In The Matter Of:

City of Doraville

State of Georgia

Special-Called Meeting with Public Hearings

August 24, 2009

American Court Reporting Company, Inc.

52 Executive Park South

Suite 5201

Atlanta, Georgia 30329-2217

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

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CITY COUNCIL MEETING

CITY OF DORAVILLE

STATE OF GEORGIA

SPECIAL-CALLED MEETING WITH PUBLIC HEARINGS

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Transcript of the proceedings held in the City Council Room at Doraville City Hall, 3725 Park Avenue, Doraville, Georgia, Mayor Ray Jenkins presiding, before Theresa Bretch, Certified Court Reporter, commencing at approximately 6:30 p.m. on Monday, August 24, 2009.

* * *

APPEARANCES:

Doraville City Council:

Hon. Ray Jenkins, Mayor
Councilmember Maria Alexander
Councilmember Brian Bates
Councilmember Robert Spangler
Councilmember Donna Pittman
Councilmember Pam Fleming
Murray J. Weed, City Attorney
Ms. Sandra Bryant, Deputy City Clerk
Scott Haeberlin, City Planner

P R O C E E D I N G S

MAYOR JENKINS: 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?

- - -

(No response)

- - -

DEPUTY CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Here.

MAYOR JENKINS: Our first item of business is under the old business, and it's a variance of an accessory structure, and I'm

going to let Scott take over at that point.

MR. HAEBERLIN: Mayor, if you recall, this is 3693 through 3695 Stewart Road. The current zoning is O-I. And the variance is for accessory structures and there are several different types of variances listed, not just the type of the structure but the locations of the structure.

Since this time, I have received an opinion from John Calcaterra, the Building Official, and in front of each person there is a handwritten memorandum from Mr. Calcaterra, and I'll read that into the record. "There are two marine shipping containers at the rear of 3695 Stewart Road. They are eight foot wide by nine foot tall by 40 foot long. Structures this size should be anchored to a foundation by whatever means designed by an engineer to resist uplifting and tilting," and that is John Calcaterra, the City Building Official.

As you recall, the recommendation from the Planning Commission was that of denial, the recommendation of City staff, again, was that of denial, because even larger than the issue as to whether these are temporary structures, there

Page 5

are variances required for them to stay in their present location that are impacting upon a residential structure and some general variances from the Code that are relative to accessory structures.

So at this time, the recommendation from the City staff stands with the notations by the Building Official.

MR. WEED: Mr. Mayor and members of the Council, I do not believe that Mr. Calcaterra's report was available to you at the original hearing on this on June 29th, 2009. Bearing that in mind, I would advise the Council to reopen the public hearing portion to allow the applicants to make whatever commentary and present whatever evidence they feel is appropriate now that they've heard about the Building Inspector's report.

MAYOR JENKINS: Okay. Do you want the applicant to speak now? Is that correct?

MR. HAEBERLIN: Yes, sir. We'll let the applicant come forward if he'd like.

MAYOR JENKINS: Would you like to speak before we open it up for a public hearing, sir?

MR. HAEBERLIN: And sir, I'll lay a

Page 6

copy of that report on here so that you can review it, and you can take a copy with you.

MR. PYE: Thank you.

Mr. Mayor, members of the Council, again, my name is Tom Pye. I speak for the applicant.

I think the only thing that I can -- two things I can add to what was said before. First of all, this is our first notice of this issue; therefore -- as it apparently is your first notice of the issue. And we would like an opportunity to address it.

As I heard it read, this is a statement by the Building Official that the structure needs to be anchored. If that is necessary, that's a simple matter to address.

The second matter -- and I express a little confusion and I'm sure it's on my part -- when we were here two months ago on June 29th, it's my understanding that the Council deferred the matter because of uncertainty over the Zoning Ordinance, for the purpose of considering an amendment to the Zoning Ordinance. The scheduling two months out was for the purpose of publishing notice and so forth.

Page 7

In discussion before the meeting, I understand that was not done. If the Council is still of a mind to do that, then it should be deferred again for that purpose. That's of course up to the Council, but that's as I understood it before.

The third matter that this does not address is the matter which I think gave concern to at least some members of the Council, that this structure, for want of a better word, was placed there with the permission and authority of an official of the city. It's been there for five years. That has not changed. And we think the same equitable principles that were of concern to members of the Council before should continue to be of concern.

We can address the issue of anchoring if that is the issue. That was not raised before.

If there are other issues that should be brought up, we can address those if we have an opportunity to address them. So we would like that opportunity.

It's been deferred. The structure has been there five years. This matter has been

Page 8

deferred more than once. And I know that the Council would like to have all information at hand and give the applicants the opportunity to have all information at hand before voting on it.

Thank you.

MR. WEED: Mr. Mayor, if I might.

Mr. Pye, let me just confirm for the record. Is it your position that you are officially asking on behalf of your clients, in that you haven't had a copy of the document from the Building Official and you want more time?

MR. PYE: That's correct. I don't believe anyone has had -- this is a handwritten letter and it's noted "Received August 24," which is today. I don't think anyone's had notice of it before today.

MR. WEED: Mr. Mayor and members of the Council, I would advise you to defer this matter for --

When is the next available hearing or the next available zoning date, Mr. Haeberlin? The 31st?

MR. HAEBERLIN: It could go to the 31st at 6:30 p.m. or it could go to September, which

Page 9

would be September 28th at 6:30.
MR. WEED: Mr. Pye, August the 31st, will that give you enough time to prepare a response or whatever commentary your clients would like to have?
MR. PYE: I'd prefer additional time to September.
MR. HAEBERLIN: September 28th at 6:30.
MR. WEED: Is there a way to have another zoning -- do you have time enough to advertise another --
We can move this to a date certain. Is there any other time frame between now and September the 28th?
MR. HAEBERLIN: That's advertised public hearings, no, sir. The 31st and then September 28th.
MR. WEED: In light of that fact, I would advise the Council to defer this thing to September 28th.
Mr. Haeberlin, is there any other evidence whatsoever that you expect Mr. Calcaterra or anybody else to present to the Council?

Page 10

MR. HAEBERLIN: No, sir. Actually, I mean, the discussion about the building and its foundation aspects are noted in the staff report, and I have been asking Mr. Calcaterra to provide a professional opinion, and he just recently got that to me actually this morning, and so I provided it to the Council.
MR. WEED: Thank you.
That's my best advice to the Council.
MAYOR JENKINS: Do I get a motion to that effect?
COUNCILMEMBER ALEXANDER: I have a question.
I understand structurally Mr. Calcaterra's information. However, how would those -- if they were to be anchored to the ground, would they be allowed under the accessory structure ordinance?
MR. HAEBERLIN: Correct. Mr. Calcaterra did not address the city Zoning Ordinance, and there would still be multiple variances required for the placement exactly where they are today.
COUNCILMEMBER SPANGLER: So just because they would be anchored doesn't mean that

Page 11

they would be in compliance. They would still need variances.
MR. HAEBERLIN: That is correct; they would need additional variances.
MR. PYE: I would then ask why do we have this? If it doesn't matter, why do we have it?
I would like an opportunity to consider this and Mr. Calcaterra's reference to the Code.
COUNCILMEMBER SPANGLER: So Mr. Weed, your recommendation is to postpone this until --
MR. WEED: Until the 28th, yes, sir.
COUNCILMEMBER SPANGLER: -- the 28th.
MR. WEED: I'd recess this hearing to the 28th with the expectation, since there's no further evidence that will be coming forth at least on behalf of the City staff, and Mr. Pye can present further evidence or commentary at that time.
MAYOR JENKINS: Between now and the 28th, do we intend to change the ordinance or are we going to leave the ordinance like it is, or what is the reason for postponing it?
MR. WEED: Let me address that, Mr. Mayor. With regard to -- I don't know if

Page 12

the Council would entertain changing the ordinance or not. I don't know that that would make any difference whatsoever to the particular request before you tonight.
The applicants have got a right to be heard underneath the ordinance that was in effect at the date they filed their application, so I don't think that's particularly relevant.
With regard to my advice as to why I'm recommending you defer it tonight, apparently Mr. Calcaterra had this letter, he issued it apparently today; the Council has been exposed to it today, and apparently the letter was not sent in advance to Mr. Pye nor his client. Therefore, out of an abundance of caution -- although you may deem the letter to be completely irrelevant in your evidence-gathering, out of an abundance of caution and since the City's got a reputation of bending over backwards to guarantee people's rights, my best advice is to put this off until the 28th.
MAYOR JENKINS: I have no problem with that. But this was a variance hearing, I understand; is that not correct?
MR. WEED: That is correct, sir.

Page 13

MAYOR JENKINS: Do I get a motion to postpone it --
COUNCILMEMBER SPANGLER: So moved.
MAYOR JENKINS: -- to the 28th of September?
Second?
COUNCILMEMBER FLEMING: Second.
MAYOR JENKINS: Call the roll, please.
COUNCILMEMBER FLEMING: Discussion.
MAYOR JENKINS: Excuse me? Discussion. Go ahead.
COUNCILMEMBER FLEMING: Mr. Weed, no matter what we do in regard to ordinances because he applied prior to, the ordinance would apply at the time he placed the application; is that correct?
MR. WEED: That's my opinion; yes, ma'am.
COUNCILMEMBER FLEMING: In looking at the original application -- and correct me if I'm wrong -- I'm not seeing where it's listed as a variance or a conditional use.
MR. HAEBERLIN: What you're hearing tonight --
COUNCILMEMBER FLEMING: So my question

Page 14

is, it's an applicant applying for -- I'm trying to quickly go through as to whether this is a conditional use or a variance.
MR. WEED: I've got -- on page 2 of the application, it's marked, I assume by the applicant, as a variance. Variance nonadminis-trative dash --
COUNCILMEMBER FLEMING: Oh, excuse me.
MR. WEED: -- Mayor and Council.
COUNCILMEMBER FLEMING: I'm very sorry. I'm very sorry. My apologies.
MR. WEED: That's fine.
COUNCILMEMBER FLEMING: That was my question. Thank you very much.
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.

Page 15

DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: All right, Scott. I believe you said 3B had already been cancelled?
MR. HAEBERLIN: Yes. In front of each Council area and with the Clerk and the Attorney and the court reporter there is a letter requesting the withdrawal of item 3B, which I received today, and I have provided you a copy of that. So there's no action required on that one.
MAYOR JENKINS: Okay.
COUNCILMEMBER FLEMING: Is there a continuance on this?
MR. HAEBERLIN: No. They just want to withdraw.
COUNCILMEMBER FLEMING: Okay. Thank you.

Page 16

MR. HAEBERLIN: The next item that you have under public hearings is Section 612, Television Reception Devices. Does everybody have a copy of that ordinance in front of them, just in case, make sure everybody's looking at the same thing?
MAYOR JENKINS: What's the ord- -- okay, excuse me.
MR. HAEBERLIN: This is version one and it will say 612 in the preamble. If anybody doesn't have one, just raise your hand and I'll give you one.
If you recall, this is the regulation of the satellite dishes. There had been a lot of discussion within the neighborhoods regarding this regulation still being on the books. Mr. Weed looked into it as well and I concluded as well that it was not an enforceable item.
It's listed under 612 in the Zoning Ordinance, and this is simply to amend by deletion Section 612 because we are dealing with an item that really is not enforceable that had been on the books for quite some time. There had been some . . . there had been some commentary from the members of the general

Page 17

1 public and also too from members of the
2 Northwoods subdivision. So this would just be
3 the formal removal of 612 from the Zoning
4 Ordinance.
5 Are there any questions?
6 - - -
7 (No response)
8 - - -
9 MAYOR JENKINS: Okay.
10 MR. HAEBERLIN: Well, sir, then we
11 would go into the public hearing section. And
12 you will open the public hearing and hear those
13 for and against, close the public hearing and
14 then deliberation of the Council.
15 MAYOR JENKINS: Anybody for that
16 particular ordinance, any of you?
17 - - -
18 (No response)
19 - - -
20 MAYOR JENKINS: Anybody against it?
21 COUNCILMEMBER FLEMING: You're against
22 to delete Ordinance 612?
23 MR. ANDERSON: I'm not against deleting
24 it. I'm asking a question.
25 Anderson, by the way.

Page 18

1 Reception Devices, 5-280, 5-285, should
2 we not consider that ordinance before we delete
3 612 or am I off base? 5-280 is Over-the-Air
4 Reception Devices, et cetera, et cetera.
5 I'm in favor of considering the new
6 ordinance, shall we say, before we delete an old
7 ordinance so that we're satisfied with the new
8 ordinance before we leave ourselves with no
9 ordinance type situation.
10 But I'm not -- believe me, I'm not
11 against deleting this thing. I'm just
12 considering that we should consider the other
13 one first or consider it so we're satisfied with
14 it.
15 COUNCILMEMBER FLEMING: Mr. Weed, would
16 you like to respond?
17 MR. WEED: I agree with Mr. Anderson as
18 a general philosophical point, that I prefer to
19 have some other regulation in place before
20 there's no regulation at all.
21 The ordinance that will remain on your
22 plate to consider will provide some limited
23 regulation of these devices based upon the
24 current FCC rules. You can regulate them in the
25 public safety arena, you could regulate them on

Page 19

1 historic structures, and there are certain other
2 antenna-like devices that the FCC doesn't have
3 an opinion on and you could do whatever you want
4 to with them in the local community.
5 However, I don't really think in this
6 case it's the cart going before the horse,
7 because I believe that the current Zoning
8 Ordinance does not comport with FCC rules and
9 regulations, anyway; therefore, in this rare
10 case, I'd actually rather have no regulation at
11 all than the not-appropriate regulation that's
12 in place now.
13 COUNCILMEMBER FLEMING: Thank you.
14 MR. WEED: But as a general rule, I
15 agree with Mr. Anderson.
16 MAYOR JENKINS: Anybody else for or
17 against?
18 - - -
19 (No response)
20 - - -
21 MAYOR JENKINS: Then, we'll bring it up
22 to the table.
23 COUNCILMEMBER FLEMING: I'd like to
24 make a motion to delete Section 612 and hold it
25 in reserve for a future date, which is the

Page 20

1 Television Reception Devices.
2 COUNCILMEMBER BATES: Second.
3 COUNCILMEMBER FLEMING: You have it in
4 here as reserve for future, and that's the
5 reason why I said it.
6 MR. WEED: With regard to the effective
7 date?
8 COUNCILMEMBER ALEXANDER: No.
9 COUNCILMEMBER FLEMING: No, no.
10 COUNCILMEMBER ALEXANDER: The section
11 reserved.
12 COUNCILMEMBER FLEMING: No. You've got
13 612 --
14 MR. WEED: Oh, yes. I'm sorry. Right.
15 COUNCILMEMBER FLEMING: -- delete
16 Section 612 --
17 MR. WEED: Yes.
18 COUNCILMEMBER FLEMING: -- as it is
19 today --
20 MR. WEED: I'm sorry. You're right.
21 COUNCILMEMBER FLEMING: -- and reserve
22 for future.
23 MR. WEED: That's fancy lawyer writing
24 for "it's deleted." Thank you.
25 MAYOR JENKINS: Did I get a second on

Page 21

that?
COUNCILMEMBER BATES: Yes, sir.
MAYOR JENKINS: More discussion?
- - -
(No response)
- - -
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 Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: All right, Scott.
MR. HAEBERLIN: The next item, Mayor and Council if you would so entertain, I would

Page 22

like to move 4B and 4C down to the bottom of the agenda if we could. And I believe Mr. Weed would say that if you are entertaining this, we'd motion to that effect.
I think they're very involved, and I want to give you the background on how they're so involved; move forward with some of the easier items first.
COUNCILMEMBER BATES: So moved.
COUNCILMEMBER PITTMAN: Second.
MAYOR JENKINS: We don't need to have a public hearing?
MR. HAEBERLIN: We have a second on them. This is just to amend the agenda, sir.
MAYOR JENKINS: Oh, okay.
MR. HAEBERLIN: So you have a first and a second.
MAYOR JENKINS: Any more discussion on amending the agenda?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
DEPUTY CLERK BRYANT: Councilmember Alexander?

Page 23

COUNCILMEMBER ALEXANDER: Yes.
DEPUTY CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
DEPUTY CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
DEPUTY CLERK BRYANT: Councilmember Roche -- sorry -- Pittman?
COUNCILMEMBER PITTMAN: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MR. HAEBERLIN: Okay. The next item on the agenda will be Section 806, Street Frontage Requirements. Does everybody have a copy of that ordinance in front of them? This would be version two, which would be located in the lower left-hand corner which would indicate version two.
The reason this came about is --
COUNCILMEMBER BATES: Mr. Haeberlin, I don't --
COUNCILMEMBER ALEXANDER: We only have version one.

Page 24

COUNCILMEMBER BATES: I don't have version two.
COUNCILMEMBER SPANGLER: I don't.
MR. HAEBERLIN: You don't have version two?
COUNCILMEMBER ALEXANDER: No.
MR. HAEBERLIN: Okay.
COUNCILMEMBER FLEMING: Version two is August 13th.
MR. HAEBERLIN: I'll just pass these out.
I believe there had been a minor typo on here, and that's the reason why there are two versions. I believe that the previous one said ordinance number 2008, and that's the reason why we corrected it.
MR. WEED: That is correct.
MR. HAEBERLIN: If you will recall, the previous Zoning Ordinance dictates that every lot have 85 feet of frontage on a public street in the city of Doraville. And as we have soon been discovering, particularly in the last couple months, that that is seldom the case. I mean it does happen but it's generally not the case. And so with that being said, we have a

Page 25

1 lot of nonconforming lots that don't have 85
2 feet of street frontage.
3 And the whole section on noncon-
4 formities has been addressed. Great discussion,
5 particularly with Councilwoman Fleming, because
6 they're so arduous. Under nonconforming, there
7 are so many items that have to be dealt with.
8 The goal of the staff was to bring as
9 many lots into conformity as we could so we'd
10 remove that impediment to further development in
11 the street -- excuse me -- in the city.
12 So what happened is we set the public
13 road frontage at 30 feet. Now, this is for
14 single-family detached.
15 However, we have this thing called
16 R-SFA, which is townhouses, in the city. Recall
17 that under the old Zoning Ordinance, they were
18 supposed to have 85 feet of lot frontage. Well,
19 they absolutely do not. The townhomes that are
20 developed in the city are on 20-feet centers,
21 and so there's a provision in here to make them
22 conforming as townhouses with 20-foot road
23 frontages because that's what they have -- for
24 example, the Avery Park, the Flowers Gate and
25 perhaps even the Chestnut Place.

Page 26

1 However, we put a provision in here for
2 new development effective after this date to go
3 to 24s. A 24-foot wide lot for a townhome is
4 much more in keeping with the desires of the
5 Council to have a two-car garage and to provide
6 enough spatial area to develop townhomes on the
7 remaining properties left in the city if we
8 should so choose to zone any additional land.
9 As you know, right now we just have
10 essentially three townhome communities within
11 the city. And also to address in here the other
12 zoning districts within the city and how these
13 lots get classified. We don't want people to
14 have their or derive their frontage from an
15 interstate-highway classification. That's very
16 dangerous for people to consider creating lots
17 with that type of access, and typically GDOT
18 would not provide them a curb cut, anyway.
19 So what we've done is we've addressed
20 the whole concept of public street frontage.
21 Everybody understands that that's different from
22 lot width. The lot width is where the width of
23 the line at the building setback line, whatever
24 that is by the zoning district, is so many feet
25 wide. So on a cul de sac, on a curvilinear lot,

Page 27

1 you typically have very low street frontage, and
2 I've seen it go as low as 22.5 feet. And then
3 at the building setback line, the lot gets wider
4 and then obtains its minimum lot width.
5 So all we're doing again is correcting
6 an existing deficiency of the Code and
7 correcting some past situations in the city and
8 to ensure that every lot does abut upon a public
9 street.
10 Are there any questions?
11 COUNCILMEMBER BATES: How would this --
12 does this eliminate private roads?
13 MR. HAEBERLIN: It eliminates in the
14 future the potential for private roads.
15 COUNCILMEMBER BATES: What do we do
16 with and how do we address or should we address,
17 can we address the existing communities that
18 have private roads?
19 MR. HAEBERLIN: Those are certainly
20 policy decisions.
21 I will tell you that of your townhomes
22 that are already finished out, that potential is
23 very limited, I think.
24 On the remaining townhome community
25 that you have left in the city, which still has

Page 28

1 outstanding building permits and which does not
2 have a completely finished road, the Council
3 could entertain taking that road in.
4 COUNCILMEMBER BATES: What would that
5 mean to us as far as a liability or incurred
6 cost and is that offset by the homeowners
7 already paying taxes to cover Dekalb County road
8 maintenance?
9 MR. HAEBERLIN: Well, that certainly is
10 -- You know, you've got a bunch of dynamics to
11 look at.
12 First of all, you have to look at what
13 most associations charge people to live there.
14 My understanding is that Chestnut Place charges
15 $185 a month. As a former resident of many of
16 these communities, I can tell you $185 a month
17 is not enough to cover maintenance and painting
18 and all these other facets.
19 So at some point, even though we may
20 avoid or not think about it, it will become the
21 city's problem because we have taxpayers who
22 will be coming forward and saying, "I pay taxes
23 to Dekalb County for public road maintenance but
24 I have no benefit of it." And so if you were to
25 take the road in, they would receive some sort

Page 29

of benefit. It would certainly help the life span of these because, as you're aware, they usually set the homeowners' fees really low initially, and that gets people in. But as time goes on and the development ages, there's a lot of need to do work -- painting, landscaping, things of that nature. And so if you don't have sufficient reserves built up, what happens is they get special assessments.

COUNCILMEMBER BATES: Is there a liability that the city would incur from a cost standpoint, of taking over and including that as part of our regular county-wide road maintenance?

COUNCILMEMBER BATES: Well, that's really more a lawyer question. I'm going to let Mr. Weed respond to that one.

MR. WEED: Well, there is always a liability with regard to a city road or sidewalk. Ordinarily, the question is, is there a known defect that was not resolved?

I assume but do not know that these private streets were -- Most regulations today, most subdivision regulations would mandate that any -- for a possible private road, it would

Page 30

have to be built to City and County standards to begin with. I do not know that's what has occurred in this circumstance.

However, I will tell you this: I think the day will come when these homeowners' associations are going to ask you as a council to take over these roads, anyway, because they frankly will not be able to maintain them.

Is there a liability potential? Absolutely. But it's the same liability as any other street.

COUNCILMEMBER BATES: I mean I guess what I'm asking is, is there a tangible cost to the City to take ownership or responsibility through the County of converting these from private roads to county-maintained roads? Is there a -- Are we going to be out of pocket dollars?

MR. WEED: My answer to that is no, not immediately; however, in the future, you're going to have to maintain them. So yes, there will ultimately be a cost. There's no doubt about that.

COUNCILMEMBER BATES: But that's a County job. We don't maintain roads.

Page 31

MR. WEED: When I say "you," I mean whoever is maintaining the roads. But are you going to have to pay? I wouldn't advise you to pay anything to the homeowners' association or anybody else for the road.

COUNCILMEMBER BATES: Right, right.

MR. WEED: I mean sooner or later, they're going to be coming to you and asking you to take it.

COUNCILMEMBER SPANGLER: Currently or presently we get so many streets or roads per year to pave, for repavement, and there's a certain cost to the City for that. So this is going -- if we take these private roads back, it will mean less of our streets in the neighborhoods now that need paved --

It will take longer to get those streets paved is what I'm trying to say.

MR. WEED: That makes logical sense to me, Councilman, and I certainly wouldn't argue that point. I think whether it's today, though, or whether it's four councils from now, the people who own the road now are going to be coming to you eventually and asking you to take it.

Page 32

One thing I would certainly encourage you to do, though, is not propagate the problem for other subdivisions that might form. And whatever you do, I wouldn't continue on allowing private streets. You're not required to do that, and I think it's a bad idea.

But I agree with you; you'll pay now or you'll pay later.

COUNCILMEMBER ALEXANDER: Okay. Further to a comment that you made to Mr. Bates' question, I know for a fact that those roads in Avery Park are not compliant with Dekalb County code regarding the turn radius for the fire trucks.

MR. WEED: I would tend to believe that.

COUNCILMEMBER ALEXANDER: So if we assume those roads, can the County just come in and say, well, you got to make them so we can get fire trucks back in there?

MR. WEED: I think that's a conversation you should have with the County. I think that would be wise.

COUNCILMEMBER ALEXANDER: Because I don't want us to say, this is great, we're going

Page 33

1 to do it, and then we have to spend 75/125
2 thousand dollars to try to fix a problem that we
3 did not create.
4 MR. WEED: And this is another one of
5 the situations where one wonders how they were
6 not built to City/County standards to begin
7 with, but it is what it is.
8 MR. HAEBERLIN: Now, do recall, this
9 ordinance is not asking you to take those
10 private streets up.
11 COUNCILMEMBER BATES: Understood. It's
12 just --
13 MR. HAEBERLIN: It's just something for
14 you to consider within the context, because you
15 certainly have one that's very close that you
16 might want to entertain -- and, again, you might
17 want to entertain.
18 But this essentially prohibits any new
19 private roads in the city. My experience as
20 Mr. Weed's has been that private roads are
21 generally a problem and become a bigger problem
22 with the life cycle of the development. Even
23 developments with homes in the millions of
24 dollars, the associations cannot keep enough
25 money on hand to maintain roads, and it

Page 34

1 generally becomes the government's problem.
2 COUNCILMEMBER FLEMING: You mentioned
3 earlier in regards to the ongoing building per-
4 mits that are already permitted for Chestnut.
5 MR. HAEBERLIN: That's correct.
6 COUNCILMEMBER FLEMING: Is this
7 ordinance going to -- or if we pass this
8 ordinance, is it going to not allow them to have
9 their private roads since the building's already
10 out there?
11 MR. HAEBERLIN: It will have no effect
12 on them because it's a plat of record.
13 MR. WEED: I concur with that.
14 MR. HAEBERLIN: It's past action of the
15 Council.
16 COUNCILMEMBER FLEMING: Okay. I just
17 wanted to be sure.
18 MAYOR JENKINS: Murray, do we have --
19 does this Council have the authority to declare
20 it a County road?
21 MR. WEED: Well, I wouldn't -- I don't
22 believe we have that authority.
23 What I think you would do is -- I feel
24 confident the homeowners' association would
25 petition you to take the road over, which you

Page 35

1 certainly would have every right to take it over
2 in that way.
3 Now, I will say this: Arguably, you
4 certainly -- you've got the right of eminent
5 domain, and the City could take whatever
6 property they want to other than property that
7 belongs to another county and/or another city.
8 And with regard to the unincorporated county,
9 you can still do that through the mechanism of
10 annexation.
11 So the answer to your question is you
12 still have power of eminent domain, so yes, you
13 could take the road. But you simply couldn't do
14 that by declaration here at a meeting. You'd
15 have to exercise your power of eminent domain to
16 take the road. I don't think that's going to be
17 relevant, though, because I think the people who
18 live there are going to want the City -- they're
19 going to beg you to take it sooner or later.
20 MAYOR JENKINS: I guess my question
21 was, does this body have the authority to
22 declare it a county road? We cannot declare it
23 a city road. We don't do roads.
24 MR. WEED: My opinion is no, you don't
25 have any authority to declare it a county road.

Page 36

1 MAYOR JENKINS: Okay. So what is the
2 question, then? We cannot declare it a county
3 road. We cannot declare it a city road unless
4 we put it in some kind of ordinance that we keep
5 that road up.
6 MR. WEED: I think it's an unresolved
7 question. I understand that the County
8 maintains all the road systems.
9 MAYOR JENKINS: Right.
10 MR. WEED: And perhaps in good faith,
11 an argument can be made that there are no city
12 roads --
13 MAYOR JENKINS: Right.
14 MR. WEED: -- in Doraville, that all
15 the roads in Doraville are all county roads.
16 MAYOR JENKINS: That's my --
17 MR. WEED: And perhaps in good faith a
18 reasonable argument could be made that there are
19 no city roads in Doraville, that all of the
20 roads in Doraville are all county roads. That
21 is certainly a position that can logically be
22 argued. And we may be arguing that position
23 some day, and I certainly think it's viable.
24 So the answer to your question is no,
25 we can't declare it a county road. The County

Page 37

would have to do that.
MAYOR JENKINS: Okay. Thank you.
COUNCILMEMBER BATES: If an applicant -- if a homeowners' association petitioned us, could we assign conditions to taking the responsibility of that -- they pay for a survey to verify turn radiuses and . . .
MR. WEED: Yes. And I think that it would also work with the County to find out whatever County requirements are and whether the County would participate in the road and, you know, what the relationship there would be with regard to that.
COUNCILMEMBER SPANGLER: What about the structure itself, that it was done correctly?
MR. WEED: Meaning?
COUNCILMEMBER SPANGLER: A road is just like a footing or anything else. It has to have a certain depth of concrete --
MR. WEED: Yes, sir.
COUNCILMEMBER SPANGLER: -- and be reinforced with steel or whatever. So can we also make that a condition, that it was properly constructed?
MR. WEED: Yes, sir, you certainly

Page 38

could.
COUNCILMEMBER ALEXANDER: I have a question in particular to this ordinance.
MR. HAEBERLIN: Yes, ma'am.
COUNCILMEMBER ALEXANDER: There was a presentation made to us of suggestion for a sub-division, and the builder had a cul de sac on his drawings, and basically some of the houses would have met your requirement for the street frontage but they physically were built practically in the back yard of their next-door neighbor's house.
MR. HAEBERLIN: Okay.
COUNCILMEMBER ALEXANDER: So how do we -- I mean we want good, aesthetic subdivisions. We don't want everybody to have 30 feet of street frontage and all that is is their driveway, maybe a flower bed and a mailbox. So how do you stop something like that?
MR. HAEBERLIN: Remember that is particular to a cul de sac. Remember that the front building setback is the minimum standard imposed by the City. That's going to be shown on the plat. The builder can choose to go greater than the minimum.

Page 39

The minimum lot width regulates the width of the lot at that City-imposed setback. That actually prevents you from having flag lots or, you know great depth lots just for the purposes of getting a lot, okay.
So let's say it's R-1, for example. As your code exists today, at 35 feet from the front pin, it would have to be, under the R-1 district which is proposed today, or actually let's just go with what we have, 85 feet. So 30 feet away from pin, it would have to be 85 feet wide, even though on a cul de sac it would be 30 feet at the street. That still creates a broader lot than you're thinking about.
Rectangular lots are a different situation. Rectangular lots are going to have the same width and the same frontage because if the code imposes 85 feet, they're going to be 85 feet generally at the street or close to it.
So did that answer your question or --? You're looking so confused.
COUNCILMEMBER ALEXANDER: I still don't see how it would prevent a builder placing basically a house behind another house.
MR. HAEBERLIN: Technically, there

Page 40

isn't anything. And really there's nothing in your code today that says you can't put the back of the house facing the street, either. There's nothing that says you can't put your house sideways on the lot.
So there are some things you could adopt in your subdivision regulations that would prevent a lot of these things that you're speaking about. But remember these are minimums. And typically when you have a lot platted, the builder will work with the geography of that lot. And if they find that it doesn't work good setting it up at the setback line, they'll simply move it farther back from the setback line. Those are just minimums imposed.
And the builders can impose maximums through covenants, of course, which we don't enforce, but they impose that on themselves.
But this situation is simply arising from -- I'll have to be very honest with you. I don't even think 10 percent of the lots in the city have 85 feet of public road frontage. And from my survey of the City Zoning Ordinance, you have generally 50-foot lots, 60-foot lots and

Page 41

70-foot lots, and many of those have nowhere near even 50 feet on a public road. I have gone as low as 22.5 feet in jurisdictions where I've worked, on cul de sacs, but I will tell you it does not produce -- aesthetically, it does not produce the effect that I would wish to support here. It just becomes too much driveway. There's too many driveways converging at the street.

COUNCILMEMBER SPANGLER: And so you're asking for 30 feet.

MR. HAEBERLIN: Right.

COUNCILMEMBER SPANGLER: From where?

MR. HAEBERLIN: 30 feet is at the right-of-way line. You will still have your minimum setback at the front building setback.

COUNCILMEMBER SPANGLER: So the right-of-way line is exactly where from the center of the road?

MR. HAEBERLIN: Well, it's half the road if the centerline is in dead center of the road.

But I will caution you, the city streets are not built on centerlines. They're way off the centerlines.

Page 42

COUNCILMEMBER SPANGLER: So, then, you would want to take it from the front --

MR. HAEBERLIN: From the front pin.

COUNCILMEMBER SPANGLER: -- pin. Okay.

MR. HAEBERLIN: There'd have to be a minimum of 30 feet of frontage on that street. That's a minimum. Could be more.

Right now it says it has to be 85, and essentially you don't have many that meet that.

So what 30 feet does is it encompasses not only rectangular lots, which obviously are going to be squares and they're going to be greater than 30 feet, but it encompasses all these great numbers of cul de sacs that we have in the city.

We are blessed with a lot of curvi-linear design in the way our subdivisions are laid out, and we really have to think about how do we capture as many lots as possible. I think that 30 feet is going to capture the majority of the lots in the city. It will not capture every one of them but it will capture the majority.

