, in my opinion, that would be a precedent
11 for other moving companies in O&I. You would
12 have deemed that they are an office-insti-
13 tutional use.
14 COUNCILMEMBER ALEXANDER: I have a
15 question. It's my understanding that O&I, it
16 was in existence on November the 21st, it lists
17 professional and business offices providing that
18 wholesale and retail merchandise is not offered
19 for sale. So they are -- the fact to me that
20 they are not a storage of domestic goods, being
21 household goods, and it's strictly an office,
22 the for-sales -- and her employees come in to
23 get their assignments or whatever, I don't see
24 how at the time that they came before us on
25 November 21st, that they would not have been

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1 recognized as a professional and business
2 office.
3 ATTORNEY WEED: That sounds like a
4 credible argument to me, Councilman. That's
5 your decision, not mine. Based upon the Code,
6 that seems like a reasonable interpretation.
7 COUNCILMEMBER ALEXANDER: And this is
8 the Code that was available to the landowner at
9 that time.
10 ATTORNEY WEED: Now I'd like to clarify
11 several things real quick.
12 With regard to what's on the Internet,
13 I believe that our Web site has an accuracy
14 statement, meaning that you cannot rely upon the
15 Web site to give you accurate information. You
16 are required and the general rule of law is that
17 you're required to actually go to City Hall, get
18 a certified copy of whatever ordinance you're
19 talking about, and then that certified copy,
20 that is the official version of it.
21 So with regard to any confusion on
22 what's on the Web site, the Web site cannot be
23 relied upon.
24 Secondly, I'd like to clarify that, and
25 just for the record, there's a number of cases

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1 that indicate that. If Council does something
2 and you weren't authorized to do it, it's called
3 an ultra vires act, and, as such, no one can
4 rely upon that act at a later date to continue
5 on doing something that they would not have been
6 allowed to do up front. So an estoppel --
7 there's a doctrine called estoppel, which means
8 that in some cases if you approve of something
9 and a person relies upon it, they get to rely
10 upon that, and you would be estopped from saying
11 no. But it does not apply in the governmental
12 context with regard to permits or other
13 issuances of that kind in the zoning context.
14 In your decisionmaking, I wanted you to
15 have that information for your thought process.
16 MR. HAEBERLIN: I do want to make it
17 clear that the Zoning Code in any fashion was
18 not generally available to the public as it
19 remains today, because we are consistently
20 trying to codify this item and send it to
21 Municode. So back on October 27th, it would no
22 more have been online and available to the
23 general public as it is today. They would have
24 to come to the City Clerk's office, and, as the
25 attorney has spoken, they would have to ask for

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1 a certified copy of that Code, the same code
2 that we have here today with revisions. So any
3 information that would have been online at that
4 time, it had only been four days, and it was
5 unlikely even that the light industrial was
6 online at that time. So really, relying on the
7 Code online, as Mr. Weed has stated, is of
8 really no value here because it would not have
9 been online, neither code.
10 COUNCILMEMBER ROCHE: Sorry? You're
11 saying --
12 MR. HAEBERLIN: Neither code.
13 COUNCILMEMBER ROCHE: -- the older
14 version wasn't online?
15 MR. HAEBERLIN: Neither code would have
16 been online.
17 If you go to Municode today --
18 COUNCILMEMBER ROCHE: How did he get a
19 copy of it?
20 MR. HAEBERLIN: I don't know. I assume
21 that he went to the City Clerk's office and
22 received a copy of it.
23 COUNCILMEMBER SPANGLER: I think he
24 said he pulled it off online.
25 COUNCILMEMBER ALEXANDER: Yes.

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1 MR. SELKE: It certainly was online.
2 It was a PDF file online. I unfortunately don't
3 have -- I just have the pertinent pages with me
4 now. But page 54, 55, it was definitely online.
5 COUNCILMEMBER SPANGLER: Okay. Do I
6 need to change my motion to say that once the
7 contract's up on this particular parcel -- do I
8 need to add to my motion or change my motion to
9 include if and when this lease contract expires,
10 then it reverts back to or still is O&I but we
11 no longer --
12 ATTORNEY WEED: Let's think about it.
13 Once again, procedurally -- I'm turning
14 to Scott here -- where I understand you are
15 procedurally is that a decision was rendered
16 that this use is not appropriate for the zone,
17 which is O-I. It's actually an M-1 use. And
18 that decision's been appealed.
19 And then based upon that, the Council
20 need to determine that this is an appropriate
21 O-I use or it is not. And unless there is some
22 other mechanism such as a conditional-use permit
23 -- which I am turning to you to answer that
24 question. If there's not, then I think it comes
25 down to either it's a permitted O&I use or

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you're going to approve the decision of the Planner and the use will not be allowed.

If there is some alternative mechanism to limit the use, I don't know of anything other than what I suggested before. But if O&I doesn't allow conditional-use permits, then that wouldn't be applicable.

COUNCILMEMBER ALEXANDER: So Council cannot make a motion to uphold their own decision made November 21st?

ATTORNEY WEED: You certainly can. You're going to be doing that in effect. What you're going to be doing in effect will be deciding that the Planner is wrong, because that's what's before you in that limited context: either that decision was right or that decision was wrong. If you decide that you want to uphold your previous decision, you have in effect decided the Planner's determination was wrong, and that's fine.

COUNCILMEMBER SPANGLER: It's not a matter -- it's not a matter -- And my motion was not to show any disrespect to the City Planner or any fault to the City Planner.

ATTORNEY WEED: Understood.

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COUNCILMEMBER SPANGLER: My motion was made because the majority of this Council had granted the gentleman his appeal or whatever. Okay. So that's all I'm saying is I think that we should honor their decision back on November 21st with the information that Ms. Alexander and whomever else was here in the meeting had, that it was probably the best decision that they could make or they felt that it was the best they could make.

COUNCILMEMBER ROCHE: Right. I mean I think that the point was made earlier, and I think that Councilman Alexander mentioned this, too. One of the permitted uses is cleaning and maintenance services, which means that you could have a company and you could have all your cleaning trucks there, and, you know, it could be, I don't know, a carpet cleaner or something like that, and store all your supplies there, and you got trucks that come and go all day long.

In this particular case, they're not warehousing anything, they're not storing anything there, so this is more like an office than anything else.

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I'm not sure I understand how having a cleaning company, according to what we're looking at here on page 18 under permitted uses -- I'm just comparing this. Again, it says cleaning and maintenance services. Well, you could be a mechanical contractor, I guess. I don't know. And I'm not sure how that would vary all that much from an office where you have a couple of moving trucks parked outside.

MR. HAEBERLIN: Sir, which ordinance are you looking at?

COUNCILMEMBER ROCHE: I'm looking at this one that you provided.

MR. HAEBERLIN: Oh, you're looking at the M-1 ordinance. The property is zoned O-I.

COUNCILMEMBER ROCHE: Oh, okay. Never mind.

COUNCILMEMBER ALEXANDER: The O-I ordinance is 2009 dash --

MR. HAEBERLIN: -- zero zero one.

And again, it goes back to our discussion. We had a very long discussion about what constitutes business and professional offices. Every day, I have people who come in that believe a tattoo parlor is a business and

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professional office, that a waste collection facility is a business and professional office. So we were very specific on what was and what was not a business and professional office, particularly in light of things such as automotive dealers, shops and things of that nature that like to claim this exemption as well. So that's the reason why we were so wordy, I believe, in the 2009 O-I amendments.

COUNCILMEMBER ROCHE: I understand. And I guess, you know, maybe I'm still thinking like I'm in the real world. But to me, if you have a situation where you have a business that wants to come to Doraville and they go on the Web site and they get this information off the Web site and they bring it to the Council and the Council -- they come before the Council, and the Council says, "God bless you. You're fine to do this," then to be told later that everything we did was wrong and you're the one that has to suffer for this, like I said, that offends my sense of fairness.

COUNCILMEMBER BATES: Well, let me ask this question, Mr. Weed.

And Mr. Haeberlin, you may weigh in on

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this if Mr. Weed can't.
A period of time went by where we had two different -- we had potentially conflicting ordinances, or --
ATTORNEY WEED: No, sir.
COUNCILMEMBER BATES: Well --
ATTORNEY WEED: That did not happen.
COUNCILMEMBER BATES: Hang tight.
Because we passed C-1/C-2 and then M-1/M-2, and then a time period went by before we passed O-I/O-W. There is, in my opinion, in reviewing the O-I/O-W ordinance as it existed in November 21 of 2008, a clause that allows for professional businesses even though there was a new location for it in M-1/M-2.
So is it possible that it could exist in both at the same time?
ATTORNEY WEED: Yes, that is -- that is a possibility. Obviously I would want to look at all the chronological dates, and you have to apply, you know, the theories of chronology, and more specific overrules less specific, and you attempt to harmonize the ordinances. But yes, that is possible.
COUNCILMEMBER FLEMING: Well, we have

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those ordinances right now where we have conditional uses in one but permitted in another.
COUNCILMEMBER BATES: Right.
COUNCILMEMBER FLEMING: So I mean --
COUNCILMEMBER BATES: Here's where I believe in this particular instance, both parties are correct; the Planner is correct, and I concur with Mr. Selke in their position.
I'm at a quandary of what to do, two-fold or maybe threefold. One is in reviewing and looking at the zoning map on where O-I is currently allowed, I have a problem with setting a precedent of allowing moving and storage facilities in some of the properties that are currently zoned O-I, and that includes the downtown Doraville sector.
On the other hand, them having occupied and operated that facility -- I drive down that road every morning. I have never seen a truck or trucks, ever. So being very close to that property, I can't say that I even knew that they existed without having this come before us.
So I am very much in a quandary as to what the appropriate decision is, and looking

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for some other feedback.
COUNCILMEMBER SPANGLER: There was no storage, Mr. Bates.
COUNCILMEMBER BATES: Yeah, well --
COUNCILMEMBER SPANGLER: I mean you mentioned storage, but there's no storage --
COUNCILMEMBER BATES: Yeah. No storage.
COUNCILMEMBER SPANGLER: -- in this situation.
ATTORNEY WEED: I'm thinking outside the box for the moment, and I don't know what the ultimate decision will be here. But one thing you could do is hold this decision in abeyance, encourage the applicant to perhaps consider rezoning the property. And if that occurs, if the other properties near it, if there is enough M-1, then that might be a logical zone for this property. I don't know. I haven't examined that.
COUNCILMEMBER BATES: My problem with that is that it is literally adjacent to R-1, and I am not inclined to rezone that property to a light industrial that literally shares a property line with single-family residential.

