In The Matter Of:

City of Doraville

State of Georgia

The City Council Meeting

May 26, 2009

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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 7:00 p.m. on Tuesday, May 26, 2009.

* * *

APPEARANCES:

Doraville City Council:

Hon. Ray Jenkins, Mayor

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

Murray J. Weed, City Attorney

Ms. Sandra Bryant, Assistant City Clerk

P R O C E E D I N G S

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

CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Here.

CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Here.

CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Here.

CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Here.

CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Here.

CLERK BRYANT: Councilmember Spangler?

- - -

(No response)

- - -

MAYOR JENKINS: Scott, I think the first one, I believe, has been cancelled, the public hearing on the Stewart Road project?

MR. HAEBERLIN: Correct. You folks have received today from the law offices of Tom Pye, who now represents Mr. Kuo, 3693 through 3695 Stewart Road, a request to recess this item to our next meeting, which would be June 29th at

6:30 p.m., and that is because the City Council will be at the convention and so there would not be a quorum present. So it's actually going to be the 5th Monday of June.

MAYOR JENKINS: Fifth Monday of June. That's when the next one will be.

MR. HAEBERLIN: That is correct.

MAYOR JENKINS: June 29th.

MR. HAEBERLIN Yes, sir. 6:30 p.m.

MAYOR JENKINS: Okay.

MR. HAEBERLIN: Do we want to do the public hearing tonight, Murray, given that it's been advertised and recessed again, yet again, or --

ATTORNEY WEED: My advice would be to recess it.

MR. HAEBERLIN: Recess it again. Okay.

So we need a motion to recess that item until June 29th, 2009, at 6:30 p.m.

COUNCILMEMBER ALEXANDER: Per the applicant's request.

MR. HAEBERLIN: Pardon me?

COUNCILMEMBER ALEXANDER: Per the applicant's request?

MR. HAEBERLIN: Per the applicant's

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request and the payment of the tabling fee as required by City Code.

COUNCILMEMBER PITTMAN: So moved.

MAYOR JENKINS: Second?

COUNCILMEMBER ALEXANDER: Second.

MAYOR JENKINS: Call the roll, please.

CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

MAYOR JENKINS: Okay. This is a public hearing, and the new business, we'll start with item number 4, Scott.

MR. HAEBERLIN: It doesn't look like we have the applicant here at this time, so if we could, Mayor, could we move on to the next item on the agenda and, as he comes in, we can start on that one?

MAYOR JENKINS: Okay. We'll move to

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item number 4B.

MR. HAEBERLIN: Correct. Item 4B is removal of the Tree Protection Plan from the Zoning Ordinance and being placed in the Building and building regulations, and then let Mr. Weed go over some changes that are a result of us wanting to be included as a Tree City USA. But generally this ordinance is not changing other than the creation of the Tree Board.

The Planning Commission did recommend approval of the requested action, and that was unanimous.

So this is purely administrative in terms of the items that we're taking out of the Zoning Ordinance, and we started with flood plain on the Tree Protection and some others that we're doing some clean-up on our Zoning Ordinance.

And this item is a public hearing, and let Mr. Weed address any questions relative to the Tree Board that the Council may have.

ATTORNEY WEED: I will make a note that we are aware of a number of typographical errors. There aren't misspelled words per se, but sometimes there were replacement words.

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This document wouldn't scan; therefore, it had to be retyped completely from scratch. There is at least one numerical change on Section 5-270. It's right now 2-270. And as the Council finds anything where a word simply doesn't make sense, such as "tree truck" as opposed to "tree trunk," please let me know and we'll certainly make that change. I think we've caught most of them.

To make a long story short, this is verbatim the ordinance that you have currently in place and still do, that's currently in the Zoning Code. Our purpose essentially was to remove it from the Zoning Code. It's Mr. Haeberlin and my professional opinions that a Tree Ordinance is better suited for one of our building codes as opposed to our Zoning Code.

With regard to the only real change in text that deals with the creation of a Tree Board, which would be a volunteer group, neither Mr. Haeberlin nor I am married in any way to the make-up of the board, staggered terms of the board, the appointment of members, et cetera. We simply were trying to give you something, you know, a ground zero to start from. So certainly we can revise that however you need or want it

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revised. You do have to have some kind of Tree Board, but it doesn't -- the Tree USA group doesn't seem to care how many people, for example, are on it.

COUNCILMEMBER PITTMAN: And we do have one. We do have a Tree Board now.

COUNCILMEMBER FLEMING: We do?

COUNCILMEMBER PITTMAN: We do. Well, the ones that are going to be the ones that started, and then you guys are supposed to pick one, I believe, because it's Susan Fraysse, Gordo Grant, and who else? Scott.

COUNCILMEMBER BATES: Well my understanding was that those appointments tentatively were pending the approval of the adoption of this ordinance.

COUNCILMEMBER PITTMAN: Right.

ATTORNEY WEED: They would have to be. They were called a committee. They wouldn't be the official board yet, but --

COUNCILMEMBER BATES: Okay.

ATTORNEY WEED: -- in accordance with this.

COUNCILMEMBER PITTMAN: And I think each council member is supposed to get together,

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because Gordo is from our area.
They stepped up to the plate immediately and said they wanted to be on the board. Somebody from Northwoods, and I can't think of their name. They stepped up and said they wanted to be the --
MAYOR JENKINS: Do you remember, Brian?
COUNCILMEMBER BATES: I'm not aware of this.
COUNCILMEMBER PITTMAN: Somebody who worked with -- Susan would know.
COUNCILMEMBER FLEMING: I was speaking to Mr. Haeberlin before the meeting in regards to -- and so was Mr. Roche, in regards to the board, and it's handled in different ways in several different municipalities, and I believe from --
McDonough?
MR. HAEBERLIN: McDonough; correct. It's handled by the planning commission and functions as the tree board.
ATTORNEY WEED: I mean legally that's fine. I certainly have no preference. I just wanted to have something in there that would make Tree USA happy; and however you want to do

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it, we can.
COUNCILMEMBER PITTMAN: I think we should use that one as the tree committee versus the Tree Board.
MR. HAEBERLIN: I'm not acting as an advocate one way or another. I'm just telling you that they had a party or a group of individuals who were interested in doing it. They appointed it as their planning commission.
COUNCILMEMBER BATES: What's the purpose? Is there a defined purpose that is set forth by Tree City USA or is that nebulous?
ATTORNEY WEED: Based purely upon my reading of their communication via the Web and some sample, you know, tree ordinance, the purpose seems to be just to have a community liaison, frankly, in the same manner in which you have a planning commission. There's no real requirement legally to have a planning commission unless you reach a certain population threshold. Below that threshold, it's just a community gatekeeping function to, you know, make sure that the thoughts of the community in general are relayed to the powers that be. That's my understanding.

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COUNCILMEMBER BATES: I'm just trying to get an understanding of what their purpose --
MAYOR JENKINS: Yeah. I wonder. Will they determine where the trees go or what?
ATTORNEY WEED: No, but they would act as many boards do, and I'll give you another example. The City of Hapeville has got an alcohol beverage review board. That board makes initial reviews of alcohol beverage licenses, once again, as a community gatekeeping function to make recommendations to the Mayor and Council who can actually vote on the individual licenses, just to serve as a community voice.
Legally, I certainly would interpose no objection, you know, to -- it could be the Planning Commission. You know, it could be any body that you wanted it to be, one that already exists or some new separate body.
COUNCILMEMBER BATES: Well, I'm not opposed to this. I just want to know what they're going to be doing.
COUNCILMEMBER FLEMING: Well, they're supposed to --
COUNCILMEMBER BATES: Do they have a purpose?

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COUNCILMEMBER FLEMING: -- be going out and checking out the trees and then offering nonbinding advice.
COUNCILMEMBER FLEMING: And I would find that it would be sort of difficult to get seven members together to run out and visit a tree to find out whether it needs to be taken down or not.
MAYOR JENKINS: That's like an arborist.
COUNCILMEMBER PITTMAN: That's not the purpose.
MAYOR JENKINS: Gordon is an arborist. I don't think that's the purpose.
COUNCILMEMBER PITTMAN: I think it's kind of like a -- I hate to say garden club, but it's kind of like we have the impression at least for the committee to do something like projects, get together in different areas for different projects kind of like what we did here and what we did on Winters Chapel.
COUNCILMEMBER ALEXANDER: So they're not going to do site review of development areas?
ATTORNEY WEED: Well, what's in the

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1 draft now -- and once again, my legal position
2 on this is you could give them as much authority
3 or as little authority as you care to.
4 Underneath Subsection 8 on page 9 of 42
5 -- and once again, this is Murray Weed; this
6 doesn't have to be what you do -- "The Board
7 shall give non-binding advice to the Mayor and
8 Council on the Ordinance, provide leadership in
9 the development of understanding of the
10 objectives and methods of the tree program, and
11 assist the Building Inspector or his designee in
12 the development and maintenance of technical
13 specifications and guidelines."
14 So for example, if you had some
15 gardeners who loves trees and they know that
16 over in the, you know, Windsor area of the city,
17 they know that live oaks grow there in that soil
18 very effectively but there's no provision in the
19 Code currently for live oaks, they could say,
20 "Hey, look. I think live oaks -- we ought to
21 add that to the ordinance, and in this
22 particular area we should focus on those type of
23 trees." That's the type of thing that they
24 could do.
25 COUNCILMEMBER FLEMING: Didn't we

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1 already determine that there was an arborist
2 already an employee with the City?
3 MAYOR JENKINS: No.
4 COUNCILMEMBER FLEMING: Manuel is not?
5 COUNCILMEMBER PITTMAN: Huh-uh. I
6 don't think so.
7 COUNCILMEMBER FLEMING: In my opinion,
8 as far as the board would be concerned, I think
9 we ought to keep it in-house but add an arborist
10 to the board to --
11 MAYOR JENKINS: Gordon Grant, I
12 believe, is an arborist.
13 COUNCILMEMBER PITTMAN: No, he's not,
14 but his partner is.
15 COUNCILMEMBER FLEMING: I would just
16 suggest that we would have the board be in-house
17 as far as within the City Council -- I mean not
18 Council, but employees, and, if need be, have an
19 arborist whether it be contractual or at-will.
20 COUNCILMEMBER PITTMAN: Bobby goes out
21 now, right, and does that?
22 MAYOR JENKINS: Yes, he does the best
23 he can. All he does is if the tree is dead. He
24 won't give them permission to cut a tree that's
25 alive.

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1 An arborist has to do that. We need to
2 hire an arborist.
3 ATTORNEY WEED: That's an absolutely --
4 if you want to keep collecting the money, in my
5 opinion, you need to have a certified arborist.
6 COUNCILMEMBER ROCHE: It doesn't have
7 to be a full-time employee.
8 ATTORNEY WEED: No, sir. It might be
9 worth the money, though, to actually get someone
10 and train them and send them to appropriate
11 classes, but it might not be. I don't know.
12 COUNCILMEMBER ROCHE: I guess, to me,
13 I'm kind of like some other people here. I
14 would just -- creating a whole 'nother board and
15 seven other people and having to maintain them
16 and figure out who's going to be on it and all
17 that, it just seems a lot more complicated than
18 necessary. It seems reasonable to just
19 obviously do whatever we need to do to have an
20 arborist on call on a contract basis for when we
21 needed them.
22 But as far as what little bit that this
23 board would do, I think that unless they
24 strenuously objected, I would just assign those
25 responsibilities to the existing Planning

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1 Commission because they're already doing the
2 site review, pretty much. I mean they're
3 already out there looking at stuff, you know.
4 ATTORNEY WEED: My opinion would be
5 that would be legal.
6 COUNCILMEMBER ROCHE: Yeah. I mean
7 there's a precedent. Our City Planner is used
8 to dealing with that situation, and it just
9 seems like a whole lot simpler.
10 Now, down the road if we realize that,
11 you know, the Planning Commission is just
12 overwhelmed with issues on trees, then maybe at
13 that point we could create a separate Tree
14 Board.
15 COUNCILMEMBER BATES: The only benefit
16 I would see of having a Tree Board -- and it's
17 entirely not even contemplated here -- would be
18 advocating on locations for the City to plant
19 trees utilizing our Tree Bank funds. That, to
20 me, seems to be as much of an extent of
21 influence and suggestibility that I --
22 I don't know that we -- I'm just
23 perplexed as to the need of having another board
24 review what we have a City Planner, who is a
25 competent tree professional in and of himself,

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and the need for a city arborist, whether they be contract or employee -- I just don't see a need or value of having a seven-person board that does really nothing.

COUNCILMEMBER ROCHE: It's just another layer of government.

COUNCILMEMBER PITTMAN: Yeah, but I have a question. Don't we have to have something that's for that committee thing for the Tree City USA?