COUNCILMEMBER ALEXANDER: Your definition of double frontage, is that just based on the front of the structure or driveway

Page 43

accessibility?

MR. HAEBERLIN: Well, a double-frontage lot is really a through lot. You can basically drive straight through the property. So if you have a double-frontage lot, you have frontage on X Street and Y Street. You have no rear yard; you have two fronts. And so you literally can construct a dwelling where you can drive straight through. You could actually have a two-sided garage where you have a front door on the front of the garage and a front door on the back of the garage. You could drive straight through.

And so we would want to discourage through lots. It's just -- it's not very good subdivision subdivision. It's the same as a flag lot, you know, unusual-shaped lots just that result in lot yield. And a lot of these are attempted by subdivision designers just to create lot yield.

And a double-frontage lot is particularly troublesome because where the garage is is where the address is assigned. Same with a corner lot. Even though I know you have a lot of old subdivisions here, the address

Page 44

should be where the driveway is. And you've got a lot of properties here in the city that's not the case, and that's just because of their age.

Are there any other questions?

- - -

(No response)

- - -

MR. HAEBERLIN: At this time, then, Mayor, we'd open it for the public hearing and hear those for and against.

MAYOR JENKINS: Okay. Anybody for it?

- - -

(No response)

- - -

MAYOR JENKINS: Against it?

MR. ANDERSON: Anderson.

I'm a little confused, Scott. You've got -- the frontage distance in this document is at the Code-required front building setback line, which is in our case mostly seven feet from the curb. Or are we judging this from the center of the street?

MR. HAEBERLIN: From the front pin.

MR. ANDERSON: From the front pin, which doesn't take in the right-of-way.

Page 45

MR. HAEBERLIN: Correct.
MR. ANDERSON: Then, I'm for it.
MAYOR JENKINS: Anybody else either way?
- - -
(No response)
- - -
MAYOR JENKINS: I'll bring it up to the table. Any comments from the table before we motion?
Will this be first reading?
MR. WEED: That's a good question, Mr. Mayor.
Scott, has this appeared on the agenda before?
MR. HAEBERLIN: Yes, sir. It was on the August -- I believe August 27th and it was recessed till tonight.
MR. WEED: Thank you.
COUNCILMEMBER BATES: You mean July 27th.
MR. HAEBERLIN: July 27th, yes.
MR. WEED: You've had first reading, so this would be second reading and you can pass it.

Page 46

MAYOR JENKINS: Do I have a motion?
COUNCILMEMBER FLEMING: I'd like to make a motion to replace Section 806 in our current code with the new Ordinance 806, Street Frontage Requirements.
MAYOR JENKINS: Do I get a 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

Page 47

Spangler?
COUNCILMEMBER SPANGLER: Yes.
MR. HAEBERLIN: Okay. The next item we're going to go to is 903, which is R-1, Single-Family Residential District.
I would like to add that the Planning Commission recommended approval of all of those items, just for the record, that we've gone through thus far.
The next item, Section 903, I'll pass out. I made copies of where basically I inserted in the text the information from the Planning Commission that they went over, and so if you see at the bottom, this is version two. So basically what I did after the meeting is I tried to just kind of edit in the text just their recommendations so you could see where they kind of weighed in the ordinance as we structured it.
If you recall, we had a lot of discussion about R-1 again because a number of the lots in the city did not meet the requirements for R-1. It was becoming a problem as people were submitting building permits and we were reviewing the criteria for building

Page 48

permits. It was also deterring redevelopment within the city.
And so what we did was we essentially rewrote R-1, and it's still a single-family detached dwelling district. We did address again the concept of the public roads.
Under the Permitted Uses, we still have single-family detached dwellings. We did exclude out mobile, modular and manufactured single-family dwellings and we've listed those as a conditional use.
We still have home occupations like we had before, and it's still limited to one, and that's consistent with the Code.
We still have public parks and common space as required -- as permitted uses within R-1.
And then again in Accessory Uses, no more than one accessory use.
And then under Conditional Uses, we have a number of different provisions for more than one accessory use, carport structures, moved-in structures, which are homes basically -- for example, the State would move a property when they're building a road. People purchase

Page 49

the home and they move it into a community and they then site it on a property. That's fairly common, and it's provided for in your building codes already.

We did provide for, again, the possibility -- I'm always very careful that the City is not viewed as deterring affordable housing. But mobile, modular and manufactured dwellings are conditional uses but they're treated just like site-built houses. They still have to have a two-car garage, foundation, et cetera.

I put some items in here as conditional uses, and the Council can certainly entertain whether they want these in here. I put in homes that were more than 5,000 square feet simply because I think that would be out of character with most of Doraville. It's something that you might want to look at individually, this concept of, quote/quote, McMansions.

I put in there homes with more than five bedrooms -- I'm on page 6 -- homes with more than one kitchen; homes with more than a three-car attached garage; dwellings that have an 800-square-foot accessory structure or

Page 50

larger, which is an extremely large accessory structure; the above-ground swimming pool, which the P.C. did note that they would like to consider taller fences because they feel the above-ground swimming pools are a safety issue.

Churches were always conditional uses in R-1, so I put them in there, and there's some provisions. Cemeteries as well, always a provision in R-1, and that is fairly common because cemeteries can be looked at as an open space.

And so those are all the items that are listed under Conditional Use. I'm certainly not married to any one of those; however, the reason I put them in there is I think that they have logical reasoning within the context of the development you have here, particularly your existing neighborhoods.

When we go down to lot size on page 7, this is where we have to try to look at how we take in as many lots that exist in the city. 10,200 was the lot size under your old Code, but that included wetlands and flood plain, okay, and so we still will allow that as an existing

Page 51

lot. However, we have put provisions in here for new lots to not have wetlands and flood plain counted as the 10-2. They could have them but they would just be extra, but they have to meet the minimum 10-2.

We did put a provision in here which is consistent with your Code: in areas that have no sewer, 22,000 square feet or greater as mandated by Public Health. So if you should annex an area, for example, where there is no public sewer availability, you still have the provision in here; you can still have 22,000-square-foot lots.

And we put a provision in here for the mobile and manufactured dwellings as conditional use, one acre.

And then of course cemeteries, 15 acres.

I'm not sure that we'll ever have these items submitted to the City, but if you do, you have provisions in here.

Under Lot Width, again, you recall very little if nothing here in the city is 85 feet wide. Most are 50s, 60s and 70s. So what I did was I looked at 60 foot of width for prior

Page 52

existing lots on page 8, and lots that exceed 250 feet in depth, 50 feet.

You'll ask me where are those. Well, they're primarily in the Tilly Mill Road area. 50 by 250 plus is very common in Tilly Mill. So again, I'm trying to capture these lots that don't meet the 85-foot requirement.

However, for new lots, I kept that standard. It seems a reasonable standard, and it seems consistent with new lots maintain the 85.

Again, on all these, I put a provision for mobile and modular homes -- 120 feet for mobile and modular homes.

The next section is Public Road Frontage, which we just went over.

The next section is Front Setbacks. Your existing front setbacks in the city really deter development, and I'll tell you why: because there are many homes that are built over their front setbacks. So there's really not a lot they can do to improve the appearance of the front of their home. So we did reduce that. The most that I was willing to reduce it to was 20 feet because 9 by 20 is a standard parking

Page 53

1 space. That allows you to park a vehicle in
2 your driveway without the vehicle hanging into
3 the public right-of-way. So I did go from 35
4 feet to 20 feet, and that is, again, to
5 encompass existing development and to allow some
6 improvements on the front of people's homes.
7 And again, the mobile, modular and
8 manufactured, 75 feet.
9 On the Side Setbacks is the next item
10 on page 8, we have 10 now. There are many homes
11 that are built in violation of a 10 side-yard
12 setback. The most that you can go down to
13 without having to do fire suppression is five
14 feet. There is nothing you can do about that.
15 When you get below five feet, you're installing
16 a residential sprinkler system.
17 Now, that certainly works great in
18 communities where there's lots of new construc-
19 tion and you can install all those materials at
20 construction. We're in a different situation
21 here. So I will tell you that if we get in a
22 situation below five feet, we're going to have
23 to be looking at sprinkler systems.
24 I did create a provision in here for
25 three-story buildings to have a 10-foot side.

Page 54

1 And it certainly seems logical based on the
2 concept of regulating light and air, from which
3 zoning comes from, that we want to have more
4 green space around a taller building.
5 And again the last -- and you see this
6 all throughout here -- the mobile, modular and
7 manufactured dwellings, 25 feet. In other
8 words, they have the highest requirements
9 imposed on them; not only the lot width, the
10 setbacks, everything.
11 The rear on page 9 is still 20 feet,
12 again, except mobile, modular and manufactured
13 which is 50 feet. So we're keeping the same
14 standards we had but we're putting a provision
15 in there for that mobile, modular and manufac-
16 tured dwelling as a conditional use.
17 The height, three stories or 35 feet,
18 whichever is greater, subject to FAA guidelines.
19 COUNCILMEMBER FLEMING: Excuse me.
20 MR. HAEBERLIN: Yes, ma'am.
21 COUNCILMEMBER FLEMING: I thought our
22 rear yard right now was 25 feet.
23 MR. HAEBERLIN: The copy of the R-1
24 that I have, it is 20, but I will doublecheck
25 that for you.

Page 55

1 The heated square footage. This was a
2 major issue, because everybody turning in a
3 building permit was having to be evaluated on
4 heated square footage, and if they were below
5 the heated square footage, they had to bring it
6 up to the heated square footage.
7 As you recall, in the Code today it was
8 1,250 square feet. Well, that didn't encompass
9 a whole lot of dwellings in the city, so I
10 lowered it for existing development to 900
11 square feet. Is that going to take in every
12 house in the city? I know it will not. I will
13 factually tell you that. There are many in the
14 Tilly Mill Road area that are 6,800 square feet.
15 But it takes in most of them.
16 And I don't know that the Council -- I
17 particularly don't feel much comfort in going
18 below 900 heated square feet.
19 However, for new construction, I set
20 the threshold at 2,000. And that is certainly
21 doable and it's consistent with what's being put
22 in here. Actually, most of your new development
23 is 2,500, 2,800, 4,000 square feet. Your
24 primary builder in the city builds way more than
25 2,000 square feet.

Page 56

1 The next item is Maximum Impervious Lot
2 Coverage. If you recall, your existing code
3 only addressed the footprint of the house, not
4 all the impervious, which is all the blacktop,
5 concrete, et cetera, swimming pool, gazebo,
6 walkways, driveways, footprints, everything.
7 Most stormwater folks want to set that bar
8 between 32 and 35 percent for detached. I set
9 it a little higher at 40 percent because I think
10 you've got a lot of existing development that
11 you really need to capture by having a little
12 higher impervious situation, so I set that at
13 40, 40 percent.
14 On the Parking section, this is where
15 we had to get very creative with existing
16 development because you have everything. You
17 have a single-car carport, you have a two-car
18 carport; you have houses with one-car garages,
19 cars [sic] with two-car garages, cars with no --
20 homes with no garages, et cetera.
21 So you have four different options
22 there that provide you the opportunity to meet
23 the requirement for parking, and that does
24 include some outside parking spaces.
25 But on new construction -- and this is

Page 57

1 consistent with what I recommended to you in the
2 past -- new construction, definitely two-car
3 garage. That is the standard, I think, and
4 certainly in 14 metropolitan counties. And so I
5 put that in there as a requirement, and I also
6 did say that they should be either side- or
7 rear-oriented. And the reason why I'm saying
8 that is because the primary focus on new
9 development of a home doesn't need to be the
10 garage.
11 Existing properties I fully understand
12 have many more limitations and they certainly
13 should be able to entertain a front-entry garage
14 if they want to put one in. But on new
15 development, it's very simple to take care of.
16 It's just in choosing your plans. You choose
17 plans with side or rear entry. And it certainly
18 improves the streetscape of the city.
19 So I know that was a lot of information
20 to go over. If there are specific questions,
21 lets go back to them.
22 MR. WEED: Councilman Fleming, what was
23 your -- your question was the minimum rear yard?
24 COUNCILMEMBER FLEMING: Yes, sir. I
25 have here minimum rear yard, 25 feet.

Page 58

1 MR. WEED: I have that, too.
2 MR. HAEBERLIN: I'll check my copy.
3 I made a typo in mine. I do apologize.
4 It was 25 feet. I stand corrected.
5 So let's keep that at 25 feet on page 8
6 of 12 unless the Council has a desire to reduce
7 that further.
8 COUNCILMEMBER BATES: The minimum rear
9 yard?
10 MR. HAEBERLIN: 25 feet, page 9.
11 Excuse me. Page 8.
12 COUNCILMEMBER BATES: Page 9.
13 MR. HAEBERLIN: Oh. Sorry. Yes. I'm
14 looking at the other 20 on here, which was the
15 front.
16 Again, this creates more situations for
17 people to be able to improve their existing
18 homes. This graces in or corrects a lot of
19 problems with homes that are built over the side
20 setback lines, over the front setback lines.
21 And if you have an existing home or you're close
22 but you want to do some sort of exterior
23 remodel, maybe a new porch or some bay windows
24 or what-have-you on the front of the house, it
25 gives you an opportunity to do some remodeling.

Page 59

1 So I think this will definitely help the
2 situation throughout the city in terms of
3 building permits without us having to consider
4 everything under legal nonconformity.
5 COUNCILMEMBER BATES: All right. Let's
6 talk about house replacement.
7 MR. HAEBERLIN: If a dwelling was
8 destroyed more than 60 percent -- and this is
9 under nonconforming -- then it would no longer
10 be grandfathered -- I hate to use that word --
11 grandfathered to what it was.
12 COUNCILMEMBER BATES: And so it would
13 need to be in compliance with these --
14 MR. HAEBERLIN: That's correct.
15 COUNCILMEMBER BATES: Okay. It is
16 impossible. We'll just use my house. We'll
17 throw in another "Bates amendment." It is
18 impossible for my lot, should something happen
19 to my house, to comply with a 2,000 square foot
20 heated structure with a two-car garage.
21 MR. HAEBERLIN: Even with two-story
22 construction?
23 COUNCILMEMBER BATES: Yep.
24 MR. HAEBERLIN: I don't know the
25 particulars of your lot.

Page 60

1 COUNCILMEMBER BATES: And my lot is
2 just like every other lot in Northwoods. I
3 don't see how we can get and put in a
4 requirement for a two-car garage on our lot
5 sizes when you've already admitted that our lot
6 widths are not compliant with what they should
7 be. They've been reduced now or proposed to be
8 reduced down to 60 on existing.
9 MR. HAEBERLIN: Which is just what you
10 already have. It's the lot that you have today.
11 COUNCILMEMBER BATES: I just don't see
12 topographically, logistically how it is even
13 remotely possible -- and I will admit I am
14 neither an architect nor an engineer, so I throw
15 that out readily -- to get this in compliance on
16 existing lots. So all of them on --
17 MR. HAEBERLIN: Most people -- I'll
18 tell you, most people that come to see me that
19 want to discuss a garage, they typically are
20 looking at adding a garage to the front, and
21 they are either going to do a side-entry garage
22 where they're turning in and their front door
23 may be located adjacent to the turn like a
24 parking court, or they're looking at just a
25 strict front entry. In that case, they would

Page 61

still have to have a 20-foot setback. So they could have a paved area out to the right-of-way where they could park their car on.

And so I certainly will agree with you, there are a bunch of existing developments in the city that if they were destroyed, it would be an entirely different situation. The bulk of your new construction would be two stories. And that is what is in the market right now. The bulk of new construction in Georgia is two stories.

COUNCILMEMBER BATES: I appreciate that. But you're also penalizing individuals who find, like and enjoy a one-story ranch property. And you mentioned previously that the city has a need for affordable housing and wanting to avoid the modular home but yet going to a 2,000-square-foot, two-car garage with the foundation being in brick or stone. That doesn't equate to me to be affordable.

MR. HAEBERLIN: Well, I didn't say I was an advocate for affordable housing. I said that I wanted to make for certain there were not allegations that the city did not provide opportunities for affordable housing of all different

Page 62

types within the context of our land use.

I would agree with you. 2,000 heated square feet may or may be looked at as affordable housing by some. Now, there are communities that set the bar higher than that, I'll be honest with you. Okay.

And it may be that you want to consider that at 1,450, but realize this: Whatever you set the bar at is the minimum. They can certainly build much more but they are not required to build any more than that if that's what you set it at.

So for example, all of our infill developers could then -- if you set it at 1,450, they can build 1,450. They meet the Code completely. The Council would have nothing to say about that.

COUNCILMEMBER BATES: I hear you, and I understand that.

MR. HAEBERLIN: Sure.

COUNCILMEMBER BATES: As it sits right now, it's 1,250 --

MR. HAEBERLIN: Yes, sir.

COUNCILMEMBER BATES: -- and they are going over and above that.

Page 63

MR. HAEBERLIN: Yes, sir.

COUNCILMEMBER BATES: So from a developer's standpoint, I would think that a developer who is looking to do infill is going to look to maximize -- to maximize.

What I'm more concerned about is a resident who is, by freak of nature, by vandalism, by some unfortunate scenario, who likes their 1,200-square-foot, one-floor brick ranch is now going to be required to build a 2,000-square-foot, two-car garage, and figure out how to put it on their existing lot.

MR. HAEBERLIN: Correct.

COUNCILMEMBER ALEXANDER: And if they have an insurance, insurance is not going to pay for it.

COUNCILMEMBER BATES: Right. Insurance isn't going to pay for future development or proposed development. It's going to pay for existing.

MR. HAEBERLIN: I understand.

COUNCILMEMBER BATES: So I'm with you on new development but I'm not with you on our existing lots and putting a requirement of a 2,000-square-foot minimum heated space, two-car

Page 64

garage. This needs working for those in our neighborhoods who like that look and feel.

MR. HAEBERLIN: Well, realizing whatever standard we set by policy today, if it stays in effect, obviously -- let's say a catastrophe occurs. Whatever that standard is will be the standard, certainly. And that applies whether you have a 600-square-foot house today or you have a 3,000-square-foot house today or a 2,000-square-foot house today if it's destroyed more than 60 percent. And I did not touch the nonconforming sections of the Code. That's exactly the way it was written before. It says it would have to comply with the Code requirements.

So either look at tweaking the 2,000 or lowering it; maybe some language which addresses lots of record. I don't know, Mr. Weed, how you would address that.

COUNCILMEMBER ALEXANDER: I have the same concern, not on necessarily a catastrophe but on penalizing a new homeowner. Say a new homeowner buys one of those nonconforming lots over on Haviland or whatever and they want to expand it. They don't know that we have this

Page 65

1 ordinance that says they have to install a
2 sprinkler system in their house. That won't be
3 on the closing papers' disclosure.
4 I think that we're penalizing new blood
5 coming into this city by handcuffing them,
6 basically, on their ability to improve their
7 home. A lot of people come into our city and
8 buy these homes with an eye for the potential
9 that the home can be for them and their family,
10 and we don't want to handcuff that Americana
11 dream by saying, "Well, you can have it, but
12 guess what? Because you bought the lot that
13 your carport's askew, you know, three feet, you
14 can't do this and you can't do that and you have
15 to install a sprinkler system in your house."
16 MR. HAEBERLIN: Well, remember the past
17 -- and I apologize, I was not here. And I'll
18 tell you, at the time these homes were built, I
19 don't think anybody looked at any regulation,
20 because I have been shared and shown some very
21 oddball situations.
22 However, I'll be factual with you, as a
23 planner: I think it would be irresponsible for
24 me to recommend to you that we simply accept all
25 these past mistakes, particularly when you're

Page 66

1 below the five feet. The other stuff, you know,
2 we've addressed, and we try to help and assist
3 people to be able to retrofit their houses as
4 much as possible. But the side setbacks is
5 simply a situation which every jurisdiction
6 grapples with.
7 And I'll tell you, most people don't do
8 their due diligence and they don't buy from a
9 survey. They don't have a survey at the time of
10 closing, so they actually have no idea what
11 they're buying. And that is unfortunate,
12 because it's not required any more.
13 So some folks do, I agree, they buy
14 sight-unseen. It is buyer beware. That's not
15 every home in the city, buy there are certainly
16 some situations. There's some houses built at
17 zero setback to the side lot line and there are
18 certainly some houses that are built over the
19 side lot lines. That, we could never resolve,
20 either. That just is what it is.
21 I don't think that's going to be every
22 home in the city. I think that the residential
23 fire suppression is still fairly affordable,
24 between $1,500 and $2,200. Most communities
25 that are south of us such as Forest Park and

Page 67

1 other areas mandate it for every single house
2 now. They require it. And particularly in
3 jurisdictions like out in California, it's
4 required regardless of what the setback is.
5 Okay?
6 But I think that if the City is going
7 to entertain these reductions below five feet --
8 and this would be something that would have to
9 be a variance situation; these are these
10 oddities -- then you need something in there to
11 protect you as the Council in terms of liability
12 as well.
13 And again, I think it would be
14 irresponsible for me not to recommend that to
15 you. That's certainly something you may choose
16 to strike. But when we're getting below five
17 feet, we're getting into a very situation of
18 side-yard setbacks.
19 COUNCILMEMBER FLEMING: Okay. In
20 regards to Ms. Alexander's point as far as the
21 verbiage is concerned, it says, "no
22 administrative variance shall be permitted," but
23 then it goes on in that same -- and please help
24 me to understand this: It then says "must
25 install residential fire suppression to expand

Page 68

1 or enlarge the dwelling upon the granting of a
2 variance by Mayor and Council."
3 MR. HAEBERLIN: Uh-huh. I mean you're
4 still going to have these nonconforming
5 situations come to you. There certainly will be
6 much less than they were -- much less -- because
7 we're helping all these people with side
8 setbacks, with front setbacks, we're helping
9 people with these lot widths and we're trying to
10 capture all that we can.
11 But there are still going to be people
12 who have houses that are built two feet from the
13 side lot line, that are going to come in to City
14 Hall, present us a survey and want to build onto
15 that house.
16 COUNCILMEMBER FLEMING: So in regards
17 to the administrative variance, that's the
18 Mayor's? Is that what --
19 MR. HAEBERLIN: That is --
20 COUNCILMEMBER FLEMING: -- you're
21 referring to?
22 MR. HAEBERLIN: -- the Mayor's and --
23 COUNCILMEMBER FLEMING: And then he's
24 not allowed to do it, but the variance could
25 come to us to hear?

Page 69

MR. HAEBERLIN: Uh-huh.
COUNCILMEMBER FLEMING: Okay. All right.
MR. HAEBERLIN: Which I think is certainly appropriate.
COUNCILMEMBER FLEMING: Okay. Thank you.
MR. HAEBERLIN: As far as I know -- and I've only been here 11 months -- the Mayor has never granted an administrative variance that I'm aware of.
MAYOR JENKINS: (Shakes head)
COUNCILMEMBER FLEMING: And I wanted to comment on Mr. Bates' comments that he made about his particular property, for instance.
Since we are already listing three different ways in here in regards to before August 24th and after August 24th and if it's a mobile, modular or manufactured, why can we not do lots created before August 24th and have that sentence in there and then include the statement after that, "replacement of" -- and put it in this particular --
MR. HAEBERLIN: Uh-huh. I know what you're talking about.

Page 70

COUNCILMEMBER FLEMING: -- (overspeaking) that it says replacement of 60 percent damaged property will apply to prior to August 24th?
COUNCILMEMBER BATES: I wouldn't even be opposed to meeting you halfway: you know, 1,000 or 1,200 on existing properties on a replacement side.
I'm just looking at my -- I'm being -- I admit I'm being very, very selfish.
MR. HAEBERLIN: That's good. You should be.
COUNCILMEMBER SPANGLER: So if, knock on wood, this doesn't ever happen, but if my house burned down and this is in place, I'm going to be required to put in a 2,000-square-foot heated home with a two-car garage.
MR. HAEBERLIN: Correct.
COUNCILMEMBER BATES: With a side entrance, side or rear entrance.
MR. HAEBERLIN: Correct.
COUNCILMEMBER FLEMING: And you can't really go around the side because you're already three feet from the --
COUNCILMEMBER BATES: Right. It's not

Page 71

going to happen.
COUNCILMEMBER FLEMING: Okay. So that's why I'm suggesting that we put another sentence in here, possibly, about replacement of existing property prior to August 24: that it can be --
COUNCILMEMBER BATES: I would --
COUNCILMEMBER FLEMING: -- or something.
COUNCILMEMBER BATES: I would even make it a little bit more restrictive of a replacement of existing structure as a result of act of God or fire or whatever. If someone voluntarily chooses to tear down their house, if they voluntarily choose to come in and buy a house and tear it down and build new, I'm not so sure that I'm opposed to having them comply with new types of --
MR. HAEBERLIN: Correct.
COUNCILMEMBER BATES: -- building --
COUNCILMEMBER FLEMING: Well, catastrophic --
COUNCILMEMBER BATES: -- building structure. But if it's catastrophic --
COUNCILMEMBER FLEMING: -- instances,

Page 72

yes.
COUNCILMEMBER BATES: -- I have huge heartburn over requiring a homeowner to be forced to comply with new standards for something that they have no choice --
MR. HAEBERLIN: I understand.
COUNCILMEMBER BATES: -- to do.
MR. HAEBERLIN: And we've had to look at a lot of those lately. I will tell you, the ones we've looked at lately have all been under the threshold of 60 percent. And I've gone out and visited these homes, and let me tell you, the tree damage to the homes in the city of lately has been substantial. We've been very lucky that they've been captured underneath that clause that exists today, because they're getting very close. Some of them are near tear-down, to be honest with you.
So I certainly understand that rationale. And you're looking in terms of some sort of language which addresses lots of record and --
COUNCILMEMBER BATES: See, I would even -- maybe even create yet a fourth one, but the brand new, a brand-new lot with a brand-new

Page 73

1 home, I don't have any problem with complying
2 with this.
3 Then there's the catastrophic I think
4 needs to be a replacement or a similar-sized
5 replacement clause.
6 But then there's the voluntary buy-it-
7 tear-it-down-build-something-new. I'm
8 challenged to see if someone were -- and again
9 I'll use my property. I'm challenged to see
10 where if someone were to buy -- If I were to
11 sell and someone were to buy it and choose to
12 tear it down, I'm challenged to see how they
13 could comply with this on the lot.
14 MR. HAEBERLIN: Well, they have a
15 three-story option, now, recall, so there's some
16 play in there.
17 COUNCILMEMBER BATES: Where I'm having
18 an issue is the driveway and the garage issue,
19 and how do you -- with the lot width, how do you
20 get a driveway that doesn't do more than 40
21 percent of the impervious surface --
22 COUNCILMEMBER ALEXANDER: And do rear
23 entry.
24 COUNCILMEMBER BATES: -- and do a rear
25 entry or a side entry on our lot widths?

Page 74

1 MR. HAEBERLIN: It would certainly
2 curtail the number of accessories you could
3 have, certainly.
4 COUNCILMEMBER BATES: I think it's -- I
5 think it would breach the side-yard setback. I
6 think it would require all sorts of variances to
7 be in compliance.
8 I think there needs to be a fourth, and
9 that's a voluntary tear-down/replacement.
10 MR. HAEBERLIN: So for example, you
11 could say on page 9: Dwellings which are
12 constructed subsequent to August 24, 2009 on
13 lots which were created subsequent to August 24,
14 2009, 2,000 heated square feet.
15 That's the type language you're trying
16 to tell me that you want.
17 COUNCILMEMBER BATES: Run that by me
18 again.
19 MR. HAEBERLIN: Dwellings which are
20 constructed subsequent to August 24, 2009 on
21 lots which were subdivided subsequent to August
22 24, 2009, 2,000 heated square feet.
23 MR. WEED: You mean prior to.
24 COUNCILMEMBER BATES: No.
25 MR. HAEBERLIN: Subsequent.

Page 75

1 COUNCILMEMBER BATES: Yeah.
2 So any new lots, new homes after today
3 would need to be in compliance with 2,000 heated
4 square feet and a two-car garage.
5 MR. HAEBERLIN: A new lot and new home,
6 correct.
7 COUNCILMEMBER BATES: New lot, new
8 home. So even an assemblage would fall under
9 that.
10 COUNCILMEMBER FLEMING: Mr. Weed, on
11 the second one, he's got the word "created," and
12 he wants it as "subsequent," correct?
13 MR. HAEBERLIN: And so you could even
14 say in that statement, "Voluntary demolition
15 shall be subject to the 2,000 heated square
16 footage requirement," but that's if you wanted
17 to even go further.
18 COUNCILMEMBER BATES: Well, that's --
19 that's where I'm not sure that I agree.
20 I think there's existing, replacement
21 as a result of catastrophic, replacement by
22 choice, and then new.
23 MR. HAEBERLIN: Correct.
24 COUNCILMEMBER BATES: I think there's
25 -- in my world, there's four levels.

Page 76

1 MR. HAEBERLIN: Uh-huh.
2 COUNCILMEMBER BATES: And I think they
3 go exceedingly up in requirements. If you
4 choose -- you know, Joe Person who lives in
5 Dunwoody or Buckhead or Alpharetta wants to buy
6 a Doraville house and tear it down and build
7 something new, I think there's a certain level
8 of standard that they need to hit.
9 I'm just concerned that they're not
10 going to be able to build this house on our
11 lots.
12 MR. HAEBERLIN: They're primarily going
13 to be creating new lots for these, yeah.
14 COUNCILMEMBER BATES: So --
15 MR. HAEBERLIN: Which is a scarce
16 resource here, really. Your ability to have
17 lots of new lots is very limited.
18 COUNCILMEMBER BATES: Well, that leads
19 me to why we need to have a voluntary tear-down
20 requirement, but I don't -- and audience,
21 correct me if I'm wrong, but I don't see how
22 you could build a 2,000-square-foot minimum,
23 two-car garage on our existing lot sizes.
24 MR. CRAWFORD: Brian, how wide is your
25 lot?

Page 77

COUNCILMEMBER BATES: I'm sorry?
MR. CRAWFORD: How wide is your lot?
MAYOR JENKINS: Wait just a minute. We're going to have a public hearing in a minute.
MR. HAEBERLIN: Well, Council, I hate to use specifics, but the people who have been building infill houses thus far have been granted variances on their situations, and basically they're achieving that already and more. They're achieving generally 2,800 and 4,000 square feet. Now, mind you, they did not have the impervious limits set on them.
COUNCILMEMBER BATES: But they're also not doing rear or side garage entry.
MR. HAEBERLIN: That is correct.
COUNCILMEMBER BATES: They're doing front, front garage entry.
MR. HAEBERLIN: They are doing front, which they could actually put an L out to the front now that they can go closer to the street and simply, instead of running the driveway straight in, the driveway runs in and turns. So you're going to have -- you're going to have generally a side entry. You're not going to

Page 78

have many rear.
COUNCILMEMBER BATES: But in order to have a side entry, the house has got -- in order to meet your setback requirements, the house is going to have to be very narrow.
MR. HAEBERLIN: How so?
COUNCILMEMBER BATES: Well, because you've got to have room to back the car out. You've got to have at least 12 feet from the garage to the fence or side yard in order to actually back the car out of.
MR. HAEBERLIN: Correct. But you're just going to build across the width of the lot, and the side-entry garage is going to back up and turn and go towards the street. But the leading edge of the house will still be the leading edge, which is generally going to be the garage --
COUNCILMEMBER BATES: Right. So if you've got --
MR. HAEBERLIN: -- in that situation.
COUNCILMEMBER BATES: If you've got a 60-foot lot width, let's take 15 feet off the side -- let's take five feet off of both sides for your side setbacks --

Page 79

MR. HAEBERLIN: Okay.
COUNCILMEMBER BATES: -- so now you're at 40 feet [sic].
MR. HAEBERLIN: Uh-huh.
COUNCILMEMBER BATES: Now let's take 15 feet off the side so that you've got enough room to move the car in and out of turn radius. So now you're at 35 for the width of the house.
COUNCILMEMBER FLEMING: Yeah. And you said 15 off of 40.
COUNCILMEMBER BATES: No. Yeah. Yeah, you're right.
You're at 25 feet. You've got a 25-foot wide house.
MR. HAEBERLIN: Well, really, no. I mean you're -- I think you're envisioning the house differently than I am.
You're still -- you have five foot each side.
COUNCILMEMBER BATES: Right.
MR. HAEBERLIN: And on new lots, they're still going to be 85 feet. So for new construction, it works perfectly.
COUNCILMEMBER BATES: Well, we're back on existing.

