In The Matter Of:

City of Doraville

State of Georgia

Doraville City Council Meeting

August 23, 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., August 23, 2010.

* * *

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

For the City of Doraville:
David Greene, Consultant
Perkins & Will
William Fussell
Miller & Martin

For Dekalb County:
Burrell Ellis, CEO Dekalb County
Jabari Simama, Chief of Staff, Dekalb County
Ann Rosenthal, Dekalb County
John Majors, Thompson Dawson

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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 is not present.

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: Councilman Bates will not be here because he's got family sickness and he's going to be traveling.

Okay. No approval of the minutes tonight.

Remember, cut your cell phones off so we won't have to worry about that.

Got a couple of guests tonight, Mr. CEO Ellis is with us tonight and his sidekick, Mr. Jibari Simama, and Anne Rosenthal who is with the County, and that's about it.

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So we're going to go into Mayor's Comments, and we have a possible Executive Session for future pending real estate, and that will concern Mr. Ellis and his people.

So Murray, do we need a motion to go into Executive Session?

ATTORNEY WEED: Yes, Mr. Mayor, if you do desire to go into Executive Session for the acquisition of real estate or discussion of the same, we need to make a motion and get a second to do that.

MAYOR JENKINS: Do I get a motion?

COUNCILMEMBER PACHUTA: So moved.

COUNCILMEMBER PITTMAN: Second.

MAYOR JENKINS: Any discussion?

COUNCILMEMBER ROCHE: Only, Mayor, that since this was added to the agenda and we do have an item Public Comments on Agenda Items, I think before we go into Executive Session we should allow the public to comment on this new item that's been added to the agenda.

MAYOR JENKINS: Very good.

Murray?

ATTORNEY WEED: Mr. Mayor, that's up to the Mayor and Council of course. You can always amend the agenda if you so choose to. In order to amend the

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1 agenda, it would require a motion and a second. So if
2 you want to place that item before Item III, you
3 certainly can do that.
4 COUNCILMEMBER ROCHE: I'd like to make a
5 friendly amendment to move the Executive Session until
6 after Item VI, which is Public Comments on Agenda
7 Items.
8 MAYOR JENKINS: Second?
9 ATTORNEY WEED: Mr. Mayor, before you
10 resolve that, you may want to resolve the first --
11 MAYOR JENKINS: Okay.
12 ATTORNEY WEED: -- vote or ask that the
13 person who made that motion allow the second motion to
14 go forward first.
15 COUNCILMEMBER ROCHE: No. I'm sorry. I was
16 making a friendly amendment, asking for a friendly
17 amendment --
18 COUNCILMEMBER PACHUTA: I'll keep my motion
19 as it stands.
20 COUNCILMEMBER ROCHE: -- to the current
21 motion.
22 MAYOR JENKINS: So I accept your second
23 motion?
24 COUNCILMEMBER ROCHE: Well, no. There's
25 only one motion on the floor.

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1 MAYOR JENKINS: Okay.
2 ATTORNEY WEED: Currently, there is one
3 motion on the floor, Mr. Mayor --
4 MAYOR JENKINS: We're going to vote on it?
5 ATTORNEY WEED: -- and that is whether or
6 not to go into Executive Session for the acquisition
7 of real estate.
8 MAYOR JENKINS: Okay. Call the roll.
9 MS. HUNT: Excuse me. I'd like to object to
10 the Executive Session. It needs to be noted on the
11 record. I don't know what other time I can offer this
12 before the vote.
13 ATTORNEY WEED: Mr. Mayor, apparently -- I
14 believe that's Ms. Hunt from --
15 I guess you represent --
16 MS. HUNT: My name's April Hunt from the
17 Atlanta Journal-Constitution. I want --
18 ATTORNEY WEED: Please approach the micro-
19 phone and state your name and purpose.
20 MS. HUNT: My name is April Hunt. I'm with
21 the Atlanta Journal-Constitution and I object to the
22 Executive Session.
23 This is not a situation where a real estate
24 deal is in effect or a price change is going into
25 effect since the public knows about it.

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1 What's more, this is a development deal that
2 the County is entering where they're going to buy and
3 give the land to a private developer.
4 The City and the County are not buying the
5 land. This came up in Dekalb County last week, and
6 they declined to go in Executive Session for that very
7 reason.
8 I just wanted to note it on the record
9 because I know it puts you at risk for any actions
10 taken from your Executive Session.
11 ATTORNEY WEED: And if I could, Mr. Mayor,
12 I'd like to ask one question.
13 What information are you privy to, Ms. Hunt,
14 that would indicate that the City of Doraville is not
15 attempting to acquire land?
16 CEO ELLIS: The facts, if I may --
17 ATTORNEY WEED: Mr. CEO, please. We're not
18 addressing you at the moment.
19 Ms. Hunt, would you answer my question,
20 please?
21 MS. HUNT: The records that the AJC has
22 indicate that the deal is for the County to issue the
23 Federal stimulus bonds to jump start some program for
24 a private developer to actually be the owner of the
25 land.

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1 ATTORNEY WEED: Okay. Once again, what
2 information do you have that the City of Doraville is
3 not going into an Executive Session for purposes of
4 their acquisition of property? Do you have any
5 information with regard to that?
6 MS. HUNT: Yes. According to all the
7 records that we have so far, it indicates that
8 everything that has been discussed on this deal is for
9 Doraville and the County to enter into an agreement
10 and the County and the developer to enter into an
11 agreement for the developer to own land.
12 ATTORNEY WEED: And what deal do you propose
13 is going to be discussed tonight? What are you privy
14 to? because I don't believe my client, the Council,
15 knows what deal you're referring to --
16 MS. HUNT: The intergovernmental --
17 ATTORNEY WEED: -- because we haven't heard
18 anything from the CEO.
19 MS. HUNT: -- agreement between the County
20 and the City.
21 ATTORNEY WEED: Mayor and Council, the city
22 attorney's office's position on this is that if you
23 are going to go into Executive Session for discussion
24 of real estate that you intend to purchase, that
25 clearly is covered by acquisition. And if you elect

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to go into Executive Session for that purpose, you may. You may also choose not to go into Executive Session for that purpose. And you may have that discussion in public.

MAYOR JENKINS: Thank you. We've got a motion and a second; is that correct?

ATTORNEY WEED: That's my understanding, Mr. Mayor.

MAYOR JENKINS: Okay. Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll, please.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: No.

CLERK BLACKMON: Councilmember Pachuta?

COUNCILMEMBER PACHUTA: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: No.

CLERK BLACKMON: 3-2, motion carries.

COUNCILMEMBER ROCHE: I'd like to make a

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motion that we allow public comments on the agenda items especially the GM property thing before we go into Executive Session for -- have those comments before the Executive Session.

COUNCILMEMBER PACHUTA: I believe we're in Executive Session now, currently?

ATTORNEY WEED: Yes, ma'am, that's my understanding.

COUNCILMEMBER PACHUTA: Are we going to remain in here?

COUNCILMEMBER ROCHE: So you're saying we cannot have public -- that was pretty clever.

ATTORNEY WEED: Mr. Councilman --

COUNCILMEMBER ROCHE: My apologies.

ATTORNEY WEED: -- I'm not saying anything.

COUNCILMEMBER ROCHE: No, I wasn't talking about you.

ATTORNEY WEED: They made a motion, they made a second.

COUNCILMEMBER ROCHE: And then I made a motion.

ATTORNEY WEED: If someone would like to retract that motion or call for another motion, now is your opportunity to do so.

COUNCILMEMBER FLEMING: Motion to

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reconsider.

MAYOR JENKINS: Do you want to make another motion, Bob?

COUNCILMEMBER ROCHE: I just did.

COUNCILMEMBER FLEMING: Motion to reconsider.

COUNCILMEMBER ROCHE: I made a motion to allow the people that are here to be able to, you know, vent -- to give their opinions before --

COUNCILMEMBER ALEXANDER: We have a motion to --

COUNCILMEMBER ROCHE: -- we make a decision.

COUNCILMEMBER ALEXANDER: -- reconsider the previous motion. Are you making a separate motion?

COUNCILMEMBER ROCHE: I'm making a separate motion.

ATTORNEY WEED: Okay. Let's deal with this one at a time.

The Councilman has made a motion. Is there a second to that motion?

COUNCILMEMBER ALEXANDER: Which council-person?

ATTORNEY WEED: I'm sorry, the councilman. Councilman Roche has made a motion to amend the agenda to allow public comments on I assume all items but

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apparently particularly item number III --

COUNCILMEMBER ROCHE: Well, essentially --

ATTORNEY WEED: -- prior to going into Executive Session formally.

COUNCILMEMBER ROCHE: -- just cover agenda Item VI which is Public Comments on Agenda Items, and this is certainly an agenda item.

ATTORNEY WEED: So you wish to modify the agenda to relocate Item No. VI before Item No. III; is that correct?

COUNCILMEMBER ROCHE: That sounds right, yes. Thank you.

ATTORNEY WEED: Mr. Mayor, I advise you, if you want to, you can get a second to that motion.

MAYOR JENKINS: We did.

ATTORNEY WEED: Is there a second?

MAYOR JENKINS: Didn't we get a second?

COUNCILMEMBER FLEMING: Second.

MAYOR JENKINS: Any more discussion?

COUNCILMEMBER ALEXANDER: We are in Executive Session already. We made a motion to go into Executive Session; correct?

ATTORNEY WEED: My opinion is you made a motion to go into Executive Session but you haven't entered into Executive Session formally yet. You've

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1 got another motion which now has been seconded. You
2 may as a group proceed with that motion or you may
3 elect not to do so.
4 COUNCILMEMBER ROCHE: Well, I think that
5 we're going to be discussing something that -- you
6 know, we're talking about millions and millions of
7 dollars, and I believe that there are people here that
8 definitely have an opinion one way or another. I
9 think the citizens who are going to be our taxpayers
10 that may or may not potentially be taking on the
11 burden of this potential large sum of money should
12 certainly have the opportunity to voice their opinions
13 before we enter into an Executive Session to discuss
14 possible acquisition of property, and I think to deny
15 these people that would be just --
16 COUNCILMEMBER ALEXANDER: Okay. We got your
17 point, Mr. Roche. Let's move on because we have a lot
18 of people waiting.
19 COUNCILMEMBER ROCHE: And I apologize for
20 interrupting you, Councilwoman Alexander.
21 MAYOR JENKINS: Do we have any more
22 discussion?
23 COUNCILMEMBER FLEMING: Yes, sir; we do.
24 Motion to reconsider.
25 COUNCILMEMBER ALEXANDER: No. We have a

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1 motion to vote on.
2 COUNCILMEMBER ROCHE: No. We have another
3 motion.
4 ATTORNEY WEED: We're not there yet,
5 Council.
6 COUNCILMEMBER FLEMING: Oh, I'm sorry.
7 MAYOR JENKINS: Let's settle down, okay?
8 Any more discussion on Bob's motion?
9 - - -
10 (No response)
11 - - -
12 MAYOR JENKINS: Call the roll, please.
13 CLERK BLACKMON: Councilmember Alexander?
14 COUNCILMEMBER ALEXANDER: No.
15 CLERK BLACKMON: Councilmember Fleming?
16 COUNCILMEMBER FLEMING: Yes.
17 CLERK BLACKMON: Councilmember Pachuta?
18 COUNCILMEMBER PACHUTA: No.
19 CLERK BLACKMON: Councilmember Pittman?
20 COUNCILMEMBER PITTMAN: No.
21 CLERK BLACKMON: Councilmember Roche?
22 COUNCILMEMBER ROCHE: Yes.
23 CLERK BLACKMON: Motion denied.
24 ATTORNEY WEED: Now Councilman Fleming, if
25 you would like to make a motion to reconsider, I'd

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1 like you to identify whether you want to have the
2 Council reconsider the original motion or Councilman
3 Roche's motion?
4 COUNCILMEMBER FLEMING: Yes, sir, I'm aware
5 of policy.
6 I'd like to make a motion to reconsider the
7 vote on going into Executive Session prior to hearing
8 the public comments.
9 COUNCILMEMBER ROCHE: 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: No.
17 CLERK BLACKMON: Councilmember Fleming?
18 COUNCILMEMBER FLEMING: Yes.
19 CLERK BLACKMON: Councilmember Pachuta?
20 COUNCILMEMBER PACHUTA: No.
21 CLERK BLACKMON: Councilmember Pittman?
22 COUNCILMEMBER PITTMAN: No.
23 CLERK BLACKMON: Councilmember Roche?
24 COUNCILMEMBER ROCHE: Yes.
25 CLERK BLACKMON: Motion denied.

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1 MAYOR JENKINS: We'll go into the Mayor's
2 office or how do you want to do it?
3 ATTORNEY WEED: That's up to you, Mr. Mayor
4 and members of the Council. Because the court
5 reporter's already set up here, I would suggest we
6 stay here and we ask the public to leave.
7 MAYOR JENKINS: Very good.
8 I apologize, everybody's got to leave except
9 the consultants and the CEO and his people.
10 - - -
11 (Public exits Council chambers)
12 - - -
13 MAYOR JENKINS: We have only postponed the
14 first part of the Executive Session. We will be going
15 back into Executive Session, so we will --
16 Do we need a motion to come back in the
17 regular meeting?
18 ATTORNEY WEED: Yes, sir. You made a motion
19 to recess the Executive Session and you need a motion
20 to go into the regular meeting.
21 MAYOR JENKINS: Okay.
22 COUNCILMEMBER PACHUTA: So moved.
23 COUNCILMEMBER ALEXANDER: Second.
24 MAYOR JENKINS: Any more discussion?
25 - - -

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(No response)
- - -
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: 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?
COUNCILMEMBER ROCHE: Yes.
MAYOR JENKINS: Is that both motions now, Murray?
ATTORNEY WEED: You already made the first motion and it was passed, Mr. Mayor, so that's -- that's just the one to go into the regular meeting.
COUNCILMEMBER PACHUTA: I wanted to make a motion to amend the agenda. I'd like to move to the top of the agenda both the items involving Peter Maltese and also 2M Properties and the associated public hearings.
COUNCILMEMBER ALEXANDER: Those would be Items VIII-F and VIII-G.

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COUNCILMEMBER PITTMAN: Second.
MAYOR JENKINS: Any more discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: 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?
COUNCILMEMBER ROCHE: Yes.
MAYOR JENKINS: All right. Scott?
COUNCILMEMBER ROCHE: Point of order, Mayor. The next item on the agenda is Item VI which is Public Comments on Agenda Items.
COUNCILMEMBER ALEXANDER: And I believe the public comments will be heard on these items during the public hearings.
COUNCILMEMBER ROCHE: Well, the agenda items -- we added something to the agenda that we're in the

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process of discussing right now, and I think that people have shown up to talk about that. So the agenda items includes what we have been having Executive Session about. And that is the next thing on the agenda, and we did vote to go into Executive Session before Item VI.
COUNCILMEMBER PACHUTA: And my motion was to move --
COUNCILMEMBER ROCHE: So a --
COUNCILMEMBER PACHUTA: -- Peter --
COUNCILMEMBER ROCHE: -- point of order would be to continue with the agenda as the agenda was published to the public.
COUNCILMEMBER PACHUTA: My motion was to move ahead to the top the two items, Mr. Maltese and 2M Properties, so that is now moved to the top.
COUNCILMEMBER ROCHE: Actually, you said you were going to move that before the text amendment.
COUNCILMEMBER PACHUTA: No. I said to the top of the agenda.
ATTORNEY WEED: Councilman, your point of order is noted. My opinion as city attorney is that Councilman Pachuta has made a motion. I believe that motion was seconded. I'm turning to the Clerk to confirm that --

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CLERK BLACKMON: Right, and voted.
ATTORNEY WEED: -- and therefore, my advice to the Council is to deal with that motion first.
CLERK BLACKMON: It was voted on.
ATTORNEY WEED: It was voted on. Did it pass?
CLERK BLACKMON: Yes.
ATTORNEY WEED: Okay. With that, Councilman, I think that the order of the agenda has been officially moved by a majority vote. So now my understanding is the next item on the agenda currently is VIII-F.
COUNCILMEMBER ROCHE: Could we get the last motion read back, please, Mayor?
MAYOR JENKINS: Yes. Can you read it back, Rhonda?
CLERK BLACKMON: The court reporter.
- - -
(Requested portion read back by the court reporter)
- - -
MAYOR JENKINS: All right. Scott?
MR. HAEBERLIN: At this time, we'd like the applicant for Item VIII-F, Scott Peters, attorney for Peter Maltese, to come forward.
MR. PETERS: Thank you, Mayor, members of

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1 the Council. My name is Scott Peters. Professional
2 address is 1100 Peachtree Street in Atlanta. I
3 represent Peter Maltese who is with me here this
4 evening.
5 This is a request for a rezoning of certain
6 property that is shown there on the map. Currently it
7 is zoned O&I. It is also for a conditional use permit
8 to allow -- it is to rezone to an M-1 designation and
9 a conditional use permit to allow for a billboard and
10 also certain variances from the sign ordinance for
11 that billboard.
12 This rezoning request came out of a dispute
13 which has arisen between Mr. Maltese and the City of
14 Doraville regarding the legal status of a billboard
15 that is currently on his property and has been there
16 since 1989. That sign has been permitted several
17 times by the City of Doraville, there have been
18 billboard fees paid to the City of Doraville, but the
19 City has now decided that that sign was never legally
20 constructed, which has landed us in the City of
21 Doraville Municipal Court, which case is on hold
22 pending determination whether the dispute can be
23 resolved here or whether we will go back and fight
24 that issue there.
25 The request, again, is for rezoning to M-1

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1 because that is the zoning designation that is
2 necessary to allow a billboard within the city of
3 Doraville. Under the current O&I zoning, a billboard
4 is not a permitted or a conditional use.
5 It does require a conditional use permit
6 which, again, is part of the application, and there is
7 a request for three sign variances. One would be to
8 allow the sign to be 80 feet in height, one would be
9 to allow the sign to be located within 50 feet of a
10 residentially-zoned parcel, and the other is to allow
11 the sign to be located within 920 feet from another
12 billboard. The closest billboard is actually across
13 285 at the Atlas Pools location.
14 The existing sign has been on the property
15 for a number of years. There is included in the
16 package --
17 And Scott, I don't know if this is some-
18 thing you can display or if I need to show this. It
19 would be the site plan.
20 MR. HAEBERLIN: You'll have to show it.
21 COUNCILMEMBER ALEXANDER: If you have a
22 larger one, I would appreciate that.
23 MR. PETERS: Okay. And I'm sorry, I do not
24 have a full-size one, but I do have this, which I'm
25 happy to give you to share, which is the same that's

