In The Matter Of:

City of Doraville

State of Georgia

City Council Meeting

July 26, 2010

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CITY COUNCIL MEETING

CITY OF DORAVILLE

STATE OF GEORGIA

* * *

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., July 26, 2010.

* * *

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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

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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?

COUNCILMAN ROCHE: Here.

MAYOR JENKINS: Got no minutes to approve, no Mayor's comments. Department reports, none. This is a public hearing so we'll have no comments on the agenda items, and I'll ask Scott to come on up and get it going.

MR. HAEBERLIN: The first item is a public hearing text amendment, which is Section 613 Portable Signs deletion. And what it is is this citation on signs is duplicative because the sign code which is not part of our zoning code already covers this, and

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Mr. Weed and I are trying to clean up the Zoning Ordinance so the Zoning Ordinance contains only items that are truly zoning related.

So again, this is merely deletion to take it out of the Zoning Ordinance. It's already covered in the Sign Code. The Planning Commission did recommend approval of the text amendment, and I share in their recommendation of approval, and this would be a public hearing.

MAYOR JENKINS: Comments?

MR. HAEBERLIN: Are there any questions? None?

MAYOR JENKINS: Anything at the table on this item?

COUNCILMEMBER FLEMING: I just didn't see where we -- Section 402. I noticed that we had 613 here but not 402 where it was going to be amended to include the language.

MR. HAEBERLIN: Well, what I did, I include definitions, and this is always an additional cautionary in case Mr. Weed did need to amend any definitions, and he did not find that necessary. But we did cover it just in case and we advertised it as well just in case.

COUNCILMEMBER FLEMING: Okay; because

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presently Portable Signs is not in our Section 402 code.

MR. HAEBERLIN: I understand.

If there are no further comments, the Mayor would open the public hearing at this time, and those who --

MAYOR JENKINS: Okay. You go ahead.

MR. HAEBERLIN: Oh, I apologize, sir.

Those who would like to speak in favor of the text amendment, please raise your hand. Anyone that would like to speak in favor? Seeing none.

Anybody who would like to speak against the text amendment on Portable Signs, please raised your hand. Again, seeing none, I return it to the Council.

MAYOR JENKINS: Bring it back to the table. Any more comments at the table?

- - -

(No response)

- - -

MAYOR JENKINS: Do I have a motion?

COUNCILMEMBER PACHUTA: I don't know how you need it phrased, Murray. What's the best way?

ATTORNEY WEED: Just a motion to approve the text amendment. This hasn't appeared on a previous agenda, so you'll have to waive first reading.

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MR. HAEBERLIN: That's correct, it's not been on a previous agenda.

ATTORNEY WEED: If you want to adopt the ordinance change tonight, you'll have to waive first reading.

COUNCILMEMBER PACHUTA: Okay. I'll make a motion to waive first reading.

MAYOR JENKINS: Second?

COUNCILMEMBER ALEXANDER: Second.

MAYOR JENKINS: Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pachuta?

COUNCILMEMBER PACHUTA: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

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COUNCILMAN ROCHE: Yes.

MAYOR JENKINS: All right. I need another motion to approve it.

COUNCILMEMBER PACHUTA: I make a motion to delete the Portable Signs from the Zoning Code.

COUNCILMEMBER PITTMAN: Second.

MAYOR JENKINS: Discussion?

COUNCILMEMBER FLEMING: Yes, sir. I would like to amend the motion to read Section 613.

COUNCILMEMBER PACHUTA: I will amend my motion.

MAYOR JENKINS: Do I get a second on that?

COUNCILMEMBER PITTMAN: Second.

MAYOR JENKINS: Okay. Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pachuta?

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COUNCILMEMBER PACHUTA: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMAN ROCHE: Yes.

MAYOR JENKINS: Motion carried.

MR. HAEBERLIN: The next item under public hearings is a text amendment, Section 305, Districts Listed. This is to reflect the current zoning districts.

As the Council is aware, we created a new district, which is the CT district. That was not reflected in this table. As well, there were some concerns that we had been doing text amendments but the table had not been accurately reflective of that, so this is really housekeeping.

As you see, there is no longer an RSFA district listed with private streets. That's reflective of some action that the Council has done. The CT is also included in there as a new district. And then your districts are pretty much the way they were in the past. And this is to make them reflective of what's on the official zoning map as well.

The Planning Commission did recommend approval of this item as well, and staff does

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1 recommend approval as well.
2 COUNCILMEMBER ALEXANDER: Did I misunder-
3 stand you? You said RSFA is no longer there?
4 MR. HAEBERLIN: The one with the private
5 streets.
6 COUNCILMEMBER ALEXANDER: Oh, okay.
7 MR. HAEBERLIN: The one that the Council
8 eliminated.
9 COUNCILMEMBER ALEXANDER: But RSFA is still
10 a legitimate zoning?
11 MR. HAEBERLIN: Right. RSFA is still a
12 legitimate zoning designation. We just don't provide
13 for the ability to have private streets any further.
14 I apologize. That was a little bit confusing.
15 Are there any other questions?
16 MAYOR JENKINS: Open up the hearing.
17 MR. HAEBERLIN: Okay. The Mayor has opened
18 up the public hearing. Those who would like to speak
19 in favor of the text amendment please raise your hand?
20 Seeing none.
21 Those who would like to speak -- those who
22 do not approve of the text amendment or would like to
23 speak against it, please raise your hand.
24 Again, seeing none, I turn it back to you.
25 MAYOR JENKINS: All right. Any more

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1 discussion at the table?
2 - - -
3 (No response)
4 - - -
5 MAYOR JENKINS: Do we have a motion?
6 COUNCILMEMBER ALEXANDER: Motion to waive
7 first reading.
8 COUNCILMEMBER PACHUTA: Second.
9 MAYOR JENKINS: Any more discussion?
10 - - -
11 (No response)
12 - - -
13 MAYOR JENKINS: Call the roll.
14 CLERK BLACKMON: Councilmember Alexander?
15 COUNCILMEMBER ALEXANDER: Yes.
16 CLERK BLACKMON: Councilmember Bates?
17 COUNCILMEMBER BATES: Yes.
18 CLERK BLACKMON: Councilmember Fleming?
19 COUNCILMEMBER FLEMING: Yes.
20 CLERK BLACKMON: Councilmember Pachuta?
21 COUNCILMEMBER PACHUTA: Yes.
22 CLERK BLACKMON: Councilmember Pittman?
23 COUNCILMEMBER PITTMAN: Yes.
24 CLERK BLACKMON: Councilmember Roche?
25 COUNCILMAN ROCHE: Yes.

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1 MAYOR JENKINS: Motion carried.
2 Do I need a motion to --
3 MR. HAEBERLIN: Approve the text?
4 MAYOR JENKINS: Yes.
5 MR. HAEBERLIN: Yes, sir.
6 COUNCILMEMBER PACHUTA: I make a motion to
7 adopt the new Section 305 under our Zoning Code to
8 reflect the current zoning areas of the city.
9 COUNCILMEMBER PITTMAN: Second.
10 MAYOR JENKINS: Any more discussion?
11 - - -
12 (No response)
13 - - -
14 MAYOR JENKINS: Call the roll.
15 CLERK BLACKMON: Councilmember Alexander?
16 COUNCILMEMBER ALEXANDER: Yes.
17 CLERK BLACKMON: Councilmember Bates?
18 COUNCILMEMBER BATES: Yes.
19 CLERK BLACKMON: Councilmember Fleming?
20 COUNCILMEMBER FLEMING: Yes.
21 CLERK BLACKMON: Councilmember Pachuta?
22 COUNCILMEMBER PACHUTA: Yes.
23 CLERK BLACKMON: Councilmember Pittman?
24 COUNCILMEMBER PITTMAN: Yes.
25 CLERK BLACKMON: Councilmember Roche?