Page 80

COUNCILMEMBER ALEXANDER: I'm not that opposed, not just because I have one, having a front-entry garage.
I could not have a side-entry garage on my lot because I am a corner lot and the majority of my side yard is right-of-way.
MR. HAEBERLIN: Well, it may be as simple as removing the provision regulating the entrance to the garages, that you allow front or side or rear, and that might be the simple solution to providing a multitude of ways for folks to create their desired effect and still have development.
COUNCILMEMBER FLEMING: Mr. Bates, on a front-entry two-car garage on your size lot --
COUNCILMEMBER BATES: It would look really ugly.
COUNCILMEMBER FLEMING: -- would you be able to construct 2,000-square-foot heated?
COUNCILMEMBER BATES: Yeah. You'd have to go vertical. You'd have to put a taller house on it.
See, I would be in favor of a one-car garage on replacement. I mean I . . .
Let me make sure that the Planner and I

Page 81

are on the same page on this.
MAYOR JENKINS: Let's take a five-minute break while he confers with the Planner on this.
MR. HAEBERLIN: Okay.
- - -
(Brief recess)
- - -
MAYOR JENKINS: Meeting come to order. Brian, you had the floor.
COUNCILMEMBER BATES: Yes, sir, Mayor. Thank you.
I want to make a recommendation to the Council. One recommendation is first that we're going to postpone this to the August 31st meeting, but I will ask Council to agree to having four criteria. One would be -- Maybe it's three. Hold on.
One would be the new lot/new house, and that would be to agree with Mr. Haeberlin's recommendation of 2,000 and two cars -- two-car garage. Then there would be a voluntary tear-down which would be some square footage in between, and I'm going to throw out 1,500 and one-car garage. And then there's going to be

Page 82

the catastrophic replacement at 12,000 -- or 1,250 square feet, no garage requirement.
COUNCILMEMBER FLEMING: I'd like a friendly amendment --
COUNCILMEMBER BATES: I'm all ears.
COUNCILMEMBER FLEMING: -- to the catastrophic.
COUNCILMEMBER BATES: Yeah.
COUNCILMEMBER FLEMING: Us getting back to a 900-square foot house. The insurance company is only paying them for the existing home that's on there. So friendly amendment to that, Brian.
COUNCILMEMBER BATES: Can we go with 1,000 so that we start to elevate and bring up the square footage of our homes?
COUNCILMEMBER FLEMING: That would be fine.
COUNCILMEMBER BATES: So 1,000 on catastrophic, 1,500 on voluntary tear-down and 2,000 on new/new.
COUNCILMEMBER FLEMING: On the 1,000 square foot, the catastrophic, are you putting in the one-car garage?
COUNCILMEMBER BATES: No garage.

Page 83

COUNCILMEMBER PITTMAN: Did you say no garage?
COUNCILMEMBER BATES: No garage. No garage required. Certainly if they want to put one in, they would be free to do that.
MAYOR JENKINS: Or a carport.
COUNCILMEMBER BATES: Carport. There would be no requirement for a garage or carport under the catastrophic.
COUNCILMEMBER FLEMING: I have a question, Mr. Haeberlin. On the studies that you've done -- and you've done extensive, and I appreciate it.
On the homes that are 900-and-under square feet, do they have existing garages, generally speaking, in the neighborhoods right now?
MR. HAEBERLIN: No. The ones that are extremely small do not have a garage.
COUNCILMEMBER FLEMING: All right. Thank you.
I agree with those.
MR. HAEBERLIN: And so as well, Councilman Bates, when we move down to page 10, definitely we're going to modify -- we're not

Page 84

going to have any requirements on side or rear, to enable more diverse arrangements; is that correct?
COUNCILMEMBER BATES: No, I'm -- unless Council objects, I'm fine with the setbacks as recommended.
COUNCILMEMBER FLEMING: He's talking about the garages --
COUNCILMEMBER ALEXANDER: The front-entry garage being allowed.
COUNCILMEMBER FLEMING: -- front and back --
MR. HAEBERLIN: Yeah.
COUNCILMEMBER FLEMING: -- rear.
MR. HAEBERLIN: Do you want to strike the side, the side or rear orientation on garages because it might impede on the geography of some of these lots?
COUNCILMEMBER BATES: I would.
MR. HAEBERLIN: Okay. So let me note that, too.
COUNCILMEMBER BATES: Yeah. The front, side or rear of the garage.
MR. HAEBERLIN: So you have all the options. Okay.

Page 85

COUNCILMEMBER BATES: Yeah. And from your diagram of using an L-shaped house, I think that's a great option.

Have you ever thought about doing a booklet of options to give some people here? "Here are some things to consider" versus --

MR. HAEBERLIN: Well, in my spare time.

MR. WEED: Well, that would be done appropriately in an architectural design ordinance. That's where that type of thing belongs.

COUNCILMEMBER BATES: And I think that's something that we should -- because I was -- I was -- in Brian's world, I was in a square or rectangular house and not in an L-shaped configuration, and Mr. Haeberlin showed to me how, on my lot, an L-shaped house would allow for a two-car garage with side entrance. But I wasn't visualizing that, so --

MR. HAEBERLIN: And I want everybody to remember as well, if you are blessed with topography, you can certainly have a walk-out and have a garage underneath. And we have some folks that have that benefit. I mean they have the topography for it. So it's not necessary

Page 86

that you build a garage at grade. You build a garage where the basement was.

MS. AVERS: Can I ask a question? It has to do with insurance replacement cost. Have you studied this?

Avers, Chris.

If we raise the Code to say a one-car garage and 1,200 square feet, insurance companies will replace -- at times, they will replace including the new code. So we would be cutting out a better quality home for someone whose home was catastrophically destroyed, if their insurance company would then be required to bring them up -- bring this new structure up to the minimum code.

COUNCILMEMBER BATES: My guess would be -- and I don't know the answer, but my guess would be that their premium would have to be adjusted to reflect --

MS. AVERS: Of course they have a higher-value home, but they will have a higher-value home anyway because the house that's being destroyed will have been --

COUNCILMEMBER BATES: No. I think the premium now would be raised to address future

Page 87

value. And I don't know for a fact, but if the replacement requirement --

MS. AVERS: That's true. That is true.

COUNCILMEMBER BATES: So I don't know that that is a viable --

MS. AVERS: I don't know. I personally don't think that it would be that impactful to a yearly budget, property tax budget.

COUNCILMEMBER BATES: Mr. Weed, any idea on whether an insurance company would . . .

MR. WEED: I can find out tomorrow. I know every insurance company out there, but I don't know tonight.

COUNCILMEMBER BATES: I guess that the hypothetical would be if we put in a minimum structure size effective tomorrow and a house was catastrophically destroyed, would --

COUNCILMEMBER ALEXANDER: That was smaller than the minimum.

COUNCILMEMBER BATES: -- that was smaller than the minimum, would they replace value up to the minimum or would that difference be up to the homeowner?

MS. AVERS: And maybe the question to the insurance company is what is replacement

Page 88

value? Is replacement value up to new code?

MR. WEED: I'll find out first thing tomorrow.

COUNCILMEMBER BATES: Thank you.

MR. HAEBERLIN: Okay. So I think I understand the charge that Mr. Weed and I have relative to these changes.

Was there any other items that you guys were concerned about?

COUNCILMEMBER ALEXANDER: I have questions regarding --

MR. HAEBERLIN: I did note the rear is 25 on page 9.

COUNCILMEMBER ALEXANDER: I had a question regarding the stacked stone or brick. A lot of our homes, the foundation is made out of cinder block.

MR. HAEBERLIN: That's only on mobile, modular and manufactured, Maria. It doesn't --

COUNCILMEMBER ALEXANDER: No. My home --

COUNCILMEMBER BATES: Well, no. He's right. The requirement --

MR. HAEBERLIN: It only applies to conditional uses.

Page 89

1 COUNCILMEMBER BATES: Yeah, he's right.
2 COUNCILMEMBER ALEXANDER: I didn't
3 think so.
4 COUNCILMEMBER BATES: Yeah. It's part
5 of that section.
6 MR. HAEBERLIN: That's a criterion for
7 conditional use, for a very specific type of
8 single-family detached use.
9 COUNCILMEMBER ALEXANDER: So you would
10 still allow -- you would allow -- I think now
11 they're using formed concrete?
12 MR. HAEBERLIN: That, again, is only on
13 mobile, modular or manufactured.
14 COUNCILMEMBER ALEXANDER: But you would
15 allow it on a home.
16 MR. HAEBERLIN: It would not -- there
17 would be no restriction on any other home.
18 COUNCILMEMBER ALEXANDER: Okay.
19 MR. HAEBERLIN: We would handle that in
20 an architectural code.
21 COUNCILMEMBER ALEXANDER: Okay.
22 COUNCILMEMBER BATES: Thank you.
23 MAYOR JENKINS: I think we're going to
24 postpone this.
25 COUNCILMEMBER BATES: Yeah. I'll make

Page 90

1 a motion to postpone.
2 MR. HAEBERLIN: Mr. Weed, do we want to
3 have the public hearing now or --
4 MR. WEED: That's up to the Council.
5 MR. HAEBERLIN: Okay. I just wanted to
6 ask.
7 MAYOR JENKINS: I think we need the
8 input of the public. In changing this, we can
9 have their input just like Chris gave her input
10 on what we need to look at.
11 MR. HAEBERLIN: So we go ahead and
12 conduct the public hearing on this item at this
13 point?
14 MAYOR JENKINS: Well, being as we're
15 going to postpone it, we can just have comments,
16 can't we?
17 COUNCILMEMBER BATES: Yeah.
18 MAYOR JENKINS: Mr. Crawford, didn't
19 you want to say something?
20 MR. CRAWFORD: Ben Crawford speaking as
21 a citizen, Mayor, City Council.
22 I think that we have to be careful a
23 little bit that we don't -- when we're doing our
24 changing and everything else, that we don't look
25 at all the what-ifs that are going to happen;

Page 91

1 because some of the examples that were cited by
2 Mr. Bates or other people on Council could be
3 what-ifs that may never happen. And if you're
4 going to set the bar real low, you know, what's
5 the point of doing the rewrites? We should --
6 You know, I again think that we have a
7 City Planner for a reason. And I'm not saying
8 that the Council can't decide anything they want
9 to decide, but I think we're trying to build to
10 the future and we should not -- we should be
11 careful about plugging in all these what-ifs at
12 a lower bar, lower threshold. I think that it's
13 the future of the city we're looking for, and it
14 impacts everybody's home values and everything
15 that everybody in the community has worked for
16 for the last few years.
17 Thank you.
18 MAYOR JENKINS: Thank you, Ben.
19 Susan?
20 MS. FRAYSSE: Susan Fraysse. I live in
21 Oakcliff Estates.
22 The main thing I want to say is that
23 I'm very, very glad that we are finally getting
24 around to taking care of making our laws match
25 what we really have in the city. I think the

Page 92

1 idea of gracing in all these homes, I think it's
2 very sensible. The vast majority of people,
3 it's going to give them more opportunities to do
4 the kind of remodeling that we all want to see
5 happen, and we're going to have higher goals and
6 standards for the homes in our community. And I
7 appreciate your work on it. I know it's
8 tedious, but I think it's important, and thank
9 you.
10 MAYOR JENKINS: Thank you.
11 MS. GREENWAY: Ms. Greenway, and I live
12 on Pontiac Circle off of Tilly Mill Road.
13 I want to tell you I agree with Brian
14 because we've still got a lot of older citizens
15 here, and if they had a catastrophic thing,
16 where are they going to get the extra money?
17 And the insurance may be, but I don't think that
18 Mr. Attorney --
19 MR. WEED: "That guy over there" is
20 good enough.
21 MS. GREENWAY: That guy over there; the
22 attorney, Mr. Weed.
23 I think his answer is going to be no,
24 that they won't pay, but there again, we'll wait
25 and find out.

Page 93

But you've got to still consider that these lots are the size they are, and people -- you know, Vera Bailey, for example, up at the end of the street, if something happened to her -- her husband worked at General Motors. She's lost her insurance, she's lost her retirement; he's dead. What if she had a -- where would she be with all the new? I mean, you know, she's entitled -- you know, she's been a good citizen. And whoever that man was that was born in 1932, said he'd been here for a long time. You know, these people are older. And yes, we will die off, I promise you, and I'll let some of you younger people come in and then buy two lots, and they can build these homes.

But until we go, treat us right. Thank you.

MAYOR JENKINS: Any more comments?

- - -

(No response)

- - -

MAYOR JENKINS: Do I get a second on that motion?

COUNCILMEMBER PITTMAN: Stuart.

MAYOR JENKINS: Come on, Stuart, let me

Page 94

know. We don't need to sit around here and wait 10 minutes for you to answer.

MR. ANDERSON: Raising my hand. I don't raise it high enough. Stuart Anderson.

Well, I hate this. Page 3, "All . . . subdivision streets shall be public, built to Applicable . . . County standards." Something that Murray had commented on. If we get a petition to take over Avery Park or something, we'd have to tear down some townhomes to get 60-foot radiuses for fire trucks to go through.

That particular situation on page 3, it says, "All new subdivision streets," et cetera, I reference back to page 6 [sic], which is under Conditional Uses, "Any interior streets shall be private and maintained by the property owner and shall not be accepted for dedication to public use." That's fine under conditional uses, but I -- I don't think it should be there, period, under conditional uses.

We're trying not to have 3- and 5-acre PUDs. We should have hundred-acre PUD, planned unit developments.

That conditional use, the allowance of that conditional use in the ordinance allows for

Page 95

a -- one of the criteria for planned unit development is to have private streets, and that's why I object to it. It's zoning. It's allowing a zoning change under conditional use without comment by the adjacent city people.

So page 4, there's no ABC in this, so it's hard for me to represent for you. It's basically the second paragraph down, Permitted Uses. It says "customary home occupation subject to restrictions of Code detailed in Section 614 provided, however, that group homes, personal care homes, nursing homes and day care shall not be permitted as customary home occupations . . ."

COUNCILMEMBER FLEMING: There has been an addendum to that.

MR. ANDERSON: Okay. And this is --

COUNCILMEMBER FLEMING: And it states "when State regulation is required."

MR. ANDERSON: All right. I saw it as being problematic. Thank you.

The next sentence down is "Public parks (either active or passive) when owned and operated by the City of Doraville." "When owned and operated by the City of Doraville," well,

Page 96

all parks that we have are owned and operated by the City of Doraville. I wrote "no private, question mark."

I don't understand that statement. Are there private parks? If there are private parks, they would be part of planned developments, once again.

Next paragraph down, "These areas shall not be conveyed" to the public, city. The wording on that sentence, "Common open spaces (either active or passive use) when owned and maintained by a mandatory property or homeowner's association and reflected on the final plat of the development. . . These areas shall not be conveyed to the City or County" or any other public agency," I guess I don't understand that sentence at all.

The next sentence down, under Accessory Uses, says one accessory structure. I wrote two under it. And there's been a great deal of back and forth in this conversation about different ways of getting more and less accessory structures, so I don't see -- I don't see the linearity in this document as to references back and forth as to how you can have or have more or

Page 97

1 less of these accessory structures.
2 Scott has done -- has started to do a
3 good job of referencing back and forth, but
4 that's a particular area that needs to be so
5 that when people read this document they know
6 that there are different ways of having
7 different numbers of accessory structures.
8 Page 5. We've been discussing
9 carports. I guess I understand this part of it.
10 But once again, without a lot of back-and-forth
11 referencing, there's different ways of having
12 more carport or less carport and garages. I
13 would like either a separate, stand-alone
14 section of this document to address all of those
15 areas and/or at least cross-reference those
16 areas back and forth.
17 Two paragraphs down, "Any single-family
18 detached dwelling structure whose primary
19 entrance facade is not constructed parallel or
20 nearly parallel (within 20 degrees) of the front
21 . . . setback line," we've allowed -- we've said
22 no, no to mobile and modulars, and then we've
23 once again put mobiles and modulars into
24 conditional uses.
25 I know Mr. Weed probably will tell me

Page 98

1 that we have to allow modulars and that we can
2 regulate them with so much difficulty so that
3 nobody can do them.
4 When you read this whole document, it
5 makes you feel like you can have mobile/modular
6 homes, and then you have to go back and forth
7 once again referencing and find that you can't
8 have them or that they're very restrictive.
9 Once again, I would like to compile some of that
10 so people can know better.
11 The 5,000 square foot house is, I wrote
12 "interesting" after that, which gets us to a
13 conversation we had earlier about how many
14 square feet you can put on . . .
15 I apologize. Back up.
16 There was a situation where you could
17 put a certain size building on a 60-foot
18 frontage. By increasing the square footage of
19 the building, it almost required you to buy two
20 lots and build the building on that to satisfy
21 that size.
22 Page 6, "Any accessory structure which
23 is larger than 800 square feet of gross floor
24 area provided that it is no larger than 50
25 percent of the heated square foot," that means

Page 99

1 that I can have a 400-square-foot garage. This
2 50 percent rule is . . . I find it problematic.
3 Down here to cemeteries and churches,
4 the 20-foot buffer for cemeteries, I'd like to
5 see a height. 20 feet wide of plantings is
6 fine, but I would like to see a provision in
7 there that requires that planting or that buffer
8 to have a certain height so that it is a buffer
9 rather than you can plant all petunias out there
10 for 20 feet and I still have to look at a
11 cemetery. So I think there should be a height
12 involved in that.
13 And once again, at the bottom of that
14 page is the interior street situation.
15 In Dimensional Requirements, lots
16 created -- and maybe we covered this in
17 conversation with Council back and forth. "Lots
18 created before August 24, 2009, shall have
19 10,200 square feet." What if they don't? What
20 if we got a lot out there that was created
21 before August 24th and it doesn't have 10,200
22 square feet? Now all of a sudden we've got an
23 illegal lot whether you've got a building on it
24 or not. You've made a statement that lots
25 created before the 24th have to grow to 10,200

Page 100

1 square feet. Some of them don't; they're not
2 that big; so I find that problematic.
3 And Scott in conversation did that
4 mention that in this paragraph, I believe, that
5 nonconforming uses should be referenced from
6 this or as part of this.
7 And we've discussed at some length the
8 22,000 square foot minimum exclusive-of-wetlands
9 lot size. Once again, that's buying two lots
10 and putting a house on it. I'd call that -- in
11 the zoning, I would have R-1 Super 1's or
12 something where you have $500,000 houses with
13 5,000 square feet houses on them, et cetera,
14 et cetera. But a 22,000 square foot lot is at
15 least a couple of our lots, so I find that
16 difficult.
17 "In no circumstances, shall the minimum
18 dwelling size be decreased based on septic tank
19 usage." I guess I just don't understand that.
20 "Circumstances, shall the minimum dwelling size
21 be decreased." I don't understand that.
22 Next paragraph down is fine. I guess
23 that's -- that's what I was referring to before
24 about putting modular and mobiles on one acre of
25 land, which makes it pretty difficult to do. We

Page 101

1 do, however, have some one-acre lots over in
2 Carver, so that -- that -- we could have
3 mobiles.
4 I also have a question about the
5 modular thing. There are some beautiful,
6 wonderful, amazingly well-constructed modular
7 homes being built in factories around the
8 country. Those modular homes would be, I
9 promise, if you looked at them, they'd be
10 welcome in the city. They're nicely made,
11 et cetera. So we're putting mobile homes and
12 modulars in together, and there are modular
13 homes that are very desirable in the
14 marketplace.
15 Cemeteries at 15 acres, I guess that's
16 fine, which is preclusive of having them, I
17 guess.
18 Minimum Lot Width. "Lots created
19 before August 24 . . . shall have 60 feet of
20 width." What if that lot was created before
21 August 24th and it's 50 feet? We're making a
22 statement that that lot now has to be -- we have
23 to get our lot stretcher out and widen the lot.
24 It's a problematic statement. It's hard to
25 stretch that lot unless you buy another lot next

Page 102

1 to it.
2 85 feet. R-85s are a fairly standard
3 thing through zoning, so I certainly agree with
4 R-85s which is the next paragraph down.
5 And once again, the next paragraph
6 down, modular and mobiles will have 120 feet
7 minimum lot width, we're precluding mobiles.
8 But like I said before, the modular house
9 concept is -- there's some darn nice ones.
10 Minimum Frontage, 30 feet. I guess
11 that's fine.
12 And then we have setbacks, the five
13 feet. I guess I agree with five feet, but we're
14 talking about quality development. By having a
15 five-foot setback, we're encouraging more
16 coverage of our lots. We're getting toward --
17 somewhere on the next page, we're getting down
18 toward the 40 percent and the 60 percent earlier
19 and 30 percent current or 20 percent current of
20 lot coverage.
21 I think the five feet should be
22 debated. Certainly for fire reasons, there has
23 to be 10 feet between structures so that fire
24 trucks and fire people can get between these
25 buildings, and I think that's where the five

Page 103

1 foot on each side comes from.
2 For quality housing, perhaps 10 should
3 be the consideration. I don't know. But I find
4 it something that should be discussed.
5 Three-story dwellings, 10 foot. We'll
6 get to three-story dwellings in a second here.
7 We're on page 9. 25-foot . . .
8 manufactured dwelling, percentage of lot
9 coverage. Sorry. I'm talking to myself.
10 Okay. Minimum -- Maximum Building
11 Height. This got my attention. Maximum three
12 stories or 35 feet, which is greater . . . to
13 FAA guidelines. There's nothing here that says
14 where that measurement is taken from. Is the
15 height of that building taken from the center-
16 line of the street? Is it taken from the front
17 porch of the new house or the old house or from
18 the front yard level or from the back yard
19 level?
20 Bill Brackbill builds a nice man-made
21 hillside so that he can put the aforementioned
22 walk-in third floor down below. We have topo-
23 graphy. Maria's house would qualify. She's
24 built on a little top of a hill. She could
25 build a garage in there, a third floor

Page 104

1 underneath her house, literally, and it's
2 because of topography. And that topography is
3 great for the developers. They push up a bunch
4 of dirt and they have themselves a hillside and
5 so we get a three-story building.
6 But there's no control over this 35
7 feet or this three stories. We don't know where
8 we're measuring it from. The height of the back
9 yard that's now a man-made hillside or the
10 height of the front yard that's somewhat
11 relative to the street height?
12 The old book I think says something,
13 and/or I've read it somewhere, about the height
14 of a building from the front stoop, the front
15 porch. So this 35-foot thing is measured from
16 where? There's no measurement starting point in
17 that situation.
18 Carports, dwellings. We've covered
19 most of that. I think we got some satisfaction
20 there.
21 This is an important thing. The 40
22 percent, 30 percent, 20 percent of lot coverage
23 has pretty much been taken care of by Scott with
24 the use of heated space, and that's an important
25 phrase.

Page 105

1 The City of Atlanta in trying to fight
2 the McMansion thing decided to include front
3 porches covered or otherwise, decks and that
4 sort of structure as footprint. Right now, what
5 we have, I guess, with not covering those decks
6 and those front porches is an amazing -- we can
7 cover the lot. We might have a 40 percent rule
8 here or a 30 percent rule or whatever we decide
9 on, but without either designating . . .
10 And certainly we need to designate in
11 this that the -- that the -- and there's nothing
12 in this document to designate whether we're
13 using decks or front porches covered or other-
14 wise, et cetera, et cetera, as footprint. That
15 needs to be designated so people know that those
16 things are or are not part of the coverage. And
17 by using them as part of the coverage, we are
18 being better for our stormwater situation, our
19 runoff situation, our permeability.
20 We need to address that, whether we're
21 going to -- and so that people know, when
22 they're building a house or modifying a house or
23 whatever, that their 40 percent or 30 percent or
24 whatever we decide on is contingent on the
25 actual footprint which is decks and carports and

Page 106

1 all the rest of this. That's a big, open
2 loophole there without having that designated.
3 Sorry for all this, but I've been
4 reading this thing.
5 Driveways reference, page 10, the word
6 "accord." I don't know if that's the correct
7 word or not. I guess it is. I apologize.
8 That's what I had to say about 903.
9 MAYOR JENKINS: Thank you.
10 MR. ANDERSON: Thank you.
11 And I wish you would postpone this till
12 after the 31st meeting so that I can come back
13 from Utah and see what y'all are doing, because
14 I'm going to be out of town. Thanks.
15 MAYOR JENKINS: Do I have a second on
16 Brian's motion?
17 MR. WEED: Mr. Mayor, before you --
18 MAYOR JENKINS: He made a motion to
19 postpone it.
20 MR. WEED: Yeah. Before we do that,
21 though -- and this is up to the prerogative of
22 the Council -- do you want to consider this to
23 have been the public hearing and you're now
24 closing it or do you want to . . .
25 Because what you've said, Mayor, was,

Page 107

1 you know, this was going to be a commentary --
2 UNIDENTIFIED SPEAKER: Exactly.
3 MR. WEED: -- but we didn't talk about
4 whether this was going to constitute public
5 hearing or not.
6 MAYOR JENKINS: I think we had a public
7 hearing, don't you?
8 MR. WEED: It sounds like we did to me,
9 too, sir, but that's up to you.
10 MAYOR JENKINS: I would say this was a
11 public hearing and --
12 MR. ANDERSON: The opening statement
13 was a commentary, not a public hearing.
14 MR. WEED: The entire -- to address
15 Mr. Anderson, as long as we've followed the
16 Zoning Procedures Act, which we have, it's up to
17 the Council to determine if you want to consider
18 what has occurred a public hearing and want to
19 apply those rules or not. It's up to you.
20 COUNCILMEMBER FLEMING: Well, if we're
21 postponing it to a date certain, it's a
22 continuation of this public hearing.
23 MR. WEED: Well, it's a continuation of
24 a public hearing but the subpart of it is the
25 actual forum for the public to speak. You can

Page 108

1 either consider that to have occurred and recess
2 it and you can start up with the decisionmaking
3 of the Council, or you can consider it not to
4 have occurred and have the public conversation
5 and for-and-against at that time. So it's up to
6 you.
7 COUNCILMEMBER FLEMING: Okay. Because
8 we -- in my opinion, Council, if we are making
9 changes and we will need to be discussing these
10 changes in front of the public, I think they
11 should be afforded the opportunity to give their
12 opinion of the changes that we will be making on
13 the 31st.
14 MR. WEED: And I have no preference. I
15 just wanted the Council to know what they were
16 doing and decide if you're going to recess it
17 and then you're going to have a public hearing
18 on whatever date you have it. You can do it
19 then, too.
20 COUNCILMEMBER ALEXANDER: May I ask
21 another question, please?
22 Page number 9. "The enclosure of
23 carports and garages shall be prohibited."
24 MR. HAEBERLIN: That is consistent with
25 my previous recommendation. I will be honest

Page 109

with you, and I know this is going to offend a lot of people. But from an appraisal standpoint, much of what has occurred in the city is not an added property value; it's a negative. Generally, these enclosures and additions are very poorly done and, in my opinion, have not added to the aesthetics of the neighborhoods.

One of the great things about having these '60s retro/modern styles that we have is the consistency of the architecture, and when you start toying with those items, it just doesn't work. I'll be honest with you. So if you're wanting us to count that garage or carport as part of the parking requirements, why should we then allow you to enclose it?

And I did want to make some comments for the record: that Mr. Anderson certainly is welcome to review the extensive definitions that have been added to the Zoning Ordinance which define stories, building heights, impervious, et cetera. There was a lot of discussion that I believe was misleading to the Council. Those items have already been addressed in the Zoning Code. They're in the Definitions phase of the

Page 110

Zoning Code.

MR. ANDERSON: Without reference.

MR. HAEBERLIN: It's a document. The whole document is an integrative document. You have to read the document from the very first cover to the very end cover. Only reading a section of it is of no use.

Are there any other questions?

COUNCILMEMBER FLEMING: I have two, actually.

Mr. Anderson did bring up something in regards to the cemetery buffer.

MR. HAEBERLIN: Uh-huh. That would be covered under --

COUNCILMEMBER FLEMING: Should there be a height there?

MR. HAEBERLIN: That's the reason why you have extensive buffer requirements elsewhere in the Zoning Code that describe what consti-tutes a buffer. That's already covered by the Zoning Ordinance.

COUNCILMEMBER FLEMING: Okay. And so then shall we -- on the lots that are not meeting minimum, should we then put a comment in there that those lots would be legal

Page 111

nonconforming or is that --

MR. HAEBERLIN: Well, they --

COUNCILMEMBER FLEMING: -- or is that to --

MR. HAEBERLIN: -- already are.

COUNCILMEMBER FLEMING: -- be assumed?

MR. HAEBERLIN: Yeah. They already are.

COUNCILMEMBER FLEMING: Is that going to be an assumed thing for them even though they don't know that that's what they are?

MR. HAEBERLIN: Well, I think you're always going to have some situations where you're not going to meet this criterion. And as we started out from the beginning, I told you this is going to help a whole lot of people but it's not going to help everybody.

And I can tell you, there are homes on Gentille, for example -- or let's use another one. Valley Stream. There are homes on Valley Stream that are 800 square feet and there are homes on Valley Stream that are 4,600 square feet. So that's how much diversity we have between new development and old development. And there are certainly homes on Valley Stream

Page 112

that are more than three stories, I'll be very frank with you, based on your definitions in the code.

So we're always going to have those situations, and the Council is still going to deal with some variances. I mean I have to be very frank with you. It's not going to help everybody. If you have 801 square feet and you come in to apply for a building permit, guess what? If 900 is the threshold, you're going to have to add enough to get to 900. If you're 600 square feet, you're going to have to add enough to get to 900 again. We still have some of those out-lyers out there.

COUNCILMEMBER BATES: So I'll . . .

Ms. Fleming, are you . . .

COUNCILMEMBER FLEMING: Yes. Thank you.

COUNCILMEMBER BATES: I'll make the motion to recess this until 8/31 of '09 and to continue the public discussion.

MAYOR JENKINS: Public hearing.

COUNCILMEMBER BATES: Yes, sir.

MAYOR JENKINS: Okay.

COUNCILMEMBER PITTMAN: Second.

Page 113

1 MAYOR JENKINS: Any more discussion?
2 - - -
3 (No response)
4 - - -
5 MAYOR JENKINS: Call the roll, please.
6 DEPUTY CLERK BRYANT: Councilmember
7 Alexander?
8 COUNCILMEMBER ALEXANDER: Yes.
9 DEPUTY CLERK BRYANT: Councilmember
10 Bates?
11 COUNCILMEMBER BATES: Yes.
12 DEPUTY CLERK BRYANT: Councilmember
13 Fleming?
14 COUNCILMEMBER FLEMING: Yes.
15 DEPUTY CLERK BRYANT: Councilmember
16 Pittman?
17 COUNCILMEMBER PITTMAN: Yes.
18 DEPUTY CLERK BRYANT: Councilmember
19 Pittman?
20 COUNCILMEMBER PITTMAN: Yes.
21 DEPUTY CLERK BRYANT: Councilmember
22 Spangler?
23 COUNCILMEMBER SPANGLER: Yes.
24 MAYOR JENKINS: All right.
25 MR. HAEBERLIN: The next item we have

Page 114

1 for public hearing is Section 902, which is Uses
2 Common to All Residential Districts.
3 Does everybody have version two of this
4 document? If not, I've got some extras. Let me
5 just pass these out.
6 I know that Mr. E-mail -- Mr. E-mail --
7 Mr. Weed -- sorry, it's late -- Mr. Weed had
8 e-mailed these items and --
9 I'm sorry, Murray.
10 MR. WEED: Hard name.
11 MR. HAEBERLIN: You know we love you,
12 Murray.
13 -- had e-mailed these items, however,
14 just like you guys, I would not want to print
15 all this stuff out in my own personal home, so I
16 did come prepared tonight if you guys had not
17 already had paper copies printed. So it's not
18 that I wanted to waste paper. I just thought it
19 would facilitate the meeting.
20 COUNCILMEMBER FLEMING: What changed
21 from the 31st to August 13th?
22 MR. HAEBERLIN: I believe . . .
23 On this one, Murray, was there any
24 version change? There might have been a typo in
25 this.

Page 115

1 MR. WEED: We're in 902; is that
2 correct?
3 MR. HAEBERLIN: Yes, sir.
4 MR. WEED: Okay.
5 COUNCILMEMBER FLEMING: That's okay.
6 Don't . . .
7 MR. HAEBERLIN: I'm thinking there was
8 something minor. There was not any recommen-
9 dation from the Planning Commission that changed
10 this.
11 So what you have, you have a section of
12 the Code, and we're talking about how to find
13 things. Well, you have to turn to this section
14 of the Code to find these uses that are common
15 to all residential districts, and it doesn't
16 define residential districts.
17 That means, right now, the way it's
18 written, if you live in a townhome community or
19 a multi-family, they're residential districts.
20 You can have all these things listed under
21 Section 902.
22 And there's all sort of things under
23 902 right now in the present Code that I think
24 you should be concerned about, and I think we
25 should address these in each zoning category.