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1 in your package.
2 That is a conceptual plan. We do not have a
3 user ready to go on the site immediately but what we
4 wanted to do was provide you with an example of what
5 is feasible and what is likely under an M-1 zoning
6 designation on the property.
7 As you can see, what that shows is two
8 buildings. One would be a small office type building;
9 the second would be a warehouse type use. The
10 buildings are oriented towards the front of the
11 property.
12 We are asking for two zoning variances
13 because of the dissimilar buffers, dissimilar zoning
14 buffers with residential behind those. What we're
15 asking is to go from 250 feet to 50 feet in the rear
16 and 40 feet on the side.
17 As part of that request, we do agree that
18 those should be landscape buffers. Those should be --
19 until an ultimate development is done on the site,
20 those should be left in their natural state, which
21 there is a rather substantial stand of tall trees
22 there now. Those would remain in place until any
23 actual land disturbance occurred for the building, at
24 which time those buffers would have to be supplemented
25 with additional landscaping to provide an effective

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1 screen to the residences behind.
2 We certainly acknowledge those issues there
3 with noise, with light, and we believe the existing
4 trees provide a very solid screen today. Obviously,
5 as many as could be maintained, would be, and those
6 would be supplemented, again, at the time of any
7 development.
8 We also acknowledge there are some uses that
9 are permitted in the M-1 zoning district that do not
10 -- are not appropriate there, and in our application,
11 in our letter of intent, we listed about 20 or 25 uses
12 that are permitted uses in the M-1.
13 We would suggest to the Council that you
14 condition the zoning to not allow those uses. We
15 believe that is appropriate. As I said, there is a
16 list in our package, and we're certainly happy to
17 discuss other possible uses that would also perhaps be
18 restricted through zoning conditions.
19 And again, then getting to the sign
20 variances, what we are talking about here is
21 constructing a billboard. The billboard would be
22 located, as you go to the property, as you're cutting
23 off Peachtree Industrial from 285, you go to the right
24 to get to Flowers. What you would do is when you hit
25 Flowers there at that dead end, the T intersection, go

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1 to your right about 50 to 100 feet, and that would be
2 the location where we are proposing to move the sign.
3 Currently, it is at the other end of the property near
4 where the Colonial Pipeline easement is located.
5 The reason for this is, again, we want to
6 try and preserve as many trees as possible. There is
7 a stand of trees along 285 which interfere with the
8 view that could be potentially trimmed, but we'd
9 rather leave those because they do allow an effective
10 screen.
11 And the height variance would be to raise
12 it to a height to be viewed, because as you're coming
13 on the property, that is the low point of the
14 property. So what we are effectively trying to do
15 with the height variance from grade is pick that sign
16 up to close to the height it would be at the other end
17 under the 50 foot permitted by the City.
18 The sign, again, there is an effective
19 screen from the rear where we do not believe the sign
20 will be actively visible from the rear. This is a
21 static billboard. It is not an LED sign, so it's not
22 going to be changing. The lights are designed bottom
23 up, they do not bleed down. And we believe it is an
24 appropriate location. There are other billboards in
25 this vicinity. It is a high-traffic area, and we

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1 believe it is an effective use for advertising
2 businesses in Doraville.
3 The staff has suggested a rezoning to a
4 townhome zoning, a residential zoning. We believe
5 that would be unconstitutional zoning for the
6 property. Admittedly, there is residential around
7 this property, around the rear of it, but the problem
8 is this property sits right on 285. There is no
9 effective screen between it and 285. It is the screen
10 for the existing residences behind it. We would
11 certainly believe any use here would add to that
12 screen for those residences. There is one gentleman
13 here this evening who lives back there, who we'd spoke
14 to, and again, their big concern is buffers, and I
15 believe we can provide effective screening and buffers
16 to make this an appropriate use at the site.
17 And that would be our request. And we would
18 appreciate your consideration, be happy to answer any
19 questions you may have, and would like to reserve the
20 rest of my time for rebuttal.
21 COUNCILMEMBER ALEXANDER: I drove out to the
22 property yesterday. Part of your text in your letter
23 said that this sign will be replacing the existing
24 sign.
25 MR. PETERS: Correct.

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1 COUNCILMEMBER ALEXANDER: But the existing
2 sign as you look at the property is to the right of
3 the pipeline easement.
4 MR. PETERS: Correct.
5 COUNCILMEMBER ALEXANDER: So are you going
6 to put the sign there or are you going to put it to
7 the left of the pipeline easement?
8 MR. PETERS: To the left of it.
9 COUNCILMEMBER ALEXANDER: To the left of it.
10 MR. PETERS: Well, that is the preferred
11 location. And again, we believe what that does is two
12 things. Number one, it moves it to an area that has
13 greater visibility. Obviously that's, you know, the
14 goal here from our perspective. And also at that end
15 of the property, there is still significant effective
16 screening.
17 And the other issue you're looking at with
18 signs is you want someone driving along the interstate
19 to see it for a period of time. You don't want it to
20 flash out of the corner of their eye as they're going
21 back because it could potentially be a distraction.
22 By moving it down that way, it does create a longer
23 read time that we think makes it safer.
24 But you are correct, it is not -- we're --
25 the suggestion we have is not to go back where the

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1 existing sign is. If it was relocated there, we would
2 be more than a -- excuse me, not relocated but left
3 there and a new sign constructed -- it would be more
4 than a thousand feet from the sign we're requesting
5 the variance from but it would be approximately 800
6 feet from another sign that's further down Flowers.
7 COUNCILMEMBER ALEXANDER: The one that's in
8 the business park on Flowers?
9 MR. PETERS: In the business park, correct.
10 So it's a tradeoff, if you will, of
11 locations is really ...
12 COUNCILMEMBER ALEXANDER: So will you be
13 removing the sign that's there now?
14 MR. PETERS: Yes, that sign will be removed.
15 COUNCILMEMBER ALEXANDER: Do you know the
16 height, the top of that sign?
17 MR. MALTESE: It's 50 foot.
18 COUNCILMEMBER ALEXANDER: 50 foot.
19 MR. PETERS: 50 foot.
20 ATTORNEY WEED: Sir, would you state your
21 name for the record, please?
22 MR. MALTESE: Peter Maltese.
23 COUNCILMEMBER ALEXANDER: So when you
24 request a height variance, it's to the top of the
25 sign.

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MR. PETERS: Yes, it will be 80 feet at the top of the sign.
MR. MALTESE: 90. It's 90.
ATTORNEY WEED: Mr. Maltese, you can come sit next to your lawyer. It's okay. He won't bite you.
MR. PETERS: We had requested 80. We have requested 80. We have requested 80. I think there was some discussion as we were going through it, but I think ultimately where the location was, I think 80 feet.
MR. MALTESE: It drops off to the point that it's in a hole, but it's a lot better visibility. It's the furthest point away to where I don't think the lights would be seen, you know, from the people behind. It's a big, tall area of trees there, you know, and a lot of kudzu on there which I've left on there. I've tried to clean up around the edge of it just recently again.
And this is not the -- I've had this billboard up.
MR. PETERS: Let's just answer their questions on that.
COUNCILMEMBER ALEXANDER: Because I believe the green power box is close to the existing sign, so

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you're going to have to run power across your property to the new sign?
MR. PETERS: Well, there is a distribution line along the frontage of the property that runs down, there it will just be changing the -- the distribution line will just come from that closest pole to the new sign.
COUNCILMEMBER ALEXANDER: The question I'm asking for the height -- and I did look at the topography yesterday when I was out there and I did look at the additional height from the top of the existing billboard to the top of those trees, which there is quite a difference there. Those trees are very tall.
MR. PETERS: Right.
COUNCILMEMBER ALEXANDER: But I received a phone call from a resident that of course is concerned about visibility from his home.
MR. PETERS: Right.
COUNCILMEMBER ALEXANDER: So you're going to have -- this is like a 45-degree angle?
MR. PETERS: Less than 45. Probably about 30 I think is what we --
MR. MALTESE: I think it's a 45.
MR. PETERS: It may be a 45.

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MR. MALTESE: Around 45. It's a standard V-shaped billboard that you see out.
COUNCILMEMBER ALEXANDER: So I guess I'm trying to discern since the -- it's the measurement from the base land topography to the top of that sign.
MR. PETERS: Correct.
COUNCILMEMBER ALEXANDER: If I'm looking at that property, is that 80-foot sign going to look like it's the same height as the existing 50-foot sign because of the topography of the land?
MR. MALTESE: Probably a hair higher. But it's very hard to kind of tell, because when you try to get back far enough to see it, you're blocked by the height of the I-285, you know.
COUNCILMEMBER ALEXANDER: And the tree line that you're concerned about clearing is the tree line in the buffer between Flowers access road and the egress from 285; correct? There's a --
MR. PETERS: Correct.
COUNCILMEMBER ALEXANDER: -- small tree line buffer there.
MR. PETERS: That and also the buffer line along I guess it's the southern edge of the property as you --
MR. MALTESE: I can go over there and point.

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MR. PETERS: Yeah. If you come in this area here, there is also a stand of trees on that side of Flowers which is part of the concern as well.
COUNCILMEMBER PITTMAN: I'm familiar with the current sign, but I am trying to envision where you want the other sign.
MR. MALTESE: Let me go point.
MR. PETERS: What I have is I have a large --
ATTORNEY WEED: Mr. Peters, do you want to use this easel?
MR. PETERS: Okay. That might be simpler. And we can show you on that map as well.
But here is the property, 285 is here, Flowers Road is here, Peachtree Industrial would be over here; so the existing sign, right here. Where we're proposing it is down here.
So let me come over here. It might help a little bit as well. Sorry to run back and forth. Actually what you're looking at is currently the sign is here in this general vicinity and what we're talking about is down in this vicinity.
COUNCILMEMBER PITTMAN: So how close to the townhomes and residential --
MR. PETERS: You have --

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1 COUNCILMEMBER PITTMAN: -- are we looking
2 at?
3 MR. PETERS: The setback request we've asked
4 for is within 50 feet. So it would be within 50 feet
5 of this residential lot, and that house is probably 50
6 or so feet from the rear setback line. So you're
7 probably a hundred feet from that house is what we're
8 talking about.
9 I think the apartments you're talking about
10 are further up Peachtree Industrial here, and then
11 there's another set here across from the business park
12 on Flowers.
13 COUNCILMEMBER PITTMAN: Okay. That's what
14 I'm referring to.
15 So when the house, they look out, they're
16 going to see the sign.
17 MR. PETERS: Right now, what you have is
18 from these townhomes here --
19 COUNCILMEMBER PITTMAN: Correct.
20 MR. PETERS: -- those people actually see
21 three signs --
22 COUNCILMEMBER PITTMAN: Right.
23 MR. PETERS: -- on 285.
24 COUNCILMEMBER PITTMAN: Right.
25 MR. PETERS: They would not see the sign.

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1 COUNCILMEMBER PITTMAN: But there's a home
2 there; correct?
3 MR. PETERS: Here?
4 COUNCILMEMBER PITTMAN: Yes.
5 MR. PETERS: When I went out there -- and I
6 did not go into these people's yards, obviously, but
7 from the street, with that stand of trees, obviously
8 you're on the ground, there's these tall trees, and
9 the sign would be behind it -- I would have a
10 difficult time seeing it.
11 You would -- you would know it was there, I
12 mean obviously if you were looking for it.
13 COUNCILMEMBER PITTMAN: Especially when it's
14 lit up at night.
15 MR. PETERS: But again, the lights are
16 designed from the bottom up.
17 COUNCILMEMBER PITTMAN: I understand. I've
18 got one and it shines on our deck and everywhere else.
19 That's why I'm asking.
20 COUNCILMEMBER FLEMING: I have a question in
21 regards to the information we received this evening, a
22 letter from the City of Doraville to Mr. Maltese dated
23 October 27th, 1982, when the property was requested to
24 rezone from R-1 to C-2. Was it ever rezoned to C-2?
25 MR. MALTESE: No. They turned me down.

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1 COUNCILMEMBER FLEMING: So it remained R-1?
2 MR. PETERS: It is our belief, I think,
3 based upon what Mr. Haeberlin has said before, that it
4 at that time was zoned O&I.
5 COUNCILMEMBER PACHUTA: I did look at the
6 old minutes, and in 1982, they changed it to O/I.
7 COUNCILMEMBER FLEMING: On this date?
8 COUNCILMEMBER PACHUTA: I don't know if it
9 was this date but I believe it was -- it was 1982 when
10 I searched the minutes.
11 COUNCILMEMBER FLEMING: Did the minutes
12 include that Mr. Maltese was present at the time?
13 COUNCILMEMBER PACHUTA: I don't recall. I'm
14 sorry.
15 MR. MALTESE: I was there.
16 COUNCILMEMBER FLEMING: When they changed it
17 to O/I?
18 MR. MALTESE: They changed it to O&I.
19 COUNCILMEMBER FLEMING: And your request to
20 change it from R-1 to C-2; and they did not allow you
21 to go to C-2, they changed it to O/I in that?
22 MR. MALTESE: I -- I -- At the time, I was
23 trying to get -- Oh, M-1 or for -- for the sign
24 business, I don't know what the actual zoning was
25 needed at that time because --

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1 COUNCILMEMBER FLEMING: C-2.
2 MR. MALTESE: C-2? And they said they would
3 only give me O&I, and they said at the time -- they
4 were arguing with Ron Lozoff (ph) who had purchased a
5 piece of property, the ramp going on -- if you're
6 coming south on I-two eighty -- south on Peachtree
7 Industrial turning on to go east on I-285, he was
8 buying that corner, and they told me I -- they
9 couldn't zone mine M-1 or commercial because they
10 would have to do his at the time. And they said just
11 go for O&I and then later on try to go for M-1 at a
12 later date, and so I followed what their
13 recommendation was, to go to O&I.
14 COUNCILMEMBER FLEMING: But since 1982,
15 you've been permitting that billboard sign.
16 MR. MALTESE: That sign was permitted, yes.
17 And even in 1989, in 1989, it was actually a billboard
18 bigger than that before that, and we had a storm when
19 all these trees came down and hit a lot of the
20 Dunwoody area when they had that huge storm, and then
21 they asked me to lower the sign and make it slightly
22 smaller, and I did what they asked me to do.
23 COUNCILMEMBER FLEMING: So until 2010 when
24 you went to renew your permit --
25 MR. MALTESE: No. They asked me to renew

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1 the permit, and I says, "Why do I need to redo a
2 permit? I already have a permit." They said I
3 didn't, and I sent them a copy of it --
4 COUNCILMEMBER FLEMING: Okay.
5 MR. MALTESE: -- and copies of canceled
6 checks, copies of checks where they charged me permit
7 fees as a billboard and it was even written on the
8 check, and I gave copies of 'em. So I've had -- I've
9 had this billboard up there, but they didn't let me
10 use it like a billboard.
11 COUNCILMEMBER FLEMING: Since 1982?
12 MR. PETERS: '89, I believe.
13 MR. MALTESE: Since '89.
14 MR. PETERS: '89 was when it was permitted.
15 MR. MALTESE: And even before that, I didn't
16 need to change it because I was using -- I was going
17 to eventually build my sign business on there.
18 COUNCILMEMBER FLEMING: Thank you, sir.
19 MAYOR JENKINS: Anybody have any more
20 questions?
21 - - -
22 (No response)
23 - - -
24 MAYOR JENKINS: Scott?
25 MR. HAEBERLIN: Let me go over a couple

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1 items. It is staff's contention the last time the
2 sign was permitted by the City of Doraville was in
3 2004. At the time, I was not an employee of the city.
4 In 2004, you had the same sign code that
5 exists today. In 2004, a billboard was only permitted
6 on commercial-zoned land. So if we know this property
7 has been O&I since 1982, in 2004 when a permit was
8 done for this property, it would have been for a use
9 which was not allowed by the sign code.
10 So again, staff's contention is, number one,
11 that if the item was permitted, it was improperly
12 permitted in the wrong zoning designation without the
13 necessary variances which were needed. Also as well,
14 again, the same code exists today on the books that
15 existed in 2004, the last time the item received a
16 permit from the City.
17 Now, it's staff's position that the sign is
18 actually a stanchion sign and not a billboard. We
19 know that billboards are regulated by the Georgia
20 Department of Transportation and have been for a
21 number of years. So again, there is controversy
22 around that.
23 Since the time the present staff has been
24 with the City, the applicant did apply for a sign
25 permit from the City. He was denied by the building

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1 official, John Calcaterra and by myself as the city
2 planner.
3 After the denial, the applicant then went
4 out and changed the sign with a denial from the City
5 of Doraville, and that is the reason why he has code
6 enforcement activity upon him is that he did something
7 with a denial.
8 Again, if the applicant's contention is that
9 it's a billboard, when billboards change face or they
10 apply new paper on the front of a billboard, they
11 don't receive a permit from the local jurisdiction.
12 So there is some question there as to why the
13 applicant chose to pursue this as though it was a new
14 sign permit, so I did want to point that out.
15 As you know, your land use plan calls for
16 this property to be R-1. It's reflective of being
17 part of a stable residential neighborhood and there
18 has been significant gentrification and infill which
19 has occurred behind this site, particularly by
20 Brackbill Homes and other folks who are actually
21 taking up homes in the area and building new homes.
22 So I am looking at this as being a stable component of
23 the land use plan and also, too, something that would
24 be eligible for some sort of residential use.
25 Again, because it does not comply with the

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1 City's land use plan, my recommendation was denial on
2 the rezoning. And my recommendation to you -- the
3 same as they did in 1982, the Council gave Mr. Maltese
4 a zoning designation which was different from that
5 which he requested -- and my recommendation to you is
6 RSFA, and I would like to show on the map why.
7 And I apologize for those who can't see as
8 well. This is Avery Park Townhomes. This is Flowers
9 Gate. This is the subject property. This is 2535
10 Garrett Circle, which the City Council recently down-
11 zoned from O/I to R-1 to eliminate O/I, an
12 incompatible zoning category in a neighborhood. This
13 site here could have access through the vacant lots
14 which are on Eula Circle, so there is development
15 potential for this site either through Eula Circle or
16 through using Flowers Road or PIB as some people call
17 it. So my recommendation is to go to a medium-
18 density residential category. The property
19 configuration as you see is very similar to the other
20 RSFA developments. Also too with construction
21 techniques that exist today, there is soundproofing
22 methods that can be used to build attached dwelling
23 units on the site. So again, I think that it has a
24 strong possibility and probability of being
25 residential, no different than Avery Park or Flowers