ATTORNEY WEED: You do. You have to have a board of some kind.

COUNCILMEMBER PITTMAN: Of some kind. And that's why I said the committee, and only for what you said, totally to do like the different areas, you know, this area over here may need trees or this area over here -- you know, we've started doing the surrounding areas -- just to work as a liaison between the Council and those areas and the neighborhood. And that was my understanding when we met with the lady, that that's what they were going to be doing as a requirement.

ATTORNEY WEED: And once again let me stress I have no preference whatsoever about

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this, but I'll throw this out. In some communities, you've got 20 applicants for every job that comes up, and some you don't have any and you have to go beat the bushes. So that's something you need to bear in mind.

And the other thing, too, is a lot of communities kind of use these boards and the people in the community use these boards as what I'm going to call farm teams to ultimately have a taste of politics and run for council. Whether you want to encourage that or not encourage that, I have no position, but that's just what some communities do.

COUNCILMEMBER ALEXANDER: One of the things I did like about the Tree Board is in Section 2 on page 8 it included a member of the business community.

COUNCILMEMBER PITTMAN: Yes. And the Mayor appointed someone, I thought, for that -- Jimmy Cushman. Did you not, Mayor?

MAYOR JENKINS: Yes.

COUNCILMEMBER PITTMAN: Yes. The Mayor appointed somebody for that.

MR. HAEBERLIN: And realize as well, this is furthering some of the, as we've

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discussed, like the landscape islands and parking lots and, you know, we're moving forward with the greening of the city. And so I'm not married to the structure either way, like Mr. Weed says, as well.

I do think we would be realistic, once we get this out of the Zoning Ordinance and into the development regulations, that there's a whole bunch of changes we're going to want to make to the Tree Ordinance.

I mean right now the City has a tremendous burden on itself. I think we should shift that burden to people who have dead trees on their property -- in other words, that they provide the City an arborist's report.

If we ever hire a full-time arborist who we utilize their services for site plan review, for landscape plan review, make them part of the development process. Check on properties after they've been C.O.ed for a couple months or years, whatever, and see what sort of plants are declining and need replacing. I mean you can broaden their job functions to encompass many things that are really development oriented.

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COUNCILMEMBER BATES: Broaden who? The arborist --

MR. HAEBERLIN: The arborist.

COUNCILMEMBER BATES: -- or the tree board?

MR. HAEBERLIN: Correct, the arborist.

COUNCILMEMBER ALEXANDER: I believe those are already in here as far as repeat site visits to check on plantings.

MR. HAEBERLIN: Correct.

What I'm saying is it's really just another arm of the development team. I mean typically -- and I've worked at many places that have a city arborist. Typically the city arborist rather than the building official is the one out there looking at installed plantings, counting the numbers, making sure they're the right gallon size, et cetera. The services of Mr. Calcaterra should really be more tailored to the building itself, not reviewing the entire site. And the arborist did function -- this was the city of Roswell -- function as an arm of the development team. So they were much more than just looking at a dead tree. They were part of site development.

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COUNCILMEMBER ROCHE: Well, you bring up a good point, though. If we're going to be looking through and changing and modifying all this anyway, I'm not sure that we want to just jump out there and start with something today that we'd have to change later. I mean we'd have to make up all the rules, you know, and like do they need training, do they not need training, you know, and all that sort of thing.

I think it would be, first of all, a good idea to hear from Mr. O'Connor and see, you know, if he would be interested and if it would be a big problem if temporarily at least the Planning Commission took on these duties instead of --

MR. O'CONNOR: I couldn't speak for them without --

COUNCILMEMBER ROCHE: I understand.

MR. O'CONNOR: At the present, I would have no comment concerning being the tree people.

COUNCILMEMBER ROCHE: I just think that, you know, like you said, we probably need to go through this whole ordinance and look at a lot of stuff, and I hesitate to --

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I have no problem with moving it out of the Zoning Ordinance into the building ordinance. But as far as making any other changes, unless it absolutely is dire that we do this change to get the Tree City USA designation, then I think for the moment we could just assign it to the Planning Commission and then later on revisit this and, you know, make what changes we need to make.

ATTORNEY WEED: I do think you definitely -- you've got to create some sort of board, you know. Even if we leave the ordinance in the Zoning Code, in my opinion, you still need a zoning amendment and create some board to qualify for Tree City USA. It's still my opinion that this is the type of thing that doesn't really need to be in the Zoning Code; in my opinion, never should have been.

And so I'm with you. I think we should take it out of the Zoning Code at a minimum and create some kind of board. And it could be a placeholder board. It could be the Planning Commission --

COUNCILMEMBER ROCHE: Right.

ATTORNEY WEED: -- you know, whoever.

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COUNCILMEMBER ROCHE: So how would we put that into -- I mean to get moving, can we put that into a motion just --

COUNCILMEMBER ALEXANDER: It doesn't need to be seven members.

COUNCILMEMBER ROCHE: At least for the moment, just as a placeholder, just make it the Planning Commission. That way we don't have to do all this creating and, you know, how many members and when they're elected and who elects them and all of that. You know, we could spend weeks on that.

COUNCILMEMBER ALEXANDER: No. I'm just saying that as it is now, it says seven members. That's what I was saying. It would need to be correct.

MR. WEED: Right, yes. And what you would do is you'd simply --

COUNCILMEMBER SPANGLER: Substitute.

MR. WEED: -- you know, you could adopt the separate ordinance with the provision that the City Attorney is authorized to change the relevant sections of the Tree Board and that the Planning Commission will act as the Tree Board.

COUNCILMEMBER ROCHE: So moved.

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COUNCILMEMBER FLEMING: Okay. But I have a question.

MR. HAEBERLIN: We didn't have a public hearing yet. We need to do that.

COUNCILMEMBER FLEMING: Right.

COUNCILMEMBER ROCHE: I'm sorry.

COUNCILMEMBER FLEMING: To be a designated Tree City component or member or whatever we are, was it not designed that we were supposed to have a seven-member council?

MR. WEED: No. They don't care how many members. That was something that I came up with, again, based upon one of the other cities that did this, and to give enough people that all of the Council members could appoint somebody. That was the idea behind that.

COUNCILMEMBER FLEMING: Oh.

COUNCILMEMBER PITTMAN: And that whole committee came out of the Council meeting that we had that we talked about Tree City USA. And those people came forward to Scott and later myself and said they were really interested, and then maybe talking to the Council they could find an additional person. And then the Mayor stepped in, I think, and asked Mr. Cushman as a

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1 business partner.
2 MR. HAEBERLIN: That's correct.
3 MAYOR JENKINS: I just don't want to
4 put any more on the Planning Commission. I
5 firmly think they've got enough to do. And if
6 the ordinance says -- We got what? Three, four
7 volunteers already? I'd hate to tell them that
8 they can't be a part of it.
9 COUNCILMEMBER ROCHE: Oh, I just think
10 there's so many questions. And it's not like
11 we've been suffering for the lack of having a
12 tree board up till now, right?
13 MR. HAEBERLIN: No.
14 COUNCILMEMBER PITTMAN: And quite
15 honestly, they were not even aware of that.
16 They thought their only responsibility was to be
17 a community liaison for different areas to
18 enhance. That's their only thoughts.
19 MR. WEED: And you can still do that.
20 I mean you can always have the tree committee.
21 COUNCILMEMBER ROCHE: You can always do
22 that, yeah.
23 COUNCILMEMBER BATES: I think there's
24 tremendous value in having that specific to, in
25 Brian's world, where to plant trees -- you know,

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1 "This area, this park, this streetscape, this
2 facility, whatever, we recommend that the City
3 look at utilizing the Tree Bank funds to augment
4 and support."
5 And all this other stuff, I don't know
6 that we're doing it now. I don't know that
7 there's a need for us to do it now. I think
8 long-term maybe there's some value especially if
9 we need to get into some nitty gritty with, you
10 know, reviewing the specifics of the Tree Bank,
11 but I will be with Mr. Roche, I believe, on
12 this.
13 MAYOR JENKINS: Did you get a second on
14 this?
15 COUNCILMEMBER BATES: Well, we have to
16 have a public hearing.
17 COUNCILMEMBER ROCHE: No. We have a
18 public hearing.
19 MR. WEED: Well, technically we have to
20 have a public hearing on the deletion of the
21 code from the Zoning Ordinance, but the adoption
22 of the new code is a standalone police-powers
23 ordinance and you don't need a hearing for that.
24 You could just vote to do it.
25 So if you want to stick with your

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1 motion, you certainly could.
2 COUNCILMEMBER ROCHE: Yes, I'd like to
3 stick with the motion but I'd also like to give
4 the people a chance to talk about it, comment on
5 it.
6 MAYOR JENKINS: You want to open it up
7 to the audience?
8 COUNCILMEMBER ROCHE: Well, yes, if
9 anyone else wants to comment.
10 MAYOR JENKINS: Anybody want to comment
11 on that in the audience?
12 MR. ANDERSON: Stuart Anderson.
13 I was going to comment on the five, but
14 I think you got that handled as well.
15 The only question that I really have, I
16 guess, is multiple boards, like Gordo's part of
17 the Ethics Committee, the old question about
18 being more boards. And I certainly agree with
19 putting it on the Planning Commission even
20 though they're not going to be given tasks. But
21 we've got a small town, and it's hard enough to
22 come up with five people and seven people and on
23 and on and on. So that's to be worked out, but
24 just the thing about double boards, I guess.
25 MAYOR JENKINS: Anybody else?

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1 MR. WEED: The only other thing I'd
2 like to mention procedurally is for some reason
3 -- and Scott and I haven't had enough time to
4 research this, but there is a point in the text
5 -- most of the text deals with the tree
6 replacement cost per tree is $500. However, in
7 a table in your existing ordinance, the amount
8 is $220, and in the table, they also give you an
9 example of working the numbers out about it
10 being $220.
11 You know, we've always used the $500
12 number, as best I could tell. And historically,
13 at some point, maybe $220 was discussed, and at
14 some point, there may be an ordinance out there
15 where it went from $220 to $500.
16 My advice would be to, you know, keep
17 it at $500; however, because that's already in
18 the actual printed text of the existing ordi-
19 nance, I wanted to tell you that and didn't to
20 make an editorial change.
21 So what I would suggest, if you would,
22 would be to make your motion to make the change
23 with regard to the Planning Commission being the
24 Tree Board, and that throughout the ordinance it
25 either be $500 or $220 or whatever magic number

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you decide it should be, but in the past it's been $500. And I'll clean up the rest of the typos editorially, which I've got the authority to do, I think.

COUNCILMEMBER ROCHE: I mean do we want to handle that as a separate motion or --

MR. WEED: You can do that, too.

COUNCILMEMBER ROCHE: Because I mean I would like to stick with a motion for now of, you know, just making whatever change is necessary to the draft ordinance so that at least temporarily the Planning Commission becomes the Tree Board until such time as we can come back and return to this.

MAYOR JENKINS: Do I get a second?

COUNCILMEMBER BATES: Second.

COUNCILMEMBER ALEXANDER: Has the public hearing -- do we need to close the public hearing before we vote?

MR. WEED: No. In my opinion, no, because I don't think -- technically,this doesn't really need a formal public hearing. You are going to need one in just a minute when you delete the zoning ordinance, but you'll go through all that again.

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COUNCILMEMBER ALEXANDER: I guess one of my questions I had was page 34 regarding stop work orders, and that didn't get answered.

MR. WEED: I have looked into that. And essentially -- well, it's drafted the way it is now, I'm sure, because at the time it was adopted, you know, the building inspector, for lack of a better term, was sort of the end-all/be-all in the code enforcement arena and made a lot of field decisions and a lot of field investigations.

In my opinion, when something says the Building Inspector or the Building Official, that can be them or their designee. If the Building Official does designate Code Enforcement to do something under the auspices of the Building Official's or Building Inspector's office, I think that's perfectly fine. Because bear in mind, Quality of Life and the Police Department, they've got universal authority to enforce every code, period.

It's a good question.

MR. HAEBERLIN: Before we move on to that portion of this public hearing, I do want to say that the ordinance itself, I'm not fully

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happy with the text. But remember this is just the process right now of getting it out of zoning. There are a lot of things that need to be addressed.

We are going to move forward in the future with having a landscape ordinance, too. The tree ordinance itself as a standalone item does not function for development sites, and we know that. We've seen examples of that. So while in the past, there was a great amount of money that was deposited into this account to avoid planting trees, in the future, we want to cajole people into planting trees rather than -- there will be some extreme circumstances where there will be a need for the Tree Bank, but we will move away essentially from allowing people not to plant trees to requiring them to plant the trees.

