In The Matter Of:

City of Doraville

State of Georgia

Special-Called Meeting/Public Hearings

August 31, 2009

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CITY COUNCIL MEETING

CITY OF DORAVILLE

STATE OF GEORGIA

SPECIAL-CALLED MEETING

WITH PUBLIC HEARINGS

* * *

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 7:00 p.m. on Monday, August 31, 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, Deputy Clerk

P R O C E E D I N G S

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

DEPUTY CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Here.

DEPUTY CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Here.

DEPUTY CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Here.

DEPUTY CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Here.

DEPUTY CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Here.

DEPUTY CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Here.

MAYOR JENKINS: Okay, Scott, let's get it going.

MR. HAEBERLIN: Everybody has an old agenda which was attached to their packages which they received over the weekend, and there needed to be a revision to the agenda. So if everybody has the new agenda in front of you, I want you to notice that under 3A, Section 902 has been added to the agenda.

We forgot that from the previous meeting. And then of course the items have been renumbered sequentially. And I'll go over item 4A when we get to that point.

So at this time, we need a motion to accept the revised agenda as presented to the City Council.

COUNCILMEMBER PITTMAN: So moved.

MAYOR JENKINS: Second?

COUNCILMEMBER ALEXANDER: Second.

MAYOR JENKINS: Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll.

DEPUTY CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

DEPUTY CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

DEPUTY CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

DEPUTY CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

DEPUTY CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

DEPUTY CLERK BRYANT: Councilmember

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Spangler?
COUNCILMEMBER SPANGLER: Yes.
MR. HAEBERLIN: On the first item, Section 902, which is Uses Common to All Residential Districts, I'm going to pass out a copy from the existing ordinance. We went over this briefly last time, but this will just reiterate the number of items that are allowed in any residential district.
As it defines itself here, it doesn't separate these from a single-family detached, a conventional house, versus a single-family attached, or multi-family or condominium. It just says all these uses are allowed in every district. And when you look at those uses that are not only permitted uses, so it says in the townhouse district you can have single-family residences, but in multi-family you can have single-family residences, too. Cemeteries, et cetera; it goes down the list.
I believe this list is very detrimental to each one of your districts because it basically allows any type of zoning in any district, and that's a concern to me. Let me correct that: use within each district.
So this list really is not necessary to be in the Code. These should be addressed individually

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in each zoning category as to whether the Council would like them as a permitted use, accessory use or conditional use.
So the goal in the Section 902 is to essentially delete this part of the Code from the Code of Ordinances, thereby requiring each permitted use, accessory use and conditional use to be addressed individually in each district.
Like I said, this was really not well thought through when you think about the number of items that are listed here that could be in multi-family and townhouses. So poor definitions and poor follow-through in the Code.
As we rewrite each one of these districts, then we'll consider these uses as to where an appropriate location is for them.
Are there any questions?
ATTORNEY WEED: On the legal aspect of this, I agree with this. You all know my philosophy of zoning. You know, for ease of use, I prefer things to be permitted, not permitted or conditional, and that be that.
COUNCILMEMBER ALEXANDER: A question aside from this, can we legally regulate railroad and utility substations? I thought utility substations,

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Georgia Power had some magical power; they could stick them wherever they wanted to.
ATTORNEY WEED: Well, as a general rule, that's true. Other than a superior court judge, the next highest authority, you know, under God, are usually the railroad and the utility companies.
The Public Service Commission actually regulates the utilities. So there's not too much that the local government can do with regard to that, and the railroad is the railroad in Georgia.
MR. HAEBERLIN: And as I reiterated at the last meeting, that I've already for September advertised R-2, R-3 and R-4. So we'll be moving ahead with making decisions relevant to those specific districts as to what will be allowed in them as permitted, accessory and conditional.
Right now, like I said, this is extremely detrimental, because basically in multi-family zoned property now you can have a single-family residence, and, again, that just doesn't go with our zoning scheme. So this was not fully thought out.
My recommendation and that of the Planning Commission's as well is to recommend approval of this amendment, thereby deleting Section 902, Uses Common to All Residential Districts.

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And we will need to hold a public hearing as well.
MAYOR JENKINS: Are you ready for the public hearing?
MR. HAEBERLIN: If the Council is, I'm certainly ready.
MAYOR JENKINS: Okay. We have ten minutes for, ten minutes against. Anybody for the 902?
- - -
(No response)
- - -
MAYOR JENKINS: Anybody against?
- - -
(No response)
- - -
MAYOR JENKINS: Okay. I'll bring it back to the table, Scott.
COUNCILMEMBER FLEMING: I'd like to make a motion to amend Section 902 and delete it in its entirety.
COUNCILMEMBER ALEXANDER: Second.
MAYOR JENKINS: Any more discussion?
- - -
(No response)
- - -

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MAYOR JENKINS: Call the roll, please.
DEPUTY CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
DEPUTY CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: It's carried, Scott.
MR. HAEBERLIN: The next item is Section 903, R-1 Single-Family Residence. Again, we recessed this from the 8/24/09.
It did elicit a significant amount of discussion, and what I attempted to do was to address the discussion and also that, too, of other areas that I saw that there were some potential flaws in how it had been written.
The basic item that the Council wanted me to

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address is if there was catastrophic devastation of a home -- for example, if there was a tornado in the city of Doraville -- and many of the existing homes were destroyed, how would we allow rebuilding to occur? Would we allow rebuilding with a smaller square footage than that of new construction?
So basically what I went through here and considered all the different possibilities that could happen with lots of record. One would be catastrophic demolition as a result of, you know, wind, fire, et cetera. And then, as well, was voluntary demolition. Involuntary demolition, I did add, because we have had some involuntary demolition in the city. And then certainly lots that are created after this effective date of August 31st, 2009.
And so I went with, hopefully, numbers that you find acceptable. On the involuntary catastrophic, I set the heated square footage at 1,250 heated square feet, and really that's what the old code dictated; but if you had more than 1,250, then you of course replaced the square footage, square footage by square footage for what you had.
And so then also I put a section in here for voluntary applicant-initiated demolition, and that is if you made a decision to buy a lot and tear a house

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down completely of your own volition, and that would be 1,450 square feet.
Then involuntary is the government-initiated demolition, and we have had to deal with this in the past. I set it -- again, it's on a sliding scale of 1,600.
And then for new construction, I set the heated square footage at 2,000.
I thought these square footages were reflective of modern house plans. I tried not to use numbers I thought were unusual for house plan, and so that being, there is a sliding continuum for that.
COUNCILMEMBER BATES: Is there any reason -- and I've got a couple other questions --
MR. HAEBERLIN: Sure.
COUNCILMEMBER BATES: -- throughout the document, but while we're on here, is there any reason why the involuntary government-initiated and the voluntary were not the same?
MR. HAEBERLIN: Well, the involuntary really is a result, in our situation of the city, is Code Enforcement. Property owners who will not maintain properties, and eventually we have to actually take court action to tear the property down.
COUNCILMEMBER BATES: Understood. But for

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ease of ordinance and enforcement, seemed that because they're both of new construction but not on new lots, that --
MR. HAEBERLIN: Correct.
COUNCILMEMBER BATES: -- there should be some -- I think some similarity between or some consistency between the two.
I will tell Council while we're on this subject, I did over the weekend randomly look at about 180 properties on the tax digest, Dekalb County tax digest, and looked at the square footage and was really surprised.
The average square footage of the 180 homes was 1,430, which I was surprised at. I thought it would have been significantly smaller than that.
The range went from 800 being the smallest to 2,700 as the largest. There's less than -- 7 percent of the homes were less than a thousand square feet, which I was really very surprised at that. I had in my head that the number was going to be significantly larger.
So based upon this, I feel very comfortable leaving the involuntary catastrophic build requirement at twelve-five, but I would be amenable to changing the voluntary and the government-initiated both to

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1,500 just to make it consistent. And again, these are just numbers that I'm throwing out there for discussion purposes.

COUNCILMEMBER ROCHE: My concern would be on that, in either situation you may have a hand full of 800-square-feet houses but they may be 800 square feet because that's what fits in the setback.

What happens if it's 800 square feet and then it burns down and then we say it's got to be 1,250, which is a third larger, but then we can't fit a building in the lot because of setback restrictions. It would seem reasonable to me that if your house burns down or you lose it from a storm or whatever, that you should be able to rebuild it at the same square footage you have currently.

MR. HAEBERLIN: First of all, you have to realize that most of these lots will accommodate a larger home.

When we began this entire discussion, I told you that this code will not grace in or will not make legal a number of properties in the city. And I'll be honest with you. I think Brian said he found a 2,700. There's actually a 4,600-square-foot heated in the house. Excuse me. In the -- house in the city. Can't speak tonight.

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Anyway, so there is a broad range. Particularly the new construction is very large. The new construction is generally between 2,500 or larger, 2,800, and three to four thousand square feet, so our infill is extremely large. I'm not worried about the base at 2,000 for new construction on a new lot.

Again, I set it based on your previous code. Your previous code really addressed a 1,250-square-foot house. I think that is reasonable, particularly in light of the fact that they're not requiring the garage requirement for these properties.

Recall today, right now if something was destroyed, under your current code before we rewrote this, it would be 1,250.

COUNCILMEMBER ROCHE: I understand that.

I guess my question is what happens if someone loses their house for some reason and then they just -- their 850-square-foot house, and then because of the dimensions of their lot, they can't built a 1,200-square-foot replacement?

ATTORNEY WEED: Legally, what would occur would be they would -- if they demonstrated intent to rebuild -- in other words, if they made substantial efforts to rebuild; they hired a contractor, they submitted plans, they contacted the zoning office,

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they got a C.O. or a certificate of completeness -- then they would demonstrate legally that they were still a legal nonconforming use.

So they would have -- the zoning aspect of it, it would still be -- the zoning would be whatever the zoning would be, and they would still be a legal nonconforming use.

And then the second element would be they could apply for and be granted a variance. And in fact, it's those situations that the variances were actually designed to deal with.

When you look at the variance requirements, one of them throughout almost all of the zoning ordinances is geological and also geographic hardship: that the back of the lot goes into a pit or that there literally is not a way to fit a legal structure on the lot. So that's the type of thing that you would apply a variance to.

COUNCILMEMBER SPANGLER: I believe one other thing that we mentioned, too, in the last meeting was cost replacement insurance, which most people have, okay? And if they've got an 800-square-foot home, that's all the insurance is going to cover. So --

ATTORNEY WEED: I did the -- I sent you a memo about that. I did do the research. It really --

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it depends literally on what policy you have and what insurance company you're using.

My research indicated for the average size homes and on the average size lots in Doraville, unless you had a specific endorsement that covered true replacement cost, that it would be in my opinion, based upon my research, more likely than not that you really just get value. You get the value paid back but not true replacement cost.

COUNCILMEMBER ROCHE: So what you're saying, though, is that if someone loses their house, they basically have to come and get a variance to build what they had before they lost the house.

ATTORNEY WEED: That is correct.

COUNCILMEMBER ROCHE: And I got a problem with that. I don't feel comfortable with that at all.

I would prefer to modify this to say that if you lose a house and it's not by your own volition, you can rebuild it back to whatever square footage you currently have or had before you lost the house. And that way, they don't have to come and throw the dice and hope that the Council gives them the variance. And that way, you don't have to worry about going out and finding additional money because the replacement insurance says okay, we'll cover a hundred thousand to

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1 rebuild your house, but because of this, you've got to
2 have a two-story house now, and they've got to go out
3 and somehow find the money to do that. I just feel
4 real uncomfortable with that.
5 Now, anything new, obviously that's fine, I
6 mean, or whatever we set that to. But I just think
7 that if you lose your house, you got to be able to
8 rebuild your house. That's to whatever you had
9 before. I mean that just sounds fair to me.
10 MR. HAEBERLIN: Councilman Bates, the
11 majority of the homes that I found that were below,
12 the small square footages were in the Tilly Mill Road
13 area. Was that your research as well?
14 COUNCILMEMBER BATES: Valley Stream,
15 Barrylyn.
16 MR. HAEBERLIN: Okay. Yeah. Those
17 properties do not suffer, as I recall, from any
18 geographical or flood issues. They're simply small
19 houses.
20 My understanding was they were moved into
21 there from another location. They're just simply
22 small houses on large lots. And that's one of the
23 reasons why they apparently have been attractive to
24 residential homebuilders who want to buy them and tear
25 them down and put larger structures there.

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1 COUNCILMEMBER BATES: And just for the
2 record, Clay Drive, Eula Circle, Barrylyn, Johnny's
3 Lane, Valley Stream and Beacon were all under 900
4 square feet.
5 COUNCILMEMBER FLEMING: Well, as I mentioned
6 at the last meeting, I agree that the involuntary
7 catastrophic destruction should default to what they
8 presently had before the destruction. I don't think
9 we should set the standard higher for them. That's my
10 opinion on that.
11 Now, going back to what Mr. Bates said in
12 regards to voluntary applicant demolition, you know,
13 as far as I'm concerned on that, if they want to tear
14 down the house and build something else, it ought to
15 be at 2,000 square feet, to be honest.
16 COUNCILMEMBER BATES: And --
17 COUNCILMEMBER FLEMING: You know what I
18 mean?
19 COUNCILMEMBER BATES: And --
20 COUNCILMEMBER FLEMING: It would be like --
21 it would be like a developer coming in and saying, I'm
22 going to tear down this house and, you know, build
23 something else. And as far as I'm concerned, it's a
24 new structure.
25 COUNCILMEMBER BATES: And I'm willing to

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1 compromise and go to the rebuild under catastrophic at
2 the existing size, and anything brand new, voluntary
3 or new lot at 2,000. I'm good with that.
4 COUNCILMEMBER ROCHE: Are you going to make
5 a motion?
6 COUNCILMEMBER BATES: I'll make the motion
7 to amend catastrophic destruction of the principal
8 structure to be rebuilt at no smaller than the
9 existing square footage.
10 COUNCILMEMBER ROCHE: And I'll second that.
11 MAYOR JENKINS: Any more discussion?
12 - - -
13 (No response)
14 - - -
15 MAYOR JENKINS: Call the roll, please.
16 DEPUTY CLERK BRYANT: Councilmember
17 Alexander?
18 COUNCILMEMBER ALEXANDER: Yes.
19 DEPUTY CLERK BRYANT: Councilmember Bates?
20 COUNCILMEMBER BATES: Yes.
21 DEPUTY CLERK BRYANT: Councilmember Fleming?
22 COUNCILMEMBER FLEMING: Yes.
23 DEPUTY CLERK BRYANT: Councilmember Pittman?
24 COUNCILMEMBER PITTMAN: Yes.
25 DEPUTY CLERK BRYANT: Councilmember Roche?

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1 COUNCILMEMBER ROCHE: Yes.
2 DEPUTY CLERK BRYANT: Councilmember
3 Spangler?
4 COUNCILMEMBER SPANGLER: Yes.
5 COUNCILMEMBER BATES: And then I'll make the
6 motion that any voluntary demolition or new construc-
7 tion be a minimum of 2,000 square feet.
8 COUNCILMEMBER ROCHE: I guess my only
9 concern there would be -- I'm sorry.
10 COUNCILMEMBER BATES: No. You're fine.
11 COUNCILMEMBER ROCHE: My only concern there
12 would be like, again, setbacks, that sort of thing.
13 COUNCILMEMBER ALEXANDER: So they could get
14 a variance to make it smaller?
15 MR. HAEBERLIN: I'll be honest with you.
16 Generally, I don't think you guys are going to have a
17 problem. Your lots on the whole -- if you look at
18 most of metro Atlanta is building on 4,500 to 6,000,
19 so you are well above the minimum.
20 I think you can get that on there. It may
21 not be the desired footprint that people want. It
22 typically would be a two-story or some sort of story-
23 and-a-half. Some aberration of more than one story.
24 COUNCILMEMBER FLEMING: Was there a motion
25 on the floor?

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COUNCILMEMBER BATES: Yes, ma'am.
COUNCILMEMBER FLEMING: Was there a second?
MAYOR JENKINS: Excuse me a minute.
What about the public hearing on these?
MR. HAEBERLIN: Well, right now they're just working out the concepts within, I guess, a work session, and we'll have the public hearing.
MAYOR JENKINS: Go in the public hearing after we finish --
MR. HAEBERLIN: Yeah, yeah.
MAYOR JENKINS: -- with this? Okay.
MR. HAEBERLIN: Right now, we're just working out the semantics of --
MAYOR JENKINS: Have a motion.
MR. HAEBERLIN: -- how it should be written.
MAYOR JENKINS: Do I get a second?
COUNCILMEMBER FLEMING: And the motion is on voluntary and new construction at 2,000 square feet?
COUNCILMEMBER BATES: Yes, ma'am.
COUNCILMEMBER FLEMING: Second.
MAYOR JENKINS: Okay. Any more discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll, please.

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DEPUTY CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
DEPUTY CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
COUNCILMEMBER BATES: Now I want to talk about government initiated.
I have a little bit of --
COUNCILMEMBER FLEMING: Me too.
COUNCILMEMBER BATES: -- queasiness about this.
What defines when this takes effect? because if you have -- we'll go a house that burns down, since in the state of disrepair and has done a nuisance abatement, does that trigger the catastrophic or does that trigger the government-initiated rebuild?

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ATTORNEY WEED: That's government initiated.
COUNCILMEMBER BATES: Even though it was the result of a catastrophic?
ATTORNEY WEED: You know, people have to behave reasonably with regard to their property and the right to swing one's fist into the tip of someone else's nose.
If someone did not take advantage of the opportunity to do something with their property and let it sit fallow and the government has to get involved --
You know, bear in mind that in order for us to do that, we have to have a Code Enforcement review of it, we have to initiate all the paperwork via legal counsel, we have to have a hearing that we have to notice the owner to come to, we have to show up before a judge and have an evidentiary hearing.
By the time it's gone that far, I'm going to have to tell you, as a lawyer, I have no sympathy for the person who has let it go that far, because that literally will take months if not more than a year to do.
So the people that we've actually nuisance-abated, they deserved it in every literal sense of the word and they've had every opportunity to avoid that.

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You know, while I've been your city attorney, I can assure you that we've never rushed into any kind of action like that. And plus we have to go before a judge who is going to either sign an order or not. It's not something we can do purely internally.
So I advise you to take a hard line with regard to that issue.
The secondary aspect of it, though, would be arguably if we did a taking under eminent domain. But if we did that, that would kind of be outside of this structure anyway because we have to have a legitimate public purpose to take the property and we have to pay value, whatever the value of the property is. And you know, that's going to be a rare occasion that we do that.
COUNCILMEMBER BATES: Okay.
COUNCILMEMBER ROCHE: Yeah. There was that house on English Oak that had been burned and the guy apparently just let it sit.
I do tend to agree on this one, you know, with Attorney Weed on this, because just the threat of having this happen might motivate people to, you know, do something a lot quicker than --
ATTORNEY WEED: One would hope.