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1 Gate. And that is my recommendation on the rezoning.
2 Commensurately as well, that there were
3 variances requested, and the variances are
4 significant. Again, we're going from a reduction from
5 two fifty to fifty and two fifty to forty feet.
6 Again, these same criteria existed in 2004 when this
7 item was last permitted. Were there variances granted
8 in 2004? Staff finds no record of that.
9 Based on the standards of review for
10 variances, I find that these variances are not
11 particularly unique to this property. My
12 recommendation was denial, again, on the requested
13 variances.
14 Moving towards the billboard's conditional
15 use and the standards of review again, obviously if
16 I'm recommending denial on the rezoning, that the
17 recommendation for the billboard conditional use is
18 also a denial.
19 And then lastly, going to the sign
20 variances, I do want to note that the applicant
21 submitted these as though they were all independent
22 applications. Increase the maximum height of a
23 billboard from 50 to 80 feet, allow a billboard to be
24 less than 1,000 feet from another billboard; allow a
25 billboard to be located within 500 feet of

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1 residentially-zoned parcels, as requested 50 feet.
2 Again, these standards existed in 2004 and
3 were not adhered to. Our recommendation on the sign
4 variances, even though they are independent hearings
5 themselves as they've been presented by the applicant,
6 is again denial.
7 As well on the back of the report, I wanted
8 to let you know you have the analysis which has been
9 prepared by the applicant's attorney, Scott Peters.
10 ATTORNEY WEED: Mr. Haeberlin, two
11 questions. One, what was the -- would you report what
12 the Planning Commission's recommendation was? And
13 two, I'm going to have a question for Mr. Maltese's
14 legal representative.
15 MR. HAEBERLIN: Yes, sir. The Planning
16 Commission only reviewed the zoning and the zoning
17 variances because that's all they're charged by you,
18 the City Council, by code. Their recommendation on
19 the rezoning was denial. Their recommendation was not
20 to rezone the property RSFA; they left that within the
21 confines of the Council but they felt the property
22 should at least remain O&I. The recommendation on the
23 zoning variances again was denial.
24 ATTORNEY WEED: Mr. Haeberlin, with regard
25 to the various applications, the independent

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1 applications, did you run individual Zoning Procedures
2 Act ads for each one of them or did you run a joint ad
3 for all of them?
4 MR. HAEBERLIN: If I recall, I ran a joint
5 ad for every -- every item.
6 ATTORNEY WEED: But you did run an ad --
7 MR. HAEBERLIN: Yes, sir.
8 ATTORNEY WEED: -- is that correct?
9 MR. HAEBERLIN: That is correct.
10 ATTORNEY WEED: Mr. Maltese, would you like
11 to be heard on each individual application --
12 MR. PETERS: No.
13 ATTORNEY WEED: -- or is it all right with
14 your client that you be heard on the whole thing?
15 MR. PETERS: We are fine with hearing them
16 as a combined public hearing.
17 ATTORNEY WEED: Thank you, Mr. Peters.
18 Thank you, Mayor and Council.
19 MR. HAEBERLIN: A note for the record, I
20 apologize, is the zoning ads are all sent to the city
21 attorney and they were as well approved as to the form
22 by the city attorney. I apologize, I probably
23 interrupted somebody.
24 COUNCILMEMBER ROCHE: I just had a couple
25 quick questions or one quick -- one main question in

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1 terms of the uses.
2 The applicant has said that they would be
3 happy to have a conditional zoning that would prohibit
4 the following otherwise permitted M-1 uses; in other
5 words, they would not do this. They would not open a
6 bait shop -- and I'll just get this on the record --
7 bakeries, blacksmith shops, bottling plants, bus
8 terminals, dry cleaning and laundries, extensive
9 impact facilities, funeral homes, golf or baseball
10 driving ranges, gunsmiths, intermediate impact -- I
11 guess that's a typo.
12 MR. PETERS: It should be "impact." I
13 apologize.
14 COUNCILMEMBER ROCHE: Right. Linen and
15 diaper services, mortuary, processing and compounding
16 facilities, and taxidermists.
17 So what would that leave open to M-1 uses in
18 this property? I mean could you give us a general
19 idea? I don't have the ordinance in front of me.
20 MR. HAEBERLIN: Well, it would still allow
21 the conditional uses, obviously, and the conditional
22 uses are listed.
23 COUNCILMEMBER ROCHE: Let me restate my
24 question. Even if we granted with these conditional
25 uses, saying they won't have that, they are still

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otherwise able to use all the uses that are granted under M-1; is that correct?

MR. HAEBERLIN: Correct, unless you the Council restrict it. I guess you could conceivably rezone this property to one permitted use or just a couple.

COUNCILMEMBER ROCHE: So uses like, you know, would a gasoline tanker be okay or a fuel dump? What would -- You know, can you give us some general ideas of --

MR. HAEBERLIN: Yes. Petroleum distribution could certainly occur there, things like --

COUNCILMEMBER ROCHE: Landfill? Recycling?

MR. HAEBERLIN: No, sir, not in M-1.

COUNCILMEMBER ROCHE: Okay.

ATTORNEY WEED: I've got the uses. If you'd like --

COUNCILMEMBER ROCHE: Yes, please.

ATTORNEY WEED: -- I'll read them.

These are the M-1 uses, and this doesn't include or exclude anything that is mentioned as conditional that the applicant has agreed to.

Permitted uses. Animal grooming without overnight housing, auction gallery (indoor only), automobile rental agencies excluding sales, automotive

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service and repair -- I'm going to paraphrase some of the language -- automobile parts stores without installation, bait shops, bakeries, blacksmith, blueprint, bottling plants, burglar and fire alarm, bus terminals, cabinet shops, catering services, cleaning, cold storage, ice plants, commercial artist, contractor offices, courier or messenger service, distribution of merchandise, driving schools, dry cleaning, electrical appliances, electronic manufacturing, engineering and architectural offices, essential services such as electrical and gas substations; extensive impact facilities including electricity generating facilities, major mail processing centers, things of that nature; fencing, funeral home, golf or baseball driving range, greenhouse, gunsmith, healthcare supplies, heating equipment dealers, home health, intermediate impact facilities such as college and junior colleges, lawn care services; limited manufacturing activities that would include dairy products, grease traps, et cetera, athletic, sporting or recreational equipment; limousine services, linen and diaper, locksmith, market research, martial arts, mortuary, newspaper offices; paint, glass, hardware stores; pest control, photograph studios, plumbing shops, printing,

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processing and compounding of non-explosive materials, retail plant, scientific or research laboratories, sign manufacturing and fabrication shops, surveying offices, swimming pool sales, taxidermists, textile manufacturing, transportation and warehousing.

Shall I continue?

COUNCILMEMBER ROCHE: We're on the T's.

ATTORNEY WEED: There's plenty more.

COUNCILMEMBER ROCHE: I guess we get the idea. Thank you.

ATTORNEY WEED: Okay. There are -- there are an additional -- there are an additional three pages of permitted uses.

COUNCILMEMBER ROCHE: I understand. Thank you.

MR. HAEBERLIN: I think what I would like to point out, again, since 1982, there's been no development on the property. The property could very easily be rezoned to M-1 and the conditional use granted and again the site would only be a site for a billboard. I think that's a significant factor to consider: that if O/I had allowed the development of what the applicant had proposed, and similarly, if O/I had allowed a billboard, which it did not, there would have already been development occur on the site. So

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staff remains mildly pessimistic that development will ever occur on the site.

COUNCILMEMBER PACHUTA: As O/I?

MR. HAEBERLIN: Well, as either designation.

It would appear that the principal use of the property is for that of signage, and that's what it's achieved since 1982.

COUNCILMEMBER PACHUTA: You mentioned you considered a stanchion sign versus a billboard sign. Does that make any difference in relation to the zoning or rezoning?

MR. HAEBERLIN: Well, in this case, he does need the M-1 for the billboard, for a recognized billboard as approved by GDOT. And a stanchion sign is really just a pole sign, it's the same type thing as we see up and down Buford Highway, but they carry a decidedly different classification than a billboard. A billboard is, like I said, a unique permit and a unique right.

However, like I said, as O/I, it would not have been eligible for a billboard anyway. So again, since I was not here, I'm not fully aware of what has occurred. However, based on the sign code that's in effect today, the same one which was in effect in 2004, there could not have been a billboard located on

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the site.
COUNCILMEMBER FLEMING: But could there have been a stanchion sign?
MR. HAEBERLIN: There could have been a stanchion sign, yes, ma'am.
COUNCILMEMBER FLEMING: And there could be a stanchion sign today?
MR. HAEBERLIN: We have not changed the sign code. Yes, ma'am, there could be a stanchion sign today.
COUNCILMEMBER FLEMING: Thank you very much.
MR. HAEBERLIN: Any other questions?
MAYOR JENKINS: It is a public hearing?
MR. HAEBERLIN: Yes, sir. We do need to have a public hearing.
MAYOR JENKINS: We're ready to open it for a public hearing. Go ahead and open it up.
MR. HAEBERLIN: Okay. Those who would like to speak in favor of the petition, please raise your hand. Anybody who would like to speak in favor.
MR. PETERS: We have a rebuttal.
MR. HAEBERLIN: Anybody who would like to speak in opposition, please raise your hand. I see one, two, three. Three, three and a half minutes apiece.

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When you come to the microphone, would you also state your name and your address for the record.
MR. PATRICK: I'm Robert Patrick. I live at 4041 Flowers Road, have lived in a Doraville residence since 2005. I live -- I can show you on the map here. That's my house right there.
COUNCILMEMBER FLEMING: Could you back up or go to the other side?
MR. PATRICK: Does that help?
COUNCILMEMBER FLEMING: Okay. Thank you.
MR. PATRICK: I'm very familiar with this billboard sign that's in front of my window at nighttime, and even though the lights are directed up towards the billboard 80 or 50 feet or so, I still have an excellent view from my bedroom. Even with the blinds closed, there's still light that shines through.
I'm just asking you please do not let this rezoning go forward or do not allow the M-1 to go forward. The property values in my neighborhood have been hit. I have been pretty hard myself because of that, and I cannot see any way that a 640-square-foot 80-foot, 90-foot tall billboard would in any way help me recoup some of my money and my investment down the line. Thank you.

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MAYOR JENKINS: Next?
MR. CRAWFORD: Ben Crawford, Oakcliff Estates.
I didn't hear any mention of what the -- what the grade drop was on that property. I heard, you know, the applicant said that they wanted to go to 80, then it became 90 feet, but I didn't hear any mention of what the actual grade was from one end of the property to the other end. Does it drop down five feet? 10 feet? 20 feet? That's a substantial increase and it also is a new sign.
And I also feel the same as the other gentleman. Even though I don't live over there, I do live in the city of Doraville. And I feel like, you know, it's O&I right now, and I think that eventually it would be nice to have residential surrounding residential property on two sides of it. And I think that the citizens have a right to be concerned about their property values, and I hate to see it become M-1 with about 85 uses there. Thank you.
MR. ANDERSON: Stuart Anderson.
The sign would be moved from here to down here; is that correct?
MR. PETERS: Yes.
MR. ANDERSON: So it's moves it away from

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you, Robert, to help that.
My main concern, I guess, is buffers. When Avery was built, it impacted this neighborhood severely, took out this. There was a huge buffer here of oak grove, pines and hardwoods. You now have an amazing amount of noise from 285 into this neighborhood because Avery took away that buffer.
I see RSFA in that O&I that is not as proposed doing the same thing to the neighborhood, the Roberts' neighborhood in that area. What I'm concerned about isn't so much the sign one way or the other; it's the buffer and the lack of buffer or the lack of buffer and what it does to the neighborhoods. I have absolute example of what it does to those neighborhoods by Avery Park and what it did to my neighborhood.
If this was permitted, it would be -- it needs to be permitted only with a very strong provision of buffer consideration and separation. Fifty feet is certainly not 500 feet. But the greenery and the noise abatement is the primary thing in my -- in my thought, not so much the sign.
What RSFA has done to my neighborhood has made it louder and dustier. If this was allowed, it would have to have extensive buffering and separation,

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1 visible separation and hopefully a noise buffer from
2 their neighborhood. The sign doesn't affect my
3 neighborhood but Avery Park already has. Thank you.
4 MS. CRAWFORD: Susan Crawford, Oakcliff.
5 I guess I am concerned about the sign. Even
6 though I don't live over there, I also do live in the
7 city. And okay. If you want a sign, obviously you
8 want people to see it so it's going to be very
9 visible. It's not something you can kind of blend in
10 with the greenery, because then you wouldn't want a
11 90-foot sign. You don't want it to blend in. You
12 want it to be very noticeable, which would mean it
13 would impact the people. It would very noticeable,
14 especially to the people living right near there.
15 And I also -- I keep beating this dead
16 horse, I guess, but I want to remind everybody that we
17 are a green city. We declared ourselves a green city,
18 and I think that some of us take that very seriously,
19 and having an enormous lit sign right at the entrance
20 or at the vista. People trying to live their lives
21 and watch each other or TV instead of a sign at night,
22 I don't think this goes along with any of that. Thank
23 you.
24 MR. HAEBERLIN: I guess we'll close the
25 public hearing. I do have one process-related

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1 question for Mr. Weed.
2 Since we're doing a rezoning, conditional
3 use, zoning variances and sign code variances, are we
4 handling this within the context of one public hearing
5 or multiples?
6 ATTORNEY WEED: Based upon the
7 representation of Mr. Maltese's counsel, they have
8 agreed to handle it in one.
9 MR. HAEBERLIN: Thank you. The public
10 hearing is now closed, and I return it to the Mayor
11 and Council for a decision.
12 MAYOR JENKINS: Okay. Bring it back up to
13 the table.
14 COUNCILMEMBER PITTMAN: Well, I'm very
15 concerned, because as I stated, I have a giant
16 billboard sign in the back of my house on Peachtree
17 Industrial. It is a distance away, and yes, the
18 lights do come up but they still reflect. And I
19 actually ended up moving my youngest son's room to the
20 other side of the house because even with the blinds
21 shut, those big lights still shine, and they're big
22 and they're just --
23 Then you've got a residential neighborhood
24 there. Even though there's trees and there's actually
25 other buildings back there, it's still the height of

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1 it is very noticeable, so --
2 ATTORNEY WEED: Councilman, pardon me just
3 one second. I'm sorry. Just procedurally, I believe
4 Mr. Maltese waived his time to speak in favor. He
5 wanted to reserve an opportunity to through his
6 counsel to rebut.
7 COUNCILMEMBER PITTMAN: Sure.
8 ATTORNEY WEED: So now would be the oppor-
9 tunity, I believe.
10 So counsel?
11 MR. PETERS: Thank you. Briefly, there are
12 several items I think that were discussed that I would
13 like to address.
14 First, the comment that the property has
15 access through the neighborhood in the rear is
16 incorrect. There is no access through that
17 neighborhood. The access is on Flowers. So I think
18 Mr. Haeberlin's statement that that would be where the
19 access point is is just incorrect.
20 This property is much different than the
21 other townhome developments you see as far as its
22 visibility and its location. The RFSA further down
23 Flowers Road is screened from 285 by the office
24 complex, the business park there. So that is the
25 screening from 285. This property has zero screening

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1 from 285. So to say residences would go there, they
2 are going to deal with the noise, the light, the
3 disturbance of 285 and Peachtree Industrial and that
4 traffic. So residential is effectively a taking of
5 this property.
6 And I think what I've heard is, in the
7 discussion of residential, it's to protect other
8 people's property is the statement that I heard
9 repeatedly, that other property. There has been no
10 discussion of Mr. Maltese's property rights.
11 He has a right to use his property. The
12 original intent when he purchased this property was to
13 locate his sign shop on the property. That was the
14 original goal. There were efforts to acquire a number
15 of those houses in the rear to get a larger parcel and
16 allow for his shop to go there. Those for various
17 reasons, I think, some political, is not problematic
18 but just a resistance to putting the sign shop there
19 and difficulty in acquiring all those houses were that
20 not to work.
21 So the fact that it's been zoned O&I that
22 has not been used has been -- for a number of years
23 the goal was that was an interim zoning moving towards
24 Mr. Maltese's desire to use the property, and the
25 expression by the City that O&I was a proper zoning

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and the intent.
Councilman Roche, you pointed out a number of the uses. The desire in the list of uses we asked to be conditioned out of it was to make it more similar to an O&I. And admittedly, there are plenty of uses in that list of M-1 that we could see neighbors or the Council thinking inappropriate, and we'd be more than happy to have a discussion about that if that is the Council's desire or if there is one specifically you point out. My guess is we probably wouldn't disagree that much.
I think Mr. Anderson mentioned buffers. We understand that. We want to put buffers in here. We want to address that screening issue. You know, yes, the sign would be moved away from Mr. Patrick's house. You know, O&I office space is in oversupply. That is why there is no demand yet. But coupling it with a distribution or a smaller warehouse with distribution with easy access on and off Peachtree Industrial is a good use, it is not a high impact use, which is what conceptually we've put down.
The goal here was to allow the screening to remain. I think the light -- any additional light which would be caused by this sign is minimal compared to the existing light and noise that's coming from

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285.
And as Mr. Maltese pointed out to me, the V shape of the sign is actually such that one face, let me get myself oriented, would be facing this way down 285, so that light reflecting off of it is shining down 285. The face here is again out toward 285. The light reflecting is coming this way. It is not bleeding towards the neighbors. It is not something where it shines -- where you're getting a reflection into those neighborhoods.
So we are fine with the screening issues. We're happy to work on those. We believe that is an appropriate use.
But to say that the City is going to downzone this property or to leave this property alone in the idea that it is protecting everyone else's property ignores the fact that Mr. Maltese has certain property rights. He is entitled to a reasonable use of his property. We believe this is a reasonable use and we ask for your consideration.
MAYOR JENKINS: Thank you.
MR. PETERS: Thank you.
MAYOR JENKINS: All right. We'll bring it back up to the table.
COUNCILMEMBER FLEMING: Yes, sir. I had a

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couple of comments.
Mr. Maltese, let me ask you real quick, the sign has been there since 1982 or prior to that?
MR. MALTESE: '89.
COUNCILMEMBER FLEMING: Or '89. I'm sorry.
MR. MALTESE: '89, but before that, there was one -- there was a bigger sign there, and I don't remember the date. It was around 1982.
COUNCILMEMBER FLEMING: Okay. I live in District 1, and that's over in District 1.
First of all, I want to thank you for all of your many years of helping the city of Doraville because I know that whenever we needed roll-around signs and everything else, you came through with no problems for many of our special events. So I want to, you know, thank you for that and your supporting the city of Doraville.
That being said, however, living in District 1, we have the largest M-1/M-2 area in the city and we are already having to put up with way too many obstacles in our neighborhoods.
I find nothing wrong with the stanchion sign that you presently have. My opinion is I think you should continue to be able to use that since it's been there since 1989. What is that? 21 years, I think.

