In The Matter Of:

Special Called/Planning & Zoning
City of Doraville, Georgia

Before Mayor Ray Jenkins
February 23, 2009

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CITY COUNCIL MEETING
CITY OF DORAVILLE
STATE OF GEORGIA
SPECIAL-CALLED MEETING
PLANNING AND ZONING
* * *

Transcript of the proceedings held in the City Council Room at Doraville City Hall, 3725 Park Avenue, Doraville, Georgia, Mayor Ray Jenkins presiding, before Theresa Bretch, Certified Court Reporter, commencing at 6:00 p.m. on Monday, February 23, 2009.

* * *

APPEARANCES:
Doraville City Council:
Hon. Ray Jenkins, Mayor
Councilmember Maria Alexander
Councilmember Brian Bates
Councilmember Robert Spangler
Councilmember Bob Roche
Councilmember Pam Fleming
Murray J. Weed, City Attorney
Ms. Sandra Bryant, Assistant City Clerk

P R O C E E D I N G S

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

ASSISTANT CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Here.

ASSISTANT CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Here.

ASSISTANT CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Here.

ASSISTANT CLERK BRYANT: Councilmember Pittman?

- - -

(No response)

- - -

ASSISTANT CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Here.

ASSISTANT CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Ms. Pittman won't be here tonight so we're one short. So Scott, I'm going to turn it over to

you to bring up your first person. I believe that's 3921 Flowers Road; is that correct?

MR. HAEBERLIN: That is correct. Let's follow the protocol if we have an applicant to let them go first, then I will speak. Of course there's an opportunity for the City Council to ask us questions --

MAYOR JENKINS: Very good.

MR. HAEBERLIN: -- and then we'll open the public hearing and proceed from there.

MAYOR JENKINS: This is a public hearing. If you signed the sheet, you can speak.

MR. HAEBERLIN: So at this time, we'd have Phyllis Stallman come forward for 3921 Flowers Road, rezoning from R-1 to O-I with concurrent buffer reduction variance.

MAYOR JENKINS: Give your name, please.

MS. STALLMAN: Phyllis Stallman. I'm the owner/operator of Translation Station at 3921 Flowers Road. I've been in business 10 years.

The first seven years, I operated out of my home and I had a business license through Dekalb County. Dekalb County knew that I had a

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[1] couple of -- a few employees, no problem.
[2] When I finally had a fourth employee,
[3] including myself, I felt that my house was too
[4] small and so I moved. I bought the house at
[5] 3921 Flowers Road and moved into it.
[6] I continued to renew my business
[7] license in Dekalb County, not realizing that
[8] that was I guess not the right thing to do.
[9] They kept renewing it for me. In 2008, I went
[10] to -- they didn't renew it, and I went down to
[11] Dekalb County to renew it and they said, "Well,
[12] you should renew in Doraville."
[13] So I left Dekalb County, the place
[14] where you renew licenses, got in my car and came
[15] straight over to the City Hall and asked for a
[16] business license. Somebody looked up my address
[17] and said, "It's residential. You can't run a
[18] business out of a residential address."
[19] So I was surprised. I said, "Well, I
[20] should apply for rezoning."
[21] "No, there's a moratorium on rezoning,"
[22] and that's how the conversation went.
[23] Anyway, at that moment, I started the
[24] process to try to rezone and to get a business
[25] license and to do the right thing. I just want

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[1] to be a good citizen of Doraville. I want to
[2] run my business at 3921 Flowers Road.
[3] I have four employees including myself.
[4] I'm interviewing for a fifth employee. In the
[5] translation business, we use subcontractors to
[6] do the jobs for us. I have roughly about 370
[7] subcontractors, many of whom make a full-time
[8] living through Translation Station.
[9] I didn't realize that in getting a
[10] business license and rezoning -- I didn't
[11] realize that getting a business license and
[12] rezoning would be such an expensive proposition
[13] for me.
[14] I want to hand out or pass out -- I've
[15] only gotten a couple of estimates, but I'd like
[16] to pass them out. I've gotten estimates on
[17] getting off of a septic tank and onto the sewer.
[18] I've gotten an estimate on destroying the drive-
[19] way that I have and putting in a commercial
[20] grade driveway and having parking in the back
[21] instead of the front of the house.
[22] In my mind, the expenses are astro-
[23] nomical. I just have a little small -- I call
[24] it a mommy business. I started the business 10
[25] years ago because I was widowed and I had a

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[1] teenage son and I had to make a living.
[2] If I do all the -- I mean the
[3] improvements sound wonderful, but I don't need
[4] them. I didn't need to change anything in the
[5] house. We don't have any heavy equipment. We
[6] don't have any chemicals. We don't make any
[7] noise. We're just four old ladies right now
[8] typing on our computers and using the fax and
[9] the telephone.
[10] If I make the changes that I've been
[11] requested to make, I'm going to have to take all
[12] my retirement funds and put them into that. I'm
[13] 65 years old. I'll never recoup any of those
[14] retirement funds. I might go on welfare. Does
[15] Doraville have a good welfare system?
[16] I want to be in compliance and I don't
[17] want to go on welfare. That's all I have to
[18] tell you.
[19] What else? Could you-all ask
[20] questions?
[21] **COUNCILMEMBER ROCHE:** When did you
[22] purchase the house?
[23] **MS. STALLMAN:** I purchased the house
[24] three years ago.
[25] **COUNCILMEMBER ROCHE:** Do you have who

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[1] sold the house to you or --
[2] **MS. STALLMAN:** Oh, I have the names. I
[3] don't remember the names of the previous owner
[4] but I have it in the office.
[5] **COUNCILMEMBER FLEMING:** But you were
[6] purchasing it as a commercial property rather
[7] than as owner-occupied business; correct?
[8] **MS. STALLMAN:** You know, I purchased
[9] it. Unfortunately, I have to admit that I'm
[10] very unsophisticated. I might be stupid when it
[11] comes to things like that.
[12] I ran the business out of my home in
[13] Dunwoody, and nobody cared including the Dekalb
[14] County government. I just bought a house that
[15] fit my needs, didn't need any work done. I
[16] didn't give any thought to -- I mean, you know,
[17] I bought it to run my business out of, but it
[18] didn't occur to me that I was doing anything
[19] wrong.
[20] **COUNCILMEMBER FLEMING:** Well, you
[21] weren't necessarily doing anything wrong that
[22] you purchased the home. That wasn't what we
[23] were implying.
[24] **COUNCILMEMBER ROCHE:** Yeah. I guess my
[25] impression is did anyone give you the impression

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or give you the idea that it was okay to run your business out of that?

MS. STALLMAN: Well, nobody gave me the impression that it wasn't okay.

I ran the business for three years. We've never ever had the first complaint or the first question.

COUNCILMEMBER ROCHE: Right. I'm going back to when you purchased the property.

MS. STALLMAN: Nobody.

COUNCILMEMBER ROCHE: Did the real estate person --

MS. STALLMAN: Nobody said anything.

COUNCILMEMBER ROCHE: -- say it was okay or anything like that?

MS. STALLMAN: Well, the real estate person knew that I was purchasing it to run my business.

COUNCILMEMBER ROCHE: And I guess they didn't tell you that it was . . .

Is that someone local or --

MS. STALLMAN: Yeah.

COUNCILMEMBER ROCHE: -- someone out of town?

