In The Matter Of:

City of Doraville

State of Georgia

Special-Called Meeting with Public Hearings

January 25, 2010

American Court Reporting Company, Inc.

52 Executive Park South

Suite 5201

Atlanta, Georgia 30329-2217

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

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CITY COUNCIL MEETING

CITY OF DORAVILLE

STATE OF GEORGIA

SPECIAL-CALLED MEETING

WITH PUBLIC HEARINGS

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Transcript of the meeting held in the City Council Room at Doraville City Hall, 3725 Park Avenue, Doraville, Georgia, Mayor Ray Jenkins presiding, before Theresa Bretch, Certified Court Reporter, commencing at approximately 6:30 p.m., January 25, 2010.

* * *

APPEARANCES:
Doraville City Council:
Hon. Ray Jenkins, Mayor
Councilmember Maria Alexander
Councilmember Brian Bates
Councilmember Karen Pachuta
Councilmember Donna Pittman
Councilmember Bob Roche
Councilmember Pam Fleming
Rhonda Blackmon, City Clerk
Murray J. Weed, City Attorney
Scott Haeberlin, City Planner

P R O C E E D I N G S

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

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Here.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Here.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Here.

CLERK BLACKMON: Councilmember Pachuta?

COUNCILMEMBER PACHUTA: Here.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Here.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Here.

MAYOR JENKINS: All right, Scott, roll it.

MR. HAEBERLIN: Mayor and Council, the first item is an administrative review; this is not a public hearing. This is pursuant to your Cell Tower Ordinance Section 706, and Mr. Jerry Johnson is going to explain to you the equipment upgrades for an existing tower.

This is at 2001 Clearview Avenue, which is at the Holiday Inn site. And it's, again, an existing site. They wanted to make some additions to it. And

you have been provided the package from Mr. Johnson which includes the site plan and pictorials, et cetera, and he will go over with you that item.

The Mayor and Council under administrative deliberations will direct the staff either yes or no to consider the proposed equipment upgrade, and then we will take it through the site-planning process and permitting once it's approved by the Mayor and Council.

So at this time, I invite Mr. Jerry Johnson to come forward and explain his petition to the Mayor and Council.

MR. JOHNSON: Good evening, Mayor; good evening, Council.

T-Mobile of course -- what we have here is T-Mobile's -- they're having some difficulties in the Atlanta area, getting new towers, and everybody knows the public does not like new towers. And what they've come up with, they've asked the engineers to come up with some type of solution to make a bigger footprint for the cell signal without proposing new towers.

So what our engineers have come up with is just some equipment upgrades. And basically what this consists of is they're going to rearrange some antennas on the mount. The mount's at 145 feet.

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They're rearrange some antennas, add two new antennas of a newer grade, and also they'll add a small piece of equipment about the size of this box right here (indicating) in the compound. The height of the tower will not be increased and the compound will not be expanded. And basically, if you were riding down the road, you would not be able to tell the difference in what it looks like now and what it would look like post construction time.

This will increase the coverage of T-Mobile's signal to help the community and also it will upgrade it to a 3G network. This work will be done at night from 9:00 until 6:00 -- they'll have to take the site down -- so basically the community will not even see them do this job. It's a very minor impact and it'll give you a lot of service for the community.

That's basically the story. If you have any questions, I'll be glad to answer them.

COUNCILMEMBER ROCHE: How are you going to actually do the change?

MR. JOHNSON: There'll be a set of construction workers who are certified and insured, and they'll do a tower climb. And what they'll do is they'll take the site down, which means that they'll just turn the power off. And they'll move the

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antennas around. While they're up there, they'll add two additional antennas. They'll be bolted on with engineering specs, so it'll all meet standards.

COUNCILMEMBER ROCHE: You're not going to do the helicopter?

MR. JOHNSON: No, no helicopters.

MAYOR JENKINS: You're just doing an addition; nothing other than just adding to the tower that's there already.

MR. JOHNSON: Yes, sir. Like I said, the tower, the mount, the antennas are exactly at 145 feet. They will not change. They will not go up, they will not go down; they'll just be moved around, and two antennas will be added to that mount.

COUNCILMEMBER ALEXANDER: Will this change the weight of the tower and/or have effect on the wind resistance that's quoted?

MR. JOHNSON: It does have a wind load, but that tower only has one carrier and it's designed for about five carriers. So it's way under -- under-stressed at this point.

COUNCILMEMBER ALEXANDER: And you are going to be adding an additional concrete pad?

MR. JOHNSON: That's correct.

COUNCILMEMBER ALEXANDER: And is that going

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to be --

MR. JOHNSON: In that corner right there?

COUNCILMEMBER ALEXANDER: -- right here?

MR. JOHNSON: Yes, ma'am.

COUNCILMEMBER ALEXANDER: Okay.

MR. JOHNSON: In that corner right there.

There won't be any ground excavation at all. What they'll do is they'll just form up a little five by six form, pour concrete in there, let it dry; and they put some rails on there, and the equipment cabinet actually mounts on top of the rails, and the wiring comes under the rails and it'll wire into the other box.

COUNCILMEMBER ALEXANDER: And does this tower have the underground grounding for lightning strikes?

MR. JOHNSON: Yes, it does have. It does have it. It's all set up with the tower.

COUNCILMEMBER ALEXANDER: Is there any fire suppression system in these cabinets, or how would you be notified if there was an electrical issue?

MR. JOHNSON: There is multiple alarms on this system, and it goes right to 911.

COUNCILMEMBER FLEMING: Will there be disruption in service for cell customers?

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MR. JOHNSON: It'll be a short time, ma'am. It'll be 9:00 p.m. till 6:00 a.m. is the time. They actually look at the usage time on the tower, what is the busiest times and what is the least busiest times. They take the tower down to do this. When I say take the tower down, I mean they just turn the power off.

COUNCILMEMBER FLEMING: And does this tower service a specific area?

MR. JOHNSON: It services this Doraville area, yes, ma'am.

It'll give the community a lot more advantages because, you know, you have Verizon, you have AT&T and T-Mobile. When they all get together and compete, it brings the prices down. It's a win-win situation for everybody in the community.

MAYOR JENKINS: Anymore discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Scott, there's no more discussion here. It's not a public hearing?

MR. HAEBERLIN: No, sir. It's administrative deliberations if the Council. The Council just needs to direct the staff as to whether we should proceed with the necessary permitting or whether you

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1 find that the applicant does not to add additional
2 equipment. Then, of course, that would be a denial.
3 COUNCILMEMBER BATES: I make the motion to
4 approve the request and let the staff move forward
5 with the permitting process.
6 COUNCILMEMBER PITTMAN: Second.
7 MAYOR JENKINS: Anymore discussion?
8 - - -
9 (No response)
10 - - -
11 MAYOR JENKINS: Call the roll, please.
12 CLERK BLACKMON: Councilmember Alexander?
13 COUNCILMEMBER ALEXANDER: Yes.
14 CLERK BLACKMON: Councilmember Bates?
15 COUNCILMEMBER BATES: Yes.
16 CLERK BLACKMON: Councilmember Fleming?
17 COUNCILMEMBER FLEMING: Yes.
18 CLERK BLACKMON: Councilmember Pachuta?
19 COUNCILMEMBER PACHUTA: Yes.
20 CLERK BLACKMON: Councilmember Pittman?
21 COUNCILMEMBER PITTMAN: Yes.
22 CLERK BLACKMON: Councilmember Roche?
23 COUNCILMEMBER ROCHE: Yes.
24 MAYOR JENKINS: Thank you, Mr. Johnson.
25 MR. HAEBERLIN: I do want to draw attention

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1 because it seems we've got a number of people in the
2 audience. There is also a Mayor and Council special-
3 called hearing tomorrow night at 6:30. There are some
4 conditional uses at the Intown Plaza shopping center
5 which I know have been of interest to the public. But
6 that's actually tomorrow at 6:30 just in case we have
7 some visitors who are perhaps confused on their
8 nights.
9 The next item that we have is a text amend-
10 ment, which is a public hearing, and this is for
11 Parking and Loading. And in my supplement that I
12 provided to the Mayor and Council, I provided you the
13 old parking code as well as the proposed amendment.
14 Now, you'll notice we did not change
15 anything other than the table itself, so the bulk of
16 the ordinance stays intact exactly the way it is.
17 Now, that is not to say that it may not warrant some
18 changes to those other sections of the code, but at
19 the time, we addressed only the table.
20 So the goal of the amendment obviously was
21 to reduce the amount of parking required throughout
22 the city for uses, and also, too, to update a number
23 of uses that were not specified and would require
24 deliberations of the Council in order to determine the
25 specific criteria.

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1 And I draw attention to just one item, for
2 example, because we recently had a daycare application
3 submitted to us. We have no criteria for that of a
4 daycare, so I have proposed a criteria. So you'll
5 notice throughout there, there are a number of
6 categories that had no criterion whatsoever before and
7 now presently have a criterion placed on there.
8 Also, too, you'll notice that in our largest
9 categories, particularly Shopping Centers, we have
10 reduced the overall amounts if the person elects to
11 install landscape islands. And that is to reduce the
12 overall amount of impervious and unnecessary or
13 surplus parking throughout the city. It gives the
14 persons the options of considering the addition of
15 islands and it makes a significant reduction in the
16 amount of parking that is required if they do elect to
17 do that.
18 Some of the additions I want to draw
19 attention to was the criterion for Adult Entertainment
20 Establishment, which we did not have. Car Wash, Full
21 Service and Self Service; Daycare Center. Assisted
22 Living was added to Hospitals, Group Homes, Rest
23 homes. Bed and Breakfast was added to that of Hotel
24 and Motel. Laboratory and Scientific Research; Mini-
25 Storage Warehouse, which the city had no criterion

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1 for. And we did collapse church into Public Assembly
2 and treat it the same as that of a movie theater.
3 And as well, some minor changes to
4 residential. Your code required four spaces for a
5 duplex in the city. I find that to be rather
6 excessive, and we did collapse that into two spaces;
7 and single-family as well, we collapsed that to two
8 spaces.
9 And again, that is just being consistent --
10 more consistent with the codes that we already have in
11 place.
12 We also added a criterion for a Subdivision
13 Amenity Area. Now, we don't have many of these.
14 They're actually owned by property owners' associa-
15 tions. But with annexation, we could perhaps get some
16 or we might have some future development where there
17 was actually an active or passive subdivision amenity
18 area. This is not to say that city parks follow this
19 criterion. Obviously a city park is exempt from all
20 parking requirements.
21 And again, we did not change the handicapped
22 criterion whatsoever.
23 Are there any questions from the Mayor and
24 Council?
25 COUNCILMEMBER BATES: Yes. Thank you,

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1 Scott.
2 Go to Places of Public Assembly which is
3 page 7 of 10.
4 MR. HAEBERLIN: Yes, sir.
5 COUNCILMEMBER BATES: I'm a little bit
6 confused that there's Places of Public Assembly or
7 Amusement Without Fixed Seats, which stipulates one
8 space for each 200 square feet of floor space devoted
9 to public use; and then there's Places of Public
10 Assembly, one space per each three seats or one space
11 for 50 square feet where fixed seats are not provided.
12 What is the difference between a place of
13 public assembly without fixed seats and a place of
14 public assembly where fixed seats are not provided?
15 MR. HAEBERLIN: Well, that is consistent
16 with your old code. And in my previous implemen-
17 tations in other communities, what I found was that if
18 I provide people a criterion for fixed seats, they're
19 going to tell me that their seats are not fixed. If I
20 provide a criterion for non-fixed seating, they're
21 going to tell me their seating is fixed.
22 I think what the original authors -- and
23 this is directly out of your code -- meant to do was
24 to provide for situations where there was a mixture of
25 both, and that's what I believe the intent of how that

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1 was written. That is consistent with your existing
2 code.
3 COUNCILMEMBER BATES: Okay. That didn't
4 clarify it for me. I apologize. And I realize that's
5 coming directly from the old code. I'm comparing them
6 apples to apples.
7 So if a -- we'll just use City Hall. These
8 chairs are not fixed.
9 MR. HAEBERLIN: Correct.
10 COUNCILMEMBER BATES: So would the
11 requirement be one space for 200 square feet or one
12 space for 50 square feet?
13 MR. HAEBERLIN: Well, since it's the City
14 property, it's exempt.
15 COUNCILMEMBER BATES: Well, if --
16 MR. HAEBERLIN: Without fixed seating. It
17 would apply to the first listing that is provided.
18 COUNCILMEMBER BATES: Then, why do we need
19 the "or one space for 50 square feet" under the
20 second?
21 MR. HAEBERLIN: I think that can reasonably
22 be argued. I think that perhaps the original authors
23 meant to anticipate a situation where there was a
24 mixture of both, and I think that's the reason why
25 they originally put that in there.