Page 116

1 That would be a much more appropriate location
2 rather than just having this lump-sum location,
3 because, I'll be frank with you: There are
4 items that are listed in here that I can't
5 foresee in a townhome community, for example.
6 So under 902 -- and I'm turning to it --- is
7 this catch-all.
8 Permitted Uses. So all districts right
9 now no matter what it's zoned, you can have a
10 single-family residence. So that kind of
11 mitigates the purpose of having districts. You
12 can have existing cemeteries, public and quasi-
13 public buildings for cultural use, local, State
14 and Federal government buildings. You have all
15 that stuff flat-out permitted, and I'm reading
16 from your existing Zoning Code.
17 Accessory Uses. Accessory buildings
18 and structures, home occupation and subdivision
19 recreation, the parking of not more than two
20 unoccupied travel trailers, motor coaches or
21 pleasure boat. That would certainly be
22 interesting at a townhome or multi-family.
23 Utility substations, railroad through and spur
24 tracks.
25 Conditional Uses. Cemeteries; public,

Page 117

1 parochial and private schools and colleges;
2 churches, synagogues, chapels; country clubs,
3 et cetera.
4 That is a broad smack of items to allow
5 in the many different categories that we have as
6 residential. I, myself, am not comfortable with
7 all those items just being a common use. I
8 don't think they were thought through within the
9 context of your Zoning Code.
10 That's why I'm recommending that you
11 eliminate this section of the Code and that you
12 address each one of these items as you get to
13 the individual zoning categories. You can
14 either list it as permitted or conditional.
15 MR. WEED: With regard to Councilman
16 Fleming's question, on page 1, I changed -- in
17 the last whereas, I changed "is" to "will be
18 superfluous."
19 On page 2, I eliminated the word "the"
20 in the third whereas, making it "imposed upon
21 individual property owner." I eliminated the
22 "the." On page 2, on the third whereas para-
23 graph, I eliminated the word "the" in line two
24 thereof.
25 On page 3, we added an additional set

Page 118

1 of quotation marks to offset the actual text
2 change.
3 Those are all the changes.
4 MR. HAEBERLIN: Like I said, I just
5 thought that was too broad, and really we've not
6 thought through. If I live in a townhome, for
7 example, do I want all these uses allowed there;
8 if I live in a condominium cooperative in the
9 city, et cetera?
10 And that's such a broad category. Why
11 not do each one of these districts, and in each
12 district, consider that specific district, that
13 particular use in that district rather than just
14 allowing them flat out everywhere. I think
15 that's really dangerous. And it is too broad,
16 and it creates situations -- I think you would
17 have trouble with some of these developments,
18 particularly townhomes.
19 So the goal is simply to remove that.
20 We'll be addressing them as we do each district.
21 I think in the meantime, we've allowed those
22 uses in enough areas in the Zoning Code that
23 were covered. And as we rewrite the R-1 again,
24 the things that are particular to R-1 we will
25 include in R-1.

Page 119

1 Were there any other questions?
2 COUNCILMEMBER FLEMING: Will we be
3 replacing 902 at all?
4 MR. HAEBERLIN: Right now, no. I mean
5 we'll reserve the area in the Zoning Code,
6 certainly. And there may be something that
7 later on you might want to come back and put in
8 there.
9 But I'll be honest with you: From that
10 list, I would prefer that you consider those
11 each in each zoning category and make the tough
12 but affirmative decision whether you want those
13 in R-1, R-2, R-3, et cetera.
14 And I have, for September -- let you
15 know I have some of the remaining zoning
16 districts scheduled for us to begin the
17 discussions on the duplex district, multi-
18 family, et cetera, because we have a lot of
19 changes we need to make. And at that time, if
20 you want those uses in those districts, let's
21 say so, we'll put it in that district rather
22 than turning to a section of the Code that
23 people don't even know that exists there. They
24 really don't.
25 If there are no further questions, I

Page 120

1 guess we'll turn to the public hearing section.
2 MAYOR JENKINS: Thank you.
3 Who wants to speak for the ordinance?
4 - - -
5 (No response)
6 - - -
7 MAYOR JENKINS: Against?
8 - - -
9 (No response)
10 - - -
11 MAYOR JENKINS: I'll bring it back up
12 to the table. Any more discussion at the table?
13 Have a -- Well, let me see. Is this
14 the first reading? Do we want to waive first
15 reading? Do I get a motion we waive first
16 reading?
17 COUNCILMEMBER BATES: So moved.
18 MAYOR JENKINS: Second?
19 COUNCILMEMBER ALEXANDER: Second.
20 MAYOR JENKINS: More discussion?
21 - - -
22 (No response)
23 - - -
24 MAYOR JENKINS: Call the roll.
25 DEPUTY CLERK BRYANT: Councilmember

Page 121

1 Alexander?
2 COUNCILMEMBER ALEXANDER: Yes.
3 DEPUTY CLERK BRYANT: Councilmember
4 Bates?
5 COUNCILMEMBER BATES: Yes.
6 DEPUTY CLERK BRYANT: Councilmember
7 Fleming?
8 COUNCILMEMBER FLEMING: No.
9 DEPUTY CLERK BRYANT: Councilmember
10 Pittman?
11 COUNCILMEMBER PITTMAN: Yes.
12 DEPUTY CLERK BRYANT: Councilmember
13 Spangler?
14 COUNCILMEMBER SPANGLER: No.
15 MAYOR JENKINS: Motion carried.
16 COUNCILMEMBER FLEMING: Doesn't it have
17 to be unanimous?
18 MR. WEED: It does. That means you
19 have first reading --
20 COUNCILMEMBER FLEMING: So this
21 particular --
22 MR. WEED: -- and it will be on the
23 next agenda.
24 COUNCILMEMBER FLEMING: Correct.
25 MAYOR JENKINS: Okay.

Page 122

1 MR. WEED: You need to readvertise for
2 this one, Scott, unless you -- unless the
3 Council automatically wants to recess it to the
4 next agenda. You have to do it to a date
5 certain, and that's going to require a motion.
6 MAYOR JENKINS: Wouldn't it be
7 unanimous out of five people?
8 MR. WEED: Sir? I'm sorry.
9 MAYOR JENKINS: Wouldn't three people
10 be unanimous?
11 MR. WEED: Oh, no, sir. In order to
12 waive first reading, it's got to be a unanimous
13 vote.
14 MAYOR JENKINS: You mean at least four
15 votes.
16 COUNCILMEMBER SPANGLER: No.
17 COUNCILMEMBER FLEMING: No. Unanimous.
18 COUNCILMEMBER BATES: Everybody.
19 MR. HAEBERLIN: No. This was on the
20 July 27th agenda, so it's already had a first
21 reading.
22 COUNCILMEMBER FLEMING: It may have
23 been on the agenda but we probably never got
24 around to it.
25 MR. WEED: Well, Councilman, I would

Page 123

1 say that that doesn't matter. If it actually
2 made an agenda, that is the first reading, so
3 that's --
4 COUNCILMEMBER FLEMING: Even though it
5 was never read?
6 MR. WEED: It doesn't have to be
7 physically read into the record. That -- that
8 requirement's not -- it's not required.
9 MR. HAEBERLIN: It was recessed. It
10 was recessed from that day till today.
11 MR. WEED: Okay. All right. And it
12 was on that agenda?
13 MR. HAEBERLIN: The July 27th, yeah.
14 MR. WEED: Okay. My opinion is first
15 reading's already occurred. If an item makes it
16 onto an agenda, especially an ordinance, that is
17 first reading.
18 COUNCILMEMBER FLEMING: I'm sorry.
19 What agenda was it on?
20 MR. HAEBERLIN: The July 27th.
21 COUNCILMEMBER FLEMING: The first draft
22 was July 31st.
23 MR. HAEBERLIN: It was listed on the
24 agenda, though, and we didn't get to that.
25 Remember? We were trying to get a bunch of

Page 124

1 stuff done in R-1. We never got to them. But
2 it was on the agenda, and you guys then recessed
3 it till this evening.
4 MR. WEED: Well, let's answer the
5 question this way: I'm looking through my file
6 to see when I actually did a draft of this
7 ordinance, and I would advise you we're going to
8 go by that date.
9 MR. HAEBERLIN: And the ad originally
10 ran for public hearing July 27th, 2009. It's in
11 the July 2nd Champion newspaper. And it was
12 recessed to a date specific on July 27th. So
13 four districts, 601, 806, 903 and 902 were
14 advertised for this July 27th hearing.
15 MR. WEED: And I apparently -- I sent a
16 draft version of the ordinance out on Friday,
17 July 31st, 2009, at 4:30 p.m. Based upon that,
18 I would think the safest thing to do would be in
19 order to constitute a first reading, that the
20 actual ordinance would need to be in the hands
21 of the Council at a minimum. And it was
22 certainly on the 31st, but that date is after
23 the date of the 27th. You know, therefore, I
24 think the vote on the first reading could stand.
25 First reading has now occurred, and

Page 125

it's now -- you have two decisions to make: One, either you could run another ad and set this to the next zoning agenda, which I believe is the 28th of September --

MR. HAEBERLIN: 28th of September.

MR. WEED: -- or you can recess the remainder of this hearing until August 31st, I believe, is the next zoning meeting.

MR. HAEBERLIN: Yes, sir.

MR. WEED: So that's where you're at in my opinion.

COUNCILMEMBER FLEMING: I'd like to make a motion to recess the public hearing as well as the reading of the ordinance until August 31st.

COUNCILMEMBER SPANGLER: 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

Page 126

Bates?

COUNCILMEMBER BATES: No.

DEPUTY CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

DEPUTY CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

DEPUTY CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MR. HAEBERLIN: I apologize. Did the motion pass?

COUNCILMEMBER FLEMING: Yes.

MAYOR JENKINS: Sir?

MR. HAEBERLIN: Motion did pass? Okay. 8/31?

MR. WEED: Yes. It's now on the 31st.

MR. HAEBERLIN: Okay. So I will not have to readvertise.

MR. WEED: Yes; correct.

MR. HAEBERLIN: Thank you.

The next item --

MAYOR JENKINS: So we're postponing this until the 31st.

Page 127

MR. HAEBERLIN: Yes, sir.

MAYOR JENKINS: One week.

MR. HAEBERLIN: Yes, sir.

MAYOR JENKINS: Okay.

MR. HAEBERLIN: The next item is where we moved those two items down to the very bottom.

We'll do the City-Initiated Rezonings next. The first one is 6129 through 6145 New Peachtree Road. As everybody is aware of this, as you come across New Peachtree over 285, and on the right, there is a development called Pebblewood Apartments, and it has historically held a C-2 zoning which is certainly incompatible with being multi-family. I do have one of our older zoning maps under here, the 1983 map, which shows it as C-2 as well. It's C-2 today.

Again, apartments -- that's not conducive zoning to apartments. The mandate of the Council was to get the map corrected, and that has been my goal.

I did put forward conditions. And I'll let you know that every planner and every attorney have different opinions on how things

Page 128

are to be done, and that doesn't make either one of us a bad or a good person.

Mr. Weed's really not comfortable with conditions on City-initiated rezonings. And to that extent, if he's not comfortable with it as your representative, then I want to agree with him, because the conditions I have placed were merely a platform for rewriting those particular zoning categories, and so we'll still get to use that information. It's good information. The Planning Commission had an opportunity to hear about what I was thinking about in terms of multi-family rewrites, and do that information is still very useful information.

Now, the Planning Commission did recommend approval of this rezoning subject to those conditions. However, as I notified you folks in e-mail that I'd become aware that Mr. Weed was not comfortable with doing conditions on the zonings -- and I'm fine with you striking those if the intent is still satisfied to get these properly zoned.

And this property does need to be R-3. It is multi-family; it has historically been multi-family. I don't know why it's C-2. I

Page 129

1 simply can't answer that question. But it was
2 C-2 in 1983, and so it's been there for about 45
3 years under C-2, and we need to make this
4 corrective of the situation.
5 There has been some discussion about
6 this questioned road right-of-way which is
7 adjacent to that, and that's certainly a unique
8 situation, that there might have been some
9 abandoned right-of-way adjacent to this property
10 that has future development potential as far as
11 actually it's a good thing. And I certainly
12 hope the reserved area for the right-of-way is
13 retained by somebody, either a private
14 individual or the City or the County, because it
15 would provide us with a very unique opportunity
16 if this property is ever redeveloped. And as
17 you rewrite your multi-family codes, I think
18 you'll find that people will then become
19 interested in redeveloping these properties.
20 At 12 units an acre, it's highly
21 unlikely that you're going to get redevelopment,
22 and so we need to look at rewriting the multi-
23 family code very soon. And the conditions as
24 you see here are simply a platform for that.
25 Without belaboring and going through

Page 130

1 the report in great detail, again, the property
2 is developed as multi-family. It should be
3 multi-family. My recommendation is that you
4 rezone it from C-2 to R-3 for that of a multi-
5 family apartment building community without
6 conditions in light of Mr. Weed's comments.
7 Are there any questions from the
8 Council?
9 - - -
10 (No response)
11 - - -
12 MAYOR JENKINS: Okay. No questions.
13 Do we need a public hearing on that?
14 MR. HAEBERLIN: Yes, sir.
15 MAYOR JENKINS: Okay. I'll open it up
16 to public hearing. Anybody for the rezoning?
17 MS. FRAYSSE: It's a no-brainer. I'm
18 for it.
19 MAYOR JENKINS: Okay. Thank you.
20 Anybody else?
21 - - -
22 (No response)
23 - - -
24 MAYOR JENKINS: Against?
25 - - -

Page 131

1 (No response)
2 - - -
3 MAYOR JENKINS: All right. I'll bring
4 it back up to the table. Any more questions
5 from the table?
6 - - -
7 (No response)
8 - - -
9 MAYOR JENKINS: Do I get a motion?
10 COUNCILMEMBER PITTMAN: So moved.
11 MAYOR JENKINS: Second?
12 COUNCILMEMBER ALEXANDER: Second.
13 MAYOR JENKINS: Any more discussion?
14 COUNCILMEMBER FLEMING: Yes, sir. I
15 want to go on record that I'm opposed to City-
16 initiated rezonings without a certified
17 registered receipt to the owner of the
18 properties, to go on file with the City-
19 initiated rezoning.
20 MAYOR JENKINS: Can you do that,
21 Murray?
22 MR. WEED: The Councilman can make
23 whatever objection she cares to, and she has --
24 MAYOR JENKINS: Yeah. I mean do we
25 need to have something like that sent to the --

Page 132

1 MR. WEED: My legal opinion on this is
2 not. My opinion on this is -- we've talked
3 about it a number of times. We have complied
4 with the Zoning Procedures law. And I believe
5 that if we do something more than comply with
6 the Zoning Procedures law, we are creating a
7 trap that eventually we, the City, will step
8 into and it'll hurt us. And therefore, that's
9 why the legislature didn't contemplate --
10 You know, if the legislature had
11 thought it was a good idea, they would have put
12 it into the minimum requirements. Can you
13 legally do more than that? Yes. Should we do
14 more than that? In my opinion, no.
15 COUNCILMEMBER BATES: But, you know, it
16 all goes back to --
17 I mean I feel like Ms. Fleming. I
18 think we should notify the property owners that
19 we're going to make this change. It's really --
20 is it better for them or is it going to not be
21 as good for them? If they want to sell this
22 property, it would be worth more as C-2 than it
23 would be R-3. Is that correct?
24 MR. WEED: That would be my opinion,
25 yes.

Page 133

1 COUNCILMEMBER SPANGLER: And so maybe
2 they don't even want this.
3 I understand, you know, Mr. Haeberlin
4 wanting to get our map fixed and I'm all for
5 that, but I think that we owe it -- And one
6 thing that we commented and commented positively
7 on is getting with the property owners and the
8 business owners to let them know what's going
9 on.
10 COUNCILMEMBER BATES: Mr. Haeberlin,
11 was there a sign put up in front of the
12 property?
13 MR. HAEBERLIN: No, sir. It's not
14 required of City-initiated rezonings.
15 And I did want to state for the record
16 the property is being taxed as multi-family in
17 the county; so although it's benefited for years
18 of having a C-2 designation on the map, they've
19 never actually paid the taxes of C-2.
20 COUNCILMEMBER SPANGLER: But the
21 property is still worth more as C-2 than what it
22 is if we change it to R-3.
23 MR. HAEBERLIN: Could be argued, but
24 it's a legal conforming use. I mean it's a
25 plethora of problems as it is under C-2. And

Page 134

1 like I said, I'm just complying with the minimum
2 requirements of your Code.
3 And these folks, the only benefit
4 they've had is they've been on the map as C-2
5 for years but they've never paid any taxes as
6 C-2. I could certainly understand some of your
7 statements if they had been paying C-2 taxes.
8 In the county, they're being taxed as what they
9 are, not what the map shows them to be.
10 COUNCILMEMBER FLEMING: I'm not opposed
11 to correcting our map. I know that we need to
12 correct the map.
13 The only thing that I am opposed to is
14 the taking of property without notification to
15 the owners.
16 MR. WEED: We're not -- I mean legally
17 we're not taking property, in my opinion.
18 MS. AVERS: Chris Avers.
19 If we left it at C-2, wouldn't we have
20 to call Code Enforcement and have the people
21 removed since we can't have people living in
22 commercial property?
23 COUNCILMEMBER FLEMING: I am opposed to
24 the non-notification to others --
25 MS. AVERS: I got that.

Page 135

1 COUNCILMEMBER FLEMING: -- when we --
2 MS. AVERS: I got that.
3 COUNCILMEMBER FLEMING: That's what I'm
4 opposed to.
5 MS. AVERS: But now we're in a position
6 where we might have to expel people from their
7 homes because they're in commercial property and
8 dwelling there.
9 COUNCILMEMBER FLEMING: Then, right
10 now, they're legally nonconforming.
11 MR. WEED: The City would take the
12 position that it's a legal nonconforming use.
13 And that would be in our best interests because,
14 otherwise, it might constitute a legal taking,
15 and unless we're prepared to buy the place,
16 which we can do, and take domain, which I don't
17 . . . that's up to you if you wanted to, I
18 wouldn't necessarily recommend that.
19 MR. ANDERSON: Since we're taking
20 liberty and standing up and positioning, I'm
21 certainly in favor of Pam Fleming's comment
22 about letting people know, and particularly this
23 particular landowner. I'm in favor of letting
24 the people around them understand or hear about
25 zoning changes.

Page 136

1 But I was at the Planning Commission
2 meeting when this was discussed, and
3 Mr. Haeberlin came up with all sorts of
4 covenants for this particular property.
5 And letting -- changing the zoning on
6 those people is one thing. But then also
7 putting covenants on these people, the owners of
8 this property, without letting them know that, I
9 really find that morally problematic.
10 MR. HAEBERLIN: And for the record,
11 sir, again, I recommended that no conditions be
12 placed on the property. Strictly C-2 to R-3.
13 MR. ANDERSON: All that discussion,
14 there was no covenants put on the thing?
15 MR. WEED: That is correct, based upon
16 my advice.
17 MAYOR JENKINS: Okay. No more
18 discussion. We'll call the roll.
19 DEPUTY CLERK BRYANT: Councilmember
20 Alexander?
21 COUNCILMEMBER ALEXANDER: I wanted to
22 make sure that the motion -- do we already have
23 a motion --
24 MAYOR JENKINS: That's right.
25 COUNCILMEMBER ALEXANDER: -- on the

Page 137

1 table? I mean obviously we do.
2 DEPUTY CLERK BRYANT: Ms. Pittman made
3 a motion moved.
4 COUNCILMEMBER ALEXANDER: Okay. But I
5 want to make sure the motion is to rezone it
6 without the conditions.
7 DEPUTY CLERK BRYANT: She just said,
8 "So moved," when the Mayor asked for a motion.
9 Ms. Pittman just said, "So moved," when the
10 Mayor asked for a motion. She didn't state what
11 the motion was.
12 MAYOR JENKINS: All she wants you to do
13 is add with no conditions.
14 COUNCILMEMBER PITTMAN: Okay. Then my
15 motion --
16 MAYOR JENKINS: Is that correct?
17 COUNCILMEMBER ALEXANDER: I'm sorry,
18 sir?
19 MAYOR JENKINS: You wanted the motion
20 to read how?
21 COUNCILMEMBER ALEXANDER: Without the
22 conditions.
23 MAYOR JENKINS: Make a motion to rezone
24 it from C-2 to R-3 without --
25 COUNCILMEMBER ALEXANDER: Conditions.

Page 138

1 MAYOR JENKINS: Okay.
2 COUNCILMEMBER PITTMAN: My motion is to
3 change the property, New Peachtree Road,
4 Pebblewood Apartments, C-2 to R-3 without
5 conditions.
6 MAYOR JENKINS: I already got a second.
7 Would I get another second?
8 COUNCILMEMBER ALEXANDER: Second again.
9 MAYOR JENKINS: Okay. Call the roll,
10 please.
11 DEPUTY CLERK BRYANT: Councilmember
12 Alexander?
13 COUNCILMEMBER ALEXANDER: Yes.
14 DEPUTY CLERK BRYANT: Councilmember
15 Bates?
16 COUNCILMEMBER BATES: Yes.
17 DEPUTY CLERK BRYANT: Councilmember
18 Fleming?
19 COUNCILMEMBER FLEMING: No.
20 DEPUTY CLERK BRYANT: Councilmember
21 Pittman?
22 COUNCILMEMBER PITTMAN: Yes.
23 DEPUTY CLERK BRYANT: Councilmember
24 Spangler?
25 COUNCILMEMBER SPANGLER: I'm going to

Page 139

1 say yes, but in the future, I would like for us
2 to let the property owners know what we're
3 doing. I mean if they're being taxed on the R-3
4 like you say they are. And let them understand
5 that the difference in the property valuation of
6 C-2 and R-3.
7 And the only reason I'm saying this is
8 because of what Ms. Avers said. You know, I'd
9 certainly hate to put those people out of their
10 homes if we kept it C-2.
11 MAYOR JENKINS: Yeah.
12 MR. HAEBERLIN: And this discussion is
13 for a later time. First of all, I think, with
14 all due respect to you, sir, if the Council
15 would like to make that a mandate, they can
16 certainly change the conditions, City-Initiated
17 Rezoning section of the Code, certainly.
18 But I also wanted to let you know, this
19 is not the only situation we're going to have to
20 deal with because we still have a huge amount of
21 people that are living in properties that are
22 zoned commercial, and we're not getting the
23 taxes for commercial. So we've got some
24 problems to deal with. And so I want you to
25 understand that within the context of the City-

Page 140

1 initiated rezonings.
2 And it's certainly something if the
3 Council as a majority wants to do that, then we
4 just need to know. We need to have a Code
5 amendment. We need to know. We need to have a
6 Code amendment so I'm not put in a situation
7 where I'm treating one person differently than
8 the other. That's all I'm concerned about.
9 MAYOR JENKINS: Motion carried.
10 MR. HAEBERLIN: The next item, again,
11 is a City-initiated rezoning. This is 2535
12 Garrett Circle, which is a single-family
13 detached dwelling. It is within a subdivision;
14 however, it is the only home in the subdivision
15 which is zoned O/I.
16 I did go back and look again on a very
17 old zoning map, the 1983 zoning map, which shows
18 it, again, as O/I. And I also had some
19 interaction from some local, long-time residents
20 to help me to understand why it became O/I.
21 However, I'll let you know the property has
22 never been converted to that of O/I. It
23 currently has a residential tenant in it and it
24 is developed as a house.
25 And so, again, this is corrective

Page 141

1 zoning to make that property compliant with what
2 it is, and that is a single-family detached
3 structure.
4 Now, for those of you who are watching
5 our ads, I want you to know that, again, Dekalb
6 County tax information has mistakes in it. This
7 was originally advertised -- there's two parcels
8 that are described as 2535 Garrett Circle. The
9 first one is apparently some right-of-way. And
10 then upon notification that there were two
11 parcels, I readvertised this. So you will
12 actually see two ads on this item, fully
13 compliant with the ZPA. And I went ahead and
14 readvertised it with the second parcel number so
15 that we had the certainty that we have properly
16 advertised it, and that's regarding the ad.
17 So again, this is based on, again,
18 inconsistencies, is to correct that map. You
19 certainly do not want an O/I-zoned property in
20 the middle of a residential neighborhood. I
21 think that certainly does deter folks from
22 looking at investment in that area. It's
23 consistently R-1 surrounding it. The only
24 anomaly is what I refer to as the Peter Maltese
25 site, which is a large triangle which is zoned

Page 142

1 O/I which is on the southern boundary of this,
2 and I don't know if that might be the reason why
3 the house got the O/I zoning or not. But the
4 rest of the parcels in this neighborhood
5 developed as single-family detached, that have
6 structures on them, is zoned R-1 as well.
7 So I did want to let you know that
8 based on the old code, it is deficient on lot
9 width. Again, no surprise; it does not have 85
10 feet at the street frontage. I did want to let
11 you know that.
12 And again based on the recommendation
13 of the City Attorney, my recommendation, even
14 though the Planning Commission recommended
15 approval with conditions on this item, is that
16 based on Mr. Attorney's -- or Mr. Weed's recom-
17 mendation that we not have conditions on zonings
18 that are City-initiated, that I am fine with you
19 zoning this property without conditions. Again,
20 we're addressing R-1 right now.
21 COUNCILMEMBER SPANGLER: So we have not
22 discussed this with the property owner?
23 MR. HAEBERLIN: No, sir. However, the
24 property owners did receive a visit from the
25 Code Enforcement authority to figure out why

Page 143

1 people were living in a house zoned O/I, so
2 they're aware of the situation.
3 COUNCILMEMBER SPANGLER: And what kind
4 of taxes have they been paying? Have they been
5 paying for --
6 COUNCILMEMBER ALEXANDER: Residential.
7 COUNCILMEMBER SPANGLER: -- residen-
8 tial?
9 MR. HAEBERLIN: They've been paying
10 residential; however, they have shown on the
11 city map to have the benefit of that of having
12 O/I.
13 And this is not uncommon, and
14 particularly even in Carver Hills, which I'll
15 discuss in more detail with the Council at a
16 later date. There's a lot of people who are
17 getting benefits but not paying the tax.
18 So are there any specific questions
19 from the Council?
20 - - -
21 (No response)
22 - - -
23 MR. HAEBERLIN: Okay. We'll need to
24 have a public hearing if there are no further
25 questions.

Page 144

1 MAYOR JENKINS: Okay. Anybody for the
2 rezoning?
3 MR. AMBROSE: James Ambrose. I'm
4 speaking as a citizen.
5 I live three houses from this house, 50
6 years ago. It has always been a house. It has
7 never been anything else but a house.
8 And the reason I believe it's O-1 [sic]
9 is when 285 and Peachtree Industrial got
10 extended, there was a triangle there, that there
11 was a rumor they were going to try to put a
12 funeral home in that area. It never passed, and
13 I don't think that area was ever changed. But
14 there was a filling station right there where
15 Peachtree Industrial and 85 [sic] for maybe ten
16 years.
17 I'd say pass this to an R-1, which it's
18 always been that.
19 MAYOR JENKINS: Thank you.
20 Anybody else?
21 - - -
22 (No response)
23 - - -
24 MAYOR JENKINS: Against it?
25 - - -

Page 145

(No response)
- - -
MAYOR JENKINS: Okay. Do I get a motion?
COUNCILMEMBER BATES: I'll make a motion to rezone Garrett Circle from O/I to R-1 without conditions.
MAYOR JENKINS: Second?
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: No.
DEPUTY CLERK BRYANT: Councilmember Pittman?

Page 146

COUNCILMEMBER PITTMAN: Yes.
DEPUTY CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: I'm going to say yes just because of the same situation as before. And my comment is I really wish in the future that we would notify the property owners or business owners what we're doing even if it's to their benefit, because I'm sure the property would be worth more O&I than what it would be R-1.
MAYOR JENKINS: Thank you. Motion carried.
Motion we adjourn?
COUNCILMEMBER SPANGLER: So moved.
MR. HAEBERLIN: Wait, wait. We have some items that we've not formally done the action on. We have 1501 and 601. If we're going to reset -- They were advertised for public hearings tonight, and are we going to recess these items to 8/31 as well? But they were advertised for public hearing.
MAYOR JENKINS: When did you put those on?
MR. HAEBERLIN: They are 4B and 4C,

Page 147

sir.
MAYOR JENKINS: I apologize to you. I've got an old agenda.
MR. HAEBERLIN: Oh, I apologize.
MR. WEED: I would just mention --
MAYOR JENKINS: I have an old agenda. It doesn't have the 5C on it.
MR. HAEBERLIN: Well, it was previously 4B and 4C, which is 1501, which is Conditional Use Criteria, and Section 601, which is Accessory Uses and Structures.
I, honest with you, feel that I need some additional time on 601 because of some of the input from both the public and the Planning Commission, so I'm fine with that being recessed to 8/31 if you would so entertain. And similarly, I think there were some comments on Conditional Use Criteria that I think that I would like to have some more time to discuss with the City Attorney. And then certainly you guys have some thoughts you can share with me tonight if you have the time and would entertain. But I'm fine with both of those items going to 8/31. It would give us a little more time to work on some items. But they were

Page 148

advertised for public hearing tonight.
COUNCILMEMBER ALEXANDER: Are we discussing version one?
MR. HAEBERLIN: Which one are we on?
COUNCILMEMBER ALEXANDER: 1501.
MR. HAEBERLIN: Yes, ma'am.
COUNCILMEMBER ALEXANDER: Mr. Weed, page 6, item number 3.
MR. WEED: All right. Give me a second.
MR. HAEBERLIN: And remember, this only had one draft.
MR. WEED: Okay.
MR. HAEBERLIN: Does everybody --
COUNCILMEMBER ALEXANDER: Page 6 --
MR. HAEBERLIN: -- have a copy of it?
COUNCILMEMBER ALEXANDER: -- item number 3, should that word be "discontinued?"
MR. WEED: I believe that should be "discontinued."
COUNCILMEMBER ALEXANDER: Thank you.
COUNCILMEMBER FLEMING: Ms. Alexander, what page again? I'm sorry.
COUNCILMEMBER ALEXANDER: Six, number 3.

Page 149

COUNCILMEMBER BATES: Under C.
MR. WEED: It would be C(3).
COUNCILMEMBER BATES: C(3).
COUNCILMEMBER FLEMING: C(3)?
MR. HAEBERLIN: "Discontinued." Uh-huh, I've got it.
COUNCILMEMBER BATES: We're going to discount it.
COUNCILMEMBER ALEXANDER: We're just picking on you, Murray.
MR. HAEBERLIN: One of the --
MR. WEED: Happy to be here.
MR. HAEBERLIN: -- discussion items, if we want to entertain some discussion on this, at the Planning Commission level was that there are some conditional use permits that are very strict limits and they're not a year, and so there's some things in the Code like rodeos and some things that have very specific time limits.
The way Mr. Reed has -- Mr. Weed has written this -- I cannot speak tonight -- he would allow those up to one year. That was the concern not only of the staff but the Planning Commission. There are some things that maybe we should have some . . . a little play with how

Page 150

that's written -- in other words, that they're approved for one year unless as otherwise specified in the Code -- and that was one of the items that was discussed.
And then of course we did discuss this idea of reviewing every conditional use every year. Now, that means that in the first year, you're going to have a minimum of two hearings, and if you make a decision to revoke it, you'll have three hearings. And in the second year, you would have, again, another hearing; the third year, fourth year, fifth year. And we were looking at was that too arduous for staff level and should there be more ability for the Council to perhaps stagger these like one, two, three, four, five, something like that.
And the basis of this is that recall the fee for this is $400. Three public hearings a year on $400, that's not much, and that may cover the first public hearing but it certainly won't cover the second or the third.
And that was some of the comments that were brought forth at the Planning Commission level. It did not pass at the Planning Commission level because there were two for it

Page 151

who basically liked the concept and two against it who had some things that they thought should be changed before it went forward.
MR. WEED: And with regard to the basic structure of how it's drafted, I made an attempt to include as many of the comments from Council that Scott and I had in advance.
I am by no means married to a review every single year. In fact, City of Hapeville did that, and they abandoned that because they determined that that process was too unwieldy.
But please bear in mind, I don't like conditional uses. I think either something should be permitted or not permitted, period, but that's my personal preference as a lawyer.
And so therefore, if you grant a conditional use, it's still my personal preference as a lawyer that it's granted, it's granted once, it's granted, period, because it goes with the zoning.
But I drafted it based upon the feedback we had from Council at the time.
COUNCILMEMBER ALEXANDER: If a conditional use is granted, then the business closes and the same type business does not move in

Page 152

there for six months, then the conditional use goes away?
MR. WEED: Yes.
COUNCILMEMBER ALEXANDER: Okay.
COUNCILMEMBER BATES: I'll make a motion to recess 1501, 601, and -- it's not on our agenda because we recessed it from our last Council meeting -- the alcohol ordinance, Chapter 3, various sections, to 8/31 of '09.
MAYOR JENKINS: Second?
COUNCILMEMBER PITTMAN: Second.
MAYOR JENKINS: Any more discussion?
COUNCILMEMBER FLEMING: Yes. I need to follow up on Ms. Alexander's question. And I'm trying to find it right now, but I thought the conditional use was to the applicant and not to the property.
MR. WEED: We -- we -- at the Council's request, there is some language to that effect.
In my legal opinion, after you grant the conditional use, it's part of the zoning. But some of the members of the Council wanted that in there, so I've included that as part of the discussion.
COUNCILMEMBER FLEMING: So are you

Page 153

1 saying it's to the property or to the applicant?
2 MR. WEED: My opinion is that
3 conditional use, after you set up the objective
4 criteria and somebody meets that, they have a
5 hearing and they've met the criteria, the
6 conditional use is then part of the property.
7 Just like, for example, if you had a
8 standard rezoning, an applicant came in and
9 wanted to rezone their land from Office/
10 Institutional back to Residential and the
11 Council felt like there ought to be some
12 conditions placed upon that, those conditions
13 literally become part of the zone just as if it
14 was a Planned Unit Development project. And
15 those conditions then become part of the zone;
16 they travel with the land.
17 In my opinion, a conditional use there
18 is very dif- -- is not very much different than
19 a conditional use permit, in my opinion, which
20 is why I frown on these things generally.
21 I think the only thing you can do is
22 you have another hearing once a year or however
23 many times you want to, to try to revisit it,
24 and then revote it up or down.
25 MR. HAEBERLIN: I mean that's common in

Page 154

1 a lot of the jurisdictions I've worked in,
2 certainly. They revisit them, so --
3 COUNCILMEMBER ALEXANDER: But would you
4 not have to have a reason to revoke their
5 conditional use permit? Would you not have to
6 have a valid reason for revocation?
7 MR. WEED: No, ma'am.
8 And it's no different -- the power of
9 zoning is constitutionally provided to the
10 general assembly and to the local governments,
11 and it's no different than what you've already
12 done twice tonight, which is when you rezone
13 property in my opinion appropriately from O/I
14 and C-2 to residential uses. It's the same
15 thing.
16 COUNCILMEMBER FLEMING: But would they
17 not --? The reason why I'm stressing applicant
18 rather than the specific property address is
19 that that applicant is coming in. We've
20 reviewed their previous business or whatever
21 we've reviewed for that specific use, and we
22 should be giving them a conditional use permit
23 to that person for that use.
24 MR. WEED: I understand the intention;
25 I do; however, because it is part of zoning --

Page 155

1 It either travels with the land or it
2 doesn't. Zoning inherently travels with the
3 land. And therefore, my opinion is a
4 conditional use permit is no different than any
5 other condition you would add to a zone during a
6 standard, old-fashioned vanilla rezoning. You
7 rezone it from O/I to residential but you
8 included making the person put a sidewalk up
9 front as a condition. They agree to the
10 condition. Therefore, that's now part of the
11 zone just like it was a PUD or something like
12 that. It's a condition only relevant to that
13 one lot, but it's a condition, and that
14 condition travels with the land. And if you
15 have a conditional use permit, once again in my
16 opinion, underneath the Zoning Code, that also
17 travels with the land. That's what I think
18 based upon my reading of the case law.
19 COUNCILMEMBER FLEMING: The reason I
20 brought this up -- and I don't mean to continue
21 the discussion and I know we're going to
22 postpone it to or revisit it on 8/31 -- is the
23 illustration of once we've allowed, for
24 instance, one specific use, okay, for instance,
25 at Plaza One, that's not even rented out yet, if

Page 156

1 we allow that specific use in there, you could
2 have 20 other of like businesses come in, and
3 they wouldn't have a conditional use. They
4 wouldn't have to apply for a conditional use if
5 you're stating that the property is then granted
6 the conditional use, and I do -- that's what we
7 were trying to avoid.
8 MR. WEED: And I agree with you, I
9 think that's exactly what would happen, which is
10 why in my opinion things ought to be permitted
11 uses or not permitted uses. In my opinion,
12 that's how you would address that.
13 If you don't really want that use in
14 that location, say no; and you can do that
15 legislatively by making it a permitted use
16 somewhere else. Once again, that's my opinion.
17 What I did offer as a stopgap measure
18 was this one-year review. That was sort of a
19 compromise that I thought would be legal that
20 would put in play -- you know, during that time
21 frame of the use, it would travel with the land,
22 yet the Council would still have the opportunity
23 to revisit it and then revoke it if necessary.
24 But that would be equivalent, in my opinion, of
25 having a zoning hearing and changing the zone,

Page 157

which is why all the protections and advertisement requirements are built into it the way they're built into it.