MS. STALLMAN: No. It was someone

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local. I mean not in Doraville but local.

I guess you'd say we're not open to the public. Customers don't come to my office.

Occasionally, an interpreter comes and in fact occasionally a few interpreters come to my office about once a month or so for an interpreter orientation, and in fact that's all. We don't really get visitors. It's kind of a boring place, actually.

MAYOR JENKINS: How long after you moved there and started your business did you wait to get a business license?

MS. STALLMAN: Well, I always had a business license. I had it through Dekalb County. You know, in my mind, I was moving from one place in Dekalb County to another place in Dekalb County. I didn't know that I had to do anything different.

MAYOR JENKINS: I understand that.

How long after you found out you had to get a business license in Doraville? How long had you --

MS. STALLMAN: It was about two years and nine months after I moved there. And the day I found that out, I drove directly to City

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Hall and asked for a business license and I caused myself a great deal of trouble in trying to be a good citizen.

COUNCILMEMBER ROCHE: I remember when you came here for the moratorium hearing.

MS. STALLMAN: You know, the thing that scares me is by my standards -- I have to say I don't think big. I only have a little house after 10 years of business. Some people have sky scrapers after 10 years in business. But by my standards, it's been a very successful business. I told you how many employees I have, how many subcontractors I have. I'm able to pay their salaries, I'm able to pay the contractors and I'm able to pay my bills.

When the economy started getting bad -- excuse me -- last year we started having trouble collecting. At one point, I think I had, oh, a couple of hundred thousand dollars in open invoices but I didn't have any money to pay my employees and my contractors. I had to borrow $36,000 from the bank. I've paid it all back now except $5,000. I still owe $5,000.

The thing that scares -- one of the things that scares me is we all know this is a

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very bad economy, and the worse the economy is, the harder it is to collect what's owed to us. I don't know if I'm going to stay in business regardless of my rezoning application. If it gets a lot worse -- I know that my customers have a hard time paying me -- you know, I anticipate that at some point I'm going to have to make a decision as to how much of my retirement I'm willing to give up to stay in business. And now it looks like I'm going to have to spend many, many, many thousands of dollars, $50,000 or something like that, to rezone when I don't even need that stuff. I mean I do want -- I'd like for the parking to be in the front of my house for many reasons, because I really don't want the expense of having to put in a commercial-grade driveway when no commercial vehicles come to my house except FedEx and Office Depot and they don't have any problems.

I'd also like to park in the front because all my neighbors have parking in the front. I know they were grandfathered in and I'm not grandfathered in. But nevertheless, for consistency purposes, I think it would look --

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in my opinion, it would look much nicer if I'd put down some kind of surface for parking and had parking in the front like all my neighbors do.

And my other issue, which probably isn't important to anyone except me, is that when I leave my office late at night, I'm in a deserted area. All the other houses on the street are empty at night. The parking lot across the street is empty. There's a subdivision, but none of the houses face the same direction I face, and they're not part of my neighborhood; I'm not part of their neighborhood. When I leave at night, I'm always a little bit uneasy because it's deserted. If something happens to me, I'd like to think that maybe somebody from the street or somebody walking on the other side of the street might see something. But if I'm in the back, nobody will see anything, which I know is just an emotional thing on my part but --

COUNCILMEMBER BATES: Ma'am, do you own the house outright or do you have a mortgage?

MS. STALLMAN: I have a mortgage. And it's worth a lot less than I'm paying for it at

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this stage, but that's okay.

COUNCILMEMBER BATES: And the thought process when opening the business versus doing a traditional lease at an office complex or office space was?

MS. STALLMAN: My office was in my home for seven years, and all my -- I mean I only have a few employees and they all like the homey atmosphere. And for that reason and also because I thought it made more sense to purchase a place than to just throw rent down the drain, I bought the house.

COUNCILMEMBER ALEXANDER: So on this one septic estimate you gave us, I guess you're already having problems with your septic tank?

MS. STALLMAN: We're having some problems with the septic tank particularly when it rains. I would like to get on the sewer. The estimate that I passed out -- other people have given me verbal estimates but they haven't given me written estimates.

The guy that gave me the written estimate says there's really nothing wrong with the sewer [sic], that there's something wrong with the pipes or whatever leading into it and

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out of it, and he could do a lot of repair work on that and it would be okay.

COUNCILMEMBER ALEXANDER: So you're going to have to do that no matter what?

MS. STALLMAN: (Nods head)

COUNCILMEMBER ROCHE: You mean the pipes to your septic tank.

MS. STALLMAN: Yeah. I don't know if it's called pipes or lines.

COUNCILMEMBER ROCHE: Right. I didn't have any questions.

MAYOR JENKINS: Scott? Go ahead, Maria.

COUNCILMEMBER ALEXANDER: So if the septic system was repaired, Mr. Haeberlin, she would still have to get a letter from Dekalb County environmental health office?

MR. HAEBERLIN: My concern at this point is that we don't have anything from Dekalb County saying that in view of this becoming a nonresidential use, that they will accept the use of septic. We don't have a letter from them, either, that says they're going to mandate it going to sewer. And that is an item that's still really up in the air.

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The reason why Ms. Stallman apparently has been looking at this issue is because she's having failures, and that is an obvious concern. And obviously, if the septic was to stay and in the back yard with the leach fields back there, then obviously our conditions would have to change regarding parking. It would have to be in the front.

So the issue of the septic versus the sewer is really a question that's still up in the air because we don't have an approval letter from Dekalb County environmental health.

COUNCILMEMBER BATES: Do we know if the associated businesses along Flowers are tapped into the sewer or are they also on septic?

MS. STALLMAN: I don't know. I know my next door neighbor is tapped into the sewer. I don't know about the others.

You know, I'm sorry, because my understanding was that I should get some estimates. I didn't realize that I should get a letter from Dekalb County, but I will attempt to get a letter from Dekalb County.

COUNCILMEMBER SPANGLER: And where did you get the $15,000 estimate for tapping into

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the sewer?
MS. STALLMAN: I got it from -- is it Chambers?
COUNCILMEMBER SPANGLER: Okay. What is the County going to charge you to tap into it?
MS. STALLMAN: I don't know.
COUNCILMEMBER SPANGLER: You don't have any idea?
MS. STALLMAN: Huh-uh.
COUNCILMEMBER SPANGLER: Scott, do you know what they charge for a tap?
MR. HAEBERLIN: I don't have any idea.
COUNCILMEMBER ROCHE: I mean the concern would be, I mean obviously with the kind of business you're running in there now, it may be adequate once the septic line is fixed. The problem is that if someone else -- if you sold the property or rented it out to a restaurant, then the septic tank would not be adequate and I don't know if we'd have any kind of recourse to make sure that they did something then. I don't know how that works.
MR. HAEBERLIN: You do have the situation where if we did rezone this property, that I would request that you folks consider

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restricting it to business and professional office use only. That would avoid that situation.
COUNCILMEMBER ROCHE: Right.
MR. HAEBERLIN: I'm not entirely comfortable with this being on a septic system. I'll just be very blunt with you. However, you know, we are subject to Dekalb County, and Dekalb County has some interesting regulations. Generally what I'm hearing now is they're not considering residential that's on less than 25,200 square feet, of course this being non-residential.
So they're really the unknown factor, and I really think that the approval letter from them would be an important component of this petition but we don't have that.
COUNCILMEMBER ROCHE: How long would it take to get that?
MR. HAEBERLIN: That's something the applicant, you know, could look into doing.
COUNCILMEMBER ROCHE: Are you saying that we might want to just postpone this yet again until we can get that information?
MR. HAEBERLIN: I'll be honest with