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1 But I do agree with you, under category
2 number two, it would seem logical that you could
3 strike "or one space for each 50 square feet where
4 fixed are [sic] provided." I think it would be just
5 as effective not to have that in there.
6 COUNCILMEMBER ALEXANDER: So if you have a
7 church that has both fixed, as in the pews in the
8 sanctuary, but then in all the Sunday school classes
9 they don't have fixed seating, how would you calculate
10 their requirement?
11 MR. HAEBERLIN: Well, you could do a
12 breakdown based on both of them.
13 The problem with churches -- well, churches
14 have become more than what they are, churches, today.
15 They're Sunday schools, they're recreation facilities.
16 Many times they have fellowship halls, et cetera. So
17 there's a number of different criteria that could be
18 applied.
19 COUNCILMEMBER BATES: How about this: just
20 eliminate the first one, and under the second one,
21 "one space per each three seats in main assembly area
22 and one space for each 200 square feet where fixed
23 seats are not provided."
24 Mr. Weed, could you do that?
25 Mr. Haeberlin, would that be -- combining

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1 the two?
2 ATTORNEY WEED: I think you could. The main
3 thing that I -- I think we have to cover, though, both
4 fixed seats and just seats generally. And what I was
5 thinking of actually was a situation in Savannah or a
6 series of -- let's say you had a nonpublic park-like
7 facility where someone had a tent meeting or other
8 outdoor meeting, and, you know, that might be an
9 occasion where there would be non-fixed seats, in that
10 type of area. So I would prefer something that
11 involves seats but then also fixed seating to
12 differentiate between something like a traditional
13 movie theater and something like a camp meeting.
14 MR. HAEBERLIN: So your preference would be
15 to strike in block two "or one space for each 50
16 square feet where fixed seats are not provided." I
17 think we're kind of returning to what originally
18 Councilman Bates was discussing.
19 Were you in agreement with that or --
20 COUNCILMEMBER BATES: Well, I think you can
21 -- Yeah, I --
22 MR. HAEBERLIN: And I think it meets the
23 same intent certainly.
24 COUNCILMEMBER BATES: Yeah. I just want to
25 make sure that there is not a contradictory code

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1 requirement in here, and, to me, that reads
2 contradictory.
3 MR. HAEBERLIN: Okay. Yeah, I would
4 definitely agree in two. And my thought process on
5 that is that perhaps they were anticipating a mixture
6 of both. That is directly under original authorship
7 of your zoning ordinance.
8 But churches themselves were a standalone
9 category before, and as Mr. Weed and I have discussed
10 many times, that we treat churches the same as we do
11 other public assemblies.
12 So what I've done is, if this is the will of
13 the Council, is struck "or one space for each 50
14 square feet where fixed seats are not provided."
15 COUNCILMEMBER BATES: So under
16 Ms. Alexander's example, a church with fixed seating
17 with pews and an assembly hall with folding chairs
18 would be -- you would calculate those two, the --
19 MR. HAEBERLIN: Separately.
20 COUNCILMEMBER BATES: -- space requirements
21 separately based upon both A and B.
22 MR. HAEBERLIN: Correct, based on their
23 square footage devoted to what they're doing,
24 basically, just like we would a shopping center
25 almost.

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1 COUNCILMEMBER BATES: Thank you.
2 The only other question I had at this time
3 is under Retail Stores --
4 MR. HAEBERLIN: Okay.
5 COUNCILMEMBER BATES: The loading require-
6 ment says 31,000 square feet; whereas all other
7 loading items are even numbered. I --
8 MR. HAEBERLIN: That is a typographical
9 error. I checked that. So we should change that to
10 "One space for the first 5,000 square feet plus one
11 additional for 30,000 square feet or fraction
12 thereof."
13 I will draw attention to on page 4 is where
14 I see another typo. Automotive sales, rental or
15 machinery, or machinery sales or rental, which is on
16 page 4 of 10. I think that should read "Automotive
17 Sales, Service or Rental or Machinery Sales, Service
18 or Rental."
19 ATTORNEY WEED: We actually did that.
20 That's a purposeful change. You and I can talk about
21 that.
22 My understanding of what you had in mind was
23 automobile sales, rental or machinery. In other
24 words, categorizing all of them together. It was
25 automobile sales or rental or machinery sales and

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1 rental.
2 MR. HAEBERLIN: Correct, but I need --
3 ATTORNEY WEED: Both groups.
4 MR. HAEBERLIN: -- the word "service" in
5 there too.
6 ATTORNEY WEED: Okay.
7 MR. HAEBERLIN: It's to cover like --
8 ATTORNEY WEED: So you want automobile
9 sales, service or rental --
10 MR. HAEBERLIN: Or machinery sales
11 service --
12 ATTORNEY WEED: Service --
13 MR. HAEBERLIN: -- or rental.
14 ATTORNEY WEED: Okay.
15 MR. HAEBERLIN: We just want to make sure we
16 cover places like Budget Rent-A-Car, you know,
17 Hennessy Lexus, you know, all the different facets of
18 automotive sales, rental and service.
19 COUNCILMEMBER FLEMING: I think the old code
20 indicated service garages. It says automotive or
21 machinery sales and service garages.
22 MR. HAEBERLIN: Yeah. In your old code,
23 they had a definition. And this is why it might be
24 confusing if you go back to the old code.
25 Under C-2 or, excuse me, under C-1, they'd

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1 listed service station. You go to the definition of
2 service station is that traditional service for when I
3 grew up, when you actually pump gas and you could get
4 tires put on, you could get minor repair jobs done at
5 the service station. And really those are pretty much
6 declining. There are still several of them left. But
7 rarely do you see a gasoline service station that also
8 provides mechanical repair. And so that's why we were
9 -- I was trying to be very consistent with how your
10 code was written to differentiate between those
11 different items.
12 COUNCILMEMBER FLEMING: So getting back to
13 Automotive Sales, so you would like it to read
14 Automotive Sales --
15 MR. HAEBERLIN: Service --
16 COUNCILMEMBER FLEMING: -- Service --
17 MR. HAEBERLIN: -- or Rental --
18 COUNCILMEMBER FLEMING: -- or Rental --
19 MR. HAEBERLIN: -- or Machinery --
20 COUNCILMEMBER FLEMING: -- or Machinery
21 Sales --
22 MR. HAEBERLIN: -- Sales, Service or Rental.
23 COUNCILMEMBER FLEMING: -- Service or
24 Rental.
25 MR. HAEBERLIN: And I think that

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1 encapsulates what both of those potential tenants
2 would do.
3 Like I said, there was some minor categories
4 added. I don't think this is completely exhaustive
5 because I will tell you that uses that will exist
6 tomorrow, we've probably not covered. It's kind of
7 like the word "daycare." Daycare was not covered when
8 this ordinance was written although we had daycares.
9 Mini-storage warehouse is a concept that's, although
10 we think of it as old, is really relatively a new use.
11 I think there is ample room in here for
12 additional changes. This is our first go-through of
13 the ordinance to fix as many deviations as I can find,
14 and I think in the future may warrant a more
15 exhaustive section of this code section.
16 COUNCILMEMBER ROCHE: Under automotive
17 sales, it says one space for each 400 square feet.
18 But is that in addition to the space that's going to
19 be for the car lot? Is that an addition to the space
20 where the cars you're selling are going or how does
21 that work?
22 MR. HAEBERLIN: Well, this is just -- this
23 is the minimum, so this is based on the gross floor
24 area. And so they can have additional parking,
25 certainly. A parking space that contains a car for

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1 sale is really no different than a parking space that
2 contains a car that we drive to the lot, and so
3 they're certainly allowed to have over the bare
4 minimums. This just sets forth a criterion based on a
5 minimum.
6 COUNCILMEMBER ROCHE: But it also would
7 allow them to fill up all the spaces with cars for
8 sale, so if you wanted to go there, you'd have to park
9 someplace else, perhaps in an adjoining parking lot.
10 MR. HAEBERLIN: Well, I mean yes, I think
11 you could interpret it that way, certainly.
12 You know, the city parking code does not
13 address, for example, if I own a shopping center and
14 all my employees take up all my spaces. The city code
15 really doesn't address that. It addresses minimums
16 and of course provides for handicap parking space in
17 the code, and we've not changed one aspect of that.
18 Have taken care to protect the disabled relative to
19 handicap parking.
20 But you are correct. I mean literally a car
21 lot could occupy every space with a for-sale vehicle.
22 It would probably not be good business, but --
23 COUNCILMEMBER ROCHE: Well, couldn't we just
24 say plus a certain number of parking spaces per
25 employee?

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1 MR. HAEBERLIN: We could say -- we could say
2 these minimum parking spaces are not to be occupied by
3 cars for sale.
4 COUNCILMEMBER ROCHE: That makes sense.
5 MR. HAEBERLIN: Which makes sense, because
6 in your code, you don't provide for tandem parking.
7 So in other words, I just can't stripe row after row
8 of parking spaces and stack cars a hundred feet deep.
9 Some communities do approach automotive sales in that
10 manner.
11 COUNCILMEMBER ROCHE: Under Banks, I notice
12 that now we have to have -- I think it went from 300
13 to 500 square feet to now if you have 1,500 square
14 feet, you can only -- you have to have three spaces
15 instead of five spaces.
16 MR. HAEBERLIN: Correct. What I generally
17 find and from my review of other people's parking
18 codes is that banks are primarily used in the drive-
19 through facility function, and then people's time in
20 the bank is limited. And so yes, I did increase that.
21 Some of the operational characteristics of
22 the banks I see here are slightly different than that;
23 I will agree with that. But it all depends on the
24 bank. Remember, these are minimums, and each person
25 that's developing a site may tailor and add more than

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1 the minimum, and certainly it would be good business
2 if their business is based on lots of people coming
3 inside the bank.
4 COUNCILMEMBER FLEMING: Well, would we not
5 put plus one for each employee?
6 MR. HAEBERLIN: Well, we could. We could.
7 I'm not a big fan of plus one for each employee even
8 though it has been listed here, because most of the
9 time, if I ask people how many employees they're going
10 to have, they'll tell me one or none. Although yeah,
11 you certainly could add that to nearly everything in
12 here.
13 COUNCILMEMBER FLEMING: Well, I was just
14 trying to be consistent with what's -- what's already
15 here --
16 MR. HAEBERLIN: Uh-huh.
17 COUNCILMEMBER FLEMING: -- and since we had
18 not listed it in that one. I mean that's quite all
19 right. No, it didn't indicate per operator or per
20 employee.
21 MR. HAEBERLIN: Yeah. It's not listed in
22 the old code per employee at all.
23 People have generally gotten away from that.
24 I even considered should we either have Beauty and
25 Barber Shops as a separate and distinct functions. I

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1 mean there is no such thing as a wholesale beauty and
2 barber shop. It's a retail function. So I even
3 considered: Do we even need that? I was trying to
4 collapse the number of categories which I thought were
5 unnecessary and redundant, but that's one that I
6 really struggled with and don't know, still, whether
7 we should have that in there, because it is purely a
8 retail function and could be covered under retail.
9 COUNCILMEMBER BATES: And that's assuming
10 it's a standalone --
11 MR. HAEBERLIN: Correct.
12 COUNCILMEMBER BATES: -- facility; right?
13 MR. HAEBERLIN: Correct.
14 COUNCILMEMBER FLEMING: Well, wouldn't
15 beauty and barber be a service-oriented company rather
16 than quote/unquote retail because it's an in-and-out
17 scenario?
18 MR. HAEBERLIN: Well, they're one and the
19 same, and that's perhaps why. You'll notice that
20 every -- obviously, every community, their parking
21 standards are different. Okay? It's based on some
22 objective criteria that the communities find to be
23 important. You see a lot of these on barber and
24 beauty shops listed per operator. I don't have any
25 real objection to that, but at the same time, it is

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1 really just a retail function. Perhaps that does
2 allow them to have a little less parking spaces than
3 pure retail.
4 COUNCILMEMBER ROCHE: How many fraternity or
5 sorority houses do we have in town?
6 MR. HAEBERLIN: We don't, but if we ever do
7 need one, we have a criterion. And that's from the
8 old code. It's not a bad thing to have in there,
9 certainly.
10 And we don't have any assisted living,
11 either, but I think it's good planning to put that in
12 there now. I think in the future, we may.
13 COUNCILMEMBER ROCHE: Well, we don't have
14 anything for colleges or universities, I don't think.
15 MR. HAEBERLIN: That's actually listed under
16 School.
17 As you know, public facilities, the board of
18 education -- and Mr. Weed may address that as well --
19 enforcing zoning on that is nearly impossible, and so
20 our school criterion is based on private facilities,
21 not public facilities -- the same as City Hall is not
22 beholden to any particular parking criteria. It is a
23 public facility, but as a government, we're exempt.
24 COUNCILMEMBER BATES: So we can't require
25 Dekalb County School System to comply with a minimum

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1 parking requirement?
2 ATTORNEY WEED: Well, I'm not going to say
3 that we can't, publicly.
4 What I would say to you is that the case law
5 is ambiguous. There is a line of cases that indicate
6 that zoning regulations -- as a general rule under the
7 Sister Sovereign Doctrine, one government's zoning
8 regulations would not apply to an equally powerful
9 sovereign such as a board of education.
10 However, that same line of cases clearly
11 indicate that regulatory codes of the local govern-
12 ment would be applicable. The best example of that is
13 a case that dealt with these mobile home facilities
14 that were moved onto school lots, oftentimes in
15 contravention of zoning, and the court cases said they
16 were allowed there underneath the zoning code;
17 however, life safety codes, tie-down codes, making
18 sure the things wouldn't collapse, that the local
19 government enforced were still applicable.
20 Parking, I don't believe that there has been
21 a direct challenge or case that would indicate one way
22 or the other with regard to parking, because parking
23 in this case is clearly underneath the terms of the
24 zoning code.
25 But what is parking here? Here, it's I

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1 think more akin to a life safety type of code and
2 regulation than it would be a zoning code. If I'm
3 representing the school board, I'm going to say, "It's
4 in the zoning ordinance, Your Honor; it's zoning."
5 But on your behalf, if you wanted us to try to enforce
6 it against the school system, I would say, "Well, it
7 may be in the zoning code but what this really is is
8 more akin to making sure there are tie-downs and
9 making sure there are cinder blocks underneath the
10 mobile home."
11 MR. HAEBERLIN: Most public schools in our
12 community are on properties that are zoned R-1 resi-
13 dential, which is not uncommon in many communities.
14 COUNCILMEMBER ROCHE: I'm also concerned
15 about the single-family residence going down to two.
16 I mean in my case, there's two cars parked there all
17 the time. I don't know. I mean where will people
18 park, I mean, instead of four if you're bringing it
19 down to two?
20 COUNCILMEMBER BATES: Well, this is --
21 COUNCILMEMBER FLEMING: No. This is the
22 minimum.
23 MR. HAEBERLIN: It's minimums.
24 COUNCILMEMBER ROCHE: I realize they're
25 minimums. But still, that means I could build a whole

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1 bunch of houses with just two spaces.
2 COUNCILMEMBER BATES: Well, this is minimum
3 off-street parking. So you're still allowed, unless
4 it's a street with no parking, to park on the street.
5 COUNCILMEMBER ROCHE: When I bought my
6 house, I had a house warming, and within 20 minutes, I
7 had a policeman at my door because someone parked on
8 Chestnut. So some City Councilman sic'ed the cops on
9 me.
10 I don't know. I'm just not sure that four
11 is -- two is enough.
12 MR. HAEBERLIN: Well, I think the way we
13 could address that is in our future -- we really need
14 to do work on our development codes, and I certainly
15 agree, is provide little definitions of the width of
16 driveways and things of that nature.
17 I think with your R-1 rewrite, you did a
18 really thorough discussion of what meets the criterion
19 to satisfy the parking codes. You know, these
20 combinations: a two-car garage, a one-car garage, a
21 one-car carport, a two-car carport, two spaces
22 outside, et cetera. You did a really thorough job on
23 that.
24 COUNCILMEMBER ROCHE: And for that reason, I
25 don't know that we should be passing this right now.