So it's an evolution of your ordinance, basically, is what I'm talking about.

COUNCILMEMBER FLEMING: Who makes the determination if it's an exemption to this ordinance? It says Exemptions, item (e) on page 10.

COUNCILMEMBER ALEXANDER: I thought it

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said Council did, if I remember correctly.

MR. WEED: Yes. Ultimately, the Council will.

There's a portion here that Councilman Alexander asked about, that an initial determination is made by the Building Inspector but the ultimate decisions go to the Mayor and Council.

MR. HAEBERLIN: And the last thing, I just wanted to note for the record that these are advertised in the April 16, 2009 Champion, which all the Council has been provided as well as the City Clerk in case there are any questions on its advertisement.

MR. WEED: Mr. Mayor, procedurally, you have a standing motion and a second.

MAYOR JENKINS: Yeah, I understand that. But I thought there was some question. Did we get that cleared up?

COUNCILMEMBER ALEXANDER: He answered it for me, sir.

COUNCILMEMBER BATES: We're good.

MAYOR JENKINS: Call the roll, please.

CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BRYANT: Councilmember Bates?

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COUNCILMEMBER BATES: Yes.
CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
MAYOR JENKINS: All right.
COUNCILMEMBER ROCHE: And then the dollar amount, someone wanted to address that.
Personally, 500 bucks, if that's what we've been charging, I think that that's what the ordinance should say.
COUNCILMEMBER ALEXANDER: So you're going to --
MR. WEED: It's 500 throughout the text. If I were going to make a legal argument about it, I would say 500 means 500. In the appendix, there's an example of this is how you calculate out, they're formulas, and in that they use 220. How that got in there, I have no idea, but it's there now and has been.
But every time we've ever done it, we've used 500, and that's rampant throughout the text. So I think the text outweighs the

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appendix just like if you had an illustration in a textbook and somehow the illustration was wrong but the text was right. I think, you know, on your final exam, the professor would say, "Hey, look. It's the text the matters, not the illustration."
COUNCILMEMBER ROCHE: Well, but I did have one question. In fact, this actually came up recently. I mean do we charge if someone's -- oh, I don't know. If someone's tree gets hit by lightning and it kills the tree and they have to take it down, would that be a situation where we would -- That would come under these exemptions, right, exemptions that they would not have to pay?
MR. WEED: In my opinion, yes.
COUNCILMEMBER ROCHE: Okay. Just making sure.
COUNCILMEMBER BATES: I'll make a motion to adjust the Appendix C.
COUNCILMEMBER ROCHE: And I'll second that.
MR. WEED: To $500?
COUNCILMEMBER BATES: To $500; yes, sir.

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MAYOR JENKINS: Anymore discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
MAYOR JENKINS: Okay, Scott. Where are we?
COUNCILMEMBER FLEMING: I make a motion to delete Sections 1701 through 1708 of the Zoning Ordinance of the City of Doraville, which is the Doraville Tree Protection Plan.
MR. HAEBERLIN: Did you want to have a public hearing?
MR. WEED: Yyou have to have a public hearing to do that, but the motion's fine.

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COUNCILMEMBER ROCHE: You can make the motion first and then have the public hearing?
MR. WEED: In my opinion, yes.
COUNCILMEMBER PITTMAN: Second.
MAYOR JENKINS: Without a second or with a second?
COUNCILMEMBER ROCHE: Well, we have a second.
COUNCILMEMBER PITTMAN: I seconded it.
MAYOR JENKINS: Okay.
MR. WEED: And then you could have the public hearing, those for and those against.
MAYOR JENKINS: All right. Anybody have any discussion from the audience on this?
Stuart?
MR. ANDERSON: It wouldn't matter if I did say it. You're going to do it anyway.
MAYOR JENKINS: Anybody else?
- - -
(No response)
- - -
MAYOR JENKINS: I'll bring it to the table.
COUNCILMEMBER BATES: I will say just for the record that we have a recommendation

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from the Planning Commission for adoption.
MAYOR JENKINS: Anymore discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
MAYOR JENKINS: All right.
MR. HAEBERLIN: The next item, Mayor, that we're going to move to is item 4A. The applicant has arrived, Mr. Jerome C. Yeh -- am I pronouncing that correctly? -- 2845 Clearview Parkway, M-1 to O-I with concurrent variances, and there is conditional uses as well.
Our normal procedure is to have the applicant speak first, then staff. Then we'll

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open the public hearing and close the public hearing and then move to discussion, then vote.
So at this time we'll bring forward Mr. Jerome C. Yeh.
MR. YEH: Your Honor, Councilmen and the public, residents, my name is Jerome Yeh. I am from Taiwan, not China. I've been in the United States about 30 years. I came to Atlanta 1983 from Athens, Georgia. I attended the University of Georgia.
I am the owner of the property 2845 Clearview Parkway, Doraville. I purchased this building June 2008. When I purchased that, the sale agent told me that was the O&I zoning, and it was the building of Circle 10 Credit Union. I checked the tax office. It also show should be the O&I zoning property because for the 15,000 square feet, the cost, the tax is about 33,000. So we purchased that but we also planning to use as an office complex.
But when I come to the City to apply the license and I was told that building has been changed from the O&I to manufacture. It was the Light Industrial. So that I feel we need to request for the rezoning. Also the City

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officer, Mr. Scott, advised me we have got to do it that way.
My application has got several reason to support. First, I feel this building, it was build for the office in 1970 and '71. It has been used as O&I, this zoning. Maybe somehow the building appraiser change his mind over that, I didn't know, and has been separate with O&I. But 1988, Circle 10 Federal Credit Union purchased that and totally renovate and become as the bank. And here, I think that they move out last year. So maybe it -- it has been built for that and has been used for the office, I should have this kind of right to continue this, first.
Second, I feel that this building, using the office complex is the best use for the building, for our community and for the neighborhood value.
So my planning to do in this building basically is for the professional use of the lawyer, for the architect, for the real estate agent and the whatever, even the telemarketing, because we furnish the first class furniture over there. And I feel if we use it as an

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office, not for the manufacture, for our community, it must have better value for the set up the manufacturer or the special.
I notice since GM Doraville close, there is not any other class A building in this area we should also keep has got office space in our city.
What we plan to do beside the professional people to use over there, we also plan to do like after school program. Mr. Scott Haeberlin advised me, he say we better to apply the rezoning.
Further reason I feel can support my application is I am the right person to handling this kind of property. I have been in the real estate business more than 25 years. I involved a lot of the community activity. I am the founder/chairman of Atlanta Taiwanese Chamber of Commerce. I have been the president of the Asia American Chamber of Commerce. I'm also as the chairman and president of Taiwanese Chamber of Commerce of North America. And currently I am still involved in the Taiwanese Chamber of Commerce, all the Taiwanese Chamber of Commerce. So I traveling a lot of place.

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1 I operate lot of commercial business,
2 commercial real estate, from the hotel,
3 apartment complex and the office unit. So I
4 feel I can do this using this property as the
5 office suite complex and for the benefit and for
6 the -- our community, our neighborhood.
7 That is my application. I hope I can
8 be accepted, grow and benefit with everybody.
9 Thank you.
10 MAYOR JENKINS: Thank you, sir.
11 COUNCILMEMBER ROCHE: Thank you.
12 COUNCILMEMBER PITTMAN: Thank you.
13 MAYOR JENKINS: Scott?
14 MR. HAEBERLIN: Yes, sir.
15 MAYOR JENKINS: Do you want to hear
16 from the public or do you want to go ahead?
17 MR. HAEBERLIN: I'll be next, Mayor --
18 MAYOR JENKINS: Okay.
19 MR. HAEBERLIN: -- and then we'll go to
20 the public hearing.
21 First I want to address some comments
22 that have previously been made regarding the
23 discrepancy between the City zoning map and the
24 County Tax Assessor. Quite frankly, we see this
25 all the time. There are numerous errors in the

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1 tax assessor's. But as Mr. Weed will agree, we
2 have an official zoning map now. This property
3 is represented as Light Industrial, which is
4 consistent with the previous zoning map. So if
5 there is an error on the zoning map, it's been
6 consistent. But we have only one official
7 zoning map to go by, which is the one we have
8 today, which designates this property as Light
9 Industrial.
10 You'll notice in the package that this
11 was advertised with concurrent variances. The
12 reason I do that is because if there is some-
13 thing that the City Council would like to vary
14 or simply accept the building as it is, then you
15 have that ability. By advertising it, I
16 brought awareness to it. And essentially here
17 what we're reflecting on is we're going to
18 accept the building essentially as it is but we
19 want to be able to manage its future development
20 in terms of its interior or its facade. So that
21 is included in your package.
22 The thing that I want to highlight
23 mostly -- and this is supported in your stan-
24 dards review -- is the Comp Plan, that this is
25 identified as a professional employment center,

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1 which is consistent with that of being O-I. So
2 certainly this petition is consistent with the
3 Comp Plan and it is consistent with the adjacent
4 O-I.
5 Like I said, the discrepancy in the
6 zoning history does not surprise me. I see this
7 a lot. I see shopping centers in Doraville that
8 are zoned residential on the County Tax
9 Assessor's web site.
10 So I bring that to your awareness. The
11 property is circa 1971, and there have been a
12 number of different individuals implementing the
13 zoning code since that time. And there is
14 discussion in there about the development of the
15 property once it is rezoned if the City Council
16 approves it.
17 We've looked at parking as well, and,
18 as you see, that there is a slight overage on
19 parking. We have a little surplus which we can
20 play with in terms of providing greenery in the
21 parking lot.
22 We do discuss the Ordinance 2009-001,
23 which is O-I, and basically that the property is
24 what it is, and it would not be consistent with
25 that which we would develop today under O-I, but

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1 where it simply exists, accepting the facility
2 as it is, which is pretty much a mid-century
3 modern design, contemporary design.
4 So under the standards review, there's
5 not a whole lot I'd like to go over, because
6 you've had an opportunity to review this in
7 advance. But consistency with the Comp Plan I
8 think is the most important thing that you see
9 in there, and we are aware that the property
10 abuts in a little slight area upon residential,
11 and so we have addressed that, too.
12 In the recommendations, we did support
13 approval of the rezoning from M-1 to O-I and
14 with no variances, because, really, after
15 looking at the property, we accept it as it is,
16 we move forward with how to enhance it, and if
17 the building is ever removed, then we have the
18 potential for it to be fully developed under the
19 code that exists at that time.
20 You'll see under the rezoning that the
21 format is typical, the natural, human and built
22 environments, and the focus is on planting, tree
23 planting and maintenance of the landscaped strip
24 along Clearview Parkway.
25 The human environment is consistent

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with the LCI plan, which is the consistency in the pedestrian benches and trash receptacles that are on Buford Highway which have previously been installed.

Under the built environment, which is always very difficult when you have an existing facility, is how to structure some conditions in case the individual would like to enclose more of the existing roof structure. If you looked at your pictures, there's a huge caged enclosure on this facility. There is a potential under existing roof structure to have more buildout, and that's one of the reasons why that I fashioned the conditions in that manner, because you do not have an architectural ordinance to control how that would be designed. Since this is conditional zoning, you have the opportunity to address that.

I also addressed, as well, signage, to bring the height of the sign down in case there was a discussion on that. Also addressed another flaw in the sign code, which is wall signs, limiting them to two, and also two under temporary signs to basically outlaw those on this property, which is consistent with O-I

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being adjacent to residential.

On the next page you do have a copy of the zoning map where I've indicated the zonings of the adjacent properties. You do have a site plan for when it was built. It's fairly consistent with this. As you can see, it looks like it was subdivided out of a master development of an office park.

The next pages you will see pretty much the architecture of the building. Please do pay attention to the large-enclosure picture, which is your future development under roof.

So with that respect, I did support approval. We'll handle this first, the rezoning of the property. The conditional use we'll handle separately because obviously we've got to rezone the property first to make it eligible under that zoning classification for a conditional use.

So at this time if there's not any questions from the Council, we'll have the public hearing on the rezoning of the property.

COUNCILMEMBER ROCHE: Actually I have two questions.

MR. HAEBERLIN: Yes, sir.

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COUNCILMEMBER ROCHE: As far as going-forward construction, and perhaps this is a better question for the landowner.

The drive-through section and the caged area, do you have particular plans as to what you might do with that construction-wise, or plan to leave it like it is or modify it or --

MR. YEH: (Inaudible)

MAYOR JENKINS: You're going to have to come up to the microphone, sir.

MR. YEH: The drive-through that's construction, I think we -- right now we don't use and where we keep that until we feel. We still have got about almost 5,000 like a warehouse. We want keeping it with some other which has been used for the bank.