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you. Because of some of the estimates -- and, you know, I've looked at the estimates and I've done adaptive reuse with many communities. I'm very concerned about some of the estimates that she received. Of course that's, you know, something she does on her own.
But I think in light of not having a letter from Dekalb County at this point and in spite of the other concerns that she has, it would be in the best interests of the City to table it and to do more fact finding. And one of the critical items would be a letter from Dekalb County environmental health telling us yes or no on the use of the septic, and then that will of course drive the remainder of the petition.
COUNCILMEMBER BATES: Are you concerned with the estimates as far as them being too high, too low?
MR. HAEBERLIN: I'll be honest with you; too high. You know, like I said, I've done adaptive reuse of similar, you know, a thousand/1500 square feet homes, and the estimates for six parking spaces seem to be astronomical of course. It's something the private market

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dictates, so I'm not involved in it, but it just seems that she would need to approach several different people to know if these are realistic expectations.
COUNCILMEMBER ROCHE: Particularly with the current economy, you'd think that people would be starving to death and ready to do it.
MR. HAEBERLIN: Well, here's the situation we have is, you know, the property cannot remain as a business unless it's rezoned. We don't have any options there.
The only option Ms. Stallman has is to move her business out of the facility and rent the house as a residence, which she surely could do under R-1.
To occupy the structure with the associated employees, et cetera, it's going to require rezoning and it's also going to require improvements. And these improvements, although maybe not as substantial as compared to what she's looked at right now, are going to cost money, so there will be investment in the property.
COUNCILMEMBER SPANGLER: But at the same time, the property is going to be worth

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more if it is rezoned --

MR. HAEBERLIN: I would tend to think that.

COUNCILMEMBER SPANGLER: -- and with the improvements that are going to be made on it.

MR. HAEBERLIN: I would tend to think that as well, and it would be marketable as -- once it's brought up to code, as an Office/ Institutional-zoned piece of property.

So like I said, there are some of the variables that we discussed way back even in the moratorium and at the Planning Commission as well that are still not resolved.

In jurisdictions, it's typical the applicant is required to get the availability letter. That is something incumbent upon the applicant to resolve. I mean I think this is a key issue in this case.

COUNCILMEMBER ROCHE: And if we don't have that and we were going to try to make any kind of decision, we'd be forced to make a decision based on the worst-case scenarios, which may not be as beneficial to the property owner.

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MR. HAEBERLIN: Let's say we rezone the property but Dekalb County won't allow her to use septic. So there's an example.

At this point, I think there's too many unknown variables. I think that it would behoove us to consider tabling it and allowing the applicant more time to investigate not only the price of the improvements but whether Dekalb County will force her to go onto sanitary sewer.

And then obviously if she is forced to go onto sanitary sewer, then that does change some of our parameters on our recommendations we put forth.

COUNCILMEMBER ROCHE: Right.

MR. HAEBERLIN: It would require obviously some tree removal, too. So there's a whole bunch of parameters that keep increasing every time we talk about construction on this property.

ATTORNEY WEED: Mayor and Council, while you're thinking along this line, it occurs to me that you could table it to another meeting. But I would tend to encourage you to use a little bit different language and go ahead and finish as much of this public hearing as you

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can tonight, perhaps get into both arguments for and against, and take as much evidence as you can and then recess this meeting to a date certain. That way, you'll avoid the expense of having to readvertise for the meeting.

MR. HAEBERLIN: Attorney is correct; the right terminology.

COUNCILMEMBER ALEXANDER: I have some questions regarding your comment, Mr. Weed. If there are going to be other variances required, would that not generate re-advertisement if it's more than what was included in the original advertisement?

ATTORNEY WEED: No, and here's my basis of that. Whenever you engage a zoning issue, it's not possible to cover every single thing that might occur. What the statute requires would be time, place, purpose. So obviously we've got the time, we have the place, and then the general purpose here would be a rezoning from R-1 to O-I, so that's covered. So as far as the gory details of whatever conditions you might put on the property or whatever variances are needed, my opinion would be that's not covered by the current State law.

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MR. HAEBERLIN: Murray, I just did want to note for the record -- I mean I respect your opinions -- let me note the ad that appeared in the February 5th, 2009 Champion for the property, the only variance that we actually advertised was for a buffer reduction. So I just want to make you aware of that. If you're comfortable with that, I'm comfortable. You're the attorney to the Council.

ATTORNEY WEED: Yes. It's just like any other zoning decision. I mean for example you could rewrite an ordinance the night of the meeting, that type of thing. The statute requires time, place, purpose right now.

MR. HAEBERLIN: Well, then, we'll proceed on with discussion of the petition if that's what you'd like.

As you're aware, it's an adaptive reuse, and that simply means a house going to an office. This is fairly common in most jurisdictions, very common in Doraville in fact as you see from the adjacent properties which run down to the City maintenance shop. That had been rezoned to -- it's Commercial II and Commercial I designations. And they have been developed in

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[1] different capacities, some of them obviously
[2] wouldn't necessarily be considered to meet the
[3] current codes or even the past codes, but again
[4] that is past history.
[5] The property we're looking is 0.306
[6] acres, and this is an interesting property in
[7] the fact that it is physically separated from
[8] the Moon Manor subdivision. This is the only
[9] remaining residential lot that has access to
[10] Flowers Road. The rest of them have access to
[11] internal subdivision streets.
[12] You guys have had an opportunity to
[13] read the history on it. You know that the house
[14] is 1956, 1050 square feet. This was a code
[15] situation where we had a Quality of Life
[16] individual approach the home owner, and that's
[17] how we've gotten there.
[18] We've discussed a little of the
[19] development process. The rezoning is just the
[20] first step in a long list of things that will
[21] need to be done which culminates in bringing the
[22] property up to commercial standards. When I say
[23] commercial standards, that does mean paved
[24] asphalt or concrete parking. Of course that
[25] would meet the minimum square footage for

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[1] parking spaces, for drive aisles, et cetera.
[2] On this property, any place that it's
[3] put will entail some tree removal, and of course
[4] that's covered under a separate code.
[5] She's really only required at this time
[6] to have four parking spaces, as she's discussed,
[7] but she actually would like to put in a few more
[8] than that because of her employees.
[9] **COUNCILMEMBER BATES:** Mr. Haeberlin,
[10] let me interrupt you there. I apologize.
[11] We have the authority to grant parking
[12] variances, though, as well, do we not?
[13] **MR. HAEBERLIN:** To reduce the number of
[14] parking places, yes, sir.
[15] The buffer. This does abut residential
[16] properties. Your buffer section is fairly
[17] ambiguous and it uses the word "commercial,"
[18] commercial vernacular. It doesn't say to me
[19] exactly that commercial is O-I. I guess that
[20] could be an interpretation, however, in seeing
[21] that the code supported having some sort of
[22] buffer between this property and the residen-
[23] tial.
[24] Now, there is a provision in the Code
[25] that says where it's ambiguous, maybe it's up to