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1 I think instead of putting this out there, again,
2 there's a lot of issues, as you said, and maybe we
3 should hold off on rewriting the parking ordinance
4 until we can take all those other issues into
5 consideration.
6 COUNCILMEMBER BATES: I would say just
7 purely on the single-family residence, the vast
8 majority of homes in Doraville would be violating the
9 parking requirements of minimum of four spaces.
10 MR. HAEBERLIN: And certainly every town-
11 home, certainly. And this is what I wanted to address
12 with you guys. It's not said specifically here, but
13 it doesn't say single-family residence attached or
14 detached. It's a broad categorization, and so town-
15 homes are treated the same way as a single-family
16 detached house.
17 COUNCILMEMBER PACHUTA: Could we split that
18 out?
19 MR. HAEBERLIN: I don't know that you really
20 need to do that because I think that consistency --
21 the norm in new home construction is a two-car garage,
22 and I think we certainly should encourage that. We
23 have encouraged that with new construction. But when
24 you rewrite the RSF-A which is the townhome district,
25 I think we, again, should make that clear: that we

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1 expect new townhomes in the city to have a two-car
2 garage. You can certainly go over that norm.
3 So I think this -- the way we have
4 structured this is minimum and to really meet standard
5 construction norms. And for me, single-family
6 attached and detached, brand new construction, we
7 should expect a two-car garage, we should expect two
8 spaces, but areas within the garage can comply for
9 those spaces.
10 We always kind of use our discussion -- and
11 we have a gentleman in the audience who may chuckle,
12 but we always talk about commercial properties having
13 the ability to install islands within our city. The
14 first protest I generally hear from the commercial
15 property owners is, "Well, you require me to have way
16 too much parking. If I wanted to install any islands,
17 I'd have to get a variance."
18 Well, the intent of this ordinance and the
19 subsequent development regulations that will be
20 written will give people that option to actually
21 benefit from parking reductions and also greening our
22 city because we really don't have parking lots that
23 have much, if any, green space or pervious areas in
24 them. We mostly have large areas and large expanses
25 of blacktop, and so this ordinance change would

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1 facilitate that.
2 Like I said, also, too, it addresses a
3 number of different sections of the code that just
4 have never been thought out. There are uses that
5 didn't exist. And it also -- and it definitely
6 collapses a number of different uses into smaller
7 uses.
8 COUNCILMEMBER FLEMING: I had a few things
9 if you don't mind, please.
10 MR. HAEBERLIN: Uh-huh.
11 COUNCILMEMBER FLEMING: I like the
12 definition that's given or that you have given us for
13 the gross floor area from the University of
14 Connecticut, that you gave us. It says gross floor
15 area of a building without storage or utility space.
16 MR. HAEBERLIN: You're talking about the
17 supplemental reading? Uh-huh.
18 COUNCILMEMBER FLEMING: Yes, sir.
19 And I would like to, you know, include that
20 as part of the definitions in the parking code when we
21 do this so that, you know, the next person that comes
22 along did indeed understand that it's without storage
23 or utility space.
24 And with that being said, let me jump over
25 to -- I think it's the eating establishments.

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MR. HAEBERLIN: Yes.
COUNCILMEMBER FLEMING: When you do eating establishments that are free-standing, they're going to have a restaurant. I mean they're going to have a kitchen facility. And though the gross floor area doesn't include storage or utility spaces, I'm wondering if that 150 square feet of gross area is also including the kitchen area.
MR. HAEBERLIN: The way that is defined, yes, ma'am, is that when it says pure gross, it means the whole building.
Now, I will tell you our standalone -- our free-standing eating establishments are a little different than our shopping centers, because as you're aware, within a shopping center you might have one restaurant, you might have 10. It all depends on the lease-up and how the person that's managing the property so chooses to implement the individuals within there.
I think that for standalone establishments, the criteria should be a stronger test -- when I say that is, the sole purpose of that whole area is nothing but an eating establishment; whereas, a shopping center has a mixture of uses, and there are off times when people will not be going to those

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eating establishments. That's why I say that the shopping center has more of a benefit in its numbers than a standalone. We have a reasonable expectation that the only purpose of going to McDonald's is to eat versus going to a shopping center that has an eating establishment, an office, an insurance brokerage, et cetera, and so the standard is higher for stand-alones.
COUNCILMEMBER FLEMING: Okay. And the other question I had, because I would think that eating establishments would need a loading parking space.
MR. HAEBERLIN: Well, it's interesting. Mr. Weed and I discussed that.
I have worked in jurisdictions where physically they required the individuals to stripe the loading and unloading space on the ground and it could not be in a required drive-out, it couldn't be across parking spaces, et cetera. But I've also been in jurisdictions where the loading is just required to be shown on the site plan; it's never enforced.
But what Mr. Weed and I discussed -- and we used McDonald's as an example or another food establishment -- is that typically the deliveries occur before the commencement of the business functions, and typically we expect --

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It's the same with the UPS truck that comes to City Hall: They don't look for a dedicated loading/unloading space; they just pull up, and whatever's the closest route, they unload the items.
Typically I find with establishments, the deliveries are done before the beginning of the shift and they don't interfere with the normal operations.
We certainly can require a loading and unloading, but realistically, I don't know that it'll be used.
COUNCILMEMBER FLEMING: Okay.
MR. HAEBERLIN: And actually, we discussed that for all the loading and unloading throughout the whole code. We did leave them in in a number of locations but in some locations we did strike them.
COUNCILMEMBER FLEMING: Okay. On page 6, I wanted to just understand Mini-Warehouse and Self-Storage Facility.
MR. HAEBERLIN: Uh-huh.
COUNCILMEMBER FLEMING: Since those are two per for the rental office or leasing office plus one space for every 5,000 square feet. So are we talking about combination of units or per unit? What if a unit's only 1,000 feet and you've got five units and so they only require one space for those five units?

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MR. HAEBERLIN: Yeah. It's just gross numbers. Typically what I find with mini-storages, of course people pull up to the office and they sign their lease or renew their lease, but when they go to actually unload items or take items home, they pull up right in front of the door, and that's what we would reasonably expect people to do. And so this is a gross number.
So for example, if there's 20,000 square feet of rental units, there would be four spaces provided additionally for them. Of course there will be some people who may spend time there. They may want to go to their storage locker and review, I don't know --
COUNCILMEMBER FLEMING: But would this --
MR. HAEBERLIN: -- IRS statements or something.
COUNCILMEMBER FLEMING: I guess also is my question, would those be located at the rental and leasing office?
MR. HAEBERLIN: The way this is written, they could be dispersed throughout the site. If I was designing the site with somebody, I would encourage them to locate some spaces throughout the site as well to provide opportunities. Like I said, if you want to

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1 look through your records and you don't want to
2 interfere with your neighbor's storage unit, you can
3 pull into a space.
4 COUNCILMEMBER FLEMING: Okay. And just one
5 other comment. There was a typo error, Mr. Weed, on
6 page 5. You may have already caught it. Gasoline
7 Service Stations with our --
8 MR. HAEBERLIN: Or without.
9 COUNCILMEMBER FLEMING: And I did some
10 extensive reading this weekend on Dekalb County, not
11 using it as a model but just using it as an example,
12 and though we haven't already defined out overlay
13 districts yet, they were doing it per shopping center,
14 and they, for instance -- this is just for instance --
15 they would do Pinetree Plaza, okay, and that would be
16 an overlay district, because they had various and
17 sundry -- they had Northlake, they had Greenbrier, you
18 know, they had all the shopping centers, but not all
19 of them -- they were similar as far as parking on the
20 different classifications but they were not identical.
21 They were similar but not identical. And I think
22 that's because they've already gone out and, you know,
23 did a design survey of what's already there or what's
24 needed at that location.
25 So I just wanted to -- when we go to do our

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1 design implementation of our overlays and downtown
2 development that we may want to consider doing
3 something like that.
4 MR. HAEBERLIN: Okay. One of the unique
5 things obviously about our shopping centers -- and no
6 disservice to these particular tenants -- our shopping
7 centers do, we recognize, have wholesalers in them.
8 Our shopping centers are a little different than
9 Dekalb County's, not to say that their standards are
10 not well done.
11 Mostly I'll tell you that I pulled this
12 information for our changes -- I did a study with a
13 co-worker when I worked for Gwinnett County. The
14 gentleman was a graduate of the University of
15 Tennessee School of Planning, subsequently worked for
16 ARC and now works with the Georgia Department of
17 Transportation. The study that we did together, which
18 was in -- became part of Gwinnett County's parking
19 ordinance was a little more exhaustive than this. In
20 other words, they even set maximums. They said you
21 can't provide any more than this amount of parking. I
22 didn't think that our characteristics in the city
23 would warrant us going to a maximum so I left those
24 figures out. But the numbers are based on that study,
25 so I wanted to let you know the source information for

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1 the discussion that we had tonight.
2 If there are no further questions, this
3 constitutes a public hearing and we'll need to hear
4 from the public.
5 COUNCILMEMBER ROCHE: I'm sorry. We have
6 one more question.
7 If we change the parking requirements and
8 there were currently conditional use applications or
9 whatever --
10 MR. HAEBERLIN: Yes, sir.
11 COUNCILMEMBER ROCHE: -- what about those
12 conditional use applications?
13 MR. HAEBERLIN: If you guys adopt an
14 amendment tonight that benefits those locations, those
15 individuals -- it's my understanding Mr. Weed will
16 concur -- that a benefit that becomes accrued in the
17 code would benefit those individuals as well.
18 COUNCILMEMBER ROCHE: So if someone wanted
19 to open like a pool hall or something and we changed
20 this, and currently the only problem with the
21 application is lack of parking --
22 MR. HAEBERLIN: That's correct.
23 COUNCILMEMBER ROCHE: -- but then we say
24 we're going to change the parking requirements and
25 suddenly that's not an obstacle anymore --

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1 MR. HAEBERLIN: That is correct.
2 COUNCILMEMBER ROCHE: -- then we have a pool
3 hall.
4 MR. HAEBERLIN: Well, the Mayor and Council
5 in their deliberations may find that the standards
6 have been applied differently than I have.
7 In other words, I expect on your conditional
8 uses that you will ask about the hours of operation,
9 alcohol sales, security, things of that nature, the
10 things that the Mayor and Council in their
11 deliberations will get more into detail than the
12 staff. The staff just went by the basic standards.
13 But you are correct, but this is city-wide.
14 So if there is somebody at the edge of the city that
15 is on the border as far as parking and we do
16 amendments, they will benefit from it as well.
17 The biggest hindrance to redevelopment in
18 the city is the excessive amount of parking, and you
19 have very small -- you do have very small parcels in
20 the city. And so when I've been working with
21 individuals -- and I've had a number of people this
22 week that were looking at parcels in the city. Once
23 they overlaid their building and tried to get the
24 parking on there and the pervious versus impervious,
25 they were having problems. So I think it's something

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that is worthwhile to address.
COUNCILMEMBER ROCHE: But I think that the parking requirements should be addressed as part of the overall plan and overall idea of what we want the city to look like. But anyway, I'll just save my comments till after the public hearing.
MR. HAEBERLIN: Would those who would like to speak in favor of the amendment, raise their hand? Who'd like to speak in favor? Anybody?
- - -
(No response)
- - -
MR. HAEBERLIN: Seeing none; those who would like to speak in opposition of the parking amendment, please raise your hand. Got two people, five minutes apiece.
COUNCILMEMBER FLEMING: It was Mr. Anderson and Mr. Hart that raised their hands.
MR. HAEBERLIN: Yes, ma'am.
MR. HART: I had everything in my laptop and the battery just died, so I'll wing it.
I don't even know where to start with this parking, with the two cars in the driveway, with four. All the complaints for years about people parking all over the grass and because their driveways are only

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eight feet wide and they're out in the grass and double parking and all over the place. We've chosen to move it from four minimum to two.
I mean it's like all these arguments come up over the years about why they don't like things, and then instead of fixing the problem they go back and make it worse.
I don't think there's any, you know, overwhelming need to reduce the parking on residential R-1 to four to two in the midst of all these vast problems the city has. We are creating more problems.
All this is about creating green space, and I think it does just the opposite. When you allow these buildings to be put five feet from the right-of-way on Buford Highway and major arterials, what you've done is that all these major parking lots they have on Buford Highway, there was complaints when they put the Waffle House in there. They didn't want that there. Now this law allows you to put a Waffle House in front of the Waffle House.
So you complain about problems and then you choose to make a decision that makes it worse instead of better. It doesn't allow for more green space. It allows for more nonpervious building surfaces in the city.