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As far as rezoning it to M-1, I am not in favor of rezoning it to M-1 so that you would be able to provide a billboard no matter how -- what degree, 45 degree angle or whatever promoting the light fixtures out to 285.
But as far as removing what you already have there, I'm not in favor of that. I'm in favor of you being able to continue the use that you presently have but not being able to extend it greater in height than it already has. That's my opinion.
MAYOR JENKINS: Thank you. Maria?
COUNCILMEMBER ALEXANDER: I have a question. I've become maybe a little befuddled.
You said that stanchion sign is allowed?
MR. HAEBERLIN: In terms of the present sign code -- and I may be speaking out of turn.
COUNCILMEMBER ALEXANDER: Because I'm trying to understand why --
MR. HAEBERLIN: I don't think --
COUNCILMEMBER ALEXANDER: -- this gentleman has been cited if a stanchion sign is allowed and that's what he has.
MR. HAEBERLIN: Because he applied for a permit, it was denied by the City of Doraville, and he did not avail himself of any appeals process, and

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subsequent to that, he was issued a citation by the quality of life unit because he did work that was not permitted by the City.

Again, his contention is that it's a billboard. And if a billboard changes the face -- as I call it, put the wallpaper on it, the fixture on the face -- those don't require permits.

So again, there is intervening discussion here. The gentleman would like to treat it like a billboard, yet he's applying for permits as though it's a stanchion sign. Like I said, what he applied for did not meet code, and he was denied. He did not register any sign on his property as a legal nonconforming sign; therefore, his rights did not carry forward.

The sign code provides that on its effective date -- there was a certain time frame that each person must register their sign. He did not avail himself of that opportunity. So is the sign on -- the present sign on the property legal nonconforming? In staff's opinion, no, it is not. It's been breached.

COUNCILMEMBER FLEMING: But did I not ask you previously about stanchion signs on that piece of property and you said yes?

MR. HAEBERLIN: It's my belief in reviewing

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your sign code -- again, I have not sat down and read it right then and there -- that a stanchion side code of a -- stanchion sign of a certain height would be allowed on there.

COUNCILMEMBER FLEMING: Okay.

MR. PETERS: So, then, it would be all right if --

COUNCILMEMBER ALEXANDER: Mr. Weed, may he answer -- ask me question or answer me a question?

ATTORNEY WEED: I'll try.

COUNCILMEMBER ALEXANDER: No. Mr. Peters.

ATTORNEY WEED: If the Council would like to allow him to have another opportunity --

MR. PETERS: I'm asking you to ask me a question now. How is that?

ATTORNEY WEED: You may certainly do that. That's up to the Council.

COUNCILMEMBER FLEMING: Mr. Peters, you may speak.

MR. PETERS: Just to clarify, I forgot to address this issue about the changing of the sign in my rebuttal. I apologize.

The change was the message was changed. The sign, the height, size, all that stayed the same. Mr. Maltese changed the message, was then advised by

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staff he needed to ask for a permit, applied for the permit and was denied after all the work had been done. He then sought legal counsel and we advised him he never needed a permit. So that's the order. Obviously we don't need to argue about the legalities of it and I don't mean to, but just for order --

COUNCILMEMBER ALEXANDER: That's okay.

MR. PETERS: -- I wanted to clarify that.

COUNCILMEMBER ALEXANDER: Thank you.

- - -

(Dekalb delegation re-enters Council chambers)

- - -

MR. HAEBERLIN: The Council was viewing and I want to pass by the actual permit that was denied by the City so you can view what was denied.

COUNCILMEMBER ROCHE: Well, I guess I'll just jump in. And I don't live in that particular district, however, you know, the attorney makes a good point that, you know, people need to be able to use their property the way they want to. But on the other hand, we as the Council, our job is to make sure that we balance these uses for the good of everyone, and it's often a difficult decision.

I'm very concerned about -- You know, as far as O&I, I think it's probably okay at least for the

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moment. I understand it hadn't been developed, but, you know, if there's some particular use that O&I doesn't allow you to do, then I would say then bring a conditional use and we could consider that.

But my number one concern is apart from the sign -- I think that's been pretty well covered so far -- is just the total lack of buffering. The buffering would be about as thick as presumably a chain-link fence, and there's residential right there. And from here, it looks like count a dozen properties that the back yard would back into this if we zoned it M-1 property, and I just -- there's no way I could support that.

So that's basically all I had to say about that, so I would prefer probably just leaving it the way it is at this point.

ATTORNEY WEED: Council, bear in mind, I have got absolutely no opinion about whether you grant this or not.

Just for your edification, the code advises that stanchion signs shall only be located on property in commercial or industrial zoning areas if that's useful here.

COUNCILMEMBER ROCHE: Does that include O&I?

ATTORNEY WEED: That is a question for the

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1 building official and Mr. Haeberlin.
2 MR. HAEBERLIN: Well, presently the sign
3 code is not part of the zoning ordinance. My under-
4 standing that my function as a code building official
5 is for zoning information only, so I'd have to defer
6 to Mr. Calcaterra. Mr. Calcaterra is the person that
7 denied the permit for Mr. Maltese, which the Council
8 is presently looking at.
9 And I believe he denotes maximum height and
10 area; is that correct, Councilman Roche?
11 COUNCILMEMBER ROCHE: I'm looking for the
12 date that this was submitted. I don't -- I see the
13 denial date, which was March 24th. I don't see the --
14 Is that the same day? Oh, well.
15 I'm not sure that this is all that important
16 at this minute, anyway, but --
17 COUNCILMEMBER PACHUTA: Yeah. I just want
18 to make a comment as far as taking, and I think this
19 property, it was obviously purchased a long time ago.
20 It was a very odd lot at the time with a very large
21 Colonial Pipeline right-of-way right through it.
22 As Mr. Peters mentioned, his original intent
23 was to hopefully acquire some of the residential
24 property next to it to build a sign. So I think at
25 the time it was purchased, it -- as-is it had very

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1 limited value at that time, and you know, without the
2 additional property, it hasn't been able to be
3 redeveloped, so I don't really think much has changed.
4 It's still -- you know, it is an odd piece of
5 property.
6 But I don't really think it's appropriate
7 for the M-1 zoning. I don't think it fits in with the
8 neighborhood and I don't think ...
9 MAYOR JENKINS: I know at one time there was
10 an entrance to the back of that lot and it was an
11 empty house. Something happened to the house and it
12 ended up and -- but that's beside the point, but it
13 was mentioned that there was only one entrance, from
14 Peachtree Industrial, but at one time there was an
15 entrance on the back of that lot for some reason or
16 another.
17 Any more discussion?
18 ATTORNEY WEED: Mr. Mayor and members of the
19 Council, I would advise the Council and I would advise
20 Mr. Haeberlin to do this one thing at a time and
21 clarify for them what motions they need to make in
22 what order.
23 MR. HAEBERLIN: Well, first is the rezoning
24 of the property from O/I to M-1. From O/I to M-1,
25 sir. And if you do not grant M-1, the conditional use

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1 obviously cannot be granted.
2 And then you have the zoning variances as
3 well. You could conceivably grant the zoning
4 variances independent of these actions. Then the sign
5 variances obviously would be of no value if you did
6 not approve the conditional use. So it's kind of a
7 hairy situation here on structuring what you're doing
8 at this point.
9 COUNCILMEMBER FLEMING: So why couldn't we
10 take the sign variance first?
11 ATTORNEY WEED: There's nothing to prohibit
12 you --
13 COUNCILMEMBER ROCHE: Because there's --
14 ATTORNEY WEED: -- from doing that --
15 COUNCILMEMBER ROCHE: -- still M-1.
16 ATTORNEY WEED: -- in my opinion.
17 COUNCILMEMBER FLEMING: I'm sorry?
18 ATTORNEY WEED: There's nothing to prohibit
19 you from doing that in my opinion.
20 COUNCILMEMBER FLEMING: Oh, okay. Well --
21 ATTORNEY WEED: You can take them in
22 whatever order you choose.
23 COUNCILMEMBER FLEMING: -- let's take the
24 sign variance first.
25 In regards to the sign variance, I am

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1 opposed to a billboard being there, but I make a
2 motion to allow the current stanchion sign that has
3 been there for 21 years to remain in operation.
4 COUNCILMEMBER PITTMAN: In the same
5 location.
6 COUNCILMEMBER FLEMING: Correct.
7 COUNCILMEMBER PITTMAN: I second that.
8 COUNCILMEMBER ROCHE: So you're denying the
9 application for -- you're denying --
10 COUNCILMEMBER FLEMING: I'm sorry?
11 COUNCILMEMBER ROCHE: -- the application for
12 the --
13 COUNCILMEMBER FLEMING: Sign code variance.
14 COUNCILMEMBER ROCHE: Okay. You deny.
15 COUNCILMEMBER FLEMING: Denying the sign
16 code variance for the billboard. And the exception to
17 the sign code variance is the fact that I am allowing
18 -- I'm making the motion to allow the stanchion post
19 sign, not classified as a billboard, stanchion post
20 sign to remain active. It's been active for the last
21 21 years.
22 COUNCILMEMBER PITTMAN: Second.
23 COUNCILMEMBER ALEXANDER: Okay. I have some
24 questions regarding your motion because it says this
25 existing sign was denied because it exceeds the

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1 maximum height.
2 In 2004, there's documentation that the sign
3 was 55 feet tall. So I would assume if you're going
4 to make your motion you would also include the
5 existing height, which is five feet above what is
6 currently in code.
7 COUNCILMEMBER FLEMING: Ms. Alexander, thank
8 you for pointing that out.
9 Mr. Weed, can I not amend my motion to
10 include the existing height that's on the -- but no
11 addition to the height?
12 ATTORNEY WEED: If I understand your
13 question correctly -- I'm going to rephrase it just to
14 see if I understand.
15 COUNCILMEMBER FLEMING: Go right ahead.
16 ATTORNEY WEED: You would like to make a
17 motion that would grant a variance to the sign code
18 that would allow the existing stanchion sign at the
19 existing location as it exists right now to remain.
20 And in order to do that if necessary, if that required
21 a height variance, you'd like to grant that as well.
22 COUNCILMEMBER FLEMING: That's a perfect
23 motion, Mr. Weed. Thank you very much.
24 ATTORNEY WEED: My opinion is you could
25 certainly make that motion. You have a legal right to

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1 make that motion.
2 COUNCILMEMBER FLEMING: Thank you. And that
3 would become a permitted use; is that not correct?
4 ATTORNEY WEED: Well, I believe the answer
5 to that would be no. It wouldn't automatically make
6 it a permitted use for the zoning code, but right now
7 your motion deals with a variance merely from the sign
8 code.
9 COUNCILMEMBER FLEMING: Fine.
10 COUNCILMEMBER PITTMAN: So I'll second that.
11 MAYOR JENKINS: All right. Any more
12 discussion?
13 COUNCILMEMBER PITTMAN: This might be a
14 stupid question, but that doesn't allow them at some
15 future time to come along and put a giant billboard
16 there, does it?
17 COUNCILMEMBER FLEMING: No. It has to
18 remain a stanchion post sign.
19 COUNCILMEMBER PITTMAN: Stanchion post.
20 ATTORNEY WEED: In order for there to ever
21 to be a billboard on that property right now unless
22 you or some future council changes the zoning -- the
23 zoning or the sign ordinance, it would have to be
24 changed to M-1 or else there could never be a
25 billboard on that property.

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1 Now, bear in mind, tomorrow you could have a
2 meeting and change the definition of billboard, change
3 the definition of stanchion sign or change the zoning,
4 but as of right now, the answer is unless it's M-1,
5 there cannot be a billboard on that property as of
6 tonight.
7 COUNCILMEMBER FLEMING: But since the motion
8 was made as a variance to the sign code, though this
9 is not zoning --
10 ATTORNEY WEED: Not yet. We're going to get
11 back to that.
12 COUNCILMEMBER FLEMING: No. I'm talking
13 about the sign code --
14 ATTORNEY WEED: Yes, ma'am.
15 COUNCILMEMBER FLEMING: -- is not in zoning.
16 ATTORNEY WEED: That's right.
17 COUNCILMEMBER FLEMING: Do the same six
18 months not used as a stanchion sign go away where he's
19 not able to use it as a stanchion since it's not in
20 zoning?
21 I mean is he going to have problems next
22 year if he needs to change the facial board on the
23 stanchion sign?
24 ATTORNEY WEED: I believe the answer to the
25 question is no, he would not have -- If you create a

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1 situation where this is a stanchion sign and you grant
2 the variance for a stanchion sign and he changes the
3 face of the stanchion sign without increasing the
4 height or changing the lighting, if he changes the
5 face, my opinion right now would be that would be
6 permissible underneath that variance if it's approved
7 by Council.
8 COUNCILMEMBER FLEMING: Thank you very much.
9 My motion still remains the same.
10 COUNCILMEMBER PITTMAN: And my second as
11 well.
12 MR. HAEBERLIN: Note for the record, height
13 is 14-11(A), "The maximum height of all signs at the
14 highest point above the level of the ground shall not
15 exceed 45 feet provided, however, the sign located on
16 property adjacent to or within 500 feet of a Federal
17 interstate highway which would otherwise comply with
18 and be permitted under each and every other provision
19 hereof may be 50 feet at its highest point." That's
20 the code citation.
21 COUNCILMEMBER FLEMING: Thank you.
22 MAYOR JENKINS: Any more discussion?
23 - - -
24 (No response)
25 MAYOR JENKINS: Call the roll.

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CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BLACKMON: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: No.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: I'm going to vote no.
CLERK BLACKMON: Motion carries.
MAYOR JENKINS: What is the next item?
MR. HAEBERLIN: Now we can go back to zoning if that's appropriate.
ATTORNEY WEED: In whatever order Council prefers. Just remind them of what to do.
COUNCILMEMBER FLEMING: I'd like to make a motion to deny the request to rezone the property. Here it is. I'm sorry. Parcel number 18-335-14-020. That is to deny the rezoning request from O/I to M-1.
COUNCILMEMBER PACHUTA: Second.
MAYOR JENKINS: Any more discussion?
- - -
(No response)
- - -

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MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: 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?
COUNCILMEMBER ROCHE: Yes.
COUNCILMEMBER ALEXANDER: If we can go back to the sign thing, I'm sorry, there is another -- the reason it was denied, because it said it exceeded the maximum size. Would you like to educate us on that?
MR. HAEBERLIN: The building official's decision?
COUNCILMEMBER ALEXANDER: Yes.
MR. HAEBERLIN: I would not like to speak on behalf of the building official.
COUNCILMEMBER ALEXANDER: I mean can you read us the code, please.
MR. HAEBERLIN: Oh. Based on parcel acreage currently -- And I know the Council has been struggling with the new sign code and would like to

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rewrite that. And this property -- "Stanchion signs for parcels less than five acres but equal to or greater than two acres shall not exceed a sign area of 150 square feet," and that is Section 14-12 -- the way they're numbered is very unusual -- (D)(2).
COUNCILMEMBER FLEMING: What's the total again? I'm sorry.
MR. HAEBERLIN: 150 square feet.
COUNCILMEMBER FLEMING: Do you have any idea what it is right now?
COUNCILMEMBER ALEXANDER: There are computations on here. I'm not sure what they mean.
COUNCILMEMBER FLEMING: But it's for the billboard, isn't it?
COUNCILMEMBER ALEXANDER: It shows 440. Like I said, I don't know what it means, but it says 440 on it. Because it looks like the current sign as displayed has a smaller lower section and a larger informational face.
MR. HAEBERLIN: Well, our definition of area of sign or sign area means "the smallest square rectangle, triangle, circle or a combination thereof which encompasses the entire sign inclusive of any border or trim but excluding the base apron, supports and other structural members." That's the definition

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that's in your current sign code.
COUNCILMEMBER ROCHE: I guess the question we're getting at is as a result of what the Council has voted tonight, is the sign in compliance or is he going to get written up with more QOL citations. Is that what we're getting at?
COUNCILMEMBER PACHUTA: Maria is trying to calculate the area.
COUNCILMEMBER FLEMING: Mr. Peters?
MR. PETERS: The size -- we believe the size of the sign as originally permitted -- and we are 99 percent sure that's what is there -- is 20 x 36 which would be 720 square feet. Excuse me. No. 520 square feet. 36? Hang on. I can't do math. 720. I was right the first time. It's 36 feet tall, 20 feet wide, and the bottom of it is 14 feet above the ground. That's how you get to 50 feet.
COUNCILMEMBER FLEMING: Right.
And Ms. Alexander, I appreciate your concern, but that's not the issue we're taking up tonight because we're permitting the stanchion post sign to continue use at the height that it presently is now.
If it needs to be changed to comply with our current ordinance, then that -- that's what needs to

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1 happen, or then they come to us for a variance or an
2 appeal.
3 MR. PETERS: I'm sorry, ma'am, but if it's
4 all right, I guess I was asking questions. I under-
5 stood -- I thought I understood your motion to be
6 what's there, out there right now as it exists can
7 continue.
8 COUNCILMEMBER FLEMING: Okay. Is it -- it
9 is a boxed --
10 MR. PETERS: Yes.
11 COUNCILMEMBER FLEMING: -- sign?
12 MR. PETERS: Yes.
13 COUNCILMEMBER FLEMING: Okay.
14 COUNCILMEMBER ALEXANDER: And this,
15 according to the denial, is too large.
16 MR. HAEBERLIN: So in your deliberations, I
17 guess what you're asking staff, could you grant an
18 area variance? Yes, you could. If you're granting
19 the height variance, you could grant an area variance.
20 ATTORNEY WEED: I concur with that.
21 COUNCILMEMBER ALEXANDER: And per the
22 drawing, to the best of your recollection, that's the
23 same size as your sign was in 2004?
24 MR. MALTESE: It's been that way ever since
25 1989 and it was permitted as a billboard. I never

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1 heard the word "stanchion." And I had the largest
2 sign company in Georgia for 36-and-a-half years. I
3 don't understand the word "stanchion."
4 COUNCILMEMBER ALEXANDER: Pole.
5 MR. MALTESE: Pole sign.
6 COUNCILMEMBER FLEMING: So Ms. Alexander,
7 you want to make a motion --
8 COUNCILMEMBER ALEXANDER: Yeah. I --
9 COUNCILMEMBER FLEMING: -- provide a
10 variance of area?
11 COUNCILMEMBER ALEXANDER: I think so, too.
12 Make a motion to allow the existing sign to
13 continue with a not-to-exceed of 720 -- is it correct
14 language, square feet? Mr. Haeberlin?
15 MR. HAEBERLIN: Yes, ma'am.
16 COUNCILMEMBER ALEXANDER: Square feet of
17 area?
18 MR. HAEBERLIN: Per face.
19 COUNCILMEMBER ALEXANDER: Per face.
20 MR. HAEBERLIN: Uh-huh, and it has one face.
21 COUNCILMEMBER FLEMING: Second.
22 ATTORNEY WEED: Just to clarify, there was a
23 request for an area variance, too, wasn't there?
24 MR. HAEBERLIN: No, sir.
25 ATTORNEY WEED: All right.