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[1] the determination of the Council. So some sort
[2] of buffer is obviously desirable between O-I and
[3] the R-1.
[4] As you're aware, since we initially
[5] took this application, we've had a new ordinance
[6] adopted, which is 2009-001, which is the new
[7] O-I/O-W. So this has proceeded just by those
[8] items being brought into code, which is pretty
[9] common.
[10] Standards of Review. Nothing specific
[11] in here. Like I said, the key item that I'm
[12] looking at as its potential for being nonresi-
[13] dential is its physical separation does abut
[14] commercial properties. If this was a property
[15] internal to the subdivision, I would be
[16] extremely more concerned than I presently am.
[17] We did put forth some conditions. The
[18] conditions don't eliminate any other provisions
[19] of code. Fairly typical in doing an adaptive
[20] reuse is to make the property not only usable
[21] but attractive. So we have some conditions on
[22] the natural environment, the human environment
[23] which has been discussed before at length, that
[24] the City does not have any real requirements for
[25] sidewalks. This property is in very close

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[1] vicinity to an existing sidewalk network. We
[2] did put some provisions in as well regarding
[3] modifying the structure, the location of the
[4] handicapped site, et cetera.
[5] On the last page of your report, you
[6] have an as-built survey of the property which is
[7] very telling. If you look at that, you'll see
[8] that if the existing driveway was allowed to be
[9] used, that people would literally be backing
[10] into the public right-of-way. It's the same
[11] thing I had to do when I visited the site.
[12] And this is not a commercial standard
[13] driveway by any means -- its width, its design.
[14] Based on the current codes that exist today, the
[15] apron would have to be concrete and meet a
[16] certain width requirement. The on-site parking
[17] could be either concrete or asphalt, and asphalt
[18] is probably generally a little cheaper.
[19] But those are the items that the
[20] applicant has discussed with you as the signifi-
[21] cant costs of bringing the property up to code,
[22] and I would concur there will be costs but it's
[23] no different than any other adaptive reuse that
[24] has occurred in this or similar jurisdictions.
[25] So if the Council has any questions at

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this time, I would entertain them.
COUNCILMEMBER BATES: On the natural recommendations, that property has an extensive tree canopy now.
MR. HAEBERLIN: Yes, sir.
COUNCILMEMBER BATES: Are these recommendations increasing the existing?
MR. HAEBERLIN: Well, the recommendations really -- Of course you have a tree ordinance that guides any tree removal.
COUNCILMEMBER BATES: Well, I guess my question is are these general? Should there be additional plantings or replacement plantings, these are the guidelines that need to be --
MR. HAEBERLIN: Yes, sir.
COUNCILMEMBER BATES: -- adhered to --
MR. HAEBERLIN: Yes, sir.
COUNCILMEMBER BATES: -- versus you need to add to what's already there?
MR. HAEBERLIN: Well, obviously the buffer would be an addition.
COUNCILMEMBER BATES: Right.
MR. HAEBERLIN: Because I will be honest with you. There is no buffer there; there is a fence.

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COUNCILMEMBER BATES: That's between the side property of --
MR. HAEBERLIN: The side and the rear.
COUNCILMEMBER BATES: -- the applicant and the rear of the neighboring residential.
MR. HAEBERLIN: Yes, sir. That's between the Moon Manor subdivision, the remaining houses and the subject site. So the buffer is a replant situation, anyway.
I hasten [sic] to really be trying to implement sod requirements, et cetera, because with the conditions that are present on the site, I just don't think that's going to happen. I mean I think that landscaping here is going to be a naturalization process of shrubs and ground covers and things of that nature. And I wrote this very loosely to include mostly shade-loving plants and to give enough creativity to the individual, because they really are challenged. I visited the site in late fall, and it was covered with leaves. So it is a very difficult maintenance situation for the property owner.
COUNCILMEMBER BATES: Well, aesthetically, it's a much more attractive property than the neighboring commercial.

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MR. HAEBERLIN: I would concur with you. The properties adjacent to the property are impervious from the front door to the public right-of-way --
COUNCILMEMBER BATES: Right.
MR. HAEBERLIN: -- and there is no real landscaping.
COUNCILMEMBER BATES: Based upon the requirements in the code and the as-built, do you have an estimate on the expansiveness of the commercial parking/driveway that needs to happen in order to accommodate the four or six parking spaces?
MR. HAEBERLIN: Well, any driveway of course would meet the Dekalb County standard for nonresidential, so you're probably looking at a 20 to 24 -- 22- to 24-foot driveway. All the interior aisles would have to be a minimum of 12 feet if they were one way and I think it's 22 feet if two way, and then you have 180 square foot parking space. So you will have some significant areas of blacktopping, particularly since you're going to need to come into the site and be able to exit the site with the nose of the car facing the road.

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So your front of this property, even if we say just do six parking spaces, we're going to take up a significant amount of the front, and it's probably likely that we'll be removing some trees, too. But you would do the same thing if the parking was in the back, to be honest with you; you would be removing trees back there as well.
COUNCILMEMBER SPANGLER: So in your opinion, would it be better to keep the parking in the front? Would there be less trees?
MR. HAEBERLIN: If the septic situation was allowed, meaning they were allowed to retain the septic, obviously we could not have parking in the rear.
Do I believe that the other properties were done well? And this is a judgment call as a planner. No. Because they truly made all the other homes look nonresidential. They clearly look like businesses.
My intent of writing that condition is since this was the last house and it was immediately adjacent to residential is to really make this house remain and look as though it was part of the subdivision versus the other

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[1] properties which clearly don't look like resi-
[2] dences at this time.
[3] **COUNCILMEMBER BATES:** But with that
[4] expanse of asphalt, that's going to not comply
[5] with the goal of making it look residential.
[6] It's going to then look commercial.
[7] **MR. HAEBERLIN:** That is correct. But
[8] behind the home, it would be less visible. And
[9] with an office use that generally has limited
[10] hours, a person would come in and out, and the
[11] traffic area would be behind the property versus
[12] with the blacktop and/or asphalt in the front of
[13] the property, the cars would be a continuous
[14] presence in the neighborhood. They would be
[15] obvious. And again, my intent was to make the
[16] property look and feel as residential as I could
[17] within the context of keeping our codes.
[18] **COUNCILMEMBER ROCHE:** And we don't know
[19] about the back yard until we find out from the
[20] County.
[21] **MR. HAEBERLIN:** Correct. So I guess
[22] that these conditions would be subject to change
[23] based on what information I receive from the
[24] County, and so I really hasten [sic] to make a
[25] judgment call until we get something from them,

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[1] as they are our water and sewer provider for the
[2] city.
[3] **COUNCILMEMBER ROCHE:** Well, I would be
[4] interested in postponing it except that we have
[5] some people that did show up that wanted to
[6] comment on it. I think we --
[7] **MAYOR JENKINS:** And we need to --
[8] **COUNCILMEMBER ROCHE:** -- should at
[9] least hear them.
[10] **MAYOR JENKINS:** -- go ahead with those.
[11] **COUNCILMEMBER ROCHE:** I would think --
[12] **MAYOR JENKINS:** You want to postpone
[13] it?
[14] **COUNCILMEMBER ALEXANDER:** We can go
[15] ahead and let them speak.
[16] **COUNCILMEMBER FLEMING:** Yes.
[17] **COUNCILMEMBER ROCHE:** Yes. I would
[18] think that we'd want to do that.
[19] **ATTORNEY WEED:** My advice would be to
[20] go ahead and follow the procedure in 1604(a), go
[21] ahead and hear from those in favor and those
[22] opposed.
[23] **COUNCILMEMBER ROCHE:** Right.
[24] **ATTORNEY WEED:** And you wouldn't have
[25] to do that when you go to the next phase or you