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So I agree with some of them that said that you need an overall plan first of where exactly you want to go, then start making rules about parking to adjust those requirements to meet your new development needs. Thank you.
MR. ANDERSON: Stuart Anderson.
Being facetious, I can't imagine what you're saying about not being green. The big trucks are driving Mr. Halpern's parking lots into pervious surface all the time.
Anyway, a couple things. In car washes, you don't have any length for the stacking lanes so you could have one-car stacking lanes or five-car stacking lanes. On car wash-self service, you've got one space for each wash bay. I think it should be 1.5 or two. Otherwise, the facilities will overflow into the streets and it will be a poor use, a bad business plan for that facility.
Under duplexes, I just commented -- and this is something that you've brought up in this conversation here -- that all this through this are minimums. There needs to be some maximums in some cases, in some of these cases, based on FARs particularly.
What Tom commented about the Waffle House,

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Waffle Houses don't come built with loading docks, so I suspect that's what Scott is going for.
Food markets. It's the same as before, the way I read it. It's 13.3 spaces per thousand square foot. I don't see how that lessens the parking requirement for food markets.
Once again, we've started to address this about percentage of the storage and how much you're going to -- how much parking for storage and not.
Libraries. I circled, aren't they public? Are there any rules we can put on libraries as far as parking goes? Aren't they public just like this building here?
I had a lot of trouble with manufacturing facilities and freight terminals. You've got them the same. There's no loading dock for the manufacturing. I see that as being an area that needs to be rewritten.
Under churches, place of public assembly, churches and theaters, how many seats in a pew? The way you've got it, 50 feet, that's 20 spaces per thousand square foot. That's a huge amount of parking per area -- 20 spaces per thousand square feet. Overparked grocery stores are 13.3 spaces per thousand square feet.

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School, auditoriums. In schools and auditoriums, we used seats before and now we're not using seats in schools. I think we've probably talked about that.

My last item is Small Item Service and Repair Shops, one space per 200 square feet of gross floor area. That's a lot. Five spaces per thousand square feet. Is it that we don't want these kind of businesses? Seems punitive to that type of business.

That's what I got in a quick look through this, but I certainly feel that this is a good effort but it needs to be reworked and fine tuned a bit before the City Council passes it. Thank you.

COUNCILMEMBER FLEMING: Mr. Haeberlin, if I understand this correctly, it was for shopping centers? Is that what we're talking about here or is that what was just commented?

MR. HAEBERLIN: Small Item Service and Repair, which is --

COUNCILMEMBER FLEMING: I'm sorry?

MR. HAEBERLIN: -- consistent -- Small Item Service and Repair --

COUNCILMEMBER FLEMING: Oh, it's the same as it was.

MR. HAEBERLIN: -- which was consistent with

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what it was in the old code. Again, we didn't change and reduce for all uses but we hit what I felt to be the larger problems within the city and of course, in addition, some uses that were not provided for. So not every category has been changed, certainly.

COUNCILMEMBER PACHUTA: Let me ask. This may be in the main part of the code. Eating establishments with a drive-through, is there a requirement for a stacking lane?

MR. HAEBERLIN: Under C-2, I think -- and I don't have that right in front of me -- but yes, I recall that we did add that as well for drive-in restaurants as well. In 2008, there was 33. Same as we did for banks and other uses.

COUNCILMEMBER ROCHE: Well, if you're in a shopping center, if you're going to build a shopping center, then you're saying essentially the parking spaces just says one for every 500 square feet regardless of whether they're restaurants or grocery stores or office space or a hobby shop, regardless of the use.

MR. HAEBERLIN: Well, recall, when we initially see shopping centers, the applicant never divulges to us what actually is going to be there. In fact, I think many times they have no idea what's

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going to be there. And so we base it on this gross criterion.

I would like to think at some point that we stop -- and this will be another code change, is that we stop classifying each and every use. So I'll be honest with you, if I sat down and took a major shopping center in this city and required the property owner every time a business came into the city to delineate every use, every square footage whether it met the parking criterion or not, I see that perhaps as a waste of staff's time.

I feel that we should have facilities that are shopping centers that are mixed uses, obviously, more than one use, be a flat criterion no matter what you put in there.

Now, that is presuming that shopping centers in our city are going to be maintained as some sort of commercial service use. We may in the future have a church come into a shopping center and request a conditional use, and that is something that the City Council can deliberate with the conditional use criteria. Shopping centers have never really been designed for that of churches. That is not to say that people don't use shopping centers for things that they should not be using them for. And you don't have

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much of that yet, but you certainly could in the future.

COUNCILMEMBER ROCHE: Well, because again I notice that some of the conditional use that we've even looked at already and apparently some new ones, they're talking about how this particular use within this shopping center may have issues with parking. So are you saying if we pass this ordinance that we're no longer going by use, we're just going by square footage?

MR. HAEBERLIN: For things that meet the definition of shopping centers and their multitude of uses, and if they choose to avail themselves of adding the parking islands, they will definitely reap a significant benefit, yes.

And so for major land areas of the city that are developed as shopping centers -- I don't need to specifically name them but you know the major ones in the city -- they have altogether a parking dilemma. And I'll tell you that because having reviewed several of the as-builts for these shopping centers, it's self-apparent that many of them were built with not enough parking from day one.

Now, at the same time, if we are to encourage these existing shopping centers to retrofit

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their lots to benefit from having more outparcel area, for having, you know, more green space area, they're going to have to reduce the amount of parking. And you have to provide them some sort of benefit; otherwise, they're going to be coming forward to the City Council and requesting a variance to put landscape islands in. And to me, that is just not in line with the type of development that you want to pursue in the city. I think you should encourage, by code -- not the zoning code but within a separate development code -- a criterion for adding islands in a parking facility.

COUNCILMEMBER ROCHE: But we do not have that separate development code.

MR. HAEBERLIN: We do not. But one will be able to benefit from that until that is written. And that, since it's not a zoning code, could be on any City Council agenda. In fact, the first draft has been written for that item for more than 12 months, so I'm ready whenever the Council is.

MAYOR JENKINS: Questions at the table?

COUNCILMEMBER ALEXANDER: I mean when he first got elected, we had some parking issues that we were studying, and it was interpretation. So we have BrandsMart. Would you use the criterion for furniture

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and appliances or retail store to apply to that facility? because there are two different parking requirements.

MR. HAEBERLIN: I would probably use the criterion -- now, which one are you -- the very first one, appliances, and --

COUNCILMEMBER ALEXANDER: Retail.

MR. HAEBERLIN: -- retail. I would probably accrue whatever the lower benefit was to the individual. In other words, if they could challenge that one provided them a better opportunity under the code, I would generally go with that challenge. I think it's appropriate for either, actually.

I want to give you another example that we probably have not covered in here: a membership warehouse such as Costco. We probably need to add in the future some criterion for that. We may get one of those. It's kind of a unique. And BrandsMart. I think BrandsMart is a discounter if I'm correct, and it's not really a membership club. It's open to the general public.

You could do either. I would say that I would generally go with whatever benefitted the applicant more, which is in keeping with general rule in zoning: that the benefit accrues to the

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individual.

Again, an engineer preparing a site plan would certainly of course challenge the City on that and run the numbers on both of them to see what the difference is, see if it's a benefit to them.

COUNCILMEMBER ROCHE: Well, my concern there would be that they would run the numbers on whatever gives them the least number of parking spaces they need but then has every intention of using a different use that would require more parking spaces, and then you have the situation where I've seen several places that haven't been there for a long time. And not to pick on a particular shopping center, but they have an opening -- they have one on Pleasant Hill Road. And I went there once, and the reason I haven't been back is because there was literally -- the stack lane was Pleasant Hill Road where people sat there and waited for -- you know, a car popped out and another car popped in, and we wandered around. You know, just flat, plain, there wasn't enough parking in that case. And that's frankly why we don't go back, but they still seem to be doing good business, so --

MR. HAEBERLIN: Well, one of the things I've discussed -- a couple Council members have asked me about this, I mean. Parking, I mean there are

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definitely some industry standards, but at the same time, parking could be subjective. Many of you have probably visited New York City. There's no on-site parking but you still visit all the establishments. Or there might be a parking garage within several blocks. Larger cities definitely have a different make-up than us.

I'm not saying that we should go to that level of density or that we should discourage people from having on-site parking. I just think the amount of numbers that we have are too high.

In working with people who are looking at properties in the city, they're looking at properties to buy and tear down. And when they're plotting buildings on there and they're looking at the parking, they're not being able to make the numbers work, which tells me that our parking code is too restrictive to facilitate redevelopment. And so I've had more than two meetings this week with individuals trying to plat on a specific piece of property -- I won't name them, but a real small retail store, and they could make the parking numbers work.

So you do have opportunities for shared parking that's already in the code; you have opportunities for other forms of parking which I guess

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1 has not been built in the city -- a multi-story
2 parking garage, things of that nature.
3 But surface parking in the city is going to
4 be a problem. I think it'll continue to be a problem
5 for all of these facilities, particularly if you want
6 to see any redevelopment. And that's the reason why
7 we prepared this item. It's not to benefit one
8 person; it's to the benefit of many people.
9 COUNCILMEMBER ROCHE: Well, I just think
10 parking requirements should be a part of an overall
11 development strategy, of an overall zoning ordinance,
12 an overall -- what we want the place to look like
13 instead of a standalone thing.
14 The comment you made earlier about
15 collapsing and combining or whatever, well, that's
16 what we heard about C-1 and C-2, M-1/M-2 and O/I, and
17 you know, obviously there's a lot of issues there.
18 And you've talked about, you know, we'd have to come
19 back and change this, we'd have to make another code
20 change.
21 I'm just not ready to support this at this
22 point in time. I'm not saying it's not necessary.
23 I'm just saying that until I know more, until I see it
24 as a part -- you know, this is like one little piece
25 of a big puzzle, and the changes we make to this

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1 little piece may have serious impact on the rest of
2 the puzzle; and it may or may not, these changes, have
3 -- take us where we want to go when we decide where we
4 want to go, which, frankly, we haven't done that yet.
5 MR. HAEBERLIN: Agreed.
6 COUNCILMEMBER ROCHE: So that's why I'm
7 concerned about doing that at this time. Plus I'm
8 concerned that, you know, if we make some changes
9 today, there may be some unforseen circumstances or
10 whatever.
11 Again, I feel like I've been down -- we've
12 been down this road before, and I'm not ready to
13 support this at this time.
14 COUNCILMEMBER FLEMING: Could I ask you
15 where you got your information to determine that you
16 needed four stacking lanes for the car wash?
17 MR. HAEBERLIN: That was actually from the
18 Gwinnett County code, ma'am, that I worked on with a
19 former co-worker.
20 I did want to illuminate on one of previous
21 discussions. 2008-33 moved buildings closer to the
22 public right-of-way and for a reason. Recently I
23 provided the City Council pictures of development in
24 Sandy Springs, and so you kind of see this concept of
25 in-fronting -- moving the built form, which now with

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1 the architectural code can be certainly more
2 attractive than it has been in the past, closer to the
3 road, and the parking behind it. So there has been
4 some thought to the planning matrix.
5 The reductions in the setbacks throughout
6 the city helped a lot of people. For example, the
7 individuals that were looking at redeveloping a site,
8 if they didn't have the significant reduction in
9 setbacks, they couldn't even consider redeveloping the
10 site.
11 So while I understand and appreciate
12 Mr. Roche's comments, it is part of an overall
13 development scheme is to get parking behind buildings
14 and to facilitate having a consistent architectural
15 theme throughout the city so that new development is
16 going to be, one, very attractive and useful, but,
17 number two, the parking which is reduced in number is
18 behind the building. And that is, I guess, for lack
19 of a better term, my approach to it. It may -- as I
20 understand, may not be the full Council's approach.
21 COUNCILMEMBER ROCHE: Well, I think we
22 should bring the discussion back to the Council for
23 deliberation.
24 MAYOR JENKINS: Okay.
25 COUNCILMEMBER ROCHE: I've said my piece.

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1 COUNCILMEMBER BATES: Personally, I think
2 it's much overdue. We should have addressed this in
3 2008 when we were looking at C-1 and C-2, so I'm in
4 favor of us moving forward -- slow, steady, incre-
5 mental. It's not ever perfect. It's not ever going
6 to be perfect. It's always going to need to be
7 changed.
8 So I'll make a motion to adopt the Parking
9 and Loading Space Required table under Article XII
10 with the changes that we discussed.
11 ATTORNEY WEED: And I'm not going to -- I'll
12 just fix the typos, but the main changes were on page
13 4 of 10 dealing with Automotive Sales, Service,
14 et cetera, and the other one that I took note of was
15 on page 7 dealing with Places of Public Assembly, as
16 noted in the prior commentary reported by the court
17 reporter.
18 COUNCILMEMBER ALEXANDER: And the typo for
19 Retail Stores, the loading section.
20 MR. HAEBERLIN: I have 4, 5 and 7, Mr. Weed.
21 ATTORNEY WEED: I've got 4. 5 is a typo. I
22 don't have anything else on 5. And I've got one typo
23 and the main change on 7.
24 COUNCILMEMBER BATES: That would be my
25 motion.