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COUNCILMEMBER FLEMING: But then there are others that are just totally dilapidated and not being lived in because -- and it's over in the Tilly Mill area off of Eula or whatever. And the children of the deceased parent haven't kept it up and they really don't care to keep it up. I'm all for sticking them with 2,000 square feet also.

But first of all, they're not going to come back in and build. They'll just probably want to level it.

Or if it's a City-initiated and we're going to demolish it for them, then they'll say, thank you very much. I mean how are we going to absorb that cost?

ATTORNEY WEED: It's automatically a lien on the property.

COUNCILMEMBER ROCHE: Right.

COUNCILMEMBER FLEMING: Okay.

ATTORNEY WEED: And if they don't, if they fail to pay the lien within a certain amount of time, we can auction the property off at the courthouse steps.

COUNCILMEMBER FLEMING: Okay; because I don't imagine that they're going to come back and even rebuild. They'll just sell the property.

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COUNCILMEMBER BATES: Based upon the timeline that you walked us through on actually nuisance abating a property, I'm with you. Let's just put 'em all -- lump 'em together and say: Listen, you've got two options. You can clean up your property and build it back under the catastrophic at a thousand or 1,500 square feet. If we've got to walk you through this process, you're going to have to build a 2,000-square-foot home.

I'll make that as the form of a motion: to change the government-initiated demolition to 2,000 square feet.

MR. HAEBERLIN: Heated square feet.

COUNCILMEMBER BATES: Heated square feet.

COUNCILMEMBER PITTMAN: Do what?

COUNCILMEMBER BATES: Heated square feet.

MR. HAEBERLIN: 2,000 heated. On page 9 of version 3 of Ordinance R-1.

COUNCILMEMBER ALEXANDER: So again, if something restricts them from having a structure that size, they can apply for a variance?

MR. HAEBERLIN: They have to look at a hardship variance, yes, ma'am.

MAYOR JENKINS: We got a motion. Do I get a second?

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COUNCILMEMBER FLEMING: Well, I'll second that.

I believe Mr. Roche was going to make a comment.

Were you?

COUNCILMEMBER ROCHE: Huh-oh.

COUNCILMEMBER FLEMING: Okay. I'm sorry.

I second.

COUNCILMEMBER ROCHE: I already did.

MAYOR JENKINS: Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll.

DEPUTY CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

DEPUTY CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

DEPUTY CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

DEPUTY CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

DEPUTY CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

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DEPUTY CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

COUNCILMEMBER BATES: And I just want to make it clear -- I probably should have -- on both motions, that that would be the minimum; that if the house was larger, although it -- it wouldn't matter because both of them are tear-downs, so never mind,

ATTORNEY WEED: I've got a technical question and an idea, which is underneath the catastrophic and the ability to rebuild to no smaller than the existing square footage, I advise that we set the standard for that meaning based upon the tax rolls. We need to base it upon something, some information about what the current, you know, at the time of destruction, the square footage was.

COUNCILMEMBER BATES: Based on --

ATTORNEY WEED: Other than just the applicant's word. I mean I hate to be that way, but --

COUNCILMEMBER BATES: Right.

ATTORNEY WEED: -- we need to have some evidentiary standard for that.

COUNCILMEMBER BATES: I'll make the motion that it's based upon the Dekalb County tax record.

COUNCILMEMBER PITTMAN: Is that a motion?

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COUNCILMEMBER BATES: Yes.
COUNCILMEMBER PITTMAN: Second.
COUNCILMEMBER ROCHE: I guess my only concern there is if those records are accurate. I mean we've found out situations where those records are not accurate because we haven't been providing them the information when people build or change or whatever. If someone adds a bedroom in the back, and we never send the building permit over to the County and that happened three-and-a-half years ago, it's going to reflect a smaller footprint than it is today.
ATTORNEY WEED: I certainly don't disagree.
I think through the efforts of Scott and the staff, I think we've closed that circuit finally, and hopefully the occasions where that happens will be far less.
And I don't really have a preference as to the Dekalb County tax records or, you know, Councilman Fleming's, you know, Bible. It doesn't matter to me legally as long as we have a standard. You know, with her family tree in it. But I mean it doesn't -- I don't really care. That's probably the best thing --
COUNCILMEMBER ROCHE: That's fine.
ATTORNEY WEED: -- that we can come up with.
COUNCILMEMBER ROCHE: That's better than

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nothing.
ATTORNEY WEED: -- unless we -- Yeah, exactly.
COUNCILMEMBER BATES: Yeah. I don't know what a more reliable source of information would be.
MR. HAEBERLIN: Yeah.
COUNCILMEMBER FLEMING: Yeah.
COUNCILMEMBER ROCHE: I agree.
MR. HAEBERLIN: I agree with you. I mean we have to rely on our taxing authority, I think, I mean unfortunately.
COUNCILMEMBER SPANGLER: And I'm sure that if there were some changes made that were not sent to Dekalb County, that we could show proof of those changes through a copy of a building permit here?
MR. HAEBERLIN: Well, remember, there are lots of additions that have been done without building permits, so -- I mean we are going to have some tricky situations and we'll have to deal with them on a case-by-case basis.
ATTORNEY WEED: That would still probably work to our advantage, though, because since we're working on the theory of what are the minimums, if someone wants to build back something bigger, ordinarily we're going to be happy to see that.

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COUNCILMEMBER SPANGLER: Yeah.
ATTORNEY WEED: But we should be okay.
COUNCILMEMBER FLEMING: Did you have other questions that you wanted to --
COUNCILMEMBER BATES: We need to vote on this one.
COUNCILMEMBER FLEMING: Oh, I'm sorry.
COUNCILMEMBER BATES: That's all right.
MR. HAEBERLIN: Dekalb County tax records being the bar, the standard of --
COUNCILMEMBER BATES: Yes.
MR. HAEBERLIN: -- reliability.
MAYOR JENKINS: Any more discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
DEPUTY CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
DEPUTY CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
DEPUTY CLERK BRYANT: Councilmember Fleming?

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COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: I skipped you. I'm sorry.
COUNCILMEMBER FLEMING: That's okay.
DEPUTY CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MR. HAEBERLIN: Since we've gotten through all those, let's go back to that first paragraph on page 9 under "Note: Heated floor area may be varied by Conditional Zoning Application or Variance Application."
Because we have people on existing lots of record that don't have any catastrophic, voluntary or involuntary demolition, they just simply come in and apply for a building permit, and so we need some sort of threshold established there. And from what you're telling me and what I'm hearing, I think you're wanting to set that at 800 square feet.
So if you come in and you have 800 square feet, you can add on completely, anything you want, but if you don't have 800 square feet, then you have to bring it up to the minimum standard which is 800

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1 square feet. Because remember, people do voluntarily
2 build on their homes. They're not just always
3 destroyed.
4 So I think in that paragraph there, what
5 you've told me is that you guys are looking at setting
6 the bar as low as will accommodate the smallest house
7 in the city that we think exists, which would be 800
8 square feet. Is that correct?
9 COUNCILMEMBER BATES: The smallest that I
10 was -- and again, I didn't do an exhaustive. I looked
11 at 183 properties. And the smallest that I was able
12 to identify was 800 square feet.
13 While we're on that subject, what is the
14 trigger that if someone wants to remodel their bath-
15 room --? And let's go hypothetically under what's
16 printed here at 900 square feet. What triggers this
17 going into effect? Someone wants to remodel their
18 bathroom and their property is 840 square feet. Do
19 they have --
20 MR. HAEBERLIN: They meet the criteria if
21 you set the bar at 800.
22 COUNCILMEMBER BATES: No. As it's written
23 right now --
24 MR. HAEBERLIN: Correct.
25 COUNCILMEMBER BATES: -- as 900 square feet.

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1 I'm going hypotheticals on you. They've got an 850-
2 square-foot house. The requirement is the minimum
3 house is 900 square feet. They want to renovate their
4 bathroom.
5 In order to renovate their bathroom, do they
6 have to add on 50 square feet?
7 MR. HAEBERLIN: The way this is written
8 right now, yes, that would trigger that.
9 COUNCILMEMBER BATES: Okay.
10 MR. HAEBERLIN: So if you would lower it to
11 800, then it would not trigger in most situations.
12 Unless we have some house out there that I'm
13 not aware of -- and I've reviewed the records as many
14 times as Brian has -- I think you're safe at 800
15 square feet. Now, I don't factually know that, but
16 I've never seen anything below 800.
17 COUNCILMEMBER FLEMING: Well, in Mr. Bates'
18 illustration, if we put in here something about the
19 footprint of the property being added onto, I wouldn't
20 think that renovating an indoor bathroom would consti-
21 tute having to bring up the square footage of the
22 home.
23 MR. HAEBERLIN: It depends on how that's
24 worded. The way I have it worded says for additional
25 heated square footage. So the way that I had that

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1 written, not in his situation, not in Brian's
2 situation that's been illustrated, but in situations
3 where they want to add on a family room, for example,
4 and they have 800 square feet. Well, the family room
5 has to be at least a hundred square feet.
6 Are we on the same? Interior finish type
7 work and repair and stuff is pretty much covered
8 within the synopsis of how it's been presented.
9 COUNCILMEMBER BATES: I just want to make
10 sure that I understood what was going to trigger the
11 requirement for meeting a minimum size of 900 square
12 feet.
13 MR. HAEBERLIN: The way I had that written
14 was heated square footage. So if you had 900 heated
15 square footage and you wanted to add heated square
16 footage -- this is as written -- then you've met the
17 criterion.
18 COUNCILMEMBER BATES: So if you've -- and
19 again, I hate doing hypotheticals but I need to for my
20 own understanding. If you've got an 800-square-foot
21 home and you want to add on a deck, that's not going
22 to trigger this because it's not heated space.
23 MR. HAEBERLIN: It's not heated square
24 footage.
25 COUNCILMEMBER BATES: Okay.

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1 MR. HAEBERLIN: But if you wanted to add on
2 a family room and it was heated square footage --
3 let's say the family room needed to be a minimum of 10
4 by 10 -- so based on what you guys have told me, I
5 think you should lower that threshold unfortunately to
6 800 square feet. That would capture all that we know
7 of.
8 COUNCILMEMBER BATES: I disagree. I think
9 we need to start, however slowly, raising the bar.
10 MR. HAEBERLIN: Okay.
11 COUNCILMEMBER BATES: And I am okay with
12 leaving it at 900 if not -- I'm okay with leaving it
13 as you've got it written here at 900.
14 MR. HAEBERLIN: So we have a 600 square foot
15 house -- just say we had one -- and they come in for a
16 building permit to add heated square footage, they
17 would be required to add, based on this, 300 heated
18 square footage.
19 COUNCILMEMBER BATES: Under that hypo-
20 thetical scenario, yes. If we lowered it to 800, then
21 they'd have to add 200 square feet.
22 MR. HAEBERLIN: Correct. I mean I'm just
23 going based on our discussion that we've had,
24 generally most folks feel that 800 is the smallest we
25 have in the city, which I tend to think that, too,

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based on what I have reviewed.
COUNCILMEMBER ROCHE: So that 800-square-foot person, if they decided they wanted to enclose their porch, they would have to come up with a hundred square feet when they're done; otherwise, they can't enclose their porch.
COUNCILMEMBER FLEMING: That's heated.
MR. HAEBERLIN: Correct.
COUNCILMEMBER FLEMING: That's heated square feet.
COUNCILMEMBER ROCHE: That's what I mean, though.
COUNCILMEMBER ALEXANDER: That's not -- that wouldn't be heated.
COUNCILMEMBER FLEMING: It's not heated.
COUNCILMEMBER ROCHE: So you have 800 square feet and your porch is not heated, and they say, okay, you know what? I want to enclose my front porch which will give me another 50 square feet, and we say no because it's not enough to bring it to 900.
MR. HAEBERLIN: Well, you're going to need some threshold, and that's why we went back to this paragraph. You need some threshold in here.
COUNCILMEMBER ROCHE: No, I understand. And what I'm getting at, though, is that when it says 900

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square feet, the scenario I just talked about, they can't enclose their porch and add 50 more square feet of heated because that wouldn't bring them up to the 900 square feet.
I'm not disagreeing with Councilman Bates. I just think that in those situations where someone wants to enclose their garage or enclose their carport or whatever --
COUNCILMEMBER FLEMING: Since we're --
COUNCILMEMBER ROCHE: -- I think 800 would be probably more appropriate in this case.
COUNCILMEMBER FLEMING: And since we're listing it just for the construction prior to today's date, I think we should encompass the majority of homes that we already have in the city as of this date, and if there are many that are 800, then that's where I feel it should be.
COUNCILMEMBER ROCHE: Right. Because I would rather have someone enclose -- have 850 square feet than 800 square feet.
But what we're telling them here is if you have 800 square feet, unless you come up with a hundred square feet, you can't do it. And if that's going to be enclosing a porch, they can't very well add on to the front porch because then they may run

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into setback restrictions.
So I would be in favor of changing that to say 800 square feet in both cases.
I'm sorry. What was --? Okay. The first part, with no -- okay.
MR. HAEBERLIN: Correct.
COUNCILMEMBER ROCHE: The 900, I would say change that to 800 and 800.
MR. HAEBERLIN: So our presumption there is we don't feel that there's any -- there will probably not be any dwelling that will not be eligible for some type of addition somewhere on their property provided they meet the dimensional requirements, et cetera.
COUNCILMEMBER ROCHE: Yeah. I just don't want a situation where someone can't enclose their porch or can't enclose their carport because they come up with -- they have an 800-square-foot house and it's going to bring them up to 890 square feet and then we have to tell them no, you can't do it.
COUNCILMEMBER FLEMING: Make a motion.
COUNCILMEMBER ROCHE: So I make a motion to change the 900 heated square feet in both cases on this paragraph to 800 square feet.
COUNCILMEMBER FLEMING: Dwellings constructed prior to August 31st.

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COUNCILMEMBER ROCHE: Right.
ATTORNEY WEED: The first full paragraph beginning "Dwellings constructed prior to August 31st, 2009" on page 9 of 14.
COUNCILMEMBER ROCHE: Thank you.
COUNCILMEMBER SPANGLER: I'll second that.
MAYOR JENKINS: Any more discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
DEPUTY CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
DEPUTY CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.

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1 COUNCILMEMBER ALEXANDER: On page 5, "Any
2 moved-in single-family detached structure." In your
3 meaning, that's physical transportation of a house to
4 a property?
5 MR. HAEBERLIN: Uh-huh.
6 COUNCILMEMBER ALEXANDER: Okay.
7 MR. HAEBERLIN: Moved-in structures are
8 provided in your building code. They're very rare in
9 jurisdictions like this because we're so metropolitan.
10 I'm not going to say that it'll never happen.
11 But people do go to the State Department of
12 Transportation and buy houses and try to move them
13 within jurisdictions, and that's pretty common in more
14 rural areas, but I'm not going to say that it would
15 never happen here.
16 COUNCILMEMBER BATES: I just read that as
17 "moved-in" as in it was occupied, as in they moved in.
18 COUNCILMEMBER ALEXANDER: That's how I read
19 it.
20 MR. HAEBERLIN: No. It's actually -- that's
21 the exact term as it's used in the building codes:
22 moved-in structure.
23 COUNCILMEMBER BATES: Got it. I'm with you.
24 COUNCILMEMBER ALEXANDER: On page 8, this is
25 regarding the older homes that we have found out may

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1 not meet the setbacks, I still am not a fan of the
2 requirement of the fire suppression.
3 Having done research last night, I found out
4 on various web sites that retrofitting a fire
5 suppression system in an older home is one to three
6 times the expense of installing one in a new home.
7 Furthermore, you have to have annual
8 inspections on a fire suppression system. I have to
9 go through them annually. And I just don't know that
10 we are ready to enact such a thing on our homeowners
11 that are purchasing the older homes.
12 COUNCILMEMBER BATES: Is this a requirement
13 by Dekalb County or is this a recommended Doraville-
14 initiated --
15 MR. HAEBERLIN: It's recommended by the City
16 of Doraville.
17 I actually as well discussed it with the
18 Building Official. He said, you know, we could just
19 take the approach, look, if your house is built three
20 feet from the side property line, it's legal
21 nonconforming, you never do anything to it, and be
22 done with it. So this was to allow some flexibility.
23 And I'll let you know, we have a lot of houses that
24 are in this criterion.
25 As we previously discussed, and Mr. Weed may

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1 also illuminate, the houses that are built over the
2 property lines, there's really nothing we can do about
3 those as a government. I mean they are what they are,
4 and those houses will remain as they are forever.
5 ATTORNEY WEED: It's a private contract,
6 right. If your house is over on my property, I can
7 sue you and make you tear it down or move it. But if
8 I don't care enough to do that, you know, good luck.
9 MR. HAEBERLIN: So this was an attempt for
10 the Council to have some leverage if they considered
11 the granting of variances in situations where people
12 have a house, for example, two-and-a-half feet from
13 the side lot line and they want to build onto it.
14 What do we do in that situation?
15 I'm not saying that that's a huge percentage
16 of your buildings, but I've seen more than my share.
17 And so we could just take the approach, look, you're
18 out of luck. You're legal nonconforming. Don't touch
19 it ever. It stays the way it is.
20 COUNCILMEMBER ALEXANDER: That was not my
21 argument. My argument is I don't like requiring them
22 to install the fire suppression.
23 MR. HAEBERLIN: Oh, I understand, yeah.
24 COUNCILMEMBER ALEXANDER: I want them to be
25 able to come to us and ask for a variance and to be

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1 able to improve their homes as long as the improve-
2 ments they make do not further encroach against the
3 setbacks or their neighbors' property.
4 But right now, in, like I said, just doing
5 the research, I mean we're not requiring new home
6 construction to install fire suppression systems, and
7 there are some municipalities, mainly out west, that
8 are requiring that.
9 MR. HAEBERLIN: Correct; and Georgia as
10 well, yeah.
11 COUNCILMEMBER ALEXANDER: Okay.
12 MR. HAEBERLIN: City of Forest Park requires
13 fire suppression for all new construction.
14 So you know, here's our situation: The City
15 Council has not wantonly engaged in behavior, as many
16 municipalities have, to create situations with new
17 construction where they're three-and-a-half feet from
18 the side lot line. So nothing that has been done has
19 been wanton by the government.
20 As I told you, I think it would be irrespon-
21 sible of me not to recommend this to you because, I'll
22 be very frank with you: At a certain level, people
23 have to become responsible for what they buy, and they
24 don't do their diligence. It's unfortunate, and it's
25 unfortunate that we have some sloppy home builders. I

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just want to be factual with that. It is what it is.
If you guys were looking at new construction and considering variances to go below five feet, it would be an entirely different world, entirely different world, but this is existing construction.
COUNCILMEMBER BATES: So just so I can understand, if there was a property that was off-centered on the property lines and it was three feet off of the property line on one side and 20 feet on the other side, if we strike the fire suppression requirement, you're saying that they couldn't build 10 feet towards the other side.
MR. HAEBERLIN: The property would be legal nonconforming until such time they tried to add onto it. You'd still be hearing it. I mean you'd still be hearing it as a variance.
COUNCILMEMBER BATES: Whether or not the fire suppression requirement was there or not.
MR. HAEBERLIN: Correct, correct.
Like I said, I discussed it with John Calcaterra. He said, you know --
And I've worked in jurisdictions where they played the numbers game. They've had variable setbacks, zero to 10. So one house is built with a 10-foot setback, the next one's built with a zero

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setback on the side lot lines.
That's a very dangerous, very dangerous gamble that I would not like you guys to entertain.
And like I said, we have not had that type of wanton behavior, although that's very common in the developing counties around us.
These are situations that were created by the home builders. People bought these properties as they were. They were not inspected by city inspectors. And unfortunately, it just kind of is existing situations.
COUNCILMEMBER BATES: Yeah. I'm going to make a motion to strike the residential fire suppression.
COUNCILMEMBER ROCHE: And I'll second that.
MAYOR JENKINS: Any more discussion?
COUNCILMEMBER BATES: If they're going to be required to come to Council for a variance as a nonconforming property anyway, I think whomever's sitting up here has some abilities to manage and control that without this added expense.
I guess this leads me to a second question. If they were to tear down, a voluntary tear-down, could they be allowed to keep the existing foundation or would they have to relocate to within the setbacks?