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[1] could reopen it up at the time.
[2] **COUNCILMEMBER ROCHE:** And we may do it
[3] again, anyway, but, still, the people that made
[4] the effort to come out should have a chance.
[5] **ATTORNEY WEED:** And you could do that.
[6] **COUNCILMEMBER BATES:** Before we get
[7] into that, do you know if there are assistance
[8] programs from the County or State on conversions
[9] from septic to sewer?
[10] **MR. HAEBERLIN:** I don't know if there
[11] is assistance per see. I'll be honest with you.
[12] At some point in time, I expect that the County
[13] will come to us and say that the Federal govern-
[14] ment has mandated that we get everything off
[15] septic. You know, I'm cringing at the day that
[16] occurs.
[17] I don't know about any assistance
[18] programs. I doubt it, but I will look into it
[19] for you.
[20] **COUNCILMEMBER BATES:** You triggered a
[21] transitional thought. As part of the shovel-
[22] ready stimulus package, would this -- and I
[23] don't expect anybody to know -- would this be a
[24] potential qualifying project in the public
[25] domain?

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[1] No?
[2] **ATTORNEY WEED:** No.
[3] **COUNCILMEMBER BATES:** Okay. Thank you.
[4] **MAYOR JENKINS:** Anybody else?
[5] Bonita?
[6] **COUNCILMEMBER ROCHE:** You have to go
[7] into the --
[8] **MR. HAEBERLIN:** At this time, the Mayor
[9] is going to open the public hearing function of
[10] it. Then when that's over, he'll close it and
[11] the Council will take appropriate action.
[12] **COUNCILMEMBER ROCHE:** So you open the
[13] public hearing. Okay.
[14] **MS. HOFFMEISTER:** I can answer the
[15] question as far as the sewer and Dekalb County.
[16] They have put several changes to their zoning
[17] ordinance before the community planning
[18] commission, and I know several of the community
[19] groups have vetoed that. So unless, like Scott
[20] says, the Federal government mandates it, Dekalb
[21] probably will not be doing it.
[22] My second question is has this been
[23] before the community council?
[24] **COUNCILMEMBER BATES:** The Planning
[25] Commission?

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MS. HOFFMEISTER: The Planning Commission.
COUNCILMEMBER BATES: Yes.
MS. HOFFMEISTER: What was their opinion?
COUNCILMEMBER BATES: Recommended for approval, I believe.
MS. HOFFMEISTER: Okay.
MAYOR JENKINS: Stuart?
MR. ANDERSON: Stuart Anderson.
Looking at these quotes -- and they are fairly astronomical -- the septic tank quote here is $30,000, and on the Chambers quote, estimate, to connect sewer is $15,000. That seems a no-brainer in the first place. And that would allow parking in the back, et cetera, some of these moves.
Maria and Brian brought up something that I was going to bring up and will and do. And if I was advising Ms. Stallman on this matter, I would look at the situation and advise her or ask her to put forth some requests for variance in itself. I don't have Scott's presentation, so I don't know what all the issues are, but I feel that there could be some

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relief in this situation and everybody would be happy with granting some variances in some of these situations.
So like I say, if I was advising her, I'd have to look at the situation and have her ask for some variances that would help some of this, because this is obviously multi-faceted and convoluted. And that would help some of that; that would relieve some of that.
But other than that, I've driven by it. I live in that neighborhood, I guess. And Scott's assessment of trying to keep it looking residential, I applaud that. It is a residen-tial-looking thing. I know that businesses close to it that are -- shouldn't be C1 and C2 are very crummy-looking C1 and C2's. And I know that that's not a criteria for giving her relief, but it is a factor. And you know, like I said, I applaud Scott for trying to keep this thing looking like residential.
That's it. Thank you.
I think some relief should be given to the woman, but, as you say, she can sell it as a product or as another property.
MAYOR JENKINS: That's all I have

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signed up. Anybody else?
- - -
(No response)
- - -
MAYOR JENKINS: Need a motion.
COUNCILMEMBER ROCHE: I make a motion to postpone this to --
Well, we'd have to pick a day, wouldn't we?
MAYOR JENKINS: When is our next regular? The fourth Monday? Do you want to postpone it till then?
MR. HAEBERLIN: Well, the fourth Monday is not a quote/quote regular meeting at this time.
MAYOR JENKINS: Sir?
MR. HAEBERLIN: The fourth Monday is not a quote/quote regular meeting at this time.
You guys have your regular City Council agendas that you are pursuing, and the special-called meetings for public hearings are only in situations when they're needed, so none of them are already advertised.
COUNCILMEMBER FLEMING: But postponing it could be to our next regular meeting, could

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it not be?
MR. HAEBERLIN: Absolutely.
MAYOR JENKINS: Well, if you have a public -- the public hearing is over. Am I correct?
MR. HAEBERLIN: That is correct.
ATTORNEY WEED: That is correct.
MAYOR JENKINS: Murray, is that true?
ATTORNEY WEED: Yes, sir. However --
MAYOR JENKINS: And then we can put it on the regular agenda.
ATTORNEY WEED: That is correct; you could. And at that meeting -- if you recess this hearing until another meeting, it'll actually be the same hearing. It will be no different than a court taking a recess to another day and then starting the proceedings back up again. It's the same thing. And at that time, the Council could choose to reopen the public hearing if they wanted to.
But my opinion right now is that you had a public hearing, you closed that, and if you want to recess to another date certain, that's perfectly legal in my opinion.
COUNCILMEMBER ROCHE: So you're saying

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the March 16th meeting?
COUNCILMEMBER FLEMING: First? Second?
COUNCILMEMBER ROCHE: Would the second give --
MAYOR JENKINS: Mid-month.
COUNCILMEMBER ROCHE: -- them enough time? That's like less than a week.
COUNCILMEMBER SPANGLER: I don't think that would give her time to get the information from Dekalb County, would it?
COUNCILMEMBER FLEMING: Ms. Stallman, do you think you would be able to by next Monday possibly get with Dekalb County to find out about the septic tank and also to get a better estimate? Because evidently, these seem extremely high.
MS. STALLMAN: I'll do the best I can.
COUNCILMEMBER FLEMING: Well, we want to give you as much time --
MS. STALLMAN: Yes.
COUNCILMEMBER FLEMING: -- as necessary, but --
MS. STALLMAN: If I can find the appropriate person at Dekalb County, I would have time to go over there and talk to them.