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1 COUNCILMEMBER ALEXANDER: Second.
2 COUNCILMEMBER FLEMING: Do we need to waive
3 the first reading?
4 ATTORNEY WEED: Has this appeared on a
5 Council agenda before, Scott?
6 MR. HAEBERLIN: I don't believe that it has.
7 ATTORNEY WEED: I don't believe it has, so
8 you would have to waive the first reading if you
9 decided to do so.
10 COUNCILMEMBER BATES: Even though it's
11 zoning?
12 ATTORNEY WEED: Well, even though; yes,
13 that's correct.
14 COUNCILMEMBER BATES: I'll withdraw the
15 previous motion and make a motion to waive first
16 reading.
17 MAYOR JENKINS: Second?
18 COUNCILMEMBER PACHUTA: Second.
19 MAYOR JENKINS: Call the roll.
20 CLERK BLACKMON: Councilmember Alexander?
21 COUNCILMEMBER ALEXANDER: Yes.
22 CLERK BLACKMON: Councilmember Bates?
23 COUNCILMEMBER BATES: Yes.
24 CLERK BLACKMON: Councilmember Fleming?
25 COUNCILMEMBER FLEMING: I'm going to vote no

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1 because I still have some questions regarding the
2 stacking lanes and the parking area.
3 CLERK BLACKMON: Councilmember Pachuta?
4 COUNCILMEMBER PACHUTA: Yes.
5 CLERK BLACKMON: Councilmember Pittman?
6 COUNCILMEMBER PITTMAN: Yes.
7 CLERK BLACKMON: Councilmember Roche?
8 COUNCILMEMBER ROCHE: I'm also going to vote
9 no. You know, everything we're saying tonight is what
10 we said back when we did C-1 and C-2, M-1/M-2 --
11 CLERK BLACKMON: Motion carried.
12 COUNCILMEMBER ROCHE: -- as far as --
13 COUNCILMEMBER FLEMING: No.
14 ATTORNEY WEED: The motion doesn't carry --
15 CLERK BLACKMON: Well --
16 ATTORNEY WEED: -- at this point. Correct,
17 understood.
18 CLERK BLACKMON: Yeah.
19 ATTORNEY WEED: That means that you'll do --
20 what I do advise you to do is make another motion to
21 table this to a date certain. That way, you don't
22 have to run another Zoning Procedures ad.
23 COUNCILMEMBER BATES: Can we table it for
24 tomorrow night?
25 ATTORNEY WEED: You certainly may. That

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1 would be completely legally compliant.
2 COUNCILMEMBER BATES: I'll make a motion to
3 table this item until tomorrow night.
4 COUNCILMEMBER PACHUTA: Second.
5 COUNCILMEMBER BATES: That would be January
6 the 26th, 2010.
7 MAYOR JENKINS: Call the roll.
8 CLERK BLACKMON: Councilmember Alexander?
9 COUNCILMEMBER ALEXANDER: Yes.
10 CLERK BLACKMON: Councilmember Bates?
11 COUNCILMEMBER BATES: Yes.
12 CLERK BLACKMON: Councilmember Fleming?
13 COUNCILMEMBER FLEMING: Yes.
14 CLERK BLACKMON: Councilmember Pachuta?
15 COUNCILMEMBER PACHUTA: Yes.
16 CLERK BLACKMON: Councilmember Pittman?
17 COUNCILMEMBER PITTMAN: Yes.
18 CLERK BLACKMON: Councilmember Roche?
19 COUNCILMEMBER ROCHE: Yes.
20 MAYOR JENKINS: Okay.
21 MR. HAEBERLIN: The net item 5A, is a public
22 hearing. It is a parking and loading variance per the
23 plans approved 5/27/08; Anh Tran, LLC, for InTown
24 Plaza Shopping Center, 18-297-07-004, zoned C-2.
25 Mayor and Council, based on your previous

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1 tabling or recessing the item, do you wish to hear
2 this item tonight?
3 If you -- if you do consider recessing this
4 until after you've deliberated on parking again, it
5 may have some impact on the petition.
6 If you hear the petition tonight, which you
7 certainly can, your deliberations will not be based on
8 any code changes. I just wanted to make you aware of
9 that. We do have the applicant's representative
10 present.
11 COUNCILMEMBER ROCHE: Could you tell us the
12 use for the record, please.
13 MR. HAEBERLIN: The use of the shopping
14 center?
15 COUNCILMEMBER ROCHE: No. The use that is
16 being requested.
17 COUNCILMEMBER FLEMING: It's the shopping
18 center.
19 COUNCILMEMBER ROCHE: Yeah. I know what it
20 is.
21 COUNCILMEMBER FLEMING: I'm very sorry.
22 COUNCILMEMBER ROCHE: I just want to say it
23 in the council -- I mean in the record.
24 MR. HAEBERLIN: I mean it's a multi-tenant
25 shopping center. We've got a couple conditional uses;

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one was a billboard request, which we have recessed till tomorrow; the other is a comedy club -- a billiard, excuse me, yes -- and a comedy club, and we've had a convenience store and another retail facility submitted thus far.

COUNCILMEMBER PACHUTA: So let me ask you this: If we pass the parking ordinance tomorrow --

MR. HAEBERLIN: Uh-huh.

COUNCILMEMBER PACHUTA: -- does it make her request moot?

MR. HAEBERLIN: This individual would benefit from that. As it is tonight -- and I'm certainly more than willing to go through this report, and you may choose to hold on your decision-making faculty -- I will tell you from the outset that based on the standards of review that I have reviewed is that the recommendation was that of denial.

COUNCILMEMBER PACHUTA: Based on the old parking ordinance.

MR. HAEBERLIN: Yes, ma'am.

COUNCILMEMBER ROCHE: Based on parking and loading.

ATTORNEY WEED: Parking ordinance, right.

MR. HAEBERLIN: Uh-huh.

COUNCILMEMBER ROCHE: So if we change the

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Parking and Loading, then that recommendation changes potentially.

MR. HAEBERLIN: Well, if you change -- if you change the ordinance, the person probably will not even need to come to the City Council.

COUNCILMEMBER ROCHE: That's the whole point. That's --

MR. HAEBERLIN: Uh-huh.

COUNCILMEMBER PACHUTA: So I mean from a legal/administrative position, is that better to wait on the request till tomorrow?

ATTORNEY WEED: That's really entirely up to the Council. I mean one thing is not related to the other.

The first part of the evening, you've addressed a piece of legislation and what was required to adopt the piece of legislation and you've made a decision about that.

The other matters, obviously they would have to be considered underneath what is the current code.

COUNCILMEMBER BATES: So just so I'm clear, Mr. Haeberlin and Mr. Weed, we have -- tomorrow night we have two conditional uses up for hearing -- the billiard facility and the comedy club/karioke facility.

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If the parking is changed in between now either through this application or the Parking and Loading requirement ordinance, that still will not change whether or not Council hears the conditional uses for those two items. They will still appear --

MR. HAEBERLIN: Uh-huh.

COUNCILMEMBER BATES: -- on our agenda.

MR. HAEBERLIN: Yes.

COUNCILMEMBER BATES: We will still listen to those presentations from both applicants; is that correct?

MR. HAEBERLIN: That is correct.

COUNCILMEMBER BATES: So they're not going to disappear. We're still --

MR. HAEBERLIN: They're not going --

COUNCILMEMBER BATES: -- going to hear them.

MR. HAEBERLIN: -- to disappear. However, this petition --

COUNCILMEMBER PACHUTA: Just this one. Okay.

MR. HAEBERLIN: -- could disappear.

COUNCILMEMBER FLEMING: In regards to this petition, however, no matter what we do here this evening right now, it was a legitimate variance request, and I do believe that we should waive the

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fees just in case we pass a parking ordinance tomorrow night.

MR. HAEBERLIN: Well, we didn't waive the fees. The applicant paid the fee.

COUNCILMEMBER FLEMING: No. But what I'm saying it's a moot point, as they just made the comment that he would not be coming before us if we pass a parking ordinance, and I just want to be assured that the applicant then doesn't come to us and say, "Oh, well, you passed -- I've been given something, and now I want my money back because I didn't have to come before you."

MR. HAEBERLIN: Well, typically we don't --

COUNCILMEMBER FLEMING: Do you understand --

MR. HAEBERLIN: Yeah.

COUNCILMEMBER FLEMING: -- what I'm saying?

MR. HAEBERLIN: Typically we do not return application fees.

COUNCILMEMBER FLEMING: Not that I'm trying to -- you know.

MR. HAEBERLIN: I understand.

ATTORNEY WEED: That's just -- it's the luck of the draw.

MR. HAEBERLIN: So the will of the Council is to hear the item tonight. We do have the

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representative present, anyway, so --
COUNCILMEMBER PACHUTA: Can we ask the applicant what their preference is? Is that appropriate?
UNIDENTIFIED SPEAKER: I'd like to speak to them if I might.
ATTORNEY WEED: Mr. Chin, you're not recognized yet.
UNIDENTIFIED SPEAKER: All right.
ATTORNEY WEED: My advice to the Council would be if you're going to hear commentary, open the hearing, and if you don't want to hear commentary, don't open the hearing. It's either going to be fish or fowl.
MAYOR JENKINS: Does the Council want to open the hearing?
COUNCILMEMBER ROCHE: Mayor, I think the question is do we want to postpone the hearing? because the hearing is here. I mean it's on the agenda.
MAYOR JENKINS: I agree with that.
COUNCILMEMBER FLEMING: I'd like to -- Go ahead, Maria.
COUNCILMEMBER ALEXANDER: I'm not familiar -- I haven't been on the construction site, obviously

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-- familiar enough to know the percentage that the project is complete. But if this parking situation is not rectified by stroke of the pen or stroke of this pen, they cannot get C.O.O.; correct?
MR. HAEBERLIN: That is correct.
The site, when I say completion-wise, is a shell -- and obviously I've not inspected the site fully, but, you know, I drive past it every day and I had occasion to look at it.
The site itself right now is -- really, they started blacktopping I believe today. And so really what is left from a C.O.O. -- from the shell perspective is finishing the parking lot and striping the spaces.
So you're correct. Once that occurs, if some action does not occur that provides them relief, they will be in violation of city codes and we will not be able to issue them a certificate of completion.
COUNCILMEMBER BATES: And as a result, then, any permitted retail/office facilities that could go in there without Council review would not be allowed to go in.
MR. HAEBERLIN: Well, they're all on hold. I mean it's my opinion that the site itself does not meet the City zoning ordinance requirements. So I

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would add further to that that adding more uses that don't meet those requirements I think is, again, more of an infraction of the code.
COUNCILMEMBER BATES: I'm fine with opening this up for a hearing tonight.
ATTORNEY WEED: For what this is worth, I mean it may be to this applicant's advantage, if you care, to delay this until tomorrow; otherwise, you may proceed. You have every right to do either one.
COUNCILMEMBER ROCHE: Well, if we're going to -- someone would have to make a motion to postpone it.
ATTORNEY WEED: That is correct.
COUNCILMEMBER ROCHE: But if it's not -- if no such motion exists, then we hear it now.
ATTORNEY WEED: That is correct again.
COUNCILMEMBER FLEMING: Mr. Bates, did you make a motion?
COUNCILMEMBER BATES: I -- I would -- I'm not going to make a motion to table it, so --
MR. HAEBERLIN: Okay.
ATTORNEY WEED: There's no motion. Proceed with the hearing.
MR. HAEBERLIN: In this situation, typically we have the applicant come forward, but I think it

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might be more instructive for me to go first since the detail, and then he'll follow up on that, and we'll certainly provide ample time.
As you know, InTown Plaza is a site that is near completion. The plans were approved on 5/17/08 by the City's former building official. I have a copy of said plans in front of you.
And this property is 1.685 plus or minus acres. It does benefit from two public road frontages, that being Shallowford and Buford Highway, and so it is a through shopping center. You can go from one street to the next street. The Comp Plan does delineate this as Highway Commercial Corridor, but some of the key items that are part of the Comp Plan and the LCI really are not embodied on this site yet. Again, it is in the current LCI study area.
Pedestrian accessibility is based on sidewalks that were done voluntary by the applicant, because they're not required by city code. The property is zoned C-2, and there is no vesting for wholesale operations at this location.
As we just discussed existing development conditions do not warrant the City being able to issue a certificate of completion or a certificate of occupancy, and the Council was advised of that on

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1 December 9, 2009, by staff.
2 There have been many revisions to this site.
3 We are familiar with that with other sites in the
4 city. This site is subject to the City's local
5 issuing authority, which means that it goes to Georgia
6 Soil and Water, so it's different than a site that
7 doesn't. Our issuing authority is based on compliance
8 with those provisions of GSWCC.
9 The code compliance is, to me, crystal
10 clear. You have copies of the letters from the City's
11 consulting engineers, Keck & Wood, from December 19,
12 2007, and March 21st, 2008, regarding the inadequacy
13 of the parking at the site.
14 For some reason, the site plan was approved.
15 We do not know why. Parking and loading is not
16 administratively varied in the code. Even the Mayor
17 as the department head does not have that authority
18 under the code that exists today and the code that
19 existed at that time.
20 The parking for this site is based on one
21 per 300, which is for offices. Everything that's been
22 submitted on this site thus far is not that of
23 offices. It is for that of a shopping center. So it
24 certainly is deficient, and it is deficient based on
25 those numbers not only with parking and loading but

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1 also to handicapped.
2 Now, the interior finishes that we've talked
3 about have not gone forward because the City staff is
4 concerned that we might vest an individual relative to
5 them submitting something when a variance is needed
6 right now.
7 And regulatory controls as we've discussed.
8 We have a pending Billiards Hall ordinance in effect
9 that may or may not affect this property. We'll find
10 out a little more about that tomorrow night and also
11 too as we proceed with that.
12 Under the standards of review -- and I won't
13 belabor these, but if you go through these standards
14 of review, they're really meant to be hardship
15 criterion. And really what is the hardship here that
16 the applicant hired an engineer that's registered in
17 the state of Georgia who could not follow the city
18 zoning code and that, as well, that a staff member of
19 the City Council apparently disregarded that code. So
20 I really do not see any standard of review based on
21 hardship that meets the criterion. That is why the
22 recommendation is for denial.
23 Again, to me, this granting of variance in
24 this situation is reactionary planning. It's
25 responding to errors that should not occur. The

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1 development cycle in the city should be managed, and
2 these type of situations should not occur, because
3 plan review -- we have many capable individuals who
4 can be involved in that: stormwater management
5 person, the city planner. We have a building official
6 as well as we have a city planner. So you have
7 multiple heads that today would be involved in these
8 projects rather than just a few individuals.
9 I did say after my recommendation of denial,
10 if the Council elects to grant one or more variances,
11 I don't think you should vary the handicapped parking
12 provisions. I don't think that's something that any
13 city should mess with relative to reducing require-
14 ments.
15 I think we do need as-built plans for this
16 property because those plans there laying in front of
17 you, they don't match the site. They haven't matched
18 the site for quite some time.
19 And lastly, I think the site warrants
20 pedestrian seating, trash receptacles and bicycle
21 racks which are consistent with those on Buford
22 Highway. And the reason I say that, again, this is a
23 core LCI location and I think that's something that we
24 need to move forward and actually implement those
25 provisions of the LCI and see progress on these sites.