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MR. HAEBERLIN: Within the setbacks.
I'll tell you this: reusing a foundation is very, very seldom, because it's not designed for modern engineering. And particularly with fires, usually the fire burns high enough that the foundation is completely destroyed.
COUNCILMEMBER SPANGLER: So say like the house is to burn down. They would have to put a new foundation in, but they could put it in the existing place.
MR. HAEBERLIN: No. They would put it what the Code says today, whatever that would be.
COUNCILMEMBER BATES: So they'd have to meet the setback requirements --
MR. HAEBERLIN: Uh-huh.
COUNCILMEMBER BATES: -- or get a variance if there --
MR. HAEBERLIN: Or get a variance.
COUNCILMEMBER BATES: -- were site conditions that wouldn't allow for it.
MR. HAEBERLIN: Uh-huh.
COUNCILMEMBER BATES: Okay.
COUNCILMEMBER ROCHE: But it could still be the same size but --
COUNCILMEMBER BATES: Right.

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COUNCILMEMBER ROCHE: -- it would still have to meet the new --
COUNCILMEMBER BATES: Right. They just have to center it on the property or do a better job of surveying.
MAYOR JENKINS: And the jurisdictions I've dealt with when there actually have been fires where there was a catastrophic demolition, I'll be frank with you, very few people build back exactly what they have, because tastes change, preferences change, and typically people will build a larger house than they had before. They'll put less luxuries on the inside. In other words, they'll get a bigger box initially, and they'll go back later and add the Corian and all those other things. Typically my experience is they build a larger house than they had before.
COUNCILMEMBER PITTMAN: And that's what happened in Dunwoody when the tornado hit and all those houses were rebuilt.
MR. HAEBERLIN: Yes. I mean the interior components can always be changed. We know that.
So that was --
And that motion did carry?
COUNCILMEMBER FLEMING: Not yet.
MR. HAEBERLIN: I apologize.

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COUNCILMEMBER BATES: No, it hasn't.
ATTORNEY WEED: If the Clerk would re-read the motion?
MAYOR JENKINS: Call the roll, please.
COUNCILMEMBER BATES: It's a move to strike the fire suppression requirement.
MR. HAEBERLIN: Page 8 of 14, Terri, under "Minimum Side Yard Building Setback."
MAYOR JENKINS: Call the roll, please.
DEPUTY CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
DEPUTY CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
COUNCILMEMBER FLEMING: Can we stay on that one item, Ms. Alexander? I know you probably have

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more things.
And I know that you are again trying to encompass all of the residents that we presently have, with the five-foot setbacks.
MR. HAEBERLIN: Uh-huh.
COUNCILMEMBER FLEMING: We previously in our Code had 10 feet.
MR. HAEBERLIN: Correct.
COUNCILMEMBER FLEMING: I am not comfortable with the five feet. I think if we're going to set our standard, we don't want -- I mean five feet is more of a residential cluster home setback rather than the older homes or the lots that we presently have.
I would prefer keeping it at 10-feet side setbacks rather than five. I don't want to see us getting into where we're able to put our hands out the window and shake hands with our next door neighbor.
COUNCILMEMBER ROCHE: And I guess the other concern that I would have on that is that, as we said before, a lot of these houses are offset on the lots. And if we had five feet and you had somebody that was right at the lot line or even over the lot line, theoretically they could be no more than five feet in between the two buildings, and there's no way to get a fire truck in between there. Might be able to get a

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fire hose, but --
COUNCILMEMBER FLEMING: So my preference, Council, is to keep our existing side setback at 10 feet.
MR. HAEBERLIN: Well, then, you will have a lot of houses that will not be built onto. I have to be very frank with you. Because most commonly there's at least one setback not meeting the 10 foot, and that's the reason why I went down to that bare minimum.
Again, I did not want to go below the five. I had extensive discussion with the Building Official on that as well.
COUNCILMEMBER FLEMING: Well, can we not then --? You've put in here dwelling constructed prior to, and I know that we have discussed square footage for after the fact, subsequent construction.
Can we not then do also a paragraph for subsequent construction after August 31st, 2009, that the side setback would be 10?
MR. HAEBERLIN: You could. I mean it's not something --
COUNCILMEMBER ROCHE: For new construction.
COUNCILMEMBER FLEMING: For new construction.

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ATTORNEY WEED: That would be legal.
MR. HAEBERLIN: Correct.
That's not something I'm going to recommend that you do. I'll be honest with you. Like I said, in most of the 14 metropolitan countries, homes are being built on 4,500 to 6,000 square feet. Typically, there is a setback with fire suppression of seven-and-a-half feet between the structures. So actually, they're much lower than five feet, because they're building these things with fire suppression and they're building them close and tight from the initial, like a cluster, on day one.
The reason I encompassed that was because you have so many problems. I've repeatedly seen house after house over the five foot. And since you're requiring a larger square footage for new construction, I think you need to allow more leverage for that.
I mean what if you have flood plain on the back of the lot and you need to get the bulk of the square footage to the front?
COUNCILMEMBER BATES: What separates this, while we're on this, between this and R-CH as far as the side setbacks?
MR. HAEBERLIN: Well, an R-CH is 7.5 feet.

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And I'll be very honest with you. I don't like how R-CH is written here and --

COUNCILMEMBER BATES: Are you going to recommend that R-CH goes to a smaller side setback?

MR. HAEBERLIN: I'm going to recommend that we consider rewriting R-CH or eliminating it completely, because you can have a conservation subdivision concept, and we're required by law to have a conservation subdivision. So you can do clustering within a different concept.

The R-CH as it's been used here is simply not to conserve any open space. It's simply just to make smaller lots, and that's been its only function. So it's not really providing any great clustering or conservation of natural resources like wetlands or flood plains or trees, et cetera. It's just really been used to put a smaller house on here. We could just call it, you know -- well, we could call it R-50, I mean 50 feet wide lots.

So if you looked at your existing R-CH, I think you will find it probably does meet these criteria. I'm just going to be factual with you. And you don't have that much R-CH to begin with. I think I recall you only have -- one? I don't think you have more than one.

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COUNCILMEMBER BATES: So you don't think that new homes should have -- in a single-family detached environment should have a wider side setback than an R-50 or an R-CH or --

MR. HAEBERLIN: No. I will tell you, the focus is the homes are closer to the street because people want to preserve as much usable area in the rear of the property. Side lots lines, there's really no usable area anyway, I mean, to be quite frank with you.

And first of all, a fire truck will never go between these houses. There would be no reason to. They're not going to pull on the property; they're going to park on the street and they're going to drop a hose. I know a lot about this because my father is a retired volunteer fire department chief when he was younger.

So I mean in that situation, allow people, I think, to put more of a house closer to the street and have more street presence, conserve more of the back yard that people actually use.

COUNCILMEMBER BATES: I'm sorry. I don't see how a 10-foot side setback impacts how close to the street they get.

MR. HAEBERLIN: Well, remember as well, you

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reduced the front setbacks.

COUNCILMEMBER BATES: Right; to 20.

MR. HAEBERLIN: Correct.

And so remember with a narrower house left to right, what you're going to see is all garage. So the more you squish that box in, the more you're going to see is a garage and the whole feature of the front house would be a garage.

I would like to discourage that. I would like to see more innovation than that, because what you're going to eventually end up with, you're going to end up with one door, one window and a two-car garage on the first floor. So you're not going to have much of a street presence.

And so if you have a lot with flood plain in particular, again you're going to shove that product closer to the street. And really your whole feature of the house is going to be the garage, and I think we should figure out a way to discourage that, and I think by going to left to right, you can. You can allow more innovation.

You're going to -- remember, you're going to let go of a whole huge amount of house plans that exist, that have been created, that people use. And you're really going to limit yourself to a house that

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essentially looks like a two-car garage on the front or it has a swing-in side entry to a two-car garage and two faux windows in the garage.

So you have to think about street presence, and that's one of the reasons why I'm an advocate of allowing more house left to right, because the side yards are of no real value to people, generally, and I think that the conservation of the area in the back is more useful for them.

COUNCILMEMBER ROCHE: I guess a couple of years ago, I had occasion to walk all over District 81, and I ran into a lot of situations where you have two or three little ranch houses and then suddenly you'd have the infill. And you'd have this little ranch house with two big old infills that were very close.

And basically if you're in the middle, you're basically screwed; you're pretty much -- you know, your house is -- you know, there's no shade anymore. I mean it's all shaded now; there's no sunlight anymore.

And I've talked to several people who were just very concerned about that type of infill. It just crowds people out, basically, and that's why I'm a little concerned about this, too, on the new

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1 construction.
2 COUNCILMEMBER FLEMING: One other comment
3 for Council also is that we presently have a variance
4 on the books right now that is not under construction
5 with a 10-foot side setback.
6 Had we allowed it to be five feet at the
7 time of that variance, they could have gotten six
8 houses on that piece of property instead of the five
9 that we approved.
10 MR. HAEBERLIN: As far as I know, there's
11 been no activity on that, that application, applica-
12 tion, that variance application. There has been no
13 land planning occur, certainly, so there are no lots
14 of record created at this time. I did want to add
15 that.
16 COUNCILMEMBER FLEMING: But we would have to
17 go with the current variance that we approved;
18 correct?
19 MR. HAEBERLIN: Well, that's really a --
20 COUNCILMEMBER FLEMING: -- because that was
21 prior --
22 MR. HAEBERLIN: -- question for the lawyer.
23 COUNCILMEMBER FLEMING: -- to our sunset
24 variance.
25 ATTORNEY WEED: Well, that's an interesting

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1 legal question.
2 And it would be prior to our sunset
3 variance, that's true; however, there would be an
4 element of, you know, how long does a variance -- how
5 long is it good for? What if it was five years and
6 there was no activity?
7 At a certain point, you know, logic will
8 also dictate that the lack of activity would be
9 indicative of a lack of interest.
10 For example, we've got a situation where an
11 entity hasn't acted upon a demolition permit in
12 accordance with the Code. And after a reasonable
13 amount of time, if you put that person on notice that
14 you haven't acted -- I mean you can do that by virtue
15 of a letter, let alone just an -- an actual ordinance.
16 So the answer to your question would be yes.
17 I mean if they came in tomorrow and started working on
18 it, I would advise you to let them, that the variance
19 was good.
20 So the artistry of law will depend on the
21 fact of how much time was there. The longer period of
22 time, the less rights they've got.
23 MR. HAEBERLIN: As far as I know, that
24 situation is just sitting. Like I said, there's no
25 platting occurred. There's not even been any

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1 submittal of any construction documents to the City.
2 COUNCILMEMBER ROCHE: Well, not to beat this
3 to death, but I mean I live in an R-CH, but the thing
4 is that the houses were all built all at once and they
5 all kind of fit with each other, et cetera, et cetera.
6 My concern is that when you have a
7 neighborhood that has a look and feel to it and --
8 You know, one of the things I liked about --
9 I don't know if I can say this officially or not; but
10 some of the houses that I have seen built in the last
11 few years, when you look down the street, you can't
12 really tell that it's a brand new house. I mean it's
13 basically the same size, the same relative dimensions
14 to the houses around it.
15 In a lot of the areas here, a lot of neigh-
16 borhoods, we have these ranch-style type houses, and I
17 wouldn't want to do anything that would encroach into
18 that. I'm not sure about the -- and I think we need
19 to look at this some more, anyway.
20 So I still feel like we need to stick with
21 the 10 feet. I think the 10 feet makes a lot of
22 sense, particularly when you're going to have a
23 neighborhood that's going to have different types of
24 houses in it, which is what the case is here.
25 Again, R-CH, they all look -- I mean they're

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1 all cookie-cutter houses. I understood that. I knew
2 it when I bought the place, but --
3 MR. HAEBERLIN: Well, your current R-CH is
4 probably in violation of the International Building
5 Codes right now, because it does say that they allow
6 you to have a zero setback provided the minimum
7 distance between structures is 15 feet.
8 That does not cut it anymore. It's five
9 feet. Five feet from that structure to that lot line.
10 Doesn't matter how far the other house is.
11 COUNCILMEMBER ROCHE: No, I got that.
12 What I'm getting at, though, is that if you
13 go down Chestnut, you see those new houses that were
14 built there, and they all look the same.
15 Now, if in the middle of that there was
16 somebody that has a 1,250-square-foot one-story ranch
17 house right in the middle of something like that, the
18 look would be all messed up. Do you see what I'm
19 saying?
20 What I'm talking about is the current R-1s,
21 you know, we have, yes, small houses/big lots, but --
22 MR. HAEBERLIN: Uh-huh. In R-1, you will
23 certainly have houses that are built in violation of
24 their own setback, so they'll be closer to the new
25 home regardless. We know that.

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COUNCILMEMBER ROCHE: Which is another reason to make it 10 feet for new construction.
MR. HAEBERLIN: Like I said, again, this is just based on my recommendation. I'll let you --
COUNCILMEMBER ROCHE: I understand.
MR. HAEBERLIN: -- know you're going to restrict yourself to the type of architectural design that's going to result from that, because certain footprints work better with less side. And you'll probably end up with more houses that are shaped like L's, and they will either have a front-entry garage or a swing-in side-entry garage, basically like in the R-CH that you live in, two stories.
COUNCILMEMBER FLEMING: But you do intend -- I mean that R-CH is part of September's agenda; correct?
MR. HAEBERLIN: I hadn't gotten that far yet, ma'am, because it's so far down the pipe --
COUNCILMEMBER FLEMING: Okay. But I mean --
MR. HAEBERLIN: -- but it definitely needs to be addressed.
COUNCILMEMBER FLEMING: -- it would be coming; correct?
MR. HAEBERLIN: Yes. It needs to be addressed.

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COUNCILMEMBER FLEMING: I don't mind having it five feet prior to August 31st, that you have in here, so that we can encompass the majority of the houses that we presently have; but I'd like to make a motion that for new construction after August 31st, that the side setback be at 10 feet.
COUNCILMEMBER ROCHE: I second that.
MAYOR JENKINS: Any more discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
DEPUTY CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
DEPUTY CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?

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COUNCILMEMBER SPANGLER: Yes.
MR. HAEBERLIN: Okay. On that same page, 8, if you go down to rear, I corrected. It's 25 foot. I did correct that.
And then I put a notation under mobile, modular and manufactured, See Article IV, Definition -- Section 402 Definition, so I did make some references that Mr. Anderson had requested.
And we went through 9. If there are any particular areas you want me to look at, let's go to those next.
COUNCILMEMBER FLEMING: I was waiting for Ms. Alexander to finish before I started.
MR. HAEBERLIN: Okay. Maria?
COUNCILMEMBER ALEXANDER: On page 10, I found a typo. The line that begins "August 31, 2009, or," should that be "where" instead of "were simultaneous?"
ATTORNEY WEED: Yes.
MR. HAEBERLIN: Where. Okay.
COUNCILMEMBER ALEXANDER: I just wanted clarification. We have a good many houses in Oakcliff that do not have carports and they do not have garages. They just have driveways, and you park next to your house. So how does that affect existing

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homes?
MR. HAEBERLIN: The way we have this written now is they were supposed to have a single-car carport, a single-car garage, a two-car carport or a two-car garage. So we have not encompassed those lots that have absolutely no coverage at all.
So if you want to amend that to say two parking spaces which are 9 x 20 and 180 square feet on paved asphalt or concrete surface, I think that's kind of where you're going.
COUNCILMEMBER FLEMING: Please include that. I agree.
COUNCILMEMBER ALEXANDER: So we make a motion to include that definition?
ATTORNEY WEED: Yes.
MR. HAEBERLIN: Are you with us on this, Murray?
ATTORNEY WEED: Yes.
MR. HAEBERLIN: Following us? Okay.
COUNCILMEMBER BATES: Second.
MAYOR JENKINS: More discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.