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And the estimates that I got -- one of the estimates that I got, I was referred to Chambers by Dekalb County. And I can try to get other estimates. I'm not sure --
COUNCILMEMBER ROCHE: We're just saying you have --
MS. STALLMAN: -- how to find the people.
COUNCILMEMBER ROCHE: We can give you one week or we can give you three weeks.
MS. STALLMAN: Oh. Give me three.
COUNCILMEMBER ROCHE: That's fine, yeah. We just want to do whatever we can.
MS. STALLMAN: Okay, because I find barriers up wherever I go.
COUNCILMEMBER ROCHE: I understand.
COUNCILMEMBER BATES: Sure. I just -- this is more to the Council. We had talked about not having --
COUNCILMEMBER ROCHE: Yeah, I know.
COUNCILMEMBER BATES: -- variances and zoning at our regular scheduled Council meetings because, you know, we're at 45 minutes on this. We're going to probably be at that length of time again. So my preference would be to not do

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it on the 16th but to be consistent and have it again on I guess it would be the 23rd of March, a month today, so that we've got, you know, time, and not spend our regular Council meeting, when we need to be moving through the agenda, doing public hearings.
COUNCILMEMBER SPANGLER: I agree with Mr. Bates. And I think that you probably will need that additional time in order to get more estimates. And I know you can do a lot better than this.
MS. STALLMAN: Well, I'm glad to hear it. I hope I can.
COUNCILMEMBER ROCHE: I'm fine with --
COUNCILMEMBER BATES: And just so I might be able to see what we can do of assistance, on the estimates that you got, was that based upon a generic, say I need to have a parking lot and a driveway, or were there actually diagrams showing where it needed to go? How did they come up with the $42,000 estimate for a driveway?
MS. STALLMAN: I got a map of the --
COUNCILMEMBER BATES: I mean that's --
MS. STALLMAN: -- a map of the --

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COUNCILMEMBER BATES: -- $42,000 for an estimate of a driveway and parking.
MR. NOONAN: Maybe they confused the decimal point.
MS. STALLMAN: Yeah.
COUNCILMEMBER BATES: So I don't know, Scott, if we can work with her to come up with a proposed site plan that would show kind of a general configuration both for rear parking and front parking to kind of help facilitate a reasonable and appropriate estimate? I'm trying to help facilitate.
MR. HAEBERLIN: Well, the site planning would have to occur if we did the rezoning, anyway. So I would say it would probably be best for her to take the existing as-built survey back to the surveyor and have him plot something. That's really the only way he's going to know factually that he's met the criteria. We would need that, anyway, so it's well-spent money if the property is rezoned.
COUNCILMEMBER BATES: I would say it will probably help you tremendously to actually have a plan to take to a concrete or asphalt driveway person and say, "This is what is

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needed. Here's Option A and Option B," versus "I need you to put a driveway and a parking lot in." And I don't know if that makes sense and I don't know --

MS. STALLMAN: It makes sense. So where would I get the plan? From the surveyor?

MR. HAEBERLIN: Yeah. I would probably go back to the person who originally prepared the survey if they're still in business because they have the information in a format which they can work with. If that surveyor is no longer in business, you may have to start with a new survey or site planning company.

COUNCILMEMBER BATES: I will just tell you that $42,000 seems exorbitantly ridiculous.

COUNCILMEMBER ROCHE: Yeah.

MS. STALLMAN: It does to me, too.

COUNCILMEMBER ROCHE: Paved in gold, maybe.

COUNCILMEMBER BATES: Yeah. I don't know what they were building it out of or paving it with, but even Mr. Cushman back there raised his eyes at that price tag. So you might check with Jimmy, introduce yourself.

MR. CUSHMAN: Absolutely.

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COUNCILMEMBER BATES: He does commercial property management, and they do a lot of asphalt stuff.

MR. CUSHMAN: It does help with drawings.

COUNCILMEMBER ROCHE: Okay. Well, then, I will make the motion that we postpone --

MR. HAEBERLIN: Just a second. I do want to get some clarification. Are you wanting to postpone this to the fourth Monday of next month?

COUNCILMEMBER ROCHE: That's what I --

MR. HAEBERLIN: My question is that's not a regularly-scheduled meeting, Murray --

MAYOR JENKINS: No.

MR. HAEBERLIN: -- and so it's not advertised per se. You know, they have the two meetings a month. That last meeting of the month is a special-called meeting, and I have not advertised anything to that extent.

ATTORNEY WEED: I don't think that's a problem, because once again, we are I prefer to use the term "recessed," not "postponed."

MR. HAEBERLIN: Recessed. Okay.

ATTORNEY WEED: We are recessing this

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hearing to another date. And you have duly advertised for this hearing, so if anybody had wanted to show up, they better, by gosh, have shown up tonight. So I think I'm -- I'm okay with that legally.

MR. HAEBERLIN: Yes, sir. I just wanted to make certain.

COUNCILMEMBER ROCHE: Let me see if I can do this right. I make a motion that we recess this current public hearing until Monday, March 23rd, at 6:30 p.m. here at City Hall in this room.

MAYOR JENKINS: 6:00 or 6:30?

MR. HAEBERLIN: 6:30 is what we've usually been doing them.

MAYOR JENKINS: Second?

COUNCILMEMBER SPANGLER: Second.

MAYOR JENKINS: Anymore discussion?

COUNCILMEMBER ROCHE: I mean I'm okay with 6:00, too. It doesn't matter.

MAYOR JENKINS: 6:00?

COUNCILMEMBER SPANGLER: 6:00 is fine with me. I'll second it for either 6:00 or 6:30, whichever Council --

COUNCILMEMBER BATES: 6:00?

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COUNCILMEMBER SPANGLER: 6:00?

COUNCILMEMBER ROCHE: 6:00.

COUNCILMEMBER ALEXANDER: How are you on getting here, Pam?

MAYOR JENKINS: Can you make it?

COUNCILMEMBER ALEXANDER: That's why I'm asking Pam.

COUNCILMEMBER FLEMING: 6:00 is pushing it, but if you can make it --

MAYOR JENKINS: 6:30 would be fine.

COUNCILMEMBER FLEMING: -- at 6:00, I'll do so.

COUNCILMEMBER ROCHE: Okay.

COUNCILMEMBER ALEXANDER: 6:30.

COUNCILMEMBER BATES: 6:30.

COUNCILMEMBER ROCHE: My motion stands.

MAYOR JENKINS: Call the roll, please.

ASSISTANT CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

ASSISTANT CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

ASSISTANT CLERK BRYANT: Councilmember Fleming?

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COUNCILMEMBER FLEMING: Yes.
ASSISTANT CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
ASSISTANT CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Okay, Scott.
COUNCILMEMBER FLEMING: And just as a note, Ms. Stallman, we appreciate you being an owner of a business in Doraville. So thank you very much, and we're sorry you're having to go through all of the problems that you're going through. Hang in there.
MS. STALLMAN: Thank you.
MR. HAEBERLIN: The next group of items I'm going to discuss generally together; however, for each separate parcel, we're going to have to have a public hearing for each parcel.
As you recall, if you were at the moratorium hearing where some of these properties were discussed when we had applicants present --
And there were a couple that are in here -- Councilman Bates and Councilman

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Alexander and maybe even Councilman Roche.
COUNCILMEMBER ROCHE: I think I was here.
MR. HAEBERLIN: -- we found that the map had what we perceived to be an error, and the error was based on the fact that we had office warehouses on R-1 zoned property. So the direction of the Council was to seek a City-initiated rezoning of those properties.
And I have in your report identified for you all the tracts. It's somewhat confusing because Tract 1 is a road tract and its only purpose is to have a road on it, and that tract seems to be linked to Tract 2 which is also identified as 6477 Peachtree Industrial Boulevard.
But I did give you the succinct tax parcel identification number so you know how Dekalb County is assessing these. And then of course Tracts 2, 3 and 4 are the ones with the buildings on them. And Tract 1 is 0.50, Tract 2, 1.80; Tract 3, 2.40; Tract 4, 2.99.
From what we understand, and this has come from some public participation as well -- and I do appreciate members of the Planning