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1 So if the City Council does elect to grant one or more
2 variances, I certainly hope they consider the
3 inclusion of those requirements.
4 On the last pages, you have copies of the
5 e-mails and the official letters from Keck & Wood
6 which indicate the deficiencies, and they're very
7 clear. I'm not going to read those for you. The last
8 page is my communication to Ms. Anh Tran, the property
9 owner's representative, depicting what the current
10 situation is and what the normal course of action
11 would be would be to apply for a variance.
12 Subsequent to this variance when I started
13 examining a number of other sites in the city, I said,
14 you know, overall, the whole city could benefit from a
15 number of parking reductions, not just this site, and
16 so it would be incumbent for the whole city to work on
17 the parking code, and that's one of the reasons why it
18 was proposed to you tonight.
19 Do you have any questions?
20 COUNCILMEMBER FLEMING: Do they have curb
21 landscape islands?
22 MR. HAEBERLIN: Yes, ma'am, they do, which
23 they installed voluntarily, which were not a
24 requirement of the city code.
25 COUNCILMEMBER FLEMING: All right. So a

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1 proposal, then, or a condition would be one per 500
2 square feet; is that correct?
3 MR. HAEBERLIN: Based on the draft that
4 we're looking at, yes.
5 COUNCILMEMBER FLEMING: Rather than one per
6 300.
7 MR. HAEBERLIN: Correct. Well, one per 250
8 is what it really is now.
9 COUNCILMEMBER FLEMING: Okay.
10 MR. HAEBERLIN: And again, I'm not married
11 to the 500 provision, and we'll discuss that further
12 when we get into the parking code again tomorrow
13 night. Anything --
14 COUNCILMEMBER FLEMING: The one per 500
15 would accommodate --
16 MR. HAEBERLIN: This site, yes.
17 COUNCILMEMBER FLEMING: -- this shopping
18 center.
19 MR. HAEBERLIN: It would more than
20 accommodate.
21 COUNCILMEMBER FLEMING: Okay.
22 MR. HAEBERLIN: That's what I'm saying is
23 any number between three and five hundred is probably
24 going to accommodate more people in the city, and the
25 farther we go out with that number, the more people

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1 it's going to help.
2 COUNCILMEMBER BATES: It's actually one per
3 200 under shopping centers now.
4 MR. HAEBERLIN: Correct. Two-fifty is
5 retail.
6 COUNCILMEMBER FLEMING: Could you tell me
7 how many handicapped parking spaces? I was trying to
8 find it, and I apologize. How many handicapped are
9 you suggesting?
10 MR. HAEBERLIN: Well, I think that there --
11 I apologize. They're one deficient. They currently
12 have four on the site based on those approved plans.
13 COUNCILMEMBER ROCHE: Where is the actual
14 sign-off where we approved the original plans? I mean
15 who actually signed it? Was it Mr. Entsminger? Was
16 it someone else?
17 MR. HAEBERLIN: Well, these are the official
18 LIA plans, local issuing authority, 5/27/08, Chuck
19 Entsminger -- C.E., Chuck Entsminger.
20 COUNCILMEMBER ROCHE: Now, is that the stamp
21 or his signature?
22 MR. HAEBERLIN: That's an actual signature.
23 And there's another stamp below that,
24 approved for construction, the same initials again,
25 and 5/27/08. So it's actually stamped on here twice.

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1 COUNCILMEMBER PACHUTA: So we don't know
2 what happened between Keck & Wood's comments and --
3 MR. HAEBERLIN: I have no idea.
4 COUNCILMEMBER PACHUTA: -- when it was
5 signed.
6 MR. HAEBERLIN: I have no idea. Certainly
7 they were provided to the staff, and I think there's
8 been a deviation from that.
9 COUNCILMEMBER ROCHE: But you also said that
10 what's actually built there does not meet those plans.
11 MR. HAEBERLIN: That is correct. It
12 deviates even further from these plans.
13 COUNCILMEMBER ROCHE: And what's the --
14 Okay. The approved plans, how many parking
15 spaces did it lack to comply?
16 MR. HAEBERLIN: It was -- I recall it was 41
17 spaces short.
18 COUNCILMEMBER ROCHE: And with what they've
19 built now, where is that?
20 MR. HAEBERLIN: The numbers have not
21 significantly changed. Based on what I've seen from
22 the site, they're still 41 spaces short.
23 The only real changes have been relative to
24 some stairwell locations. They did realign a driveway
25 on Shallowford Road with an existing driveway. So

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1 they really moved things from place to place. They
2 didn't eliminate things; they just reshuffled items.
3 COUNCILMEMBER ROCHE: And we weren't paying
4 attention while they were building this to make sure
5 that what they built complied with their plans.
6 MR. HAEBERLIN: Well, you know --
7 COUNCILMEMBER FLEMING: Well, they built to
8 their plans but the plans were deficient to begin
9 with.
10 MR. HAEBERLIN: That's correct.
11 COUNCILMEMBER FLEMING: Correct? Is that
12 what you --
13 MR. HAEBERLIN: That's correct, uh-huh.
14 COUNCILMEMBER FLEMING: Okay.
15 COUNCILMEMBER ROCHE: What we're saying,
16 though, is I can come to you and say here's my plans,
17 and go and build whatever I want to. Nobody's going
18 to check.
19 MR. HAEBERLIN: What you're getting to, sir,
20 is implementation in the field. The city planner
21 unfortunately has no responsibility over any
22 individual who is involved in the field operations,
23 and there are other individuals inspecting properties
24 independent of me.
25 So I can agree with you is that yes, I could

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1 review a plan and have it meet code, and what may
2 occur out on the field, we don't know.
3 Again, I don't know who the inspection folks
4 were at the time this entire facility was built.
5 COUNCILMEMBER ROCHE: Well, I mean it's just
6 finishing up now, so I would think that over the
7 course of 2009 is when it was being built, and I don't
8 know why the City didn't have anybody to run out there
9 and keep an eye on things.
10 MR. HAEBERLIN: Well, that's --
11 COUNCILMEMBER ROCHE: Maybe it's because we
12 don't have a full-time building inspector, but that's
13 a whole 'nother story.
14 COUNCILMEMBER PACHUTA: Is the building
15 inspector in charge of site plan reviews and ongoing
16 site plan reviews?
17 MR. HAEBERLIN: I really am not privy to his
18 contract so I really don't know.
19 ATTORNEY WEED: My position on that is that,
20 to me, that's an inherent part of his job.
21 COUNCILMEMBER ROCHE: But he only does a job
22 when we ask him to because he's a contractor that
23 bills by the hour.
24 You know, unless someone says, "I'm going to
25 pay you 50 bucks to go out and look at this thing

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1 today," he's not going to do that.
2 ATTORNEY WEED: Councilman, let me -- I will
3 not judge him by my standards; however, I do not think
4 the Council expects your city attorney, who's merely a
5 contractor at the end of the day, to not make some
6 effort to look into the future and try to prevent
7 things before they happen. But I don't want to hold
8 everybody to the same standard.
9 MR. HAEBERLIN: I think it really comes down
10 to -- again, this is an observation and I hope it
11 doesn't offend the Council -- is that there be a more
12 clear line of who's doing what and when. There
13 probably is mandated an additional staff person, which
14 I'm going to call a site development inspector. This
15 is a person that's on the -- looking at sites every
16 day to see are you deviating from plans.
17 You know, a lot of it's communication,
18 certainly. And I can't speak to how it occurred
19 before I got here, but since I've gotten here, we have
20 seen two major multi-million-dollar shopping centers
21 that have not been built towards the plans, and there
22 has been individuals who own these shopping centers
23 that ask for us, the City, to take responsibility for
24 their contractors violating City plans.
25 COUNCILMEMBER ROCHE: I completely agree.

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1 And there have been individuals that have tried to
2 rectify the staffing to get that, but that's really
3 not the question at hand here, so --
4 COUNCILMEMBER FLEMING: I need to ask a
5 question because I really can't -- I can't tell by
6 this drawing that we have.
7 Is there a stacking lane for a bank in this
8 location?
9 MR. HAEBERLIN: No, ma'am. And this site,
10 nobody has identified for me that this site will be a
11 bank, and if they had from day one, I would have
12 addressed that. There is no drive-through window
13 shown. The lane shown on here is merely a travel lane
14 for vehicles to move from one section of the site to
15 another.
16 COUNCILMEMBER FLEMING: Okay.
17 MR. HAEBERLIN: If you said to me, would
18 this site be ideal for adding a drive-through, I would
19 say no, based on the site's configuration and
20 topography. Much like another situation the Council
21 is looking at, this would be not an ideal site. In
22 fact, I think it would be dangerous to add a drive-
23 through to this facility.
24 You really have to do drive-throughs from
25 site planning up. It is not an afterthought where you

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1 simply add a window.
2 COUNCILMEMBER FLEMING: Okay. Thank you
3 very much.
4 COUNCILMEMBER ROCHE: Well, this that we
5 have here, I mean it shows Mr. Calcaterra's signature
6 on 4/4/09 where there was a revision, so apparently
7 someone knew about it.
8 MR. HAEBERLIN: That is for a stairwell.
9 COUNCILMEMBER ROCHE: I understand.
10 MR. HAEBERLIN: Uh-huh. And like I said, as
11 I came on to employment with the City, the thing that
12 I was seeing constantly, and I've told the Council
13 that, is people just going out and doing things
14 without getting approval from the City. And that
15 seems to be a persistent problem, not just in
16 commercial, the residential as well.
17 And we've literally sent the code enforce-
18 ment individuals to go out and speak to these
19 individuals and say, "What are you doing now? It
20 appears that you're deviating from the plans."
21 We have had some cooperation of individuals
22 coming in, and this is one of the situations. There
23 was another stairwell that appeared on the site. The
24 code enforcement individual said, "Something's going
25 on there." I said, "Would you please go out and look

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1 into it?" And they discovered that they need to come
2 see us. And that is appropriate. People should be
3 coming to see the City before they do work.
4 COUNCILMEMBER ROCHE: All right. Well, here
5 we are now. Did we need to hear from the --
6 MR. HAEBERLIN: We need to hear from the
7 applicant's representative.
8 Are you ready?
9 MR. JAY: My name is John Jay and I
10 represent the applicant.
11 But I had a threshold question. That is why
12 I was trying to be recognized before. I'm sorry I
13 spoke out of turn.
14 But is there any problem with us withdrawing
15 this without prejudice at this time?
16 ATTORNEY WEED: My position on that is if
17 you withdraw this matter, it's moot and there's
18 nothing for the Council to decide, so I see no problem
19 with that at all.
20 MR. JAY: Logically it seemed like to me --
21 and of course there was no motion to postpone, but if
22 we're categorized with a group, all of which may
23 benefit to some extent or maybe some more than others
24 if the amendment's made to the Parking and Loading, I
25 mean it seems logical to me that we wait till you

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1 determine whether or not you're going to amend the
2 Parking and Loading.
3 And the issues that I think I would probably
4 say you, Councilman Roche, are concerned more about
5 the conditional use. Maybe I'm mistaken about that.
6 That may be a totally different issue altogether --
7 COUNCILMEMBER ROCHE: It is.
8 MR. JAY: -- and separate from the amenity
9 aspect of the pervious areas for greenery and land-
10 scaping and curbing and so forth, which this
11 particular applicant's already done. And I guess if
12 they had known, if that's right way to put it, that
13 there was a deficient in terms of parking, they may
14 have not done the landscaping that they did do which
15 they weren't required to do.
16 But I think our position would be to with-
17 draw without prejudice before you do that. Can we
18 bring it back at a subsequent time if we elect to?
19 ATTORNEY WEED: You can.
20 Now, if you withdraw it, it's withdrawn, and
21 that means that you --
22 MR. JAY: You have to refile? No, that's --
23 ATTORNEY WEED: You have to refile.
24 MR. JAY: I understood the issue about the
25 moneys. That was not the concern, but --