MAYOR JENKINS: Is that it?

COUNCILMEMBER FLEMING: You have a first and second and discussion.

MAYOR JENKINS: I thought we'd already voted on it.

COUNCILMEMBER FLEMING: No, sir. You had first and second, and I did . . .

Did we not have a first and second and I --

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: No.

DEPUTY CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER FLEMING: I'm sorry.

Page 158

We're -- I'm very sorry. The motion was to postpone to the 31st. My vote is yes.

DEPUTY CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

DEPUTY CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

COUNCILMEMBER BATES: Motion to adjourn.

COUNCILMEMBER SPANGLER: Second.

MAYOR JENKINS: Call the roll, please.

DEPUTY CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

DEPUTY CLERK BRYANT: Bates?

COUNCILMEMBER BATES: Yes.

DEPUTY CLERK BRYANT: Fleming?

COUNCILMEMBER FLEMING: Yes.

DEPUTY CLERK BRYANT: Pittman?

COUNCILMEMBER PITTMAN: Yes.

DEPUTY CLERK BRYANT: Spangler?

COUNCILMEMBER SPANGLER: Yes.

(Meeting adjourned at 9:25 p.m.)

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Page 159

C E R T I F I C A T E

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

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

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This the 7th day of September, 2009.

_____

Theresa Bretch, CCR

Permit No. B-755

[SEAL]

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$1,500 (1)
66:24
$185 (2)
28:15,16
$2,200 (1)
66:24
$400 (2)
150:18,19
$500,000 (1)
100:12

[

[sic] (5)
56:19;79:3;94:14;
144:8,15

0

09 (2)
112:20;152:9

1

1 (3)
50:10;117:16;
146:11
1,000 (4)
70:7;82:15,19,22
1,200 (2)
70:7;86:8
1,200-square-foot (1)
63:9
1,250 (3)
55:8;62:22;82:2
1,450 (3)
62:8,14,15
1,500 (2)
81:24;82:20
10 (9)
40:22;53:10,11;
83:24;94:2;102:23;
103:2,5;106:5
10,200 (4)
50:23;99:19,21,25
10-2 (2)
51:3,5
10-foot (1)
53:25
11 (1)
69:9
12 (3)
58:6;78:9;129:20
12,000 (1)
82:1
120 (2)
52:13;102:6
13th (2)
24:9;114:21
14 (1)
57:4
15 (5)
51:17;78:23;79:5,
10;101:15
1501 (4)
146:18;147:9;
148:5;152:6
1932 (1)
93:10
1983 (3)
127:17;129:2;
140:17
1's (1)
100:11

2

2 (3)
14:4;117:19,22
2,000 (11)
55:20,25;59:19;
62:2;64:16;74:14,22;
75:3,15;81:21;82:21
2,000-square- (1)
70:16
2,000-square-foot (6)
61:18;63:11,25;
64:10;76:22;80:19
2,500 (1)
55:23
2,800 (2)
55:23;77:11
20 (12)
52:25,25;53:4;
54:11,24;58:14;
97:20;99:5,10;
102:19;104:22;156:2
2008 (1)
24:15
2009 (8)
5:12;74:12,14,20,
22;99:18;124:10,17
20-feet (1)
25:20
20-foot (3)
25:22;61:1;99:4
22,000 (3)
51:8;100:8,14
22,000- (1)
51:12
22.5 (2)
27:2;41:3
24 (8)
8:15;71:5;74:12,
13,20,22;99:18;
101:19
24-foot (1)
26:3
24s (1)
26:3
24th (7)
69:18,18,20;70:4;
99:21,25;101:21
25 (8)
54:7,22;57:25;
58:4,5,10;79:13;
88:13
25- (1)
79:13
250 (2)
52:2,5
2535 (2)
140:11;141:8
25-foot (1)
103:7
27th (10)
45:17,21,22;
122:20;123:13,20;
124:10,12,14,23
285 (2)
127:11;144:9
28th (13)
9:1,8,15,18,21;
11:12,13,15,21;
12:21;13:4;125:4,5
29th (2)
5:12;6:19
2nd (1)
124:11

3

3 (7)
94:5,12;117:25;
148:8,18,25;152:9
3- (1)
94:21
3,000-square-foot (1)
64:9
30 (15)
25:13;38:16;
39:10,12;41:11,14;
42:6,10,13,20;
102:10,19;104:22;
105:8,23
31st (16)
8:23,24;9:2,17;
81:15;106:12;
108:13;114:21;
123:22;124:17,22;
125:7,15;126:18,25;
158:2
32 (1)
56:8
35 (7)
39:7;53:3;54:17;
56:8;79:8;103:12;
104:6
35-foot (1)
104:15
3693 (1)
4:3
3695 (2)
4:3,14
3B (2)
15:11,15

4

4 (1)
95:6
4,000 (2)
55:23;77:12
4,600 (1)
111:22
4:30 (1)
124:17
40 (11)
4:16;56:9,13,13;
73:20;79:3,10;
102:18;104:21;
105:7,23
400-square-foot (1)
99:1
45 (1)
129:2
4B (3)
22:1;146:25;147:9
4C (3)
22:1;146:25;147:9

5

5 (1)
97:8
5,000 (3)
49:16;98:11;
100:13
50 (8)
41:2;52:2,5;54:13;
98:24;99:2;101:21;
144:5
50-foot (1)
40:25
50s (1)
51:24
5-280 (2)
18:1,3
5-285 (1)
18:1
5-acre (1)
94:21
5C (1)
147:7

6

6 (5)
49:22;94:14;
98:22;148:8,15
6,800 (1)
55:14
6:30 (3)
8:25;9:1,9
60 (8)
51:25;59:8;60:8;
64:11;70:2;72:11;
101:19;102:18
600 (1)
112:11
600-square-foot (1)
64:8
601 (5)
124:13;146:18;
147:10,13;152:6
60-foot (4)
40:25;78:23;
94:11;98:17
60s (2)
51:24;109:10
612 (10)
16:2,10,19,21;
17:3,22;18:3;19:24;
20:13,16
6129 (1)
127:9
614 (1)
95:11
6145 (1)
127:9

7

7 (1)
50:20
70-foot (1)
41:1
70s (1)
51:24
75 (1)
53:8
75/125 (1)
33:1

8

8 (4)
52:1;53:10;58:5,
11
8/31 (7)
112:20;126:17;
146:21;147:16,24;
152:9;155:22
800 (2)
98:23;111:21
800-square-foot (1)
49:25
801 (1)
112:8
806 (4)
23:15;46:3,4;
124:13
85 (15)
24:20;25:1,18;
39:10,11,18,18;
40:23;42:8;51:23;
52:11;79:22;102:2;
142:9;144:15
85-foot (1)
52:7

9

9 (8)
52:25;54:11;
58:10,12;74:11;
88:13;103:7;108:22
9:25 (1)
158:24
900 (5)
55:10,18;112:10,
11,13
900-and-under (1)
83:14
900-square (1)
82:10
902 (7)
114:1;115:1,21,23;
116:6;119:3;124:13
903 (4)
47:4,10;106:8;
124:13

A

abandoned (2)
129:9;151:10
ABC (1)
95:6
ability (3)
65:6;76:16;150:14
able (6)
30:8;57:13;58:17;
66:3;76:10;80:19
above (1)
62:25
above-ground (2)
50:2,5
absolutely (2)
25:19;30:10
abundance (2)
12:15,18
abut (1)
27:8
accept (1)
65:24
accepted (1)
94:17
access (1)
26:17
accessibility (1)
43:1
accessories (1)
74:2
accessory (18)
3:25;4:5;5:4;
10:18;48:18,19,22;
49:25;50:1;96:18,19,
22;97:1,7;98:22;
116:17,17;147:11
accord (1)
106:6
achieving (2)
77:10,11
acre (3)
51:16;100:24;
129:20
acres (2)
51:18;101:15
across (2)
78:13;127:11
act (2)
71:13;107:16
action (3)
15:17;34:14;
146:18
active (2)
95:23;96:11
actual (4)
105:25;107:25;
118:1;124:20
Actually (16)
10:1,6;19:10;39:3,
9;43:9;55:22;66:10;
77:20;78:11;110:10;
123:1;124:6;129:11;
133:19;141:12
ad (3)
124:9;125:2;
141:16
add (6)
6:8;47:6;112:11,
12;137:13;155:5
added (4)
109:4,7,20;117:25
addendum (1)
95:16
adding (1)
60:20
additional (5)
9:6;11:4;26:8;
117:25;147:13
additions (1)
109:6
address (24)
6:12,16;7:8,17,21,
22;10:20;11:24;
26:11;27:16,16,17;
43:23,25;48:5;64:19;
86:25;97:14;105:20;
107:14;115:25;
117:12;154:18;
156:12
addressed (5)
25:4;26:19;56:3;
66:2;109:24
addresses (2)
64:17;72:21
addressing (2)
118:20;142:20
adjacent (4)
60:23;95:5;129:7,
9
adjourn (2)
146:14;158:10
adjourned (1)
158:24
adjusted (1)
86:19
administrative (3)
67:22;68:17;69:10
admit (2)
60:13;70:10
admitted (1)
60:5
adopt (1)
40:7
ads (2)
141:5,12
advance (2)
12:14;151:7
advertise (1)
9:12
advertised (7)
9:16;124:14;
141:7,16;146:19,22;
148:1
advertisement (1)
157:2
advice (4)
10:9;12:9,21;
136:16
advise (5)
5:13;8:19;9:20;
31:3;124:7
advocate (1)
61:22
aesthetic (1)
38:15
aesthetically (1)
41:5
aesthetics (1)
109:7
affirmative (1)
119:12
affordable (7)
49:7;61:16,20,22,
25;62:4;66:23
afforded (1)
108:11
aforementioned (1)
103:21
again (51)
4:23;6:5;7:4;27:5;
33:16;47:21;48:6,18;
49:5;51:22;52:6,12;
53:4,7;54:5,12;
58:16;67:13;73:8;
74:18;89:12;91:6;
92:24;96:7;97:10,23;
98:7,9;99:13;100:9;
102:5;112:13;
118:23;127:19;
130:1;136:11;138:8;
140:10,16,18,25;
141:5,17,17;142:9,
12,19;148:23;
150:11;155:15;
156:16
against (12)
17:13,20,21,23;
18:11;19:17;44:10,
15;120:7;130:24;
144:24;151:1
age (1)
44:3
agency (1)
96:16
agenda (19)
22:2,14,19;23:15;
45:14;121:23;122:4,
20,23;123:2,12,16,
19,24;124:2;125:3;
147:3,6;152:7
ages (1)
29:5
ago (2)
6:19;144:6
agree (16)
18:17;19:15;32:7;
61:4;62:2;66:13;
75:19;81:16,20;
83:22;92:13;102:3,
13;128:6;155:9;
156:8
ahead (3)
13:11;90:11;
141:13
air (1)
54:2
alcohol (1)
152:8
Alexander (76)
3:4,5;10:12;14:21,
22;20:8,10;21:9,10;
22:25;23:1,24;24:6;
32:9,17,24;38:2,5,
14;39:22;42:23;46:7,
14,15;63:14;64:20;
73:22;80:1;84:9;
87:18;88:10,14,20;
89:2,9,14,18,21;
108:20;113:7,8;
120:19;121:1,2;
125:23,24;131:12;
136:20,21,25;137:4,
17,21,25;138:8,12,
13;143:6;145:16,17;
148:2,5,7,15,17,21,
22,24;149:9;151:23;
152:4;154:3;157:15,
16;158:14,15
Alexander's (2)
67:20;152:14
allegations (1)
61:24
allow (14)
5:14;34:8;50:25;
53:5;80:9;85:17;
89:10,10,15;98:1;
109:16;117:4;
149:22;156:1
allowance (1)
94:24
allowed (7)
10:17;68:24;
84:10;97:21;118:7,
21;155:23
allowing (3)
32:4;95:4;118:14
allows (2)
53:1;94:25
almost (1)
98:19
Alpharetta (1)
76:5
although (2)
12:16;133:17
always (8)
29:18;49:6;50:6,9;
111:13;112:4;144:6,
18
amazing (1)
105:6
amazingly (1)
101:6
AMBROSE (2)
144:3,3
amend (2)
16:20;22:14
amending (1)
22:19
amendment (6)
6:23;59:17;82:4,
12;140:5,6
Americana (1)
65:10
amount (1)
139:20
anchored (4)
4:17;6:15;10:16,
25
anchoring (1)
7:17
and/or (3)
35:7;97:15;104:13
ANDERSON (20)
17:23,25;18:17;
19:15;44:16,16,24;
45:2;94:3,4;95:17,
20;106:10;107:12,
15;109:18;110:2,11;
135:19;136:13
annex (1)
51:10
annexation (1)
35:10
anomaly (1)
141:24
antenna-like (1)
19:2
apartment (1)
130:5
Apartments (4)
127:13,19,20;

138:4
apologies (1)
14:11
apologize (7)
58:3;65:17;98:15;
106:7;126:12;147:2,
4
apparently (6)
6:10;12:10,12,13;
124:15;141:9
appearance (1)
52:22
appeared (1)
45:14
Applicable (1)
94:7
applicant (11)
5:20,22;6:6;14:1,
6;37:3;152:16;153:1,
8;154:17,19
applicants (3)
5:15;8:3;12:5
application (4)
12:7;13:15,20;
14:5
applied (1)
13:14
applies (2)
64:8;88:24
apply (5)
13:15;70:3;
107:19;112:9;156:4
applying (1)
14:1
appraisal (1)
109:2
appreciate (3)
61:12;83:13;92:7
appropriate (3)
5:17;69:5;116:1
appropriately (2)
85:9;154:13
approval (3)
47:7;128:16;
142:15
approved (1)
150:2
architect (1)
60:14
architectural (2)
85:9;89:20
architecture (1)
109:11
arduous (2)
25:6;150:13
area (13)
15:13;26:6;51:10;
52:4;55:14;61:2;
97:4;98:24;119:5;
129:12;141:22;
144:12,13
areas (7)
51:7;67:1;96:8,14;
97:15,16;118:22
arena (1)
18:25
Arguably (1)
35:3
argue (1)
31:20
argued (2)
36:22;133:23
arguing (1)
36:22
argument (2)
36:11,18
arising (1)
40:20
around (7)
54:4;70:23;91:24;
94:1;101:7;122:24;
135:24
arrangements (1)
84:2
askew (1)
65:13
aspects (1)
10:3
assemblage (1)
75:8
assembly (1)
154:10
assessments (1)
29:9
assign (1)
37:5
assigned (1)
43:23
assist (1)
66:2
association (4)
31:4;34:24;37:4;
96:13
associations (3)
28:13;30:6;33:24
assume (3)
14:5;29:22;32:18
assumed (2)
111:6,10
Atlanta (1)
105:1
attached (1)
49:24
attempt (1)
151:5
attempted (1)
43:19
attention (1)
103:11
Attorney (6)
15:13;92:18,22;
127:25;142:13;
147:20
Attorney's (1)
142:16
audience (1)
76:20
August (22)
8:15;9:2;24:9;
45:17,17;69:18,18,
20;70:4;71:5;74:12,
13,20,21;81:15;
99:18,21;101:19,21;
114:21;125:7,15
authority (6)
7:11;34:19,22;
35:21,25;142:25
automatically (1)
122:3
availability (1)
51:11
available (3)
5:11;8:21,22
AVERS (12)
86:3,6,20;87:3,6,
24;134:18,18,25;
135:2,5;139:8
Avery (3)
25:24;32:12;94:9
avoid (3)
28:20;61:17;156:7
aware (5)
29:2;69:11;
127:10;128:18;143:2
away (2)
39:11;152:2

B

back (30)
31:14;32:20;
38:11;40:2,14;43:12;
57:21;78:8,11,14;
79:24;82:9;84:12;
94:14;96:20,24;97:3,
16;98:6,15;99:17;
103:18;104:8;
106:12;119:7;
120:11;131:4;
132:16;140:16;
153:10
back-and-forth (1)
97:10
background (1)
22:6
backwards (1)
12:20
bad (2)
32:6;128:2
Bailey (1)
93:3
bar (5)
56:7;62:5,9;91:4,
12
base (1)
18:3
based (13)
18:23;42:25;54:1;
100:18;112:2;
124:17;136:15;
141:17;142:8,12,16;
151:21;155:18
basement (1)
86:2
basic (1)
151:4
basically (10)
38:8;39:24;43:3;
47:11,15;48:23;65:6;
77:10;95:8;151:1
basis (1)
150:17
Bates (134)
3:7,8;14:24,25;
20:2;21:2,12,13;
22:9;23:3,4,22;24:1;
27:11,15;28:4;29:10,
15;30:12,24;31:6;
33:11;37:3;45:20;
46:17,18;58:8,12;
59:5,12,15,17,23;
60:1,11;61:12;62:18,
21,24;63:2,17,22;
70:5,19,25;71:7,10,
20,23;72:2,7,23;
73:17,24;74:4,17,24;
75:1,7,18,24;76:2,14,
18;77:1,14,17;78:2,
7,19,22;79:2,5,11,20,
24;80:14,16,20;
81:11;82:5,8,14,19,
25;83:3,7,24;84:4,
19,22;85:1,12;86:16,
24;87:4,9,14,20;
88:4,22;89:1,4,22,
25;90:17;91:2;
112:15,19,23;
113:10,11;120:17;
121:4,5;122:18;
126:1,2;132:15;
133:10;138:15,16;
145:5,19,20;149:1,3,
7;152:5;157:18,19;
158:9,16,17
Bates' (2)
32:10;69:14
bay (1)
58:23
bear (1)
151:12
Bearing (1)
5:12
beautiful (1)
101:5
became (1)
140:20
become (6)
28:20;33:21;
128:18;129:18;
153:13,15
becomes (2)
34:1;41:7
becoming (1)
47:23
bed (1)
38:18
bedrooms (1)
49:22
beg (1)
35:19
begin (3)
30:2;33:6;119:16
beginning (1)
111:15
behalf (2)
8:10;11:17
behind (1)
39:24
belaboring (1)
129:25
belongs (2)
35:7;85:11
below (8)
53:15,22;55:4,18;
66:1;67:7,16;103:22
Ben (2)
90:20;91:18
bending (1)
12:19
benefit (6)
28:24;29:1;85:24;
134:3;143:11;146:9
benefited (1)
133:17
benefits (1)
143:17
best (3)
10:9;12:20;135:13
better (5)
7:10;86:11;98:10;
105:18;132:20
beware (1)
66:14
big (2)
100:2;106:1
bigger (1)
33:21
Bill (1)
103:20
bit (2)
71:11;90:23
blacktop (1)
56:4
blessed (2)
42:16;85:21
block (1)
88:17
blood (1)
65:4
boat (1)
116:21
body (1)
35:21
book (1)
104:12

booklet (1)
85:5
books (2)
16:16,23
born (1)
93:10
both (3)
78:24;147:14,23
bottom (4)
22:1;47:14;99:13;
127:7
bought (1)
65:12
boundary (1)
142:1
Brackbill (1)
103:20
brand (1)
72:25
brand-new (2)
72:25,25
breach (1)
74:5
break (1)
81:3
Brian (4)
76:24;81:10;
82:13;92:13
Brian's (2)
85:14;106:16
brick (3)
61:19;63:9;88:15
Brief (1)
81:7
bring (10)
19:21;25:8;45:8;
55:5;82:15;86:14,14;
110:11;120:11;131:3
broad (4)
117:4;118:5,10,15
broader (1)
39:14
brought (3)
7:21;150:23;
155:20
BRYANT (66)
3:3,6,9,12,15,20;
14:20,23;15:1,4,7;
21:8,11,14,17,20;
22:24;23:2,5,8,11;
46:13,16,19,22,25;
113:6,9,12,15,18,21;
120:25;121:3,6,9,12;
125:22,25;126:3,6,9;
136:19;137:2,7;
138:11,14,17,20,23;
145:15,18,21,24;
146:2;157:14,17,20,
23;158:3,6,13,16,18,
20,22
Buckhead (1)
76:5
budget (2)
87:8,8
buffer (6)
99:4,7,8;110:12,
18,20
build (16)
62:10,11,15;63:10;
68:14;71:16;76:6,10,
22;78:13;86:1,1;
91:9;93:15;98:20;
103:25
builder (5)
38:7,24;39:23;
40:11;55:24
builders (1)
40:17
Building (36)
4:10,20;5:8,18;
6:14;8:12;10:2;
26:23;27:3;28:1;
34:3;38:22;41:16;
44:19;47:24,25;
48:25;49:3;54:4;
55:3;59:3;71:20,23;
77:8;98:17,19,20;
99:23;103:10,15;
104:5,14;105:22;
109:21;112:9;130:5
buildings (5)
53:25;102:25;
116:13,14,17
building's (1)
34:9
builds (2)
55:24;103:20
built (17)
29:8;30:1;33:6;
38:10;41:24;52:20;
53:11;58:19;65:18;
66:16,18;68:12;94:6;
101:7;103:24;157:2,
3
bulk (2)
61:7,10
bunch (4)
28:10;61:5;104:3;
123:25
burned (1)
70:15
business (7)
3:24,24;133:8;
146:8;151:24,25;
154:20
businesses (1)
156:2
buy (12)
65:8;66:8,13,15;
71:15;73:10,11;76:5;
93:14;98:19;101:25;
135:15
buyer (1)
66:14
buying (2)
66:11;100:9
buy-it- (1)
73:6
buys (1)
64:23

C

C-2 (22)
127:14,17,18;
128:25;129:2,3;
130:4;132:22;
133:18,19,21,25;
134:4,6,7,19;136:12;
137:24;138:4;139:6,
10;154:14
C3 (3)
149:2,3,4
Calcaterra (7)
4:10,12,20;9:24;
10:4,20;12:11
Calcaterra's (3)
5:10;10:15;11:9
California (1)
67:3
Call (16)
3:2;13:8;14:19;
21:7;22:23;46:12;
100:10;113:5;
120:24;125:21;
134:20;136:18;
138:9;145:14;
157:13;158:12
called (2)
25:15;127:12
came (3)
23:21;136:3;153:8
can (76)
6:1,2,7,8;7:17,21;
9:13;11:18;18:24;
27:17;28:16;32:18,
19;35:9;36:11,21;
37:22;38:24;40:17;
43:3,7,8;45:24;
49:14;50:11;51:12;
52:22;53:12,14,19;
60:3;62:9,15;65:9,
11;68:10;69:19;
71:6;77:21;82:14;
85:22;86:3;87:11;
90:8,15;93:15;96:25;
98:1,3,5,10,14;99:1,
9;102:24;103:21;
105:6;106:12;
107:25;108:2,3,18;
111:18;115:20;
116:9,12;117:13;
125:6;131:20,22;
132:12;135:16;
139:15;147:21;
153:21;156:14
cancelled (1)
15:11
capture (7)
42:19,20,21,22;
52:6;56:11;68:10
captured (1)
72:15
car (4)
61:3;78:8,11;79:7
care (5)
57:15;91:24;
95:12,12;104:23
careful (3)
49:6;90:22;91:11
cares (1)
131:23
carport (9)
48:22;56:17,18;
83:6,7,8;97:12,12;
109:15
carports (4)
97:9;104:18;
105:25;108:23
carport's (1)
65:13
carried (3)
121:15;140:9;
146:13
cars (3)
56:19,19;81:21
cart (1)
19:6
Carver (2)
101:2;143:14
case (9)
16:5;19:6,10;
24:23,25;44:3,20;
60:25;155:18
catastrophe (2)
64:6,21
catastrophic (10)
71:22,24;73:3;
75:21;82:1,7,20,23;
83:9;92:15
catastrophically (2)
86:12;87:17
catch-all (1)
116:7
categories (3)
117:5,13;128:9
category (3)
115:25;118:10;
119:11
caution (3)
12:15,18;41:23
Cemeteries (8)
50:9,11;51:17;
99:3,4;101:15;
116:12,25
cemetery (2)
99:11;110:12
center (3)
41:18,21;44:22
center- (1)
103:15
centerline (1)
41:21
centerlines (2)
41:24,25
centers (1)
25:20
cer- (1)
62:9
certain (10)
9:13;19:1;31:13;
37:19;61:23;76:7;
98:17;99:8;107:21;
122:5
certainly (53)
27:19;28:9;29:1;
31:20;32:1;33:15;
35:1,4;36:21,23;
37:25;49:14;50:14;
53:17;54:1;55:20;
57:4,12,17;61:4;
64:7;66:15,18;67:15;
68:5;69:5;72:19;
74:1,3;83:4;85:22;
102:3,22;105:10;
109:18;111:25;
116:21;119:6;
124:22;127:14;
129:7,11;134:6;
135:21;139:9,16,17;
140:2;141:19,21;
147:20;150:20;154:2
certainty (1)
141:15
certified (1)
131:16
cetera (16)
18:4,4;49:12;56:5,
20;94:13;100:13,14;
101:11;105:14,14;
109:22;117:3;118:9;
119:13,18
challenged (3)
73:8,9,12
Champion (1)
124:11
change (8)
11:21;95:4;
114:24;118:2;
132:19;133:22;
138:3;139:16
changed (7)
7:13;114:20;
115:9;117:16,17;
144:13;151:3
changes (7)
88:7;108:9,10,12;
118:3;119:19;135:25
changing (5)
12:1;90:8,24;
136:5;156:25
chapels (1)
117:2
Chapter (1)
152:9

character (1)
49:17
charge (2)
28:13;88:6
charges (1)
28:14
check (1)
58:2
Chestnut (3)
25:25;28:14;34:4
choice (2)
72:5;75:22
choose (7)
26:8;38:24;57:16;
67:15;71:15;73:11;
76:4
chooses (1)
71:14
choosing (1)
57:16
Chris (3)
86:6;90:9;134:18
Churches (3)
50:6;99:3;117:2
cinder (1)
88:17
Circle (4)
92:12;140:12;
141:8;145:6
circumstance (1)
30:3
circumstances (2)
100:17,20
cited (1)
91:1
citizen (3)
90:21;93:9;144:4
citizens (1)
92:14
City (78)
4:20,23;5:7;7:12;
10:20;11:17;24:21;
25:11,16,20;26:7,11,
12;27:7,25;29:11,19;
30:1,14;31:13;33:19;
35:5,7,18,23;36:3,11,
19;38:23;40:23,24;
41:23;42:15,21;44:2;
47:22;48:2;49:7;
50:22;51:20,23;
52:18;55:9,12,24;
57:18;59:2;61:6,16,
24;65:5,7;66:15,22;
67:6;68:13;72:13;
90:21;91:7,13,25;
95:5,24,25;96:2,9,
15;101:10;105:1;
109:4;118:9;129:14;
132:7;135:11;
142:13;143:11;
147:20;151:9
City- (3)
131:15,18;139:25
City/County (1)
33:6
City-imposed (1)
39:2
City-Initiated (6)
127:8;128:4;
133:14;139:16;
140:11;142:18
City's (2)
12:19;28:21
classification (1)
26:15
classified (1)
26:13
clause (2)
72:16;73:5
CLERK (67)
3:3,6,9,12,15,20;
14:20,23;15:1,4,7,
13;21:8,11,14,17,20;
22:24;23:2,5,8,11;
46:13,16,19,22,25;
113:6,9,12,15,18,21;
120:25;121:3,6,9,12;
125:22,25;126:3,6,9;
136:19;137:2,7;
138:11,14,17,20,23;
145:15,18,21,24;
146:2;157:14,17,20,
23;158:3,6,13,16,18,
20,22
client (1)
12:14
clients (2)
8:10;9:4
close (5)
17:13;33:15;
39:19;58:21;72:17
closer (1)
77:21
closes (1)
151:24
closing (3)
65:3;66:10;106:24
clubs (1)
117:2
coaches (1)
116:20
Code (46)
5:4;11:9;27:6;
32:13;39:7,18;40:2;
46:4;48:14;50:23;
51:7;55:7;56:2;
62:15;64:12,14;86:7,
10,15;88:1;89:20;
95:10;109:25;110:1,
19;112:3;115:12,14,
23;116:16;117:9,11;
118:22;119:5,22;
129:23;134:2,20;
139:17;140:4,6;
142:8,25;149:18;
150:3;155:16
Code-required (1)
44:19
codes (2)
49:4;129:17
colleges (1)
117:1
com- (1)
12:16
comfort (1)
55:17
comfortable (4)
117:6;128:3,5,19
coming (6)
11:16;28:22;31:8,
24;65:5;154:19
comment (6)
32:10;69:14;95:5;
110:24;135:21;146:6
commentary (6)
5:15;9:4;11:18;
16:25;107:1,13
commented (3)
94:8;133:6,6
comments (9)
45:9;69:14;90:15;
93:18;109:17;130:6;
147:17;150:22;151:6
commercial (4)
134:22;135:7;
139:22,23
Commission (13)
4:22;47:7,13;
115:9;128:11,15;
136:1;142:14;
147:15;149:15,24;
150:23,25
common (9)
48:15;49:3;50:10;
52:5;96:10;114:2;
115:14;117:7;153:25
communities (6)
26:10;27:17;
28:16;53:18;62:5;
66:24
community (8)
19:4;27:24;49:1;
91:15;92:6;115:18;
116:5;130:5
companies (1)
86:9
company (5)
82:11;86:13;
87:10,12,25
compile (1)
98:9
completely (2)
28:2;62:16
compliance (5)
11:1;59:13;60:15;
74:7;75:3
compliant (4)
32:12;60:6;141:1,
13
complied (1)
132:3
comply (6)
59:19;64:14;
71:17;72:4;73:13;
132:5
complying (2)
73:1;134:1
comport (1)
19:8
compromise (1)
156:19
concept (6)
26:20;48:6;49:19;
54:2;102:9;151:1
concern (5)
7:8,15,16;64:21;
149:23
concerned (6)
63:6;67:21;76:9;
88:9;115:24;140:8
concluded (1)
16:17
concrete (3)
37:19;56:5;89:11
concur (1)
34:13
condi- (1)
151:23
condition (7)
37:23;155:5,9,10,
12,13,14
conditional (41)
13:22;14:3;48:11,
20;49:9,13;50:7,14;
51:15;54:16;88:25;
89:7;94:15,18,20,24,
25;95:4;97:24;
116:25;117:14;
147:9,18;149:16;
150:6;151:13,17;
152:1,16,21;153:3,6,
17,19;154:5,22;
155:4,15;156:3,4,6
conditions (22)
37:5;127:23;
128:4,7,17,20;
129:23;130:6;
136:11;137:6,13,22,
25;138:5;139:16;
142:15,17,19;145:7;
153:12,12,15
condominium (1)
118:8
conducive (1)
127:20
conduct (1)
90:12
confers (1)
81:3
confident (1)
34:24
configuration (1)
85:16
confirm (1)
8:8
conforming (2)
25:22;133:24
conformity (1)
25:9
confused (2)
39:21;44:17
confusion (1)
6:18
consider (18)
11:8;18:2,12,13,
22;26:16;33:14;
50:4;59:3;62:7;85:6;
93:1;106:22;107:17;
108:1,3;118:12;
119:10
consideration (1)
103:3
considering (3)
6:22;18:5,12
consistency (1)
109:11
consistent (6)
48:14;51:7;52:10;
55:21;57:1;108:24
consistently (1)
141:23
consti- (1)
110:19
constitute (3)
107:4;124:19;
135:14
constitutionally (1)
154:9
construc- (1)
53:18
construct (2)
43:8;80:19
constructed (4)
37:24;74:12,20;
97:19
construction (8)
53:20;55:19;
56:25;57:2;59:22;
61:8,10;79:23
containers (1)
4:14
contemplate (1)
132:9
context (5)
33:14;50:17;62:1;
117:9;139:25
contingent (1)
105:24
continuance (1)
15:21
continuation (2)
107:22,23
continue (4)
7:16;32:4;112:21;
155:20