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Commission who have lived here for a number of years giving me some history on this -- it seems that perhaps the back building was built maybe by the Federal government or some division of the Federal government, which typically means that the Federal government is not required to comply with any zoning requirements of the City. That might be indicative as to why the back tract has no buffer adjacent to Chicopee Park. And I've certainly experienced that in other jurisdictions, so I wanted to let you know that.
You do have a listing of the heated square footage of each warehouse. Under the Standards of Review, there's really nothing specific, and obviously these are built. And they're not in any R-1 capacity at all; they're office warehouses. And to that extent, we did advertise these for rezoning.
I'll let you know that I actually sent certified letters to the property owners and even letters that were not certified just in case they happened to decide to open those as well, and I've not gotten any responses. So no property owner has come forward to argue any specific rights although I made a good-faith

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effort to try to get ahold of them. I don't now why they're not interested.
So like I said, the back of the property abuts Chicopee Park, which I think is a natural buffer in and of itself. It's mostly flood plain.
We do know that this property was destroyed. Obviously these buildings probably could not be built back the way they are today because we've got significant flood plain and we have buffer requirements and all sorts of other requirements that are now in place.
So with that in mind, I put forth the recommendation of approval based on the wishes of the Council, from R-1 to O-W for the properties identified as 6477, the road tract; 6477, the other tract; 6479 and 6481 Peachtree Industrial Boulevard with the following conditions: The conditions do not eliminate compliance with any other City codes. No variances from the Code are recommended or approved at this time.
Any development of the property which results in a footprint expansion of any one of the facilities or a building permit other than

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[1] tenant interior finish and trade permit requests
[2] shall generate a master development plan for the
[3] four tracts in question which shall be reviewed
[4] and approved by the City Council per recommenda-
[5] tion of the City Planner and/or his designee.
[6] At that time, variances may be required from
[7] Code regarding as-built conditions.
[8] So you may say to me, "That's a very
[9] general condition, Scott." Well, I certainly
[10] don't want people to not partake in normal
[11] maintenance. They have the need for getting
[12] electric brought up to Code and putting in new
[13] fixtures and, you know, we'll say the heating
[14] and air conditioning went out, et cetera.
[15] What I'm seeking with this condition is
[16] to make sure they don't try to expand the non-
[17] conforming that's already there. And I think
[18] because of the presence of the flood plan,
[19] that's nearly impossible. I'll be honest with
[20] you. I think that this generally addresses any
[21] facade renovation that may be embarked upon such
[22] as putting some sort of synthetic stucco or
[23] something on there.
[24] Because the three parcels are unusual
[25] in and of their nature, they have a tract of

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[1] land that provides them with access, and
[2] essentially the back two tracts are landlocked.
[3] So how this occurred, I don't know. It
[4] wouldn't surprise me that if you took this to
[5] Dekalb County and recorded it, that they would
[6] have recorded it anyway whether the City signed
[7] off on the survey or not. So I think that's
[8] probably how it got to where it is today.
[9] So my recommendation, although very
[10] generic, is designed from a practical stand-
[11] point of the day to day. And you know, at some
[12] point if the buildings are ever torn down, then
[13] we have a different situation to deal with.
[14] On the back of the report area, if
[15] you'll look very closely at this map described
[16] as 18-341, you will see the overlay of the
[17] private drive onto the properties. It should be
[18] multi-sided printed. No?
[19] It's actually a tax map. Yeah. Each
[20] one of you should have a copy of this report
[21] present in front of you.
[22] If you look at that tax map, which
[23] clearly tells you our zoning map is not exactly
[24] in conformity of the tax map, you'll see the
[25] overlay of the private drive as it comes into

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[1] the property and you'll see that essentially two
[2] of the parcels are landlocked. And then of
[3] course you do see Chicopee Park behind there,
[4] which is the flood plain. You'll also see the
[5] traverse lines of a tributary of Nancy Creek,
[6] which gives you further idea of the situation
[7] regarding the flooding.
[8] **COUNCILMEMBER ROCHE:** I don't see any
[9] of that. You'll have to help me.
[10] **MR. HAEBERLIN:** Those are upside down.
[11] **COUNCILMEMBER ROCHE:** Oh, okay. That
[12] helps.
[13] **MR. HAEBERLIN:** Does everybody see
[14] where I'm talking about --
[15] **COUNCILMEMBER ROCHE:** I've got you.
[16] Yes.
[17] **MR. HAEBERLIN:** -- above the big block
[18] that's labeled as number 12 right along the land
[19] lot line?
[20] **COUNCILMEMBER ALEXANDER:** And you did
[21] confirm that the tax database shows those zoned
[22] commercial?
[23] **MR. HAEBERLIN:** The tax database does
[24] not agree with your zoning map. It shows them
[25] as light industrial.

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[1] **COUNCILMEMBER ALEXANDER:** Okay.
[2] **MR. HAEBERLIN:** However, your zoning
[3] map says they're R-1, and they were really built
[4] in the capacity of an office warehouse.
[5] I went out there to do kind of a visual
[6] survey of the type businesses. There are places
[7] that perhaps do upholstery. There are places
[8] that make drapes. There's a lot of, you know,
[9] interesting business conglomerations in there.
[10] Most of them have some sort of commercial
[11] dumpster sitting in front of them, so there's a
[12] lot of disposal needs, apparently, of the
[13] properties. Each one of them basically has
[14] their own large roll-off dumpster in front of
[15] their facilities. Looks like there's some maybe
[16] home builders that might be located in there and
[17] some other, you know, like I said, office/ware-
[18] house style usually where they need storage.
[19] Your last map on here is your City tax
[20] map -- excuse me; your City zoning map, a copy
[21] of the officiated zoning map which shows the
[22] three properties but does not show the road
[23] tract itself. Of course, I'm relying on Dekalb
[24] County's as being more accurate, and it is, as
[25] it clearly designates these as four properties.

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COUNCILMEMBER BATES: So these properties don't abut any residential at all.

MR. HAEBERLIN: They abut Chicopee Park which is residential.

COUNCILMEMBER BATES: But that's a buffer between actual residential properties.

MR. HAEBERLIN: Yes, it really is. And really, Chicopee Park being mostly flood plain, the improvements that could be put in there are very minimal as far as essentially a passive park.

COUNCILMEMBER BATES: Move to grant the -- I'm sorry.

MR. HAEBERLIN: You need a public hearing --

COUNCILMEMBER BATES: Yes. Sorry.

MR. HAEBERLIN: -- for each one of the tracts in question, and you can go in the order of Tract 1, 2, 3 and 4.

And so at this time, the Mayor would open the public hearing, go through that, close it; two, three, four, et cetera.

MAYOR JENKINS: You want to open and close each one; is that correct?

MR. HAEBERLIN: Yes, sir.

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MAYOR JENKINS: We'll open it on Tract 1, 6477.

Do we have anybody? We got two sign-ups at the bottom of the page.

Bonita?

MS. HOFFMEISTER: My question is similar to the last one. Did the Planning Commission hear this?

COUNCILMEMBER BATES: Yes.