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1 MR. HAEBERLIN: There were variances
2 advertised but we're outside the context of -- other
3 than one, which was a height variance from 50 to 80.
4 That was in reference to a billboard. We're kind of
5 outside the context of that original discussion.
6 ATTORNEY WEED: I'm going to advise the
7 Council that the applicant may need to come back and
8 apply for an actual area variance. He certainly is
9 entitled to get it and you'd certainly grant him that,
10 but because it wasn't advertised -- and I need to take
11 a look at the advertisement to see if it's broad
12 enough that it would cover this possibility, but I'm a
13 little concerned that it might not be.
14 COUNCILMEMBER FLEMING: But we're outside of
15 zoning.
16 COUNCILMEMBER PACHUTA: That's correct.
17 ATTORNEY WEED: We are -- that is correct,
18 we are outside of zoning but we're still underneath
19 the sign code. So give me a second. I want to see
20 what the variance standards are and see what we can do
21 here.
22 MAYOR JENKINS: While we're doing this
23 research, we're going to take a 10-minute break, 10
24 minutes only.
25 - - -

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1 (Brief recess)
2 - - -
3 MAYOR JENKINS: Get it going. What have we
4 got?
5 MR. HAEBERLIN: We're still in discussion
6 about the stanchion sign.
7 CLERK BLACKMON: There is a motion on the
8 table.
9 ATTORNEY WEED: Would you repeat the motion?
10 CLERK BLACKMON: I show --
11 MAYOR JENKINS: The original motion was to
12 leave the sign as it was. It didn't say anything
13 about whether it was 720 square feet or fifteen.
14 MR. HAEBERLIN: Correct. We pointed out
15 that a height variance was advertised. However, an
16 area variance was not advertised although there was
17 discussion about that what they requested was twice
18 the sign area that would normally be allowed.
19 ATTORNEY WEED: Based upon -- based upon
20 what was in the application and the fact that it was
21 twice -- if you put a cap on the size of the sign at
22 what they currently have, since what they applied for
23 are two faces which would equal essentially twice that
24 one face, it's my opinion that you don't have to --
25 they do not have to file for a complete sub-

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application, and that would be within the parameters of what you can decide tonight.

Had it been the opposite, had it been somewhat less or less than what they had applied for, then I would probably advise you that they needed to reapply; but because that was already in their application and it was twice the size of what you might cap it at, I'm all right with that procedurally.

COUNCILMEMBER FLEMING: And the motion on the floor is?

CLERK BLACKMON: To allow the sign to continue as-is at a maximum of 720 square feet per face.

COUNCILMEMBER FLEMING: And did you get a second?

CLERK BLACKMON: No, ma'am.

COUNCILMEMBER FLEMING: Second.

MAYOR JENKINS: Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Fleming?

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COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pachuta?

COUNCILMEMBER PACHUTA: No.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: No.

CLERK BLACKMON: Motion carries.

MAYOR JENKINS: Okay.

MR. HAEBERLIN: We still have the issue of the zoning variances, and as far as a motion on those: to reduce the rear building setback for abutting residentially zoned land from 250 feet as per code to 50 feet, to reduce the side building setback for abutting residentially zoned land from 250 feet as per code to 40 feet.

Again, if the site is to remain as is, is there a need to grant those variances? That's a decision for the Council.

COUNCILMEMBER FLEMING: So I thoroughly understand, those variance would have applied to a billboard in M-1.

MR. HAEBERLIN: That's correct. It's my belief this is predicated on your rezoning the property to M-1 which you did not do. You've left it

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at O/I.

COUNCILMEMBER FLEMING: Then, I'd like to make a motion to deny the variance request.

And Mr. Haeberlin, repeat them because I can't find them.

MR. HAEBERLIN: The zoning variances request illuminated on page 4 of the report: to reduce the rear building setback where abutting residentially zoned land from 250 feet to 50 feet and to reduce the side building setback where abutting residentially zoned land from 250 . . . to 40 feet.

COUNCILMEMBER PACHUTA: Second.

MAYOR JENKINS: We got a motion and a second?

CLERK BLACKMON: Yes, sir.

MAYOR JENKINS: Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: 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?

COUNCILMEMBER ROCHE: Yes.

MR. HAEBERLIN: The last item which is intrinsic to the denial for the M-1 zoning is a conditional use, a motion which it would be appropriate to deny the conditional use because a conditional use is only allowed in M-1.

MAYOR JENKINS: Do I get a motion?

COUNCILMEMBER FLEMING: The conditional use was for a billboard.

MR. HAEBERLIN: For that of a billboard.

COUNCILMEMBER FLEMING: I make a motion to deny the conditional use for a billboard as it was predicated on the M-1 zoning.

COUNCILMEMBER PITTMAN: Second.

MAYOR JENKINS: Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

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1 CLERK BLACKMON: Councilmember Fleming?
2 COUNCILMEMBER FLEMING: Yes.
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: Yes.
9 MR. HAEBERLIN: Completes that item.
10 MAYOR JENKINS: Thank you, Scott.
11 MR. PETERS: Thank you very much.
12 MR. MALTESE: Thank you.
13 MR. PETERS: Have a good evening.
14 ATTORNEY WEED: It's my understanding,
15 Mr. Mayor, that we've got a request from the Dekalb
16 County delegation to reactivate our formerly recessed
17 Executive Session.
18 COUNCILMEMBER ROCHE: Mayor, I think it
19 would be better if we could, since -- I mean, the
20 other ones are text amendments that could be
21 postponed, but we do have some people here, 4171
22 Winters Chapel. Since they've been waiting, it would
23 be great if we could maybe get that out of the way
24 also.
25 MAYOR JENKINS: Well, I understand that, but

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1 the CEO's got to leave before 10:00, and if it's all
2 right with the Council, supposedly it'll only take a
3 matter of a few minutes to finish up what we were
4 doing.
5 ATTORNEY WEED: That is my understanding,
6 Mr. Mayor.
7 MAYOR JENKINS: So I understand that, but I
8 mean it's up to the Council.
9 COUNCILMEMBER PACHUTA: Do we need to make a
10 motion to resume the Executive Session?
11 ATTORNEY WEED: Yes, ma'am. I'd prefer
12 that.
13 COUNCILMEMBER PACHUTA: I make a motion to
14 resume our previous Executive Session for future
15 potential real estate acquisition.
16 MAYOR JENKINS: Second?
17 COUNCILMEMBER PITTMAN: Second.
18 MAYOR JENKINS: Any more discussion?
19 COUNCILMEMBER ROCHE: Again, I'll say it
20 over and over again, it just troubles me that we're
21 not allowing the citizens to have any kind of public
22 comments on this agenda item.
23 MR. JOHNSON: You know, I'd like to say
24 that, you know, my attorney will be in contact with
25 you in the morning. You have held an illegal -- you

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1 know, if you're not going to give us any input, I'm
2 going to stand up and just tell you that the people
3 who voted to --
4 My name's Ray Johnson.
5 MAYOR JENKINS: Excuse me, sir.
6 ATTORNEY WEED: Sir, no disrespect, but
7 you're out of order.
8 MR. JOHNSON: I know, and I understand that.
9 ATTORNEY WEED: Sir, there'll be an
10 opportunity on the agenda --
11 MR. JOHNSON: (Overspeaking)
12 ATTORNEY WEED: -- for you to speak later.
13 MR. JOHNSON: (Overspeaking)
14 ATTORNEY WEED: Sir, I'm respectfully asking
15 you to cease.
16 MAYOR JENKINS: Excuse me, sir.
17 MR. JOHNSON: Those of you who voted --
18 MAYOR JENKINS: Excuse me, sir.
19 MR. JOHNSON: -- in favor -- Those of you
20 who voted in favor, you know, of the Executive
21 Session --
22 MAYOR JENKINS: That's enough, sir.
23 MR. JOHNSON: -- are personally -- are
24 personally liable for violating your own oath of
25 office. Okay. That's it.

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1 MAYOR JENKINS: John, we can remove this man
2 from the Council room.
3 MR. JOHNSON: I don't -- you know, that's
4 fine.
5 MAYOR JENKINS: Any more discussion on the
6 motion?
7 - - -
8 (No response)
9 - - -
10 MAYOR JENKINS: Call the roll, please.
11 CLERK BLACKMON: Councilmember Alexander?
12 COUNCILMEMBER ALEXANDER: Yes.
13 CLERK BLACKMON: Councilmember Fleming?
14 COUNCILMEMBER FLEMING: If we're not going
15 to allow public comments prior to the CEO coming back
16 in, then I would say that I'm going to vote no.
17 CLERK BLACKMON: Councilmember Pachuta?
18 COUNCILMEMBER PACHUTA: Yes.
19 CLERK BLACKMON: Councilmember Pittman?
20 COUNCILMEMBER PITTMAN: Yes.
21 CLERK BLACKMON: Councilmember Roche?
22 COUNCILMEMBER ROCHE: No.
23 CLERK BLACKMON: Motion carries.
24 MAYOR JENKINS: Thank you. We shouldn't be
25 too long.

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- - -
(Executive Session resumed)
- - -
MAYOR JENKINS: We have come out of Executive Session. Do we have anything to report?
ATTORNEY WEED: Mr. Mayor, I believe our consultant, David Greene, from Perkins & Will would like to make a brief announcement to the Council and the audience.
MR. GREENE: I'd just like to say that we had a very productive meeting with Dekalb County and it looks as though they're seriously considering the proposal that we gave to them a number of weeks ago, which is great because it means that Dekalb County is finally coming around to Doraville's way of thinking about the way this project should work. So there you are.
MAYOR JENKINS: All right. Okay, Scott. We're going to resume our regular meeting.
MR. HAEBERLIN: Yes, sir. We're going to go to Item VIII-G, 2M Properties, zoning variance, 4171 Winters Chapel Road. At this time, I invite the applicant's representative to come forward.
ATTORNEY WEED: Mr. Haeberlin, can I get a motion to go back in the regular meeting, please, just

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to --
COUNCILMEMBER ALEXANDER: So moved.
ATTORNEY WEED: -- make me happy?
COUNCILMEMBER PACHUTA: Second.
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: 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?
COUNCILMEMBER ROCHE: Yes.
ATTORNEY WEED: Thank you.
MR. HAEBERLIN: At this time, I invite the applicant forward, 2M Properties.
MR. MATTHEWS: Good evening. My name is Wayne Matthews. I work with Southeastern Engineering. We're representing 2M Properties for the property at 4171 Winters Chapel.
Can everybody hear me okay?
MAYOR JENKINS: All right.
MR. MATTHEWS: Okay. I think you've got

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some smaller plans for the property, probably a little hard to read. We've got some larger ones, if you don't mind, ma'am.
And while you're passing those out, the property is currently zoned M-2. It's an industrial building that was built I believe in about 1966. It fronts on Winters Chapel Road.
And the request is two-fold. It's to get a zoning variance for the existing side setback and to allow the existing impervious coverage that's on the site now.
As a part of the impervious percentage approval, what we're proposing is some mitigation in the form of -- I don't know if you can see it right now, but right now, your driveway is about this wide and it's going to be reduced down to about a third of what it is now. We're also proposing some plantings along the front to clean up the frontage, complete the look. It's a pretty straightforward request and that's open to questions.
COUNCILMEMBER FLEMING: And where does the side setback come in?
MR. MATTHEWS: Over here. Several years ago, the County came in and built a road. The original property line was up here off the page,

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basically. When they built a new road, obviously the property moved down and the setback moved with it, and therefore, this part of the building overhangs it.
COUNCILMEMBER PACHUTA: Was it sufficient setback with the old road?
MR. MATTHEWS: Yes, ma'am.
COUNCILMEMBER ALEXANDER: Is the reason you're asking for the setback variance, is that just to -- I mean what -- I guess I was trying to figure out --
MR. MATTHEWS: Why? It's a nonconformity.
COUNCILMEMBER ALEXANDER: Okay.
MR. MATTHEWS: And since it is a noncon-formity, we would like to go ahead and get that covered and vested now.
COUNCILMEMBER PACHUTA: My question, Mr. Weed, is considering that the setback was decreased due to a road widening, I mean is it a legal nonconforming --? I don't know what the right word is.
ATTORNEY WEED: That's my opinion, yes.
COUNCILMEMBER PACHUTA: Okay. So we don't have to grant the variance if it's --
ATTORNEY WEED: The applicant --
COUNCILMEMBER PACHUTA: -- already there.

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ATTORNEY WEED: The applicant did nothing to create the problem with the setback. At least that's what the evidence is indicating now.

COUNCILMEMBER PACHUTA: Okay.

COUNCILMEMBER ALEXANDER: I believe that this is the drawing that you sent Friday, I believe it was. And it says the existing impervious is 83.9, your proposed is 72, but I believe the planner had a different figure.

MR. MATTHEWS: Okay.

COUNCILMEMBER ALEXANDER: Is that true, Mr. Haeberlin?

MR. HAEBERLIN: Correct. Based on the application I received, it was something like eighty -- my application was to go to 83.9. So perhaps there was less imperious variance needed than I am aware of.

MR. MATTHEWS: I believe when the plan was initially submitted, our survey was not completed yet. And so after that, the impervious percentages were updated. As it stands, the existing impervious percentage as of right now is 83.9 percent of the property. We're proposing to take that down somewhere in the neck of 70, 72, somewhere in there, percent just simply by reducing the width of the driveway and providing a planting area up front.

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COUNCILMEMBER FLEMING: I personally don't have any questions, any other questions for you. However, I do want to express that this is part of my district and I live very close to it, and anything that you can do to beautify that area in front of that building is okay with me, and reducing the driveway and that parking area out front would be a great improvement.

COUNCILMEMBER PITTMAN: It's also in my area, so anything that can make it look better. It's hideous right now. It's an embarrassment.

MAYOR JENKINS: Any more discussion?

Do I have a motion?

COUNCILMEMBER FLEMING: No, it goes to --

CLERK BLACKMON: Public hearing.

MAYOR JENKINS: Oh, okay. I'm sorry. It's getting late.

COUNCILMEMBER FLEMING: I'll be glad to make a motion if you want me to, but I think there's a little more to it.

MAYOR JENKINS: Okay, Scott.

MR. HAEBERLIN: Yes, sir. As the applicant discussed, this is a much smaller M-2 lot than most of the M-2 properties in the city which are significant in size. This does have shallow depth. There is or

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appears to have been a slide or a pie taking at the development of the extension there, and it appears to abut Dekalb County-owned right-of-way. It is the ownership on the tax records. So there are some existing situations present. It was built in 1966.

Most of the area on the lot has been used for parking, has been used in that capacity. Also too with the granting of the conditional use by the City Council which has already occurred, that there is a need for more outdoor storage or parking area than most M-2 properties.

So I do make the recommendation of approval on an impervious surface variance. You may want to clarify that since it's not as large as we thought it was.

But I did recommend denial of the requested side yard building setback. It's really an iffy discussion here as to whether this really is a side. If this area here is actually Dekalb County right-of-way, then it would be a front because any time you abut right-of-way it is a front.

As we discussed, I don't really think it matters one way or another. It is perhaps legally nonconforming. It would be whatever pleases the Council.

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The recommendation is based on a review of this item by the city arborist as well. He has been working with the applicant's engineers on the tree plan for the property, and we wrote a condition that says a 20-foot landscape strip along Winters Chapel Road, and I won't read it verbatim, but the selections that we include in there were ones that the arborist selected because he thought they would withstand or make it in that area, and it is to improve the frontage of that property.

Now, the Planning Commission did offer this slightly in their recommendation of approval. It's that they would allow trees as small as two inches in caliper and eight feet in height. I have cautioned the applicant that those will not comply or meet the requirements of the tree ordinance but they will certainly meet the requirements for beautification.

Are there any questions?

COUNCILMEMBER ALEXANDER: I guess when you say they would not meet the requirements for the tree ordinance --

MR. HAEBERLIN: In terms of the three inches and -- three feet -- three inches and eight feet in height at the time of planting for replacement trees.

COUNCILMEMBER ALEXANDER: Okay.

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1 MR. HAEBERLIN: So they will simply be
2 beautification.
3 COUNCILMEMBER ALEXANDER: But he's not
4 cutting down any trees; correct?
5 MR. HAEBERLIN: Well, we haven't gotten into
6 a land disturbance permit. We haven't gotten to that
7 phase yet.
8 What was structured in the conditional use
9 is to maintain the tree buffer on the site. We've not
10 done the calculation yet on the number of units
11 required. He may in fact have the necessary units,
12 and again, this will just be a supplement. It'll be
13 an improvement to the front.
14 But he does take that risk if he goes to a
15 two-inch caliper that it will never meet any require-
16 ments for the tree ordinance. It will simply be
17 beautification.
18 COUNCILMEMBER ROCHE: What happens if we
19 deny the requested side yard building setback?
20 MR. HAEBERLIN: I really don't think it has
21 any impact on the situation, you know. Is it a side?
22 Is it the front? That's interpretive.
23 This tract is clearly owned by Dekalb County
24 as well as this island right here. So is it a side
25 yard? Is it a front? In my opinion, it would be a

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1 front, and there's a reason why Dekalb County owns
2 that property. The only reason they've owned property
3 in the city of Doraville and conceivably would be for
4 right-of-way. I doubt if they're opening this tract
5 for development purposes.
6 I don't think it really matters one way or
7 another. It's again, the applicant feels strongly
8 that it's something he would like to clear up.
9 The current setback today if it's a front
10 would be 75 feet.
11 COUNCILMEMBER ROCHE: So they would need a
12 variance, then, because that's clearly less than 75
13 feet.
14 MR. HAEBERLIN: Well, the structure could be
15 looked at as legally nonconforming as a result of this
16 taking that's occurred there. So I mean it's
17 semantics, and I think Mr. Weed agrees with me. It's
18 really semantics.
19 COUNCILMEMBER ROCHE: I just don't want a
20 situation later where, you know, we think we're --
21 where we think we're doing the right thing, and then
22 later on, technicalities and ... I want to cover all
23 the bases.
24 MR. HAEBERLIN: Well, I think in your fact
25 finding you need to first decide whether you consider

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1 this to be a side or a front. I think that would be
2 important in your deliberations.
3 COUNCILMEMBER ROCHE: But if it was a side,
4 wouldn't they need a variance for that setback?
5 MR. HAEBERLIN: If the building's legally
6 nonconforming, again, it's a moot issue, but people
7 are reading nonconforming -- you all are perceiving it
8 a little differently than I would, and the engineer
9 has his own opinion of that as well.
10 COUNCILMEMBER ROCHE: So if someone wanted
11 to make a major modification to that building, maybe
12 take out a couple of walls, rebuild something there,
13 would they be able to do that and still conform to the
14 side setback --
15 MR. HAEBERLIN: In my --
16 COUNCILMEMBER ROCHE: -- or front setback?
17 MR. HAEBERLIN: In my view of the property,
18 by not bringing the variance, you are holding the
19 present configuration to what it is. So yes, that
20 could be argued that if we don't grant a variance,
21 then they could never expand this building.
22 The question then becomes for you: do you
23 want them to expand this building which was built in
24 1966 and do you want them to expand onto more of these
25 areas?