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1 COUNCILMAN ROCHE: Yes.
2 MAYOR JENKINS: Okay. Motion carried.
3 MR. HAEBERLIN: The next item is a public
4 hearing, Conditional Use, Massage Therapy; Attorney
5 Bruce Morriss for Midori Spa, 5201 Buford Highway at
6 PineTree Plaza Shopping Center, 18-310-03-009,
7 13.981 plus or minus acres zoned C-2 and R-1.
8 At this time, the applicant will speak.
9 ATTORNEY MORRISS: Good evening, Mr. Mayor,
10 members of the Council. My name is Bruce Morris. I
11 practice law with the Atlanta law firm of Morriss &
12 Shim. I have with me tonight the owner of the Midori
13 Spa, Mr. Dae -- (spelling) D-a-e, Sup, S-u-p, Lee,
14 Mr. Lee. We hope you will act favorably upon our
15 application for a business license, and he is here and
16 available to answer any questions about his business
17 plans, model, or any concerns that the Council has.
18 MR. LEE: Thank you for the opportunity to
19 speak, and I'll answer any questions that you might
20 have.
21 COUNCILMEMBER BATES: How long have you
22 owned the spa, sir?
23 MR. LEE: I purchased the spa early in
24 January of 2010.
25 COUNCILMEMBER BATES: So January of this

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1 year.
2 MR. LEE: Yes, sir.
3 COUNCILMEMBER PITTMAN: Do you have other
4 locations?
5 COUNCILMEMBER FLEMING: What did you ask?
6 COUNCILMEMBER PITTMAN: Do you have other
7 locations?
8 MR. LEE: No, I do not.
9 COUNCILMEMBER PITTMAN: So this is the only
10 location?
11 MR. LEE: Yes, ma'am.
12 COUNCILMEMBER BATES: And how many employees
13 do you have?
14 MR. LEE: Well, I don't have none at the
15 moment. The business is closed down because I do not
16 have the license to open.
17 COUNCILMEMBER BATES: As of June 1st, how
18 many employees did you have?
19 MR. LEE: I had two.
20 COUNCILMEMBER BATES: In addition to your-
21 self?
22 MR. LEE: Yes, sir.
23 COUNCILMEMBER BATES: And were they
24 performing massage therapy?
25 MR. LEE: Yes.

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1 COUNCILMEMBER BATES: And did they have a
2 State certified license to perform massage therapy?
3 MR. LEE: They did not.
4 COUNCILMEMBER BATES: And were they
5 performing full-body massage?
6 MR. LEE: Yes, sir.
7 COUNCILMEMBER BATES: And where do you
8 advertise your business, sir?
9 MR. LEE: I haven't. I haven't.
10 I just want to quickly note, if I were given
11 an opportunity to open this business legally, I -- I
12 fully plan to, you know, do everything that's by the
13 law, meaning hire the staff that has current licensure
14 per State of Georgia.
15 And you know, I spent my entire savings just
16 to get this business up and running, and had I known,
17 you know, back in January this was going to be such an
18 issue, I would have thought otherwise. But you know,
19 this is all I got, and I'm just asking for a chance to
20 do the right thing and, you know, do it in the lawful
21 way to open this business.
22 COUNCILMEMBER BATES: Were you on premise
23 between January -- were you on site there running the
24 business from January through June?
25 ATTORNEY MORRISS: It wasn't open from

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1 January through June. The mistake he's accountable
2 for was a very short period of days due to his
3 frustration of the process or inability to get it
4 opened timely, but it was not during the six-month
5 period that he was open.
6 COUNCILMEMBER BATES: So you're stating on
7 the record that from the date you purchased the
8 business in January, that it was not open in January,
9 February, March, April, May or June?
10 ATTORNEY MORRISS: Well, I think there's an
11 issue with the June.
12 Would you specifically answer when you were
13 open?
14 MR. LEE: Yes. I mean I was open, but it
15 was open -- I think by the time March came, I -- I had
16 like no money. I needed to open the business to just
17 pay the rent, the bills and what-have-you.
18 But you know, when I -- when I took on this
19 business, I thought by March, you know, this -- this
20 all been resolved and I would have a green light to
21 open the business; but however, it hasn't.
22 So you know, I made a mistake, you know, and
23 I can own up to that.
24 ATTORNEY MORRISS: (Inaudible)
25 MR. LEE: Yes.

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1 COUNCILMEMBER PACHUTA: I mean I've seen the
2 open sign during that time frame, and I know at one
3 point when I was in PineTree Plaza one evening, there
4 was a dog behind the doors.
5 Were you in the car with me that time?
6 COUNCILMEMBER BATES: Uh-huh.
7 COUNCILMEMBER PACHUTA: Yeah. I mean three
8 of us I believe saw the dog behind the doors, so I'm
9 really doubting the story that he was not open.
10 ATTORNEY MORRISS: I think he's now on the
11 record that he was open March, April, May, until the
12 citation.
13 COUNCILMEMBER PITTMAN: Was there a prior
14 business, a similar prior business prior to you buying
15 it there?
16 MR. LEE: Yes.
17 COUNCILMEMBER PITTMAN: Under that same
18 name?
19 MR. LEE: Yes.
20 COUNCILMEMBER PITTMAN: Are you related to
21 any of those people in any way --
22 MR. LEE: I am not.
23 COUNCILMEMBER PITTMAN: -- that you bought
24 it from?
25 MR. LEE: Huh-uh. I have no relations, no

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1 prior contacts. Only time I met was, you know, when I
2 bought -- bought the business from the owner.
3 COUNCILMEMBER PITTMAN: And did some of the
4 same employees carry over into your business from that
5 business?
6 MR. LEE: Yes.
7 COUNCILMEMBER PACHUTA: And I guess one of
8 the problems I have is that your business is all over
9 the Internet for providing prostitution and sexual
10 services. And I brought it to put on the record for
11 tonight printouts of screen shots of reviews of the
12 women who work at the spa, how much they charge, what
13 services they provide and --
14 MR. LEE: Those are not by --
15 You know, I didn't put up those ads. I
16 don't know if those are the ads --
17 COUNCILMEMBER PACHUTA: I know that you --
18 MR. LEE: -- the previous owner has.
19 COUNCILMEMBER PACHUTA: They're not ads.
20 They're forum posts. And you know, I have a prob -- I
21 mean they're pretty detailed and, you know, they went
22 into, you know, information that we're closed because
23 there was a problem with the business license but you
24 hope to be back open. Lots of details. And I'll give
25 the court reporter a copy that she can put in the

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1 record so that I do not have to read these into the
2 record, because they're very graphic.
3 ATTORNEY MORRISS: We've not been provided
4 any package with that information, so we have --
5 COUNCILMEMBER PACHUTA: You'll have it as
6 part of the record. I'll give it to the court
7 reporter so she can include it into the record.
8 ATTORNEY MORRISS: The issue being we would
9 -- in order that we be able to respond adequately --
10 COUNCILMEMBER PACHUTA: I'm not sure.
11 ATTORNEY MORRISS: -- to your concerns.
12 COUNCILMEMBER PACHUTA: This is the copy for
13 the record. It's about 27 pages, I think.
14 ATTORNEY MORRISS: You have 27 pages? We've
15 been given three.
16 COUNCILMAN ROCHE: Sorry, I only have the
17 three pages of hard copy.
18 COUNCILMEMBER PACHUTA: Can you make a copy?
19 COUNCILMEMBER BATES: And if you'll note,
20 one review is of May the 24th of this year, the page
21 three.
22 COUNCILMEMBER PACHUTA: Yeah. I mean
23 there's plenty of reviews from March, April, May;
24 very, very graphic details of the services.
25 MAYOR JENKINS: She's going to make copies,