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DEPUTY CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
DEPUTY CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MR. HAEBERLIN: Councilmember Alexander, are there other ones that you want me to move to?
COUNCILMEMBER ALEXANDER: I was trying to, on the bottom of page 10, the dwellings constructed subsequent to 8/31 which are located on lots, I wanted to clarify exactly, because we had discussed not requiring the two-car garages and I wanted clarification on that.
COUNCILMEMBER BATES: This seems to be in conflict to the involuntary catastrophic build-back at the existing size, because it's got the involuntary

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demolition clause in there.
MR. HAEBERLIN: So if people voluntarily and involuntarily have a building demolished, do you want them to have a two-car garage or not?
COUNCILMEMBER BATES: Well, they couldn't if it was a catastrophic involuntary, build back an 800-square-foot house. That would be all garage.
So I think you actually need to strike the word "involuntary."
MR. HAEBERLIN: Well, when I say invol- -- maybe that should say government demolition, involuntary government demolition.
COUNCILMEMBER BATES: Or put in parens, not applicable to catastrophic, or something to make sure that someone who's in an involuntary catastrophic replacement program doesn't have to put in a two-car garage on their thousand-square-foot home.
MR. HAEBERLIN: I see what you're saying, the semantics of how you're reading that.
Any recommendations, Murray, on how that is perhaps rephrased?
COUNCILMEMBER BATES: Could you put excluding catastrophic?
ATTORNEY WEED: Yes. I would say excluding catastrophic involuntary demolition, because we've

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already determined that governmental demolition will not be the same things as catastrophic and voluntary.
COUNCILMEMBER BATES: Right.
ATTORNEY WEED: It may be catastrophic to the person who owns the home, but it won't be catastrophic as a result of the catastrophe, and I think that would do it. It would be involuntary demolition excluding catastrophic involuntary demolition.
MR. HAEBERLIN: Okay.
COUNCILMEMBER BATES: Do we need to make a motion on that?
ATTORNEY WEED: Yes.
COUNCILMEMBER BATES: So moved.
COUNCILMEMBER ALEXANDER: Second.
MAYOR JENKINS: More discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
DEPUTY CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.

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DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
DEPUTY CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
COUNCILMEMBER ALEXANDER: And I have two more on page 11.
Can you draw me a picture about the facade and the 20 degrees and what you're trying to accomplish by that?
MR. HAEBERLIN: What I'm trying to accomplish is that --
And I experienced this in Gwinnett County. We had a person of a minority background who wanted to construct a home and put the rear of the house facing the public street. That was their decision. And the way the zoning condition was written -- well, it was poorly written; it was prior existing -- they ended up, what essentially became the rear of the house had brick on it and then the side facing the street had hardy plank. And why I draw this back is because we

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1 think conventionally in terms of houses being placed
2 nearly parallel to the street.
3 And in some circumstances, that looks great
4 and works great, but there also will be some
5 situations in the future as the lots become scare,
6 more and more scarce, and the geography of the lots is
7 poorer, where you might construct a house where the
8 end or the side is at the street.
9 And I always use this as an example. I know
10 this dates me, but if anybody remembers the Amityville
11 Horror movie, the house was actually constructed with
12 the front facing a side yard. And it's very common in
13 New England, and it has a big gabled roof with a
14 chimney in the middle. It's very balanced and very
15 symmetrical.
16 However, here in the South, we're not used
17 to seeing that. So it's more common up North, the
18 houses. The longest part of the house is actually on
19 the side lot line. In Charleston style houses, for
20 example, that's common, too. You know, the smallest
21 portion of the house faces the street.
22 I think we need something in the Code to try
23 to regulate that, and so when we have these
24 aberrations occur, I think that it should be covered
25 under some rule as far as site orientation.

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1 And then that gives you an opportunity to
2 review them as a variance, why are you facing the
3 front of the house to the side lot line? I'm facing
4 the house to the side lot line because I have a creek
5 running through my lot, or something of that nature,
6 some hardship case. And so that just provides that
7 opportunity.
8 If we have no regulation whatsoever, I won't
9 be able to control it at all, and people will be able
10 to do essentially whatever they want to do.
11 COUNCILMEMBER ALEXANDER: Again, I know we
12 don't -- we're talking about what-if's, but I've got
13 two houses in particular on my street. One is
14 actually set diagonally. So could they not rebuild to
15 their existing footprint?
16 MR. HAEBERLIN: The way the codes are
17 written today before the rewrite, there's nothing that
18 will control that situation, in my opinion.
19 COUNCILMEMBER ALEXANDER: So if he suffered
20 a catastrophic event, he could build back on his same
21 foundation. Say a tree in his front yard fell in the
22 middle of his house. He could still orient his house
23 diagonally because that's how the foundation is.
24 MR. HAEBERLIN: Well, can the foundation be
25 reused again? That's always a question.

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1 And that's rare. I'll be honest with you.
2 That's a rare circumstance.
3 COUNCILMEMBER ALEXANDER: I didn't know if
4 this would prohibit them from having to rebuild,
5 because we have several homes in Oakcliff that
6 actually the house on the corner is diagonal.
7 The house in front of me, as you know, the
8 address is my street but the front of their house
9 faces the side street.
10 MR. HAEBERLIN: Yeah. And to me, that is a
11 true corner-lot development. I mean even though I
12 know there's some odd aberrations with that particular
13 property, that's a true conventional, you know, corner
14 lot where the longest side has been utilized to build
15 the bulk of the house and the smallest side, which
16 happens to face you, is used for a -- it's a side lot
17 line but it's really a front yard.
18 And I'm really talking about more unusual
19 circumstances like this where you may have a lot of
20 record, and, to be honest with you, the person wants
21 to build more of a house that's typical of not only
22 Charleston or Savannah but also New England where the
23 end of the house is the smallest visible portion of
24 the house and the doors are oriented toward the side
25 lot line, maybe with a parking port or something like

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1 that.
2 So this is just to give you some management
3 tool. To me, right now you have no management tool.
4 So this gives you -- The reason I moved this from
5 conditional use to a development guideline within
6 zoning is to allow you to vary it. It would be a
7 simple variance. So what is your hardships or why are
8 you wanting to locate the house this way?
9 COUNCILMEMBER ROCHE: Well, first of all, on
10 the rebuilding, they can rebuild to the same square
11 footage but they still have to meet all the other
12 criteria even if they're --
13 I mean it sounds like in that situation if
14 it's a diagonal house and they lost the house, they
15 could rebuild it to the same size but not necessarily
16 on the same diagonal foundation.
17 I don't remember us ever talking about
18 rebuilding it on the same foundation. It was just a
19 matter of allowing leeway on the square footage.
20 MR. HAEBERLIN: Yeah. I think that, to be
21 honest with you again, the rebuilding on the current
22 foundation is going to be a rare, rare circumstance.
23 I don't think that -- you know, with modern
24 engineering, I just don't see that happening, and I
25 don't see -- I know in burn situations, it nearly

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never happens. The fire's just way too hot.
COUNCILMEMBER ROCHE: But at the same time, what if it is a corner lot? What if someone wants to go diagonally on a corner lot?
MR. HAEBERLIN: On a corner lot? Well, with the reduced setbacks, it has helped them, but with the side yard setbacks of 10 feet, they couldn't do it anyway.
So I mean that's where -- I know we gave on one area of the Code, but that's now made it more difficult to place a house diagonally to two street frontages because you can't meet the side setbacks now.
COUNCILMEMBER BATES: Well, you could. It would just be taller or narrower.
COUNCILMEMBER ALEXANDER: I think this one meets the side setbacks now the way it's positioned.
MR. HAEBERLIN: I mean really, like I said, I put that in as a management tool. The reason why I moved it from conditional use to that of what becomes a variance is for to consider it on a hardship criterion. And again, I always use the example of New England. It's more common there than it is here, certainly.
COUNCILMEMBER ROCHE: But the way this is

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written, if I wanted to buy a corner lot, I could not build a house that's oriented towards the corner.
MR. HAEBERLIN: And I'll be honest with you. I can't think of many lots absent a few really big 25,000 square feet with a 10-foot side, that you're going to be able to do that, anyway.
I mean I'm just --
COUNCILMEMBER ROCHE: Well, I'm not --
MR. HAEBERLIN: -- thinking out of the box.
COUNCILMEMBER ROCHE: -- saying there's lots. I'm just saying I can't do that by this.
COUNCILMEMBER BATES: Well, you could. You'd just have to get a variance to do it.
COUNCILMEMBER ROCHE: Well, of course.
COUNCILMEMBER BATES: Yeah. It's just not a -- you're not prohibited from doing it. You're just not free to do it without a signed piece of paper saying --
MR. HAEBERLIN: Correct.
COUNCILMEMBER BATES: -- you can.
COUNCILMEMBER ROCHE: So which way do you orient as far as if you're on a corner lot, there's no -- you can orient it either way you want.
MR. HAEBERLIN: Well, corner lots are interesting here because they were improperly

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addressed so we have a lot of addressing that's improper for corner lots.
Where the driveway is should mandate the address, but that's not the case in the city of Doraville, I'll be honest with you.
And I'm trying to think. I can think of some diagonally-placed homes, but not too many off the top of my head.
COUNCILMEMBER ROCHE: But what I'm saying is if something's not diagonally --
If I buy a corner lot, I can face my house at this street or that street.
MR. HAEBERLIN: Correct, correct, as long as we're --
COUNCILMEMBER ROCHE: And we're not changing that.
MR. HAEBERLIN: As long as where the garage or whatever curb-cut entry is -- let's use curb cut -- is the actual address.
I mean we probably do need to go back and look at all of our corner lots and see if the address is actually appropriate, because in a lot of cases, it isn't.
COUNCILMEMBER ROCHE: I've noticed that.
COUNCILMEMBER FLEMING: On our two corners

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or at least my two corners of Hickory Lane, address and mail boxes are for the front door and not the driveway.
MR. HAEBERLIN: The curb cut, uh-huh.
COUNCILMEMBER BATES: That's where it is over on my neck of the woods, too.
COUNCILMEMBER FLEMING: I'm sorry?
COUNCILMEMBER BATES: It's that way over on my neck of the woods, too.
COUNCILMEMBER FLEMING: So we may find that there are many. Or several. Let me just put several instead of many.
MR. HAEBERLIN: Yeah. I would say the corner-lot situation definitely -- what was done in the past here does not meet the current criteria that somebody who would address those would do.
Under Development Guidelines, if you entered into these, I put down --
You asked me why am I trying to regulate kitchens in houses. Well, kitchens are indicative of occupancy and so that's the reason why I'm trying to regulate that.
I certainly don't want to preclude somebody from having, you know, the bar area, the snack area in their master bedroom. But really, should every

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1 bedroom in a single-family dwelling have these, quote,
2 wet-bar facilities? Is this becoming like multi-
3 family? That's the reason I put that in there.
4 In a lot of the jurisdictions I've worked
5 in, the second kitchen was a conditional use.
6 I was counseled by Mr. Weed to try to
7 eliminate as many conditional uses as I could, and I
8 certainly think that is a reasonable request based on
9 some of the other impending legislation regarding
10 that. So I put it as a development guideline so you
11 guys can consider variances to this.
12 COUNCILMEMBER BATES: So if someone wanted
13 to do a mother-in-law suite, that would come as a
14 variance.
15 MR. HAEBERLIN: If they want to have a full
16 kitchen, yeah.
17 ATTORNEY WEED: And what we're obviously
18 trying to combat would be --
19 COUNCILMEMBER BATES: Boarding houses.
20 ATTORNEY WEED: -- you know, multi-family --
21 COUNCILMEMBER BATES: Yes, sure.
22 ATTORNEY WEED: -- in, you know, R-1 zone,
23 which will happen.
24 COUNCILMEMBER FLEMING: But the larger homes
25 that we're asking them to build, okay, and even that

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1 4,600-square-foot one that you were talking about --
2 MR. HAEBERLIN: Uh-huh.
3 COUNCILMEMBER FLEMING: -- are going to have
4 a finished basement with another room. They're going
5 to have a complete bathroom down there. They're going
6 to have a refrigerator, a wet bar or whatever, and
7 they definitely will have a stove.
8 So I really -- it may not be a separate
9 kitchen like we have, maybe, but it's got a nook in
10 there to accommodate instead of having to run up two
11 flights of stairs to get something to drink --
12 COUNCILMEMBER BATES: Let me ask --
13 COUNCILMEMBER FLEMING: -- or -- Yeah.
14 COUNCILMEMBER BATES: And I don't mean to
15 interrupt, Ms. Fleming.
16 Does a microwave qualify as a cooking or
17 warming apparatus?
18 MR. HAEBERLIN: Yes.
19 COUNCILMEMBER BATES: So teenage son,
20 teenage daughter who's, you know, being antisocial
21 wants to have a microwave in their room, no can do.
22 Right?
23 MR. HAEBERLIN: Well, remember, looking at
24 this in the concept of that which we can control. I
25 mean I want to really be honest with you.

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1 I mean I can haul a microwave into my office
2 here at work and nobody would have any idea about it
3 until they smelled something cooking.
4 I'm talking in terms of plan review. If
5 somebody comes in and they show a house that has two
6 full kitchens on the plan review or remodel or in new
7 construction, to me, it's a general sign of multi-
8 family occupancy. And I think, even though I see
9 where Ms. Fleming is going, in houses that are more
10 than 5,000 square feet, I think that's a lot more
11 common.
12 I don't think in the size houses that
13 generally are within the city that you're going to
14 have two full kitchens unless there is multi-family
15 occupancy there. And really people are just renting
16 rooms. I mean they've got a five-bedroom house, and
17 every room has a full kitchen and it's an apartment.
18 COUNCILMEMBER ROCHE: I don't see why anyone
19 would want to cook in their bedroom, frankly.
20 MR. HAEBERLIN: If you're paying $210 a
21 month to rent a house in the city of Doraville, that's
22 a 5,000 -- let's say it's a 4,000-square-foot house
23 and everybody rents a room and has their own kitchen,
24 the owner of the house is making their house payment
25 and they've got the master and the living room. I

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1 think that's probably more of a common situation than
2 we want to believe.
3 COUNCILMEMBER ROCHE: Oh, I understand that.
4 That's what I'm saying: that I don't know why you'd
5 want to allow that.
6 COUNCILMEMBER FLEMING: But you are
7 indicating that it would come to us with a variance?
8 MR. HAEBERLIN: Correct. Correct. That's
9 again why I moved it from conditional use to develop-
10 ment guidelines.
11 Same with the last item on that page. "Any
12 single-family detached . . . structure larger than
13 5,000 square feet of gross and/or heated floor area."
14 That's a pretty big house. And you know, we were
15 talking about the regulation of light and air. And
16 when we get to houses of that size, you really got to
17 think, can we accommodate those.
18 Your biggest lot here that I can honestly
19 recall is maybe about a 25,000. I mean that's some of
20 the larger lots I've seen in the city. They're mostly
21 corner lots in older, established neighborhoods.
22 And the concept of McMansion that many
23 people like to use, there certainly is the potential
24 for that, you know, but how to define that is really
25 questionable. It's whatever threshold you guys feel

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is appropriate. If you feel 6,000 is appropriate, then you need to convey that to me.

Jurisdictions such as Gwinnett County, their threshold, I think it was 5,000 and I think they raised it to like 7,500 because in Sugar Loaf Country Club many of the houses are 7,500 to 12/15,000 square feet, extremely large.

COUNCILMEMBER BATES: So this would include unfinished and unconditioned space.

MR. HAEBERLIN: Correct.

COUNCILMEMBER BATES: So they couldn't build a 3,000 conditioned facility with an unfinished, unconditioned basement and then get approved and come back six months later and build out the basement and all of a sudden have a 6,000-square-foot house.

MR. HAEBERLIN: The way it's written.

COUNCILMEMBER BATES: Okay.

MR. HAEBERLIN: But you could certainly change that to 5,000 square feet of heated floor area.

COUNCILMEMBER BATES: No. I'm --

MR. HAEBERLIN: You could change it.

COUNCILMEMBER BATES: I'm good with how it's written. I just wanted to make sure that there wasn't going to be a loophole in there.

MR. HAEBERLIN: The next item is "Any

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single-family detached dwelling structure with more than five bedrooms or sleeping quarters."

Again, getting to this concept of are these really single-family homes or are they multi-family occupancies?

And then the same I added is, "Any single-family detached dwelling . . . which contains more than a three-car attached" structure, to me, that's -- a four-car garage really starts becoming a monolith on a house, particularly on a house on lots of these size. I mean that's substantial.

And then the last one, "Any accessory structure which is larger than 800 square feet of gross floor area provided that it is no larger than 50 percent of the heated" floor area "of the principal structure."

So if you've got 1,600 square feet, you can have an 800-square-foot accessory structure. To me, 800 square foot for an accessory in this city is extremely large, and we have some that are over that threshold already, that I don't know why they're here. They are here, though.

COUNCILMEMBER FLEMING: Well, what if a developer bought two lots, two parcels, and built a five-bedroom/four-car garage? They would have to get

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all the variances even though they owned both lots and they were --

MR. HAEBERLIN: If they owned two lots --

COUNCILMEMBER FLEMING: -- building that five-bedroom house on those two lots?

MR. HAEBERLIN: If they have two lots, they need to converge those lots into one building lot. I wouldn't issue a building permit over two lot lines. So that would then become one lot, so it would be subject to this criterion the way it's written or presented to you.

And so that does address -- in your communities, you were talking about the streetscape. You know, what is to prevent somebody from coming in to Councilperson Alexander's neighborhood and buying four lots and tearing them all down and putting a 20,000 square foot house there -- just saying, if they wanted to -- and have, you know, extensive? Or maybe none. I mean some people just like a big house; there's not necessarily anybody living there.

So those are all contained on page 12.

Is everyone comfortable with those thresholds or not comfortable with those?

Like I said, I moved those from conditional uses to just development guidelines as variances

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because I wanted to deter as many conditional uses that might require re-review under the new legislation we have pending.

COUNCILMEMBER FLEMING: I believe that Ms. Alexander's through, and I'd like to ask --

MR. HAEBERLIN: Okay.

COUNCILMEMBER FLEMING: -- a couple questions.

MR. HAEBERLIN: Sure.

COUNCILMEMBER FLEMING: Page 4, it's the common open space, and it's the last sentence, because I wasn't sure. It says, "These areas shall not be conveyed to the City or County or to any other public or private agency," and I was wondering why aren't they reflected somewhere?

MR. HAEBERLIN: Well, what's happening with common open space in newer subdivisions -- And you know really this will only in Doraville apply to new subdivisions. Common open space, the taxes are not being maintained on these properties, and this is very common in Gwinnett County. And people try to then dump the properties to some other agency so they can get the benefit but not pay the cost.