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1 COUNCILMEMBER ROCHE: No. My question is,
2 if they wanted to rebuild the building, would they be
3 able to do it?
4 ATTORNEY WEED: If they --
5 COUNCILMEMBER ROCHE: If they wanted to tear
6 it down, the cinder block, and they wanted to put it
7 up and make it some other material.
8 ATTORNEY WEED: Then my opinion would be
9 legally, then the legal nonconforming use with regard
10 to that side or front setback goes away upon the
11 destruction of the building.
12 COUNCILMEMBER ROCHE: So the answer is no.
13 If they decided they wanted to rebuild that part of
14 the building or change it, then they would have to
15 come back for a variance.
16 ATTORNEY WEED: I would agree with that.
17 COUNCILMEMBER ROCHE: So that's my -- that
18 was my question.
19 MR. HAEBERLIN: I would agree with what
20 Mr. Weed said.
21 COUNCILMEMBER ROCHE: So that may be why
22 they want that variance --
23 MR. HAEBERLIN: Correct.
24 COUNCILMEMBER ROCHE: -- the side yard
25 variance, because that way, if they did decide to

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1 somehow for some reason demolish the building and
2 rebuild it, they'd already have the variance and they
3 wouldn't have to do it, so --
4 MR. HAEBERLIN: Well, the perspective --
5 COUNCILMEMBER ROCHE: -- I wanted to make
6 sure that was clear.
7 MR. HAEBERLIN: Uh-huh. The perspective
8 that staff is looking at, because you're granting an
9 impervious variance on the property, that if the
10 building is ever torn down, the intention of the City
11 is that the building be smaller. So how I'm looking
12 at it is different than the way you may look at it.
13 I'm looking at if the building is taken down, we can
14 actually shrink the new building and the building will
15 be farther away from this area. Again, it's just a
16 different perspective on the same item.
17 COUNCILMEMBER ROCHE: I think that maybe the
18 applicant just wants to be able to preserve the square
19 footage of his building if necessary if he decided to
20 change it or something happened like a fire or
21 whatever. I don't know how you burn down a brick
22 wall, but still --
23 COUNCILMEMBER FLEMING: I wanted to go back
24 to the tree ordinance situation.
25 MR. HAEBERLIN: Yes, ma'am.

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1 COUNCILMEMBER FLEMING: And you also
2 commented about land disturbance permits.
3 MR. HAEBERLIN: Yes, ma'am.
4 COUNCILMEMBER FLEMING: So him planting
5 trees is considered a land disturbance permit?
6 MR. HAEBERLIN: No, ma'am. He is going
7 through a land disturbance permit to develop this
8 entire property to pave the necessary areas to have an
9 impound or other facility on the property.
10 Currently the property does not meet code.
11 They are intending to get the necessary permits from
12 the City. Land disturbance under the State guidelines
13 is 40 percent of the site or one acre, and clearly
14 we're at that threshold. So these plans will go to
15 the State for review in addition to the local reviews
16 which occur with the city arborist participating.
17 So this is a true land disturbance permit.
18 So no matter what occurs tonight, it will still go
19 through those formal processes.
20 COUNCILMEMBER ALEXANDER: I appreciate the
21 Planning Commission's suggestion about allowing a
22 smaller caliper of trees but I don't want Council to
23 agree to that and then the applicant be punished for
24 that agreement because they are trying to beautify
25 their property, but you are telling me you can't tell

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1 me if their existing tree canopy with the new, smaller
2 caliper trees will meet the requirements of our tree
3 ordinance which is triggered by the land disturbance
4 permit.
5 MR. HAEBERLIN: Correct, because they have
6 not submitted for any such permits at this time. I
7 don't have any records that indicate one way or
8 another. They are very proactive. Instead of
9 submitting for a permit and responding to the outcome
10 of that, they came from the forefront and said, "This
11 is what we think we need to do to our property to be
12 able to develop it," and they're realizing once they
13 get through your action, they're coming to us for the
14 land disturbance permit application and proceed
15 thereon.
16 There has been no variance applied for at
17 this time to allow this to be gravel. The intentions
18 of the applicant is to pave this area right now.
19 COUNCILMEMBER FLEMING: So paving a parking
20 lot, what's already a parking lot, is a land
21 disturbance?
22 MR. HAEBERLIN: Well, it exceeds one acre or
23 40 percent of the site. Under the State threshold,
24 yes, ma'am, it's a land disturbance permit. Under the
25 tree ordinance, a land disturbance permit includes

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1 demolition and site plan review and State
2 requirements.
3 Tree ordinance is much broader. Tree
4 ordinance basically allows the City of Doraville right
5 now to implement the tree ordinance on an interior
6 finish permit demolition the way it's currently
7 constructed.
8 And I know we have had discussions and
9 negotiations with the city arborist on this based on
10 the tasks that we're looking at on 5,000 square foot
11 or less which was discussed at the last Council
12 meeting.
13 So regardless if that amendment is approved
14 or not, this will constitute a land disturbance permit
15 and we are going to proceed with the required State
16 guidelines, which is what we have to do to keep our
17 local issuing authority.
18 MAYOR JENKINS: Any more discussion?
19 - - -
20 (No response)
21 - - -
22 MAYOR JENKINS: Scott?
23 MR. HAEBERLIN: At this time, the Mayor
24 would like to open the public hearing. Those who
25 would like to speak in favor of the petition, please

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raise your hand.
Please come forward and state your name for the record and your address as well.
MR. JOHNSON: Sure. Good evening. My name is Les Johnson with the Simpson Company. I'm the broker that represents the Maxwells.
Mostly a point of order on the trees. When we went -- we hired an engineer to do this plan, the difference between the three-inch and the two-inch came up, and because there's a power line along the front, sometimes it's hard to get a three-inch caliper tree, and so that's why we asked for a variance because maybe we couldn't find any that was suitable to do what we want to do to beautify the front, which we're going to a lot of expense to do so. That was the main reason for that, no other.
MAYOR JENKINS: Okay. Thank you. Next?
MR. HAEBERLIN: Anybody who would like to speak against the petition please raise your hand.
Stuart, you want to speak against?
MR. ANDERSON: Stuart Anderson.
It's the issue I brought up when this first came up, this business, and that would be the storm-water runoff, if that's been addressed properly. I brought it up before and it was discussed some, but it

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hasn't been discussed or mentioned tonight, impervious and what-not, and I just want to make sure that storm-water runoff is addressed tonight.
MR. HAEBERLIN: Close the public hearing, Mayor. It returns to the Council.
MAYOR JENKINS: Okay.
MR. MATTHEWS: Scott, can I rebut?
MR. HAEBERLIN: Mr. Weed, would you like to clarify? The applicant would like to rebut?
ATTORNEY WEED: I think that's fair.
MR. HAEBERLIN: Okay.
MR. MATTHEWS: Thank you.
I just wanted to clarify a couple of items. The reason why we've requested the two-inch trees is pretty simple. It's like Mr. Johnson said, sometimes it's hard to find a good three-inch tree.
And I know that the tree density was mentioned on the site. We haven't done an official count or survey yet to know exactly what's back there in this treed area. We may not need to plant three-inch trees to meet that density. Two inches may be sufficient; three inches may be necessary. At the time of (obliterated), we'll make that determination and we'll do an official tree survey, we'll do the tree count per your development codes, and if we have

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to plant three inches to make it work, then we'll do so.
But as far as what we're required to do, let's go ahead and approve the two-inch tree. If we have to plant a three- or a four-inch later, then we'll do that, but as far as what's required, let's go with two.
As far as stormwater runoff, the gentleman's concern, as Scott said, this project, in whatever shape it comes before you for a land disturbance permit, we'll have to go through the full State review and through a full hydrology study. At that time, we'll treat any kind of stormwater request you have.
For now, this is merely a zoning exercise. We just want to address what's there, simple as that.
COUNCILMEMBER ROCHE: Quick question.
MR. MATTHEWS: Yes.
COUNCILMEMBER ROCHE: Have you had a chance to see this document, the staff's -- Sometimes it's more than just zoning. He actually -- this document actually specifies the types of trees, and I notice they don't really necessarily match the types of trees you have on your thing.
If we pass this and you want to get a different type of tree, if I'm not mistaken, you got

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to rezone your property or get a variance or something, and that's a big deal.
MR. MATTHEWS: I'm glad you bring it up. I'd like to address that too if we could.
As you know, there's a power line running across the frontage of the property. I'm not sure who owns that, but more than likely it's Georgia Power but I haven't done my homework to see exactly who owns that line. Typically, utilities company only allow certain plants under their lines. Regardless of whose right-of-way it is, they only allow certain plants because they have to come in and maintain those lines, and the trees or bushes, whatever they may be, are in their way. So what I'd like to do if we could is to amend this condition number one here. Instead of listing out the specific trees, give us leeway to plant the appropriate trees as the utility owner may approve that would be fitting. Magnolia -- magnolias tend to get pretty large. I'd rather than not be in the list because I don't think that would ever be approved by a utility owner.
COUNCILMEMBER ROCHE: What about the pine --
MR. MATTHEWS: So we'd kind of -- I'm sorry.
COUNCILMEMBER ROCHE: I'm sorry. What about the pine varieties, pine trees?

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1 MR. MATTHEWS: Pine varieties I don't think
2 will ever be approved, no.
3 What we've got in there right now on this
4 drawing is a Nellie Stevens holly, which is more of a
5 bush, a big bush. It provides -- it's good for
6 screening. It's hardy. It's there all year long.
7 It's more of a bush, won't conflict with the lines.
8 COUNCILMEMBER ROCHE: Thank you. That's the
9 only question I have.
10 MR. MATTHEWS: Anything else that was
11 unclear?
12 - - -
13 (No response)
14 - - -
15 MAYOR JENKINS: Thank you. Bring it back up
16 to the table. Do we have any more discussion at the
17 table?
18 COUNCILMEMBER ROCHE: Well, just that, you
19 know, as noted before, well, two things, I guess. The
20 side setback, I think we should probably leave that in
21 if we're going to pass this. And the second thing, I
22 would take out all the stuff about specific types of
23 trees in number one except for the line that says,
24 "Pine varieties shall not meet the requirements." And
25 I'm concerned that the city arborist may have

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1 different ideas than the power company, and I'm not
2 sure how that would all work out, so, and we're
3 granting this in perpetuity. For all we know, 10
4 years from now, we may not have the city arborist. So
5 I would want to probably just take out everything
6 except for the sentence that begins, "Pine varieties."
7 COUNCILMEMBER ALEXANDER: So you're going to
8 end the sentence "decorative hardwood mulch," period,
9 and then you're going to strike the species, that
10 line?
11 COUNCILMEMBER ROCHE: Right.
12 COUNCILMEMBER ALEXANDER: Okay.
13 COUNCILMEMBER ROCHE: That'll work, yeah.
14 COUNCILMEMBER PITTMAN: And as you all know,
15 I voted against it, but since it's going to be there
16 anyways, I am very pleased that you are at least
17 trying to make the appearance better because the
18 property has not been taken care of like some of the
19 other properties in that area. So we're very pleased
20 or I'm very pleased that you are making those efforts
21 to do that.
22 MR. HAEBERLIN: What's endemic, if it please
23 the Council, to the way this is structured, if the
24 Council elects to strike something, I would ask that
25 they strike the species selection to where it ends, to

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1 pine varieties, because there's no structure or form
2 to the condition at all, so they could do essentially
3 anything they wanted to. So to have some management
4 of the situation if, if the Council feels "The species
5 selection within the strip shall include the following
6 minimum selections: Waxmyrtle, Cryptomeria, Holly
7 (pyramidal tree form), Magnolia and flowering cherry,"
8 That's the only thing that really could be struck and
9 have any teeth left to implement.
10 COUNCILMEMBER ALEXANDER: I believe
11 Mr. Roche said that he would strike that, and then the
12 sentence picks up again at "Pine varieties."
13 COUNCILMEMBER ROCHE: Right.
14 MR. HAEBERLIN: Okay. So the 20 foot,
15 et cetera, is still in there.
16 COUNCILMEMBER ROCHE: Right.
17 MR. HAEBERLIN: Okay. Clarification.
18 COUNCILMEMBER ROCHE: What do you want to do
19 about the three inches or two inches?
20 COUNCILMEMBER PACHUTA: What was the
21 recommendation from the Planning Commission? It was
22 two inches in --
23 MR. HAEBERLIN: Two inches.
24 COUNCILMEMBER PACHUTA: -- caliper and was
25 it still eight feet in height?

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1 MR. HAEBERLIN: Yes, ma'am.
2 Now, they in effect are not recommending to
3 you any variance of the tree ordinance, so we want to
4 make that clear, because they don't have the authority
5 to do that, but they are just saying, as a decorative
6 purpose, two inches and eight feet high is acceptable
7 to them.
8 COUNCILMEMBER FLEMING: But are hollies
9 trees and not bushes? Are hollies bushes or trees?
10 MR. HAEBERLIN: Hollies are understory trees
11 in our list.
12 COUNCILMEMBER FLEMING: I'm sorry?
13 MR. HAEBERLIN: Hollies are understory trees
14 in our list.
15 COUNCILMEMBER FLEMING: Okay.
16 MR. HAEBERLIN: And like the gentleman
17 suggested, the Nellie R. Stevens holly makes a nice
18 pyramidal form that could be sheared.
19 COUNCILMEMBER FLEMING: Okay.
20 MR. HAEBERLIN: Mr. Strickland was looking
21 at things that he felt would not get overly
22 burdensome. One of the reasons he chose Waxmyrtle,
23 because it's widely available and it's inexpensive.
24 So I mean, you know, again, these were items that he
25 was looking at.

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1 COUNCILMEMBER ALEXANDER: So it is my
2 understanding we're modifying condition two, all trees
3 shall be a minimum of two inches in caliper and eight
4 feet in height at the time of planting?
5 COUNCILMEMBER FLEMING: That's acceptable to
6 me.
7 COUNCILMEMBER ROCHE: Fine with me.
8 COUNCILMEMBER PITTMAN: That's fine.
9 COUNCILMEMBER PACHUTA: Move to decrease the
10 impervious surface variance without the staff
11 recommendation is not to exceed 85 percent. From what
12 I understand from the applicant, they don't expect it
13 to go over 72 percent.
14 Currently the staff recommendation is for
15 impervious surface variance not to exceed 85 percent
16 but I believe the applicant stated -- was it 72
17 percent that you did not expect to go over?
18 COUNCILMEMBER ALEXANDER: Make it 75.
19 COUNCILMEMBER PACHUTA: You want to change
20 that to 75 percent?
21 MR. HAEBERLIN: The applicant has nodded
22 agreement for the record.
23 COUNCILMEMBER FLEMING: But it said in here
24 not to exceed.
25 COUNCILMEMBER PACHUTA: Well, the applicant

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1 said they don't expect to exceed 72 percent.
2 COUNCILMEMBER FLEMING: The approval was --
3 based on the staff recommendation it is approval of
4 the variance that it not exceed 85 percent.
5 COUNCILMEMBER ALEXANDER: Which is more than
6 it has now, because now it only has 83.9. So I feel
7 more comfortable with not to exceed 75 percent. He's
8 estimating 72 to 73.
9 MAYOR JENKINS: Any more comments?
10 COUNCILMEMBER FLEMING: Well, I'm trying to
11 contemplate over the not to exceed 75 percent. I'm
12 contemplating.
13 If he's at 72 now --
14 COUNCILMEMBER ALEXANDER: No. He's at 83.9
15 now.
16 COUNCILMEMBER FLEMING: Where does the 72
17 come in?
18 COUNCILMEMBER ALEXANDER: Proposed on-site
19 impervious area is 72 percent. It's on your drawing.
20 COUNCILMEMBER FLEMING: Okay. I wasn't
21 looking at the drawing. Sorry.
22 MR. HAEBERLIN: Correct. For the record, we
23 did not have the drawing at the time the initial staff
24 report came out. It came subsequent, so we have new
25 information.

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1 COUNCILMEMBER FLEMING: Okay. All right.
2 Make a motion unless --
3 COUNCILMEMBER ROCHE: Your district.
4 COUNCILMEMBER ALEXANDER: How does Council
5 wish to address the forced-upon setback issue the
6 property owner incurred with the widening of Oakcliff
7 Road?
8 COUNCILMEMBER ROCHE: I'd say grant it.
9 COUNCILMEMBER FLEMING: My recommendation is
10 to grant the variance. Grant the variance for the
11 side setback even though it might be a front setback
12 because it's Dekalb County.
13 COUNCILMEMBER PACHUTA: Mr. Weed, is there a
14 way to word that so that whether it's a side or front
15 -- I mean some way to word it, the portion of the
16 building fronting whatever, we're granting variance to
17 however many feet so that there's no question later,
18 is this a side setback or a front setback? That's
19 what I'm trying to avoid.
20 ATTORNEY WEED: Well, I mean, yeah, I think
21 you have the authority to declare it one thing or the
22 other underneath your local code. Whether Dekalb
23 County -- you know, whatever they consider it, you
24 know, wouldn't matter.
25 Mr. Haeberlin, based upon code, what is your

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1 professional opinion with regard to that setback? Is
2 it a side setback or is it a front setback? As the
3 building official, what is your answer?
4 MR. HAEBERLIN: For zoning, all -- all the
5 information suggests to me that the tract of land
6 owned by Dekalb County, Georgia, is for one and only
7 one purpose, and that is for right-of-way, so my
8 interpretation would be that it's a front. And that
9 would be consistent with a number of properties that
10 we have in the city that have multi frontages. It's
11 really no different than any other property in the
12 city that has multiple frontages.
13 ATTORNEY WEED: Bearing in mind that it's a
14 front, I don't know that that per se makes any
15 difference with whether or not you grant the setback
16 if you're going to call it a secondary front setback
17 variance where the primary front would be the portion
18 of the building that fronts -- what's the street,
19 Scott?
20 COUNCILMEMBER ALEXANDER: Winters Chapel
21 Road.
22 MR. HAEBERLIN: Winters Chapel Road.
23 ATTORNEY WEED: There you go.
24 COUNCILMEMBER ALEXANDER: So to me, the
25 front is the address.