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1 but if you have something to say, go ahead. Speak in
2 the microphone, please, sir.
3 ATTORNEY MORRISS: I think we need the
4 opportunity to review. That information could have
5 been provided as far as any type of foundation for any
6 of this to come into the record, and I've got serious
7 concerns.
8 COUNCILMEMBER PACHUTA: Well, we don't
9 follow the Civil Practice Act, if I'm not correct. I
10 mean this is a public hearing. This is information.
11 You know, the public can come up and speak to and for
12 an item, and we take everything into consideration.
13 ATTORNEY WEED: I'll state for the record
14 with regard to the law on it, we are required to
15 following the Zoning Procedures Act. The Zoning
16 Procedures Act, 36-66-1 et. seq. does define that a
17 hearing must occur and provides the parameters for
18 that hearing and advertisement for the hearing.
19 With regard to any procedural due process in
20 the hearing itself, the statute doesn't -- it doesn't
21 specify. It simply provides that the public, and it's
22 as vague as that, at the hearing can present whatever
23 evidence there may be.
24 I would advise the Council that with regard
25 to the evidence, I think clearly it's admissible but

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1 the question would be the weight that you would assign
2 the evidence, which may be a great deal of weight or
3 no weight.
4 If you care to grant the applicant
5 additional time to consider this evidence and speak
6 with his client, you can certainly recess this hearing
7 and give him the opportunity to do so. I don't
8 believe that you're required by law to do that;
9 however, you certainly can do that as a courtesy.
10 And that's my legal opinion on the matter.
11 COUNCILMEMBER PITTMAN: Sir, what other
12 businesses have you --
13 MR. LEE: This is my first, first business.
14 COUNCILMEMBER PITTMAN: First one?
15 MR. LEE: Yes.
16 I mean right now, I have another career I'm
17 pursuing as management in retail business, and, you
18 know, I've always worked hard. You know, I always got
19 -- I mean earned every penny. I worked hard to earn
20 every penny, you know, so I mean I have a good work
21 ethic. I volunteer regularly throughout -- you know,
22 with my church, you know, the community that I live
23 in. And I'm -- I'm just a little bit upset that
24 because of the picture that was painted prior to me
25 buying this business. And you know, maybe I made a

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1 mistake of bringing on those two -- two employees back
2 in March, April, May, until I got the citation in
3 June.
4 But I fully intend to follow the law. I
5 want to bring in a therapist who has, you know, legal
6 rights to work, has the proper licensure. Those are
7 my plans. I just need the opportunity to make that
8 happen, and you know, I don't have a lot of money.
9 I've been burning all my money. It's been six months
10 since I bought the business, you know, I have no
11 revenue coming in and I came at a point where this --
12 I'm at a crossroad, you know. I just need -- I'm just
13 asking for an opportunity, you know, just to make this
14 happen.
15 COUNCILMEMBER PITTMAN: So when you were
16 open those months, did you know you weren't supposed
17 to be open? You knew that?
18 MR. LEE: I knew that. I knew that.
19 COUNCILMEMBER PITTMAN: And so how often
20 were you on the premises?
21 MR. LEE: Off and on. Off and on. Again, I
22 have a full-time career, so --
23 COUNCILMEMBER PITTMAN: So when you say off
24 and on, all day, once in a while or --
25 MR. LEE: I would say probably once or twice

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1 a week, maybe three or four times a month to check in
2 just to pay the bills, check in and, you know, see
3 what else that I need to do.
4 I mean I had all these great ideas and
5 business plan and I just haven't had a chance to carry
6 those through.
7 COUNCILMEMBER BATES: What would you like to
8 do?
9 MR. LEE: Excuse me?
10 COUNCILMEMBER BATES: What would you like to
11 do?
12 MR. LEE: I would like -- Well, the reason I
13 bought this business, sir, back in January is because
14 there was very lucrative market of, you know, massage
15 therapy, and I only found out the dark side of my type
16 of business afterwards. I knew it existed. To what
17 extent, I'm finding out now. And I'm kind of feeling
18 the full brunt of -- you know, of those type of
19 businesses have impacted me in an adverse way.
20 COUNCILMEMBER PITTMAN: So you did no
21 research on the prior business.
22 MR. LEE: Yeah. Well, I --
23 COUNCILMEMBER PITTMAN: You have?
24 MR. LEE: I have not.
25 COUNCILMEMBER PITTMAN: You have?

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1 MR. LEE: No, I have not. I have not.
2 COUNCILMEMBER PITTMAN: Are you going to
3 keep the same name?
4 MR. LEE: No. I'd like to change that, you
5 know. I don't want that kind of clientele if that --
6 truly, if that's the kind of business it was in the
7 past. You know, I'll do everything possible to -- to
8 you know, rectify the old image and have a legitimate
9 business. That's all I'm asking is a chance.
10 ATTORNEY MORRISS: In the Council acting
11 upon this, all I ask are the items that have been
12 provided to us, if you would as a courtesy not hold
13 anything against Mr. Lee that occurred prior to his
14 being involved 2009 or previous.
15 And then as far as things that happened in
16 2010, if you'll look at the posts and take them for
17 what they're worth. I see very little that -- other
18 than what he's accepting responsibility for as far as
19 being open, that goes to him, and I think it's very
20 difficult for the board to hold this against him.
21 We don't ask for it to be continued, but for
22 those who have not seen it prior to your vote, you may
23 actually want to look at the documents.
24 COUNCILMEMBER PACHUTA: I did e-mail it to
25 all of Council.

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1 COUNCILMEMBER ALEXANDER: So you're not
2 asking for it to be continued? Is that what you just
3 said? I'm having a hard time hearing you. I'm sorry.
4 ATTORNEY MORRISS: No. I looked through
5 this briefly as I'm here, and it seems that this is
6 largely historical and would not have anything to do
7 with Mr. Lee's business.
8 COUNCILMEMBER ALEXANDER: This document that
9 was provided, which I guess is a sublease of a
10 sublease of a sublease, is not signed by a repre-
11 sentative of Halpern and it's not a date on this
12 document that was provided. So I don't know if this
13 document is in effect or --
14 This was sent by you, sir? The attorney?
15 ATTORNEY MORRISS: It was -- I'm not sure if
16 it was provided to Mr. Haeberlin as part of by my
17 office or directly as part of the application process,
18 but there's a valid and binding sublease from Mr. Lee
19 in effect --
20 COUNCILMEMBER ALEXANDER: Yeah. I don't --
21 ATTORNEY MORRISS: -- at this point.
22 COUNCILMEMBER ALEXANDER: -- know if it's
23 valid or not because it's not dated and it's not
24 signed by the owner of the property. So I don't know
25 if it's valid or not, the copy that we were given.