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ATTORNEY WEED: Then it occurs to me that unless there is some other mechanism which doesn't appear to exist in O-I that would allow a conditional-use permit, then I think logic would dictate that you're going to decide essentially to uphold the decision you made previously and allow the use as a permitted use in that zone.
COUNCILMEMBER BATES: Could we hypothetically -- I'm thinking outside the box -- split that terminology of "moving and storage" to "moving" and then "moving and storage?" because, to me, there are two elements of concern here. One is a professional business office that runs an operation that is a moving company but doesn't provide the on-site storage or ware- housing of moved stuff and then there is the alternative of moving and storage businesses that do both the moving and the on-site storage. So is there a way where we could properly split the two and allow in O-I the business, the moving business -- the office/operational things -- I think there would need to be some restrictions and requirements on number and size of trucks -- and allow that in

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an O-I designation and keep the moving and storage as a joint usage in light industrial as a conditional use, both of them as conditional uses?

ATTORNEY WEED: I'm sure that is possible. I mean certainly you could make modification to the legislation and change the Zoning Ordinance to differentiate between the two items.

COUNCILMEMBER BATES: Because this topic has been advertised, is that something that we could do tonight or does that need to be revetted through the Planning Commission?

ATTORNEY WEED: Yeah. I would not feel comfortable doing that tonight. I think --

COUNCILMEMBER BATES: Sure.

ATTORNEY WEED: -- that would need to go through the Planning Commission. You need to do an appropriate Zoning Procedures Act ad that dealt with a Zoning Ordinance change to do that, but that certainly is possible.

COUNCILMEMBER BATES: Mr. Haeberlin, is that amenable?

MR. HAEBERLIN: It's the will of the Council, sir. I'll do whatever you ask me to.

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As a planner, I don't recommend it, and I'll tell you why: because you also have auto dealers' licenses that would like to locate in O-I; you have taxi services that would like to locate in O-I. And so I'm concerned about where we'll go down this string in terms of regulating land use within the city.

COUNCILMEMBER BATES: I understand.

MR. HAEBERLIN: If I could, Mr. Selke, could you show me page 54 because I just want to get a little clarification as to what you were actually looking at at the time that you reviewed the Zoning Ordinance of the city, make sure it's not Dekalb County's zoning ordinance certainly.

MR. SELKE: (Presenting)

MR. HAEBERLIN: Mayor and Council, I have turned to page 54 of our old Zoning Code and it has nothing to do with the page the gentleman has presented to me.

COUNCILMEMBER ALEXANDER: Check page 45.

MR. HAEBERLIN: Let me move to page 45. Just a second.

It looks like it might be a portion of

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page 45, but it is labeled as page 54.

MR. SELKE: If I might, that may be -- that numbering, because the number is at a different place, that may be the way the PDF document formatted it, because it certainly would seem to be same.

If I can add, we're not really asking for a reinterpretation of the current O&I. I think we're asking just to be honored under the previous O&I which would seem to offer an exemption to professional and business offices not offering for sale. So really, it seems like that's already -- it's asking that the decision that was already made be honored, which I wouldn't think would take -- wouldn't set a precedent since after that date you have made new zoning rules. So we're in the past, and those zoning rules would affect anything in the future.

MR. HAEBERLIN: The page that he's showing me really is a quandary, and I'll tell you why: because the Municipal Zoning Code that we have -- and we're talking about codified tonight, obviously -- labels every page in the center. This has a typewritten page on the

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right-hand side, so it's not even consistent with the form of the Zoning Ordinance.

I don't discount that you did get this from some place. I just don't know where.

COUNCILMEMBER ROCHE: Is the text the same, that Section 907?

MR. HAEBERLIN: The text is the same, and only a portion of the page is shown, though.

COUNCILMEMBER ROCHE: That could just be a PDF.

MR. HAEBERLIN: Yeah. Only a portion of the pages are shown.

MR. SELKE: But everything within that portion is shown. It's not taken out of context. It's just a previous page has the top of what's on here and --

COUNCILMEMBER ROCHE: Right.

MR. HAEBERLIN: Yeah. I don't know how to respond to that because I didn't get to see the source document.

COUNCILMEMBER ALEXANDER: I guess he touched on my -- I saw you shaking your head no, Mr. Weed.

ATTORNEY WEED: I don't think the chronology works out like that, because

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1 apparently when you had your hearing with regard
2 to the moratorium and the occupation-tax receipt
3 situation, apparently the Zoning Ordinance had
4 already changed?
5 COUNCILMEMBER ALEXANDER: No.
6 ATTORNEY WEED: I just wanted to
7 clarify that.
8 COUNCILMEMBER BATES: Only M-1 and -2
9 had changed.
10 COUNCILMEMBER ALEXANDER: That was my
11 point: that on November 21st, this O&I was
12 still active.
13 ATTORNEY WEED: And it was active in
14 two different places.
15 COUNCILMEMBER BATES: Well, we hadn't
16 readopted a new O-I/O-W that excluded --
17 COUNCILMEMBER ALEXANDER: Moving
18 companies.
19 COUNCILMEMBER BATES: -- moving
20 companies. That happened on January 20th of
21 2009. So as of November 21st, 2008, the O&I
22 that was allowable, even though it was now
23 listed as a conditional use under M-1, O-I/O-W
24 allowed professional and business offices with
25 no exclusions.

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1 MR. HAEBERLIN: Well, and also let's go
2 back to the savings clause. It had a savings
3 clause back then that said any use deemed
4 appropriate by the City Council.
5 COUNCILMEMBER BATES: Right.
6 MR. HAEBERLIN: So what you are saying
7 is you believe on that date, I assume, that you
8 were acting under that impression.
9 COUNCILMEMBER BATES: I remember this
10 conversation. I don't remember the details of
11 the conversation but I do remember talking about
12 professional uses and trucks, and I do recall
13 that.
14 I'm with Ms. Alexander on this par-
15 ticular . . .
16 ATTORNEY WEED: And I don't want to
17 misstate the facts, and Scott, please correct me
18 if I'm wrong. Is it not an issue with this
19 particular situation dealing with the timing of
20 what was submitted and when, meaning an actual
21 application to pay occupation tax?
22 MR. HAEBERLIN: Correct. While there
23 were claims the documents had been submitted to
24 the City prior to this time, you know, I
25 conferred with the City Clerk, Rhonda Blackmon,

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1 and there was no actual applications when people
2 came before the City Council's moratorium. They
3 simply signed up on the list. They did not make
4 an application. They were then directed to go
5 across the hall, I believe at the time it would
6 be to see either Dorothy or Sandra, to obtain an
7 application and follow through.
8 Apparently these folks did not do that,
9 because we have no record, no public record
10 document which indicates they did. And then
11 sometime in January they came in to apply to
12 actually get an occupational tax license because
13 they had been cited by the Quality of Life unit.
14 ATTORNEY WEED: And that time frame was
15 obviously after the adoption of the new O&I.
16 COUNCILMEMBER ALEXANDER: No.
17 MR. HAEBERLIN: It was shortly before
18 the adoption of the new O&I but after the
19 adoption of the light industrial.
20 ATTORNEY WEED: If you're asking me if
21 you have the legal authority to render a
22 decision in favor of the applicant based upon
23 the evidence presented, you certainly can weigh
24 the evidence, and you've got the authority to
25 weigh that evidence in whatever manner you deem

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1 appropriate.
2 If you do make that determination, then
3 I still think you ought to decide in the context
4 of where you are procedurally, in effect, that
5 the decision of the planning director is not
6 correct and that the applicant -- that you want
7 to grant their appeal.
8 Now, that's what's before you tonight,
9 and however you get there is how you get there.
10 COUNCILMEMBER PITTMAN: And did I
11 understand you to say that O-I you could not do
12 nonconforming or you could not do conditional?
13 MR. HAEBERLIN: You're asking me is
14 this an item specific for a conditional use
15 within O-I?
16 There is not an ability for them to do
17 so under the ordinance that exists today.
18 ATTORNEY WEED: You can always have a
19 legal nonconforming use in any zone.
20 MR. HAEBERLIN: Correct.
21 ATTORNEY WEED: That's always possible.
22 COUNCILMEMBER ROCHE: Well, but given
23 that, if we granted this appeal, would that
24 create this use? I know we kind of came here a
25 minute ago, but --

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1 ATTORNEY WEED: Based upon the evidence
2 that I've heard, I think a reasonable view of
3 the evidence would be that this use was legal at
4 the time that the majority of Council determined
5 that it would be appropriate for the tenant to
6 pay occupation tax underneath that use.
7 If that is the case, and now that the
8 zoning has changed, then you could I think
9 logically make a decision that it was a legal
10 nonconforming use and that use will continue on,
11 and at that location, that use is part of the
12 bundle of rights and that these will continue
13 on, and the landlord can rent to moving
14 companies ad infinitum unless there's a break of
15 six months. I think that is a reasonable
16 interpretation of the evidence before you
17 tonight.
18 COUNCILMEMBER ROCHE: But what about
19 the rest of O-I?
20 ATTORNEY WEED: I would render the
21 opinion that you'd have to deal with that on a
22 case-by-case basis. And unless there was some
23 evidence that there was a legal nonconforming
24 use on that particular plot of land, then it
25 would not be generally applicable. In other