COUNCILMEMBER ROCHE: Yeah. I was just looking at this big enclosure here. Were you going to leave it there or take it down?

MR. YEH: Right now, leave it there.

COUNCILMEMBER ROCHE: Okay. And what about the caged area?

MR. YEH: (Inaudible)

COUNCILMEMBER ROCHE: Caged.

MR. HAEBERLIN: Sir, that's what we're

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talking about (indicating).

MR. YEH: Yeah, yeah. This where I talk about the picture of warehouse. We're going to see how the people want to use, maybe some distributor can use this. Right now, since we have not really -- we don't have any plan to do that. Okay. Maybe use, build more like executive suite or like a fitness center, but --

COUNCILMEMBER ROCHE: It would seem like you'd want to enclose it at some point.

MR. YEH: Yeah, yeah. Maybe one day but not right now.

COUNCILMEMBER ROCHE: Okay. I didn't know if you had any particular --

Thank you. That's all I had.

COUNCILMEMBER BATES: Mr. Haeberlin, I have one question for you. The zoning map shows that parcels 2045 and 2095 addresses. Is that two parcels? Is it one parcel with one address?

MR. HAEBERLIN: That's not uncommon. Let me use an example. Angler's Corner currently has five addresses under Dekalb County, so it's not uncommon to have multiple addresses.

COUNCILMEMBER BATES: But it's for this parcel as an entirety and not --

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1 MR. HAEBERLIN: As an entirety,
2 correct.
3 COUNCILMEMBER BATES: Thank you.
4 COUNCILMEMBER ALEXANDER: Because when
5 I drove back there yesterday, there is a whole
6 'nother office building behind this one. So
7 we're --
8 MR. HAEBERLIN: To the side of it.
9 COUNCILMEMBER ALEXANDER: Well, no.
10 It's directly behind it.
11 MR. HAEBERLIN: The other street
12 frontage, correct.
13 COUNCILMEMBER ALEXANDER: There's
14 street frontage on that building behind it?
15 MR. HAEBERLIN: Should be, yeah.
16 COUNCILMEMBER ALEXANDER: Not on
17 Clearview.
18 MR. HAEBERLIN: There's not direct
19 access for any other site that I'm aware of.
20 There is interparcel to the right as you're
21 looking at the front of the building, to another
22 office building.
23 COUNCILMEMBER ALEXANDER: Okay. When I
24 turned in the entrance where the sign for the
25 credit union is, I went straight back. And

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1 where I turned left to go back around to see
2 where the drive-through is, there was a building
3 directly in front of me. Are you saying that
4 building has access from Wilton?
5 MR. HAEBERLIN: No. No, ma'am. That
6 has interparcel. There looks as though there's
7 some sort of pre-existing --
8 COUNCILMEMBER ALEXANDER: Because there
9 is a taxicab --
10 MR. HAEBERLIN: -- parking agreement.
11 COUNCILMEMBER ALEXANDER: -- in there
12 and I forgot what else, what other businesses
13 were in there.
14 MR. HAEBERLIN: If you guys would refer
15 to your site visit, you'll see that the property
16 lines pretty much cross over or at one point in
17 time crossed over into some other parking areas,
18 and the parking lot -- the parking -- excuse me.
19 The property line was sort of gerrymandered to
20 reflect how it was built. So if you're looking
21 at that exhibit --
22 COUNCILMEMBER ALEXANDER: It's in the
23 photograph where the white truck is. It's that
24 building right there.
25 MR. HAEBERLIN: Okay. I'll look at

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1 this quickly.
2 That should be the building on the
3 adjacent parcel. We can bring Mr. Yeh forward.
4 If you would please come forward.
5 And I'll denote based on the pictures
6 we have, this is the building that you own --
7 MR. YEH: Yes.
8 MR. HAEBERLIN: -- 2835? Do you own
9 this building here?
10 MR. YEH: No, no. Right now, I don't.
11 But from the record that I saw, origi-
12 nal developed by the North Park, this developer,
13 business like area.
14 The next and behind, actually it's
15 three parcel original is for the office, all the
16 three. But somehow, the owner of this building,
17 they didn't use the office, they might change it
18 to the M-1. And I'm here, so that is a separate
19 ownership. But original is three parcel
20 together. Okay. Right now, only this building
21 has been rezoning as the manufacture. That's
22 what I know so far.
23 MR. HAEBERLIN: I just went to check
24 the map. I think that's consistent with the
25 2815 property that's actually addressed from

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1 another street.
2 What you're seeing here, like I said,
3 is an office park that was kind of gerrymandered
4 with property lines -- at that time, they
5 probably had no real regulation on how proper-
6 ties are to be subdivided -- and as a result,
7 that you have interparcel going through this
8 parcel to another property. And that's, to me,
9 what the as-built site plan reflects.
10 Are there any other questions of the
11 Council?
12 COUNCILMEMBER ALEXANDER: So I guess we
13 don't know the other address, if it's M-1? I
14 guess we're going to assume it is M-1?
15 MR. HAEBERLIN: The adjacent property
16 is M-1. It's Light Industrial. And also it's
17 shown on the future land development map as well
18 as should be O-I. In other words, consistency
19 with the Comp Plan would be for that individual,
20 if they came in, to go through the rezoning
21 process to recommend it as being O-I.
22 Now, recall this property has been
23 sitting vacant for quite some time, so all
24 discussion about legal nonconformity is pretty
25 much gone. It's been sitting vacant. It's not

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1 uncommon for there to be uses in the city which
2 are not consistent with their zoning. That's
3 very common, and we see that often.
4 And I think if you'll look at your
5 zoning map -- that's the line as shown on the
6 site plan where the parking spaces are coming
7 into the next facility -- it's consistent. The
8 property boundaries are consistent with that of
9 the map.
10 So at this time, if there's no further
11 questions, we'll go into the public hearing on
12 the zoning.
13 MAYOR JENKINS: Mr. O'Connor could
14 probably add something to that. Come on up,
15 sir.
16 MR. O'CONNOR: Mayor and Council, I
17 apologize. I didn't get a chance to say
18 anything during the last presentation because
19 you asked anybody in the public, so I couldn't
20 get up as the Planning Commission and say that
21 we had previously agreed on the text.
22 Anyway, we conducted a hearing, public
23 hearing with this on May 7th, and we were quite
24 impressed with the business expertise, both his
25 national reputation and local reputation.

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1 And his proposal, this is something
2 that we believe Doraville needs, a professional
3 building where they're going to rent or lease
4 out space which is already built and furnished.
5 And we also supported Scott's recommendation
6 concerning green aisles in the parking lot,
7 maintaining the outward appearance and structure
8 of the building, and some other standards.
9 So in a vote 4-0, the plan has our
10 unconditional recommendation to the Council.
11 Thank you.
12 COUNCILMEMBER FLEMING: Thank you.
13 MAYOR JENKINS: Okay. Anybody else?
14 MR. ANDERSON: Stuart Anderson.
15 I, too, concur it should be O&I. In
16 fact, my general opinion about having M-1 and
17 M-2 in the city is somewhat well known. They
18 shouldn't have it in the Tilly Mill/Chicopee
19 neighborhood as well.
20 Nonetheless, this building and this
21 area is appropriate for O&I, I agree.
22 There was something in the Planning
23 Commission hearing that I'd like to either
24 discuss or satisfy, and I didn't get an under-
25 standing of it during the Planning Commission

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1 hearing, and that was something Scott said about
2 not having variances, and perhaps like ESL or
3 schools were part of conditional uses or
4 something and they weren't appropriate.
5 And I think that we need ESL schools,
6 and if that was a variance or a discussion, a
7 codicil that could be put onto this, the passage
8 of this, that might be appropriate for discus-
9 sion. Schools of that nature are basically O&I
10 type things, not high traffic, and it's an
11 appropriate use. Thank you.
12 But I feel that the O&I is appropriate
13 for this building.
14 MAYOR JENKINS: Anybody else?
15 COUNCILMEMBER ROCHE: And at this
16 point, you are not asking for any conditional
17 uses or anything. Is that what you're saying?
18 MR. HAEBERLIN: Well, we need to
19 address the zoning of the property to then allow
20 their ability for conditional uses. Needs to be
21 O&I to have these abilities.
22 COUNCILMEMBER ROCHE: Oh, I understand
23 that, but I'm just saying is that coming up
24 next?
25 MR. HAEBERLIN: That will be coming up

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1 next.
2 COUNCILMEMBER ROCHE: Okay.
3 MR. HAEBERLIN: I did want to address
4 the drive-through. It is on the back of the
5 facility, it is existing, and I think that
6 numerous businesses -- certainly we're not
7 advocating that there's a fast-food restaurant
8 here because we know it's -- it does not allow
9 the zoning. But numerous businesses do utilize
10 the functions of a drive-through, and they are
11 very helpful. For example, City Hall does not
12 have a drive-through, but think about how
13 wonderful it would be to accept payments on
14 garbage if we had a drive-through. It's one of
15 those things that's very helpful, and for many
16 business-style operations, it is useful. That's
17 why I think that in this case, because it's on
18 the rear, it's probably best just to leave it
19 in. They may find a use for it.
20 COUNCILMEMBER ROCHE: That's fine.
21 MR. HAEBERLIN: Okay.
22 COUNCILMEMBER BATES: Just to clarify
23 what Ms. Alexander was getting to -- and I
24 actually concur with her -- the adjacent O-I
25 property doesn't have street frontage. They can

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only access that property off of Clearview because there is no access off of Wilton.

MR. HAEBERLIN: Are you talking about parcel 22?

COUNCILMEMBER BATES: 21.

MR. HAEBERLIN: 21? Okay.

COUNCILMEMBER ALEXANDER: So you did confirm that 21 is already O-I?

MR. HAEBERLIN: 21 is O-I per your map.

COUNCILMEMBER ALEXANDER: But we don't know what Dekalb County thinks.

MR. HAEBERLIN: It doesn't matter, because your official zoning map represents it as O-I.

MR. WEED: I concur with that legally.

COUNCILMEMBER BATES: I'm a little concerned if we got a parcel of property that doesn't have clear access to a road.

MR. HAEBERLIN: Well, that's replete in the city. I'll tell you that.

I'll give you an example. There's an industrial park off of -- let me clarify the name. Here's an example. There is an industrial park developed in the city -- it's very near Councilwoman Fleming and Ms. Pittman's

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home -- which is on McAuliffe Drive, which is a private street, which has numerous parcels cut off of it. So the situation of access, certainly if they don't have a written agreement, they certainly have a prescriptive easement across people's properties. They may very well have some sort of property owners' association that we are not aware of. But there are parcels in the city that are in a similar situation. That's pretty common.

MAYOR JENKINS: In other words, what we are saying is the only access to that building is through various parking lots.

MR. HAEBERLIN: Correct. That's what Councilwoman Alexander is asserting.

MAYOR JENKINS: Well, is there any way that they could close off those parking lots and stop access?

COUNCILMEMBER ALEXANDER: No. That's the only way to get to that property.

MR. HAEBERLIN: That's a private discussion with the property owners.

MAYOR JENKINS: That was what I would be worried about.

COUNCILMEMBER ALEXANDER: Yeah, I

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understand.

MAYOR JENKINS: But if they can't do that, then there is no big problem, is there?

MR. WEED: Mr. Mayor, for what it's worth, you know, legally, there's nothing that the government's doing to shut off the access.

MAYOR JENKINS: Yeah.

MR. WEED: So then it would be a private matter between the landowners.

MR. HAEBERLIN: Well, like I said, this is entirely not uncommon. I mean this is throughout the city, because there really were no laws that regulated land subdivision that were appropriate to managing how things were subdivided. For example, the facility up off PIB which is known as Peachtree Square, the City Council granted numerous variances at one point in time to subdivide those into parcels because they didn't meet the requirements even at that time, and this was under the previous zoning ordinance.

Surveyors have a lot of ingenuity, and they will figure out a way to gerrymander lots. Today, however, you have lots of extensive regulations on subdividing lots so the situation

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probably wouldn't happen today.

COUNCILMEMBER ALEXANDER: Okay.

COUNCILMEMBER BATES: Thank you.

MR. WEED: I would like to tail onto that. If this came up today, we, the government, would insist -- if they came to us with one big lot and they wanted to subdivide it, we would insist upon dedicating the right-of-way to the secondary lot.

MAYOR JENKINS: Anybody else?

- - -

(No response)

- - -

MAYOR JENKINS: We need a motion.

COUNCILMEMBER FLEMING: I'd like to make a motion to rezone property 2845 Clearview Parkway from M-1 to O-I.

COUNCILMEMBER ROCHE: I'll second it.

MR. HAEBERLIN: With conditions are represented by staff? I'm just trying to clarify your motion.