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COUNCILMEMBER FLEMING: Agree. That's just what I was going to say.
ATTORNEY WEED: Yeah. I would say the primary front is the --
MR. HAEBERLIN: Well, technically in their code, if this property abutted three right-of-ways, it would have three fronts. So that's not interpretive. The code is clear that if we could prove that that's right-of-way, it would be a front.
ATTORNEY WEED: For purposes of the motion, though, do you have -- is there any opposition to having it being designated a primary and secondary front?
MR. HAEBERLIN: Just say the area that abuts -- I don't even know. This extension has no real name.
The area other than the Winters Chapel right-of-way will have a building setback reduction to X feet by the granting of the relief of the Council. I wouldn't even -- I wouldn't even discuss front or side in that situation.
ATTORNEY WEED: So I think the answer to your question is whether it's got multiple frontage or not wouldn't matter for the purpose of the variance if you grant it as long as you identify clearly which --

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you know, what you intend to vary and where that variance is applied.
MR. HAEBERLIN: I guess you could even add based on the building which was constructed in 1966 or whatever.
COUNCILMEMBER FLEMING: Well, can't we just list the parcel I.D. number and say we're granting the variance for the side setbacks for parcel number 18-337-01-008, and then that covers both sides?
ATTORNEY WEED: I mean I don't think it --
MR. HAEBERLIN: Well, this is a side here.
ATTORNEY WEED: Yeah. I --
COUNCILMEMBER FLEMING: I know. That's what I'm saying.
ATTORNEY WEED: Let me ask this question: There's a -- is there an eight-and-a-half by eleven of this map somewhere?
COUNCILMEMBER ALEXANDER: Yes.
ATTORNEY WEED: Okay. All right. Somebody mark that as Exhibit A.
MR. HAEBERLIN: Okay.
- - -
(Whereupon, said document was marked for identification as Exhibit A.)
- - -

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ATTORNEY WEED: Would you hand that to me, Mr. Haeberlin?
If the Council wishes to grant this variance, I would state that the Council would attach Exhibit A, which I'm going to give to the court reporter for permanent attachment in the official minutes of this record, and that for purposes of the grant of the variance that the side setback variance, side or front depending upon the Code of Ordinances of the City of Doraville, that is a line that runs along Dekalb County property on the north line of Exhibit A, that is what you intend to grant the variance if you're going to grant it, in accordance with what's shown in Exhibit A.
Let the record reflect I am giving Exhibit A to the clerk. Mr. Haeberlin, would you hand that to our lovely clerk.
Hopefully, that'll resolve the issue for all eternity because this piece of paper will be in the minutes.
COUNCILMEMBER FLEMING: Well, I think that also needs to be attached to the application and the staff report so that there's no -- because the minutes may only be in spot, and that way, this is attached to the address rather than just the minutes.

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MR. HAEBERLIN: Well, we can add clarification, and that tract owned by Dekalb County is 18-340-04-002. I think that forever solves that situation.
COUNCILMEMBER PACHUTA: 18-340 --
MR. HAEBERLIN: 04-002, the area that is depicted as owned by Dekalb County.
COUNCILMEMBER PACHUTA: Do we need to do these as separate motions or can I attempt to combine them all into one motion?
ATTORNEY WEED: I think the Councilman has answered her own question, and I would probably -- that's my advice.
COUNCILMEMBER PACHUTA: All right. We'll start with one.
I make the motion to grant the impervious surface variance not to exceed 75 percent.
COUNCILMEMBER ALEXANDER: Second.
MAYOR JENKINS: More discussion?
CLERK BLACKMON: Who seconded it? I'm sorry.
COUNCILMEMBER ALEXANDER: I did.
MAYOR JENKINS: More discussion?
- - -
(No response)

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- - -
MAYOR JENKINS: Call the roll, please.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: No.
CLERK BLACKMON: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BLACKMON: Motion passes.
COUNCILMEMBER ALEXANDER: So we need a separate motion now to address the landscaping?
ATTORNEY WEED: Yes, ma'am.
COUNCILMEMBER PACHUTA: All right. I make a motion to adopt the staff recommendations of the landscaping, striking the sentence starting with "The species selection," and ending -- starting again with the next sentence, "Pine varieties."
COUNCILMEMBER ROCHE: Second.
COUNCILMEMBER PACHUTA: And then for number 2, all trees shall be a minimum of two inches in caliper and eight feet in height at the time of

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planting.
COUNCILMEMBER ROCHE: I'll second.
MAYOR JENKINS: Any more discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: 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?
COUNCILMEMBER ROCHE: Yes.
COUNCILMEMBER PACHUTA: Okay. And I make a motion that we grant the requested yard building setback on the portion of the property abutting Dekalb County property 18-34-004-002 to the requested -- what's the feet? -- I'm trying to find what's the feet. Was it 25?
COUNCILMEMBER ROCHE: As depicted in Exhibit A?

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ATTORNEY WEED: I would say as shown and depicted on Exhibit A and made a part of this record.
COUNCILMEMBER PACHUTA: As depicted in Exhibit A and made a part of this record.
MAYOR JENKINS: Second?
COUNCILMEMBER PITTMAN: Second.
COUNCILMEMBER ALEXANDER: Says the existing office warehouse building currently encroaches 14 feet into the 25-foot side yard. So that means it's 11 foot between the end of the building and the property line.
MR. HAEBERLIN: Again, that's all hearted in whether it's a front or side. I'm fine with per the exhibit.
COUNCILMEMBER ALEXANDER: Okay.
MAYOR JENKINS: Any more discussion?
COUNCILMEMBER ALEXANDER: Did she get a second?
COUNCILMEMBER PITTMAN: She did.
COUNCILMEMBER ALEXANDER: Okay.
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.

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CLERK BLACKMON: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
MAYOR JENKINS: Okay.
Is that the item, Scott?
MR. HAEBERLIN: That's the text amendment that Council made a decision whether they're going to do those or recess them to a date specific. Remember, many of these text amendments are necessary for us to continue action on the 2009 occupational tax renewals, so there are some things in there that the importance of them are high.
ATTORNEY WEED: Right. And members of Council, just as a procedural item, you moved VIII-F and VIII-G to the top of your agenda. So going back to your agenda, by my recollection, I think you would either be on V, Department Reports, and I don't believe there are any, and then I think you'd be at VI, Public Comments on Agenda Items.
And on a personal note, I know that you're already tired and so am I, but we've got to get to Item VII with regard to the Employee Manual and the

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1 Procedures, and I know that might require some effort
2 and debate on your part but we have a hearing
3 scheduled for October 31. If you don't get to that
4 tonight, my advice would be to move that hearing back.
5 COUNCILMEMBER FLEMING: August 31.
6 ATTORNEY WEED: August 31. I'm sorry.
7 So that's a very important item that
8 unfortunately has got to be dealt with, or my advice
9 is to move that hearing back.
10 COUNCILMEMBER ROCHE: Is that a hearing or
11 is that an agenda item? I mean do we need a public
12 hearing on that --
13 ATTORNEY WEED: No, sir.
14 COUNCILMEMBER ROCHE: -- to change it from
15 two days to 15 days?
16 ATTORNEY WEED: Well, with regard to -- On
17 one item, yes, sir. The ordinance to extend the
18 employee appeal time frame, that would require -- the
19 way our policy is designed, you have to make the
20 changes by ordinance. So that would be treated as a
21 standard ordinance.
22 You have essentially approved that
23 previously, requested my office to do the amendment.
24 So we're following up on a decision you've already
25 made, but technically, I would prefer that you waive

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1 first reading and adopt the ordinance.
2 With regard to the secondary matter,
3 ultimately I think I would advise you that we
4 ultimately make that a change in the personnel policy
5 and add language to the policy, but for purposes of
6 the August 31 hearing, you can simply adopt a
7 procedure of some kind so that you could conduct that
8 hearing to help guarantee adequate due process to the
9 applicant for the appeal.
10 COUNCILMEMBER ROCHE: I'm fine with changing
11 the number of days. I'm just kind of leery of
12 changing the rest of it, but that's just my opinion.
13 COUNCILMEMBER FLEMING: I don't believe
14 we've actually seen a document, have we?
15 ATTORNEY WEED: Yes, ma'am, on both of them.
16 COUNCILMEMBER FLEMING: I have the one on
17 the second one. I mean --
18 COUNCILMEMBER PITTMAN: Are you talking
19 about the --
20 COUNCILMEMBER FLEMING: -- on the request --
21 COUNCILMEMBER PITTMAN: -- hearing
22 procedures?
23 COUNCILMEMBER FLEMING: -- for the
24 procedure.
25 COUNCILMEMBER ALEXANDER: Yes.

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1 COUNCILMEMBER PITTMAN: Yes, we did receive
2 that.
3 COUNCILMEMBER FLEMING: For the hearing
4 procedures?
5 COUNCILMEMBER PITTMAN: That's what you're
6 talking about; right?
7 COUNCILMEMBER FLEMING: I asked on the
8 ordinance for the two to five days.
9 ATTORNEY WEED: Yes, ma'am, that's --
10 COUNCILMEMBER PITTMAN: Yeah, he sent that.
11 ATTORNEY WEED: -- been sent.
12 MR. HAEBERLIN: These were sent via e-mail
13 obviously because they were not part of my package.
14 So they were received by the Council in e-mail from
15 Mr. Weed's office.
16 COUNCILMEMBER PITTMAN: So we need to
17 proceed with --
18 ATTORNEY WEED: So where you're at on the
19 agenda right now, my understanding would be you are at
20 Item VI, which is Public Comments on Agenda Items.
21 And I'm not particularly asking that you move Item VII
22 before Item VI. We can go ahead and have Item VI.
23 I just wanted to warn you that before you
24 leave tonight, my opinion is you've got to deal with
25 Item VII, however late it may be, or we need to put

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1 off the August 31 hearing until you can effectively
2 deal with Item VII. That's obviously your choice.
3 COUNCILMEMBER PACHUTA: Can we first amend
4 the agenda or -- with the text amendment? Amend the
5 agenda so that the remaining items, zoning items, the
6 text amendments VIII-A through VIII-E, move those to a
7 date certain?
8 ATTORNEY WEED: I would appreciate it if you
9 did that if you wish to. That would be the proper
10 procedure.
11 COUNCILMEMBER PITTMAN: You need a motion?
12 COUNCILMEMBER ALEXANDER: Well, we need the
13 date.
14 COUNCILMEMBER PACHUTA: Is it something we
15 can put off until the next regularly-scheduled zoning
16 meeting or do you think --
17 COUNCILMEMBER ALEXANDER: We're holding up
18 those businesses.
19 MR. HAEBERLIN: You could, but I want to
20 advise the Council that these businesses will continue
21 without the necessary occupational tax license from
22 the City. I think that's been a concern of the
23 Council that we would make some effort on this,
24 particularly for the C-1 and C-2 amendments.
25 The other two text amendments are things

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that are certainly necessary and needed but not nearly as important as the ones affecting the business.

COUNCILMEMBER PACHUTA: Do we want to put these items on the agenda after the employee appeal on August 31st?

ATTORNEY WEED: I would advise Council that you're not going to have anything left in you after the appeal on August the 31st. I don't think that's realistic for you and I would ask you not to do that to yourselves.

MR. HAEBERLIN: I mean a date certain could be tomorrow evening, correct?

ATTORNEY WEED: Sure.

CLERK BLACKMON: Monday the 30th or --

MR. HAEBERLIN: Whatever.

COUNCILMEMBER PITTMAN: Monday the 30th?

CLERK BLACKMON: We don't have anything on Monday night at this time. Of course the hearing is Tuesday night, but Monday night is open. Just a question.

COUNCILMEMBER FLEMING: Motion it, Karen.

COUNCILMEMBER PACHUTA: I'll make the motion that we amend the agenda and Items VIII-A through VIII-E, the text amendments, be continued until the meeting on August 30th at 6:30.

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COUNCILMEMBER FLEMING: Second.

MAYOR JENKINS: Any more discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: 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?

COUNCILMEMBER ROCHE: Yes.

MAYOR JENKINS: Where are we now?

ATTORNEY WEED: You're on Item VI, Mr. Mayor, Public Comments on Agenda Items.

MAYOR JENKINS: Okay. Public Comments on Agenda Items. Anybody?

MS. DAVIS: Yes, sir, I'm right here.

Viola Davis, (spelling) V-i-o-l-a, Davis, and I'm an Unhappy Taxpayer Voter. Our address, Unhappy Taxpayer Voter dot com.

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We wanted to make it part of your official record that as taxpayers, as voters and as property owners, particularly in unincorporated Dekalb, we stand with the AJC in a strong objection to you proceeding with the Executive Session to discuss the GM plant.

Exactly what you discussed, we do not know. However, if there was any discussion of the inter-governmental agreement, any discussion of the tax money that would be applied to our property taxes, any discussion of the -- anything outside of purchase of that real estate, we want it to be made clear is in violation of the Open Meetings law and we will seek legal representation to challenge the process in which this agreement was -- how this agreement was made.

Now, I congratulate you from what the gentleman said that has the blue shirt on, I don't know his name. So that whatever the agreement that you've made, you appear to be very happy with and you have a win-win situation. But unfortunately, as taxpayers and voters, we are the ones that are the loser because we don't have a clue what it is that you discussed, what it is that was the subject matter, because that agenda item was added at the last minute. So there was not public notification, so if someone

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wanted to comment on that, that they could.

So I won't keep your time. I just want to make it part of your official record. Thank you.

MAYOR JENKINS: Thank you.

COUNCILMEMBER FLEMING: Thank you, Ms. Davis.

MAYOR JENKINS: Anybody else?

- - -

(No response)

- - -

MAYOR JENKINS: Okay. Nobody else. We'll proceed.

ATTORNEY WEED: Mr. Mayor, Item VII is Old Business, and those items involve my office. First is an ordinance that the Mayor and Council had already -- essentially the majority has already approved in theory, and that is a change in the date in the Personnel Policy for when an employee who has been terminated and/or forced to resign, how long they have to appeal that decision.

And that change has been made per your request, and I forwarded to you a copy of that document on August the 18th of 2010. If you desire to adopt that ordinance tonight, I would ask that you waive first reading and adopt the same.

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1 COUNCILMEMBER PITTMAN: I'd like to make a
2 motion to waive first reading to amend the Personnel
3 Manual, Section 10.3 and review from two working days
4 to five working days requesting in writing a public
5 hearing before the City Council for such termination
6 or resignation.
7 MAYOR JENKINS: Do I get a second?
8 COUNCILMEMBER ALEXANDER: 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 Fleming?
17 COUNCILMEMBER FLEMING: No.
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 CLERK BLACKMON: Motion carried.
25 COUNCILMEMBER ALEXANDER: No, it did not.

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1 It has to be unanimous to waive first reading.
2 ATTORNEY WEED: That is correct. First
3 reading was waived; this ordinance is not passed.
4 COUNCILMEMBER ALEXANDER: So how does that
5 affect the procedures on the 31st?
6 ATTORNEY WEED: I'm going to suggest to you
7 that you don't have them on the 31st, but that's up to
8 the Council to decide. My advice is that I think -- I
9 think it is a complicated situation --
10 COUNCILMEMBER PACHUTA: When --
11 ATTORNEY WEED: -- if you proceed without
12 modifying this ordinance.
13 COUNCILMEMBER PACHUTA: When is the 30 days?
14 What was the date of his request for an appeal? When
15 were the 30 days up?
16 CLERK BLACKMON: The first week of
17 September. It's been almost three weeks.
18 COUNCILMEMBER PACHUTA: This is August.
19 CLERK BLACKMON: Yeah. The 30 days from the
20 time he turned in his written request, it'll be -- I
21 don't have it in front of me, but around about the
22 first week of September, so it's coming up on at least
23 three weeks now.
24 COUNCILMEMBER ROCHE: Well, somebody remind
25 me. Didn't we make a motion to allow him to make his

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1 appeal and that was more than five days afterwards.
2 So I don't understand why it would affect this
3 particular situation if we've already voted to change
4 it.
5 And I guess the other thing is I'm a little
6 concerned that now someone's appealed and now we're
7 going to start messing around and changing the appeal
8 process after the fact.
9 ATTORNEY WEED: Well --
10 COUNCILMEMBER ROCHE: And that just --
11 ATTORNEY WEED: -- to go over the --
12 COUNCILMEMBER ROCHE: -- makes me concerned.
13 ATTORNEY WEED: To go over the record as I
14 understand it, I was on vacation so I wasn't here.
15 However, I did get a report from Bill Linkous, who was
16 filling in for me that night. The Council made a
17 motion which passed to grant a particular former
18 employee an extended time period to appeal. You did
19 that but you didn't change the relevant ordinance.
20 You simply made a motion to change to allow this
21 person more time --
22 COUNCILMEMBER ROCHE: Right.
23 ATTORNEY WEED: -- without ever changing the
24 actual underlying ordinance. I think that's -- that's
25 a problem, and the only way that you can do that

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1 legally is to have an understanding it's your
2 intention to change the underlying ordinance, which so
3 far you haven't done.
4 Now, if you proceed on with that hearing on
5 the 31st, can you do it? Yes. Is that the best
6 procedure? No.
7 Had I been here that night, I would have
8 advised you that you certainly have the authority to
9 change the ordinance and you can do that virtually at
10 will; however, you've got to change it by changing the
11 ordinance and not simply by making a blanket motion to
12 not follow the ordinance.
13 COUNCILMEMBER ROCHE: But the motion was to
14 allow this particular employee to file an appeal after
15 what was in the ordinance.
16 ATTORNEY WEED: I understand what the motion
17 was.
18 COUNCILMEMBER ROCHE: So we can pass the
19 ordinance after that. I mean what you're saying that
20 it has an effect on this particular situation. I
21 believe it was longer, more than five days after the
22 forced resignation, anyway, so I wouldn't think it
23 would make any difference one way or another.
24 ATTORNEY WEED: Well -- and I agree with
25 you. I agree with your basic factual premise, but my