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1 words, the entirety of O&I, you would not have
2 to apply the same rule with regard to that
3 because you're making a decision essentially
4 based on a legal nonconforming-use vesting
5 argument.
6 COUNCILMEMBER ROCHE: That sounds good.
7 ATTORNEY WEED: Now, you'll have to
8 look at it every single time --
9 COUNCILMEMBER ROCHE: No, I understand.
10 ATTORNEY WEED: -- but, you know --
11 COUNCILMEMBER FLEMING: But even if --
12 ATTORNEY WEED: Acre 1-2-3, you'll have
13 to make that decision each time.
14 COUNCILMEMBER FLEMING: Even if we make
15 it as granting them a permit, legal noncon-
16 orming with conditions of no vested rights for
17 this property?
18 ATTORNEY WEED: Yeah, I think we're
19 beyond all of that.
20 I think what you would do is, you know,
21 based upon the evidence as I hear it, you would
22 be making the determination essentially that the
23 applicant's use was legal and nonconforming at
24 the time that it was being done, and, therefore,
25 they could continue that use. But the break in

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1 time would have to be the six-month period of
2 time, that, you know, there was not a moving
3 company in that office space for a break of time
4 of six months, then the general rules of O&I
5 would apply.
6 MAYOR JENKINS: We've got a motion and
7 a second, Bob. How do you want to do that?
8 COUNCILMEMBER SPANGLER: Well, do I
9 need to change my motion, Mr. Weed?
10 ATTORNEY WEED: What was your motion
11 again? Let's go back to that.
12 COUNCILMEMBER SPANGLER: Well, I just
13 said that since we had granted this business-
14 person the appeal back in November 21st, with
15 the information that Council at that time had
16 and the information that the applicant had, that
17 we should stand by our word and give him his
18 appeal.
19 ATTORNEY WEED: What I would suggest,
20 what I would advise would be that you make a
21 motion that based upon the evidence before you
22 tonight, you have made the determination that
23 the landowner and -- and the use is a legal
24 nonconforming use, and when you make that
25 determination, you will in effect be granting

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1 them the appeal -- the applicant the appeal.
2 COUNCILMEMBER SPANGLER: That was my
3 motion.
4 COUNCILMEMBER ROCHE: And I'll still
5 second that motion.
6 COUNCILMEMBER BATES: And just for
7 clarity so everybody's clear, that is granting
8 this legal nonconforming use, if approved, to
9 this property only --
10 ATTORNEY WEED: That is correct.
11 COUNCILMEMBER BATES: -- and not
12 throughout all of O-I.
13 ATTORNEY WEED: The next property would
14 have to come up and demonstrate, and you'd have
15 to find evidence that there was a legal
16 nonconforming use at the time, you know, it
17 existed before you changed the zoning.
18 COUNCILMEMBER ALEXANDER: And that is
19 3684 Clearview Avenue, Dekalb County Tax Parcel
20 I.D. number is 18-11-04-027.
21 ATTORNEY WEED: I think you have a
22 motion and as second; correct?
23 MAYOR JENKINS: Okay. Call the roll,
24 please.
25 ASSISTANT CLERK BRYANT: Councilmember

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Alexander?
COUNCILMEMBER ALEXANDER: Yes.
ASSISTANT CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
ASSISTANT CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
ASSISTANT CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
ASSISTANT CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
ASSISTANT CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Break time. We're going to take a ten-minute break.
Motion carried.
- - -
(Brief recess)
- - -
MAYOR JENKINS: Meeting come to order.
Item number 6, Scott.

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MR. HAEBERLIN: Zoning Ordinance text amendment, which is Conditions on Approval of Variances, which is a sunset provision for variances. I do want to note again that this item was held in public hearing of the Planning Commission on April 9th, 2007. The draft copy was available to the general public. Of course they could go to the City Clerk's office at any time and review it and request a copy to be made at a cost to them of 25 cents a page.
If you remember this item, there was a desire by a couple members of the City Council to have variances kind of I hate to say fade but sunset to ensure that they didn't run with the land in perpetuity. And so there were some attempts made as drafts, several drafts, which the last draft was March 25th, 2009, which is the one that the Planning Commission reviewed, and then that contained the updates provided by Mr. Weed as a result of some of my comments that I have provided to him.
So essentially they came into effect a provision for sunset for variances and an appeal provision as well for people to appeal up to 30 months for their variances conditions to stay.

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There's some actions in here that give them substantial progress -- Murray, I illuminated those a little further -- but basically this was thought to be an improvement on the existing Zoning Ordinance relative to some variances that or some situations that have resulted from variances in the past with past City Councils.
Like I said, the Planning Commission did recommend approval of this on April 9, 2009, of the draft document dated March 9th -- March 25th -- excuse me -- 2009.
MAYOR JENKINS: Okay, Scott, what do you want to do?
MR. HAEBERLIN: We're going to need to have a public hearing on this again.
MAYOR JENKINS: Okay. Do we need to hear from these people that signed up before we go into further hearing?
MR. HAEBERLIN: No. That would be part of the public hearing, sir.
MAYOR JENKINS: Okay. Go into public hearing.
Do you want to go first, Adam?
MR. HOIPKEMIER: I will.
MAYOR JENKINS: It's easier to say Adam

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than try to pronounce it.
MR. HOIPKEMIER: Adam Hoipkemier on behalf of Joe Frank.
This is a significant change to your Zoning Ordinance, and I think some of you agree with me already that it needs to be tabled for further circulation and discussion among the people of Doraville. This is a government by the people, and I would wager that probably only a handful of people in the city have seen this change, and many of the business people here have a stake in this.
Our concern here is that there is a perception that there is a lack of transparency. I don't know if it's intentional. It probably isn't. But perception is a reality, and you can hear the people in this room, how they feel about it. This is the first day that I've been involved with this, and I'm probably one of the few people that does have a copy. I got it at 4:30. The City Clerk, through her efforts, I got it, and I thank her for that. But I can't really go to the Mayor -- it's in the constitutionality of this -- because I've only had it for two hours.

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I did file objections to preserve the right to appeal if you go ahead with it tonight. I hope you don't. I think something like this needs to be discussed fully. I think everyone needs to talk about it and Mr. Spangler, and Mr. Roche have already mentioned that I think they share my view.

I believe it's retroactive to people in the city who do have vacant lots with variances. And the case that your attorney has probably counseled you gives you the power to enact this variance was not a unanimous decision by the Supreme Court of Georgia. Justice Carley, who is probably the most well-respected judge in the state, did write a long dissent. So this isn't that clear-cut of an issue.

The issue before you is whether a variance creates a vested right or whether the Council can remove that right for certain -- here it's a condition whether you develop the property within a year or take some steps towards developing it, based on my short review.

But as a comment, I think Mr. Roche said that when you look at the Internet and you rely on what the Council's putting out there, it

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seems unfair to then take away -- or you can't rely on something that's on the Internet because there's some legal language with a disclaimer, and that's just not how people act. When you see something put up there by the City on the City's Web site, you take it as fact.

And in the same vein, when you have a variance, you don't think it's going to be taken away, especially in this economic climate where -- you're putting on landowners now they have a year to put I think it's a large investment in the property, and that's going to be difficult for developers in Doraville right now. They don't have a lot of free cash flow, and now you're saying, "All right. You're about to lose what could be a significant investment in this property because of this amendment that you might not even know about."

Thanks.

MAYOR JENKINS: Thank you.

Bonita?

MS. HOFFMEISTER: May I speak later, please?

MAYOR JENKINS: Excuse me?

MS. HOFFMEISTER: May I speak later,

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please?

COUNCILMEMBER PITTMAN: She wants to speak later.

MR. CRAWFORD: She wants to defer to a later time.

MAYOR JENKINS: I'm sorry. I can't hear you.

MR. CRAWFORD: She wants to defer to a later time, you know, after somebody else speaks.

MAYOR JENKINS: Oh, okay. After the other people speak or --

MS. HOFFMEISTER: Yes, please.

MAYOR JENKINS: Tom's not here.

Stuart Anderson?

MR. ANDERSON: Stuart Anderson.

To comment to Adam, I think the reason this thing was proposed as the sunset provision was because of a particular subdivision of a lot, 1406 Wilton, that bothered some City Council people, wherein the variance was open-ended and could be just acted on should we say in 10 years kind of situation. It was kind of a reach-around thing, and that was the reaction to this, and that's where it came from.

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I agree with you a hundred percent. I came forward with a proclamation that I found in records that all of the City Council had signed as far as notifying people, and the City has chosen to only notify The Champion, which is the legality, et cetera.

But I just want to go on record to bring out the announcement or my support of letting people know when we're going to rezone around them or have a variance around them so that they can have public comment and possibly get information.

And also since you touched on it, something that Scott mentioned in the Planning Commission meeting was that for continuance of this variance sunset, particularly for industrial projects where it takes two or three years to get something done, finances, et cetera, I tend to be for the sunset provision in residential; but I agree with Scott as far as industrial goes, just for what that's worth.