COUNCILMEMBER FLEMING: Well, I started to say that but you told me that we had to change it to O-I first.

MR. HAEBERLIN: Well, no, that's only

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on the conditional use. But the conditions that are related to the rezoning as depicted on page 8, 9 and 10, that's my recommendation to you.

COUNCILMEMBER FLEMING: That's sort of why I stopped --

MR. HAEBERLIN: I understand.

COUNCILMEMBER FLEMING: -- myself right there --

MR. HAEBERLIN: I apologize.

COUNCILMEMBER FLEMING: -- because I wasn't going to -- Okay.

MR. HAEBERLIN: I apologize. You can act on the rezoning conditions, yes, ma'am.

COUNCILMEMBER FLEMING: With zoning conditions as per attached.

MR. HAEBERLIN: Thank you.

COUNCILMEMBER ROCHE: And I second the zoning conditions.

MAYOR JENKINS: Okay. I believe you said -- did you clarify the two numbers, 2045 and 2095?

COUNCILMEMBER BATES: It's all one lot, sir. It's just --

MAYOR JENKINS: Yeah, I know, but they mentioned they had two numbers.

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MR. HAEBERLIN: I mean we can identify it more appropriately as its tax parcel, which is 1831113-024.

MAYOR JENKINS: All right. Anymore discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll, please.

CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

MAYOR JENKINS: Thank you.

MR. HAEBERLIN: Now that we've acted on the zoning matter, it is my understanding from originally talking to Mr. Yeh, that his concept was that of having a conditional use, that he wanted a more fluid environment than is

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typically in a business park, I mean, who would actually share some of their facilities or conference areas and that he wanted it to be more of a club and lodge.

He also then did discuss assembling and using it as a community center at certain times, and so that's why I did advertise the item for him, including conditional use club and lodge of a business character which are non-profit, but excluding alcohol sales, and assembly halls and community centers when operated on a non-profit status. I thought that generally covered what he relayed to me as being his vision of being more than just an office park.

As you recall, the Planning Commission does not review nor make a recommendation on conditional uses so they have not provided such to you. Your Code very strictly says that it's a decision of the City Council; therefore, there is no recommendation from staff. Section 1501 is very clear that the conditional-use decision is yours and yours alone.

COUNCILMEMBER ROCHE: Well, I just noticed on the request it says with concurrent variances. I mean we haven't done any. There

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are no variances?

MR. HAEBERLIN: Correct.

COUNCILMEMBER ROCHE: Okay.

MR. HAEBERLIN: We've accepted that the property is built the way it is --

COUNCILMEMBER ROCHE: Okay.

MR. HAEBERLIN: -- and if it's ever torn down, it will meet the code in effect at that time.

COUNCILMEMBER BATES: Mr. Yeh?

MR. YEH: Yes.

COUNCILMEMBER BATES: If you were to have gatherings or events, how many would there be, do you foresee?

MR. YEH: Well, over there total we have about 30 unit, assorted size. We have got about two or three designated for like conference or career training; and maybe after the school, the program is for like a Princeton Review or some other community, they have quality -- not quality -- that's for dancing or some kind of cultural education use. The biggest one probably can allow about 50 or 60 people, like a classroom size.

COUNCILMEMBER BATES: I'll make -- I'm

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1 sorry.
2 MR. HAEBERLIN: I think procedurally,
3 Mr. Weed, should we not have a public hearing
4 since conditional uses are clearly identified as
5 being under the purview of the Council?
6 MR. WEED: Yes.
7 MR. HAEBERLIN: We do need to have a
8 public hearing on just the conditional use.
9 MAYOR JENKINS: Anybody from the
10 audience want to speak on it?
11 MR. ANDERSON: Stuart Anderson.
12 Once again, the request on schools.
13 COUNCILMEMBER FLEMING: Stuart, what
14 was your comment? And I'm sitting right next to
15 you.
16 MR. ANDERSON: I'm sorry. Thank you.
17 I brought up the thing that in the
18 Planning Commission there was some discussion
19 about ESL and schools as a conditional use, and
20 it wasn't satisfied or wasn't really finished as
21 a discussion. And since we're discussing now
22 conditional uses, perhaps that could be
23 addressed at this point.
24 COUNCILMEMBER ROCHE: So you're saying
25 we would need to add -- you're recommending that

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1 we add a conditional use of --
2 MR. ANDERSON: Allowing schools, yes.
3 COUNCILMEMBER ROCHE: -- school,
4 training or education?
5 MR. ANDERSON: Right.
6 MR. WEED: And forgive my ignorance.
7 What do you mean by ESL, please?
8 MR. ANDERSON: English as a second
9 language.
10 MR. WEED: Thank you. All right.
11 MR. ANDERSON: It's a pretty common
12 thing these days.
13 COUNCILMEMBER ROCHE: Would that not
14 come under community centers, Scott?
15 MR. HAEBERLIN: I'm going to check the
16 wording. Most of these ESL discussions that
17 I've had with the individual are profit-making
18 centers sort of like the Kumon Learning Centers
19 where folks take their children to provide
20 tutoring assistance. Of course I'm not meaning
21 to affiliate that with the Kumon Center in
22 Doraville, but there is actually a business that
23 does that.
24 COUNCILMEMBER ROCHE: You're saying
25 that would not be allowed?

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1 MR. HAEBERLIN: Well, that's what I'm
2 looking at.
3 Basically what I'm understanding from
4 the applicant is that it's not a profit-making
5 venture, that it is going to be an assembly to
6 provide free services for the community. If
7 that is correct -- and I'm trying to reference
8 my ordinance that we have present here. Under
9 2009-001 O-I/O-W, there is a conditional use for
10 colleges and universities. And if the Council
11 feels that that generally fits under there, my
12 opinion is if it's not a profit-making venture,
13 that it would fall under the community func-
14 tions. No different than them having somebody
15 come in and speak regarding maintaining their
16 health or, you know, health management
17 practices.
18 So we can get some clarification from
19 the applicant as to whether these classes would
20 be for profit or are they for free.
21 COUNCILMEMBER ROCHE: Well, you mean --
22 For profit. I mean you could pay something but
23 not necessarily be profit-making.
24 MR. HAEBERLIN: Correct. It's not
25 going to be a separate -- it's not going to be

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1 its own business, a business license at that
2 facility for ESL.
3 COUNCILMEMBER FLEMING: Well, because
4 he has so many areas that he could fill them up
5 with.
6 COUNCILMEMBER ROCHE: Right.
7 MR. YEH: You say the conditional use
8 means exclude those like a school type, ESL,
9 those kind of things. I -- not really for the
10 ESL, okay. I don't know. Sometimes we might
11 have, or the community service, but charge for
12 the very minimum. Even as the Asian community
13 activities, sometimes I probably provide this as
14 opportunity for the people who give the lecture
15 and something good for health, good for the
16 business, that type, but it is not totally free.
17 I might just donate for the space. But I'm not
18 right now limit for the use because sometimes
19 you have got to benefit for the community,
20 benefit the folks like organization or even some
21 of the -- for totally for the like Doraville
22 citizen, something like that.
23 COUNCILMEMBER BATES: But your primary
24 business --
25 MR. YEH: Is profit.

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1 COUNCILMEMBER BATES: -- is going to be
2 architects and lawyers and --
3 MR. YEH: Yeah, those executive like
4 suite. Okay. This is my attempt to have this
5 concept. Okay.
6 MR. HAEBERLIN: I think to satisfy the
7 Council's needs, if somebody comes forward to me
8 with a business license request for that of a
9 school, then I'll know it's a profit-making
10 venture; otherwise, be holding periodic or
11 infrequent, you know, organizational type things
12 for assisting their community. At least that's
13 my understanding.
14 COUNCILMEMBER FLEMING: But in O&I, we
15 do allow public schools from kindergarten to
16 twelfth grade as a public school.
17 MR. HAEBERLIN: Correct, but public
18 vernacularly is, is this a public school open to
19 all citizens of Dekalb County? No, it's a
20 private school. Private schooling. Excuse me.
21 COUNCILMEMBER FLEMING: Correct. So as
22 a conditional use, I mean if schools, public,
23 offering instruction to children for public is a
24 permitted use, I would think if we -- I'm not
25 suggesting to do it tonight, obviously, but to

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1 consider having private schools with no greater
2 than 50 students or something for instructional
3 purposes --
4 MR. HAEBERLIN: Well, that was --
5 COUNCILMEMBER FLEMING: -- if they're
6 going to call it a school.
7 MR. HAEBERLIN: That was really your
8 intent under conditional uses is to manage those
9 type facilities. The one that we're most
10 familiar with is we have a lot of businesses
11 that come forth that wanted to do English as a
12 second language. And it is a business. They're
13 a profit-making function. That's the only thing
14 they do. They rent a suite. And generally
15 under the Code that exists today, the only
16 category that they really fit under is
17 conditional use. And of course that was brought
18 to the attention at your last City Council
19 meeting, if that might be something that the
20 Council is entertaining looking at adding it
21 somewhere as a permitted use or a conditional
22 use or maybe even in multiple zoning districts
23 because it is such a common request here.
24 COUNCILMEMBER ROCHE: Well, I think the
25 question before us right now is would we

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1 consider allowing that as a conditional use at
2 the get-go.
3 COUNCILMEMBER FLEMING: To include the
4 conditional uses that we presently have listed,
5 club and lodge of a business character which are
6 non-profit, but excluding alcohol sales, and
7 assembly halls and community centers when
8 operated on a non-profit basis. But also as a
9 conditional use, we have listed vocational,
10 technical schools, GED instruction. So I think
11 that's still in the same general area that the
12 English as a second language school, that type
13 of an instructional school.
14 So I would like to add that to this
15 conditional use if that's a possibility for this
16 for Mr. Yeh.
17 COUNCILMEMBER ROCHE: Yeah, whether
18 it's for profit or not for profit, I mean.
19 MR. HAEBERLIN: I mean I advertised it
20 for the two that are specified. I did not
21 advertise for any other conditional use. Of
22 course that should be your call.
23 MAYOR JENKINS: Excuse me, sir, did you
24 want to . . . Come on up.
25 MR. BARNES: Good evening. I'm Pat

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1 Barnes. My property abuts the applicant's
2 property so that if he stands at his back door,
3 he's virtually in my back yard.
4 And when I saw the ad for club and
5 lodge, I was concerned about, well, if it's
6 nonprofit are they still going to be having
7 bingo till midnight and whatnot, and what uses
8 actually was going to be in the hours that they
9 were going to have these uses. And it said
10 excluding alcohol, so that means there will be
11 no alcohol on the property or whether they could
12 just have a big party until the wee hours of the
13 morning.
14 Can we have some clarification on that?
15 I appreciate it.
16 MR. HAEBERLIN: I'll let the applicant
17 address that. It's not something I'm know-
18 ledgeable.
19 MAYOR JENKINS: Come on up, sir. Can
20 you answer those questions?
21 MR. YEH: Okay. We are not designed
22 for those like restaurant-type alcohol usage,
23 okay, but basically we want to provide a good
24 environment over there for the professional.
25 But for the educational purpose, we also really

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1 consider that because we know, like to develop
2 the culture as Asian community besides just next
3 door. That is nonprofit. Even in Chamblee for
4 the citizens of Chamblee, called the Chinese
5 Culture Center, but that's the -- they got to
6 charge. They charge the price, not really free.
7 And if you want totally use for the
8 nonprofit, for the ESL so far, I think is not
9 allowed. You have a duty to designate as
10 non-profit. The owner must be, when you apply
11 to this building for the nonprofit so you can
12 have the tax benefit. So I don't know right
13 now.
14 You're likely to set the conditional
15 for use, that borderline is very difficult.
16 COUNCILMEMBER BATES: Mr. Yeh, how late
17 in the evening would events go?
18 MR. YEH: Well, event, we have the
19 business hour, okay, just regular business hour
20 except I think it's about 9 or 10 o'clock.
21 That's what we plan.
22 COUNCILMEMBER BATES: So you're not
23 going to have wild parties there, are you?
24 MR. YEH: Oh, no, no. Even we have
25 original we thought about maybe like -- how to

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1 call it? -- Internet cafe, okay. But many of
2 our people, my friends said don't involve that,
3 that usually they come any time and even in the
4 mid night for those people. So we don't have
5 that type in our mind to set up the business.
6 But for the education, for the culture,
7 we really feel that is a benefit for the -- for
8 the people, okay. For example, like when we
9 said the after school, I checked with some big
10 city for the Asian community, lots of -- like
11 Los Angeles or San Francisco or Houston, they
12 have got even not really for the school for the
13 -- either the public or private or school full
14 time, but they already start lots of
15 after-school programs. That mean they want
16 their children to be learning about their
17 culture.
18 Like right now, I think either in the
19 Chinese community, Korea community and any
20 other, if you let the people to just learning
21 only the Saturday one day, actually about three
22 or two hours where they're learning the Chinese,
23 in the future you cannot use. Okay. Not
24 sufficient. So right now, those big cities,
25 they've already set a program. Okay. You are

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1 after the school, you come to over here, and not
2 only to helping your school work, also every day
3 has got one or two hours, let them to learning
4 the foreign language. And this is from
5 experience and from the other parent that
6 suggest. So we have got this kind of idea.
7 My children -- I've got four children,
8 okay, and since their school, since about eight,
9 six years old, I send them to the Chinese
10 school, it's called this community, just only
11 two hours a week. But so far, all graduate from
12 the -- to go from the U.C. Berkeley to from the
13 Georgia Tech. But right now, they identify
14 themselves, they feel why we don't have more
15 time, not the parent encouraging them learning
16 Chinese or the Taiwanese. Okay. So this type
17 of demand is right now graduates accepted for --
18 for the parent. So I tried to also follow that
19 kind of the direction. Okay.
20 But basically we want to have the like
21 quiet and environmental in the property.
22 COUNCILMEMBER BATES: Thank you.
23 Did that answer your question, Mr.
24 Barnes?
25 MR. BARNES: Yes.