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1 opinion is the best way of -- the best way this should
2 have been done in my opinion would have been to change
3 the ordinance first. That remains -- that was my
4 opinion then. Had I been here, I would have given you
5 that opinion. I make my opinion now. It was my
6 opinion the day after I heard about what you'd done.
7 COUNCILMEMBER ROCHE: But I'm not hearing
8 anything that prevents us from holding the hearing.
9 ATTORNEY WEED: I didn't say that there's
10 anything to prevent you from holding the hearing. I
11 didn't render that opinion.
12 I said I do not think that's in your best
13 interest.
14 COUNCILMEMBER ROCHE: Well, I think we've
15 delayed the hearing long enough. I think we've
16 delayed it far too long. I think we've already
17 decided how we're going to proceed with it. I think
18 we should move ahead and we can revisit this ordinance
19 at our next Council meeting.
20 COUNCILMEMBER PITTMAN: But what are the
21 repercussions if we proceed without passing this? You
22 say you do not recommend it. What's the reason behind
23 that?
24 ATTORNEY WEED: By virtue of the motion and
25 second that you made, it's my opinion that you have

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1 created a class of employees that the existing
2 ordinances do not apply to. That class of employees
3 at a minimum involved everyone who was terminated or
4 forced to resign during the time period of the
5 effective date of the employment policy, which was
6 summer of 2009 until you made your motion and second
7 and it passed. So you've created that protected class
8 of people that you've got to at least at a minimum
9 treat that class the same way.
10 I still maintain that the better way of
11 doing this would have just been to -- you could have
12 accomplished the goal by simply changing the
13 ordinance, not simply saying it didn't apply to this
14 particular individual. That's my opinion.
15 With regard to negative repercussions,
16 you've created a class and you have to deal with that
17 class.
18 COUNCILMEMBER PITTMAN: It may be possible
19 that we might --
20 ATTORNEY WEED: Can you proceed? Yes.
21 COUNCILMEMBER PITTMAN: Yes. It might be
22 possible we might can reconsider.
23 ATTORNEY WEED: I have warned you and that's
24 all I can do.
25 COUNCILMEMBER ROCHE: Motion to reconsider

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1 the previous motion.
2 COUNCILMEMBER PACHUTA: Second.
3 COUNCILMEMBER FLEMING: But show me the
4 ordinance.
5 COUNCILMEMBER ROCHE: I'm looking for it
6 here.
7 MAYOR JENKINS: More discussion?
8 COUNCILMEMBER FLEMING: Sir, can you bear
9 with me just a moment, please?
10 MAYOR JENKINS: Yes.
11 COUNCILMEMBER FLEMING: Thank you.
12 COUNCILMEMBER ALEXANDER: Can I hand down my
13 copy?
14 COUNCILMEMBER FLEMING: Please.
15 COUNCILMEMBER ALEXANDER: Ignore what's on
16 the back. It's the tree ordinance.
17 COUNCILMEMBER ROCHE: I know I saw it some-
18 where.
19 CLERK BLACKMON: It's on the screen.
20 COUNCILMEMBER ROCHE: We're ready.
21 MAYOR JENKINS: Any more discussion?
22 - - -
23 (No response)
24 - - -
25 MAYOR JENKINS: Call the roll.

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1 CLERK BLACKMON: Councilmember Alexander?
2 COUNCILMEMBER ALEXANDER: Yes.
3 CLERK BLACKMON: Councilmember Fleming?
4 COUNCILMEMBER FLEMING: Yes.
5 CLERK BLACKMON: Councilmember Pachuta?
6 COUNCILMEMBER PACHUTA: Yes.
7 CLERK BLACKMON: Councilmember Pittman?
8 COUNCILMEMBER PITTMAN: Yes.
9 CLERK BLACKMON: Councilmember Roche?
10 COUNCILMEMBER ROCHE: Yes.
11 COUNCILMEMBER PITTMAN: Now, I would like to
12 make a motion to amend the Personnel Manual Section
13 10.3 Complaints and Review, from two working days to
14 five working days requesting in writing a public
15 hearing before the City Council for such termination
16 or resignation.
17 COUNCILMEMBER ALEXANDER: Are we waiving
18 first reading again or we don't have to?
19 COUNCILMEMBER ROCHE: Yeah, the previous
20 motion was to waive.
21 COUNCILMEMBER FLEMING: The first reading,
22 yes.
23 ATTORNEY WEED: You had a motion to
24 reconsider. That passed. So you're back on the floor
25 with your motion to waive first reading.

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1 COUNCILMEMBER PITTMAN: Okay. So that's to
2 waive the first reading.
3 COUNCILMEMBER PACHUTA: Second.
4 COUNCILMEMBER ROCHE: Right.
5 MAYOR JENKINS: Any more discussion?
6 - - -
7 (No response)
8 - - -
9 MAYOR JENKINS: Call the roll.
10 CLERK BLACKMON: Councilmember Alexander?
11 COUNCILMEMBER ALEXANDER: 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 COUNCILMEMBER PITTMAN: Now I would like to
21 make a motion to amend the Personnel Manual Section
22 10.3 Complaints and Review from two working days to
23 five working days requesting in writing a public
24 hearing before the City Council for such termination
25 and resignation.

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1 MAYOR JENKINS: Second?
2 COUNCILMEMBER PACHUTA: Second.
3 MAYOR JENKINS: More discussion?
4 COUNCILMEMBER FLEMING: Yes, sir.
5 Originally when Ms. Pittman brought this up, it was
6 one of my agenda items as well but hers hit before
7 mine and I, you know, respect her for that, but I
8 really don't feel that five working days is adequate
9 time for an employee to appeal. So I just wanted to
10 go on the record again to indicate that I am opposed
11 to changing it to five days, that I feel that it
12 should be at least 10 working days.
13 MAYOR JENKINS: Any more discussion?
14 - - -
15 (No response)
16 - - -
17 MAYOR JENKINS: Call the roll.
18 CLERK BLACKMON: Councilmember Alexander?
19 COUNCILMEMBER ALEXANDER: Yes.
20 CLERK BLACKMON: Councilmember Fleming?
21 COUNCILMEMBER FLEMING: No.
22 CLERK BLACKMON: Councilmember Pachuta?
23 COUNCILMEMBER PACHUTA: Yes.
24 CLERK BLACKMON: Councilmember Pittman?
25 COUNCILMEMBER PITTMAN: Yes.

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1 CLERK BLACKMON: Councilmember Roche?
2 COUNCILMEMBER ROCHE: Yes.
3 MAYOR JENKINS: Okay. Motion carried.
4 ATTORNEY WEED: Mr. Mayor, the second thing
5 under Item VII is adoption of a procedure for an
6 employee complaint hearing or for all employee
7 complaint hearings preferably.
8 As you are aware, your charter and I believe
9 2.12 indicates plainly that the Mayor and Council have
10 and hear employee appeals in cases of termination or
11 when there is a forced resignation. These appeals can
12 be conducted at a regular meeting but they are not
13 required to be conducted at a regular meeting.
14 Further, that same section provides that the appeal is
15 to the Mayor and Council.
16 The Charter section does not, however,
17 provide any type of procedure for the conduct of an
18 employee personnel hearing. I highly recommend that
19 you have that procedure.
20 I have heard from different members of the
21 Council and other constituents that mentioned this to
22 me that in the past some employee personnel-appealed
23 hearings were disorganized and have been raucous.
24 I would advise to you that your goal should
25 be to do everything you can to guarantee the

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1 procedural due process rights of the individual
2 applicant who is seeking his or her appeal to you, and
3 in order to do that, I advise you to conduct the
4 hearing as what it should be -- a hearing and not a --
5 it might occur during a regular meeting but it is not
6 an item for which you would generally hear public
7 commentary, that there will most likely be lawyers in
8 the room who would want to make objections. I would
9 recommend to you that people be sworn the oath or
10 affirm that what they're saying is the truth, that if
11 they actually testify before you, that they be subject
12 to cross-examination, and essentially I've outlined a
13 draft procedure for you and sent to you by virtue of a
14 memo sent to you on August the 10th of 2010.
15 I am not married to this procedure but I am
16 married to a procedure and I highly recommend you
17 adopt one. I think this is a sound one. This is what
18 Dekalb County uses, although there are certainly
19 others out there. City of Hapeville has got a pretty
20 clean one and other communities have similar
21 processes.
22 Another thing that you might want to
23 consider which isn't in this recommended procedure per
24 se is that you do have the right to delegate these
25 appeals to some other entity, meaning the Mayor and

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1 Council by ordinance could delegate to a personnel
2 board. So I'll just mention that to you as well.
3 During the employment Personnel Policy review process,
4 I noted that sometime ago last year as well.
5 With that, I recommend that at a minimum you
6 consider adopting the procedure that's outlined in the
7 August 10 memo to you.
8 COUNCILMEMBER ROCHE: I got to say I got a
9 lot of problems with some of the stuff I read in this
10 August 10 memo.
11 One thing that just leaps out at me is
12 irrelevant testimony about an employee's general
13 character or general work habits should not be
14 allowed. I mean that's just completely opposite of
15 everything I've ever thought. I mean if someone makes
16 a mistake, you got to consider that with the
17 background of what's their general performance been,
18 you know, are they a trustworthy person, et cetera,
19 et cetera, versus just --
20 I don't know. I find this very restrictive.
21 I find it -- I just can't support this at all.
22 COUNCILMEMBER ALEXANDER: Well, having sat
23 in this audience before I was on Council and have
24 witnesses an employee appeal and both seen how the
25 employee was treated and how staff was treated, it's

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1 extremely important that everyone's rights are
2 protected, and character assassination is not allowed,
3 slander or libel, whatever.
4 I think it's fair that procedures are
5 enacted and followed by -- by staff and Council and --
6 and the person appealing. I think it's in their best
7 interest. I mean you could have somebody come up and
8 slander their character and it not have anything to do
9 with the infraction that occurred that caused their
10 termination or resignation, and I don't feel that that
11 would be fair to the employee.
12 COUNCILMEMBER ROCHE: Well, if you want my
13 reading of this, if 10 people want to line up and say
14 that so-and-so is a great employee, they're not
15 allowed to do that.
16 COUNCILMEMBER ALEXANDER: This is the --
17 ATTORNEY WEED: That is correct; but 10
18 people can also not line up and say that they're a
19 terrible employee.
20 The evidence that would come before the
21 Council is the evidence directly relevant to the issue
22 at hand, whether the termination -- whether the facts
23 surrounding the termination or forced resignation were
24 true and whether the punishment was appropriate based
25 upon the determination of facts.

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1 COUNCILMEMBER ALEXANDER: I just don't want
2 us to, again, us hear this employee's appeal and not
3 have procedures in place and it become a free-for-all.
4 It's not fair to anyone involved.
5 COUNCILMEMBER PITTMAN: I was actually
6 pleased with it. It's pretty much the norm procedure.
7 I too have been a audience member, and it wasn't very
8 good.
9 COUNCILMEMBER PACHUTA: I'll make a motion
10 that we accept the recommended procedures outlined in
11 the August 10th, 2010 memorandum from Murray Weed.
12 COUNCILMEMBER PITTMAN: Second.
13 MAYOR JENKINS: More discussion?
14 COUNCILMEMBER FLEMING: Yes, sir, I have,
15 you know. I mean we jumped out there and made a
16 motion.
17 Number 7, irrelevant testimony about an
18 employee's general character or general work habits
19 should not be allowed.
20 You know, if we've got a habitual employee
21 that has, you know, been late and late and late and
22 called in sick and, you know, the director hasn't been
23 able to do anything with them but they are asked to
24 resign, we are not able to bring up this previous --
25 the work habits, and I have problems not being able to

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1 -- It says you can't bring up the general character or
2 general work habits should not be allowed.
3 COUNCILMEMBER PACHUTA: Irrelevant
4 testimony. But if someone is terminated or asked to
5 resign for repeated absences, then that's directly
6 relevant to their termination or resignation so it
7 would be allowed.
8 COUNCILMEMBER FLEMING: Well, who is going
9 to be this objective person saying that the person up
10 here can't present the evidence?
11 COUNCILMEMBER PACHUTA: I don't think that's
12 subjective at all. I think that's directly relevant
13 to the reason they were terminated in that scenario.
14 ATTORNEY WEED: And the people who make the
15 decision would be the Mayor and Council. For example,
16 if it came up and a lawyer representing an applicant
17 objected to that testimony, the Mayor and Council will
18 make that determination of whether that objection is
19 sustained or not, so you will decide that.
20 COUNCILMEMBER FLEMING: And Mr. Weed, can
21 you explain to me what number 9 means, please.
22 ATTORNEY WEED: Yes, ma'am. Number 9 says
23 that the formal rules of evidence should not apply,
24 objections should only be made as to the relevance of
25 evidence presented, the harassment of witnesses, the

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1 possible duplication of evidence, and potentially
2 privileged matters.
3 In other words, Title 24 is the Georgia
4 Evidence Code, and the Georgia Evidence Code and/or
5 the Federal Rules of Evidence that lawyers are trained
6 in would not be applied to the procedures directly.
7 However, objections could be made if the evidence
8 became duplicative. If there were five employees who
9 essentially said the same thing, there could be an
10 objection to that being duplicative so that you can
11 manage the hearing. That's one example.
12 If the evidence is relevant and you've
13 already given a perfectly good example about whether
14 or not some evidence would be relevant, and ultimately
15 the Mayor and Council would make those decisions based
16 upon whatever objections happen to be made.
17 COUNCILMEMBER ROCHE: You said privileged
18 material. What's that all about? What if there's
19 evidence that happens to be in an e-mail that happened
20 to have copied our city attorney and therefore
21 magically becomes client-attorney privilege that bears
22 on it? Are we not allowed to talk about that like it
23 doesn't exist or --
24 COUNCILMEMBER FLEMING: Because it says
25 potentially privileged matters.

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1 COUNCILMEMBER ROCHE: Right.
2 ATTORNEY WEED: Well, ultimately --
3 COUNCILMEMBER FLEMING: I mean --
4 ATTORNEY WEED: -- once again, the Mayor and
5 Council would make that decision.
6 At any point, any four of you can waive any
7 privilege held by the Council, and I've advised you
8 that before. You don't have to keep any secret at
9 all. The only holder of your secrets is not the city
10 attorney; it's the Mayor and Council as the client.
11 COUNCILMEMBER ROCHE: I understand.
12 ATTORNEY WEED: So four of you can -- at any
13 point, you could overrule that objection; everything
14 I've ever written can become a matter of public
15 record, and you can do that at any time.
16 COUNCILMEMBER ROCHE: But there may be
17 evidence that bears on the particular appeal at hand
18 and if four people don't want that exposed even though
19 it may help or hurt that appeal, then it can't be
20 brought up.
21 ATTORNEY WEED: Possibly that's true.
22 COUNCILMEMBER ROCHE: So we can hide that.
23 ATTORNEY WEED: Well, I would not use the
24 term "hide."
25 COUNCILMEMBER ROCHE: What term --

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1 ATTORNEY WEED: The Council --
2 COUNCILMEMBER ROCHE: -- would you use?
3 ATTORNEY WEED: -- can exercise its
4 privilege --
5 COUNCILMEMBER ROCHE: To hide it.
6 ATTORNEY WEED: -- which the Council holds.
7 COUNCILMEMBER ROCHE: To hide the infor-
8 mation from the public.
9 ATTORNEY WEED: Mr. Roche, that's your
10 opinion but I don't know if that's the opinion of
11 everybody else on the Council, and at any moment, any
12 four of you can decide that that's the will and the
13 opinion of the Council and not your individual
14 opinion.
15 But once again, the occasion when that's
16 going to come up I believe would be very rare.
17 COUNCILMEMBER ROCHE: And my other
18 concern --
19 ATTORNEY WEED: Mostly in a situation --
20 what's going to happen would be an employee will be
21 terminated. And in this city particularly, you
22 terminate people so rarely that very often the
23 terminations have a very clear record. That record
24 will go forward as long as it's relevant, and the
25 evidence will come forward.

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1 The idea behind some kind of procedure is to
2 make sure that order is maintained, that the truth is
3 reached, and that the Mayor and Council and the
4 employee who's filed the appeal, that their procedural
5 due-process rights have been covered. It is
6 essentially a hearing procedure which has worked for
7 over 200 years in our country. I'm all for it for
8 what that's worth.
9 COUNCILMEMBER ROCHE: Well, I don't know
10 about the truth being reached, but I guess my other
11 concern is that we're adopting a process after an
12 appeal has been filed but before we're actually
13 holding that appeal. So does that mean that, you
14 know, next time some employee wants to file an appeal,
15 then we can decide to change it all around and adopt
16 some new procedure for that particular employee?
17 ATTORNEY WEED: Unfortunately, yes, sir, you
18 could do that, and in fact that's what you did
19 already.
20 COUNCILMEMBER ROCHE: That's --
21 ATTORNEY WEED: When you granted the appeal,
22 that's exactly what happened. So yes, sir, you can do
23 that.
24 COUNCILMEMBER ROCHE: I'm very uncomfortable
25 with this.

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COUNCILMEMBER FLEMING: I think --
MAYOR JENKINS: More discussion?
COUNCILMEMBER FLEMING: Yes, sir. I just have one comment. I believe in procedures for the employee complaint hearings.
I object to item number 7 where the sentence beginning relevant and also number 9, my objections to both of those.
MAYOR JENKINS: More discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: No.
CLERK BLACKMON: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: No.
MAYOR JENKINS: Motion carried.
COUNCILMEMBER PACHUTA: Motion to adjourn.

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ATTORNEY WEED: Well, before you do that, one item of business actually. Would you waive the 9 o'clock rule just so we have it on the record that you waived the 9 o'clock rule?
COUNCILMEMBER PACHUTA: It's very late to have that.
ATTORNEY WEED: It's the house rules. I wish you'd make a motion to abandon the 9 o'clock rule. It's not an ordinance, but while you've got it, I'd like you to --
COUNCILMEMBER PACHUTA: I make a motion --
ATTORNEY WEED: -- put that in the record.
COUNCILMEMBER PACHUTA: -- that we waive our 9 o'clock ending time.
MAYOR JENKINS: Second?
COUNCILMEMBER PITTMAN: Second.
MAYOR JENKINS: Any more discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.

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CLERK BLACKMON: Councilmember Pachuta?
COUNCILMEMBER PACHUTA: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
COUNCILMEMBER PACHUTA: Motion to adjourn.
MAYOR JENKINS: Second?
COUNCILMEMBER PITTMAN: Second.
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: 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?
COUNCILMEMBER ROCHE: Yes.
MAYOR JENKINS: Thank you.
- - -
(Meeting adjourned at 11:40 p.m.)
-o0o-

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C E R T I F I C A T E

STATE OF GEORGIA]
COUNTY OF DEKALB]

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

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

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

This the 13th day of September 2010.

_____
Theresa Bretch, CCR
Permit No. B-755

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