What I wrote about this issue is item -- whatever item it is tonight; it was item 10 a few times ago -- Conditions on Variance Approval: This is not conditions of variance

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1 approval. It's just an addition to 1402,
2 Variance Criteria. The fifth "whereas" in --
3 I'm not sure what version I have, so Murray
4 might have fixed some of this. I'm not sure.
5 But the fifth "whereas" in the document that I
6 have can remain as long as it contains the
7 Planning Commission as reviewers mentioned. The
8 document that I have leaves off the Planning
9 Commission as far as this goes.
10 I find the continued listing of our
11 zoning criteria, consideration criteria, 1603,
12 in every zoning revision to be confusing to the
13 researcher or reader, misleading, in that the
14 wording changes from revision to revision.
15 But in this case, "whereases" 6 through
16 18 absolutely need to be removed and should not
17 be in any of our variance criteria ordinances.
18 6 through 18 are conflicting and confusing and
19 would lead the reader of a variance ordinance to
20 believe or think that they might be the criteria
21 for consideration of the granting of a variance.
22 They are zoning criteria and they are changed
23 from time to time as they're presented. They
24 certainly shouldn't be in anything as far as
25 variance considerations go.

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1 The only part of the seven pages of
2 item 10 Variance, or the only part of the seven
3 pages that should be added to 1402 are the
4 paragraphs on page 3 and 4, conditions on
5 variance approval that indicate sunset require-
6 ments, extension procedure. This is a revision
7 of 1402 asked for by Mrs. Fleming.
8 However, the second paragraph under
9 1405, question mark, needs to end with "will be
10 revoked," not "may."
11 And the third paragraph needs to be
12 deleted. The revocation process is not a
13 rezoning as long as "will be revoked" is the end
14 of paragraph two. If it's left as "may," we
15 have unneeded time wasted and expenses having
16 unnecessary public hearings. And what I wrote
17 there was Scott had useful information about
18 extension procedures.
19 As I mentioned before, our variance
20 criteria are not good. They should be deleted
21 and replaced with the following: "must meet
22 all," in quotes; A, there are extraordinary and
23 exceptional conditions pertaining to the
24 particular property in question because of its
25 size, shape or topography; B, the application of

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1 the Zoning Ordinance, City of Doraville, to this
2 particular piece of property would create an
3 undue hardship; C, such conditions are peculiar
4 to the particular piece of property involved; D,
5 such conditions are not the result of any action
6 of the property owner; E, relief, if granted,
7 would not cause a substantial detriment to the
8 public good nor impair the purposes or intent of
9 the Zoning Ordinance, City of Doraville; F, no
10 variance will be granted for use of land or
11 building or structure that is prohibited by the
12 Zoning Ordinance, City of Doraville.
13 I guess that's all I have to say about
14 this.
15 But we've got seven pages here that is
16 really two paragraphs. I apologize for picking
17 on Murray, but we have a lot of stuff here that
18 should be just a revision of an ordinance, 1402,
19 not a creation of a whole new 1405 with all this
20 zoning stuff or with all this rezoning material
21 in it.
22 Thank you.
23 MAYOR JENKINS: Ben Crawford?
24 MR. CRAWFORD: Ben Crawford, Oakcliff.
25 The first thing I'd like to say is a

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1 proclamation is I guess something that City
2 Council could do and it's not an ordinance or
3 anything else. If I'm wrong, maybe, you know,
4 it's something that they'd like to do.
5 I don't know. If Murray could answer
6 that. Is it something they have to do if they
7 make a proclamation? If somebody on City
8 Council makes a proclamation, does that become
9 binding?
10 ATTORNEY WEED: Well, with regard to
11 zoning law, what Title 36 says is that zoning
12 can ordinarily be done by an ordinance or a
13 resolution. If something was done by a procla-
14 mation, usually proclamations are reserved for
15 honorarium, things of that nature. You know, by
16 definition, they don't ordinarily rise to the
17 level of a piece of legislation unlike a
18 resolution or a --
19 MR. CRAWFORD: Okay. Thanks for that
20 answer there. That's kind of what I thought.
21 And then the other thing is to look in
22 the audience and to have somebody come up here
23 and say that, you know, they're confused or
24 against it and everything else, they shouldn't
25 speak for everybody. I as a citizen am not

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1 confused.
2 And I also know that back when we were
3 doing the Comp Plan, there is a gentleman in
4 this room that was there at the time, a
5 gentleman that's here only when things concern
6 him and sometimes other times.
7 But the business community has known a
8 long time that the zoning has been changing, is
9 about to change. The City made a decision at
10 the point when they hired a City Planner to take
11 a comprehensive look at the zoning within the
12 city and start working it, making it better for
13 the citizens of the city and for the future of
14 the city. And I think we're off in the right
15 direction, we're going forward in the right
16 direction, and I think it would be a sad mistake
17 to take what's been worked on, and as that
18 gentleman back there suggests, to put it on
19 hold, to table it on his sayso. You know, he's
20 got it tonight, this afternoon at 4:30; so be
21 it. That's the way it happened.
22 But to say the business community
23 hasn't been aware, that's not true. They've
24 been aware for a long, long time, and you very
25 seldom see them at City Council meetings, do

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1 you? And that's all I have to say.
2 MAYOR JENKINS: Come on up.
3 MR. FRANK: Joe Frank, Buford Highway.
4 Ladies and gentlemen, guess I don't
5 appreciate his comment on me, but yes, we are
6 aware of those things. We have never said that
7 we were not aware of those things.
8 But at the same time, things seem to be
9 constantly changing. Seems like things are made
10 and then everything settles down for awhile, and
11 then all of a sudden it gets picked up again and
12 somebody else tries to do something. And the
13 fact is we are not made aware of those things,
14 just for your information.
15 Anyway, back to the point of the sunset
16 clause, my concern is that right now apparently
17 we are talking and I assume we are talking only
18 about future development, and correct me if I'm
19 wrong on this.
20 What I'm concerned about is that it's
21 going to -- somewhere down the line again, it's
22 going to be changed and it's going to be retro-
23 active to existing properties. In other words,
24 let's say somebody has a property that has a
25 variance on it, and now all of a sudden somehow

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1 this is going to be changed and they're going to
2 say, "Well, you did have a variance on it but
3 this variance is no longer a valid variance
4 anymore," or they're going to come in and say a
5 situation where there was a piece of property,
6 you know, because the road has been widened and
7 now pieces of the parking lots have been taken
8 away, and now all of a sudden your situation
9 where maybe the parking lots are not to the
10 current zoning, and somebody's going to come out
11 and say, "Yes. Well, that was taken back then.
12 It doesn't qualify to the current one so
13 therefore it's not the -- you can no longer use
14 the property," or you have variances that were
15 given by City Councillors very similar to what
16 just happened to the gentleman over there, and
17 then the City Council comes back and says, "Yes,
18 but that was given by the previous City Council
19 so therefore it is no longer valid."
20 And this is what we need to be careful
21 in those sunset things. And I don't want to
22 elaborate and spend a lot of time on this, but
23 like maybe we need to sit down and discuss it a
24 little further on that. Thank you very much.
25 MAYOR JENKINS: Thank you.

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1 Last chance, Bonita.
2 MS. HOFFMEISTER: I waive.
3 MS. FRAYSSE: Susan Fraysse, Oakcliff
4 Estates.
5 I just want to ask a question. I
6 remember when this came up before, I remember it
7 being discussed. It seems perfectly reasonable
8 to me to have a sunset. I think there was some
9 discussion about how much time would be
10 appropriate. It seems like, you know, a year
11 would be too short, and I just want to ask Scott
12 to clarify for me and the rest of us, is this
13 not going to involve a period of time over
14 several years before any penalty?
15 MR. HAEBERLIN: It is to allow the
16 privilege of the City Council to grant
17 extensions up to 30 months, and that again is
18 just shy of three years. The reason we did that
19 is because, again, there are different financing
20 situations. It takes a long time particularly
21 to develop nonresidential properties. It was
22 felt by staff, particularly with my experience
23 in development, that you really need to have
24 that protracted ability for an individual to
25 work on a project. And I certainly hope we get

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some projects that are large enough of a size that, if they did have a variance, that there would be a couple years involved in their development, and that's pretty common.

In other words, we can't look at the development of small 5,000 square foot buildings. We need to look at the big picture of building several hundred thousand square feet of facilities, and that takes time. Again, that's the reason why that I felt it was appropriate to put up to 30 months, and, you know, that does extend the time frame out there.

I do appreciate the comments on the residential development, but I'll let you know that residents have financing situations as well. There are some people who move quickly on things and some people who will need a certain amount of time. So it treats everybody equally in this respect; everybody will have the opportunity to apply for extensions up to 30 months, and of course they'll pay their respective fees and come before the City Council. So I think it treats everybody fairly.

And although I was initially adverse to this, in hindsight, if it moves people forward

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to complete developments, I am in favor of it.

So I do recommend that the draft that Mr. Weed has prepared for you, the last draft, that was presented to the Planning Commission and was also recommended by your Planning Commission.

MAYOR JENKINS: We close the public hearing and bring it up to the table.

COUNCILMEMBER SPANGLER: I made a motion at the beginning of this meeting and I guess it would still stand. I would ask that Council postpone this. And again, there's been more than myself, of Council people, that have asked that we communicate more with the business owners of the city, and I'd just like to have a little more time to meet with them since they have the newly-formed, again, business association. All of the Council people attended, the Mayor attended; Mr. Noonan, you attended; Ms. Fraysse, Stuart. I just think we owe it to them to get some more input from them and let them know exactly what's going on.

MAYOR JENKINS: Do I get a second?

COUNCILMEMBER FLEMING: We still didn't have a discussion situation. He just jumps out

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there and makes a motion.

COUNCILMEMBER SPANGLER: Oh, I made the motion at the beginning of the meeting, so, you know, any discussion or whatever . . .

MAYOR JENKINS: I need a second.

COUNCILMEMBER BATES: Your motion was to postpone it?

COUNCILMEMBER SPANGLER: To postpone it to give --

COUNCILMEMBER BATES: I'll second.

COUNCILMEMBER SPANGLER: -- the newly-formed business association an opportunity to respond back to us.