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1 COUNCILMEMBER BATES: Thank you.
2 COUNCILMEMBER ROCHE: And obviously,
3 there's nuisance laws and anything like that in
4 case there was an issue, so --
5 COUNCILMEMBER BATES: They get rowdy,
6 call us, call me.
7 COUNCILMEMBER ALEXANDER: I guess that
8 is one of the questions that I was going to pose
9 to Mr. Haeberlin since Ms. Fleming and I have
10 been dealing with some Doravillians complaining
11 about a public address system in the city of
12 Chamblee. How would we address that issue? We
13 don't want them having a public address system
14 out there and blasting these people out of their
15 homes.
16 MR. HAEBERLIN: Well, I think that's
17 something that you can speak with Mr. Weed
18 regarding if you grant this or any conditional
19 uses on these properties. Are you going to
20 structure some sort of environment in which they
21 exist? I mean I generally think that the City
22 Council could place stipulations on conditional
23 use applications --
24 MR. WEED: Certainly.
25 MR. HAEBERLIN: -- being approved.

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MR. WEED: I mean sure. Absolutely you could limit it to no P.A. systems or P.A. systems within certain hours. Absolutely. Certainly.

Or if you didn't want to address it directly, we have a noise ordinance and we could always enforce the Code that way.

COUNCILMEMBER BATES: Well, any outdoor events would require a separate permit.

MR. WEED: Possibly.

MR. HAEBERLIN: The City of Doraville doesn't really have what we call temporary use permits in Gwinnett County. It's something that we need to discuss, these sort of outdoor -- you know, for example, putting a tent up and having a revival or something, something of that nature. I don't want to use that as a -- that's not a best example. Selling tennis shoes under a tent. We really don't have any really good ordinance that addresses these temporary uses.

COUNCILMEMBER BATES: Fireworks.

MR. HAEBERLIN: Fireworks is a fine example in most communities. We don't really have a good temporary use ordinance on the books.

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COUNCILMEMBER ROCHE: But of course in Doraville we need something for, I mean, Chinese New Year of course. I know that I hear a lot of fireworks on the Chinese New Year, which is part of the deal, I guess.

MR. HAEBERLIN: I think really what you're looking at is does City Council think that there are any reasonable land use controls they can put forth as far as stipulations on this conditional use? And you know, this is a situation where it does abut some residential, certainly.

COUNCILMEMBER ROCHE: My only concern would be I know that in certain -- in various types of schools, they have drums. They have the big drums, big Taiwanese drums. You're not planning to have that?

MR. YEH: We will see, because right now already have the two Taiwanese school.

COUNCILMEMBER ROCHE: That do the drums. Okay.

MR. YEH: We are not.

COUNCILMEMBER ROCHE: Good. I'm good, then.

MR. WEED: Going back to, I believe,

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Mr. Haeberlin's question, looking at the ad, the ad does appear in my opinion to be generic enough to cover the items that we've been discussing with regard to assembly halls and community centers when operated as a non-profit basis. I think that's wide enough to give the public -- give notice procedurally of that community center and anything that would occur at a community center by programming. You know, I think the world's on notice of that.

MR. HAEBERLIN: But nothing generally that would allow a specific use to be rented as a school; in other words, that if he has a tenant space that he then rents it to some schooling institution rather than just him providing an assembly area on an infrequent basis.

MR. WEED: That's correct. Underneath this language, I think it's really geared to a non-profit use.

MR. HAEBERLIN: Correct. So I think we're not really talking about him renting, you know, 50 percent of the facility to a school. Talking about an infrequent, a temporary situation where they provide assistance to the

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children or what-have-you within that context.

If they do find a tenant who would like to do something that definitely fits under the conditional use under school, then we can proceed with that at another time. I think if it evolves to that, certainly we need to think about that.

COUNCILMAN BATES: Do we need to close the public hearing?

MR. HAEBERLIN: Yes, we do need to close the public hearing if there's nobody else who's going to speak.

MAYOR JENKINS: Stuart?

MR. ANDERSON: Stuart Anderson. A quick question and hopefully just a quick answer.

Mr. Yeh has said something about and been referring to non-profit. O&I is for profit generally, so the building is -- you can have -- I'm asking a question, not making a statement. I'm asking a question. Because it's O&I, if it's rezoned, he can have for-profit offices and that sort of thing, an insurance office or a doctor's office in there. So I'm just clarifying or asking for clarification so we

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1 know that we're not giving him O&I just so he
2 can be non-profit or if that's his intent to
3 have the whole thing non-profit.
4 Understand what I'm getting at?
5 MR. WEED: No, the ad doesn't read that
6 way. I mean he could have --
7 MR. ANDERSON: He can have profit.
8 MR. WEED: Correct.
9 MR. ANDERSON: Okay. Thank you.
10 MAYOR JENKINS: Anybody else?
11 COUNCILMEMBER FLEMING: So the motion
12 cannot include for-profit educational instruc-
13 tion.
14 MR. WEED: The ordinance advertisement
15 with regard to the conditional uses is very
16 specific, and, quote, it reads: and conditional
17 use for that of a, quote, club and lodge of a
18 business character which are non-profit, but
19 excluding alcohol sales, and quote, assembly
20 halls and community centers when operated on a
21 non-profit basis.
22 COUNCILMEMBER FLEMING: Okay.
23 MR. WEED: Based upon that, I would not
24 feel comfortable. I don't think it's generic
25 enough to cover anything beyond that.

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1 COUNCILMEMBER FLEMING: Okay.
2 MAYOR JENKINS: Anybody else?
3 - - -
4 (No response)
5 - - -
6 COUNCILMEMBER ROCHE: Well, we have a
7 motion and a second.
8 MAYOR JENKINS: Get a second?
9 COUNCILMEMBER ROCHE: Yeah, I already
10 seconded.
11 MAYOR JENKINS: Okay.
12 CLERK BRYANT: What's the motion?
13 COUNCILMEMBER FLEMING: To accept the
14 conditional use?
15 COUNCILMEMBER ROCHE: Well, you made
16 the motion. I'm not sure what the motion
17 specifically --
18 MAYOR JENKINS: What was the motion?
19 CLERK BRYANT: The motion that Ms.
20 Fleming made was only to rezone from M-1 to O&I.
21 There is nothing else.
22 COUNCILMEMBER FLEMING: We didn't have
23 a motion.
24 CLERK BRYANT: You already approved
25 that one. Everybody voted.

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1 MAYOR JENKINS: We did not get another
2 motion.
3 CLERK BRYANT: There is nothing else
4 after that. Nobody has made a motion.
5 COUNCILMEMBER ROCHE: Well, we need a
6 motion.
7 MAYOR JENKINS: We need a motion.
8 COUNCILMEMBER FLEMING: I wanted to
9 make a motion but I wanted to be able to include
10 it, and I guess that was in a question form as I
11 was doing it --
12 COUNCILMEMBER ROCHE: Oh, okay.
13 COUNCILMEMBER FLEMING: -- because I
14 really wanted to be able to add, since it showed
15 as a conditional use as GED instruction, that
16 was sort of on the same line as his English for
17 a second language instruction, and those are for
18 profit. But since it has not been duly
19 advertised that way, then we cannot include that
20 as part of the conditional use.
21 COUNCILMEMBER ROCHE: So you wanted --
22 COUNCILMEMBER FLEMING: For this --
23 COUNCILMEMBER ROCHE: -- to make the
24 motion.
25 COUNCILMEMBER FLEMING: -- motion.

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1 Right.
2 You want me to do it? Okay.
3 I'd like to make a motion to accept the
4 conditional use to be applied to the property of
5 2845 Clearview Parkway to include club and lodge
6 of a business character which are not-profit,
7 but excluding alcohol sales, and assembly halls
8 and community centers when operated on a non-
9 profit basis.
10 COUNCILMEMBER ROCHE: And I'll second
11 it.
12 COUNCILMAN BATES: Ms. Fleming, would
13 you be amenable to accept an amendment to that
14 motion to exclude outdoor events?
15 MR. WEED: Can you do that? Yes.
16 COUNCILMEMBER ALEXANDER: Okay, but
17 what about an event that is held in the fenced-
18 in area that's roofed? It has no walls.
19 MR. WEED: I was going to mention that,
20 too. I mean if one considered that to be a
21 pavilion --
22 COUNCILMEMBER FLEMING: Well, I mean
23 we're getting into, well, I think I ought to --
24 let's make this motion into only you're allowed
25 to do this from 9:00 to 8:00 Monday through

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1 Friday, and I --
2 COUNCILMEMBER ROCHE: Just on Tuesdays.
3 COUNCILMEMBER FLEMING: Yeah.
4 So you know, we're getting ready to
5 really -- so I'll do whatever you guys want me
6 to do, but . . .
7 COUNCILMAN BATES: You don't need to
8 accept it, so . . .
9 COUNCILMEMBER FLEMING: Pardon me?
10 COUNCILMAN BATES: You don't need to
11 accept the amendment, and I'll respect that and
12 I won't be mad.
13 COUNCILMEMBER FLEMING: I believe that
14 when Mr. Yeh comes to permit with occupancy
15 licenses for each one of these buildings [sic],
16 I think we need to be sure that since we are
17 giving a conditional use, can we not --
18 COUNCILMAN BATES: I'll withdraw the
19 amendment.
20 COUNCILMEMBER FLEMING: -- do specifics
21 at that time?
22 COUNCILMAN BATES: I'll withdraw the
23 amendment.
24 COUNCILMEMBER FLEMING: Thank you.
25 COUNCILMEMBER ALEXANDER: Is that our

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1 understanding? Is that correct, Mr. Haeberlin?
2 MR. HAEBERLIN: The way I would
3 structure this is if you say these conditional
4 uses are to be approved, say, within heated
5 square footage of the building, that would
6 address that containment area which is not
7 heated. And so if they're concerned about the
8 caged facility which is under roof and attaches
9 to the building being used in some sort of
10 function that would disturb the neighbors, we
11 could say within heated square footage of the
12 building. So they can either then enclose the
13 area and make it comply with Code, like we've
14 addressed in our conditions, or they can just
15 leave it as-is and it's basically just wasted
16 space right now. But that would not allow them
17 to have events out there.
18 COUNCILMEMBER FLEMING: Out in the
19 parking lot.
20 MR. HAEBERLIN: Well, either out in the
21 parking lot or out in the caged area.
22 COUNCILMEMBER FLEMING: All right.
23 MR. HAEBERLIN: You'd say the
24 conditional uses apply for the heated square
25 footage of the building only.