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I guess further, how did you find out that this particular business was for sale?
MR. LEE: Through a friend.
COUNCILMEMBER ALEXANDER: Okay. And before you purchased the business, you did not research the state law regarding massage therapists?
MR. LEE: I mean I thought I did do my due diligence, but apparently there was a lot more involved than just, you know, trying to do like marketing figures. And I mean I was trying to get my ideas together and, you know, the plans for the business, I mean.
COUNCILMEMBER ALEXANDER: But you said you purchased it because it was a lucrative business.
MR. LEE: Yes.
COUNCILMEMBER ALEXANDER: So exactly what due diligence did you do to come to that conclusion?
MR. LEE: Well, the average -- I don't know -- like a 30-minute massage costs about $40 to $50; 60-minute massage will cost about $90 to $80. And of that, you know, like when I did my calculations and what-not, I would have a profit margin of 40 to 50 percent, you know, and if I had people coming in, 20, 30 patients, that would be lucrative for me to take a gamble. And when I bought the business, it was pretty

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-- pretty cheap in my opinion, so that's why I took out my, you know, savings account and took out my loan to buy the -- purchase the business.
COUNCILMEMBER PITTMAN: And you said you had two employees from the prior business --
MR. LEE: Yes.
COUNCILMEMBER PITTMAN: -- that you hired? What were their names?
MR. LEE: Mrs. -- Mrs. Lee and Mrs. Kim.
COUNCILMEMBER PITTMAN: Do you know their first name?
MR. LEE: Well, I don't know if it's their legal name, but I do. They go by Janet and -- I don't know the other -- other name.
ATTORNEY MORRISS: I'm sure the Mayor and the Council are aware that Mr. Lee's background is exemplary.
COUNCILMEMBER ALEXANDER: Mr. Weed, is the amount of the occupational tax based on income?
ATTORNEY WEED: Yes. There are different ways of doing it but it's usually based upon gross receipts that are generated at the home situs of the location of the building or business.
COUNCILMEMBER ALEXANDER: I believe data supplied by the previous owner was only $50,000 a

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year. Were you submitted different figures than were supplied to City Hall as far as the income of the establishment?
MR. LEE: I think -- I think the form that I turned in, I think estimate of double that.
COUNCILMEMBER ALEXANDER: Okay. That's interesting.
ATTORNEY MORRISS: I believe it was $8,000 a month in anticipated revenue based upon his investigation of the business if I'm correct.
COUNCILMEMBER PACHUTA: Okay, because for 2008 they claimed $50,000; in 2009, they claimed $60,000 to City Hall.
COUNCILMEMBER PITTMAN: So your friend that you purchased this -- or the friend that you heard this about, was he part owner in the business?
MR. LEE: No.
COUNCILMEMBER PITTMAN: No. Just hearsay.
MR. LEE: Yeah.
COUNCILMAN ROCHE: Have you looked into essentially alternative businesses for that site?
MR. LEE: Well, I might have to, you know, but I haven't yet. I mean I've come so far, so I mean this probably is the -- the last straw for me.
MAYOR JENKINS: Any more questions?

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- - -
(No response)
- - -
MAYOR JENKINS: Okay, Scott, you're still going to have a public hearing?
MR. HAEBERLIN: Yes, sir.
MAYOR JENKINS: Very good.
MR. HAEBERLIN: I did go and do some research because the Council always asks me the first instance of this business.
The business does predate my employment with the City. I did find an official record from the City -- I'll pass that across there -- that represents how the business first got there.
As the Council is aware, the city attorney and the staff have determined that massage establishments are not legal nonconforming uses. Therefore, in early February when Mr. Morriss contacted our office with an application, of course we had to deny the request because it required a conditional use. And so there is communication on record and in the package dated February 22nd, 2010, regarding the need to obtain a conditional use because this was a new business, a different owner.
And then somewhere about April 14th, we

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1 received an application but it was again incomplete.
2 The first time I met Mr. Morriss was at the
3 city court. I actually was present. I was subpoenaed
4 by the City to testify in a number of court cases.
5 This was one of the court cases I was subpoenaed to
6 testify in.
7 Since that time, we did have two ladies,
8 which I'm not aware of their name. Perhaps the
9 applicant can tell us who they are. Two ladies came
10 in and amended the application, and then Mr. Lee
11 recently came in and amended the application again to
12 reflect it's split zoning because it being C-2 and
13 R-1.
14 So that's kind of a history of where we've
15 gotten to today.
16 As you're aware, the property is split
17 zoned. That's been a recent announcement to the City
18 that we're notified as a result of applications by
19 Halpern Properties, and this business dates back to
20 8/24/08, the original issuance to a different person.
21 And so the standards of review that are
22 embodied in code for the staff to review these on your
23 behalf, I did a diligent review of those and my
24 recommendation was denial.
25 And I do want to note for the record, one of

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1 the criteria in reviewing these items is based on
2 compliance with space limits, buffers, parking and
3 loading provisions.
4 Now, we have received information in the
5 past that there were variances granted on this
6 property in 2001, but it is apparent they did not
7 follow the Zoning Procedures Act, again, because there
8 was only five days that lapsed between the first
9 reading by the council and the actual approval of the
10 variances. So I'm still investigating that on your
11 behalf.
12 But on the basis of the actual minutes, it
13 does not seem to comply with the Zoning Procedures
14 Act, and that is criteria number 7.
15 The staff did recommend denial of the
16 petition, and at this time I return it back to you.
17 MAYOR JENKINS: Any more questions at the
18 table?
19 - - -
20 (No response)
21 - - -
22 MR. HAEBERLIN: Okay. The Mayor has opened
23 the public hearing portion. Those who would like to
24 speak in favor of the petition, please raise your
25 hand. Seeing none.

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1 Those who would like to speak against the
2 petition please raise your hand. We have two people,
3 please come forward, about five minutes apiece.
4 Please state your name as well as your
5 address for the record.
6 MS. GILMAN: Mayor, Council, Carol Gilman,
7 Chestnut Place. I support the staff's recommendation
8 of denial of this petition request.
9 Like the applicant, I work hard and care
10 about my community. And so when I saw this on the
11 agenda for this evening, I got in my car and drove
12 over to PineTree and then I went across the street and
13 stood in front of the church, in front of the church
14 and the residences that are kind of up on the hill
15 behind the church.
16 I looked across so I could actually see this
17 proposed establishment. And I and anyone else who
18 would be coming and going from the church or from
19 their residence could see across the road. They could
20 see a foot massage business four doors to the right,
21 and if you kind of walked a little bit forward from
22 the door, you could look around and you'd see the
23 other massage parlor that's right there close, throw a
24 stone. And if you walk a little further to the front
25 of the church parking lot, you can see a therapeutic

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1 massage place, and you can see it because it's right
2 next to that huge pawn sign.
3 Caring about my community, I just wanted to
4 put the location and its place in my community that I
5 care about in perspective.
6 As a business consultant, I work with
7 clients to help them perform due diligence. I look at
8 market saturation and help them make a decision as to
9 whether there's a piece of the market left for them.
10 I actually advise them to get financials and all that
11 sort of thing as part of due diligence to be sure that
12 they're making a wise decision with their investment
13 dollars. And then I even advise in this age of
14 Internet that they get on the Internet and take a look
15 at what's been in the surrounding areas, what was in
16 that location formerly. Why was it successful? Why
17 did it fail?
18 And after thinking about that for just this
19 afternoon and hearing what I hear this evening, I
20 strongly support the staff's recommendation for denial
21 of the petition request. Thank you for your time.
22 MR. HART: I support the staff recommen-
23 dation for denial.
24 I suppose what bothers me about this
25 particular business or business location is the mixed

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zoning, the C-2 and R-1 and the neighborhood behind it, which is Gordon Heights and Northwoods. And that area's been adversely affected because of lack of buffers that are like behind the Pung Mie wall behind the shopping center where there's supposed to be, you know, a 75-foot, you know, tree buffer between that and the neighborhood. And as you know, where the Pung Mie was, it's virtually inches away from the -- from the property line behind it and has negatively affected all those houses on the street of Raymond Drive -- light pollution, noise pollution -- and this is the time to make a stand against that sort of thing, particularly with the mixed zoning.

So I support the denial. I think we have enough massage parlors in the city at this point. It seems to have become a focal point of all zoning and all matters before the Council now is some kind of full-body massages to foot massages. So if we could get it down just to, you know, a half a dozen, that would be better. Thank you.

MAYOR JENKINS: Scott?

MR. HAEBERLIN: That's it, sir. Return it to the Council.

MAYOR JENKINS: Okay. Bring it to the table. Any more discussion?