I think if a developer actually develops a subdivision within the city of Doraville that has

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1 common open space, that we should have a mandatory
2 property owners' association, and that becomes their
3 charge to pay those taxes and to maintain that
4 property. I certainly don't want them turning it over
5 to the city. I think we have enough, quote/quote
6 subdivision amenities as it is, and that's really most
7 of our parks as they exist today began as subdivision
8 amenities.
9 So this just prevents them. It's their
10 volition at this time to make that decision to create
11 common space. I think they should be responsible
12 through its full life.
13 COUNCILMEMBER FLEMING: But if they did, if
14 they did have a common open space, they'd be paying
15 taxes on it, but that area would have to be defined
16 somewhere. The plat would have to be --
17 MR. HAEBERLIN: Yeah. Uh-huh. The plat
18 will define it.
19 COUNCILMEMBER FLEMING: So that's where I
20 was trying to -- "These areas shall not be conveyed to
21 the City or County or to any other public or private
22 agency," and I was really getting confused about that
23 sentence.
24 MR. HAEBERLIN: So let's say they build a
25 swimming pool and they decide, you know, we really

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1 don't like paying association fees. Let's get the
2 Council to agree to accept the amenity site.
3 I don't think with new construction that we
4 should entertain that. I think we have enough of
5 those amenity sites already, and they're actually our
6 public parks today.
7 And so they're stuck with it. That
8 homeowners' association must maintain that property
9 and pay taxes on it through its full life span. And
10 this keeps it from becoming a problem that then is
11 going to be dumped on us. And it really has to do
12 with how they manage their properties and set forth
13 the necessary covenants and the life span for
14 maintaining these things.
15 I don't think you're going to have a lot of
16 subdivisions here that have common open space. I
17 think you will probably have that within the context
18 of more of a PUD, but in R-1 I just don't really see
19 that happening.
20 COUNCILMEMBER FLEMING: Okay.
21 MR. HAEBERLIN: But you may. You may.
22 COUNCILMEMBER ROCHE: And this is not R-1,
23 but what if that common open space is paved? I mean
24 we got an e-mail today. We were talking about the
25 private roads, the little road that goes into the

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1 townhouses.
2 MR. HAEBERLIN: Uh-huh. Well, right now,
3 that is common open space within an R-SFA development
4 and it was approved that way. And it's not an R-1
5 development. I mean I'm addressing R-1 now.
6 COUNCILMEMBER ROCHE: I understand that, but
7 I'm just saying that I mean it could be.
8 MR. HAEBERLIN: Well, we're taking action to
9 prevent that in the future. We have three on the
10 books right now that are R-SFA with common open space
11 that may contain private roads, but this Code we're
12 addressing right here is R-1.
13 COUNCILMEMBER ROCHE: I understand.
14 ATTORNEY WEED: Scott, I'm a little
15 concerned about that last sentence also. Actually,
16 legally, I think it might be better that we say these
17 areas shall not be accepted --
18 MR. HAEBERLIN: Accepted. Okay.
19 ATTORNEY WEED: -- by the City.
20 MR. HAEBERLIN: Okay. Instead of the word
21 "conveyed."
22 ATTORNEY WEED: And then we don't have any
23 control of what the County does.
24 MR. HAEBERLIN: Well, we could, could we
25 not, if they did -- if they did deed it to the County,

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1 we could technically write that homeowners'
2 association a citation for violating the zoning
3 ordinance; is that correct?
4 ATTORNEY WEED: Well, I don't -- I'm a
5 little -- I don't think the County would. You know,
6 what we're worried about of course would be a standard
7 subdivision plat that got approved that had a
8 conveyance on the plat map to a governmental entity of
9 some kind, which happens all the time, and if some
10 bureaucrat isn't paying attention, then it could be
11 conveyed to the County.
12 I guess I can live with that. And I could
13 probably even live with "or to any other public
14 agency." But what I am a little concerned about would
15 be, you know, the homeowners' association's going to
16 be a private agency itself, so I think we're going to
17 have to eliminate "or private agency" completely.
18 MR. HAEBERLIN: You would say other than
19 homeowners' association?
20 ATTORNEY WEED: Yeah.
21 MR. HAEBERLIN: And do you want to strike
22 the word "County?"
23 ATTORNEY WEED: Yeah, just strike "County."
24 MR. HAEBERLIN: Okay.
25 ATTORNEY WEED: Just leave it "These areas

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shall not be accepted by the City or conveyed to any other public entity or private agency other than a homeowners' association."

MR. HAEBERLIN: And when we're speaking homeowners' association, we are speaking of lawful homeowners' associations that are registered pursuant to Georgia law that are legally set forth and followed, et cetera. We're not just talking about ad hockery. I mean we're --

ATTORNEY WEED: Yes.

MR. HAEBERLIN: -- talking the same language.

ATTORNEY WEED: Yes. I mean hopefully -- I think we already have a definition of homeowners' association in the zoning definitions.

MR. HAEBERLIN: I think we do as well. If not, we'll check that.

ATTORNEY WEED: That's what we'd refer back to.

MR. HAEBERLIN: Okay.

COUNCILMEMBER FLEMING: Thank you.

Again on page 4, I know that we are going to be taking Section 601 Accessory Structures up on 3C tonight, but we've included it in here so I do want to address it.

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I feel that as an accessory use, that we should be able to have two accessory structures, those of which that would not be part of the ones that are listed on 601 that would be allowed, but that we should be allowed two accessory structures -- two counted accessory structures, not just one.

MR. HAEBERLIN: Okay.

COUNCILMEMBER FLEMING: And it's difficult, I know, because we're talking about it in here but we haven't even approved 601 yet.

MR. HAEBERLIN: Correct, correct.

COUNCILMEMBER FLEMING: So when we get to 601, I'm still going to say the same thing: that I really feel that we need to have two accessory structures and not just one. So now I'll throw that out for discussion.

ATTORNEY WEED: Before you discuss that, could we get a vote on the language that we drafted --

MR. HAEBERLIN: Oh. I'm sorry. I apologize.

ATTORNEY WEED: -- for the homeowners' association?

COUNCILMEMBER BATES: I'll make the motion to accept the change to reflect under --

COUNCILMEMBER FLEMING: Page 4.

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COUNCILMEMBER BATES: -- page 4 of 14, (b) Permitted Uses, Common open space, last sentence: "These areas shall not be accepted by the City or conveyed to any other public or private agency other than the homeowners' association."

COUNCILMEMBER PITTMAN: Second.

MAYOR JENKINS: Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll.

DEPUTY CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

DEPUTY CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

DEPUTY CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

DEPUTY CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

DEPUTY CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

DEPUTY CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

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COUNCILMEMBER FLEMING: More than one accessory structure is what my next item was, and I wanted to know what Council felt.

COUNCILMEMBER BATES: Scott, help me understand outside of the exemptions under the accessory structures of 602, give me some examples of accessory structures. Garage, detached garage?

MR. HAEBERLIN: Yes. A shop.

COUNCILMEMBER BATES: Shed?

MR. HAEBERLIN: Shed, yeah.

I mean I'll be very honest with you. There are a lot of properties in the city that have more than one accessory structure right now, which is actually a violation of the Code. And even at two permitted accessory structures in R-1, you're still going to have people who are in violation, and again I'm just going to be very frank with you.

Now recall, these accessory structures, even if you allow two, they still are subject to the dimensional requirements. So if you don't have enough impervious -- or excuse me -- pervious left on the property to have another accessory structure, you're out of luck anyway. So these are always within the context of the development.

COUNCILMEMBER BATES: I just -- Ms. Fleming,

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1 I just want to get a sense from you as to some
2 examples of two accessory structures just so I can get
3 a general sense of what we're looking to talk about.
4 COUNCILMEMBER FLEMING: Sure. One accessory
5 structure would be your lawn mower and all of your
6 garden equipment in a building in your back yard.
7 COUNCILMEMBER BATES: Sure. A tool shed of
8 some sort.
9 COUNCILMEMBER FLEMING: And then you also
10 may have another storage shed of some sort or a
11 detached garage.
12 Is that considered one --
13 MR. HAEBERLIN: A detached garage?
14 COUNCILMEMBER FLEMING: -- in 601, a
15 detached?
16 MR. HAEBERLIN: No, no. It's considered
17 countable.
18 COUNCILMEMBER FLEMING: It is countable.
19 MR. HAEBERLIN: Uh-huh.
20 COUNCILMEMBER FLEMING: Okay. So a detached
21 garage and a storage shed for your lawn mower and all
22 of your garden supplies is two accessories. Now,
23 that's just an example.
24 MR. HAEBERLIN: Yeah. You could have two
25 storage buildings. That's --

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1 COUNCILMEMBER FLEMING: Two storage
2 buildings.
3 MR. HAEBERLIN: -- two accessories.
4 COUNCILMEMBER ALEXANDER: So how are we
5 going to handle the folks that, as you say, may
6 already be in violation of this?
7 ATTORNEY WEED: They ought to be cited.
8 COUNCILMEMBER ALEXANDER: I don't see them
9 removing their roofed cover over their R.V., and they
10 have a storage shed and they have an awning attachment
11 for their back patio. So we're just going to cite
12 them every day?
13 COUNCILMEMBER SPANGLER: No, I don't feel
14 like we need to do that. I mean that's ridiculous.
15 COUNCILMEMBER ALEXANDER: Because we've had
16 this issue before, before I came on Council. I was
17 sitting in the audience, and this lady bought a home
18 over in Northwoods that had one of those R.V. carports
19 and, you know, she got a citation and didn't
20 understand why.
21 COUNCILMEMBER SPANGLER: And it's a good
22 looking structure. I mean I've been by there many
23 times, and, you know, even though she's not using it
24 for an R.V. or whatever, why should we make her tear
25 it down? I mean someone else might want to come in

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1 there and might want to use it for, you know, their
2 vehicles or whatever.
3 COUNCILMEMBER FLEMING: Now, bear in mind
4 that 601 has definitely addressed a lot of concerns --
5 MR. HAEBERLIN: Under exceptions, yes.
6 COUNCILMEMBER FLEMING: -- that would not be
7 counted. And I really appreciate Scott and the
8 Planning Commission, you know, really defining a lot
9 of those, but I'm still concerned about, you know, the
10 ones that are now counted.
11 MR. HAEBERLIN: Taking Maria's example, and
12 I'll be very honest with you. I think that -- I mean
13 just thinking about that, I don't think there was any
14 way that that ever could have been Code compliant.
15 I'll be very frank with you.
16 However, they could attach to the house and
17 it no longer becomes subordinate. Remember, that's
18 always an option. You can put a breezeway from the
19 house to a garage and now the garage is no longer
20 subordinate, or the R.V. structure.
21 Again, on that particular -- I know the one
22 you're . . . I don't want to name the person. But on
23 that situation, that just was, to me, unlawful from
24 all aspects.
25 But you can always attach a subordinate

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1 structure to the house, and that makes it part of the
2 principal structure, but it still has to meet the
3 setbacks. So you don't get that little nice five foot
4 from the property line once it becomes part of the
5 house.
6 COUNCILMEMBER BATES: Is there a reason why
7 this is a conditional use and not a variance?
8 MR. HAEBERLIN: Well, I mean that's
9 something you can look at.
10 COUNCILMEMBER FLEMING: It's an accessory.
11 MR. HAEBERLIN: That's something you can
12 look at.
13 COUNCILMEMBER ALEXANDER: Yeah, but it says
14 conditional use.
15 COUNCILMEMBER FLEMING: Oh, I'm sorry.
16 MR. HAEBERLIN: I mean that's something you
17 can look at.
18 COUNCILMEMBER BATES: I'm very quickly
19 moving in Mr. Weed's direction of eliminating as many
20 conditional uses as we possibly can. It either is or
21 it isn't, and . . .
22 MR. HAEBERLIN: Well, there's still some
23 things I'd like for you to entertain as conditional
24 uses.
25 But yes, I am trying to take an active

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1 pursuit to try to move as many things as to
2 development guidelines or general zoning situations,
3 but I think there are some things that you see listed
4 here as conditional uses that definitely do need to
5 remain conditional uses.
6 COUNCILMEMBER ROCHE: So the question at
7 hand right now is do we want to allow three -- I'm
8 sorry -- two instead of one. Is that where we are?
9 MR. HAEBERLIN: Yes.
10 COUNCILMEMBER FLEMING: Would Council
11 entertain two versus one as a permitted use versus a
12 conditional, or are you thinking more in the line of
13 more than two?
14 COUNCILMEMBER BATES: I'm not thinking in
15 the line of more than two.
16 COUNCILMEMBER FLEMING: Okay.
17 MR. HAEBERLIN: And remember this is all
18 again subject to all those setbacks, all those
19 dimensional requirements, impervious, et cetera.
20 You know, I just don't -- our lots just
21 really do not allow for this much accessory, and I'll
22 just be frank with you. I mean they just don't.
23 I mean there are going to be some
24 circumstances certainly, but, in general, probably
25 not. Remember they have to be 20 feet from the

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1 principal structure and from every other one. So if
2 your back yard's 25 feet --
3 COUNCILMEMBER BATES: You can't put it in.
4 MR. HAEBERLIN: Yeah. So I mean that's just
5 something to consider.
6 So from what I'm hearing from you guys is
7 that you could make (c) two accessory structures and
8 then in (d) you'd have to bump it up to three if
9 that's how you're proposing this terminology.
10 COUNCILMEMBER FLEMING: Yes, sir. That's
11 what I would want to propose.
12 Make a motion to on page 4, (c) under
13 Accessory Uses, that we permit two accessory
14 structures. And the second part of the motion would
15 be under Conditional Uses on page 5, that there shall
16 be no more than three accessory structures.
17 COUNCILMEMBER ROCHE: I'm sorry. I'm lost
18 on that one.
19 COUNCILMEMBER FLEMING: On the accessory
20 structure, I make a motion to amend it to read two
21 instead of one.
22 COUNCILMEMBER ROCHE: Yeah, I got that part.
23 COUNCILMEMBER FLEMING: And then page 5
24 under Conditional Uses, it presently states that no
25 more than two, and I'd like to change that to three

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1 accessory structures.
2 COUNCILMEMBER ALEXANDER: It's on the bottom
3 of page 4.
4 COUNCILMEMBER SPANGLER: Bottom of page 4.
5 COUNCILMEMBER FLEMING: I'm sorry? Maybe
6 I've got --
7 MR. HAEBERLIN: Yes, ma'am, the bottom of
8 page 4.
9 COUNCILMEMBER FLEMING: Sorry.
10 MR. HAEBERLIN: And then you're just reading
11 on to the next page. It continues on.
12 COUNCILMEMBER FLEMING: I'm sorry. In
13 section (d); is that correct?
14 COUNCILMEMBER BATES: Uh-huh, yes.
15 So changing the first one from one to two
16 and the second one from two to three.
17 COUNCILMEMBER FLEMING: Yes, sir, that's
18 correct.
19 COUNCILMEMBER BATES: Okay. So --
20 COUNCILMEMBER ROCHE: I'm comfortable with
21 the first one but not necessarily the second one.
22 COUNCILMEMBER FLEMING: Now, that's a
23 conditional use where they'd have to come to us for
24 approval.
25 COUNCILMEMBER SPANGLER: Now, how do you

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1 feel about these houses that have, that already have?
2 I don't think we should go back and make them tear
3 down. The houses that already have these carports or
4 these other structures, I don't feel like that we
5 should be able to go in and force them to tear down or
6 to fine them every so many days until they do tear it
7 down.
8 I think the existing structures that they
9 have now should be allowed. Any new construction,
10 then they would have to go by the changes we've made
11 tonight.
12 COUNCILMEMBER FLEMING: Mr. Weed, would we
13 need to put in here that they would be considered
14 legal nonconforming?
15 ATTORNEY WEED: I think what you need to do
16 would be you'd have to put in the date: prior to
17 August 31st, anything that they had is allowed, and
18 after, it's not, I mean with regard to new construc-
19 tion.
20 MR. HAEBERLIN: Well, I think the qualifying
21 there is remember, some of these that exceed the
22 number, although going back and reading the old code,
23 they were always unlawful.
24 In other words, the staff did not have the
25 authority to grant a building permit but they probably

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1 didn't have any resource material to know that they
2 were dealing with a house that already had one
3 accessory structure.
4 So as we've discussed before, was that act
5 of the previous staff unlawful? It certainly seems to
6 be the case based on the old code.
7 But I think we need to discern because there
8 are some things that have more than one accessory that
9 actually received a permit from the City, and there's
10 a bunch of them that are just built. They were just
11 built illegally.
12 COUNCILMEMBER SPANGLER: And I think some of
13 these structures were probably built before previous
14 staff was on board. Okay?
15 MR. HAEBERLIN: Correct.
16 COUNCILMEMBER SPANGLER: So I think --
17 MR. HAEBERLIN: Correct.
18 COUNCILMEMBER SPANGLER: -- that those
19 conditions or those particular cases should be
20 allowed.
21 MR. HAEBERLIN: But we have no -- I don't
22 know how we're going to know that.
23 ATTORNEY WEED: The only way to do that
24 legally is to say that prior to August the 31st of
25 2009, any accessory use in the city on any existing

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1 lot is allowed and anything after that, you know, must
2 comply with the new standards.
3 MR. HAEBERLIN: But there's no -- there's no
4 record of that, I mean, so that's really --
5 ATTORNEY WEED: That's correct.
6 MR. HAEBERLIN: So if somebody goes out and
7 builds an accessory structure over the next weekend,
8 that I don't know about --
9 COUNCILMEMBER SPANGLER: Well, you're going
10 to know because you can tell that it's a new
11 structure.
12 MR. HAEBERLIN: Um, as time --
13 COUNCILMEMBER SPANGLER: Yes, you can.
14 MR. HAEBERLIN: -- goes on, I don't
15 necessarily agree with that. I mean I've had some
16 pictures brought to me from the Code Enforcement
17 officers, and I said, "Is this new or is this old?"
18 They don't know.
19 COUNCILMEMBER SPANGLER: Well, we know, we
20 know; our neighborhoods. Each one of us -- I know
21 Maria drives around our neighborhood as well as the
22 other neighborhoods. I do the same. I think
23 Ms. Fleming, Ms. Pittman, Mr. Roche and Mr. Bates, we
24 all drive around, so we could report any new
25 construction, as well as the Quality of Life people

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1 have been in place long enough that they know what new
2 construction is or whatever.
3 ATTORNEY WEED: If the Council wants to
4 allow the existing accessory structures, you know,
5 legislatively we can do that.
6 I don't think that would be sufficient
7 evidence to actually issue a citation.
8 What would be sufficient evidence would be
9 the staff photographing each lot in the city, which is
10 doable in a town as small as Doraville, and then you'd
11 have a permanent record of what was there at a
12 particular place, date and time, and you'd have the
13 photographic evidence. And anything before --
14 anything that's on the lot that shows in the picture
15 is fine; anything after, complies with the new rules.
16 That's how you do it.
17 COUNCILMEMBER FLEMING: I appreciate that,
18 but you're talking about accessory structures in
19 people's back yards. We're not talking about
20 accessory structures necessarily in people's front
21 yards.
22 Back yards are generally fenced with
23 possibly even animals in them.
24 MS. FRAYSSE: And tree cover.
25 COUNCILMEMBER FLEMING: I'm sorry?