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1 MR. WEED: That would be legal in my
2 opinion.
3 COUNCILMEMBER ROCHE: I have to say I
4 kind of like the existing motion, I mean,
5 because we can get this thing so complicated, no
6 one can comply with --
7 COUNCILMEMBER FLEMING: You know, with
8 the heated square footage of the building, it
9 sounds fine.
10 CLERK BRYANT: Do you want to add that
11 to your motion?
12 COUNCILMEMBER FLEMING: Because it says
13 assembly halls and community centers when
14 operated on a non-profit basis within the
15 confines of the heated floor space of the
16 complex.
17 MR. HAEBERLIN: Correct.
18 COUNCILMEMBER FLEMING: Then they can't
19 operate it.
20 COUNCILMEMBER ROCHE: So they can't
21 really use that caged area.
22 MR. HAEBERLIN: Well, my hope is that
23 the caged area eventually will be retrofitted to
24 be more office suites and they'll have so much,
25 you know, need for occupancy that they'll simply

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1 build out that area. It would be a very easy
2 buildout. I mean simply it's under roof.
3 COUNCILMEMBER FLEMING: Brian, did that
4 take care of it --
5 COUNCILMAN BATES: I'm fine.
6 COUNCILMEMBER FLEMING: -- with the
7 within-the-heated?
8 COUNCILMEMBER ROCHE: I will still
9 second it.
10 MR. HAEBERLIN: Did you need to say
11 something --
12 MR. YEH: Yes.
13 MR. HAEBERLIN: -- as applicant?
14 MR. YEH: I don't know right now
15 condition this side of the area or so. Even the
16 function need to be for the working hour, for
17 the office hour if involved with the community,
18 even the education or the training. Usually for
19 the Asian community, they set in the weekend,
20 okay, not -- not do in for the like Monday
21 through Friday 9:00 to 5:00 or so.
22 COUNCILMEMBER ROCHE: I think we were
23 just making a joke about that earlier. We're
24 not talking about limiting the hours. So if you
25 have night classes, that should be okay under

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this.
MR. YEH: Okay. Basically I would like to, if the education and the function is we have got even the weekend just normal activities.
COUNCILMAN BATES: Saturdays and Sundays are fine.
COUNCILMEMBER ROCHE: Yeah.
MR. YEH: Okay.
COUNCILMEMBER ALEXANDER: So the motion as it stands now, that fenced-in area could not be used for any type of assembly.
MR. HAEBERLIN: That's correct, but they could then -- like I said, per the conditions we've written in the zoning, then they could actually fill in that area or complete it as the rest of the building, make it more office suites or assembly areas, et cetera. But it wouldn't be unheated square footage. Certainly not going to be people out there during the dead of summer holding a public assembly in that area. How you would restrict it is they have to be inside in the heated area. You might even say heated and air conditioned if that's what you want to say. That covers it generally. I think heated is the biggest

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concern.
COUNCILMEMBER ALEXANDER: That's a lot of that building.
COUNCILMEMBER ROCHE: Yeah. That's what I was thinking.
MR. HAEBERLIN: Well, like I said, you know, that --
COUNCILMEMBER ROCHE: It's all going to be heated.
MR. HAEBERLIN: I mean that caged facility -- I mean what is the use of that caged facility? What you can look at is you can either add exterior walls and make it part of the building.
You could actually put parking in there if you could meet the overhead clearance. It certainly looks like it's been used for parking in the past because there's a ramp going up in there. So it has possibilities other than being part of the building, certainly.
This is not a warehousing function so this is not a storage area. This is O-I, professional office uses. I mean there's not going to be wholesaling occurring at this location.

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So other than building out that area of the caged facility, it has very limited uses. It could be that of storage for automobiles if it could meet Code. It would be under-cover parking, basically, or it could be built out.
COUNCILMEMBER ALEXANDER: Well, I mean you could put picnic tables in there and have picnics in there.
MR. HAEBERLIN: Not under -- well --
COUNCILMEMBER ALEXANDER: That's what I'm asking. You could put mats in there and teach tae kwon do, tae whatever.
MR. WEED: If you want to, you can, but the motion doesn't allow that.
COUNCILMEMBER ALEXANDER: That's what I'm getting at. I guess my concern is a 24/7 operation with P.A. systems. I don't want that because I don't want that to annoy the residents in their home. But I still in the same point don't want to restrict so much of that that he's just got space there and he can't use it.
MR. HAEBERLIN: I think ultimately the hope is that the facility will be successful enough that he'll finally complete that.
I mean I don't know why that was ever

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structured that way, and my feeling is that the credit union probably repossessed cars and stored them in that area. Based on the design, it would seem to appear that they probably used that as a containment facility for repossessed vehicles.
Like I said, it could probably meet the codes to be parking spaces, and that might be useful. It certainly could be built out to be part of the structure. It could even have exterior doors. It wouldn't be -- that it would be a separate tenant space like in the multi-tenant shopping centers. That wouldn't require them to go through the front door of the building. There's a lot of potential for that.
But if you leave it open, you can certainly have a karaoke machine out there and you can have the neighbors hearing that. You can have music running. You can have all sorts of things that are boisterous that might interfere with the residents.
So if you say within heated square footage, you're avoiding any potential negative impact on the community, and that's just the reason why I offered it in that manner.

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That's it for me unless there's some other questions.
MAYOR JENKINS: Yes, sir.
MR. O'CONNOR: Scott, I just have one question.
MR. HAEBERLIN: Yes, sir.
MR. O'CONNOR: If you enclosed that area, what would it do to the parking capacity in relationship to the square footage?
MR. HAEBERLIN: They have somewhat of a surplus right now, a minor surplus. As you can see, they've got -- looks like they've got some existing parking arrangements. They can enter into parking arrangements to fulfill their on site parking needs, anyway, under your Code.
And hopefully we'll revise the City Code on parking very soon to be more reflective of modern needs and wants and actually reduce parking. I think our parking tolerances are way too high. We should allow parking off site, but off site is shared parking; we should reduce the total numbers, et cetera. So I think we'll address that by code eventually.
And I think the lot has potential for re-striping or redevelopment to obtain more

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parking anyway, because there's some huge areas that don't have any parking striped at all. Right now there is surplus. If they come in for that, we'll evaluate it. They can certainly enter in an agreement with an adjacent property owner for parking. There's a lot of vacant facilities in the general area, so --
COUNCILMEMBER FLEMING: Do you want me to amend it?
COUNCILMEMBER ALEXANDER: I'm sorry?
COUNCILMEMBER FLEMING: Do you want me to amend it?
COUNCILMEMBER ALEXANDER: I just feel like, I don't know, the greater good. I just feel like that, you know, he couldn't use that for anything.
MR. HAEBERLIN: He could enclose it and make it a tenant space if he can meet the parking requirements.
COUNCILMEMBER FLEMING: Right; but I mean he couldn't use it for anything else in the meantime.
COUNCILMEMBER ROCHE: Until it's enclosed.
MR. HAEBERLIN: Correct. I mean it

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could be parking if it met the code for parking.
COUNCILMEMBER ROCHE: Well, right.
MR. HAEBERLIN: Which I think it probably does, like I said, based on the ramp that's going in there.
COUNCILMEMBER ALEXANDER: He could not use it for anything other than parking.
COUNCILMEMBER ROCHE: Right.
MR. HAEBERLIN: Correct.
COUNCILMEMBER ALEXANDER: It would be just useless space. And I don't know how much square footage that is, but it's quite a long length back there. Unfortunately, I did not research the noise ordinance to know what it is.
COUNCILMEMBER FLEMING: I'm amending my motion.
COUNCILMEMBER ROCHE: Or just removing the last amendment?
COUNCILMEMBER FLEMING: Removing the last and let somebody else talk.
I'd like to amend the motion.
COUNCILMEMBER ROCHE: So basically --
COUNCILMAN BATES: Back to the original?
COUNCILMEMBER ROCHE: -- just make that

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the motion. All right.
MAYOR JENKINS: Being as we have a second, don't you have to withdraw it?
COUNCILMEMBER FLEMING: Oh. I'd like to --
COUNCILMEMBER ROCHE: I withdraw my --
COUNCILMEMBER FLEMING: -- withdraw it.
COUNCILMEMBER ROCHE: -- second so you can do what you need to do.
So you just want to make a motion to allow these conditions.
COUNCILMEMBER FLEMING: Mr. Yeh, I want to address a problem that Maria, Ms. Alexander and I have been dealing with just so that you understand. Okay?
MR. YEH: Okay.
COUNCILMEMBER FLEMING: And because you've got a resident that's abutting your property and we have a situation in another district that is having to continually put up with loudspeaker music or some such of sound that's reverberating homes on Sunday and it starts real early in the morning and it goes until real late at night, and so we're thinking about this.

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We want you to have as much space as possible, but we don't want to have to, in a few months from now or whenever you get it all rented, for us to have to say to you -- though we may have a noise ordinance, we don't want to stop you from doing what you're doing; however. That's what Ms. Alexander and I, and the Mayor, for that matter, because he lives in that neighborhood --

MR. YEH: Okay.

COUNCILMEMBER FLEMING: So that's what we're trying to do here. I am sorry it sounds as if we're trying to make you jump through hoops, but we're really not.

COUNCILMEMBER ALEXANDER: We're trying to give you the most -- utilize most of your space but be very conscious and good citizens to the neighbors next to you.

MR. YEH: Yeah.

COUNCILMEMBER ALEXANDER: Because they're going from that being a banking facility for 20 years and having regular hours, and I don't even think they were open on the weekends, to now there's going to be activity, more activity there.

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MR. YEH: Okay. Coincidentally, right now I have got people who may also use the caged area. They are the luxury car dealer. And so if you stop the -- say that must be heating area, that place is not the need for the -- they don't need for the air condition for that.

COUNCILMAN BATES: We're not going to require you to heat it.

MR. YEH: Not require the heat. Okay.

COUNCILMEMBER ROCHE: He can't sell cars there.

MR. WEED: A car dealer wouldn't be appropriate there, anyway.

MR. HAEBERLIN: No, no.

MR. YEH: Not for --

MR. HAEBERLIN: When you rezone that property, that's the end of the car dealership.

MR. YEH: Oh, okay.

MR. HAEBERLIN: I don't think they have a business license there, to begin with, I'll be honest with you. I'd have to research that.

COUNCILMEMBER FLEMING: Okay.

MR. WEED: As far as the noise ordinance, just real quick, there are two provisions: 11-10 Subsection (7), you can't

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make unusual or unnecessary noises calculated to disturb the peace and good order. You can be cited with a disorderly conduct citation for that. And you can't cause or continue unnecessary or unusual noises under 11-13 Subsection (d). You can be cited for idling, loitering, loafing or noise underneath that.

So I mean we do have noise ordinances that can also be used.

COUNCILMEMBER FLEMING: Okay.

MAYOR JENKINS: Are you going to make a new motion?

COUNCILMEMBER FLEMING: Yes, sir, I am. I'm making a new motion.

MAYOR JENKINS: Okay. Scratch that. We'll start over.

COUNCILMEMBER FLEMING: I'd like to make a motion to accept the conditional use of club and lodge of a business character which are non-profit, but excluding alcohol sales, and assembly halls and community centers when operated on a non-profit basis, and that's located at 2845 Clearview Parkway.

COUNCILMEMBER ROCHE: And I'll still second the latest version.

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MAYOR JENKINS: Let's make sure she's got that all.

CLERK BRYANT: I've got it.

MAYOR JENKINS: You've got it?

You seconded it, Bob?

COUNCILMEMBER ROCHE: Yes, sir.

MAYOR JENKINS: Call the roll.

CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BRYANT: Councilmember Bates?

COUNCILMAN BATES: Yes.

CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

MAYOR JENKINS: Okay. Motion carried.

I want to thank Barbara and Pat Barnes for coming out and putting your input into this. Sure did help out. Okay?

COUNCILMEMBER FLEMING: Thank you.

MR. HAEBERLIN: Mayor, Councilwoman Fleming has indicated we need like a five-minute break.