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- - -

(No response)

- - -

MAYOR JENKINS: Do I have a motion?

COUNCILMEMBER PACHUTA: I make a motion that we deny the conditional use application of Midori Spa.

MAYOR JENKINS: Second?

COUNCILMAN ROCHE: I'll second.

MAYOR JENKINS: Okay. Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll, please.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: I'm going to abstain from my vote this evening due to possible litigation against me.

CLERK BLACKMON: Councilmember Pachuta?

COUNCILMEMBER PACHUTA: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

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CLERK BLACKMON: Councilmember Roche?

COUNCILMAN ROCHE: Yes.

MAYOR JENKINS: Motion carried.

All right, Scott.

ATTORNEY MORRISS: Thank you for your time.

MAYOR JENKINS: Thank you.

MR. HAEBERLIN: The next item we have is again a public hearing, conditional use for a truck and trailer rental. The applicant is Mumtaz S. Pirani. It's 4483 Tilly Mill Road at the Happy Mart, which is a convenience store and package store, 18-342-05-009. The lot is approximately 15,000 square feet. The property is zoned M-1.

At this time, we invite the applicant to come forward.

MR. PIRANI: Good afternoon. You guys want to ask any question about the truck rental?

COUNCILMEMBER BATES: Sir, you're going to have to speak up.

MR. PIRANI: Yeah. You guys have any question about the truck rental that we do at this location?

COUNCILMAN ROCHE: Could you give us a summary of what you want to do there?

MR. PIRANI: Yeah. Usually the U-Haul's a

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dealership that they give us on the truck rental, the U-Haul truck rental, and like they do online reservation and we rent the truck one-way and in town like for a day. We usually have a few trucks on the lot inventory, and the customer comes in and we rent the truck.

COUNCILMEMBER PITTMAN: How long did you own this business?

MR. PIRANI: I just had this one on May, May 1st, 2010.

COUNCILMEMBER PITTMAN: So you bought it in May?

MR. PIRANI: Yes.

COUNCILMEMBER PITTMAN: From a family member?

MR. PIRANI: No.

COUNCILMEMBER PITTMAN: I said from a family member.

MR. PIRANI: No.

COUNCILMEMBER PITTMAN: So how many trucks do you anticipate?

MR. PIRANI: Normally it's in and out. We only have the two-truck inventory that U-Haul give us to start with and then somebody drop off and then they always have a reservation that they drop it off. They

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1 come and pick it up, the main U-Haul location. They
2 have it on Jimmy Carter Boulevard. They always come
3 and get the truck when they have one-way. So most of
4 the time, we have two truck inventory but up and down,
5 sometimes we get three or four. Other than that, we
6 only have two trucks.
7 COUNCILMEMBER PITTMAN: A few weeks ago,
8 there was a lot of U-Haul trucks parked there.
9 MR. PIRANI: Yeah, we had it, because we --
10 the previous owner had the dealership on the U-Haul.
11 And then I applied for it. I got approved for the
12 U-Haul dealership, but I didn't know that we had to
13 have a conditional use because I'm new in the city.
14 And I applied for it, they gave me the letter that you
15 have to have a conditional use application, and then I
16 was getting together with all the stuff.
17 But it was previously location. Then the
18 people, I don't know. They always look at online and
19 they keep dropping off the trucks. I have to call
20 U-Haul people to pick it up because we always be
21 surrounding area, and they have to come and get it. I
22 wasn't renting; it was just -- they will just -- Yeah,
23 we can --
24 COUNCILMEMBER PITTMAN: You had a lot.
25 MR. PIRANI: I know. They had there. They

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1 made a time. They -- one way it's sometimes
2 summertime, like vacation time people move around and
3 they drop so many trucks around. We had to limit it
4 but sometime we close, and they used to be like closed
5 location. Also, they have a drop box and drop it off
6 and they leave the truck. When we come in the
7 morning, we have to enter it in the computer and then
8 we have to send it to another location. So that's
9 what it's all about.
10 And other than that, we stop that. Please
11 don't bring it. We take it off the Internet, so they
12 really don't bring it, because we put it on there
13 closed, so -- And the phone number also we change. So
14 nobody calls for the rental because normally they
15 always look at online and they see the inventory or
16 they reserve it to the U-Haul 1-800 and then they send
17 it to the location where the truck is available. But
18 normally we don't have any trucks so they don't send
19 us any more. As soon as we got vacation in process,
20 we stopped.
21 COUNCILMEMBER PITTMAN: So you are not going
22 to have no more than two on the premises? Is that
23 what you're saying?
24 MR. PIRANI: As a beginning inventory. I
25 mean I'm not sure I mean that every day it's going to

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1 be two, but sometimes we're none and sometimes maybe
2 three, maybe. But it will be my permanent inventory,
3 the two truck. That's it.
4 COUNCILMEMBER BATES: And what is your
5 principal business?
6 MR. PIRANI: Convenience store.
7 COUNCILMEMBER PITTMAN: And where will you
8 be parking those trucks?
9 MR. PIRANI: In the back. We have space
10 behind the store.
11 COUNCILMAN ROCHE: Yeah. I see in the back
12 or the back of what I'm looking at right now, it has
13 about five trucks parked behind it. You don't have a
14 fence or anything but --
15 MR. PIRANI: There is a fence behind the
16 wall on the side of the next --
17 COUNCILMAN ROCHE: Right.
18 MR. PIRANI: -- property. There's a fence
19 there.
20 COUNCILMAN ROCHE: So the trucks would be
21 behind the building?
22 MR. PIRANI: Right, yeah.
23 COUNCILMAN ROCHE: Now, on this particular
24 day, they happened to catch you with a truck in front
25 of your building?

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1 MR. PIRANI: Perhaps, because, you know,
2 sometimes we close and when they drop in the night or
3 sometimes, we have to take it back into the back.
4 When we come in at 8 o'clock in the morning or 7:00
5 when we open up, we have to get it.
6 Normally, on the weekends, we always rent it
7 out. We never have the trucks over there. On week
8 days, just for a few days, Monday to Wednesday or
9 something like that, there is nobody is renting truck,
10 and we have some inventory, but normally we never have
11 the trucks over there.
12 COUNCILMAN ROCHE: And next door to you is a
13 -- obviously it's a Euro Performance, which is a
14 mechanic.
15 MR. PIRANI: Mechanic.
16 COUNCILMAN ROCHE: Auto mechanic.
17 MR. PIRANI: Yes.
18 COUNCILMEMBER PITTMAN: And they sell cars
19 also.
20 MR. PIRANI: They sell cars?
21 COUNCILMEMBER PITTMAN: Uh-huh.
22 COUNCILMAN ROCHE: And then Pull-A-Part
23 which --
24 MR. PIRANI: Pull-A-Part next door.
25 COUNCILMAN ROCHE: -- is used auto parts.