control (1)
104:6
conver- (1)
32:21
converging (1)
41:8
conversation (5)
96:21;98:13;
99:17;100:3;108:4
converted (1)
140:22
converting (1)
30:15
conveyed (2)
96:9,15
cooperative (1)
118:8
copies (2)
47:11;114:17
copy (9)
6:1,2;8:11;15:16;
16:4;23:16;54:23;
58:2;148:16
corner (3)
23:19;43:24;80:5
corrected (3)
24:16;58:4;127:21
correcting (3)
27:5,7;134:11
corrective (2)
129:4;140:25
correctly (1)
37:15
corrects (1)
58:18
cost (6)
28:6;29:11;30:13,
22;31:13;86:4
Council (62)
5:10,13;6:4,20;7:2,
5,9,15;8:2,19;9:20,
25;10:7,9;12:1,12;
14:9;15:13;17:14;
21:25;26:5;28:2;
30:6;34:15,19;49:14;
55:16;58:6;62:16;
67:11;68:2;77:6;
81:14,16;84:5;90:4,
21;91:2,8;99:17;
106:22;107:17;
108:3,8,15;109:23;
112:5;122:3;124:21;
127:21;130:8;
139:14;140:3;
143:15,19;150:15;
151:6,22;152:8,22;
153:11;156:22
Councilman (6)
31:20;57:22;
83:24;117:15;
122:25;131:22
Councilmember (404)
3:3,5,6,8,9,11,12,
14,15,20,22;10:12,
24;11:10,13;13:3,7,
9,12,19,25;14:8,10,
13,20,22,23,25;15:1,
3,4,6,7,9,20,24;
17:21;18:15;19:13,
23;20:2,3,8,9,10,12,
15,18,21;21:2,8,10,
11,13,14,16,17,19,
20,22;22:9,10,24;
23:1,2,4,5,7,8,10,11,
13,22,24;24:1,3,6,8;
27:11,15;28:4;29:10,
15;30:12,24;31:6,10;
32:9,17,24;33:11;
34:2,6,16;37:3,14,17,
21;38:2,5,14;39:22;
41:10,13,17;42:1,4,
23;45:20;46:2,7,13,
15,16,18,19,21,22,
24,25;47:2;54:19,21;
57:24;58:8,12;59:5,
12,15,23;60:1,11;
61:12;62:18,21,24;
63:2,14,17,22;64:20;
67:19;68:16,20,23;
69:2,6,13;70:1,5,13,
19,22,25;71:2,7,8,10,
20,21,23,25;72:2,7,
23;73:17,22,24;74:4,
17,24;75:1,7,10,18,
24;76:2,14,18;77:1,
14,17;78:2,7,19,22;
79:2,5,9,11,20,24;
80:1,14,16,18,20;
81:11;82:3,5,6,8,9,
14,17,19,22,25;83:1,
3,7,10,20;84:4,7,9,
11,14,19,22;85:1,12;
86:16,24;87:4,9,14,
18,20;88:4,10,14,20,
22;89:1,2,4,9,14,18,
21,22,25;90:17;
93:24;95:15,18;
107:20;108:7,20;
110:9,15,22;111:3,6,
9;112:15,17,19,23,
25;113:6,8,9,11,12,
14,15,17,18,20,21,
23;114:20;115:5;
119:2;120:17,19,25;
121:2,3,5,6,8,9,11,
12,14,16,20,24;
122:16,17,18,22;
123:4,18,21;125:12,
16,22,24,25;126:2,3,
5,6,8,9,11,14;131:10,
12,14;132:15;133:1,
10,20;134:10,23;
135:1,3,9;136:19,21,
25;137:4,14,17,21,
25;138:2,8,11,13,14,
16,17,19,20,22,23,
25;142:21;143:3,6,7;
145:5,9,15,17,18,20,
21,23,24;146:1,2,4,
15;148:2,5,7,15,17,
21,22,24;149:1,3,4,7,
9;151:23;152:4,5,11,
13,25;154:3,16;
155:19;157:5,9,14,
16,17,19,20,22,23,
25;158:3,5,6,8,9,11,
13,15,17,19,21,23
councils (1)
31:22
Council's (1)
152:18
Councilwoman (1)
25:5
count (1)
109:14
counted (1)
51:3
counties (1)
57:4
country (2)
101:8;117:2
County (28)
28:7,23;30:1,15,
25;32:12,18,22;
34:20;35:7,8,22,25;
36:2,7,15,20,25,25;
37:9,10,11;94:7;
96:15;129:14;
133:17;134:8;141:6
county-maintained (1)
30:16
county-wide (1)
29:13
couple (2)
24:23;100:15
course (5)
7:5;40:18;51:17;
86:20;150:5
court (2)
15:14;60:24
covenants (4)
40:18;136:4,7,14
cover (7)
28:7,17;105:7;
110:6,6;150:20,21
Coverage (7)
56:2;102:16,20;
103:9;104:22;
105:16,17
covered (7)
99:16;104:18;
105:3,13;110:14,20;
118:23
covering (1)
105:5
CRAWFORD (5)
76:24;77:2;90:18,
20,20
create (5)
33:3;43:20;53:24;
72:24;80:12
created (9)
69:20;74:13;
75:11;99:16,18,20,
25;101:18,20
creates (3)
39:13;58:16;
118:16
creating (3)
26:16;76:13;132:6
creative (1)
56:15
criteria (7)
47:25;81:17;95:1;
147:10,18;153:4,5
criterion (2)
89:6;111:14
cross-reference (1)
97:15
cul (6)
26:25;38:7,21;
39:12;41:4;42:14
cultural (1)
116:13
curb (2)
26:18;44:21
current (6)
4:4;18:24;19:7;
46:4;102:19,19
Currently (2)
31:10;140:23
curtail (1)
74:2
curvi- (1)
42:16
curvilinear (1)
26:25
customary (2)
95:9,13
cut (1)
26:18
cutting (1)
86:11
cycle (1)
33:22

D

damage (1)
72:13
damaged (1)
70:3
dangerous (2)
26:16;118:15
darn (1)
102:9
dash (1)
14:7
date (14)
8:22;9:13;12:7;
19:25;20:7;26:2;
107:21;108:18;
122:4;124:8,12,22,
23;143:16
dation (1)
115:9
day (4)
30:5;36:23;95:12;
123:10
de (6)
26:25;38:7,21;
39:12;41:4;42:14
dead (2)
41:21;93:7
deal (4)
96:20;112:6;
139:20,24
dealing (1)
16:21
dealt (1)
25:7
debated (1)
102:22
decide (5)
91:8,9;105:8,24;
108:16
decided (1)
105:2
decision (2)
119:12;150:9
decisionmaking (1)
108:2
decisions (2)
27:20;125:1
decks (4)
105:3,5,13,25
declaration (1)
35:14
declare (7)
34:19;35:22,22,25;
36:2,3,25
decreased (2)
100:18,21
dedication (1)
94:17
deem (1)
12:16
defect (1)
29:21
defer (3)
8:19;9:20;12:10
deferred (4)
6:20;7:4,24;8:1
deficiency (1)
27:6
deficient (1)
142:8
define (2)
109:21;115:16
definitely (3)
57:2;59:1;83:25
definition (1)
42:24
definitions (3)
109:19,25;112:2

degrees (1)
97:20
Dekalb (4)
28:7,23;32:12;
141:5
delete (5)
17:22;18:2,6;
19:24;20:15
deleted (1)
20:24
deleting (2)
17:23;18:11
deletion (1)
16:21
deliberation (1)
17:14
demolition (1)
75:14
denial (2)
4:22,24
depth (3)
37:19;39:4;52:2
DEPUTY (66)
3:3,6,9,12,15,20;
14:20,23;15:1,4,7;
21:8,11,14,17,20;
22:24;23:2,5,8,11;
46:13,16,19,22,25;
113:6,9,12,15,18,21;
120:25;121:3,6,9,12;
125:22,25;126:3,6,9;
136:19;137:2,7;
138:11,14,17,20,23;
145:15,18,21,24;
146:2;157:14,17,20,
23;158:3,6,13,16,18,
20,22
derive (1)
26:14
describe (1)
110:19
described (1)
141:8
design (2)
42:17;85:9
designate (2)
105:10,12
designated (2)
105:15;106:2
designating (1)
105:9
designation (1)
133:18
designed (1)
4:18
designers (1)
43:19
desirable (1)
101:13
desire (1)
58:6
desired (1)
80:12
desires (1)
26:4
destroyed (6)
59:8;61:6;64:11;
86:12,23;87:17
detached (9)
25:14;48:5,8;56:8;
89:8;97:18;140:13;
141:2;142:5
detail (2)
130:1;143:15
detailed (1)
95:10
deter (2)
52:19;141:21
determine (1)
107:17
determined (1)
151:11
deterring (2)
48:1;49:7
develop (1)
26:6
develop- (1)
96:6
developed (4)
25:20;130:2;
140:24;142:5
developer (1)
63:4
developers (2)
62:14;104:3
developer's (1)
63:3
development (25)
25:10;26:2;29:5;
33:22;50:18;52:19;
53:5;55:10,22;56:10,
16;57:9,15;63:18,19,
23;80:13;95:2;
96:14;102:14;
111:24,24;127:12;
129:10;153:14
developments (4)
33:23;61:5;94:23;
118:17
Devices (6)
16:3;18:1,4,23;
19:2;20:1
diagram (1)
85:2
dictates (1)
24:19
die (1)
93:12
dif- (1)
153:18
difference (3)
12:3;87:22;139:5
different (19)
4:6;26:21;39:15;
48:21;53:20;56:21;
61:7,25;69:17;96:21;
97:6,7,11;117:5;
127:25;153:18;
154:8,11;155:4
differently (2)
79:17;140:7
difficult (2)
100:16,25
difficulty (1)
98:2
diligence (1)
66:8
Dimensional (1)
99:15
dirt (1)
104:4
disclosure (1)
65:3
discontinued (3)
148:18,20;149:5
discount (1)
149:8
discourage (1)
43:14
discovering (1)
24:22
discuss (4)
60:19;143:15;
147:19;150:5
discussed (5)
100:7;103:4;
136:2;142:22;150:4
discussing (3)
97:8;108:9;148:3
discussion (29)
7:1;10:2;13:9,10;
14:15;16:15;21:3;
22:18;25:4;46:8;
47:21;109:22;
112:21;113:1;
120:12,20;125:17;
129:5;131:13;
136:13,18;139:12;
145:10;149:13,14;
152:12,24;155:21;
157:6
discussions (1)
119:17
dishes (1)
16:14
distance (1)
44:18
district (10)
26:24;39:9;47:5;
48:5;118:12,12,13,
20;119:17,21
districts (11)
26:12;114:2;
115:15,16,19;116:8,
11;118:11;119:16,
20;124:13
diverse (1)
84:2
diversity (1)
111:23
division (1)
38:7
doable (1)
55:21
document (12)
8:11;44:18;96:24;
97:5,14;98:4;105:12;
110:3,4,4,5;114:4
dollars (3)
30:18;33:2,24
domain (4)
35:5,12,15;135:16
done (12)
7:2;26:19;37:15;
83:12,12;85:8;97:2;
109:6;124:1;128:1;
146:17;154:12
door (3)
43:10,11;60:22
Doraville (10)
24:21;36:14,15,19,
20;49:18;76:6;95:24,
25;96:2
double (1)
42:24
doublecheck (1)
54:24
double-frontage (3)
43:2,5,21
doubt (1)
30:22
down (26)
22:1;50:20;53:12;
60:8;70:15;71:14,16;
72:18;73:12;76:6;
81:23;83:24;94:10;
95:8,22;96:8,18;
97:17;99:3;100:22;
102:4,6,17;103:22;
127:6;153:24
draft (4)
123:21;124:6,16;
148:12
drafted (2)
151:5,21
drawings (1)
38:8
dream (1)
65:11
drive (3)
43:4,8,12
driveway (9)
38:18;41:7;42:25;
44:1;53:2;73:18,20;
77:22,23
driveways (3)
41:8;56:6;106:5
due (2)
66:8;139:14
Dunwoody (1)
76:5
duplex (1)
119:17
during (2)
155:5;156:20
dwelling (11)
43:8;48:5;54:16;
59:7;68:1;97:18;
100:18,20;103:8;
135:8;140:13
dwellings (12)
48:8,10;49:9,24;
51:15;54:7;55:9;
74:11,19;103:5,6;
104:18
dynamics (1)
28:10

E

earlier (3)
34:3;98:13;102:18
ears (1)
82:5
easier (1)
22:8
edge (2)
78:16,17
edit (1)
47:16
effect (8)
10:11;12:7;22:4;
34:11;41:6;64:5;
80:12;152:19
effective (3)
20:6;26:2;87:16
eight (1)
4:15
either (17)
40:3;45:3;57:6;
60:21;64:16;66:20;
95:23;96:11;97:13;
105:9;108:1;117:14;
125:2;128:1;129:13;
151:13;155:1
elevate (1)
82:15
eliminate (2)
27:12;117:11
eliminated (3)
117:19,21,23
eliminates (1)
27:13
else (10)
9:24;19:16;31:5;
37:18;45:3;90:24;
130:20;144:7,20;
156:16
elsewhere (1)
110:18
E-mail (3)
114:6,6;128:18
e-mailed (2)
114:8,13
eminent (3)

35:4,12,15
enable (1)
84:2
enclose (1)
109:16
enclosure (1)
108:22
enclosures (1)
109:5
encompass (2)
53:5;55:8
encompasses (2)
42:10,13
encourage (1)
32:1
encouraging (1)
102:15
end (2)
93:4;110:6
enforce (1)
40:19
enforceable (2)
16:18,22
Enforcement (2)
134:20;142:25
engineer (2)
4:18;60:14
enjoy (1)
61:14
enlarge (1)
68:1
enough (11)
9:3,11;26:6;28:17;
33:24;79:6;92:20;
94:4;112:11,12;
118:22
ensure (1)
27:8
enter- (1)
147:22
entertain (10)
12:1;21:25;28:3;
33:16,17;49:14;
57:13;67:7;147:16;
149:14
entertaining (1)
22:3
entire (1)
107:14
entirely (1)
61:7
entitled (1)
93:9
entrance (5)
70:20,20;80:9;
85:18;97:19
entry (10)
57:17;60:25;
73:23,25,25;77:15,
18,25;78:3;84:10
envisioning (1)
79:16
equate (1)
61:20
equitable (1)
7:14
equivalent (1)
156:24
especially (1)
123:16
essentially (4)
26:10;33:18;42:9;
48:3
Estates (1)
91:21
et (16)
18:4,4;49:12;56:5,
20;94:13;100:13,14;
101:11;105:14,14;
109:22;117:3;118:9;
119:13,18
evaluated (1)
55:3
even (25)
4:24;25:25;28:19;
33:22;39:12;40:22;
41:2;43:24;59:21;
60:12;70:5;71:10;
72:23,24;75:8,13,17;
111:10;119:23;
123:4;133:2;142:13;
143:14;146:8;155:25
evening (1)
124:3
eventually (2)
31:24;132:7
everybody (13)
16:3;23:16;26:21;
38:16;55:2;85:20;
91:15;111:17;112:8;
114:3;122:18;
127:10;148:14
everybody's (2)
16:5;91:14
everywhere (1)
118:14
evidence (4)
5:16;9:23;11:16,
18
evidence-gathering (1)
12:17
exactly (5)
10:22;41:18;
64:13;107:2;156:9
example (11)
25:24;39:6;48:24;
51:10;62:13;74:10;
93:3;111:19;116:5;
118:7;153:7
examples (1)
91:1
exceed (1)
52:1
exceedingly (1)
76:3
except (1)
54:12
exclude (1)
48:9
exclusive-of-wetlands (1)
100:8
Excuse (6)
13:10;14:8;16:8;
25:11;54:19;58:11
exercise (1)
35:15
exist (1)
50:22
existing (30)
27:6,17;50:19,25;
52:1,18;53:5;55:10;
56:2,10,15;57:11;
58:17,21;60:8,16;
61:5;63:12,20,24;
70:7;71:5,12;75:20;
76:23;79:25;82:11;
83:15;116:12,16
exists (3)
39:7;72:16;119:23
expand (2)
64:25;67:25
expect (1)
9:23
expectation (1)
11:15
expel (1)
135:6
experience (1)
33:19
exposed (1)
12:12
express (1)
6:17
extended (1)
144:10
extensive (3)
83:12;109:19;
110:18
extent (1)
128:5
exterior (1)
58:22
extra (2)
51:4;92:16
extras (1)
114:4
extremely (2)
50:1;83:19
eye (1)
65:8

F

FAA (2)
54:18;103:13
facade (1)
97:19
facets (1)
28:18
facilitate (1)
114:19
facing (1)
40:3
fact (4)
9:19;32:11;87:1;
151:9
factories (1)
101:7
factual (1)
65:22
factually (1)
55:13
fairly (4)
49:2;50:10;66:23;
102:2
faith (2)
36:10,17
fall (1)
75:8
family (4)
65:9;119:18;
129:23;130:5
fancy (1)
20:23
far (6)
28:5;47:9;67:20;
69:8;77:8;129:10
farther (1)
40:14
favor (4)
18:5;80:23;
135:21,23
FCC (3)
18:24;19:2,8
Federal (1)
116:14
fee (1)
150:18
feedback (1)
151:22
feel (8)
5:16;34:23;50:4;
55:17;64:2;98:5;
132:17;147:12
fees (1)
29:3
feet (97)
24:20;25:2,13,18;
26:24;27:2;38:16;
39:7,10,11,11,13,18,
19;40:23;41:2,3,11,
14;42:6,10,13,20;
44:20;49:16;51:8,23;
52:2,2,13,25;53:4,4,
8,14,15,22;54:7,11,
13,17,22;55:8,11,14,
18,23,25;57:25;58:4,
5,10;62:3;65:13;
66:1;67:7,17;68:12;
70:24;74:14,22;75:4;
77:12;78:9,23,24;
79:3,6,13,22;82:2;
83:15;86:8;98:14,23;
99:5,10,19,22;100:1,
13;101:19,21;102:2,
6,10,13,13,21,23;
103:12;104:7;
111:21,23;112:8,12;
142:10
felt (1)
153:11
fence (1)
78:10
fences (1)
50:4
few (1)
91:16
fifth (1)
150:12
fight (1)
105:1
figure (2)
63:11;142:25
file (2)
124:5;131:18
filed (1)
12:7
filling (1)
144:14
final (1)
96:14
finally (1)
91:23
find (16)
37:9;40:12;61:14;
87:11;88:2;92:25;
98:7;99:2;100:2,15;
103:3;115:12,14;
129:18;136:9;152:15
fine (12)
14:12;82:18;84:5;
94:18;99:6;100:22;
101:16;102:11;
128:20;142:18;
147:15,23
finished (2)
27:22;28:2
fire (10)
32:13,20;53:13;
66:23;67:25;71:13;
94:11;102:22,23,24
first (34)
3:23;6:9,9,11;
18:13;22:8,16;28:12;
45:11,23;81:14;88:2;
110:5;120:14,14,15;
121:19;122:12,20;
123:2,14,17,21;
124:19,24,25;127:9;
139:13;141:9;150:7,
20;157:6,10,11
five (17)
7:13,25;49:22;
53:13,15,22;66:1;
67:7,16;78:24;79:18;

102:12,13,21,25; 122:7;150:16
five- (1) 81:2
five-foot (1) 102:15
fix (1) 33:2
fixed (1) 133:4
flag (2) 39:3;43:17
flat (1) 118:14
flat-out (1) 116:15
Fleming (122) 3:10,11;13:7,9,12, 19,25;14:8,10,13; 15:2,3,20,24;17:21; 18:15;19:13,23;20:3, 9,12,15,18,21;21:15, 16;23:6,7;24:8;25:5; 34:2,6,16;46:2,20, 21;54:19,21;57:22, 24;67:19;68:16,20, 23;69:2,6,13;70:1, 22;71:2,8,21,25; 75:10;79:9;80:14,18; 82:3,6,9,17,22;83:10, 20;84:7,11,14;95:15, 18;107:20;108:7; 110:9,15,22;111:3,6, 9;112:16,17;113:13, 14;114:20;115:5; 119:2;121:7,8,16,20, 24;122:17,22;123:4, 18,21;125:12;126:4, 5,14;131:14;132:17; 134:10,23;135:1,3,9; 138:18,19;145:22, 23;148:22;149:4; 152:13,25;154:16; 155:19;157:5,9,21, 22,25;158:18,19
Fleming's (2) 117:16;135:21
flood (2) 50:24;51:2
floor (4) 81:10;98:23; 103:22,25
flower (1) 38:18
Flowers (1) 25:24
focus (1) 57:8
folks (7) 56:7;66:13;80:12; 85:24;128:18;134:3; 141:21
follow (1) 152:14
followed (1) 107:15
foot (16) 4:15,16,16;51:25; 59:19;70:17;79:14, 18;82:10,23;98:11, 25;100:8,14;103:1,5
footage (8) 55:1,4,5,6;75:16; 81:23;82:16;98:18
footing (1) 37:18
footprint (4) 56:3;105:4,14,25
footprints (1) 56:6
for-and-against (1) 108:5
forced (1) 72:4
foresee (1) 116:5
Forest (1) 66:25
form (1) 32:3
formal (1) 17:3
formally (1) 146:17
formed (1) 89:11
former (1) 28:15
formities (1) 25:4
forth (9) 6:25;11:16;96:21, 25;97:3,16;98:6; 99:17;150:23
forum (1) 107:25
forward (5) 5:22;22:7;28:22; 127:23;151:3
foundation (5) 4:17;10:3;49:11; 61:19;88:16
four (7) 31:22;56:21; 75:25;81:17;122:14; 124:13;150:16
fourth (3) 72:24;74:8;150:12
frame (2) 9:14;156:21
frank (3) 112:2,7;116:3
frankly (1) 30:8
FRAYSSE (3) 91:20,20;130:17
freak (1) 63:7
free (1) 83:5
Friday (1) 124:16
friendly (2) 82:4,12
front (47) 4:11;15:12;16:4; 23:17;38:22;39:8; 41:16;42:2,3,25; 43:10,11,11;44:19, 23,24;52:17,18,21, 23;53:6;58:15,20,24; 60:20,22,25;68:8; 77:18,18,19,21;80:9; 84:11,22;97:20; 103:16,18;104:10, 14,14;105:2,6,13; 108:10;133:11;155:9
front- (1) 84:9
Frontage (21) 23:15;24:20;25:2, 13,18;26:14,20;27:1; 38:10,17;39:17; 40:23;42:6,24;43:5; 44:18;46:5;52:16; 98:18;102:10;142:10
frontages (1) 25:23
front-entry (3) 57:13;80:3,15
fronts (1) 43:7
frown (1) 153:20
fully (2) 57:11;141:12
funeral (1) 144:12
further (8) 11:16,18;25:10; 32:10;58:7;75:17; 119:25;143:24
future (12) 19:25;20:4,22; 27:14;30:20;63:18; 86:25;91:10,13; 129:10;139:1;146:7

G

garage (51) 26:5;43:10,11,12, 23;49:11,24;57:3,10, 13;59:20;60:4,19,20, 21;61:18;63:11; 64:1;70:17;73:18; 75:4;76:23;77:15,18; 78:10,14,18;80:3,4, 15,24;81:22,25;82:2, 24,25;83:2,3,4,8,19; 84:10,23;85:18,23; 86:1,2,8;99:1; 103:25;109:14
garages (9) 56:18,19,20;80:9; 83:15;84:8,17;97:12; 108:23
Garrett (3) 140:12;141:8; 145:6
Gate (1) 25:24
gave (2) 7:8;90:9
gazebo (1) 56:5
GDOT (1) 26:17
general (6) 5:3;16:25;18:18; 19:14;93:5;154:10
generally (11) 24:24;33:21;34:1; 39:19;40:25;77:11, 25;78:17;83:16; 109:5;153:20
Gentille (1) 111:19
geography (2) 40:12;84:17
Georgia (1) 61:10
gets (3) 27:3;29:4;98:12
gives (1) 58:25
giving (1) 154:22
glad (1) 91:23
goal (3) 25:8;118:19; 127:22
goals (1) 92:5
God (1) 71:13
goes (5) 29:5;67:23; 132:16;151:20;152:2
good (15) 36:10,17;38:15; 40:13;43:15;45:12; 70:11;92:20;93:9; 97:3;128:2,10; 129:11;132:11,21
government (1) 116:14
governments (1) 154:10
government's (1) 34:1
graces (1) 58:18
gracing (1) 92:1
grade (1) 86:1
grandfathered (2) 59:10,11
grant (2) 151:16;152:20
granted (7) 69:10;77:9; 151:18,19,19,24; 156:5
granting (1) 68:1
graph (1) 117:23
graphy (1) 103:23
grapples (1) 66:6
Great (10) 25:4;32:25;39:4; 42:14;53:17;85:3; 96:20;104:3;109:9; 130:1
greater (5) 38:25;42:13;51:8; 54:18;103:12
green (1) 54:4
Greenway (3) 92:11,11,21
gross (1) 98:23
ground (1) 10:17
group (1) 95:11
grow (1) 99:25
guarantee (1) 12:20
guess (18) 30:12;35:20; 65:12;86:16,17; 87:14;96:16;97:9; 100:19,22;101:15, 17;102:10,13;105:5; 106:7;112:9;120:1
guidelines (2) 54:18;103:13
guy (2) 92:19,21
guys (5) 88:8;114:14,16; 124:2;147:21

H

HAEBERLIN (181) 4:2;5:21,25;8:22,

24;9:8,16,22;10:1,19;11:3;13:23;15:12,22;16:1,9;17:10;21:24;22:13,16;23:14,22;24:4,7,10,18;27:13,19;28:9;33:8,13;34:5,11,14;38:4,13,20;39:25;41:12,14,20;42:3,5;43:2;44:8,23;45:1,16,22;47:3;54:20,23;58:2,10,13;59:7,14,21,24;60:9,17;61:21;62:20,23;63:1,13,21;64:3;65:16;68:3,19,22;69:1,4,8,24;70:11,18,21;71:19;72:6,8;73:14;74:1,10,19,25;75:5,13,23;76:1,12,15;77:6,16,19;78:6,12,21;79:1,4,15,21;80:7;81:5;83:11,18,23;84:13,15,20,24;85:7,16,20;88:5,12,18,24;89:6,12,16,19;90:2,5,11;108:24;110:3,13,17;111:2,5,7,12;113:25;114:11,22;115:3,7;118:4;119:4;122:19;123:9,13,20,23;124:9;125:5,9;126:12,16,19,22;127:1,3,5;130:14;133:3,10,13,23;136:3,10;139:12;140:10;142:23;143:9,23;146:16,25;147:4,8;148:4,6,11,14,16;149:5,11,13;153:25
Haeberlin's (1)
81:20
half (1)
41:20
halfway (1)
70:6
Hall (1)
68:14
hand (5)
8:3,4;16:11;33:25;94:3
handcuff (1)
65:10
handcuffing (1)
65:5
handle (1)
89:19
hands (1)
124:20
handwritten (2)
4:12;8:14
hanging (1)
53:2
Hapeville (1)
151:9
happen (8)
24:24;59:18;70:14;71:1;90:25;91:3;92:5;156:9
happened (2)
25:12;93:4
happens (1)
29:8
Happy (1)
149:12
hard (3)
95:7;101:24;114:10
hate (4)
59:10;77:6;94:5;139:9
Haviland (1)
64:24
head (1)
69:12
Health (1)
51:9
hear (6)
17:12;44:10;62:18;68:25;128:11;135:24
heard (3)
5:17;6:13;12:6
hearing (41)
5:12,14,24;8:21;11:14;12:23;13:23;17:11,12,13;22:12;44:9;77:4;90:3,12;106:23;107:5,7,11,13,18,22,24;108:17;112:22;114:1;120:1;124:10,14;125:7,13;130:13,16;143:24;146:22;148:1;150:11,20;153:5,22;156:25
hearings (6)
9:17;16:2;146:20;150:8,10,18
heartburn (1)
72:3
heated (16)
55:1,4,5,6,18;59:20;62:2;63:25;70:17;74:14,22;75:3,15;80:19;98:25;104:24
height (11)
54:17;99:5,8,11;103:11,15;104:8,10,11,13;110:16
heights (1)
109:21
held (1)
127:14
help (8)
29:1;59:1;66:2;67:23;111:16,17;112:7;140:20
helping (2)
68:7,8
high (1)
94:4
higher (4)
56:9,12;62:5;92:5
higher- (1)
86:21
higher-value (1)
86:21
highest (1)
54:8
highly (1)
129:20
hill (1)
103:24
Hills (1)
143:14
hillside (3)
103:21;104:4,9
historic (1)
19:1
historically (2)
127:13;128:24
hit (1)
76:8
hold (2)
19:24;81:18
home (29)
48:12;49:1;52:23;57:9;58:21;61:17;65:7,9;66:15,22;70:17;73:1;75:5,8;82:12;86:11,12,21,22;88:21;89:15,17;91:14;95:9,13;114:15;116:18;140:14;144:12
homeowner (4)
64:22,23;72:3;87:23
homeowners (1)
28:6
homeowner's (1)
96:13
homeowners' (5)
29:3;30:5;31:4;34:24;37:4
homes (39)
33:23;48:23;49:15,21,22,23;52:13,14,20;53:6,10;56:20;58:18,19;65:8,18;72:12,13;75:2;82:16;83:14;88:16;92:1,6;93:15;95:11,12,12;98:6;101:7,8,11,13;111:18,20,22,25;135:7;139:10
honest (7)
40:21;62:6;72:18;108:25;109:13;119:9;147:12
hoods (1)
31:16
hope (1)
129:12
horse (1)
19:6
house (52)
38:12;39:24,24;40:3,4;55:12;56:3;58:24;59:6,16,19;64:8,9,10;65:2,15;67:1;68:15;70:15;71:14,16;76:6,10;78:3,4,16;79:8,14,17;80:22;81:19;82:10;85:2,15,17;86:22;87:16;98:11;100:10;102:8;103:17,17,23;104:1;105:22,22;140:24;142:3;143:1;144:5,6,7
houses (11)
38:8;49:10;56:18;66:3,16,18;68:12;77:8;100:12,13;144:5
housing (6)
49:8;61:16,22,25;62:4;103:2
huge (2)
72:2;139:20
hundred-acre (1)
94:22
hurt (1)
132:8
husband (1)
93:5
hypothetical (1)
87:15