COUNCILMEMBER ALEXANDER: What would be the proper language for the motion so it can come up at the next meeting if it needs to? Defer?

ATTORNEY WEED: Well, if you don't want to run another Zoning Procedures Act, then I would just make a motion to recess a decision on this until the next meeting, till a date certain, whatever date that is.

ASSISTANT CLERK BRYANT: May 26.

ATTORNEY WEED: Apparently it's May 26.

COUNCILMEMBER SPANGLER: Well, I'm not

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going to be here May 26. I'd like for it to be a later date than that.

ATTORNEY WEED: You could set whatever -- you know, I think whatever reasonable date you care to, but I wouldn't make it more than 90 days out.

MAYOR JENKINS: How about the next one?

COUNCILMEMBER SPANGLER: Next Council meeting, Mayor, wouldn't give us an opportunity to meet with the business association, I don't think.

MAYOR JENKINS: Oh, okay.

COUNCILMEMBER SPANGLER: Do you concur, Mr. Bates?

COUNCILMEMBER BATES: Could we recess a zoning meeting to a scheduled Council meeting?

ATTORNEY WEED: Yes.

COUNCILMEMBER BATES: Okay.

ATTORNEY WEED: Sure you can. If you've got a meeting, you've got a quorum. And all the Zoning Procedures Act requires is that you've duly advertised it and held and conducted a hearing.

You have done that. And if you want to recess and make a decision at some other future

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1 point in time, my opinion is yes, you can do
2 that. Where it gets a little murky is I don't
3 think you can do it a year from now.
4 COUNCILMEMBER BATES: Sure.
5 Yeah. I'll second that, Mr. Spangler.
6 COUNCILMEMBER SPANGLER: Okay. But
7 again, not for the May 26 meeting but possibly
8 the meeting after that?
9 ASSISTANT CLERK BRYANT: That will be
10 in June, June 1st.
11 ATTORNEY WEED: The first Monday in
12 June or you could set it to a special-called
13 date, either one, as long as -- but you need to
14 set the date tonight, whatever date it's going
15 to be.
16 COUNCILMEMBER SPANGLER: What date is
17 that first meeting in June?
18 ASSISTANT CLERK BRYANT: June 1st.
19 COUNCILMEMBER SPANGLER: June 1st. I
20 think that would give us plenty of time to get
21 back with the business association, Mr. Bates.
22 COUNCILMEMBER BATES: I'll second that,
23 but I do want to have a discussion tonight if we
24 can.
25 MAYOR JENKINS: You seconded it.

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1 COUNCILMEMBER BATES: Yes, sir.
2 MAYOR JENKINS: Okay. Discussion.
3 COUNCILMEMBER ROCHE: I just want to
4 say two things.
5 First of all, apparently someone
6 overheard me in the hallway. I was actually
7 talking about the next item on the agenda, not
8 this particular one, as far as coming back to it
9 later.
10 And as Mr. Bates said, I do have -- I
11 just want to make something clear. This sunset
12 ordinance would not be retroactive to any
13 existing variances.
14 ATTORNEY WEED: Underneath the leading
15 case on the subject, unless the variance --
16 unless the person who held the variance had done
17 something to vest in the variance, arguably, it
18 could be. You know, you could have a variance,
19 but unless you -- if you simply sit on your
20 hands and do nothing with it, then if the law
21 changes, then the law changes and you aren't
22 vested. And that's the basis of Meeks versus
23 Buford County.
24 COUNCILMEMBER FLEMING: Back when we
25 were discussing the Wilton Avenue and we awarded

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1 them the variance, he was talking about 10 years
2 out, and --
3 ATTORNEY WEED: And bear in mind --
4 COUNCILMEMBER ROCHE: And he could sell
5 the property with the variance.
6 COUNCILMEMBER FLEMING: And he could --
7 ATTORNEY WEED: Yes.
8 COUNCILMEMBER FLEMING: -- sell it.
9 That's what we were told. And that was my
10 purpose for trying to --
11 COUNCILMEMBER ROCHE: Right.
12 COUNCILMEMBER FLEMING: -- get this
13 sunset provision enacted.
14 ATTORNEY WEED: Absolutely. And the
15 question that would come up would be whether or
16 not that particular landowner did something to
17 vest in the variance. And there's a pretty
18 clear laundry list of things you've got to do to
19 vest. Were there substantial expenditures? The
20 case is WMM, I think, versus Cherokee County.
21 That's off the top of my head. I have it here.
22 I can look it up.
23 But there's a laundry list of things
24 you can do to vest. But if you don't do those
25 things and you've got the potential to vest --

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1 but you can't sit on your hands and hope that
2 the law doesn't change.
3 COUNCILMEMBER ROCHE: So anything
4 that's out there, you know, if someone got a
5 variance a year-and-a-half ago --
6 ATTORNEY WEED: They need to do some-
7 thing with it.
8 COUNCILMEMBER ROCHE: -- if we pass
9 this right this minute, supposedly they would
10 have until they ran out of the 30 months, they'd
11 have to come back and get extensions.
12 ATTORNEY WEED: Well, not necessarily.
13 If they have a variance today and they have done
14 something to vest in it --
15 COUNCILMEMBER ROCHE: Right, but if
16 they haven't yet.
17 ATTORNEY WEED: If they haven't yet,
18 then yes.
19 COUNCILMEMBER ROCHE: Suddenly we're
20 going to have a lot of people needing exten-
21 sions, potentially -- I don't know how many
22 variances are out there -- that do not meet our
23 criteria.
24 ATTORNEY WEED: Possibly. I don't
25 know.

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1 COUNCILMEMBER ALEXANDER: Could we not
2 set an effective date?
3 ATTORNEY WEED: No.
4 COUNCILMEMBER ALEXANDER: Because?
5 ATTORNEY WEED: Every ordinance has got
6 an effective date or else it's not a valid piece
7 of legislation.
8 COUNCILMEMBER ALEXANDER: I meant set
9 an effective date so it would not be retro-
10 active.
11 COUNCILMEMBER BATES: Grandfather
12 everything that's already been granted.
13 ATTORNEY WEED: I think you could
14 attempt to do that. I think you would be
15 pursuing an unexplored area of the law. Because
16 the case law, the current case law indicates
17 that in order for a vari- -- a variance has to
18 vest for someone to be assured that some future
19 council that might not have anybody here on it
20 couldn't change the law at some future time.
21 So the answer to your question would
22 be, you know, can you legislatively say that,
23 you know, it is your intention for this not to
24 apply retroactively? I think the answer to that
25 is yes. Would that be essentially superseded by

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1 the current case law? Arguably yes. But until
2 somebody says no, until that issue is litigated,
3 that's the law locally.
4 COUNCILMEMBER ROCHE: Could you say
5 that any existing variances that are out there
6 today have 30 months before they would have to
7 come back to get an extension?
8 ATTORNEY WEED: Yes, I believe you
9 could do that.
10 COUNCILMEMBER ROCHE: That would make
11 sense because that way someone that's going to
12 just hang onto something for 10 years that
13 doesn't really have any immediate intention of
14 using their variance, that would solve the
15 problem, I think, that the point of this
16 ordinance came out to be, but at the same time,
17 if there's someone out there that just for lack
18 of funding or lack of financing or whatever is
19 having to sit on a variance for, you know, three
20 years or two years instead of one year or six
21 months, then we wouldn't necessarily be
22 affecting them.
23 Now, the question I would have is if
24 you are in that situation and the 30 months does
25 elapse and you've already had your variance,

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1 then you'd have to come back and get a brand new
2 variance as if it never happened before.
3 ATTORNEY WEED: Yes.
4 COUNCILMEMBER ROCHE: Now, wouldn't the
5 Council hopefully --
6 ATTORNEY WEED: Well, right now the
7 wording -- I mean it would depend upon the
8 wording. But right now, you say that you won't
9 extend beyond a certain period of time,
10 currently, but you can change that too.
11 COUNCILMEMBER ROCHE: So it would be
12 like starting all over again the way it is
13 today. But I mean I think we do try to be
14 reasonable. And if someone said, "Well, I can't
15 get the financing," after 30 months and he came
16 back, then there would probably be a reasonable
17 chance that they would be re-granted the same
18 variance.
19 ATTORNEY WEED: Arguably, yes.
20 Underneath the current -- underneath
21 the last draft, you had a cap of no more than
22 three extensions would be granted by the
23 Council, so you'd have to make some modifi-
24 cations to do what you're contemplating.
25 COUNCILMEMBER ALEXANDER: That was one

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1 of my questions, too. For example, if the
2 developer of the GM property needed more time
3 than we were allotting here, there's not a
4 caveat, there's not another procedure that would
5 allow them to get an additional extension.
6 MR. HAEBERLIN: Well, I mean that --
7 you know, as we're aware, the GM site like all
8 large developing sites we'll be rezoning. It
9 will not be a stand-alone variance case. I
10 don't see that as a probability based on the
11 Code of Ordinances you have in effect today.
12 I just did want to add that I am not --
13 obviously, I only know so much from the time
14 I've been here, but I've had an opportunity to
15 review a lot of stuff.
16 Many of the cases that this was based
17 on already are vested. For example, the Wilton
18 Avenue case is already legally subdivided and
19 it's recorded. The property on Tilly Mill Road
20 subdivided into three lots is legally vested.
21 It's already legally subdivided and there's a
22 house under construction.
23 So when we're talking about cases,
24 we're not talking about a glut of cases out
25 there. The only possible case that I could