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COUNCILMEMBER PITTMAN: And there's a dry cleaners right here.
Just curious. There's been a limo parked there for a while. What is that?
MR. PIRANI: Oh, they -- they -- they service the limo, the garage people. They have a contract with a limo company. They repair the cars for the limos company. Most time, they always bring two or three cars and they have one on the inside and one outside by the -- it's right beside my building.
COUNCILMEMBER PITTMAN: Kind of been on your side, so I was just --
MR. PIRANI: They always do that, yeah. In other words, I have to talk to them about it if they bring it all the time.
COUNCILMEMBER ALEXANDER: What are your hours of operation?
MR. PIRANI: 8:00 a.m. to 10:00 p.m.
COUNCILMEMBER ALEXANDER: Seven days a week or --
MR. PIRANI: Sundays we close early like 7 o'clock.
COUNCILMEMBER ALEXANDER: And so your agreement with U-Haul is if you get a certain amount of vehicles, you are to call them and they are to come

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and retrieve them?
MR. PIRANI: Right, yeah. They know it. We would normally -- we have all inventory online, and they always pull it up. And when we see that we have trucks more than our capacity, they will pick it up and they will resolve it, transcend the customer, we rent it out one way, so they won't come back.
Normally in town they come and go, come and go, but once we go out one way, then we don't have an inventory.
COUNCILMEMBER ALEXANDER: And you're going to do -- Because your application says two to four trucks between 10 and 14 feet. So you're not going to bother with the trailers or anything like that, just trucks only?
MR. PIRANI: That is all.
MAYOR JENKINS: Any more questions?
COUNCILMEMBER FLEMING: Yes, sir. I had a couple.
So I am to understand that you purchased this business in May; is that correct?
MR. PIRANI: Yeah.
COUNCILMEMBER FLEMING: Okay. Who did you purchase it from?
MR. PIRANI: Mr. Fong Lee (phonetic). His

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name is Lee, Mr. Lee.
COUNCILMEMBER FLEMING: At that time that you purchased it, the business Happy Mart C-store --
MR. PIRANI: Right.
COUNCILMEMBER FLEMING: -- he had a contract with U-Haul in place. So when you purchased the business, you assumed the U-Haul was going to go with it, that dealership? I mean the --
MR. PIRANI: Yeah.
COUNCILMEMBER FLEMING: -- the contract?
MR. PIRANI: Uh-huh. No. I had to apply, new application.
COUNCILMEMBER FLEMING: Right. And were you awarded a contract with U-Haul?
MR. PIRANI: Yes. I --
COUNCILMEMBER FLEMING: Okay.
MR. PIRANI: -- I void that one and apply new one and I got approved for that.
COUNCILMEMBER FLEMING: Okay. I think that's the only questions I need to ask you, sir. Thank you very much.
MR. PIRANI: Thank you.
MAYOR JENKINS: Any more questions?
- - -
(No response)

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- - -
MAYOR JENKINS: Scott?
MR. HAEBERLIN: Yes, sir, there was -- the previous business was that of a convenience store. Now, the old zoning code allowed a convenience store in M-1, so currently the convenience store is a legal nonconforming use. The gentleman is correct. He did come in and apply for that.
We were very specific to make alcohol a separate application. Subsequent to that, he did apply for an alcohol license and was awarded -- after doing the necessary surveys and other items, he was awarded an alcohol license as well for that of a package store.
And then the next item that he wished to do was the U-Haul dealership. The U-Haul dealership was determined not to be, again, a legal nonconforming use because it was not allowed in the old code. It had been allowed, assumedly, by former staff. And so we had the applicant apply pursuant to the ordinance that exists today, 2008-23, which gives him rights to be considered as a conditional use with very specific criteria, obviously -- the fencing, the park in the rear, et cetera.
The information that I have received, that

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4483 Tilly Mill Road was at one time a residential structure. Sometime it has evolved into that of a convenience store. It's on a very, very small lot which is 15,000 square feet. Your comp plan actually states this probably should be zoned commercial rather than industrial, and one would think that commercial would be a more appropriate location as well for that of a convenience store.

So one of the things that you see in the site exhibit is really the site is very overdeveloped, and when we talk about our discussions about pervious versus imperious, the residual of this property, the rear of the property, is really the 30 percent that the applicant needs to comply with the zoning ordinance. So by adding a parking area there, which is required to be on impervious surface, he then breaks the threshold of 70 percent -- 70 percent impervious versus 30 percent pervious -- and this is an area that should be devoted to green space, trees, what-have-you, grass, et cetera. The code would require him to pave it and it would require him as well to install the necessary black fencing.

These are some of the basic tenets of your zoning code. When I came here, there were no impervious limits, so the first thing that the staff

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went -- went forward with is to try to set some limits in the city so that we didn't have sites that were completely covered in blacktop or asphalt.

And again, this really in my mind breaks the threshold of stormwater, because in order for him to have the remainder of the site as a truck or trailer rental location, he will probably have to exceed the 70 percent threshold, which is again a variance to the code.

I also drew in on your exhibit that you see, that more than half the area which he is wanting to devote to parking is actually a drive easement by record, because this lot serves many functions. One of the functions is to access the former KinderCare site on the back side, which the City Council heard as a daycare petition some time ago, but it also provides access to the adjacent auto repair facility and the car sales lot.

Again, this is a very tight area if you've had an opportunity to drive into the area. It's a tight area. It has very difficult traffic circulation. It is in my mind, again, way over-developed for 15,000 square feet. And again, based on the standards of review, I did recommend denial of this petition as well.

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Are there any questions?

COUNCILMEMBER FLEMING: Yes, I have a question or two.

MR. HAEBERLIN: Yes, ma'am.

COUNCILMEMBER FLEMING: On the 2010 renewal, did the previous owner apply for renewal for 2010?

MR. HAEBERLIN: In my best recollection, they did apply for renewal, and the only thing that they were granted was that of the C-store. We specifically exempted package, the package component, which is a different application, and we specifically exempted as well the U-Haul.

So yes, in my review of that time frame, yes, there was a request by the previous owner. When we sent out the letter regarding alcohol, then we were pretty much notified that the business had been sold. When the current or -- excuse me -- the previous owner did not receive the alcohol license instantaneously, then it's my belief they sold the business or they were no longer interested in having the business, and then this gentleman arrived on the scene. But we never actually followed through or completed the alcohol application with the previous owner because there are some pretty extensive requirements that require alcohol surveys to be completed by a

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registered land surveyor. Apparently, they were not interested in that.

COUNCILMEMBER FLEMING: So the renewal for the previous owner, to the best of your recollection, he was applying for the quick mart or whatever, a liquor/package store, and a U-Haul type location on the application originally, the best of your knowledge?

MR. HAEBERLIN: I don't know if it was...Again, this is going back, but I don't know if that was all on one application, but I do recall what was actually approved was that of only a grocery store or convenience store. I wrote on the side, alcohol is a separate permit, et cetera, as I normally do.

COUNCILMEMBER PITTMAN: Well, the previous owner sold lots of things from four-wheelers to all kinds of things that they were not supposed to be doing, and so we received quite a lot of complaints from the Dunwoody neighborhood there in reference to the business.

MR. HAEBERLIN: There had been code enforcement activity dating back to the daycare application. When we had the daycare application at 4485 Tilly Mill Road, I arrived on the site and found U-Haul vehicles parked on that site. I notified code

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1 enforcement. They went out there I believe and wrote
2 some warnings or citations, and, you know, that was
3 part of that petition, and obviously ongoing code
4 enforcement.
5 But again, in my review of the past M-1
6 zoning ordinance, there was no provision for truck or
7 trailer rental, so why it's there is again a mystery
8 to me.
9 MAYOR JENKINS: Any more questions?
10 - - -
11 (No response)
12 - - -
13 MAYOR JENKINS: Want to open it up, public
14 hearing.
15 MR. HAEBERLIN: At this time, the Mayor is
16 opening the public hearing.
17 Those who would like to speak in favor of
18 the petition, please raise your hand. Seeing none.
19 Those who would like to speak against the
20 petition, please raise your hand as well.
21 One, Mr. Hart. Please come forward.
22 COUNCILMEMBER PITTMAN: There's two.
23 MR. HAEBERLIN: Two? Was there another
24 individual?
25 COUNCILMEMBER PITTMAN: Ms. Gilman.