I

idea (6)
32:6;66:10;87:10;92:1;132:11;150:6
illegal (1)
99:23
illustration (1)
155:23
immediately (1)
30:20
impactful (1)
87:7
impacting (1)
5:2
impacts (1)
91:14
impede (1)
84:17
impediment (1)
25:10
Impervious (6)
56:1,4,12;73:21;77:13;109:21
important (3)
92:8;104:21,24
impose (2)
40:17,19
imposed (4)
38:23;40:16;54:9;117:20
imposes (1)
39:18
impossible (2)
59:16,18
improve (3)
52:22;58:17;65:6
improvements (1)
53:6
improves (1)
57:18
include (5)
56:24;69:21;105:2;118:25;151:6
included (3)
50:24;152:23;155:8
including (2)
29:12;86:10
incompatible (1)
127:15
inconsistencies (1)
141:18
increasing (1)
98:18
incur (1)
29:11
incurred (1)
28:5
indicate (1)
23:19
individual (3)
117:13,21;129:14
individually (1)
49:19
individuals (1)
61:13
Industrial (2)
144:9,15
infill (3)
62:13;63:4;77:8
information (10)
8:2,4;10:15;47:12;57:19;128:10,10,13,14;141:6
inherently (1)
155:2
initially (1)
29:4
initiated (3)
131:16,19;140:1

input (4)
90:8,9,9;147:14
inserted (1)
47:12
Inspector's (1)
5:18
install (4)
53:19;65:1,15;
67:25
installing (1)
53:15
instance (3)
69:15;155:24,24
instances (1)
71:25
instead (1)
77:22
Institutional (1)
153:10
insurance (12)
63:15,15,17;82:10;
86:4,8,13;87:10,12,
25;92:17;93:6
integrative (1)
110:4
intend (1)
11:21
intent (1)
128:21
intention (1)
154:24
interaction (1)
140:19
interested (1)
129:19
interesting (2)
98:12;116:22
interests (1)
135:13
interior (2)
94:15;99:14
interstate-highway (1)
26:15
into (15)
4:13;16:17;17:11;
25:9;49:1;53:2;65:5,
7;67:17;97:23;
123:7;132:8,12;
157:2,3
investment (1)
141:22
involved (3)
22:5,7;99:12
irrelevant (1)
12:17
irresponsible (2)
65:23;67:14
issue (9)
4:24;6:10,11;7:17,
18;50:5;55:2;73:18,
18
issued (1)
12:11
issues (1)
7:20
item (21)
3:23;15:15;16:1,
18,22;21:24;23:14;
47:3,10;53:9;56:1;
90:12;113:25;
123:15;126:23;
127:5;140:10;
141:12;142:15;
148:8,17
items (22)
22:8;25:7;47:8;
49:13;50:13;51:20;
88:8;109:12,24;
114:8,13;116:4;
117:4,7,12;127:6;
146:17,21;147:23,
25;149:13;150:4

J

James (1)
144:3
JENKINS (123)
3:2,23;5:19,23;
10:10;11:20;12:22;
13:1,4,8,10;14:15,
19;15:10,19;16:7;
17:9,15,20;19:16,21;
20:25;21:3,7,23;
22:11,15,18,23;
34:18;35:20;36:1,9,
13,16;37:2;44:11,15;
45:3,8;46:1,6,8,12;
69:12;77:3;81:2,9;
83:6;89:23;90:7,14,
18;91:18;92:10;
93:18,22,25;106:9,
15,18;107:6,10;
112:22,24;113:1,5,
24;120:2,7,11,18,20,
24;121:15,25;122:6,
9,14;125:17,21;
126:15,24;127:2,4;
130:12,15,19,24;
131:3,9,11,13,20,24;
136:17,24;137:12,
16,19,23;138:1,6,9;
139:11;140:9;144:1,
19,24;145:3,8,10,14;
146:12,23;147:2,6;
152:10,12;157:4,7,
13;158:12
job (2)
30:25;97:3
Joe (1)
76:4
John (2)
4:10,19
judging (1)
44:21
July (11)
45:20,22;122:20;
123:13,20,22;
124:10,11,12,14,17
June (2)
5:12;6:19
jurisdiction (1)
66:5
jurisdictions (3)
41:3;67:3;154:1

K

keep (3)
33:24;36:4;58:5
keeping (2)
26:4;54:13
kept (2)
52:8;139:10
kind (6)
36:4;47:16,18;
92:4;116:10;143:3
kitchen (1)
49:23
knock (1)
70:13
known (1)
29:21

L

laid (1)
42:18
land (10)
26:8;62:1;100:25;
153:9,16;155:1,3,14,
17;156:21
landowner (1)
135:23
landscaping (1)
29:6
language (4)
64:17;72:21;
74:15;152:19
large (2)
50:1;141:25
larger (4)
4:24;50:1;98:23,
24
last (5)
24:22;54:5;91:16;
117:17;152:7
late (1)
114:7
lately (3)
72:9,10,14
later (6)
31:7;32:8;35:19;
119:7;139:13;143:16
law (3)
132:4,6;155:18
laws (1)
91:24
lawyer (4)
20:23;29:16;
151:15,18
lay (1)
5:25
leading (2)
78:16,17
leads (1)
76:18
least (6)
7:9;11:17;78:9;
97:15;100:15;122:14
leave (2)
11:22;18:8
left (3)
26:7;27:25;134:19
left-hand (1)
23:19
legal (8)
59:4;110:25;
132:1;133:24;
135:12,14;152:20;
156:19
legally (3)
132:13;134:16;
135:10
legislatively (1)
156:15
legislature (2)
132:9,10
length (1)
100:7
less (6)
31:15;68:6,6;
96:22;97:1,12
lets (1)
57:21
letter (5)
8:15;12:11,13,16;
15:14
letting (4)
135:22,23;136:5,8
level (7)
76:7;103:18,19;
149:15;150:14,24,25
levels (1)
75:25
liability (6)
28:5;29:11,19;
30:9,10;67:11
liberty (1)
135:20
life (2)
29:1;33:22
light (3)
9:19;54:2;130:6
liked (1)
151:1
likes (1)
63:9
limitations (1)
57:12
limited (4)
18:22;27:23;
48:13;76:17
limits (3)
77:13;149:17,19
line (13)
26:23,23;27:3;
40:14,15;41:15,18;
44:20;66:17;68:13;
97:21;103:16;117:23
linear (1)
42:17
linearity (1)
96:24
lines (3)
58:20,20;66:19
list (2)
117:14;119:10
listed (8)
4:6;13:21;16:19;
48:10;50:14;115:20;
116:4;123:23
listing (1)
69:16
literally (3)
43:7;104:1;153:13
little (10)
6:18;44:17;51:23;
56:9,11;71:11;90:23;
103:24;147:24;
149:25
live (8)
28:13;35:18;
91:20;92:11;115:18;
118:6,8;144:5
lives (1)
76:4
living (3)
134:21;139:21;
143:1
local (4)
19:4;116:13;
140:19;154:10
located (2)
23:18;60:23
location (4)
5:2;116:1,2;
156:14
locations (1)
4:7
logical (3)
31:19;50:17;54:1
logically (1)
36:21
logistically (1)
60:12
long (3)
4:16;93:11;107:15
longer (2)
31:17;59:9
long-time (1)
140:19
look (14)
28:11,12;49:19;
50:21;63:5;64:2,16;

72:8;80:16;90:10,24;
99:10;129:22;140:16
looked (7)
16:17;50:11;
51:25;62:3;65:19;
72:10;101:9
looking (14)
13:19;16:5;39:21;
53:23;58:14;60:20,
24;63:4;70:9;72:20;
91:13;124:5;141:22;
150:13
loophole (1)
106:2
lost (2)
93:6,6
lot (101)
16:14;24:20;25:1,
18;26:3,22,22,25;
27:3,4,8;29:5;39:1,2,
5,14;40:5,8,10,12;
42:16;43:3,3,5,17,18,
18,20,21,24,25;44:2;
47:20;50:20,23;51:1,
22;52:22;54:9;55:9;
56:1,10;57:19;58:18;
59:18,25;60:1,2,4,5,
10;63:12;65:7,12;
66:17,19;68:9,13;
72:9,25;73:13,19,25;
75:5,7;76:23,25;
77:2;78:13,23;80:5,
5,15;85:17;88:16;
92:14;97:10;99:20,
23;100:9,14;101:18,
20,22,23,23,25,25;
102:7,20;103:8;
104:22;105:7;109:2,
22;111:16;119:18;
142:8;143:16;154:1;
155:13
lot/new (1)
81:19
lots (55)
25:1,9;26:13,16;
39:3,4,15,16;40:22,
25,25;41:1;42:11,19,
21;43:15,17;47:22;
50:22;51:2,13;52:1,
1,6,8,10;53:18;
60:16;63:24;64:18,
23;69:20;72:21;
74:13,21;75:2;76:11,
13,17,17;79:21;
84:18;93:2,14;98:20;
99:15,17,24;100:9,
15;101:1,18;102:16;
110:23,25
love (1)
114:11
low (5)
27:1,2;29:3;41:3;
91:4
lower (3)
23:18;91:12,12
lowered (1)
55:10
lowering (1)
64:17
L-shaped (3)
85:2,15,17
lucky (1)
72:15
lump-sum (1)
116:2

M

ma'am (5)
13:18;38:4;54:20;
148:6;154:7
mailbox (1)
38:18
main (1)
91:22
maintain (5)
30:8,21,25;33:25;
52:10
maintained (2)
94:16;96:12
maintaining (1)
31:2
maintains (1)
36:8
mainte- (1)
29:13
maintenance (3)
28:8,17,23
major (1)
55:2
majority (5)
42:20,22;80:6;
92:2;140:3
makes (4)
31:19;98:5;
100:25;123:15
making (7)
91:24;101:21;
108:8,12;117:20;
155:8;156:15
Maltese (1)
141:24
man (1)
93:10
mandate (4)
29:24;67:1;
127:20;139:15
mandated (1)
51:9
mandatory (1)
96:12
man-made (2)
103:20;104:9
manufac- (1)
54:15
manufactured (10)
48:9;49:8;51:15;
53:8;54:7,12;69:19;
88:19;89:13;103:8
many (19)
25:7,9;26:24;
28:15;31:11;41:1,8;
42:9,19;50:22;52:20;
53:10;55:13;57:12;
78:1;98:13;117:5;
151:6;153:23
map (12)
127:17,21;133:4,
18;134:4,9,11,12;
140:17,17;141:18;
143:11
maps (1)
127:16
Maria (1)
88:19
Maria's (1)
103:23
marine (1)
4:14
mark (1)
96:3
marked (1)
14:5
market (1)
61:9
marketplace (1)
101:14
marks (1)
118:1
married (2)
50:15;151:8
match (1)
91:24
materials (1)
53:19
matter (11)
6:16,17,21;7:7,8,
25;8:19;11:6;13:13;
116:9;123:1
maximize (2)
63:5,5
Maximum (3)
56:1;103:10,11
maximums (1)
40:17
may (15)
12:16;28:19;
36:22;60:23;62:3,3,
7;67:15;80:7;91:3;
92:17;108:20;119:6;
122:22;150:19
maybe (10)
38:18;58:23;
64:17;72:24;81:17;
87:24;99:16;133:1;
144:15;149:24
MAYOR (141)
3:2,23;4:2;5:9,19,
23;6:4;8:7,18;10:10;
11:20,25;12:22;13:1,
4,8,10;14:9,15,19;
15:10,19;16:7;17:9,
15,20;19:16,21;
20:25;21:3,7,23,24;
22:11,15,18,23;
34:18;35:20;36:1,9,
13,16;37:2;44:9,11,
15;45:3,8,13;46:1,6,
8,12;68:2;69:9,12;
77:3;81:2,9,11;83:6;
89:23;90:7,14,18,21;
91:18;92:10;93:18,
22,25;106:9,15,17,
18,25;107:6,10;
112:22,24;113:1,5,
24;120:2,7,11,18,20,
24;121:15,25;122:6,
9,14;125:17,21;
126:15,24;127:2,4;
130:12,15,19,24;
131:3,9,11,13,20,24;
136:17,24;137:8,10,
12,16,19,23;138:1,6,
9;139:11;140:9;
144:1,19,24;145:3,8,
10,14;146:12,23;
147:2,6;152:10,12;
157:4,7,13;158:12
Mayor's (2)
68:18,22
McMansion (1)
105:2
McMansions (1)
49:20
mean (27)
10:2,25;24:24;
28:5;30:12;31:1,7,
15;38:15;45:20;
68:3;74:23;79:16;
80:24;85:24;93:8;
112:6;119:4;122:14;
131:24;132:17;
133:24;134:16;
137:1;139:3;153:25;
155:20
Meaning (1)
37:16
means (6)
4:18;98:25;
115:17;121:18;
150:7;151:8
meantime (1)
118:21
measure (1)
156:17
measured (1)
104:15
measurement (2)
103:14;104:16
measuring (1)
104:8
mechanism (1)
35:9
meet (8)
42:9;47:22;51:5;
52:7;56:22;62:15;
78:4;111:14
meeting (13)
7:1;35:14;47:15;
70:6;81:9,16;106:12;
110:24;114:19;
125:8;136:2;152:8;
158:24
meets (1)
153:4
members (8)
5:9;6:4;7:9,15;
8:18;16:25;17:1;
152:22
memorandum (1)
4:12
mendation (1)
142:17
mention (2)
100:4;147:5
mentioned (2)
34:2;61:15
ments (1)
96:7
merely (1)
128:8
met (2)
38:9;153:5
metropolitan (1)
57:4
middle (1)
141:20
might (14)
8:7;32:3;33:16,16;
49:19;80:10;84:17;
105:7;114:24;119:7;
129:8;135:6,14;
142:2
Mill (4)
52:4,5;55:14;
92:12
millions (1)
33:23
mind (4)
5:13;7:3;77:12;
151:12
mine (1)
58:3
minimum (31)
27:4;38:22,25;
39:1;41:16;42:6,7;
51:5;57:23,25;58:8;
62:9;63:25;76:22;
86:15;87:15,19,21,
22;100:8,17,20;
101:18;102:7,10;
103:10;110:24;
124:21;132:12;
134:1;150:8
minimums (2)

40:10,15
minor (2)
24:12;115:8
minute (3)
77:3,5;81:3
minutes (1)
94:2
misleading (1)
109:23
mistakes (2)
65:25;141:6
mitigates (1)
116:11
mits (1)
34:4
mobile (14)
48:9;49:8;51:15;
52:13,14;53:7;54:6,
12,15;69:19;88:18;
89:13;97:22;101:11
mobile/modular (1)
98:5
mobiles (5)
97:23;100:24;
101:3;102:6,7
modify (1)
83:25
modifying (1)
105:22
modular (19)
48:9;49:8;52:13,
14;53:7;54:6,12,15;
61:17;69:19;88:19;
89:13;100:24;101:5,
6,8,12;102:6,8
modulars (4)
97:22,23;98:1;
101:12
money (2)
33:25;92:16
month (2)
28:15,16
months (5)
6:19,24;24:23;
69:9;152:1
morally (1)
136:9
more (57)
8:1,12;14:15;21:3;
22:18;26:4;29:16;
42:7;46:8;48:19,21;
49:16,21,23,23;54:3;
55:24;57:12;58:16;
59:8;62:10,11;63:6;
64:11;66:12;71:11;
73:20;77:11;84:2;
92:3;93:18;96:22,25;
97:12;102:15;112:1;
113:1;116:1,19;
120:12,20;125:17;
131:4,13;132:5,13,
14,22;133:21;
136:17;143:15;
145:10;146:10;
147:19,24;150:14;
152:12
morning (1)
10:6
most (15)
28:13;29:23,24;
49:18;51:24;52:24;
53:12;55:15,22;56:7;
60:17,18;66:7,24;
104:19
mostly (1)
44:20
motion (38)
10:10;13:1;19:24;
22:4;45:10;46:1,3;
90:1;93:23;106:16,
18;112:20;120:15;
121:15;122:5;
125:13;126:13,16;
131:9;136:22,23;
137:3,5,8,10,11,15,
19,23;138:2;140:9;
145:4,6;146:12,14;
152:6;158:1,9
motor (1)
116:20
Motors (1)
93:5
move (9)
9:13;22:1,7;40:14;
48:24;49:1;79:7;
83:24;151:25
moved (9)
13:3;22:9;120:17;
127:6;131:10;137:3,
8,9;146:15
moved-in (1)
48:23
much (15)
14:14;26:4;41:7;
55:17;62:10;66:4;
68:6,6;98:2;104:23;
109:3;111:23;116:1;
150:19;153:18
multi- (3)
119:17;129:22;
130:4
multi-family (10)
115:19;116:22;
127:15;128:13,24,
25;129:17;130:2,3;
133:16
multiple (1)
10:21
multitude (1)
80:11
Murray (7)
34:18;94:8;114:9,
12,23;131:21;149:10
must (1)
67:24
myself (2)
103:9;117:6

N

name (2)
6:5;114:10
nance (1)
29:14
narrow (1)
78:5
nature (2)
29:7;63:7
near (2)
41:2;72:17
nearly (1)
97:20
necessarily (2)
64:21;135:18
necessary (3)
6:15;85:25;156:23
need (35)
11:2,4;22:11;29:6;
31:16;56:11;57:9;
59:13;61:16;67:10;
75:3;76:8,19;90:7,
10;94:1;105:10,20;
108:9;119:19;122:1;
124:20;128:23;
129:3,22;130:13;
131:25;134:11;
140:4,4,5,5;143:23;
147:12;152:13
needs (6)
6:15;64:1;73:4;
74:8;97:4;105:15
negative (1)
109:5
neighbor- (1)
31:15
neighborhood (2)
141:20;142:4
neighborhoods (5)
16:15;50:19;64:2;
83:16;109:8
neighbor's (1)
38:12
neither (1)
60:14
new (49)
18:5,7;26:2;33:18;
46:4;51:2;52:8,10;
53:18;55:19,22;
56:25;57:2,8,14;
58:23;61:8,10;63:23;
64:22,22;65:4;71:16,
18;72:4,25;75:2,2,5,
5,7,7,22;76:7,13,17;
79:21,22;81:19;
86:10,14;88:1;93:8;
94:13;103:17;
111:24;127:9,11;
138:3
new/new (1)
82:21
newspaper (1)
124:11
next (28)
8:21,22;16:1;
21:24;23:14;47:3,10;
52:15,17;53:9;56:1;
95:22;96:8,18;
100:22;101:25;
102:4,5,17;113:25;
121:23;122:4;125:3,
8;126:23;127:5,9;
140:10
next-door (1)
38:11
nice (2)
102:9;103:20
nicely (1)
101:10
nine (1)
4:15
nobody (1)
98:3
no-brainer (1)
130:17
nonadminis- (1)
14:6
noncon- (1)
25:3
nonconforming (10)
25:1,6;59:9;64:12,
23;68:4;100:5;
111:1;135:10,12
nonconformity (1)
59:4
non-notification (1)
134:24
nor (2)
12:14;60:14
Northwoods (2)
17:2;60:2
not-appropriate (1)
19:11
notations (1)
5:7
note (3)
50:3;84:20;88:12
noted (2)
8:15;10:3
notice (4)
6:9,11,25;8:17
notification (2)
134:14;141:10
notified (1)
128:17
notify (2)
132:18;146:7
nowhere (1)
41:1
number (10)
24:15;47:21;
48:21;74:2;108:22;
132:3;141:14;148:8,
17,24
numbers (2)
42:14;97:7
nursing (1)
95:12

O

O&I (1)
146:10
O/I (11)
140:15,18,20,22;
142:1,3;143:1,12;
145:6;154:13;155:7
O/I-zoned (1)
141:19
o0o- (1)
158:25
O-1 (1)
144:8
Oakcliff (1)
91:21
object (1)
95:3
objection (1)
131:23
objective (1)
153:3
objects (1)
84:5
obtains (1)
27:4
obviously (3)
42:11;64:5;137:1
occupation (2)
95:9;116:18
occupations (2)
48:12;95:14
occurred (7)
30:3;107:18;
108:1,4;109:3;
123:15;124:25
occurs (1)
64:6
oddball (1)
65:21
oddities (1)
67:10
off (9)
12:21;18:3;41:25;
78:23,24;79:6,10;
92:12;93:13
offend (1)
109:1
offer (1)
156:17
Office/ (1)
153:9
Official (6)
4:11,20;5:8;6:14;
7:12;8:12
officially (1)
8:10

offset (2)
28:6;118:1
of-way (1)
41:18
O-I (1)
4:4
old (12)
3:24;18:6;25:17;
43:25;50:23;103:17;
104:12;111:24;
140:17;142:8;147:3,
6
older (3)
92:14;93:12;
127:16
old-fashioned (1)
155:6
once (14)
8:1;96:7;97:10,23;
98:7,9;99:13;100:9;
102:5;151:19;
153:22;155:15,23;
156:16
one (57)
15:18;16:9,11,12;
18:13;23:25;24:14;
29:17;32:1;33:4,5,
15;42:22;48:13,19,
22;49:23;50:15;
51:16;57:14;64:23;
72:24;75:11;80:2;
81:14,17,19;83:5;
95:1;96:19;100:24;
109:9;111:20;
114:23;117:12;
118:11;122:2;125:2;
127:2,9,16;128:1;
133:5;136:6;140:7;
141:9;148:3,4,12;
149:11,22;150:2,3,
15;155:13,24,25
one-acre (1)
101:1
one-car (5)
56:18;80:23;
81:25;82:24;86:7
one-floor (1)
63:9
ones (3)
72:10;83:18;102:9
one-story (1)
61:14
one-year (1)
156:18
ongoing (1)
34:3
only (21)
6:7;23:24;42:11;
54:9;56:3;69:9;
82:11;88:18,24;
89:12;110:6;134:3,
13;139:7,19;140:14;
141:23;148:11;
149:23;153:21;
155:12
onto (2)
68:14;123:16
open (7)
5:24;17:12;44:9;
50:11;96:10;106:1;
130:15
opening (1)
107:12
operated (3)
95:24,25;96:1
opinion (26)
4:10;10:5;13:17;
19:3;35:24;108:8,12;
109:7;123:14;
125:11;132:1,2,14,
24;134:17;152:20;
153:2,17,19;154:13;
155:3,16;156:10,11,
16,24
opinions (1)
127:25
oppor- (1)
61:24
opportunities (1)
92:3
opportunity (11)
6:12;7:22,23;8:3;
11:8;56:22;58:25;
108:11;128:11;
129:15;156:22
opposed (8)
70:6;71:17;80:2;
131:15;134:10,13,
23;135:4
option (2)
73:15;85:3
options (3)
56:21;84:25;85:5
ord- (1)
16:7
order (6)
78:2,3,10;81:9;
122:11;124:19
Ordinance (45)
6:22,23;10:18,21;
11:21,22;12:2,6;
13:14;16:4,20;17:4,
16,22;18:2,6,7,8,9,
21;19:8;23:17;24:15,
19;25:17;33:9;34:7,
8;36:4;38:3;40:24;
46:4;47:18;65:1;
85:10;94:25;109:20;
110:21;120:3;
123:16;124:7,16,20;
125:14;152:8
ordinances (1)
13:13
Ordinarily (1)
29:20
orientation (1)
84:16
original (2)
5:11;13:20
originally (2)
124:9;141:7
other- (1)
105:13
others (1)
134:24
otherwise (3)
105:3;135:14;
150:2
ought (2)
153:11;156:10
ourselves (1)
18:8
out (42)
6:24;12:15,18;
24:11;27:22;30:17;
34:10;37:9;42:18;
47:11;48:9;49:17;
60:15;61:2;63:12;
67:3;72:11;77:20;
78:8,11;79:7;81:24;
86:11;87:11,12;88:2,
16;92:25;99:9,20;
101:23;106:14;
111:15;112:14;
114:5,15;118:14;
122:7;124:16;139:9;
142:25;155:25
out-lyers (1)
112:14
outside (1)
56:24
outstanding (1)
28:1
over (23)
4:1;6:21;12:19;
29:12;30:7;34:25;
35:1;47:13;52:16,20;
57:20;58:19,20;
62:25;64:24;66:18;
72:3;92:19,21;94:9;
101:1;104:6;127:11
overspeaking (1)
70:2
Over-the-Air (1)
18:3
owe (1)
133:5
own (2)
31:23;114:15
owned (4)
95:23,24;96:1,11
owner (4)
94:16;117:21;
131:17;142:22
owners (9)
132:18;133:7,8;
134:15;136:7;139:2;
142:24;146:7,8
ownership (1)
30:14

P

page (32)
14:4;49:22;50:20;
52:1;53:10;54:11;
58:5,10,11,12;74:11;
81:1;83:24;88:13;
94:5,12,14;95:6;
97:8;98:22;99:14;
102:17;103:7;106:5;
108:22;117:16,19,
22,25;148:8,15,23
paid (2)
133:19;134:5
painting (2)
28:17;29:6
Pam (1)
135:21
paper (2)
114:17,18
papers' (1)
65:3
para- (1)
117:22
paragraph (6)
95:8;96:8;100:4,
22;102:4,5
paragraphs (1)
97:17
parallel (2)
97:19,20
parcel (1)
141:14
parcels (3)
141:7,11;142:4
Park (6)
25:24;32:12;53:1;
61:3;66:25;94:9
parking (7)
52:25;56:14,23,24;
60:24;109:15;116:19
parks (5)
48:15;95:22;96:1,
5,6
parochial (1)
117:1
part (16)
6:18;29:13;89:4;
96:6;97:9;100:6;
105:16,17;109:15;
152:21,23;153:6,13,
15;154:25;155:10
participate (1)
37:11
particular (14)
12:3;17:16;38:3,
21;69:15,23;94:12;
97:4;118:13,24;
121:21;128:8;
135:23;136:4
particularly (11)
12:8;24:22;25:5;
43:22;50:18;55:17;
65:25;67:2;118:18;
135:22;143:14
particulars (1)
59:25
pass (9)
24:10;34:7;45:24;
47:10;114:5;126:13,
16;144:17;150:24
passed (1)
144:12
passive (2)
95:23;96:11
past (5)
27:7;34:14;57:2;
65:16,25
pave (1)
31:12
paved (3)
31:16,18;61:2
pay (10)
28:22;31:3,4;32:7,
8;37:6;63:15,18,19;
92:24
paying (7)
28:7;82:11;134:7;
143:4,5,9,17
PC (1)
50:3
Peachtree (5)
127:10,11;138:3;
144:9,15
Pebblewood (2)
127:13;138:4
penalizing (3)
61:13;64:22;65:4
people (47)
26:13,16;28:13;
29:4;31:23;35:17;
47:24;48:25;58:17;
60:17,18;65:7;66:3,
7;68:7,9,11;77:7;
85:5;91:2;92:2;93:2,
12,14;95:5;97:5;
98:10;102:24;
105:15,21;109:2;
111:16;119:23;
122:7,9;129:18;
134:20,21;135:6,22,
24;136:6,7;139:9,21;
143:1,16
people's (2)
12:20;53:6
per (1)
31:11
per- (1)
34:3
percent (22)
40:22;56:8,9,13;
59:8;64:11;70:3;
72:11;73:21;98:25;
99:2;102:18,18,19,

19;104:22,22,22;
105:7,8,23,23
percentage (1)
103:8
perfectly (1)
79:23
perhaps (5)
25:25;36:10,17;
103:2;150:15
period (3)
94:19;151:14,19
permeability (1)
105:19
permission (1)
7:11
permit (7)
55:3;112:9;
153:19;154:5,22;
155:4,15
permits (5)
28:1;47:24;48:1;
59:3;149:16
permitted (14)
34:4;48:7,16;
67:22;95:8,13;116:8,
15;117:14;151:14,
14;156:10,11,15
person (6)
4:11;76:4;128:2;
140:7;154:23;155:8
personal (4)
95:12;114:15;
151:15,17
personally (1)
87:6
Peter (1)
141:24
petition (2)
34:25;94:9
petitioned (1)
37:4
petunias (1)
99:9
phase (1)
109:25
philosophical (1)
18:18
phrase (1)
104:25
physically (2)
38:10;123:7
picking (1)
149:10
pin (6)
39:8,11;42:3,4;
44:23,24
Pittman (38)
3:13,14;15:5,6;
21:18,19;22:10;23:9,
10;46:23,24;83:1;
93:24;112:25;
113:16,17,19,20;
121:10,11;126:7,8;
131:10;137:2,9,14;
138:2,21,22;145:9,
25;146:1;152:11;
157:24;158:4,5,20,
21
place (6)
18:19;19:12;
25:25;28:14;70:15;
135:15
placed (5)
7:11;13:15;128:7;
136:12;153:12
placement (1)
10:22
placing (1)
39:23
plain (2)
50:24;51:3
planned (4)
94:22;95:1;96:6;
153:14
planner (5)
65:23;80:25;81:3;
91:7;127:24
Planning (13)
4:22;47:6,13;
115:9;128:11,15;
136:1;142:14;
147:14;149:15,23;
150:23,24
plans (2)
57:16,17
plant (1)
99:9
planting (1)
99:7
plantings (1)
99:5
plat (3)
34:12;38:24;96:14
plate (1)
18:22
platform (2)
128:8;129:24
platted (1)
40:11
play (3)
73:16;149:25;
156:20
Plaza (1)
155:25
please (10)
3:2;13:8;21:7;
67:23;108:21;113:5;
138:10;151:12;
157:13;158:12
pleasure (1)
116:21
pletely (1)
12:17
plethora (1)
133:25
plugging (1)
91:11
plus (1)
52:5
pm (3)
8:25;124:17;
158:24
pocket (1)
30:17
point (8)
4:1;18:18;28:19;
31:21;67:20;90:13;
91:5;104:16
policy (2)
27:20;64:4
Pontiac (1)
92:12
pool (2)
50:2;56:5
pools (1)
50:5
poorly (1)
109:6
porch (3)
58:23;103:17;
104:15
porches (3)
105:3,6,13
portion (1)
5:14
position (5)
8:9;36:21,22;
135:5,12
positioning (1)
135:20
positively (1)
133:6
possibility (1)
49:6
possible (4)
29:25;42:19;
60:13;66:4
possibly (1)
71:4
postpone (10)
11:11;13:2;81:15;
89:24;90:1,15;
106:11,19;155:22;
158:2
postponing (3)
11:23;107:21;
126:24
potential (5)
27:14,22;30:9;
65:8;129:10
power (3)
35:12,15;154:8
practically (1)
38:11
preamble (1)
16:10
precluding (1)
102:7
preclusive (1)
101:16
prefer (3)
9:6;18:18;119:10
preference (3)
108:14;151:15,18
premium (2)
86:18,25
prepare (1)
9:3
prepared (2)
114:16;135:15
prerogative (1)
106:21
present (6)
5:2,16;9:24;11:18;
68:14;115:23
presentation (1)
38:6
presently (1)
31:11
pretty (2)
100:25;104:23
prevent (2)
39:23;40:8
prevents (1)
39:3
previous (4)
24:14,19;108:25;
154:20
previously (2)
61:15;147:8
primarily (2)
52:4;76:12
primary (3)
55:24;57:8;97:18
principles (1)
7:14
print (1)
114:14
printed (1)
114:17
prior (5)
13:14;51:25;70:3;
71:5;74:23
private (19)
27:12,14,18;29:23,
25;30:16;31:14;
32:5;33:10,19,20;
34:9;94:16;95:2;
96:2,5,5;117:1;
129:13
probably (2)
97:25;122:23
problem (9)
12:22;28:21;32:2;
33:2,21,21;34:1;
47:23;73:1
problematic (5)
95:21;99:2;100:2;
101:24;136:9
problems (3)
58:19;133:25;
139:24
Procedures (3)
107:16;132:4,6
process (1)
151:11
produce (2)
41:5,6
professional (1)
10:5
prohibited (1)
108:23
prohibits (1)
33:18
project (1)
153:14
promise (2)
93:13;101:9
propagate (1)
32:2
properly (3)
37:23;128:22;
141:15
properties (7)
26:7;44:2;57:11;
70:7;129:19;131:18;
139:21
property (49)
35:6,6;43:4;48:24;
49:2;61:15;69:15;
70:3;71:5;73:9;87:8;
94:16;96:12;109:4;
117:21;128:23;
129:9,16;130:1;
132:18,22;133:7,12,
16,21;134:14,17,22;
135:7;136:4,8,12;
138:3;139:2,5;
140:21;141:1,19;
142:19,22,24;146:7,
9;152:17;153:1,6;
154:13,18;156:5
proposed (3)
39:9;60:7;63:19
protect (1)
67:11
protections (1)
157:1
provide (8)
10:5;18:22;26:5,
18;49:5;56:22;
61:24;129:15
provided (6)
10:7;15:16;49:3;
95:11;98:24;154:9
providing (1)
80:11
provision (11)
25:21;26:1;50:9;
51:6,12,14;52:12;
53:24;54:14;80:8;
99:6
provisions (4)
48:21;50:8;51:1,
21

public (63)
5:14,24;9:17;16:2;
17:1,11,12,13;18:25;
22:12;24:20;25:12;
26:20;27:8;28:23;
40:23;41:2;44:9;
48:6,15;51:9,11;
52:15;53:3;77:4;
90:3,8,12;94:6,17;
95:22;96:9,16;
106:23;107:4,6,11,
13,18,22,24,25;
108:4,10,17;112:21,
22;114:1;116:12,13,
25;120:1;124:10;
125:13;130:13,16;
143:24;146:20,22;
147:14;148:1;
150:18,20
publishing (1)
6:25
PUD (2)
94:22;155:11
PUDs (1)
94:22
purchase (1)
48:25
purpose (4)
6:22,24;7:4;
116:11
purposes (1)
39:5
push (1)
104:3
put (43)
12:21;26:1;36:4;
40:2,4;49:13,15,21;
50:7,16;51:1,6,14;
52:12;55:21;57:5,14;
60:3;63:12;69:22;
70:16;71:3;77:20;
80:21;83:4;87:15;
97:23;98:14,17;
103:21;110:24;
119:7,21;127:23;
132:11;133:11;
136:14;139:9;140:6;
144:11;146:23;
155:8;156:20
putting (7)
54:14;63:24;
82:23;100:10,24;
101:11;136:7
PYE (9)
6:3,5;8:8,13;9:2,6;
11:5,17;12:14

Q

qualify (1)
103:23
quality (3)
86:11;102:14;
103:2
quasi- (1)
116:12
quickly (1)
14:2
quite (1)
16:23
quotation (1)
118:1
quote/quote (1)
49:20