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1 possibly think of that might still be out there
2 would be some sort of development on Turner
3 Street, and I don't know the full details
4 because that predated me.
5 But there's not a lot of variance cases
6 that I'm aware of that are sitting out there
7 where they have not done something to vest
8 themselves. All these previous discussion
9 cases, they already have vesting; they've
10 already filed a plat which has been approved by
11 the City and recorded. So those are really moot
12 discussions. It probably comes down to essen-
13 tially, like I said, if I'm not aware of any
14 variance on the books, it's mostly going to
15 pertain to your new actions.
16 COUNCILMEMBER ROCHE: Just a shot in
17 the dark. Does anyone know of any variances
18 that would be affected by this, that's out there
19 today?
20 - - -
21 (No response)
22 - - -
23 COUNCILMEMBER ROCHE: Didn't think so.
24 Thanks.
25 MR. HAEBERLIN: No. I think there's a

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1 perception that there's a lot of variances on
2 the books. I don't know of any particulars.
3 ATTORNEY WEED: Variances should be the
4 exception, and I do mean the exception --
5 COUNCILMEMBER ROCHE: Well, of course.
6 ATTORNEY WEED: -- rather than the
7 rule.
8 COUNCILMEMBER ROCHE: I'm just
9 wondering if there's -- You know, as Scott said,
10 it may be a moot point if there's no unvested
11 variances out there.
12 COUNCILMEMBER FLEMING: I had a couple
13 of questions that I'd like you to address if you
14 don't mind, Mr. Weed.
15 ATTORNEY WEED: I'll try.
16 COUNCILMEMBER FLEMING: Mr. Anderson
17 brought up on the first page, the bottom para-
18 graph where it only lists Mayor and Council.
19 Should that not also read City staff?
20 ATTORNEY WEED: No, ma'am.
21 COUNCILMEMBER FLEMING: And P.C.?
22 ATTORNEY WEED: No, ma'am, it
23 shouldn't.
24 COUNCILMEMBER FLEMING: And could you
25 explain to me why?

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1 ATTORNEY WEED: The preambles are --
2 the preambles actually deal with what I would
3 call part of the artistry rather than the
4 science of creating a piece of legislation.
5 What I do in the preambles is I always address
6 the standards of zoning, and I try to address
7 them, you know, succinctly but I also follow the
8 pattern that's established by the Zoning Code.
9 You'll notice on every zoning ordinance
10 I write, I have the Council actively engage the
11 standards that are in the Zoning Code so that no
12 zoning attorney at some future date can argue
13 that you didn't engage your code, that you
14 didn't actually apply the standards that are out
15 there. And you may determine that they don't
16 apply, and actually sometimes the language says
17 that this standard does not apply. But the
18 point in the preamble is to have some written
19 record that you actually engaged the standards
20 which is all you're required to do.
21 With regard to the particular language,
22 only the Mayor and Council have got the power,
23 the authority to adopt legislation -- not the
24 staff, not the Planning Commission, no citizen.
25 This is a representative democracy, not a pure

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1 democracy. So while I know you care what the
2 public thinks, what staff thinks, what your
3 attorney thinks, only you have the legislative
4 power. Therefore, it would not be appropriate
5 in my opinion to add staff, Planning Commission
6 nor anybody else. That essentially is a given
7 in this. Because what this ordinance does, what
8 the preamble does is address the power broker,
9 which is the Mayor and Council.
10 COUNCILMEMBER FLEMING: Okay, because
11 it didn't say in passing. It said in reviewing.
12 And that's what I was --
13 ATTORNEY WEED: And that's --
14 COUNCILMEMBER FLEMING: -- looking at
15 also.
16 ATTORNEY WEED: -- what the Council
17 does. You are going to review and pass.
18 MR. ANDERSON: It doesn't say pass. It
19 says review.
20 ATTORNEY WEED: Mr. Anderson, you and I
21 will just have to beg to differ. I've written a
22 lot of ordinances. I'm the author of the
23 leading paper on ordinance drafting in the
24 state. Hopefully, you'll rely upon the fact
25 that I know what I'm doing.

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However, if the Council wants to add Planning Commission and staff, you certainly could do so, and I'll make the appropriate change.

COUNCILMEMBER FLEMING: I just --

ATTORNEY WEED: In my opinion, it is not necessary.

COUNCILMEMBER FLEMING: Just wanted to ask the question, sir.

COUNCILMEMBER BATES: I need to be educated, though. It's on the very last thing under Section 4, I guess. It says, appeals of Council decisions on revocations shall be made by writ of -- some Latin word that I can't pronounce -- to Dekalb County Superior Court. What does that mean?

ATTORNEY WEED: Certiorari.

Essentially what it is, there is a very formal procedure in Title 5 of the state law, that if someone wants to contest an ordinance, it gives a very formal procedure to have to follow in order to be able to do that in Superior Court.

Virtually all the ordinances I write, you know, include that in a reference somewhere,

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and it's also in the main body of the Code. That's the appropriate procedural mechanism to do it in my opinion.

COUNCILMEMBER FLEMING: Would you also address the "shall" versus "may" on page 4, please.

ATTORNEY WEED: Can you refer me to the line?

COUNCILMEMBER FLEMING: It's the second paragraph, last -- on page 4.

ATTORNEY WEED: The second paragraph of the last or --

COUNCILMEMBER FLEMING: Second paragraph. Well, it's the first official paragraph of page 4, last three words.

ATTORNEY WEED: It just says that the variance approval may be revoked.

You know, frankly, I don't think it's -- you wouldn't want to necessarily prejudge any issue. You're going to have to make a determination. Therefore, in this context, I believe that the term "may" is appropriate rather than "shall."

COUNCILMEMBER FLEMING: Well, it says "shall be deemed to have failed and the variance

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approval may be revoked."

ATTORNEY WEED: Correct. But once again, there may be some evidence, some extenuating circumstance where you would render a decision that revocation is not necessarily what you want to do.

COUNCILMEMBER FLEMING: Okay.

ATTORNEY WEED: So it permits -- if you put the word "shall" there, you must revoke it. If circumstances one, two, three, four occur, you must revoke.

COUNCILMEMBER FLEMING: Okay.

MAYOR JENKINS: Brian?

COUNCILMEMBER BATES: I'm good, sir.

MAYOR JENKINS: Anymore discussion?

- - -

(No response)

- - -

MAYOR JENKINS: You had a motion and a second?

COUNCILMEMBER SPANGLER: Yes.

ASSISTANT CLERK BRYANT: Brian seconded.

COUNCILMEMBER BATES: And that's to recess this to the June 1st meeting.

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COUNCILMEMBER ROCHE: That's the next two agenda item? This item and the last agenda item?

COUNCILMEMBER BATES: It's only for this item.

COUNCILMEMBER ROCHE: Only for this one.

MAYOR JENKINS: Just one. Okay. Call the roll, please.

ASSISTANT CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

ASSISTANT CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

ASSISTANT CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: No.

ASSISTANT CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: No.

ASSISTANT CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: No.

ASSISTANT CLERK BRYANT: Councilmember

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1 Spangler?
2 COUNCILMEMBER SPANGLER: Yes.
3 ASSISTANT CLERK BRYANT: Mayor, it's 3-
4 3.
5 MAYOR JENKINS: That's to postpone it?
6 COUNCILMEMBER SPANGLER: Yes.
7 MAYOR JENKINS: Yes.
8 Item number 7.
9 MR. HAEBERLIN: Mayor, the last item we
10 have is also a public hearing which is the
11 adoption of the Zoning Ordinance Update. It's
12 the codification. This item was heard by the
13 Planning Commission on April 9, 2009, which
14 again is a public hearing, which obviously none
15 of the folks that are in attendance tonight are
16 aware of despite our efforts with not only the
17 City Web site but the City newsletter as well.
18 Don't know what to say about that. It goes to
19 one's own personal responsibility.
20 This item, this document has been
21 available at the City Clerk's office for people
22 to review and look through. They can request
23 and make copies and of course pay cost.
24 However, I can tell you only one affected person
25 looked at it, and that was a student in

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1 planning, so I had one person that actually did
2 look at it.
3 But this document did go to the
4 Planning Commission. And when I say it went to
5 the Planning Commission, they had the full
6 detail that you folks have, as well -- the big
7 brick, as we call it, with the amendments
8 attached to it.
9 There's a lot of perception of the
10 people that are here, that there will be changes
11 to permitted uses and conditional uses within
12 certain zoning categories. That's not what
13 we're here for tonight. It's to send this
14 completed document for codification so that
15 Municode and not the City Web site will be the
16 reliable location for the City Zoning Ordinance.
17 And this is something that we need to start
18 doing every six months. The past City Councils
19 apparently were remiss in that, and we are doing
20 housekeeping at this point in time.
21 Like I said, this has been available
22 for public inspection. The municipal Planning
23 Commission went through it in full detail and
24 did recommend, with the exception of the Chair,
25 Ben Crawford, who felt that the ordinances were

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1 essentially already in effect so he didn't need
2 to recertify them. But we did have a
3 recommendation of approval from the municipal
4 Planning Commission of this document that I have
5 here before you, which was available for public
6 inspection.
7 Are there any questions from Mayor and
8 Council?
9 And we will need to hold a public
10 hearing.
11 MAYOR JENKINS: Okay.
12 COUNCILMEMBER ROCHE: Well, my question
13 would be the same as Mr. Crawford's question. I
14 mean they're already law. Why would we have to
15 pass the law all over again?
16 MR. HAEBERLIN: It's a housekeeping
17 effort. You know, I can be certain of the work
18 that I've done and I can certainly be certain of
19 the work that Mr. Weed has done; however, your
20 prior representation -- and you had no planner
21 as well -- I can't be certain of the work
22 they've done at all.
23 We do need to start with a base
24 document. It's just like the discussion that
25 occurred over that map. We continuously argued

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1 about the efficacy of that map, but we needed a
2 map, we needed a base point.
3 That's what that document represents.
4 We need a base point in time. We need to codify
5 this. We need to be part of Municode. There is
6 an expectation from the development community
7 that they don't rely on the City Web site. They
8 rely on Municode. And if we don't get this item
9 to Municode, we simply are never going to have a
10 codified version that is available that will
11 help move development forward in the city and
12 that will, again, be a base document.
13 And we'll need to start doing this
14 every six months. With the amount of activity
15 we've been doing on code amendments, we
16 certainly do need to do that. And we do have
17 the funds available. I know there has been a
18 meeting with Municode which occurred with
19 Mayor Jenkins and as well with the City Clerk.
20 The efforts are there, we're wanting to do it,
21 we have the great skills of Municode, but we
22 need to get this passed from you folks as to the
23 document that we're going to send forth.
24 COUNCILMEMBER BATES: As it sits right
25 now, the Zoning Ordinances are not on Municode.