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1 MS. FRAYSSE: Tree cover. So on satellite
2 maps, you can't see what --
3 COUNCILMEMBER FLEMING: Correct.
4 COUNCILMEMBER FLEMING: -- accessory
5 structures.
6 COUNCILMEMBER FLEMING: So for the Quality
7 of Life people to go in my back yard right now --
8 ATTORNEY WEED: We have every legal right to
9 do that.
10 COUNCILMEMBER FLEMING: -- with my animals,
11 and me not present --
12 ATTORNEY WEED: Yes, ma'am.
13 COUNCILMEMBER FLEMING: Okay. I realize
14 that.
15 But what I'm saying is I don't want to put
16 our ladies in jeopardy of going onto a person's
17 property to take -- I'm not opposed to it. I don't
18 want to put them in jeopardy of having to take
19 photographs of somebody's back yard all over the city
20 of Doraville and have to be subjected to what may be
21 in those people's back yards.
22 ATTORNEY WEED: Well, then, the only thing
23 you can do legally in my opinion is to say that any
24 existing accessory use on any existing lot that
25 existed as of this date is allowed, and any new lot or

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1 new construction must comply with the new rules.
2 COUNCILMEMBER ROCHE: And we'll only know
3 about that if they come for a permit.
4 ATTORNEY WEED: Yeah, I mean exactly.
5 MR. HAEBERLIN: Yeah, I mean -- and that is
6 the usefulness -- Go back to the usefulness of
7 surveys. Surveys tell a lot of stuff that people
8 aren't willing to tell me verbally. They bring in a
9 survey, and guess what? I see already three accessory
10 structures on the property, not things that would be
11 exemptions under the Code.
12 That's how I found out this information.
13 That's the usefulness of having some base archival
14 information. That's where we're finding it out. And
15 really that's how I knew how many problems we had with
16 setbacks is looking at archival information: surveys.
17 I'm not particularly comfortable just saying
18 anything that's there, be it there, because again I
19 think it really depends on was it issued a permit or
20 not? I mean I know that seems superfluous to the
21 discussion, but you know, people who just built stuff
22 illegally, I don't know. I don't know if I'm
23 comfortable with that.
24 COUNCILMEMBER SPANGLER: Well, and some of
25 these people, when they built these structures or

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1 whatever you want to call them, Scott, had approval.
2 They may not have had a building permit. They
3 probably didn't need one.
4 I mean you can talk to some of the older
5 residents around the city. Some of them didn't even
6 have to ever have a building permit, didn't know they
7 had to, but they did talk to either the mayor or a
8 council person or the building official or someone
9 here in City Hall and they were allowed to build that
10 structure.
11 So I mean we can't penalize these people for
12 doing what they thought was right at the time.
13 MR. HAEBERLIN: I do understand that. I do
14 sympathize with that. But I will tell you even in the
15 1971 Zoning Ordinance, those persons could have been
16 looked at as violating the Code of Ordinances. It's
17 unfortunate but it is the case.
18 COUNCILMEMBER SPANGLER: Well, I understand
19 that, but I'm just saying I'm not for going back and
20 making some of these people that have lived here for
21 40 or 50 years tear down structures or fine them for
22 having what they thought was a legal structure. I'm
23 not for that.
24 And I don't see why we can't -- as Mr. Weed
25 said, anything after August 31st, then they have to

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1 comply; anything before, then . . .
2 MR. HAEBERLIN: Well, recall a lot of those
3 structures are not going to meet any codes. I mean
4 I'll just be truthful with you. So if they had a
5 marine storage container sitting on the ground in
6 their back yard and it existed prior to this hearing,
7 it's going to be lawful forever? Again, I'm not --
8 professionally, I can't recommend that to you. I
9 think that's just a very dangerous path to go down.
10 So I could go buy a bus and throw it in my
11 back yard and it was there prior to tonight, and that
12 bus sitting on the ground is an accessory structure
13 and I can keep it there forever.
14 COUNCILMEMBER SPANGLER: I don't think you
15 can find any --
16 COUNCILMEMBER ALEXANDER: That is defined in
17 the accessory structures as being unacceptable.
18 MR. HAEBERLIN: But it predates tonight's
19 hearing.
20 ATTORNEY WEED: That would be --
21 COUNCILMEMBER SPANGLER: Well, I don't think
22 anybody in the city has any --
23 COUNCILMEMBER ALEXANDER: That's correct.
24 COUNCILMEMBER SPANGLER: -- buses in their
25 back yard.

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1 COUNCILMEMBER ALEXANDER: There's only one
2 person that we know of that has that situation.
3 MR. HAEBERLIN: There are some things that
4 are more common than you would be aware; trust me.
5 COUNCILMEMBER ALEXANDER: I don't personally
6 have a problem with my neighbor's R.V. cover. He's
7 replaced it because it was killed by an oak tree. I
8 don't have a problem with the shed that he keeps his
9 lawn mower in and his awning that he's got on the back
10 of his house that goes over his koi pond.
11 And I don't think that we want to start
12 penalizing people that take care of their homes. And
13 all those items affect his personal quality of life,
14 and I just don't think he should be penalized for
15 that.
16 COUNCILMEMBER SPANGLER: Does he have an
17 aerator on his koi pond?
18 COUNCILMEMBER ALEXANDER: I think he does.
19 COUNCILMEMBER SPANGLER: Does he have fish
20 in it?
21 COUNCILMEMBER ALEXANDER: Yes, he does.
22 COUNCILMEMBER SPANGLER: And it's not
23 stagnant water.
24 COUNCILMEMBER ALEXANDER: No, it's not.
25 ATTORNEY WEED: If this is helpful, there's

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an old adage of law which is laws are good at catching flies. They're like spider webs. But a fish goes right through the spider web.

In other words, when you legislate, there will always be a negative secondary impact. And you either make it a hundred yards or you make it 50. It doesn't really matter because there will always be a negative secondary impact. And you either allow everything or you don't, or you allow 50 percent or 40. So it just comes down to one or the other.

But I will tell you legislatively and legally, that if you want to make all the existing accessory uses legal, can you do that? Yes. But then you'd have to figure out -- then you'd have to have some logical reason to take a subset out of that class of uses and make them illegal, and you're going to have to have a good reason to make that subset illegal if you're going to try to different between the two. Or you just make them all legal, and that's fine, too, legislatively.

MR. HAEBERLIN: And there are still thresholds that are going to catch them. Okay. Let's say we make every structure lawful. Okay? Guess what. You come in to build on your house. Because you have five accessory structures, you're over your

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impervious limit. You've got five storage buildings, so you can't add onto your house.

So like you said --

ATTORNEY WEED: Well, you can, but you have to eliminate a couple of the storage buildings.

MR. HAEBERLIN: The unintended consequences, you would probably be caught in some fashion if you ever approached the City to add onto your home.

Like the example Maria used, that person is probably well over their threshold anyways. They probably wouldn't be able to do anything with their property at this point. It's well over the threshold, and they probably could not really do anything with their property at this point.

COUNCILMEMBER ROCHE: Well, given that, why do we limit the number of accessory structures at all?

MR. HAEBERLIN: Most municipalities do. I mean it does come back to the concept of -- It does come back to general -- the consequences of having numerous accessory structures.

I mean accessory structures generally are not as well maintained as the principal structure. They're generally not of the same quality. People continue to invest in these accessory structures rather than adding onto the principal structure.

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I mean it's a community norm. I mean every jurisdiction I have worked in it's regulated differently.

ATTORNEY WEED: Every structure built affects, you know, pervious/impervious surface. Every structure built limits somebody else's access to light and air.

MR. HAEBERLIN: Uh-huh.

COUNCILMEMBER ROCHE: Well, I got that.

But what I'm saying is that given all the setback requirements, and you're saying things can't be within 20 feet of each other and all that, you proba-
bly --

You know, if you happen to have a big, long yard anyway, I guess I just -- It just seems like that it would be taken care of with all the other restrictions like the setback restrictions, et cetera, et cetera, and the impervious surface and all that.

ATTORNEY WEED: Some of them would be.

MR. HAEBERLIN: Some of them would be.

ATTORNEY WEED: Some of them would be.

COUNCILMEMBER ROCHE: So it just makes me wonder why we would even need to limit the accessory structures at all. It almost seems redundant.

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ATTORNEY WEED: I mean -- but as we said, you do it because every one that's allowed cuts out somebody else's access to light, air; it increases somebody else's -- the runoff going to somebody else's property.

And when you think about it, every zoning regulation there isn't to protect your property -- well, it is -- but to protect your property from what the other guy is doing. There's always another guy doing something to you. That's the reason why we have zoning.

MR. HAEBERLIN: True.

COUNCILMEMBER FLEMING: Well, let me ask a question because I believe there's a motion and a second on the floor.

COUNCILMEMBER ROCHE: Right.

DEPUTY CLERK BRYANT: There's just a motion.

COUNCILMEMBER FLEMING: Okay. Question in regards to policy for our Quality of Life Department. That doesn't have to go into this particular ordinance, though, does it?

ATTORNEY WEED: If you're saying could the management of Qualify of Life exercise their discretion to enforce or not to enforce? yes, they can. They can always choose never to enforce an

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1 ordinance, and they have the legal discretion of law
2 enforcement to do that.
3 In other words, a policeman stationed at an
4 area can let a hundred cars go by over the speed limit
5 and pull you over. He's got every legal right to do
6 that. Cases say that. You don't have to have perfect
7 enforcement. You don't have to have enforcement.
8 So could there be a policy saying use your
9 common sense and anything that looks older than, you
10 know, this year, you know, don't cite it? I'm never
11 going to advise them to do that, by --
12 COUNCILMEMBER FLEMING: But do we need --
13 ATTORNEY WEED: -- the way, but they could
14 do that.
15 COUNCILMEMBER FLEMING: -- to put it in this
16 ordinance, that homes on record as of August 31st,
17 2009, are exempt from --
18 ATTORNEY WEED: As a policy --
19 COUNCILMEMBER FLEMING: -- the number of
20 accessories?
21 ATTORNEY WEED: As a policy, I don't think
22 that's wise.
23 COUNCILMEMBER FLEMING: No, I don't think
24 so, either.
25 ATTORNEY WEED: But as a law, you can

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1 certainly write it that way.
2 I mean we can exempt whatever you want to as
3 long as everything in the same class is treated the
4 same way; everything that's a subset of that class is
5 treated the same way.
6 COUNCILMEMBER FLEMING: But that's what I
7 was trying to say is that I don't think us exempting
8 them should be in this ordinance. I think it should
9 be a policy of the Council to dictate the fact that
10 those that are in existence today are exempted from
11 the number for new construction.
12 ATTORNEY WEED: I don't think that's legally
13 defensible.
14 COUNCILMEMBER FLEMING: Okay. I don't know
15 what we're going to do, then.
16 ATTORNEY WEED: What you would do is you
17 would say everything prior to a date's legal and
18 everything after the date's illegal. That's the
19 easiest way of doing it.
20 COUNCILMEMBER ALEXANDER: But then you
21 cleared off the school bus on blocks in the back yard
22 to use as a storage shed, and --
23 ATTORNEY WEED: It would be legal.
24 COUNCILMEMBER ALEXANDER: -- that's not what
25 we're talking bout.

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1 MR. HAEBERLIN: Yeah, it would be legal, the
2 way we have this written.
3 I mean a lot of these things that are in
4 these yards -- I mean I've talked with the Building
5 Official, and I mean they're these Rubbermaid items.
6 I won't tell you the word he used to describe those,
7 but I mean they could never meet the Code, anyways.
8 There's all sorts of things that are out
9 there that could never meet the Code, anyways, and
10 never did, and that was a concern Mr. Calcaterra
11 shared with me.
12 I mean you guys are struggling with this on
13 another variance situation, and that just draws
14 inference to what people will look at as accessories.
15 Just got to be careful.
16 COUNCILMEMBER BATES: So . . .
17 I don't know about --
18 COUNCILMEMBER ALEXANDER: No. Please.
19 COUNCILMEMBER BATES: Well, I answered my
20 own question.
21 MR. HAEBERLIN: Well, unfortunately here
22 what we don't have is we don't have new construction
23 with covenants.
24 And new construction with covenants, nobody
25 wants to invest money in a planned-development

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1 community where their neighbor is allowed to have all
2 these accessory structures. And so as long as those
3 covenants are being enforced -- I know the government
4 doesn't enforce those -- they maintain a certain
5 quality of life.
6 For example, if I buy in Sugar Loaf Country
7 Club and I paid 1.2 million dollars for a house, I
8 have a certain expectation of how my neighbors are
9 going to be governed.
10 Here, we're not dealing with, obviously,
11 that price point of a house, but I still think you
12 should have some reasonable expectation that if you
13 invest in the city, that your next door neighbor
14 doesn't have five accessory structures in the back
15 yard. If he's doing that, he really probably needs to
16 invest in building onto that home or find a larger
17 home.
18 COUNCILMEMBER SPANGLER: Well, if I'm going
19 to be buying a piece of property, I'm going to be
20 looking all around, both sides, behind, front, to see.
21 And if there is something undesirable, I don't have to
22 buy that piece of property. Okay?
23 What I'm saying is right now I can't see
24 penalizing all the older residents that have been here
25 for a while for having these structures that you say

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are illegal.
MR. HAEBERLIN: Correct.
COUNCILMEMBER SPANGLER: Okay? I'm not for that. And my motion will be like Mr. Weed --
How did you say? Anything before August the 31st?
ATTORNEY WEED: It would be worded something to the effect of, you know, any lot with an existing principal structure in existence prior to, you know, August 31st, 2009, and any accessory structure thereon will not -- will be exempt from, you know, the conditions of this section and any new construction on any lot after August the 31st of 2009 would be -- with the terms of the ordinance, would come into compliance -- would have to -- they have to come into compliance with all the terms of the ordinance, something to that effect.
And we'd have to define new construction as, you know, not remodeling and repair, probably, because apparently the Council doesn't want to catch people who are trying to refurbish their homes, but it would be new construction, you know, from the ground up. But we can cover that under the definitions.
DEPUTY CLERK BRYANT: There's a pending motion on the floor.

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ATTORNEY WEED: Yes. Well, read Ms. Fleming's motion if you would.
DEPUTY CLERK BRYANT: She made a motion to permit two structural -- two structural buildings instead of one on page 4(c) and then she said to change it -- where it says it shall be no more than two, to change it to three structural.
COUNCILMEMBER FLEMING: For conditional,
DEPUTY CLERK BRYANT: For conditional, yes.
But there was no second.
ATTORNEY WEED: Yeah. And that's completely different than Councilman Spangler's motion.
COUNCILMEMBER FLEMING: Correct.
DEPUTY CLERK BRYANT: But the Clerk is right. You probably need to deal with the first one first and then we'll get --
COUNCILMEMBER SPANGLER: And I apologize --
COUNCILMEMBER FLEMING: That's quite all right.
COUNCILMEMBER SPANGLER: -- for that.
COUNCILMEMBER FLEMING: And there is just a motion at the present. There has not been a second.
COUNCILMEMBER BATES: Ms. Fleming, just to clarify, under section (c), it would be to modify that from one to two under Accessory Uses --

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COUNCILMEMBER FLEMING: That's correct.
COUNCILMEMBER BATES: -- and then under (d) under Conditional Uses, it would be modifying line one from one to two and then line two from two to three.
MR. HAEBERLIN: That's what I understand as well.
COUNCILMEMBER FLEMING: That is correct.
COUNCILMEMBER BATES: Okay. I will second that motion.
COUNCILMEMBER BATES: Now, let me -- since we're in discussion phase --
Right, Mayor?
MAYOR JENKINS: Discussion.
COUNCILMEMBER BATES: Let's talk about the school bus on blocks.
If that was the only accessory structure, under this proposed ordinance as previously written and as proposed to be modified under Ms. Fleming's motion, if that was the only accessory structure, it would still be allowed; is that correct?
ATTORNEY WEED: My opinion is yes.
MR. HAEBERLIN: Yes.
COUNCILMEMBER ALEXANDER: How would that not fall under the inoperable vehicle ordinance?
ATTORNEY WEED: Because I don't think the --

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We have to take a look at the current definition of accessory structures.
MR. HAEBERLIN: Yeah.
ATTORNEY WEED: Yeah.
COUNCILMEMBER ROCHE: Is inoperative school buses in that definition?
MR. HAEBERLIN: Accessory structure: a subordinate structure detached from but located on the same lot as the principal structure, the use of which is incidental and accessory to that of the principal use.
ATTORNEY WEED: And then you're going to go into --
MR. HAEBERLIN: Page 4 of the existing definitions.
ATTORNEY WEED: Right. You have to figure out what the use is.
COUNCILMEMBER ROCHE: So you're saying that's determined by what it's used for versus the nature of what the structure is?
ATTORNEY WEED: It could be. I mean, you know, people use tires and paint them white as planters. Are they any longer tires in the front yard or are they planters?
What is art? You know, people convert cans

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1 into sculpture. Is it art or is it a bunch of junk
2 cans strung together?
3 MR. HAEBERLIN: Structure: anything
4 constructed or erected with a fix location on the
5 ground or attached to something having a fixed
6 location on the ground. Among other things,
7 structures includes buildings, gasoline pumps, mobile
8 homes, walls, fences, billboard signs and satellite
9 dish antennas. Pretty broad.
10 MAYOR JENKINS: Why wouldn't a bus take care
11 of itself? If it's inoperable, it shouldn't be in the
12 back yard --
13 MR. HAEBERLIN: I'm just using it --
14 MAYOR JENKINS: -- to start with.
15 MR. HAEBERLIN: -- as an exaggerated -- I'm
16 just using it as an exaggerated recommendation.
17 MAYOR JENKINS: Why would a bus be permitted
18 in the back yard to start with and especially if it
19 doesn't run. That's an inoperable vehicle. It's not
20 supposed to be on the premises at all.
21 COUNCILMEMBER ROCHE: But if it's used for
22 storage.
23 MR. HAEBERLIN: And anchor it to concrete
24 blocks. It's anchored to the ground. I mean --
25 COUNCILMEMBER ROCHE: Then it becomes --