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COUNCILMEMBER FLEMING: Fine.
MAYOR JENKINS: Ten minutes.
- - -
(Brief recess)
- - -
MAYOR JENKINS: Okay, Scott.
MR. HAEBERLIN: The next item for public hearing is Text Amendment, Removal and Deletion of Planned Unit Development from the Zoning Ordinance.
If you recall, there had been a lot of discussion about 2006 activity at the City in 2007. We went back and did some research, both Mr. Weed and myself, and also involved the City Clerk. And we're of the opinion in order to protect the City relative to the ordinance that exists for PUD, which we don't feel is accommodating to assist you in meeting your land-use needs, that we really need to remove it formally. This might be a second or repeat time just, again, to make for certain that it has been done. There were some procedural problems with the prior attempts.
We do want to have a mixed-use district in the city, certainly. I don't know that we

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necessarily want to call it PUD, but we might call it a village overlay or something of that nature. So once we delete this item, in the future, we will be coming back to you with a new version that will allow more than one use on a property, not only horizontally but vertically as well so that we can provide some sort of development similar to that of Atlantic Station or other mixed-use properties.
So Mr. Weed has prepared an ordinance to delete this item. The Planning Commission did recommend approval 4-0. And like I said, we'll be coming back to you in the very near future with a revision for an overlay.
And that's really the extent of the discussion on that if there are not any further questions. We would have to again do the public hearing.
And there is, as well, a former Planning Commissioner present tonight who can attest that the desires of the Planning Commission at that time, they felt that the PUD was just an improperly structured document in which to pursue development in the city and they were initiators of that request to remove it

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from the City Code of Ordinances. Unfortunately, it did not feel to us that it was done properly, and we want to make for certain that no applicant can come in here tomorrow and apply for a PUD as a zoning classification.
Like I said, again, just an ordinance clean-up. If there are not any questions, we'll open the public hearing.
MAYOR JENKINS: Okay. Anybody from the audience?
MR. HART: Tom Hart, formerly St. Joe's.
This is like a bad pain that keeps turning back up again, this PUD. I don't know how many times we took it out, threw it away, burned it, whatever it is, and it jumps right back in the zoning manual again.
It dates back to this unbelievably bad PUD that goes outside of south Gwinnett. Global Forum, whatever it is that's built out there, was the original reason why it was written. We took it out, and I thought it was gone, and now it seems to have wandered back.
I guess the Zoning Ordinance was codified with the PUD put back in again. So

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please remove it, burn it, whatever you want to do. Thank you.
MAYOR JENKINS: Anybody else?
COUNCILMEMBER BATES: Come on, Stuart.
MAYOR JENKINS: I always wait for Stuart.
MR. ANDERSON: Stuart Anderson.
Take it out, please. Thank you.
COUNCILMEMBER PITTMAN: It's on the record.
MR. HAEBERLIN: You have it on record, by the way.
COUNCILMEMBER PITTMAN: That's what I said.
MAYOR JENKINS: What do you say, Scott?
MR. HAEBERLIN: Close the public hearing, Mayor. Make a motion and then vote.
MAYOR JENKINS: All right. Do I get a motion?
COUNCILMEMBER ROCHE: I make a motion that we adopt this ordinance which removes the PUD, the Planned Unit Development Districts, Article blah-blah-blah.
MAYOR JENKINS: Be sure you put that in the motion.

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1 COUNCILMEMBER ALEXANDER: Blah-blah-
2 blah?
3 COUNCILMEMBER PITTMAN: Blah-blah-blah?
4 COUNCILMEMBER ROCHE: Whatever.
5 MR. WEED: Amending Section 607 in --
6 I'm sorry.
7 COUNCILMEMBER FLEMING: 9l3.
8 MR. WEED: Thank you.
9 COUNCILMEMBER FLEMING: You're welcome.
10 MR. WEED: To delete.
11 COUNCILMEMBER ROCHE: So moved.
12 COUNCILMEMBER PITTMAN: Second.
13 MAYOR JENKINS: Anymore discussion?
14 - - -
15 (No response)
16 - - -
17 MAYOR JENKINS: Call the roll.
18 CLERK BRYANT: Councilmember Alexander?
19 COUNCILMEMBER ALEXANDER: Yes.
20 CLERK BRYANT: Councilmember Bates?
21 COUNCILMEMBER BATES: Yes.
22 CLERK BRYANT: Councilmember Fleming?
23 COUNCILMEMBER FLEMING: Yes.
24 CLERK BRYANT: Councilmember Pittman?
25 COUNCILMEMBER PITTMAN: Yes.

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1 CLERK BRYANT: Councilmember Roche?
2 COUNCILMEMBER ROCHE: Yes.
3 MAYOR JENKINS: All right. Scott.
4 MR. HAEBERLIN: The last public hearing
5 is text amendments. This is some residual from
6 some previous activity of the Council regarding
7 Section 607 and Section 809, and I believe this
8 was originally sponsored by I think it's
9 Councilman Roche and Councilwoman Fleming or it
10 might have been Brian and Councilwoman Fleming.
11 I apologize. I can't recall who it is.
12 But this is a residual from the
13 activity that you've already taken on clarifying
14 rental and occupancy in the city. We had a big
15 discussion about bedrooms and all sorts of
16 items. But this is the residual, and I'll let
17 Mr. Weed go over the ordinance that he's drafted
18 on your behalf for that.
19 MR. WEED: Well, essentially, the other
20 ordinances that you passed now deal with all of
21 the relevant issues that cover what you wanted
22 to accomplish with regard to rental and
23 eliminated the definition of family.
24 And what this is is this goes back to
25 the zoning part of it, to simply delete and make

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1 reserved the sections that you wanted to delete
2 and make reserved in order to effectuate what
3 you've already done. It's closing the circuit
4 on that language. And we would have already
5 done it, of course, but it's a zoning ordinance.
6 It requires deletion; have to go through all the
7 formalities.
8 MR. HAEBERLIN: Need to open the public
9 hearing, Mayor.
10 MAYOR JENKINS: Okay. Comments from
11 the audience?
12 MR. ANDERSON: Stuart Anderson.
13 I agree wholeheartedly by taking out
14 607 which precludes residents from renting out a
15 room to anybody. Its occupant or owner should
16 be able to rent a room, as it were.
17 Of course I rushed out of the house
18 without getting all my stuff. And I don't know
19 if this is the appropriate time; it's probably
20 not. But during this discussion before, I
21 brought up the thing about occupational tax for
22 rental houses to address the rooming house
23 situation. As part of this 607 which is going
24 to delete being able to -- or so that people can
25 --

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1 And I'm asking a question, actually.
2 Can people at this point -- if we take this out,
3 which says that people cannot rent a room, does
4 that automatically mean that they can rent a
5 room? And can we address the furtherance of
6 occupational tax for people if they own three
7 houses and we call them up and ask them if
8 they're a for-profit, if they're renting this
9 house for profit, if we can then -- and this is
10 a discussion that Mr. Weed has had -- require
11 them to get an occupational tax and be inspected
12 because they are for profit and thereby address
13 the rooming house situation?
14 Questions? Anything? Thank you.
15 MR. HART: A big problem with Doraville
16 has been the boarding houses. That seemed like
17 that's all we talked about for about three or
18 four years is boarding houses and 20 cars in the
19 driveway and ladder trucks; and then the
20 discussion was ladder trucks, too many cars in
21 the driveway and rental houses and boarding
22 houses.
23 Whether taking this out addresses that,
24 we've got fraternity houses down on Chestnut
25 again where we had, you know, 15 cars in the

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1 driveway and every room was rented out and they
2 all had padlocks on the doors. And does this
3 renting out a room in your house clear the way
4 for that to be more difficult to prosecute that
5 sort of thing.
6 I'm asking the question, because I know
7 that has been a big thing in the past, particu-
8 larly with Doraville having so many -- such a
9 high percentage of the residential properties
10 being rental homes to begin with. They turn
11 them into boarding houses, and not being able to
12 control that is going to be a big issue. If the
13 Council would like to address that.
14 COUNCILMEMBER ROCHE: I can just say
15 that what we end up with is not perfect but
16 it'll be easier to fix as we go along.
17 MR. HART: I've heard that before.
18 MAYOR JENKINS: Anybody else?
19 Scott?
20 MR. HAEBERLIN: Well, it's not
21 particularly relevant to this. It is, but City
22 Council should entertain some sort of Code
23 amendments regarding the number of vehicles. I
24 know that Roswell successfully -- as far as I
25 know, it has not been overturned in court --

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1 limits the number of vehicles on a residential,
2 single-family detached site. I think it's to no
3 more than five. And it's something the City
4 Council could entertain to address the concerns
5 of Mr. Hart and others.
6 We really do need to think in terms
7 more of vehicle storage. We have done that with
8 the garage requirement that exists today which
9 did not previously exist, but then we need to
10 think about parking as well. So it's just some-
11 thing to keep in mind along with your actions
12 tonight.
13 COUNCILMEMBER ROCHE: And I've already
14 had one conversation with one Councilperson
15 about looking for ways to start to tighten this
16 whole thing up.
17 MR. HAEBERLIN: Uh-huh.
18 COUNCILMEMBER ROCHE: Still in the
19 public --
20 MR. HAEBERLIN: Yes. Is there anything
21 further?
22 MAYOR JENKINS: We brought it back up
23 to the table.
24 MR. HAEBERLIN: Okay.
25 COUNCILMEMBER FLEMING: Mr. Weed, do

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1 you have our City Code of Ordinances with you?
2 MR. WEED: Yes.
3 COUNCILMEMBER FLEMING: And this is
4 similar, too. But don't we have something
5 already on the books for rental property in the
6 City Code of Ordinances -- and I didn't bring
7 that book with me -- something to the effect
8 that yearly we would go out and inspect?
9 MR. WEED: Well, let's talk about that.
10 I don't -- I mean I can look up what we have in
11 the book, but there are a couple of legal
12 issues. The real estate -- the realtors board
13 has a very powerful lobby with the legislature
14 in Georgia. And what occurred two years ago was
15 a local government attempted to create a
16 situation where whenever a new occupant entered
17 into a new apartment unit, that that triggered
18 an automatic inspection. That was thrown out
19 essentially in superior court, and that local
20 government elected not to appeal the decision.
21 Sometime after that, the realtors lobby
22 approached the State Legislature, who modified
23 some of the laws, and generally you can't do
24 that anymore. You can't do an individual
25 inspection of an individual unit automatically.

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1 What you can do, of course, is if
2 you've got any kind of probable cause adminis-
3 tratively -- and probable cause can be as low a
4 threshold as "We haven't inspected this building
5 in ten years" -- you can go before a judge, get
6 an administrative search warrant and go and
7 inspect the building for violations. You just
8 can't do it on some automatic-trigger basis.
9 So with regard to when we talked about
10 -- I guess, a couple of things: one, can you
11 regulate how many cars are parked at a certain
12 property? Absolutely, you can.
13 Can you regulate where the cars are
14 parked on a property? Can you regulate that?
15 Yes, you can. There's no doubt about that.
16 That's well-settled law.
17 With regard to what goes on inside a
18 home, you could regulate a number of things as
19 well. And you've already done that by amending
20 some of the other codes with regard to, you
21 know, how structures are going to be carved up
22 with regard to occupancy. And the best way of
23 doing that legally, we talked about before, is
24 you don't worry about definitions of rooms so
25 much; you worry about every human being is

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1 entitled to X-amount of living space, and that's
2 what you've done. And those ordinances are very
3 effective and very legal. They're clearly
4 defensible.
5 With regard to boarding houses, to my
6 knowledge, we don't have what I consider, you
7 know, the place where, you know, Barney of
8 Mayberry lived. We don't have a traditional
9 boarding house in some old Victorian home with
10 10 rooms in it that, you know, are literally
11 rented out to individuals. Maybe we have that.
12 I'm just not aware of it. I've never seen it.
13 But with regard to the payment of
14 occupation tax for rental facilities, the State
15 law is pretty clear: we don't get to do that.
16 That lobby is extremely powerful. And they're
17 exempt. The legislature said, "You're exempt."
18 You know, there's lots of things you
19 could do to regulate those industries, but you
20 have to be very careful with regard to what you
21 can do.
22 So that's a pretty good synopsis of the
23 current law on the subject.
24 COUNCILMEMBER BATES: I'll make a
25 motion to amend Zoning Sections 607 and 809 to

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1 delete it.
2 COUNCILMEMBER ROCHE: And I will second
3 that.
4 MAYOR JENKINS: More discussion?
5 - - -
6 (No response)
7 - - -
8 MAYOR JENKINS: Call the roll.
9 CLERK BRYANT: Councilmember Alexander?
10 COUNCILMEMBER ALEXANDER: Yes.
11 CLERK BRYANT: Councilmember Bates?
12 COUNCILMEMBER BATES: Yes.
13 CLERK BRYANT: Councilmember Fleming?
14 COUNCILMEMBER FLEMING: Yes.
15 CLERK BRYANT: Councilmember Pittman?
16 COUNCILMEMBER PITTMAN: Yes.
17 CLERK BRYANT: Councilmember Roche?
18 COUNCILMEMBER ROCHE: Yes.
19 MAYOR JENKINS: Motion we adjourn?
20 COUNCILMEMBER PITTMAN: So moved.
21 MAYOR JENKINS: Second?
22 COUNCILMEMBER BATES: Second.
23 MAYOR JENKINS: Call the roll.
24 CLERK BRYANT: Councilmember Alexander?
25 COUNCILMEMBER ALEXANDER: Yes.

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1 CLERK BRYANT: Councilmember Bates?
2 COUNCILMEMBER BATES: Yes.
3 CLERK BRYANT: Councilmember Fleming?
4 COUNCILMEMBER FLEMING: Yes.
5 CLERK BRYANT: Councilmember Pittman?
6 COUNCILMEMBER PITTMAN: Yes.
7 CLERK BRYANT: Councilmember Roche?
8 COUNCILMEMBER ROCHE: Yes.
9 MAYOR JENKINS: Thank you.
10 - - -
11 (Meeting adjourned at 8:50 p.m. the same
12 day.)
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1 C E R T I F I C A T E
2 E OF GEORGIA]
3 TY OF DEKALB]
4 I hereby certify that the foregoing transcript
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