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MR. HAEBERLIN: Exactly.
COUNCILMEMBER BATES: So this is not passing any new ordinances tonight. This is taking what has already been in existence --
MR. HAEBERLIN: Uh-huh.
COUNCILMEMBER BATES: -- plus the new zoning ordinances that have --
MR. HAEBERLIN: Yes, sir.
COUNCILMEMBER BATES: -- been adopted from this Council since January of 2008 and codifying the two and putting them as a central resource for everybody to have a certified item.
MR. HAEBERLIN: Yes, sir. Yes, sir.
And this did require me to go back and to review numerous tapes and minutes, et cetera, dating a number of years back. And like I said, as we reviewed the documents, we put together that book which is available for public inspection. We did take that to the Planning Commission. They had the same documents that you as City Council have, which is the large brick document.
And like I said, once this goes to Municode -- And I've heard time and time again tonight about having accuracy of documents.

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Well, we're never going to have accuracy of documents if we can't get something to Municode.
And there is no doubt -- like I said, I have great faith in the work that I've done and great faith in the work that Mr. Weed's done. Nothing else I can attest to.
So the document is before you. The Planning Commission felt, again, that it was appropriate. And they reviewed it in detail, because let me tell you, they asked me very specific questions about each ordinance, particularly the new ordinances.
So that is before you tonight, like I said, and we do need to hold the public hearing on it.
MAYOR JENKINS: Okay.
COUNCILMEMBER SPANGLER: And when will this public hearing be?
MR. HAEBERLIN: Right now.
ATTORNEY WEED: Right now.
MAYOR JENKINS: Right now.
MR. HAEBERLIN: It's been advertised for quite some time.
COUNCILMEMBER SPANGLER: Well, we've already gone overtime.

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MAYOR JENKINS: Adam, I guess you'll be first.
MR. HAEBERLIN: So Mayor, you are opening the public hearing, sir?
MAYOR JENKINS: Do what?
MR. HAEBERLIN: Just for the record, you are opening the public hearing?
MAYOR JENKINS: Yes.
MR. HAEBERLIN: Thank you.
MR. HOIPKEMIER: I'll just be really quick.
I guess this is sort of a question for the Planner. What sort of checks and balances have there been on his work putting this together? It sounds like he did it all and then someone might have reviewed it too. What did they compare it to? No one else has seen it other than him.
ATTORNEY WEED: That's completely inaccurate.
MR. CRAWFORD: I've seen it.
MR. NOONAN: I've seen it.
MR. CRAWFORD: The Planning Commission has seen it and anyone in the Planning Commission meetings has seen it.

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ATTORNEY WEED: I've reviewed it, the Clerk's reviewed it, Mr. Haeberlin's reviewed it, the Planning Commission's reviewed it. It's been advertised duly under the Zoning Procedures Act. It's been out there for months. Anybody who wanted to could have seen it any time they wanted to. One person's checked it out. There's nothing more the City could have done to get it out there any further.
COUNCILMEMBER SPANGLER: So did the City make every attempt to let everybody know in the whole city that this was available, that all they had to do was come up and pay the 25 cents per page in order to get the documents and to be able to review them?
ATTORNEY WEED: In my opinion, yes. We conformed with the Zoning Procedures Act, conformed with it to the letter.
COUNCILMEMBER SPANGLER: So we went through The Champion to let these people know. We didn't advertise it in any other organ.
ATTORNEY WEED: With regard to any other organ, I am not aware. We complied with the Zoning Procedures Act under Title 36.
MR. CRAWFORD: It was on multiple

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1 neighborhood Web sites, too.
2 MR. HOIPKEMIER: He's correct that it
3 only requires it be published in the local --
4 COUNCILMEMBER SPANGLER: Well, I under-
5 stand.
6 MR. HOIPKEMIER: -- I mean, but I just
7 don't think you should do the minimum here. But
8 that's all I've got.
9 MAYOR JENKINS: Thank you.
10 Ben?
11 MR. CRAWFORD: Ben Crawford, Oakcliff.
12 I'm up here as a citizen, and I am in support of
13 all the work that Scott's done and the City's
14 done in getting this stuff to where they can put
15 it on Municode. I think it's a good effort. I
16 think it's something that City Council should
17 deal with tonight, not postpone, and they should
18 go ahead and move forward because the time now
19 is to move forward, not to stumble a little
20 more.
21 MAYOR JENKINS: Thank you, Ben.
22 Bonita?
23 MS. HOFFMEISTER: Bonita Hoffmeister,
24 Oakcliff.
25 Honorable Mayor and City Council,

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1 you've done an outstanding job. It's taken
2 about two to three years to get to this point
3 and we're finally there. I commend you in your
4 efforts and I hope you proceed forthright
5 tonight. Thank you very much.
6 MAYOR JENKINS: Thank you.
7 Stuart?
8 MR. ANDERSON: I'll make it brief.
9 Stuart Anderson.
10 The only comment I had was the one at
11 the beginning of this discussion about reviewing
12 402. I guess the Planning Commission looked at
13 it, but it's within M-1/M-2, C-1/C-2, et cetera,
14 et cetera, and if it's sent to Municode, I
15 prefer that it was codified or grouped into one
16 document so that it could be reviewed. That's
17 all.
18 MAYOR JENKINS: Susan?
19 MS. FRAYSSE: Susan Fraysse, Oakcliff
20 Estates.
21 I sure hope we can do this now. I
22 remember a period of time before you were
23 elected, Pam Fleming, when you came to a Council
24 meeting and you had the same delusion that some
25 of the people have talked about today, that what

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1 we see online is the real, actual code, and you
2 were horrified. I think you printed the whole
3 thing out, and I felt so sorry for you.
4 And we have had great lapses. I think
5 there have been years when we have paid a fee to
6 Municode and never used their services. So it's
7 a long time coming. We need to join all the
8 rest of the cities and counties and municipali-
9 ties and get our Code online in Municode. I
10 hope we will be able to do that tonight.
11 - - -
12 (Applause)
13 - - -
14 MAYOR JENKINS: Thank you.
15 MR. FRANK: Joe Frank, Buford Highway.
16 Ladies and gentlemen of the City
17 Council, Honorable Mayor, we're getting back to
18 the same issue here. I understand that the
19 Planning Commission has seen it and the attorney
20 has seen it and et cetera, et cetera, but again
21 nothing has been sent out to the community that
22 that is now finished and is a finished product.
23 This has been a product that's been in the works
24 for several years. And, again, now it's
25 finished, so now supposedly everybody out there,

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1 all the citizens and the business people, should
2 have known that at this day, it is somehow
3 finished. You know, again we are going back,
4 this business about, "Well, we have published it
5 in the newspaper and therefore everybody's
6 supposed to know about it," but most people do
7 not get the newspaper.
8 We now have -- we have just formed the
9 business association. I believe it wouldn't be
10 -- since this has not been done over so many
11 years, it wouldn't hurt anybody, it wouldn't, to
12 present this to the -- to have the business
13 association review it one time, take a look at
14 it. I'm sure if it is everything what has been
15 always there the way it's said, shouldn't be any
16 problem.
17 Again, things have changed. We have
18 now an association that we can deal with.
19 Originally, we had pretty much three or four
20 individuals who had to sort of take care of
21 everything. Now we have an association. So now
22 it would be a good idea to run those things by
23 the association, and I would appreciate it if
24 this would be done. And then, again, we can
25 review it, we can go with the meeting on the

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1 June 1st meeting, and we an go ahead and, you
2 know, whatever. If there needs to be a discus-
3 sion or anything, other discussions can be done
4 in between, between the association and the City
5 Council or however you-all want to handle that.
6 But I think it needs to be reviewt6ed
7 so that everybody knows what is in there. This
8 is the purpose of the City Council. This is the
9 purpose of the association. This is only good
10 stewardship of the city, and I believe -- and I
11 would ask the City Council that they consider
12 doing it in the manner if, for anything, for
13 goodwill. Thank you very much.
14 MAYOR JENKINS: Thank you.
15 MR. NOONAN: Question to Scott. Is
16 this the Official Zoning Code of the City of
17 Doraville?
18 MR. HAEBERLIN: Clarification. What
19 this represents, to the best of our knowledge,
20 with the discussion with not only the City
21 Clerk, the City Attorney and all the affected
22 parties who had an opportunity to review it, as
23 well as extensive research, not only the Zoning
24 Ordinance but the amendments that have been
25 passed since Mr. Weed and myself have been here.

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1 And that's what we're offering to the City
2 Council tonight to send for codification.
3 MR. NOONAN: Thank you. I would say
4 get it codified, get it online for everybody to
5 see any time they want to see it. This will be
6 a giant step forward for the city of Doraville.
7 Thank you.
8 - - -
9 (Applause)
10 - - -
11 MAYOR JENKINS: Thank you, John.
12 Anybody else?
13 - - -
14 (No response)
15 - - -
16 MAYOR JENKINS: Okay. I'm going to
17 bring it back up to the table. Public hearing
18 is over.
19 So where are we at?
20 COUNCILMEMBER BATES: I'll make a
21 motion that we send this off to Municode for
22 codification.
23 ATTORNEY WEED: We'd actually like you
24 to approve it as the official Zoning Ordinance
25 and send it off.