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1 MR. HAEBERLIN: -- you're getting into real
2 semantics.
3 COUNCILMEMBER ROCHE: -- an accessory struc-
4 ture.
5 MR. HAEBERLIN: I mean we've had this
6 discussion with another petitioner. Is it really
7 accessory or not? It's just a temporary structure.
8 It leaves us very open. I realize this is a
9 very difficult concept, because this leaves us wide
10 open when we start talking about this. But we've had
11 these challenges, certainly.
12 COUNCILMEMBER ROCHE: Well, then, by that
13 definition, any of these vehicles, you could just say
14 that's just a storage compartment for a jack and a
15 spare tire.
16 ATTORNEY WEED: If you're clever enough to
17 make that argument, it might fly.
18 COUNCILMEMBER ALEXANDER: You could let your
19 dog live in it. It's his dog house.
20 COUNCILMEMBER ROCHE: Yeah.
21 COUNCILMEMBER BATES: Well, but accessory
22 structures are required to be in the back yard, under
23 601, so it would have to be in the back yard.
24 MR. HAEBERLIN: They were allowed in -- they
25 were generally allowed in side and rears, the rear on

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1 your old code, and there were a lot of people --
2 COUNCILMEMBER BATES: But not the front.
3 MR. HAEBERLIN: Well, a lot of people con-
4 structed them in the front, so you do have accessory
5 structures in the city in front yards, and that's on
6 corner lots.
7 COUNCILMEMBER ROCHE: I'm just saying if I
8 had a vehicle and the tag expires and I don't have
9 insurance on it anymore, I can roll it around to the
10 back, jack it up.
11 ATTORNEY WEED: Once again, arguably, yes.
12 I mean these things, they're not perfect.
13 COUNCILMEMBER ROCHE: I understand. I just
14 --
15 ATTORNEY WEED: It's art.
16 COUNCILMEMBER ROCHE: -- wanted to make sure
17 I understood.
18 ATTORNEY WEED: It's art. It's not science.
19 And we would of course say that it was an
20 inoperable vehicle. I mean Title 40 of the Motor
21 Vehicle Code actually does allow you to not
22 necessarily have a tag on the vehicle as long as it's
23 essentially under a cover.
24 And part of the Title 40 combined with local
25 ordinances, whether or not the vehicle is clearly

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1 inoperable but it's out in the open and everyone can
2 see it; it's not under a cover, it's not in the back
3 yard, that type of thing.
4 And we've argued that case in front of Judge
5 Cuadra right now. We had to brief it in fact. So
6 these things aren't easy. And the judge will decide
7 ulti-mately whether it's art, whether it's an
8 accessory use or whether it's an inoperable vehicle,
9 and that's what will happen.
10 COUNCILMEMBER ROCHE: Okay. Then, if you
11 had an R.V. with a flat tire, then theoretically
12 you've got two kitchens.
13 ATTORNEY WEED: Well, it's not attached to
14 the house, though, so that one's easy.
15 COUNCILMEMBER ROCHE: I'll stop.
16 ATTORNEY WEED: No. It can go on all night.
17 That's --
18 COUNCILMEMBER ROCHE: I know.
19 ATTORNEY WEED: That's why these things go
20 to court.
21 MR. HAEBERLIN: Yeah.
22 COUNCILMEMBER BATES: Back on this motion.
23 Ms. Fleming, would -- I'm going to speak on behalf of
24 Mr. Spangler and Ms. Alexander. Would you be willing
25 to amend your motion to include a date that any

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accessory structures prior to August 31, 2009 --
COUNCILMEMBER FLEMING: I thought that was going to be a second one.
COUNCILMEMBER BATES: Does that need to be a second or is that attached to this? because we're --
ATTORNEY WEED: Right now it's a standalone motion.
COUNCILMEMBER SPANGLER: It's standalone.
COUNCILMEMBER BATES: Should it be?
ATTORNEY WEED: No. I don't think so, no, sir. I mean I think you need to decide how many acces-sory structures you want.
COUNCILMEMBER BATES: And then --
ATTORNEY WEED: And then decide --
COUNCILMEMBER BATES: -- about grandfathering in.
ATTORNEY WEED: -- about, yeah, which ones are going to be allowed in and which ones aren't, in my opinion.
COUNCILMEMBER BATES: I'll withdraw my request.
MR. HAEBERLIN: And recall, you could remove acces- -- Let's say you had two 10 x 10 accessory structures and you want to take them both off the lot and put one new compliant 800-square-foot accessory

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structure. I mean you could certainly -- there are ways you could become compliant by taking all these accessories -- taking them away and putting one big thing that's regulated by the Code, that's allowed.
COUNCILMEMBER ROCHE: Right.
MR. HAEBERLIN: I mean there are ways to diminish this, certainly.
ATTORNEY WEED: And we talked about that as an analogy just today with regard to parking. You know, each use has got a mandatory element of parking, so if you want to have a bigger building on your lot, you inherently have less parking, and that controls what uses can actually can actually go in there.
It's all a matter of trades.
MAYOR JENKINS: Any more discussion?
Did you verify the ordinance -- I mean the motion or is it the same?
COUNCILMEMBER SPANGLER: Well, I think that we're going to combine.
COUNCILMEMBER FLEMING: The motion on the floor right now, just to repeat what the Clerk says, is that for R-1 (c) Accessory Uses, we are changing it from one accessory structure to two.
MAYOR JENKINS: Yeah, I understand that's part of it.

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COUNCILMEMBER FLEMING: Okay.
COUNCILMEMBER BATES: And then under --
COUNCILMEMBER FLEMING: And on (d) Conditional Uses, we're changing the first accessory structure to make it two, and then however that no more than three accessory structures may be located on the lot.
COUNCILMEMBER SPANGLER: And we can add to that what I made my motion on as far as anything before August 31st of 2009.
COUNCILMEMBER FLEMING: Shall be exempt?
COUNCILMEMBER SPANGLER: Shall be exempt.
ATTORNEY WEED: Yeah. If you want to make a friendly amendment to Ms. Fleming's motion if you're accepting of that. She is.
COUNCILMEMBER FLEMING: That will be fine: that anything before August 31st, 2009, shall be exempt from the number of accessory structures allowed.
COUNCILMEMBER BATES: And I'll second the friendly.
MAYOR JENKINS: Call the roll.
COUNCILMEMBER ROCHE: Well, I actually have a question about that, the amendment.
Does that mean, though, that if someone

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comes to you and says, okay, I want to put another, then all bets are off?
MR. HAEBERLIN: I don't know.
COUNCILMEMBER ROCHE: I think we should --
MR. HAEBERLIN: Yeah.
COUNCILMEMBER ROCHE: -- handle that as a separate thing, because I mean there's concerns there. I mean if I've got three accessory structures and then I show up at City Hall and say now I want to build another accessory structure, does that mean I've got to get rid of my existing three ones -- three accessory structures or however many to come back down to two?
What triggers that? That's what I'm saying.
ATTORNEY WEED: Well, what would trigger it -- I would say the answer to your question is yes, and what would trigger it would be somebody coming in to get a building permit or get a permit for whatever they're doing on the property.
What's probably going to happen, though, is we're not going to know about it or they're going to say it was already there. We're not going to know until after the fact, and there won't be very much we can do about it at all.
COUNCILMEMBER ROCHE: No. I got that.

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But what I'm saying is if today you have three accessory structures on your property and we pass this motion as it stands, and then later on, you know, someone -- that person comes in and says I want another accessory structure, does that have to bring them down? Would they have to get rid of --

COUNCILMEMBER BATES: That's a great question because --

COUNCILMEMBER ROCHE: -- two other ones --

COUNCILMEMBER BATES: -- we're not --

COUNCILMEMBER ROCHE: -- to bring it down into compliance going forward?

COUNCILMEMBER BATES: The motion is only allowing them to keep what they currently have, not expand the use.

ATTORNEY WEED: Yeah. Well, the way he -- the way I remember we couched the wording of it, the appli-cation of the new regulations will only be on new construction.

So as it was worded, the way I heard it, I will change my answer and say they could essentially keep adding on until they get to the thresholds of the setbacks. They could have 20 accessory structures in the back as long as they can meet the --

COUNCILMEMBER ROCHE: Right.

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ATTORNEY WEED: -- thresholds of the setbacks.

COUNCILMEMBER ROCHE: I'm just not sure that was what our intent was.

If we say, okay, today you have three, you can have three forever. But if you want another one, does that mean you can have four? I don't think that's our intent.

COUNCILMEMBER SPANGLER: No.

ATTORNEY WEED: And if it's not, I mean you can --

COUNCILMEMBER ROCHE: Does that mean I can take --

ATTORNEY WEED: -- you can say that.

COUNCILMEMBER ROCHE: -- take one out and put one in and so I can have -- I used to have three, now I still have three? Or does it mean I'm going to do something on my property; now suddenly you have to have two? You have to meet the current requirement?

ATTORNEY WEED: And the answer to your question would be it's whatever you want it to be.

COUNCILMEMBER ROCHE: Yeah, right.

ATTORNEY WEED: You know --

COUNCILMEMBER ROCHE: I'm just saying that the current --

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ATTORNEY WEED: -- you will decide that.

COUNCILMEMBER ROCHE: But the way the current motion reads. That's --

ATTORNEY WEED: The way --

COUNCILMEMBER ROCHE: -- what I'm asking.

ATTORNEY WEED: -- the current -- My under-standing of the current motion would be if you are a property that has a principal structure on it and you've got any accessory uses prior to today's date, you essentially have unlimited accessory uses up to the setback thresholds, or impervious surface or the other; or it's an automobile and, you know, it's an unfit auto or that type of thing; or the accessory uses become otherwise illegal through some other mechanism -- they don't meet the setbacks, they have vermin harborage, they're automobiles that, you know, are junk, et cetera, et cetera.

But underneath the sheer, raw terms of what you're talking about now, there wouldn't be any numerical limit on them or any real limit on what they consist of. The limit would be the other ordinances that also are effective on the land.

COUNCILMEMBER ROCHE: So that means if we pass this motion as it is, the only people it would apply to are people that currently have two or less

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accessory structures, for (c).

ATTORNEY WEED: The way the motion is being worded, it wouldn't apply to them either. It would apply to a raw piece of land that has no principal structure --

COUNCILMEMBER ROCHE: I see.

ATTORNEY WEED: -- principal structure on it.

COUNCILMEMBER ROCHE: Okay.

ATTORNEY WEED: And when they built it, they would only be allowed, I guess, up to three.

COUNCILMEMBER BATES: Well, that's not my intent. My intent --

COUNCILMEMBER ROCHE: I don't think that --

COUNCILMEMBER BATES: -- would be --

COUNCILMEMBER ROCHE: -- was the intent.

COUNCILMEMBER BATES: -- to allow for anybody who's got, you know, three or four to continue to have them, but if you don't have any, your max would be two.

ATTORNEY WEED: Then, somebody needs to make that motion.

COUNCILMEMBER FLEMING: Okay.

COUNCILMEMBER ROCHE: So I still think it would be better to just deal with the first part

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without the amendment, without the amendment to the motion.
ATTORNEY WEED: Well, right now you've got a motion and a second so you have to either --
COUNCILMEMBER FLEMING: I'd like to withdraw my motion.
COUNCILMEMBER BATES: And I'm withdrawing the second.
MAYOR JENKINS: Okay. We don't have a motion on the table.
_ _ _
(Brief recess)
- - -
MAYOR JENKINS: Meeting come to order.
Okay. Where are we?
COUNCILMEMBER BATES: Are you looking at me?
ATTORNEY WEED: All right. Just to clarify procedurally, Councilman Fleming withdrew her motion.
COUNCILMEMBER FLEMING: That is correct.
ATTORNEY WEED: The second was withdrawn.
COUNCILMEMBER BATES: Yes.
ATTORNEY WEED: Right now you've got a blank slate.
COUNCILMEMBER BATES: Yes.
COUNCILMEMBER FLEMING: Correct.

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COUNCILMEMBER BATES: I'm going to try this. We're going to see if we can muddle ourselves through it.
Under Section 3, Subsection 3 of Accessory Uses --
ATTORNEY WEED: You mean (c)?
COUNCILMEMBER BATES: (c), (c) as in cat.
MAYOR JENKINS: It's on page 4.
COUNCILMEMBER BATES: Page 4 of 14.
I got to get -- I'm processing, so give me a second here.
Homes with less than two accessory structures and new construction shall have no more than two accessory structures exist on any lot. Homes prior to August 31 with two or more accessory structures will be allowed to maintain the existing accessory structures but not add any additional accessory structures.
COUNCILMEMBER FLEMING: Second.
COUNCILMEMBER SPANGLER: Are you satisfied with that, Mr. Bates?
COUNCILMEMBER BATES: Yes.
COUNCILMEMBER ALEXANDER: Mr. Weed, is that defensible?
ATTORNEY WEED: Is it defensible? Yes.

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Will I ever win a zoning case again? No.
You know, it's because without photographs, without some evidence of what the existing accessory uses are, what will happen -- and I think the Council's got more faith in human nature than I have -- what will happen is, you know, people will say that this was already prior existing, and it'll be their word against our word and they're going to win in my opinion.
But is the crafting of the legislation itself legal? My opinion is yes.
I just think essentially what we're going to have to -- We just won't be prosecuting accessory-use cases in the future, and that's fine, too.
COUNCILMEMBER ALEXANDER: Could part of this not be education to the public in the newsletter on what is required? I mean if they have to put up a storage shed, that they need a building permit.
I think education --
COUNCILMEMBER SPANGLER: I agree.
COUNCILMEMBER ALEXANDER: -- can be a friend.
COUNCILMEMBER SPANGLER: I agree, because, you know, we haven't done a very good job of that in the past. I mean you've got lots of people out there

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who probably don't realize that they have to have a building permit to extend their driveway or to put up a little storage building or whatever.
COUNCILMEMBER BATES: I have a motion and second.
COUNCILMEMBER PITTMAN: We've got a motion and a second.
COUNCILMEMBER SPANGLER: Motion and a second.
MAYOR JENKINS: Are you ready?
COUNCILMEMBER SPANGLER: We're ready to vote.
MAYOR JENKINS: More discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
DEPUTY CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: Councilmember Pittman?

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1 COUNCILMEMBER PITTMAN: Yes.
2 DEPUTY CLERK BRYANT: Councilmember Roche?
3 COUNCILMEMBER ROCHE: Reluctantly, yes.
4 DEPUTY CLERK BRYANT: Councilmember
5 Spangler?
6 COUNCILMEMBER SPANGLER: Yes.
7 MAYOR JENKINS: All right.
8 COUNCILMEMBER ROCHE: I feel like we --
9 COUNCILMEMBER FLEMING: Wait. We're not --
10 COUNCILMEMBER ROCHE: -- didn't do anything.
11 COUNCILMEMBER FLEMING: -- finished yet.
12 MAYOR JENKINS: Oh. You've got more. Okay.
13 MR. HAEBERLIN: Maria, I trust you'll
14 explain that to me tomorrow.
15 COUNCILMEMBER ROCHE: Yeah, I --
16 MR. HAEBERLIN: I'm totally lost.
17 COUNCILMEMBER ROCHE: It's like how would we
18 ever explain this to somebody? I understand what
19 we're trying to do. I just --
20 COUNCILMEMBER SPANGLER: It's pretty simple.
21 I mean if you --
22 And we can talk about it later.
23 COUNCILMEMBER FLEMING: Brian?
24 COUNCILMEMBER BATES: Yes, ma'am.
25 COUNCILMEMBER FLEMING: We still have to do

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1 the --
2 COUNCILMEMBER BATES: The conditional?
3 Section (b), Conditional Uses. Homes with
4 less than two accessory structures and new homes will
5 be allowed two accessory structures; however, no more
6 than three accessory structures when one of the
7 accessory structures is a detached garage. Homes
8 prior to August 31 will be allowed to maintain
9 existing accessory struc-tures but not add any
10 additional.
11 COUNCILMEMBER SPANGLER: Sounds good.
12 Second.
13 COUNCILMEMBER ROCHE: You're discriminating
14 against me because I don't have any accessory
15 structures and now I can only have two; whereas,
16 someone next door that may already have three, they
17 get to have three forever.
18 COUNCILMEMBER BATES: Yes.
19 COUNCILMEMBER ROCHE: Like I said, I just --
20 I understand what we're trying to do and I kind of
21 agree with it. I just . . . I don't see where --
22 I agree with Murray Weed on this. It
23 doesn't seem like good law.
24 COUNCILMEMBER SPANGLER: Well, I can't see
25 penalizing all these people, Bob, that have been here

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1 for years, for having structures that they were
2 allowed to have, and now we're coming back and saying
3 that you can't have these structures.
4 COUNCILMEMBER ROCHE: No, no. I understand
5 what you're doing, and I agree with that.
6 I'm just saying that the way we're trying to
7 do this -- I don't know. Of course I've always
8 thought that if half the town isn't mad at you, you're
9 not doing your job. So I don't know.
10 I just -- it doesn't -- You know, I think
11 there's got a better solution, and I don't see how we
12 could enforce this.
13 MR. HAEBERLIN: Bob, for once we agree.
14 COUNCILMEMBER ROCHE: Oh, we agree all the
15 time.
16 ATTORNEY WEED: I --
17 COUNCILMEMBER ALEXANDER: Well, the
18 alternative is to cite everyone that has an accessory
19 structure, and I disagree with that.
20 COUNCILMEMBER ROCHE: Either that, or take
21 out (c) and (d) completely.
22 COUNCILMEMBER BATES: Or the alternative is
23 to not regulate accessory structures at all.
24 COUNCILMEMBER ALEXANDER: Exactly.
25 COUNCILMEMBER ROCHE: That's what I'm

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1 saying. I would think if we just struck --
2 ATTORNEY WEED: Which in effect is what
3 you've done.
4 I mean you've created an ordinance, but no -
5 - I'm a good prosecutor. I cannot -- I'm telling you
6 my honest opinion. I cannot win a case.
7 And that may be fine. That may be exactly
8 what you want to do, and there's no requirement that
9 you regulate accessory structures.
10 But I cannot win a case because I'm not
11 going to be able to prove what was on the lot
12 beforehand. It'll be the person's word against, you
13 know, the Code Enforcement officer, and it's just, you
14 know, there won't be --
15 If Scott and the Code Enforcement people
16 tomorrow started taking photographs and we put the
17 effective date off for this until let's say September
18 the 14th and then we have the photographic record,
19 those cases could be won.
20 And I respect Councilman Fleming's opinion
21 that she doesn't want to do that, but that's the only
22 way to really enforce this.
23 Other than that, it is the equivalent of not
24 having a regulation, in my opinion. And that's okay,
25 too. If that's what the Council wants, that's legal.