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1 MR. HAEBERLIN: Ms. Gilman? Okay.
2 Please come forward.
3 MR. HART: I agree that this area is -- it's
4 kind of congested, and it's a gateway entrance on
5 Tilly Mill from Dunwoody to the city of Doraville, and
6 it's always been sort of an eyesore there on the side
7 of the road because it's -- you know, from the corner
8 liquor store on Peachtree Industrial to this
9 particular area, it's -- it's a combination of used
10 car lot, you know, repair shop, you know, kind of
11 free-for-all going on there. The only nice building
12 that's really there is the Pull-A-Part which is their
13 headquarters building and they don't sell parts there
14 but just they keep their office space there.
15 So you know, having U-Haul trucks parked out
16 there, I don't think on Tilly Mill at that point --
17 And the whole -- the whole strip needs to be
18 cleaned up because it's a mess. There's oil all over
19 the parking lot, and I mean it's like they're working
20 all over this. It just doesn't look good. There is a
21 dry cleaners. And actually these businesses could
22 probably do more business if it was a little better
23 organized rather than trying to crawl all over each
24 other. So I don't recommend they put U-Haul trucks
25 there. Thank you.

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1 MS. GILMAN: Mayor, Council. Carol Gilman.
2 I drove over there today, and frankly, I
3 don't see how you could get U-Haul trucks in and out
4 of there. I believe there was a quality of life
5 vehicle out in that area also today. There was a huge
6 truck parked out front of the convenience store.
7 And just looking at the area, you've got the
8 dry cleaners on the left and you've the BMW repair
9 shop and you got the cars that they work on at that
10 repair shop outside, outside their shop and also
11 taking up part of the access, the driveway. And then
12 you take the vehicles that are at the convenience
13 store.
14 Then you go back up -- and I don't know how
15 quality of life has missed the former KinderCare up
16 there on the hill. They've got weeds taller than I
17 am. I think they probably have weeds as tall as
18 trees. I mean it's just frightful.
19 You come toward Doraville, you're coming
20 down Tilly Mill and you have this lovely -- these
21 lovely homes, these lovely condominiums, and then you
22 get to the Doraville city limit sign and you have this
23 corner of stuff that really, really -- I agree with
24 Tom. They'd probably do more business if they were
25 cleaned up.

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1 And then if you stand at the convenience
2 shop and you look across the street, there's a lovely
3 entrance to a subdivision. And I don't know anybody
4 who lives there, but I tell you, I have empathy for
5 them as they come out of their lovely subdivision and
6 this is what they see. That's a great way to start
7 your day on the way to work, isn't it? You could come
8 out and see some of these cars, and it's really a mess
9 there on that corner, and if you had to also face
10 U-Haul trucks coming and going.
11 I think the thing that really bothered me
12 today when I saw it is it's right there, "Welcome to
13 Doraville." And based on that, I certainly support
14 the staff's recommendation of denial of this petition
15 request.
16 MAYOR JENKINS: You got --
17 MR. HAEBERLIN: Close the --
18 MAYOR JENKINS: -- anything else?
19 MR. HAEBERLIN: -- public hearing. No, sir,
20 I have nothing else.
21 MAYOR JENKINS: Bring it to the table.
22 COUNCILMEMBER FLEMING: I just wanted to
23 confirm. He has received an occupational tax permit
24 or occupational permit for a convenience store and to
25 sell liquor; is that correct?

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1 MR. HAEBERLIN: Correct. Those are two
2 separate items, but yes, he has received both of
3 those.
4 COUNCILMEMBER FLEMING: Is he considered a
5 convenience or package store at this point with us as
6 far as the usage?
7 MR. HAEBERLIN: Well, really and technically
8 under the zoning code it's considered a grocery store,
9 and then the liquor code, which is a regulatory code,
10 it's a package store for lack of a better word. They
11 sell beer and wine.
12 COUNCILMEMBER FLEMING: Okay.
13 COUNCILMEMBER ALEXANDER: Okay. So it's
14 beer and wine; it's not liquor.
15 MR. HAEBERLIN: Correct.
16 COUNCILMEMBER ALEXANDER: Okay.
17 MR. HAEBERLIN: Beer and wine.
18 And those are both effective and valid from
19 the City at this time.
20 COUNCILMEMBER FLEMING: Thank you.
21 MR. HAEBERLIN: Uh-huh.
22 MAYOR JENKINS: Anybody else? Any
23 questions?
24 COUNCILMEMBER PITTMAN: I'd like to make a
25 motion to deny the conditional use for the truck/

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1 trailer rental at 4483 Tilly Mill Road.
2 COUNCILMEMBER FLEMING: Second.
3 MAYOR JENKINS: Okay. Any more discussion?
4 - - -
5 (No response)
6 - - -
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 COUNCILMAN ROCHE: Yes.
20 MAYOR JENKINS: Motion denied.
21 MR. HAEBERLIN: Mayor and Council, the next
22 item you had, it falls under administrative review. I
23 know some people cringe at that, but this is your cell
24 tower ordinance. And this does not constitute a
25 public hearing but it does require it to come before

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1 the Council, and basically, installing an antenna on
2 an existing tower allows the Council to administra-
3 tively approve that use.
4 And so tonight we have Mr. Sarran Marshall
5 from Clearwire Legacy LLC for the location at
6 Doraville Plaza, which is 5766 Buford Highway,
7 18-320-06-008, and this is a small, small portion
8 leasehold, 0.0551 plus or minus of the larger site
9 which is zoned C-2. Many of you know this location.
10 It's the location behind the Chick Fil-A to just give
11 you a point of where it is.
12 At this time, I invite the applicant to come
13 forward and explain his request to the Council.
14 Again, this does not constitute a public hearing.
15 MR. MARSHALL: Good evening, Mayor,
16 Chairman, Members of the Board.
17 Sorran Marshall, 30 Mansell Court, Suite
18 103, Roswell, Georgia 30076. I'm here on behalf of
19 Clearwire concerning an upgrade to their antennas that
20 they have on an existing tower here in Doraville.
21 The request before you will not change
22 anything you see on the existing facility, will not
23 change anything that you have come to recognize by the
24 structure. It's currently about a 150-foot structure.
25 Clearwire has antennas at 110 feet on that existing

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1 pole. They're grading the site. They have one
2 antenna per sector, so a total of three antennas at
3 110 feet on the pole.
4 What they're going to do, they're going to
5 switch out one antenna -- not all three, just one --
6 upgrading it with another antenna. So they're just
7 taking one out, putting another one in. So it'll look
8 the same. It's not going to -- It's not adding to;
9 it's just a swap-off of the existing antenna just to
10 upgrade the signal quality here for many of their
11 customers. And for those that are not that clear of
12 what Clear does -- Clearwire is also known as Clear.
13 They provide wireless broadband to the metro area.
14 So with that, I hope that the Council
15 approves our request and I'm more than happy to answer
16 any questions you have.
17 COUNCILMEMBER FLEMING: The way that your
18 letter read --
19 MR. MARSHALL: Yes.
20 COUNCILMEMBER FLEMING: -- and I apologize
21 for maybe misunderstanding, but it appeared that you
22 were going to swap out antenna for a similar model and
23 adding one panel antenna.
24 MR. MARSHALL: No, no. It's a swap-out. So
25 we're just taking the one that's there now and putting

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1 up another one to just replace it. It's a
2 replacement.
3 COUNCILMEMBER PITTMAN: Any size difference?
4 MR. MARSHALL: No. Same size, just
5 different. In the antenna -- each antenna that's
6 there now is considered -- each antenna is considered
7 a dual-pole antenna. When it gets stronger signal in
8 one sector -- If you look at it as signal dispersion,
9 the dispersion's in three different angles. And in
10 one different -- one particular angle, I guess they
11 have customers that are not getting good signal
12 quality so they're going to change out what is called
13 a dual-pole antenna and put in a quad-pole antenna.
14 That just means that it's a stronger signal, better
15 frequency; the customers get better reception.
16 More than happy to answer any other
17 questions you have.
18 COUNCILMEMBER FLEMING: And this is your
19 specific, Clearview's --
20 MR. MARSHALL: Clearwire.
21 COUNCILMEMBER FLEMING: -- pole?
22 Clearwire's --
23 MR. MARSHALL: No.
24 COUNCILMEMBER FLEMING: -- pole?
25 MR. MARSHALL: No. Clearwire does not own