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1 ATTORNEY WEED: Until the Council makes a
2 motion and a second and approves or denies, my
3 position on this is it's your appeal, it's completely
4 in your hands.
5 COUNCILMEMBER FLEMING: Mr. Jay, before you
6 do, I do have a question.
7 MR. JAY: Yes, ma'am.
8 COUNCILMEMBER FLEMING: Part of the
9 conditions that have been notated this evening is that
10 it is deficient -- the site itself, InTown Plaza, is
11 deficient of one additional handicapped space and two
12 loading spaces.
13 Is the applicant in agreement to add those
14 to his site?
15 MR. JAY: Yes.
16 COUNCILMEMBER FLEMING: Okay.
17 MR. JAY: Again, I think we will withdraw at
18 this time.
19 ATTORNEY WEED: The matter is withdrawn from
20 the Council consideration and therefore you may move
21 on to your next item.
22 MR. JAY: Thank you.
23 COUNCILMEMBER ROCHE: Thank you.
24 MAYOR JENKINS: Thank you.
25 We're going to take a break before we go to

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1 the next item; 10 minutes.
2 - - -
3 (Brief recess)
4 - - -
5 MR. HAEBERLIN: The net item, Mayor and
6 Council, is a conditional use for that of a nightclub.
7 As you recall, conditional uses do not go to the
8 Planning Commission.
9 The variance that you heard previously and
10 the text amendment did go to the Planning Commission.
11 I do want to note for the record that you have been
12 provided through e-mail their recommendation. But on
13 conditional uses, they do not originate with the
14 Planning Commission, so in this case it simply goes to
15 the Mayor and Council.
16 And so this property is zoned C-2 and the
17 applicant has applied for that of a nightclub. Now,
18 you'll hear further in deliberations that simply
19 having a nightclub with alcohol sales without the
20 attendant restaurant and the serving of food is not
21 something that is entertained in the city the way the
22 codes are set up, particularly with the alcohol
23 ordinance.
24 The site is 20.109 plus or minus acres and
25 it's depicted on this extremely large site plan

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1 provided to me by Halpern Properties, and I did
2 provide you as a subset of that.
3 The property is delineated as Highway
4 Commercial Corridor. It's not part of the LCI study.
5 You're aware that this site has a bunch of different
6 curb cuts going onto Buford Highway but McElroy Road
7 as well, but there is a rather incomplete network of
8 sidewalks; however, they're not required by the city
9 code.
10 This item comes to you and was a discussion
11 item in the previous City Moratorium hearings.
12 However, I've not been able to locate any code prior
13 to 2008-33 which allowed nightclubs in the city. And
14 the current petitioner was previously heard as
15 Coyote's on September 4th, 2008, and at that time, I
16 was not yet employed by the City.
17 The existing development conditions is that
18 of a multitude of attached and detached buildings, as
19 you see on here, A and B, and there's some outparcels
20 as well. But the gross areas, we're looking at
21 195,815 square feet of gross tenant area, and the site
22 also has a cell tower site on it as well. The
23 outparcels are collectively 10,550 gross floor area of
24 tenant space. So in our previous discussions about
25 shopping centers and the requirements for parking

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1 spaces, this is one of these significant items in the
2 city that requires a substantial amount of parking.
3 So based on the numbers that have been
4 provided me with the as-built survey, it does seem as
5 though the parking is slightly deficient; however, the
6 spaces in your facility, their uses are not clearly
7 delineated on here. And if you see under standard of
8 review number 7, I think that they will benefit
9 because they have in their shopping center a number of
10 wholesalers that require significantly less parking
11 than that of retail. So those are some questions we
12 can direct to the applicant.
13 But on its whole, it seems slightly
14 deficient, but when we include the number of
15 wholesalers in the shopping center, that may change
16 the parking matrix.
17 Now, the proposed tenant space and the
18 adjacent tenant space were gutted by fire in the last
19 two years, and there has been some repair work done --
20 we wanted to stabilize the facility -- the roof
21 repair, and there's been an interior demolition permit
22 to remove the charred debris and other items from the
23 fire.
24 The signage typically at this shopping
25 center has been more than 30 percent of the window

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1 area, and that does impede the police department's
2 ability to look inside these facilities. So there is
3 a rational explanation for one of the reasons why we
4 don't want windows covered throughout the city; and
5 that is, for facilities where there's public assembly,
6 we expect the police department to be able to see into
7 the facility, so I note that.
8 The alcohol ordinance is a separate
9 application once you determine that the conditional
10 use is appropriate for this facility, and the
11 individual will still have to meet all those criterion
12 for an alcohol ordinance -- excuse me -- an alcohol
13 license.
14 Under our standards of review, going through
15 items 1 through 8, as you see -- and I did note in
16 here that although subjectively individuals may not
17 feel that this is an ideal location for that of a
18 nightclub, there's nothing in the code that prohibits
19 it.
20 This is a site that is not adjacent to
21 residential. The distance from neighborhoods and the
22 impediments upon residential areas seem to be the key
23 in these standards of review that have been provided
24 to the staff -- the concerns about traffic, noise,
25 odors, visual nuisances, drainage, other items are not

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1 really applicable in this situation.
2 So if there is a site and it's ideal in
3 terms of a nightclub, this, again, might be that.
4 Again, that would be -- could be looked at as a
5 subjective determination; however, your standards just
6 really don't -- well, they don't really work against
7 this use. We'll say that. Of course the Mayor and
8 Council on their deliberations of these standards may
9 find differently than I do; but again, all these
10 characteristics being based on proximity to neighbor-
11 hoods, there are no neighborhoods anywhere near this
12 site.
13 The transitional buffers are not required
14 because, again, there's no neighborhoods adjacent.
15 The parking, again, seems like a minor
16 deviation. I think if we had a more revised, as-built
17 site plan, we would find that the parking is probably
18 okay.
19 And as you know, even though it's termed as
20 a nightclub, the primary use of the facility in
21 addition to being a nightclub is that of a restaurant.
22 In other words, they have to serve food to be able to
23 serve liquor by the drink. And so that is one of the
24 items that the applicant will address with you is that
25 the facility is not just a nightclub facility but has

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1 uses within the daytime as well as that of a
2 restaurant, and they will have the ability to have
3 lunch service and other items.
4 So based on the conditions of our standards
5 of review that have been provided the staff, we did
6 recommend approval. There appear to be more standards
7 that are met than are not met. However, I want the
8 Council to consider the overall site and to look at
9 the site in terms of incremental change. And I say
10 this again, and I would be more than happy to make an
11 initial recommendation.
12 But the overall site, these are kind of the
13 burdens that it has: The site does not have any
14 green. It is definitely deficient of landscaping,
15 and this site would be ideal for the reduction of
16 parking spaces and inclusion of islands.
17 Under the human environment, pedestrian
18 seating, trash receptacles, lighting, and calming
19 effects such as sculptures, fountains or other water
20 feature effects could certainly be included into the
21 site. It would make I think a tremendous impact on
22 that sense of place that is so discussed in the LCI.
23 Eventual completion of a sidewalk network on
24 all property frontages would certainly be of benefit
25 to the entire city and that of patrons of the shopping

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1 center.
2 The hours of operation and security is
3 something that I think the City Council should review
4 in their deliberations.
5 And the built environment, which is a long-
6 term approach for the property owner, and I realize
7 that, is an exterior facade renovation and signage
8 upgrades to include monument style signs, more uniform
9 wall signs, and less window signage.
10 And this is just an overall approach looking
11 at the entire something. It's something I want you to
12 consider as we move forward with more and more
13 conditional use applications at this site. But the
14 recommendation was that of approval because it met the
15 standards.
16 COUNCILMEMBER PITTMAN: I'm just curious.
17 What used to be in that location, do we know?
18 MR. HAEBERLIN: It used to be Acapulco.
19 COUNCILMEMBER ROCHE: It used to be a
20 nightclub.
21 MR. HAEBERLIN: Yes.
22 COUNCILMEMBER PITTMAN: Yeah, I know.
23 Okay. Thank you.
24 MR. HAEBERLIN: Uh-huh.
25 And just for the edification of the public

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1 in attendance, this is the large-scale site plan, and
2 you do see a significant amount of surface parking at
3 the site. This is the plan that the staff used to
4 evaluate the standards that were provided to me. It's
5 the as-built provided to me by the applicant.
6 Are there any questions from the Council?
7 COUNCILMEMBER ROCHE: Well, during the
8 Moratorium I believe we did approve this?
9 MR. HAEBERLIN: Yes, sir.
10 COUNCILMEMBER PITTMAN: Do we know what the
11 operating hours are?
12 COUNCILMEMBER FLEMING: No. We're going to
13 ask that.
14 MR. HAEBERLIN: That is something that we
15 should ask the applicant. I think it's appropriate.
16 COUNCILMEMBER PITTMAN: Okay.
17 MR. HAEBERLIN: Are there any other
18 questions?
19 - - -
20 (No response)
21 - - -
22 MR. HAEBERLIN: At this time I invite the
23 applicant to come forward, speak to the Council.
24 MR. LUPA: Good evening, Mr. Mayor and
25 Council Members. My name is Jerry Lupa. I'm the

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1 attorney Ms. Funez hired when she was denied to go
2 forward to finish up the project.
3 In December, I think the 15th or so, she got
4 a letter from Mr. Haeberlin that said something had
5 been done wrong. And she had been approved under this
6 moratorium procedure and thought she was allowed to go
7 forward and then she was told she wasn't.
8 So I had numerous discussions with Mr. Weed
9 about it, and we agreed to -- as opposed to filing
10 suit and try to force the approval that was given
11 before, we've agreed to go through this process.
12 Ms. Funez would be glad to answer any questions you-
13 all have regarding the operation of the business.
14 MS. FUNEZ: I am looking to open a club at
15 5728 Buford Highway, Suite A.
16 We do plan on having security there. There
17 will be -- on the weekends, there will be more
18 security than during the week. I also plan on talking
19 to the Doraville city police to have them outside of
20 the facility on the weekends when there is more
21 clientele inside.
22 Our hours of operation, we're looking at
23 11:00 a.m. through 2:00 a.m., and that is to try to
24 get a lunch crowd in as well during the day. And of
25 course we will follow all rules and regulations of the

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1 city, and the door will be closed by the 2:00 a.m.
2 curfew and --
3 Any other questions?
4 COUNCILMEMBER PITTMAN: What days of the
5 week are you going to be open?
6 MS. FUNEZ: Monday through Sunday. It will
7 be seven days a week.
8 COUNCILMEMBER PITTMAN: So you anticipate
9 how long do you think to clean up if it closes at
10 2:00?
11 MS. FUNEZ: It closes at 2:00. Normal
12 clean-up could be, depending on if all staff is there
13 and how tired they are, it could be 30 minutes to an
14 hour depending on how long it takes to close up and
15 count tills and finish cleaning up for the night.
16 COUNCILMEMBER PITTMAN: And I'm just
17 curious. What kind of food are you serving?
18 MS. FUNEZ: A little bit of everything.
19 We're going to start off with bar type food and work
20 our way towards a menu as the crowd comes in and try
21 to see what everybody's looking for and get a feel for
22 the community and what they want to eat.
23 COUNCILMEMBER PITTMAN: So right off the
24 bat, you're not going to be serving meals. You're
25 going to be serving --

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1 MS. FUNEZ: You're looking at more like your
2 tacos and your quesadillas, your hamburgers, things
3 like that -- chicken wings, French fries.
4 COUNCILMEMBER PITTMAN: Is that right off
5 the bat or later?
6 MS. FUNEZ: That's right off the bat.
7 COUNCILMEMBER PITTMAN: Okay.
8 ATTORNEY WEED: It would in fact have to be
9 or else they wouldn't comply with the law.
10 COUNCILMEMBER PITTMAN: Yeah, I'm just --
11 COUNCILMEMBER BATES: Any idea on what
12 percentage of your revenue you're expecting to come
13 from food versus alcohol?
14 MS. FUNEZ: At this point, I'm not real
15 sure, dependent -- as I said, I'd like to build a
16 lunch crowd, so eventually I'd hope for at least 50
17 percent or better to be from food sales.
18 COUNCILMEMBER BATES: And why the name
19 change from Coyote's to Laguna Azul?
20 MS. FUNEZ: "Coyote" represented something
21 once I got more in the Spanish community, that I
22 realized that I did not want my bar to representing.
23 Coyote, if you know anything about the Spanish
24 community, it's someone who brings illegals across the
25 boarder; so therefore, I decided to change the name.