R

R- (2)
50:9;146:10
R-1 (20)
39:6,8;47:4,21,23;
48:4,17;50:7;54:23;
100:11;118:23,24,
25;119:13;124:1;
141:23;142:6,20;
144:17;145:6
R-2 (1)
119:13
R-3 (10)
119:13;128:23;
130:4;132:23;
133:22;136:12;
137:24;138:4;139:3,
6
R-85s (2)
102:2,4
radius (2)
32:13;79:7
radiuses (2)
37:7;94:11
railroad (1)
116:23
raise (3)
16:11;86:7;94:4
raised (2)
7:18;86:25
Raising (1)
94:3
ran (1)
124:10
ranch (2)
61:14;63:10
rare (1)
19:9
rather (6)
19:10;99:9;116:2;
118:13;119:21;
154:18
rationale (1)
72:20
read (9)
4:13;6:13;97:5;
98:4;104:13;110:5;
123:5,7;137:20
readily (1)
60:15
reading (19)
45:11,23,24;106:4;
110:6;116:15;
120:14,15,16;
121:19;122:12,21;
123:2,17;124:19,24,
25;125:14;155:18
reading's (1)
123:15
readvertise (2)
122:1;126:20
readvertised (2)
141:11,14
real (1)
91:4
realize (1)
62:8
realizing (1)
64:3
really (23)
16:22;19:5;29:3,
16;40:1;42:18;43:3;
52:18,21;56:11;
70:23;76:16;79:15;
80:17;91:25;118:5,
15;119:24;128:3;
132:19;136:9;146:6;
156:13
rear (19)
4:14;43:6;54:11,
22;57:17,23,25;58:8;
70:20;73:22,24;
77:15;78:1;80:10;
84:1,14,16,23;88:12
rear-oriented (1)
57:7
reason (16)
11:23;20:5;23:21;
24:13,15;50:15;57:7;
91:7;110:17;139:7;
142:2;144:8;154:4,6,
17;155:19
reasonable (2)
36:18;52:9
reasoning (1)
50:17
reasons (1)
102:22
recall (12)
4:2,21;16:13;
24:18;25:16;33:8;
47:20;51:22;55:7;
56:2;73:15;150:17
receipt (1)
131:17
receive (2)
28:25;142:24
received (3)
4:9;8:15;15:16
recently (1)
10:6
Reception (4)
16:3;18:1,4;20:1
recess (10)
11:14;81:7;108:1,
16;112:20;122:3;
125:6,13;146:21;
152:6
recessed (7)
45:18;123:9,10;
124:2,12;147:15;
152:7
recom- (1)
142:16
recommen- (1)
115:8
recommend (4)
65:24;67:14;
128:16;135:18
recommendation (11)
4:21,23;5:6;11:11;
81:13,14,21;108:25;
130:3;142:12,13
recommendations (1)
47:17
recommended (5)
47:7;57:1;84:6;
136:11;142:14
recommending (2)
12:10;117:10
record (11)
4:13;8:9;34:12;
47:8;64:18;72:21;
109:18;123:7;
131:15;133:15;
136:10
recreation (1)
116:19
Rectangular (4)
39:15,16;42:11;
85:15
redeveloped (1)
129:16
redeveloping (1)
129:19
redevelopment (2)
48:1;129:21
reduce (3)
52:23,24;58:6
reduced (2)
60:7,8
reductions (1)
67:7
Reed (1)
149:20
refer (1)
141:24
reference (4)
11:9;94:14;106:5;
110:2
referenced (1)
100:5
references (1)
96:24
referencing (3)
97:3,11;98:7
referring (2)
68:21;100:23
reflect (1)
86:19
reflected (1)
96:13
regard (9)
11:25;12:9;13:13;
20:6;29:19;35:8;
37:13;117:15;151:4
regarding (5)
16:15;32:13;
88:11,15;141:16
regardless (1)
67:4
regards (5)
34:3;67:20;68:16;
69:17;110:12
registered (1)
131:17
regular (1)
29:13
regulate (3)
18:24,25;98:2
regulates (1)
39:1
regulating (2)
54:2;80:8
regulation (9)
16:13,16;18:19,20,
23;19:10,11;65:19;
95:19
regulations (4)
19:9;29:23,24;
40:7
reinforced (1)
37:22
relationship (1)
37:12
relative (3)
5:4;88:7;104:11
relevant (3)
12:8;35:17;155:12
remain (1)
18:21
remainder (1)
125:7
remaining (3)
26:7;27:24;119:15
Remember (7)
38:20,21;40:9;
65:16;85:21;123:25;
148:11
remodel (1)
58:23
remodeling (2)
58:25;92:4
remotely (1)
60:13
removal (1)
17:3
remove (2)
25:10;118:19

removed (1)
134:21
removing (1)
80:8
rented (1)
155:25
reopen (1)
5:14
repavement (1)
31:12
replace (4)
46:3;86:9,10;
87:21
replacement (16)
59:6;69:22;70:2,8;
71:4,12;73:4,5;
75:20,21;80:24;82:1;
86:4;87:2,25;88:1
replacing (1)
119:3
report (5)
5:11,18;6:1;10:4;
130:1
reporter (1)
15:14
represent (1)
95:7
representative (1)
128:6
reputation (1)
12:19
request (2)
12:4;152:19
requesting (1)
15:15
require (3)
67:2;74:6;122:5
required (16)
5:1;10:22;15:17;
32:5;48:16;62:10;
63:10;66:12;67:4;
70:16;83:4;86:13;
95:19;98:19;123:8;
133:14
requirement (12)
38:9;52:7;56:23;
57:5;60:4;63:24;
75:16;76:20;82:2;
83:8;87:2;88:23
Requirements (15)
23:16;37:10;46:5;
47:23;54:8;64:15;
76:3;78:4;84:1;
99:15;109:15;
110:18;132:12;
134:2;157:2
requirement's (1)
123:8
requires (1)
99:7
requiring (1)
72:3
reserve (4)
19:25;20:4,21;
119:5
reserved (2)
20:11;129:12
reserves (1)
29:8
reset (1)
146:19
residen- (1)
143:7
residence (1)
116:10
resident (2)
28:15;63:7
residential (17)
5:3;47:5;53:16;
66:22;67:25;114:2;
115:15,16,19;117:6;
140:23;141:20;
143:6,10;153:10;
154:14;155:7
residents (1)
140:19
resist (1)
4:18
resolve (1)
66:19
resolved (1)
29:21
resource (1)
76:16
respect (1)
139:14
respond (2)
18:16;29:17
response (26)
3:18;9:4;14:17;
17:7,18;19:19;21:5;
22:21;44:6,13;45:6;
46:10;93:20;113:3;
120:5,9,22;125:19;
130:10,22;131:1,7;
143:21;144:22;
145:1,12
responsibility (2)
30:14;37:6
rest (2)
106:1;142:4
restriction (1)
89:17
restrictions (1)
95:10
restrictive (2)
71:11;98:8
result (3)
43:18;71:12;75:21
retained (1)
129:13
retirement (1)
93:6
retro/modern (1)
109:10
retrofit (1)
66:3
review (4)
6:2;109:19;151:8;
156:18
reviewed (2)
154:20,21
reviewing (2)
47:25;150:6
revisit (4)
153:23;154:2;
155:22;156:23
revocation (1)
154:6
revoke (3)
150:9;154:4;
156:23
revote (1)
153:24
rewrite (2)
118:23;129:17
rewrites (2)
91:5;128:13
rewriting (2)
128:8;129:22
rewrote (1)
48:4
rezone (7)
130:4;137:5,23;
145:6;153:9;154:12;
155:7
rezoning (8)
128:16;130:16;
131:19;139:17;
140:11;144:2;153:8;
155:6
Rezonings (5)
127:8;128:4;
131:16;133:14;140:1
right (45)
12:5;15:10;20:14,
20;21:23;26:9;31:6,
6;35:1,4;36:9,13;
41:12;42:8;54:22;
59:5;61:9;62:21;
63:17;69:3;70:25;
78:19;79:12,20;
83:16,20;88:23;89:1;
93:16;95:20;105:4;
113:24;115:17,23;
116:8;119:4;123:11;
127:12;131:3;135:9;
136:24;142:20;
144:14;148:9;152:15
right- (1)
41:17
right-of-way (9)
41:15;44:25;53:3;
61:2;80:6;129:6,9,
12;141:9
rights (1)
12:20
Road (41)
4:3,15;25:13,22;
28:2,3,7,23,25;29:13,
19,25;31:5,23;34:20,
25;35:13,16,22,23,
25;36:3,3,5,8,25;
37:11,17;40:23;41:2,
19,21,22;48:25;52:4,
15;55:14;92:12;
127:10;129:6;138:3
roads (24)
27:12,14,18;30:7,
16,16,25;31:2,11,14;
32:11,18;33:19,20,
25;34:9;35:23;36:12,
15,15,19,20,20;48:6
Roche (2)
3:16;23:9
rodeos (1)
149:18
roll (14)
3:2;13:8;14:19;
21:7;22:23;46:12;
113:5;120:24;
125:21;136:18;
138:9;145:14;
157:13;158:12
room (2)
78:8;79:6
R-SFA (1)
25:16
rule (4)
19:14;99:2;105:7,
8
rules (3)
18:24;19:8;107:19
rumor (1)
144:11
Run (2)
74:17;125:2
running (1)
77:22
runoff (1)
105:19
runs (1)
77:23

S

sac (4)
26:25;38:7,21;
39:12
sacs (2)
41:4;42:14
safest (1)
124:18
safety (2)
18:25;50:5
same (14)
7:14;16:6;30:10;
39:17,17;43:16,24;
54:13;64:21;67:23;
81:1;146:5;151:25;
154:14
satellite (1)
16:14
sation (1)
32:22
satisfaction (1)
104:19
satisfied (3)
18:7,13;128:22
satisfy (1)
98:20
saw (1)
95:20
saying (6)
28:22;57:7;65:11;
91:7;139:7;153:1
scarce (1)
76:15
scenario (1)
63:8
scheduled (1)
119:16
scheduling (1)
6:24
schools (1)
117:1
Scott (10)
4:1;15:10;21:23;
44:17;45:14;97:2;
100:3;104:23;122:2;
151:7
second (37)
6:17;13:6,7;20:2,
25;22:10,13,17;
45:24;46:6,7;75:11;
93:22;95:8;103:6;
106:15;112:25;
120:18,19;125:16;
131:11,12;138:6,7,8;
141:14;145:8,9;
148:10;150:10,21;
152:10,11;157:6,10,
11;158:11
Section (26)
16:2,21;17:11;
19:24;20:10,16;
23:15;25:3;46:3;
47:10;52:15,17;
56:14;89:5;95:11;
97:14;110:7;114:1;
115:11,13,21;
117:11;119:22;
120:1;139:17;147:10
sections (2)
64:12;152:9
seeing (1)
13:21
seems (3)
52:9,10;54:1
seldom (1)
24:23
selfish (1)
70:10
sell (2)
73:11;132:21

sense (1)
31:19
sensible (1)
92:2
sent (3)
12:14;124:15;
131:25
sentence (6)
69:21;71:4;95:22;
96:10,17,18
separate (1)
97:13
September (11)
8:25;9:1,7,8,15,18,
21;13:5;119:14;
125:4,5
septic (1)
100:18
set (16)
25:12;29:3;55:19;
56:7,8,12;62:5,9,12,
14;64:4;77:13;91:4;
117:25;125:2;153:3
setback (19)
26:23;27:3;38:22;
39:2;40:13,15;41:16,
16;44:19;53:12;
58:20,20;61:1;66:17;
67:4;74:5;78:4;
97:21;102:15
Setbacks (12)
52:17,18,21;53:9;
54:10;66:4;67:18;
68:8,8;78:25;84:5;
102:12
setting (1)
40:13
seven (1)
44:20
several (1)
4:5
sewer (2)
51:8,11
Shakes (1)
69:12
shall (15)
18:6;67:22;75:15;
94:6,15,17;95:13;
96:8,15;99:18;
100:17,20;101:19;
108:23;110:23
share (1)
147:21
shared (1)
65:20
shipping (1)
4:14
showed (1)
85:16
shown (3)
38:23;65:20;
143:10
shows (3)
127:17;134:9;
140:17
Side (30)
53:9,25;57:17;
58:19;66:4,17,19;
68:7,13;70:8,19,20,
23;73:25;77:15,25;
78:3,10,24,25;79:6,
19;80:6,10;84:1,16,
16,23;85:18;103:1
side- (1)
57:6
side-entry (3)
60:21;78:14;80:4
sides (1)
78:24
sidewalk (2)
29:20;155:8
sideways (1)
40:5
side-yard (3)
53:11;67:18;74:5
sight-unseen (1)
66:14
sign (1)
133:11
similarly (1)
147:17
similar-sized (1)
73:4
simple (4)
6:16;57:15;80:8,
10
simply (11)
16:20;35:13;
40:14,20;49:16;
65:24;66:5;77:22;
118:19;129:1,24
single (2)
67:1;151:9
single-car (1)
56:17
single-family (11)
25:14;47:5;48:4,8,
10;89:8;97:17;
116:10;140:12;
141:2;142:5
sit (1)
94:1
site (2)
49:2;141:25
site-built (1)
49:10
sits (1)
62:21
situation (24)
18:9;39:16;40:20;
53:20,22;56:12;59:2;
61:7;66:5;67:9,17;
78:21;94:12;98:16;
99:14;104:17;
105:18,19;129:4,8;
139:19;140:6;143:2;
146:5
situations (10)
27:7;33:5;58:16;
65:21;66:16;68:5;
77:9;111:13;112:5;
118:16
Six (2)
148:24;152:1
size (11)
4:16;50:20,23;
80:15;87:16;93:2;
98:17,21;100:9,18,
20
sizes (2)
60:5;76:23
smack (1)
117:4
small (1)
83:19
smaller (2)
87:19,21
solution (1)
80:11
somebody (2)
129:13;153:4
someone (5)
71:13;73:8,10,11;
86:11
somewhat (1)
104:10
somewhere (3)
102:17;104:13;
156:16
soon (2)
24:21;129:23
sooner (2)
31:7;35:19
sorry (17)
14:10,11;20:14,20;
23:9;58:13;77:1;
103:9;106:3;114:7,9;
122:8;123:18;
137:17;148:23;
157:25;158:1
sort (6)
28:25;58:22;
72:21;105:4;115:22;
156:18
sorts (2)
74:6;136:3
sounds (1)
107:8
south (1)
66:25
southern (1)
142:1
space (6)
48:16;50:12;53:1;
54:4;63:25;104:24
spaces (2)
56:24;96:10
span (1)
29:2
Spangler (48)
3:21,22;10:24;
11:10,13;13:3;15:8,
9;21:21,22;23:12,13;
24:3;31:10;37:14,17,
21;41:10,13,17;42:1,
4;47:1,2;70:13;
113:22,23;121:13,
14;122:16;125:16;
126:10,11;133:1,20;
138:24,25;142:21;
143:3,7;146:3,4,15;
158:7,8,11,22,23
spare (1)
85:7
spatial (1)
26:6
speak (6)
5:20,23;6:5;
107:25;120:3;149:21
SPEAKER (1)
107:2
speaking (4)
40:9;83:16;90:20;
144:4
special (1)
29:9
specific (10)
57:20;89:7;
118:12;124:12;
143:18;149:19;
154:18,21;155:24;
156:1
specifics (1)
77:7
specified (1)
150:3
spend (1)
33:1
sprinkler (4)
53:16,23;65:2,15
spur (1)
116:23
square (41)
49:16;51:8;55:1,4,
5,6,8,11,14,18,23,25;
59:19;62:3;74:14,22;
75:4,15;77:12;81:23;
82:2,16,23;83:15;
85:14;86:8;98:11,14,
18,23,25;99:19,22;
100:1,8,13,14;
111:21,22;112:8,12
square-foot (1)
51:13
squares (1)
42:12
stacked (1)
88:15
staff (7)
4:23;5:7;10:3;
11:17;25:8;149:23;
150:13
stagger (1)
150:15
stand (3)
12:24;58:4;124:24
stand-alone (1)
97:13
standard (12)
38:22;52:9,9,25;
57:3;64:4,6,7;76:8;
102:2;153:8;155:6
standards (6)
30:1;33:6;54:14;
72:4;92:6;94:7
standing (1)
135:20
standpoint (3)
29:12;63:3;109:3
stands (1)
5:7
start (3)
82:15;108:2;
109:12
started (2)
97:2;111:15
starting (1)
104:16
State (5)
48:24;95:19;
116:13;133:15;
137:10
statement (8)
6:13;69:21;75:14;
96:4;99:24;101:22,
24;107:12
statements (1)
134:7
states (1)
95:18
stating (1)
156:5
station (1)
144:14
stay (1)
5:1
stays (1)
64:5
steel (1)
37:22
step (1)
132:7
Stewart (2)
4:3,15
still (41)
7:3;10:21;11:1;
16:16;27:25;35:9,12;
39:13,22;41:15;48:4,
7,12,13,15;49:10;
50:25;51:11,12;
54:11;61:1;66:23;
68:4,11;78:16;79:18,
22;80:12;89:10;
92:14;93:1;99:10;
112:5,13;128:9,14,

21;133:21;139:20;
151:17;156:22
stone (2)
61:19;88:15
stoop (1)
104:14
stop (1)
38:19
stopgap (1)
156:17
stories (7)
54:17;61:8,11;
103:12;104:7;
109:21;112:1
stormwater (2)
56:7;105:18
straight (4)
43:4,9,12;77:23
Stream (4)
111:20,21,22,25
Street (26)
23:15;24:20;25:2,
11;26:20;27:1,9;
30:11;38:9,17;39:13,
19;40:3;41:9;42:6;
43:6,6;44:22;46:4;
77:21;78:15;93:4;
99:14;103:16;
104:11;142:10
streets (11)
29:23;31:11,15,18;
32:5;33:10;41:24;
94:6,13,15;95:2
streetscape (1)
57:18
stressing (1)
154:17
stretch (1)
101:25
stretcher (1)
101:23
strict (2)
60:25;149:17
Strictly (1)
136:12
strike (2)
67:16;84:15
striking (1)
128:21
structurally (1)
10:14
structure (23)
3:25;4:7,8;5:3;
6:14;7:10,24;10:18;
37:15;42:25;49:25;
50:2;59:20;71:12,24;
86:14;87:16;96:19;
97:18;98:22;105:4;
141:3;151:5
structured (1)
47:19
structures (14)
4:5,16,25;5:5;
19:1;48:22,23;96:23;
97:1,7;102:23;
116:18;142:6;147:11
Stuart (3)
93:24,25;94:4
studied (1)
86:5
studies (1)
83:11
stuff (4)
66:1;114:15;
116:15;124:1
styles (1)
109:10
sub- (1)
38:6
subdivided (1)
74:21
subdivision (11)
17:2;29:24;40:7;
43:16,16,19;94:6,13;
116:18;140:13,14
subdivisions (4)
32:3;38:15;42:17;
43:25
subject (4)
54:18;75:15;
95:10;128:16
submitted (1)
51:20
submitting (1)
47:24
subpart (1)
107:24
subsequent (6)
74:12,13,20,21,25;
75:12
substantial (1)
72:14
substations (1)
116:23
sudden (1)
99:22
sufficient (1)
29:8
suggesting (1)
71:3
suggestion (1)
38:6
Super (1)
100:11
superfluous (1)
117:18
support (1)
41:6
supposed (1)
25:18
suppression (3)
53:13;66:23;67:25
sure (11)
6:18;16:5;34:17;
51:19;62:20;71:17;
75:19;80:25;136:22;
137:5;146:9
surface (1)
73:21
surprise (1)
142:9
surrounding (1)
141:23
survey (5)
37:6;40:24;66:9,9;
68:14
Susan (2)
91:19,20
swimming (3)
50:2,5;56:5
synagogues (1)
117:2
system (3)
53:16;65:2,15
systems (2)
36:8;53:23

T

table (8)
19:22;45:9,9;
120:12,12;131:4,5;
137:1
tain (1)
147:23
tainly (1)
62:10
talk (2)
59:6;107:3
talked (1)
132:2
talking (5)
69:25;84:7;
102:14;103:9;115:12
tall (1)
4:16
taller (3)
50:4;54:4;80:21
tangible (1)
30:13
tank (1)
100:18
tax (3)
87:8;141:6;143:17
taxed (3)
133:16;134:8;
139:3
taxes (7)
28:7,22;133:19;
134:5,7;139:23;
143:4
taxpayers (1)
28:21
tear (5)
71:14,16;73:12;
76:6;94:10
tear- (2)
72:17;81:22
tear-down (2)
76:19;82:20
tear-down/replacement (1)
74:9
tear-it-down-build-something-new (1)
73:7
Technically (1)
39:25
tedious (1)
92:8
Television (2)
16:3;20:1
temporary (1)
4:25
ten (1)
144:15
tenant (1)
140:23
tend (1)
32:15
terms (4)
59:2;67:11;72:20;
128:12
Thanks (1)
106:14
There'd (1)
42:5
therefore (8)
6:10;12:15;19:9;
124:23;132:8;
151:16;155:3,10
thereof (1)
117:24
thinking (3)
39:14;115:7;
128:12
third (7)
7:7;103:22,25;
117:20,22;150:12,21
though (11)
28:19;31:21;32:2;
35:17;39:12;43:24;
106:21;111:10;
123:4,24;142:14
thought (11)
54:21;85:4;
114:18;117:8;118:5,
6;132:11;151:2;
152:15;156:19;157:7
thoughts (1)
147:21
thousand (1)
33:2
three (14)
26:10;54:17;
65:13;69:16;70:24;
81:18;103:11;104:7;
112:1;122:9;144:5;
150:10,16,18
three-car (1)
49:24
three-story (5)
53:25;73:15;
103:5,6;104:5
threshold (4)
55:20;72:11;
91:12;112:10
throughout (2)
54:6;59:2
throw (3)
59:17;60:14;81:24
thus (2)
47:9;77:8
tial (1)
143:8
till (4)
45:18;106:11;
123:10;124:3
Tilly (4)
52:4,5;55:14;
92:12
tilting (1)
4:19
times (3)
86:9;132:3;153:23
tion (1)
53:19
tional (1)
151:24
today (22)
8:16,17;10:23;
12:12,13;15:16;
20:19;29:23;31:21;
39:7,9;40:2;55:7;
60:10;64:4,9,10,10;
72:16;75:2;123:10;
127:18
together (1)
101:12
told (1)
111:15
Tom (1)
6:5
tomorrow (3)
87:11,16;88:3
tonight (11)
12:4,10;13:24;
45:18;87:13;114:16;
146:20;147:22;
148:1;149:21;154:12
top (1)
103:24
topo- (1)
103:22
topographically (1)
60:12
topography (4)
85:22,25;104:2,2
touch (1)
64:12
tough (1)
119:11
toward (2)
102:16,18
towards (1)
78:15
town (1)

106:14
townhome (7)
26:3,10;27:24;
115:18;116:5,22;
118:6
townhomes (5)
25:19;26:6;27:21;
94:10;118:18
townhouses (2)
25:16,22
toying (1)
109:12
tracks (1)
116:24
trailers (1)
116:20
trap (1)
132:7
trative (1)
14:7
travel (3)
116:20;153:16;
156:21
travels (4)
155:1,2,14,17
treat (1)
93:16
treated (1)
49:10
treating (1)
140:7
tree (1)
72:13
triangle (2)
141:25;144:10
tried (1)
47:16
trouble (1)
118:17
troublesome (1)
43:22
trucks (4)
32:14,20;94:11;
102:24
true (2)
87:3,3
try (5)
33:2;50:21;66:2;
144:11;153:23
trying (11)
14:1;31:18;52:6;
68:9;74:15;91:9;
94:21;105:1;123:25;
152:15;156:7
tunities (1)
61:25
tured (1)
54:16
turn (7)
32:13;37:7;60:23;
78:15;79:7;115:13;
120:1
turning (4)
55:2;60:22;116:6;
119:22
turns (1)
77:23
tutes (1)
110:20
tweaking (1)
64:16
twice (1)
154:12
two (34)
4:13;6:8,19,24;
23:18,20;24:2,5,8,
13;43:7;47:14;61:8,
10;68:12;81:21;
93:14;96:19;97:17;
98:19;100:9;110:9;
114:3;116:19;
117:23;125:1;127:6;
141:7,10,12;150:8,
15,25;151:1
two-car (16)
26:5;49:11;56:17,
19;57:2;59:20;60:4;
61:18;63:11,25;
70:17;75:4;76:23;
80:15;81:21;85:18
two-sided (1)
43:10
two-story (1)
59:21
type (7)
4:7;18:9;26:17;
74:15;85:10;89:7;
151:25
types (3)
4:6;62:1;71:18
typically (4)
26:17;27:1;40:10;
60:19
typo (3)
24:12;58:3;114:24

U

ugly (1)
80:17
ultimately (1)
30:22
unanimous (5)
121:17;122:7,10,
12,17
uncertainty (1)
6:21
uncommon (1)
143:13
under (31)
3:24;10:17;16:2,
19;25:6,17;39:8;
48:7,20;50:14,23;
51:22;59:4,9;72:10;
75:8;83:9;94:14,18,
20;95:4;96:18,20;
110:14;115:20,22;
116:6;127:16;129:3;
133:25;149:1
under- (1)
12:23
underneath (5)
12:6;72:15;85:23;
104:1;155:16
understands (1)
26:21
understood (2)
7:6;33:11
unfortunate (2)
63:8;66:11
UNIDENTIFIED (1)
107:2
unincorporated (1)
35:8
unique (2)
129:7,15
unit (3)
94:23;95:1;153:14
units (1)
129:20
unless (8)
36:3;58:6;84:4;
101:25;122:2,2;
135:15;150:2
unlikely (1)
129:21
unoccupied (1)
116:20
unresolved (1)
36:6
unusual-shaped (1)
43:17
unwieldy (1)
151:11
up (42)
5:24;7:5,21;19:21;
29:8;33:10;36:5;
40:13;45:8;55:6;
76:3;78:14;82:15;
86:14,14;87:22,23;
88:1;90:4;93:3;
98:15;104:3;106:21;
107:9,16,19;108:2,5;
110:11;120:11;
130:15;131:4;
133:11;135:17,20;
136:3;149:22;
152:14;153:3,24;
155:8,20
uplifting (1)
4:19
upon (11)
5:2;18:23;27:8;
68:1;117:20;124:17;
136:15;141:10;
151:21;153:12;
155:18
usage (1)
100:19
use (56)
13:22;14:3;48:11,
19,22;50:14;51:16;
54:16;59:10,16;62:1;
73:9;77:7;89:7,8;
94:18,24,25;95:4;
96:11;104:24;110:7;
111:19;116:13;
117:7;118:13;128:9;
133:24;135:12;
147:10,18;149:16;
150:6;151:17,24;
152:1,16,21;153:3,6,
17,19;154:5,21,22,
23;155:4,15,24;
156:1,3,4,6,13,15,21
useful (1)
128:14
Uses (28)
48:7,16,18,20;
49:9,14;50:7;88:25;
94:15,18,20;95:9;
96:19;97:24;100:5;
114:1;115:14;116:8,
17,25;118:7,22;
119:20;147:11;
151:13;154:14;
156:11,11
using (4)
85:2;89:11;
105:13,17
usually (1)
29:3
Utah (1)
106:13
Utility (1)
116:23

V

valid (1)
154:6
Valley (4)
111:20,20,22,25
valuation (1)
139:5
value (6)
86:22;87:1,22;
88:1,1;109:4
values (1)
91:14
vandalism (1)
63:8
vanilla (1)
155:6
variance (13)
3:25;4:4;12:23;
13:22;14:3,6,6;67:9,
22;68:2,17,24;69:10
variances (9)
4:6;5:1,3;10:22;
11:2,4;74:6;77:9;
112:6
various (1)
152:9
vast (1)
92:2
vehicle (2)
53:1,2
Vera (1)
93:3
verbiage (1)
67:21
verify (1)
37:7
version (12)
16:9;23:18,19,25;
24:2,4,8;47:14;
114:3,24;124:16;
148:3
versions (1)
24:14
versus (1)
85:6
vertical (1)
80:21
viable (2)
36:23;87:5
viewed (1)
49:7
violation (1)
53:11
visit (1)
142:24
visited (1)
72:12
visualizing (1)
85:19
voluntarily (2)
71:14,15
voluntary (6)
73:6;74:9;75:14;
76:19;81:22;82:20
vote (3)
122:13;124:24;
158:2
voted (1)
157:8
votes (1)
122:15
voting (1)
8:4

W

Wait (5)
77:3;92:24;94:1;
146:16,16
waive (3)
120:14,15;122:12
walk-in (1)
103:22
walk-out (1)
85:22
walkways (1)
56:6

wants (6)
75:12;76:5;120:3;
122:3;137:12;140:3
waste (1)
114:18
watching (1)
141:4
way (12)
9:10;17:25;35:2;
41:25;42:17;45:4;
55:24;64:13;115:17;
124:5;149:20;157:3
ways (5)
69:17;80:11;
96:22;97:6,11
WEED (116)
5:9;8:7,18;9:2,10,
19;10:8;11:10,12,14,
24;12:25;13:12,17;
14:4,9,12;16:17;
18:15,17;19:14;20:6,
14,17,20,23;22:2;
24:17;29:17,18;
30:19;31:1,7,19;
32:15,21;33:4;34:13,
21;35:24;36:6,10,14,
17;37:8,16,20,25;
45:12,19,23;57:22;
58:1;64:18;74:23;
75:10;85:8;87:9,11;
88:2,6;90:2,4;92:19,
22;97:25;106:17,20;
107:3,8,14,23;
108:14;114:7,7,10;
115:1,4;117:15;
121:18,22;122:1,8,
11,25;123:6,11,14;
124:4,15;125:6,10;
126:18,21;128:19;
131:22;132:1,24;
134:16;135:11;
136:15;147:5;148:7,
9,13,19;149:2,12,20;
151:4;152:3,18;
153:2;154:7,24;
156:8
Weed's (4)
33:20;128:3;
130:6;142:16
week (1)
127:2
weighed (1)
47:18
welcome (2)
101:10;109:19
well-constructed (1)
101:6
wetlands (2)
50:24;51:2
what-have-you (1)
58:24
what-ifs (3)
90:25;91:3,11
What's (4)
16:7;55:21;91:4;
133:8
whatsoever (2)
9:23;12:3
whereas (3)
117:17,20,22
whichever (1)
54:18
whole (6)
25:3;26:20;55:9;
98:4;110:4;111:16
whose (2)
86:12;97:18
wide (9)
4:15;26:3,25;
39:12;51:24;76:24;
77:2;79:14;99:5
widen (1)
101:23
wider (1)
27:3
width (18)
26:22,22,22;27:4;
39:1,2,17;51:22,25;
54:9;73:19;78:13,23;
79:8;101:18,20;
102:7;142:9
widths (3)
60:6;68:9;73:25
willing (1)
52:24
windows (1)
58:23
wise (2)
32:23;105:14
wish (3)
41:6;106:11;146:6
withdraw (1)
15:23
withdrawal (1)
15:15
within (12)
16:15;26:10,12;
33:14;48:2,16;50:17;
62:1;97:20;117:8;
139:25;140:13
without (19)
53:2,13;59:3;95:5;
97:10;105:9;106:2;
110:2;129:25;130:5;
131:16;134:14;
136:8;137:6,21,24;
138:4;142:19;145:7
wonderful (1)
101:6
wonders (1)
33:5
wood (1)
70:14
word (8)
7:10;59:10;75:11;
106:5,7;117:19,23;
148:18
wording (1)
96:10
words (2)
54:8;150:1
work (7)
29:6;37:9;40:11,
13;92:7;109:13;
147:25
worked (4)
41:4;91:15;93:5;
154:1
working (1)
64:1
works (2)
53:17;79:23
world (2)
75:25;85:14
worth (3)
132:22;133:21;
146:10
writing (1)
20:23
written (4)
64:13;115:18;
149:21;150:1
wrong (2)
13:21;76:21
wrote (3)
96:2,19;98:11

Y

y'all (1)
106:13
yard (12)
38:11;43:6;54:22;
57:23,25;58:9;78:10;
80:6;103:18,18;
104:9,10
year (13)
31:12;149:17,22;
150:2,7,7,10,12,12,
12,19;151:9;153:22
yearly (1)
87:8
years (8)
7:13,25;91:16;
129:3;133:17;134:5;
144:6,16
Yep (1)
59:23
yield (2)
43:18,20
younger (1)
93:14

Z

zero (1)
66:17
zone (6)
26:8;153:13,15;
155:5,11;156:25
zoned (7)
116:9;128:22;
139:22;140:15;
141:25;142:6;143:1
zoning (55)
4:4;6:22,23;8:22;
9:11;10:20;16:19;
17:3;19:7;24:19;
25:17;26:12,24;
40:24;54:3;95:3,4;
100:11;102:3;
107:16;109:20,24;
110:1,19,21;115:25;
116:16;117:9,13;
118:22;119:5,11,15;
125:3,8;127:14,16,
20;128:9;132:4,6;
135:25;136:5;
140:17,17;141:1;
142:3,19;151:20;
152:21;154:9,25;
155:2,16;156:25
zonings (2)
128:20;142:17
ZPA (1)
141:13