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1 any poles.
2 COUNCILMEMBER FLEMING: Do we have to get
3 permission from the owner of the existing pole for you
4 guys to shimmy up the pole and change out a panel?
5 MR. MARSHALL: We already have a lease
6 agreement with them.
7 MAYOR JENKINS: Any more questions?
8 - - -
9 (No response)
10 - - -
11 MAYOR JENKINS: Scott, we don't have to have
12 a public hearing on this.
13 MR. HAEBERLIN: No, sir. Under your code,
14 this is an administrative right of the Council, does
15 not constitute a public hearing.
16 MAYOR JENKINS: Okay.
17 MR. HAEBERLIN: This merely gives the staff
18 the ability, then, to proceed with the necessary
19 permitting to go forward with the necessary permits to
20 do this, basically.
21 COUNCILMAN ROCHE: So do we have to approve
22 this or -- I mean why are we here?
23 MR. HAEBERLIN: Well, you're here because
24 your code requires it. I'm not a big fan of this
25 portion of your code; I would like to rewrite it. I

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1 think that these folks coming forward to you for an
2 existing tower seems unnecessary and cumbersome. But
3 however, it is your code, and I will enforce the code
4 as it exists. On page 20 of the code under (b)(2), it
5 does require this item to come to you for you guys to
6 make a decision and then forward it to me.
7 COUNCILMEMBER FLEMING: Well, I think that's
8 a wise decision because I surely wouldn't want them
9 just to just be carte blanche hanging up additional
10 antennas and us not knowing about it.
11 COUNCILMAN ROCHE: Given that we are here
12 and given that this is a public forum, as usual, I
13 would always think that if anyone wants -- any
14 citizens want to give their opinion about it, I think
15 they certainly should be allowed to.
16 MAYOR JENKINS: I don't think it requires
17 it, but Murray?
18 COUNCILMEMBER ALEXANDER: I don't think
19 anybody --
20 ATTORNEY WEED: Yeah. It's definitely not
21 required, Mayor. And you can always choose to do it,
22 but it's certainly not required. And if you did allow
23 public comment, I would advise you to give the public
24 comments under the scenario very little weight in any
25 judgment you make with regard to this code, because

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1 the code is very specific that it is not a public
2 hearing.
3 COUNCILMAN ROCHE: I mean I honestly don't
4 know if anyone has anything to say about it, but, you
5 know.
6 MAYOR JENKINS: Okay. Do we need a motion
7 on that, to approve it?
8 ATTORNEY WEED: Mr. Mayor, it looks like you
9 might be ready to make a motion to either approve this
10 or not approve it.
11 MAYOR JENKINS: Yes, that's what I mean.
12 ATTORNEY WEED: Yes, sir.
13 MAYOR JENKINS: Yes.
14 ATTORNEY WEED: You need a motion for that.
15 COUNCILMAN ROCHE: We're not going to give
16 people the opportunity to have something to say?
17 COUNCILMEMBER ALEXANDER: I don't think
18 anyone wanted to, Mr. Roche.
19 COUNCILMAN ROCHE: Well, but we don't know
20 that.
21 COUNCILMEMBER ALEXANDER: Well, let's go.
22 COUNCILMEMBER PACHUTA: Since the code does
23 not allow for a public hearing, I just want to put it
24 on the record that I object to having public comments
25 because I don't want it to be considered as giving

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1 weight to any public comments when they're not
2 required.
3 MAYOR JENKINS: We say no, Mr. Stuart.
4 ATTORNEY WEED: If you -- if the Council
5 denies this decision, denies the request, and the
6 argument could be made that you did so based upon the
7 public comment which is not required by your
8 ordinance, I would warn you about that, and what I
9 would advise you is to state publicly that if you
10 allow the public to speak on this that their comments
11 will not be used in any way in your decision-making
12 process with regard to this code.
13 So you can certainly let the public speak,
14 but I would also advise you to put on the record that
15 whatever they say didn't affect your decision. That's
16 my best advice.
17 MAYOR JENKINS: That would have to be in the
18 motion if we let them speak.
19 ATTORNEY WEED: Mr. Mayor, you run the
20 meeting. You don't have to have a motion and a second
21 to let them speak.
22 MAYOR JENKINS: I said no. Then you came up
23 with this.
24 ATTORNEY WEED: Mr. Mayor, unless someone
25 countermands your decision by making a motion that

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1 gets a second to let the public speak, then the answer
2 is no, the public is not speaking on this issue.
3 MAYOR JENKINS: Okay. Do I get a motion to
4 that effect to let the public speak?
5 COUNCILMAN ROCHE: I would like to make a
6 motion that we allow the public to speak on this
7 issue.
8 COUNCILMEMBER FLEMING: Absolutely.
9 MAYOR JENKINS: Any more discussion?
10 Are you seconding that?
11 COUNCILMEMBER FLEMING: Yes, sir, I did,
12 with an "absolutely."
13 MAYOR JENKINS: Okay. Very good.
14 Call the roll, please.
15 CLERK BLACKMON: Councilmember Alexander?
16 COUNCILMEMBER ALEXANDER: No.
17 CLERK BLACKMON: Councilmember Bates?
18 COUNCILMEMBER BATES: No.
19 CLERK BLACKMON: Councilmember Fleming?
20 COUNCILMEMBER FLEMING: Yes.
21 CLERK BLACKMON: Councilmember Pachuta?
22 COUNCILMEMBER PACHUTA: No.
23 CLERK BLACKMON: Councilmember Pittman?
24 COUNCILMEMBER PITTMAN: No.
25 CLERK BLACKMON: Councilmember Roche?

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1 COUNCILMAN ROCHE: Yes.
2 MAYOR JENKINS: Motion denied.
3 COUNCILMEMBER ALEXANDER: I make a motion to
4 approve the administrative review to upgrade replace-
5 ment of existing equipment on the tower located at
6 5766 Buford Highway.
7 COUNCILMAN ROCHE: And I'll second that.
8 MAYOR JENKINS: Any more discussion?
9 - - -
10 (No response)
11 - - -
12 MAYOR JENKINS: Call the roll, please.
13 CLERK BLACKMON: Councilmember Alexander?
14 COUNCILMEMBER ALEXANDER: Yes.
15 CLERK BLACKMON: Councilmember Bates?
16 COUNCILMEMBER BATES: Yes.
17 CLERK BLACKMON: Councilmember Fleming?
18 COUNCILMEMBER FLEMING: Yes.
19 CLERK BLACKMON: Councilmember Pachuta?
20 COUNCILMEMBER PACHUTA: Yes.
21 CLERK BLACKMON: Councilmember Pittman?
22 COUNCILMEMBER PITTMAN: Yes.
23 CLERK BLACKMON: Councilmember Roche?
24 COUNCILMAN ROCHE: Yes.
25 MAYOR JENKINS: All right.

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1 COUNCILMEMBER ALEXANDER: Motion to adjourn.
2 COUNCILMEMBER PACHUTA: Second.
3 MAYOR JENKINS: Any more discussion?
4 - - -
5 (No response)
6 - - -
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 COUNCILMAN ROCHE: Yes.
20 - - -
21 (Meeting adjourned at 7:40 p.m.)
22 -o0o-
23
24
25

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 24th day of August, 2010.

_____

Theresa Bretch, CCR
Permit No. B-755

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