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1 COUNCILMEMBER BATES: And what's your
2 marketing business plan on promoting and where do you
3 plan on -- what's your clientele demographics market?
4 MS. FUNEZ: We are planning on promoting
5 through radio and flyers and, you know, the local
6 community. Right now, with the name and the area, it
7 is a Hispanic-based community, so you will get a lot
8 of those, but I hope to make it something that anyone
9 from any culture can come into. I would like to see
10 more Americans in there. I would like to bring, you
11 know, people in there to teach salsa for free and, you
12 know, have everybody in there from every demographic.
13 COUNCILMEMBER ALEXANDER: And the club is
14 going to be no smoking? You're going to have smoking
15 outside?
16 MS. FUNEZ: No, ma'am. I was going to have
17 smoking inside because it will be 21 and older.
18 Everyone will be of age.
19 COUNCILMEMBER ALEXANDER: Okay. So 21 and
20 older. Are you going --
21 MS. FUNEZ: Yes, ma'am.
22 COUNCILMEMBER ALEXANDER: -- to be carding
23 at the door?
24 MS. FUNEZ: Yes, ma'am.
25 COUNCILMEMBER ALEXANDER: Just a couple of

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1 questions as far as safety.
2 I remember when a previous club was there.
3 Oftentimes, which was a good sign, they'd have people
4 lined up to get into the door, but they wouldn't
5 necessarily be lined up under the canopy on the
6 sidewalk but they would be lined up on the side of the
7 building where the parking is. And that always made
8 me cringe just a little bit because I mean public
9 safety and pedestrians versus cars don't have a good
10 history. So that would be one of the things I would
11 caution you: to make sure they line up in front of
12 the other --
13 MS. FUNEZ: Yes, ma'am.
14 COUNCILMEMBER ALEXANDER: -- establishments.
15 MS. FUNEZ: I fully intend on having
16 security at the door outside as well as inside, and
17 like I said, the police on the weekend, and we do plan
18 on putting up the line so, you know, the people won't
19 be going into the street and will be directed in the
20 direction.
21 COUNCILMEMBER ALEXANDER: And as part of
22 your opening -- I assume you'll have your workers show
23 up maybe around 10:00/10:30 if you're going to be
24 opening at 11:00. Is part of your opening going to be
25 sort of scanning your area of the parking lot to make

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1 sure debris are picked up and --
2 MS. FUNEZ: Yes, ma'am. That will be --
3 COUNCILMEMBER ALEXANDER: -- you're a good
4 tenant?
5 MS. FUNEZ: Yes, ma'am.
6 COUNCILMEMBER ALEXANDER: Okay.
7 COUNCILMEMBER BATES: How many employees do
8 you expect to have?
9 MS. FUNEZ: Right now, we're looking at
10 anywhere from 10 to 15 to start until business picks
11 up and people know that we're here. It could be more
12 later on.
13 COUNCILMEMBER BATES: And what training will
14 there be for the bartenders and the servers regarding
15 alcohol awareness, intoxication?
16 MS. FUNEZ: There are several classes
17 through the health department that are offered for
18 them as well as they will be with me as well, and
19 everyone is to card. Regardless if they're carded at
20 the door, the bartenders have the right to card, and I
21 encourage the right to car.
22 COUNCILMEMBER PITTMAN: So you are going to
23 offer additional training to your employees?
24 MS. FUNEZ: Yes, ma'am.
25 COUNCILMEMBER ROCHE: Even though we

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1 basically said we approved you during the Moratorium,
2 you found yourself filing a conditional use at the end
3 of the year.
4 Just curious. What were the fees that you
5 paid for --
6 CLERK BLACKMON: The fees were waived by the
7 City for the conditional use.
8 COUNCILMEMBER ROCHE: Thank you.
9 COUNCILMEMBER FLEMING: Your last call for
10 alcohol pouring, would that be 30 minutes before the
11 2:00 a.m. --
12 MS. FUNEZ: Yes, ma'am.
13 COUNCILMEMBER FLEMING: -- closing time?
14 MS. FUNEZ: Last call -- they'll be given
15 the five-minute warning before last call, and then
16 last call will be given about 30 to 20 -- 20 to 30
17 minutes before we close.
18 COUNCILMEMBER FLEMING: Okay. So by 1:45,
19 you stop pouring; correct?
20 MS. FUNEZ: Yes, ma'am.
21 MAYOR JENKINS: Anymore questions?
22 - - -
23 (No response)
24 - - -
25 MAYOR JENKINS: Okay. Thank you.

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1 MS. FUNEZ: Thank you.
2 MAYOR JENKINS: Scott, you say the public
3 hearing; is that correct?
4 MR. HAEBERLIN: This is a public hearing.
5 Those who would like to speak in favor of the
6 petition, please raise your hand.
7 - - -
8 (No response)
9 - - -
10 MR. HAEBERLIN: Seeing none, those who would
11 like to speak in opposition of the petition, who are
12 opposed to it?
13 I see one, Bonita. Mr. O'Connor as well;
14 two. Five minutes apiece.
15 MS. HOFFMEISTER: Bonita Hoffmeister, 3948
16 Spanish Oak Drive, Oakcliff Estates.
17 I really had high hopes for this place until
18 she says, well, we're going to be smoking. You're not
19 going to be attracting a lunch-hour crowd or a dining
20 crowd if you're allowing smoking, and so I'm really
21 disappointed because I was hoping for a place that I
22 could eat at and enjoy some company of my neighbors.
23 And that's my big objection there. It's
24 obvious she's not trying to serve food here.
25 MR. O'CONNOR: I guess my opposition to it

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1 is based on I don't think we really need that type of
2 a nightclub in the area. We've had problems before,
3 and every time you turn on the news, somebody's
4 getting shot or something's happening at a bar,
5 nightclub. I know you probably can't do anything
6 about it but I just want to express my opposition.
7 And secondly, it's also based on now that
8 you have a club there, what else are you going to draw
9 there? Two or three more clubs? If that's what we
10 want that side of town to be, well, that's fine. I
11 don't live on that side. So as long as they're not
12 coming down this way, nightclubs, I don't have an
13 opposition. i thought I would just state what I felt.
14 Thank you.
15 MAYOR JENKINS: Thank you, sir.
16 Scott, anything more?
17 Bring it up to the table.
18 MR. HAEBERLIN: Turn it over to the Council.
19 MAYOR JENKINS: Anymore discussion?
20 - - -
21 (No response)
22 - - -
23 MAYOR JENKINS: Do I have a motion?
24 COUNCILMEMBER FLEMING: I'd like to make a
25 motion to approve the conditional use for Laguna Azul.

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1 I'll just leave the motion like that.
2 COUNCILMEMBER ROCHE: I'll second.
3 COUNCILMEMBER ALEXANDER: I have a question.
4 In the future, if she was to expand into the
5 vacant area, would she have to come back to us, if she
6 was to enlarge the business?
7 ATTORNEY WEED: I would lean towards not.
8 This isn't a situation where it's a legal noncon-
9 forming use. You couldn't expand a legal
10 nonconforming use or an illegal, you know, use. So my
11 off-the-cuff opinion would be not.
12 COUNCILMEMBER ALEXANDER: That she would not
13 have to come back to us if she was to expand.
14 ATTORNEY WEED: That is correct.
15 COUNCILMEMBER ALEXANDER: Okay.
16 ATTORNEY WEED: She would still have to go
17 through the proper, you know, building inspection
18 process to get an interior-finish permit or certifi-
19 cate of occupancy or whatever might be required for
20 that.
21 COUNCILMEMBER FLEMING: But since the
22 conditional use is based on the parcel I.D. and she's
23 in that one suite, okay. And if I'm not mistaken --
24 and I'll open my book if I have to -- it's C-2
25 conditional use because of alcohol sales, is it not?

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1 MR. HAEBERLIN: Well, it's a conditional use
2 because of that of nightclub.
3 COUNCILMEMBER FLEMING: Okay. So it's a
4 conditional use to begin with. So Ms. Alexander's
5 question is, we're approving the -- for instance, if
6 we approve the condition, we're approving it for that
7 address. And so to me --
8 ATTORNEY WEED: Yeah, I understand where
9 you're going.
10 My legal opinion is after you approve the
11 condition, since it's zoning and it's on the land,
12 then you've approved it for the entire parcel of
13 property.
14 I mean, you know, "parcel," my understanding
15 is this place is located in a shopping center; and
16 therefore, underneath the current case law -- which I
17 think is terrible case law, by the way -- but thanks
18 to the court system, I think that it could be expanded
19 or you could -- you know, throughout the entire
20 parcel, you know, not just only in this one area but
21 anywhere on that parcel as long as the setbacks were
22 met.
23 COUNCILMEMBER FLEMING: But we presently
24 have conditional use criteria in our codes that
25 indicate that they must come before us and they

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1 expire, they're only good for a year --
2 ATTORNEY WEED: Yes, that's correct.
3 COUNCILMEMBER FLEMING: -- and that they
4 have to be reconsidered for renewal at the end of the
5 year.
6 ATTORNEY WEED: Yes.
7 COUNCILMEMBER FLEMING: So why would that be
8 permitting the balance of the shopping center?
9 ATTORNEY WEED: Because the conditional use
10 is zoning and the zoning travels with the land.
11 And once again, in my opinion unfortunately,
12 the current case law indicates that if a use is valid
13 or permissible on any subpart of any parcel, it can be
14 expanded throughout the entirety of the parcel. I
15 think it is a terrible decision. I rail against it.
16 I don't think it was an exercise of judicial wisdom.
17 Nevertheless, that is my opinion and that's the
18 current law in Georgia.
19 COUNCILMEMBER BATES: So if there was a
20 second nightclub that wanted to go in that same plaza,
21 would we or would we not hear it as a conditional use?
22 ATTORNEY WEED: I think you would hear it as
23 a conditional use, but you would have great difficulty
24 in denying it.
25 COUNCILMEMBER ROCHE: But if things got out

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1 of hand, when they came back to renew their
2 conditional use at the end of the year, we didn't
3 necessarily have to approve it.
4 ATTORNEY WEED: That is correct. And you
5 would put forth clearly objective, reasonable
6 criteria, the facts, and you'd compare them to the
7 standards, and if there was a problem, you'd have
8 reason to deny it and I would certainly be proud to
9 defend that.
10 COUNCILMEMBER FLEMING: And we would have
11 reason to deny the second or third one as well based
12 on the criteria that we have.
13 MAYOR JENKINS: As she said, you couldn't
14 just approve this as 5728 only?
15 ATTORNEY WEED: No, sir, my opinion is you
16 can't. You can no longer do it that way based upon
17 the current case law.
18 MR. HAEBERLIN: I think this is what
19 Councilwoman Fleming's asking: Could she set some
20 sort of cap in her deliberations on this specific
21 nightclub and say, for example, the conditional use
22 for that of nightclub is limited to no more than
23 10,000 square feet of the shopping center?
24 ATTORNEY WEED: You could always -- if the
25 applicant agrees, you could always negotiate

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1 conditions with an applicant. You know, that's always
2 available. What you can't do is have quid pro quo
3 zoning, but you can always ask. Nothing wrong with
4 asking.
5 MR. LUPA: I don't believe my client would
6 object to some kind of condition regarding the
7 ultimate size of the proposed establishment and that
8 perhaps 10,000 square feet is a good number.
9 ATTORNEY WEED: Then, in that case, I think
10 it would be perfectly valid if you wanted to approve
11 this. You could it approve it with that condition,
12 and that too would become part and parcel of the
13 zoning and that would be the maximum it could be.
14 COUNCILMEMBER FLEMING: Maximum for her
15 location.
16 ATTORNEY WEED: Correct.
17 COUNCILMEMBER FLEMING: But not maximum for
18 the entire shopping center, as you've just mentioned.
19 ATTORNEY WEED: But maximum for her
20 location, that is correct, which is better than
21 nothing.
22 COUNCILMEMBER FLEMING: I'd like to amend my
23 -- I'll wait until Ms. Pittman returns.
24 - - -
25 (Pause)

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1 - - -
2 COUNCILMEMBER FLEMING: I'd like to amend my
3 motion, please.
4 COUNCILMEMBER ROCHE: I'll amend my second
5 or I'll second the amendment.
6 COUNCILMEMBER FLEMING: I'd like to make a
7 motion to permit the conditional use requested by
8 Laguna Azul at 5728-A Buford Highway in the Doraville
9 Plaza Shopping Center for a nightclub with alcohol
10 sales, and I'd like to place a condition on this
11 conditional use: that the establishment is no greater
12 than 10,000 square feet.
13 COUNCILMEMBER ROCHE: And I'll still second
14 that.
15 MAYOR JENKINS: Anymore discussion?
16 COUNCILMEMBER ALEXANDER: I have one
17 question. May I ask Mr. Cushman a question?
18 MAYOR JENKINS: Jimmy?
19 COUNCILMEMBER ALEXANDER: What size is the
20 suite?
21 MR. LUPA: I'll have to ask Ms. Funez.
22 MS. FUNEZ: It's 7,500 square feet.
23 MAYOR JENKINS: Anymore discussion?
24 - - -
25 (No response)

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1 - - -
2 MAYOR JENKINS: Call the roll, please.
3 CLERK BLACKMON: Councilmember Alexander?
4 COUNCILMEMBER ALEXANDER: Yes.
5 CLERK BLACKMON: Councilmember Bates?
6 COUNCILMEMBER BATES: Yes.
7 CLERK BLACKMON: Councilmember Fleming?
8 COUNCILMEMBER FLEMING: Yes.
9 CLERK BLACKMON: Councilmember Pachuta?
10 COUNCILMEMBER PACHUTA: Yes.
11 CLERK BLACKMON: Councilmember Pittman?
12 COUNCILMEMBER PITTMAN: Yes.
13 CLERK BLACKMON: Councilmember Roche?
14 COUNCILMEMBER ROCHE: Yes.
15 MAYOR JENKINS: All right. Thank you.
16 COUNCILMEMBER ROCHE: Motion to adjourn.
17 MAYOR JENKINS: Second?
18 COUNCILMEMBER PITTMAN: Second.
19 MAYOR JENKINS: Call the roll, please.
20 CLERK BLACKMON: Councilmember Alexander?
21 COUNCILMEMBER ALEXANDER: Yes.
22 CLERK BLACKMON: Councilmember Bates?
23 COUNCILMEMBER BATES: Yes.
24 CLERK BLACKMON: Councilmember Fleming?
25 COUNCILMEMBER FLEMING: Yes.

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1 CLERK BLACKMON: Councilmember Pachuta?
2 COUNCILMEMBER PACHUTA: Yes.
3 CLERK BLACKMON: Councilmember Pittman?
4 COUNCILMEMBER PITTMAN: Yes.
5 CLERK BLACKMON: Councilmember Roche.
6 COUNCILMEMBER ROCHE: Yes.
7 MAYOR JENKINS: Thank you. Meeting
8 adjourned.
9 - - -
10 (Meeting adjourned at 8:45 p.m.)
11 - - -
12
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C E R T I F I C A T E

STATE OF GEORGIA]
COUNTY OF DEKALB]

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

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

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

This the 5th day of February, 2010.

_____

Theresa Bretch, CCR
Permit No. B-755

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