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COUNCILMEMBER SPANGLER: Well, first of all, like Ms. Alexander said, okay, we need to get the word out to the residents of Doraville saying that you have to have a building permit for whatever structures that you plan to build, or you have to have a variance or you have to do this or you have to do that. Okay. We need to educate them first, and then we can penalize them if they don't adhere to the information we've given them.

A lot of these people don't know right now. And it's like the businesses, you know. We pass all these ordinances and everything that affects them, but yet we don't tell them. Yeah, it's their place to be here maybe, and we do have Mr. Cushman here, but, you know, years ago, we didn't have the business owners here but we didn't try to penalize them.

And that's basically what we're trying to do here. We're trying to penalize good neighbors for doing what they thought was right or maybe they had approval from whomever in the City government, and now we're trying to penalize them. I can't see that and I won't stand for it. I won't vote for it. That's why I agree with the motion that Mr. Bates just made.

COUNCILMEMBER ROCHE: Well, the other way to handle this would be to simply delete paragraphs (c)

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and (d) from this ordinance altogether because, again, we'll have a whole 'nother ordinance on accessory uses and conditional uses, first of all. And second of all, all these have to meet setbacks and all these other rules, anyway.

ATTORNEY WEED: I would actually -- I would prefer that, and I'm going to turn to the planner for his input because, in my opinion, legally what you've done is decide you don't want to regulate accessory uses -- which, by the way, is fine. It's perfectly legal.

I would rather these two sections not even be there unless --

I mean, Scott, you're frowning.

With the amendments that have been made, I don't know that that takes the city anywhere.

MR. HAEBERLIN: Well, I definitely agree with you on that, and I'm thankful that I don't enforce the City Zoning Ordinance because actually that's entrusted with our City Building Official -- that's your Code right now -- because, I'll be honest with you: there's no way I could enforce what you discussed tonight. I mean I'm confused, and I do this for a living.

So, you know, R-1 is the prevailing zoning

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category within the city. This is most of your property. So this -- what we decide for R-1 is really critical, and I think R-1 is certainly different than R-2, duplexes. It's a totally different situation. And what you do with this district sends a message for the City, and I don't want -- I don't think it should be separate. I mean that's my opinion.

COUNCILMEMBER ALEXANDER: Well, we told --

MR. HAEBERLIN: You may disagree.

COUNCILMEMBER ALEXANDER: -- you what we wanted. Make it happen. If you're sitting up here telling us that we're legislating something that's not enforceable or you can't win the case, and we told you what we want, make it happen.

ATTORNEY WEED: The impression of what I've heard the Council say as a unified group as to what you want is that you do not really want to regulate accessory structures.

COUNCILMEMBER BATES: That's not true --

COUNCILMEMBER SPANGLER: No.

COUNCILMEMBER BATES: -- at all.

ATTORNEY WEED: All right. Well, okay. Then, the alternative is that you want to regulate only new construction after August the 31st, 2009. Is that accurate?

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COUNCILMEMBER ALEXANDER: Partially.

COUNCILMEMBER BATES: Partially.

ATTORNEY WEED: Okay. Well, then, let's -- Then please tell us again, and the Planner, what you want to regulate.

You clearly do not want to regulate any accessory structure that was in existence on an existing lot, an existing principal building lot, prior to August the 31st of 2009. I think we get that. Is that fair? Is that accurate?

COUNCILMEMBER ALEXANDER: That's correct.

COUNCILMEMBER BATES: Yes.

ATTORNEY WEED: That is correct.

COUNCILMEMBER ALEXANDER: But we --

ATTORNEY WEED: All right.

COUNCILMEMBER ALEXANDER: -- do not want them to allow them to increase the number that they have.

ATTORNEY WEED: And I am trying to explain to the Council -- please don't take offense; I work for you -- how do we prove that?

And the question is the only way to really prove it is to have some recordation of what the existing accessory structures are as of the date of the effectiveness of the ordinance. Other than that,

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it's always going to be the word of the defendant against the word of the officer, and without some other proof, if I'm the judge, those cases are going to be thrown out.

COUNCILMEMBER ROCHE: And all I'm getting at is that I think I understand what we're trying to do. I just don't think that (c) and (d) will do it for us. I don't think that limiting the number of --

If I happen to have a three-acre back yard, then, you know, I could have room for more than one -- more than two accessory structures. I just think that trying to limit it in paragraphs (c) and (d) is not going to be effective.

I think that the other way to limit it is to say if you happen to have a big yard and you've got room for four accessory structures, the setbacks, et cetera, et cetera, then fine.

ATTORNEY WEED: And what we -- what is enforceable and what can be done to effectuate what I hear you want will be the second part of it, which would be: on new construction, those will be limited to the numbers that you've set forth tonight.

That's defensible because that would be triggered by a site plan, a survey, you know, a building permit. So that part, we can do.

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But the first half of it, without doing a survey of the lots and what's on there now, I can't enforce it.

MR. HAEBERLIN: And you still get back to catastrophic, okay? What if your house is destroyed but you have four accessory structures that don't get destroyed? So we allow you to build a new house and keep your accessory structures?

I don't know. I mean we're getting -- we're definitely getting complicated.

COUNCILMEMBER ROCHE: So, then you could say -- So what you're saying is that we could have (c) and (d) condition for -- apply only to new construction.

ATTORNEY WEED: Yes.

COUNCILMEMBER ROCHE: And that would take care of it.

ATTORNEY WEED: That would take care of. . .

COUNCILMEMBER ROCHE: That way, the people that have, you know, four, you know, accessory structures today could continue to have their . . .

COUNCILMEMBER BATES: And anybody who doesn't have one today could put eight.

COUNCILMEMBER ROCHE: Well, that's true.

MR. HAEBERLIN: And what if one of those is destroyed? What if a tree falls on it? Are we going

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to allow it to be rebuilt?

I mean we do get back to -- you know. What about voluntarily coming and getting a demolition permit and tearing down my fourth structure?

I mean I'm just throwing these out there. It's getting -- it's getting mumbled.

ATTORNEY WEED: Well, you have a -- I think you've got --

Well, you actually passed the language, did you not?

COUNCILMEMBER BATES: We did.

COUNCILMEMBER ROCHE: Yes.

ATTORNEY WEED: Would the Council be willing to allow Scott and I go kind of just take some time and try to work this a little bit and see if we can achieve your goals, which, as I understand them, for the record, would be: not penalizing anybody who's got whatever accessory structure they've got on their property now but may be limiting future accessory structures even on those lots, and I don't think you'd mind that; and then also, for any new construction, there's a cap.

I mean can you give us some time to try to work that out? And I don't know that it's possible to do that, by the way, but I mean I don't know -- I

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don't think we're going to be able to do it right here.

COUNCILMEMBER SPANGLER: No, not tonight.

And let's certainly not let Quality of Life people go out and start writing citations on --

COUNCILMEMBER ROCHE: Please.

COUNCILMEMBER SPANGLER: -- these people.

ATTORNEY WEED: I don't have any control over there, but --

COUNCILMEMBER SPANGLER: Well, somebody --

MR. HAEBERLIN: I don't, either.

COUNCILMEMBER SPANGLER: -- should have control over that, I mean.

COUNCILMEMBER ROCHE: So would someone need to rescind the original motion?

ATTORNEY WEED: I would respectfully ask you to do that to see if we can make another stab at it, you know, in the light of day, so to speak.

COUNCILMEMBER BATES: I made it; I'll rescind it.

ATTORNEY WEED: Would someone rescind the second?

COUNCILMEMBER SPANGLER: Oh, I'll rescind the second.

COUNCILMEMBER ROCHE: How does that work?

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ATTORNEY WEED: Actually, you know what? On second thought, would you just make a motion to rescind the prior motion? and that would do it.
COUNCILMEMBER BATES: Well, I had to rescind the one that was on the table.
ATTORNEY WEED: Okay. I'm sorry.
COUNCILMEMBER ROCHE: Okay. Yeah, well --
COUNCILMEMBER BATES: And then I'll make a motion to rescind the motion that was passed for Subsection (c) Accessory Uses.
MAYOR JENKINS: Second?
COUNCILMEMBER FLEMING: Second.
MAYOR JENKINS: Discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
DEPUTY CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: Councilmember Pittman?

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COUNCILMEMBER PITTMAN: Yes.
DEPUTY CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
COUNCILMEMBER ROCHE: I'd like to make a motion to postpone or recess this until September 14th.
COUNCILMEMBER PITTMAN: What time?
COUNCILMEMBER SPANGLER: At what time?
DEPUTY CLERK BRYANT: Which one is this?
ATTORNEY WEED: We're on 3B still.
COUNCILMEMBER ROCHE: And I guess 3 -- 3B, 3C and 3D till September 14th at 6:30.
COUNCILMEMBER FLEMING: 906C as well.
COUNCILMEMBER ROCHE: Sorry. 5A, right.
DEPUTY CLERK BRYANT: And 5A?
MR. HAEBERLIN: Well, 4A we'll handle separately.
COUNCILMEMBER SPANGLER: And that was September what? 14th?
COUNCILMEMBER ROCHE: Yeah. That's --
COUNCILMEMBER SPANGLER: At what time?
COUNCILMEMBER ROCHE: -- a Monday.

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COUNCILMEMBER SPANGLER: 6:30?
COUNCILMEMBER ROCHE: Yes.
DEPUTY CLERK BRYANT: 3B, 3C, 3D and 5A?
COUNCILMEMBER ROCHE: Yes.
ATTORNEY WEED: Yes.
DEPUTY CLERK BRYANT: Okay.
COUNCILMEMBER ROCHE: Because apparently --
ATTORNEY WEED: September the 14th.
MR. HAEBERLIN: 6:30.
COUNCILMEMBER ROCHE: Right, and we'll come back to 4A.
COUNCILMEMBER SPANGLER: Second.
COUNCILMEMBER ROCHE: And we have a second.
And the reason I'm saying this, my concern is this: we can get so tied up with these text amendments that when people come to us for variances and whatever, they would never get heard at the rate we're going. Seems like we need probably a separate meeting to deal with text amendments and then another meeting to deal with when people come to us for things, because they shouldn't have to be delayed. So anyway --
MAYOR JENKINS: Very good. You got a second already?
COUNCILMEMBER ROCHE: Yeah.

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MAYOR JENKINS: Call the roll.
DEPUTY CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER FLEMING: Discussion.
COUNCILMEMBER BATES: Hold on.
COUNCILMEMBER ROCHE: Well, we're still in discussion.
COUNCILMEMBER FLEMING: Discussion, please, because I want to throw this out because I don't think it should be in here.
Page 6, I think it's 6, it's (e) where you've got Uses Prohibited?
MR. HAEBERLIN: Uh-huh.
COUNCILMEMBER FLEMING: I don't think it's necessary. I noticed that you came back and put "Duplex dwelling units are specifically prohibited within R-1." Well, yes, they are, because they are in R-2. I mean they are only in R-2. So I really don't think that's -- you know, you wouldn't necessarily need that as a statement in here.
MR. HAEBERLIN: The reason I went back and put that in there is because I realize we have some duplexes in R-1.
COUNCILMEMBER FLEMING: We do?
MR. HAEBERLIN: Uh-huh.

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COUNCILMEMBER FLEMING: Because I looked at the map and I thought they were considered R-2.
MR. HAEBERLIN: There on Tilly Mill, they're in R-1. We do have some duplexes in R-1.
COUNCILMEMBER FLEMING: Okay. All right.
MR. HAEBERLIN: I mean that's the reason I put that in there.
COUNCILMEMBER FLEMING: Okay. That's fine.
MAYOR JENKINS: Any more discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
DEPUTY CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
DEPUTY CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
DEPUTY CLERK BRYANT: Councilmember

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Spangler?
COUNCILMEMBER SPANGLER: Yes.
COUNCILMEMBER ROCHE: And I'd also like to make a motion to recess item 4A to September 28, 2009, at 6:30 p.m.
MAYOR JENKINS: Second?
COUNCILMEMBER PITTMAN: Second.
MAYOR JENKINS: More discussion?
- - -
(No response)
- - -
DEPUTY CLERK BRYANT: Who seconded it? I'm sorry.
COUNCILMEMBER PITTMAN: I did.
MAYOR JENKINS: Call the roll.
DEPUTY CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Before I vote, I believe we were going to go into Executive Session.
ATTORNEY WEED: I would like to have a five-minute Executive Session based upon the correspondence

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I shared with you earlier, to discuss this item.
COUNCILMEMBER SPANGLER: But did we not just vote --
MAYOR JENKINS: Which item?
COUNCILMEMBER SPANGLER: -- to recess this meeting but not to adjourn?
ATTORNEY WEED: Correct.
COUNCILMEMBER ROCHE: Right. We're not adjourning yet.
ATTORNEY WEED: We're not adjourning.
MAYOR JENKINS: No.
COUNCILMEMBER ROCHE: Right. We're just recessing at this point.
MAYOR JENKINS: Which item are we going into Executive Session?
ATTORNEY WEED: And if you have the Executive Session --
DEPUTY CLERK BRYANT: 4A.
ATTORNEY WEED: -- this item may not appear on the next agenda. So you'll be saving yourself some time some other time.
COUNCILMEMBER SPANGLER: So we're going to have a five-minute Executive Session?
ATTORNEY WEED: We'll time it.
COUNCILMEMBER ROCHE: All right. I will

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with-draw my motion and --
COUNCILMEMBER BATES: No. You still need to make it.
ATTORNEY WEED: You still need to make that motion.
COUNCILMEMBER ROCHE: Okay. Well, all right. We're voting on that motion, and then we'll -- I'll be happy to do the Executive Session.
MAYOR JENKINS: We're voting on it.
COUNCILMEMBER FLEMING: Yes.
MAYOR JENKINS: (To Councilmember Pittman) You seconded it.
COUNCILMEMBER FLEMING: Yes.
MAYOR JENKINS: Okay. Call the roll.
DEPUTY CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
DEPUTY CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER ROCHE: I'd like to make a motion to go into Executive Session to discuss the appeal for --
ATTORNEY WEED: It would be future or pending litigation.

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COUNCILMEMBER ROCHE: Future or pending liti-gation --
COUNCILMEMBER PITTMAN: Second.
COUNCILMEMBER ROCHE: -- five minutes.
ATTORNEY WEED: I'm going to respectfully ask the audience to go ahead and leave. We ordinarily go to the other room, but I'd rather it be here because we're burning time.
UNIDENTIFIED SPEAKER: No problem.
COUNCILMEMBER SPANGLER: You need to cut everything off?
THE REPORTER: Oh, I'll be out of here.
COUNCILMEMBER SPANGLER: Yes.
Sandra, do you want to cut the --
ATTORNEY WEED: Yes, turn it off.
COUNCILMEMBER SPANGLER: -- video?
COUNCILMEMBER FLEMING: Executive Session, we're voting?
MAYOR JENKINS: When we come out of Executive Session, do we have to make a statement on tape?
ATTORNEY WEED: Yeah. I will ask you to affirm your directions to me on the record --
MAYOR JENKINS: Wait just a minute.
ATTORNEY WEED: -- so you need to hang

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around right here.
THE REPORTER: Right.
COUNCILMEMBER FLEMING: Is she on the record right now is what she's asking?
ATTORNEY WEED: Yes, you are.
COUNCILMEMBER ROCHE: We need to vote, Mayor.
ATTORNEY WEED: Yes.
MAYOR JENKINS: Excuse me?
COUNCILMEMBER ROCHE: We need to vote on the Executive Session.
MAYOR JENKINS: Okay. Did we get a motion and a second?
COUNCILMEMBER FLEMING: Yes, Mayor.
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Okay. Vote on it.
Call the roll, please.
DEPUTY CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: Councilmember Pittman?

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COUNCILMEMBER PITTMAN: Yes.
DEPUTY CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
- - -
(Executive Session, 9:20 p.m. - 9:40 p.m.)
- - -
MAYOR JENKINS: Motion to come out of Executive Session.
COUNCILMEMBER ROCHE: Second.
COUNCILMEMBER SPANGLER: We already did that.
MAYOR JENKINS: Well, I thought we did, too.
ATTORNEY WEED: Yes, you did. I'm going to report on behalf of the Council. And they're all here; they can, you know, correct me if I'm wrong.
Councilman Spangler made a motion to come out of Executive Session seconded by Councilman Roche and the vote was unanimous by the members who did vote for it, and let the record reflect that Councilman Pittman did not vote for that motion because she is currently absent due to family emergency.
At this point, I'd respectfully ask the

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Council to make a motion to authorize the city attorney to negotiate with regard to item 4A on the zoning agenda tonight under the terms previously outlined in correspondence to the Council and in the reasonable discretion of the city attorney on the matter.
COUNCILMEMBER ROCHE: So moved.
MAYOR JENKINS: Second?
COUNCILMEMBER SPANGLER: Second.
MAYOR JENKINS: Okay. Any more discussion?
COUNCILMEMBER BATES: For the record, I didn't receive a copy.
MAYOR JENKINS: Excuse me?
COUNCILMEMBER BATES: For the record, I did not receive a copy.
COUNCILMEMBER SPANGLER: What time did it come out?
ATTORNEY WEED: It was late this afternoon.
COUNCILMEMBER SPANGLER: I didn't have a chance to see it.
MAYOR JENKINS: I got it at home and it was late, yes, sir.
Okay. Call the roll.
DEPUTY CLERK BRYANT: Councilmember Alexander?

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COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Thank you.
ATTORNEY WEED: I'll make sure you get that first thing tomorrow.
COUNCILMEMBER SPANGLER: I make a motion to adjourn.
COUNCILMEMBER ROCHE: Whoa, whoa, whoa. Does this mean we can -- do we need to do anything now about the appeal or will it just show up cancelled?
ATTORNEY WEED: I'm sure that the applicant will dismiss it; he'll ask for it to be removed tomorrow, I suspect.
COUNCILMEMBER ROCHE: I second the motion to adjourn.
MAYOR JENKINS: Call the roll?
DEPUTY CLERK BRYANT: Councilmember

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Alexander?
COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Thank you. Meeting adjourned.

- - -

(Meeting adjourned at 9:45 p.m.)

-o0o-

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C E R T I F I C A T E

STATE OF GEORGIA]
COUNTY OF DEKALB]

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

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

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

This the 28th day of September, 2009.

Theresa Bretch, CCR
Permit No. B-755

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