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1 COUNCILMEMBER BATES: Thank you. I'll
2 make a motion to approve this as the official
3 Zoning Ordinance and send it off to Municode for
4 codification.
5 MAYOR JENKINS: Do I get a second?
6 COUNCILMEMBER PITTMAN: Second.
7 MAYOR JENKINS: Okay. Anymore
8 discussion?
9 COUNCILMEMBER FLEMING: Yes, sir.
10 Scott, we talked about how soon codi-
11 fication would take place, and I believe you
12 said something around December?
13 MR. HAEBERLIN: Well, it could be
14 certainly before then. As you know, the reason
15 we're paying for the services of Municode is
16 their staff and their staff attorneys. And
17 they're going to go through, and, you know, this
18 is going to be in a document form where it reads
19 consistently through like a book. So it's going
20 to take some time, certainly. And the time
21 frame on that really depends on whether you make
22 anymore changes in the month of May, which I
23 think you guys are going to be making some
24 changes.
25 So it probably would behoove us to

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1 actually -- Well, number one, I would recommend
2 that you approve this item tonight, obviously.
3 If you want to make any further changes, then
4 follow through in the month of May. And then
5 hopefully we'll have everything that we send to
6 Municode and get them working on this. The
7 sooner the better, and I certainly hope it's
8 before December.
9 COUNCILMEMBER FLEMING: You are working
10 on some very vital ordinances as you have with
11 all the others. You're working on planned unit
12 development, you're working on architectural
13 standards, which we definitely need, and you're
14 starting to work on R-1 if I'm not mistaken or
15 you are planning on --
16 MR. HAEBERLIN: Yes, ma'am.
17 COUNCILMEMBER FLEMING: -- working on
18 R-1, and I think those are vital to put into our
19 Zoning Ordinance and then say then it is the
20 official zoning book.
21 So I would rather wait until we have
22 finished working on the ones that you're already
23 working on before we send everything to
24 Municode.
25 MR. HAEBERLIN: I do want to be clear.

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1 First of all, the architectural code as well as
2 the sign code are not part of the Zoning
3 Ordinance, so they will never be included.
4 R-1 has never even made it to the
5 Planning Commission nor has it even be scheduled
6 because of the volume of Council-initiated
7 items. So we are very far out there on those
8 items. The bulk of your development occurring
9 here in the city is in the nonresidential
10 districts, which have been fully covered and
11 fully addressed in detail -- we know that --
12 since October of 2008.
13 Again, if we waited any longer, there's
14 going to be more of a stack that needs to be
15 included. And we need to do this periodically.
16 We do this now, we'll do this in another six
17 months. We're going to have another stack for
18 them in six months.
19 Like I said, sign code, architectural
20 code not part of the Zoning Ordinance so, again,
21 not germane. R-1, we haven't even made it to
22 the Planning Commission yet, so I wouldn't see
23 that as occurring any time soon.
24 So really as far as things that are out
25 there, there are some simple amendments in May,

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1 and that's it, and that's as far as we've
2 gotten. We just have such a volume of Council-
3 initiated items, that we've never gotten to
4 these other items.
5 COUNCILMEMBER FLEMING: Thank you.
6 COUNCILMEMBER ROCHE: I will say that
7 -- nothing against staff or anybody else, but
8 with everything that happened with all the
9 ordinances that passed in 2006, that weren't
10 passed and all that, I don't feel at all like --
11 I still have a little bit of uneasiness here,
12 frankly. But on the other hand, I can
13 understand the need for --
14 This document will constantly be
15 changing. I mean we could go out and rewrite it
16 next month if we wanted to, technically, and I
17 don't think that that's really -- and it would
18 be into the pipeline for the Municode thing.
19 So I don't think that sending this to
20 Municode prevents us from continuing to make
21 changes to it or refine it or re-legislate or
22 whatever we want to do. That's a true
23 statement; right? I mean --
24 MR. HAEBERLIN: Correct.
25 COUNCILMEMBER ROCHE: -- there's

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1 nothing that stops us from doing that.
2 ATTORNEY WEED: Absolutely.
3 MR. HAEBERLIN: Certainly. And I
4 certainly hope between, you know, May/June and
5 December of this year, that we get the rest of
6 the residential districts. I certainly hope.
7 But we have not made quite that progress yet.
8 We've made a lot of progress, and I don't want
9 to discount that, because we have made a lot of
10 progress. This Council has worked very hard,
11 since October, particularly, and it was very
12 germane to the current situations that needed to
13 be looked at as far as development.
14 The other things, I'm not as concerned
15 about because they will sit for now. There's
16 not a lot of development in the R-1 district,
17 for example. It does need to be rewritten, but
18 I think we have time for that.
19 And you're exactly right. It's a
20 living document. We're going to continue to
21 change it and we're going to continue to fine
22 tune it, and hopefully we'll have the best
23 zoning ordinance the city can have for what the
24 current conditions and the future conditions
25 are.

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1 So like I said, I think we need to move
2 forward with it, and certainly we'll probably be
3 approaching you guys again in December with the
4 exact same thing. We'll have all these new
5 amendments that we want to certify as being the
6 official Zoning Ordinance.
7 COUNCILMEMBER ROCHE: I mean again, I'm
8 not saying that we need to go out and change
9 anything. I'm just saying that we need to --
10 MR. HAEBERLIN: Sure.
11 COUNCILMEMBER ROCHE: -- still do that.
12 You know those signs you get in the
13 little gift shops? I kind of feel like there's
14 this little sign that says, "God Bless This
15 Mess." And I feel a little bit like that's what
16 I'm doing, but I guess -- I mean I'm . . .
17 COUNCILMEMBER BATES: I guess I --
18 Mr. Roche, I didn't mean to interrupt.
19 COUNCILMEMBER ROCHE: But we got to
20 start somewhere, frankly. I mean I think we
21 have the baseline. And if we do get it out
22 there, then we'll have -- I'm sure we'll have a
23 lot more eyes on it, and I guess the sooner the
24 better.
25 Just so everyone understands that doing

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this does not mean everything comes to a halt as far as evolving this document.
That's all I have to say.
COUNCILMEMBER BATES: That was going to be my point exactly. The longer we put this off, the more challenges we're going to continue to have with people not having accurate information --
MR. HAEBERLIN: Correct.
COUNCILMEMBER BATES: -- available to them, that's codified and in one central location.
And it's not set in stone. It is just like all the rest of our ordinances. We'll chink them on a hopefully more frequent basis than what we've been doing in the past, get them to Municode for codification and inclusion.
So I'm very much in favor of us having a baseline to start with and making sure that everybody has a single central point to go and reference the laws of the city of Doraville from one location.
COUNCILMEMBER FLEMING: So anything that we pass from this point forward is not part of the official Zoning Code.

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ATTORNEY WEED: No, ma'am. Not true at all. Not true at all. Any ordinance you pass that you've duly and appropriately, you know, followed the Zoning Procedures Act rules will become a part of the official Zoning Code.
This thing isn't locked in stone. After it's codified, literally we will send a new ordinance off to MCC and they'll give us supplemental pages or change the pages out.
But once again, we have to start somewhere. To get it codified, we've got to send it off. And until we can send it off, it can't be codified. Anything you change will become part of the official Zoning Code, I promise you.
MAYOR JENKINS: More discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
ASSISTANT CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
ASSISTANT CLERK BRYANT: Councilmember Bates?

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COUNCILMEMBER BATES: Yes.
ASSISTANT CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: No.
ASSISTANT CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
ASSISTANT CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
ASSISTANT CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: No.
MAYOR JENKINS: Thank you.
Motion to adjourn?
COUNCILMEMBER SPANGLER: Motion to adjourn.
COUNCILMEMBER BATES: Second.
ATTORNEY WEED: Before you do that, I would like to suggest, Mr. Mayor, I want to make sure this is on the record. When we had talked about the 9:30 rule, my understanding was the 9:30 rule did not apply to zoning cases, and we talked about that specifically because of the public hearing aspect. And I want to state that

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for the record so that if we're ever challenged on it, the 9:30 rule does not apply to zoning cases.
COUNCILMEMBER SPANGLER: Well, evidently the 9:30 rule doesn't apply to regular Council meetings, either.
ATTORNEY WEED: We'll talk about that later, but I just want to talk about zoning.
MAYOR JENKINS: Call the roll, please.
ASSISTANT CLERK BRYANT: Who seconded?
COUNCILMEMBER BATES: I'll second.
ASSISTANT CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
ASSISTANT CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
ASSISTANT CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
ASSISTANT CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
COUNCILMEMBER FLEMING: We didn't have any discussion.

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ASSISTANT CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
ASSISTANT CLERK BRYANT: Councilmember Spangler?
ATTORNEY WEED: Mr. Spangler wants to stay.
COUNCILMEMBER SPANGLER: Yes.
- - -
(Whereupon, the meeting was adjourned at approximately 9:38 p.m. the same day.)
-o0o-

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C E R T I F I C A T E

E OF GEORGIA]
TY OF DEKALB]

I hereby certify that the foregoing transcript taken down, as stated in the caption, and the eedings were reduced to typewriting under my ction and control.

I further certify that the transcript is a true correct record of the evidence given at the said eedings.

I further certify that I am neither a relative mployee or attorney or counsel to any of the ies, nor financially or otherwise interested in matter.

This the 26th day of May, 2009.

_____
Theresa Bretch, CCR
Permit No. B-755

[SEAL]

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103:1;106:12
11/21 (2)
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1401 (2)
30:11;32:16
1402 (14)
5:5,25;9:7;10:9,
24;12:12;15:8;
20:11;21:3;24:25;
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