MS. HOFFMEISTER: And I would appreciate when Scott talks, that he enlighten us as to what their decision was -- a simple yea, nay, abstain, recommend full cycle, whatever it is that they decided that they had agreed to rule on this. I would appreciate that.

COUNCILMEMBER ROCHE: I mean they're here. They could present, themselves, their own recommendation.

MS. HOFFMEISTER: I would appreciate if we could hear from them, either through Scott or through them.

MR. HAEBERLIN: You know, Attorney Weed just reminded me as well to notate that you have copies of their recommendations in front of you.

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Each one of you has them. Provided as well to the court reporter, the Acting City Clerk, and the attorney present.

The reason why I did not go over the presentation of the Planning Commission items, it was my understanding that the movement of the City was that the City Planner would not present findings of the Planning Commission, and this is the method that they were moving forward with in the future and perhaps as late as tonight.

But I do apologize I didn't give consideration to doing that tonight --

MAYOR JENKINS: Well, why are they --

MR. HAEBERLIN: -- just because I knew that was appropriate that they speak.

MAYOR JENKINS: Why are they not here?

COUNCILMEMBER FLEMING: They are here.

COUNCILMEMBER ROCHE: They are here.

UNIDENTIFIED SPEAKER: They are.

COUNCILMEMBER ROCHE: The Planning Commission, yeah.

MR. CRAWFORD: Do you want me to get up and just say what . . .

COUNCILMEMBER ROCHE: Would the Planning Commission recommendation happen during

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the public hearing part or would it happen before the public hearing part?

ATTORNEY WEED: Well, under 1604, what it says essentially is it'll happen before the actual opportunity for people to speak for or against.

COUNCILMEMBER ROCHE: Right.

ATTORNEY WEED: So the way it's worded would be the Mayor will make an announcement about each individual case, and then there'll be a report issued by the City Planner or whoever is relevant, and then the Planning Commission would issue a report. It doesn't mandate that they have to at that point under 1604(a). They're in a laundry list of people who can.

MR. HAEBERLIN: And in terms of procedural due process, I think it would be appropriate as well.

And we did ask the audience. There is not an owner of this property present or a representative who would like to come forward and speak. Is that correct?

MAYOR JENKINS: That's the question that I ask. I apologize.

MR. HAEBERLIN: Yes, sir. These are

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City-initiated rezonings. I didn't know if somebody did actually appear. I don't see anybody visually who looks like they might be a property owner other than a resident, but I wanted to make sure we had that on the record: we gave them opportunity as well.

MAYOR JENKINS: Okay.

MR. HAEBERLIN: Now return to the public hearing.

MAYOR JENKINS: Stuart?

MR. ANDERSON: Stuart Anderson.

I'll hand -- I would defer to the Planning Commission, but I agree that they should have made a presentation as staff to the City, as Scott did.

Since I'm up here, I recommend or I feel that the City-initiated zoning should go forward on all three or four so I don't have to get up here four times. I think you should do it.

MAYOR JENKINS: Are we finished with the public hearing on the audience?

COUNCILMEMBER ROCHE: For the first one.

MAYOR JENKINS: For 1, yes; Tract 1.

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MR. CRAWFORD: Are you asking me to come up, Mayor?

MAYOR JENKINS: No, sir, I'm not. I'm asking the audience. Is there anymore in the audience?

MR. HAEBERLIN: This is for Tract 1, the roadway tract, sir.

MAYOR JENKINS: Okay. Do you want the Planning Commission to come up?

MR. HAEBERLIN: Well, I'd like -- we're in the public hearing.

COUNCILMEMBER ROCHE: Yeah.

MR. HAEBERLIN: Let's proceed with --

COUNCILMEMBER ROCHE: Well, we're still in the public hearing.

MR. HAEBERLIN: Let's proceed with finishing this component so you move on to Tract 2 -- I mean close the public hearing on this item and --

COUNCILMEMBER ROCHE: Then we can have the Planning Commission and then we can get the other three plats.

MR. HAEBERLIN: Right.

COUNCILMEMBER ROCHE: How about that? Will that work?

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I know. It's weird.

MAYOR JENKINS: Are we going to vote on Tract 1 or are we going to wait till we finish all four?

COUNCILMEMBER ROCHE: We have to --

ATTORNEY WEED: You could do it --

COUNCILMEMBER ROCHE: -- close the public hearing.

ATTORNEY WEED: You could do it either way.

What the Planner has asked you to do is do each one individually. So what I would recommend you do is close the public hearing for the first one, let the Planning Commission come up and say anything about that, and then vote on that one and move to the next one.

MAYOR JENKINS: Okay. I'm going to close the public hearing on Tract 1.

Planning Commission come up.

MR. CRAWFORD: Ben Crawford, Chairperson, Planning Commission.

On this, we had a Planning Commission meeting in January 2009 at 7:00 p.m., and at that point we had a hearing. We approved with the conditions laid out by Scott. We approved

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his work on these, on this particular tract, and we're in agreement with the City Planner.

COUNCILMEMBER ROCHE: I just had one question on this because this is an unnamed two-land paved roadway.

Does that mean it's a road? Is it private property?

MR. HAEBERLIN: I'll be honest with you. It appears to be -- it's well-maintained for most of it but it does fall into disrepair. I don't believe it to be a public road. I believe it to be some sort of a prescriptive easement or maybe there's an arrangement between the property owners. There's nothing I have found that clarifies that, but it's my under-standing it's not a public road.

COUNCILMEMBER BATES: Well, the tax map says it's a private road.

MR. HAEBERLIN: And like I said, I would tend to believe the tax map as being accurate.

COUNCILMEMBER BATES: Mr. Roche raises a good question. Would the property owners then be responsible for maintenance or is that a County or --

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ATTORNEY WEED: No. The property owners -- the private property owners are responsible for that.

MAYOR JENKINS: In other words, we're rezoning something and we don't even know if it's a private road or not. Is that correct?

MR. HAEBERLIN: According to the tax records, which I have to believe Dekalb County's tax records to be accurate, it's a private road.

MAYOR JENKINS: Did the property owner ask for this to be rezoned?

MR. HAEBERLIN: No, sir. It was initiated by you, the Council. In this instance, again, I made a good-faith effort to research the Dekalb County tax records and to send registered letters to these individuals but they did not respond. And I think that's the most I can do. I also sent regular mail just in case they're folks that refuse to receive certified mail. And still, I have had no contact.

COUNCILMEMBER FLEMING: These are clearly not R-1.

COUNCILMEMBER ROCHE: Right.

COUNCILMEMBER FLEMING: Clearly not R-1, okay, so there's no question.

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COUNCILMEMBER ALEXANDER: No. And how it came up -- and I think probably Mr. Roche was here and Mr. Bates -- is they were cited --

COUNCILMEMBER ROCHE: Right.

COUNCILMEMBER ALEXANDER: -- for operating a business without a license. And then that's when it all came about that their addresses were shown as R-1 and they're not.

COUNCILMEMBER ROCHE: Right.

COUNCILMEMBER BATES: So I'll move to grant the zoning change for Tract 1.

MAYOR JENKINS: Let me close the public hearing.

COUNCILMEMBER BATES: Sorry, Mr. Mayor.

MAYOR JENKINS: I close the public hearing on Tract 1 and ask for a motion.

COUNCILMEMBER BATES: So moved.

COUNCILMEMBER SPANGLER: Second.

MAYOR JENKINS: Anymore discussion?

MR. HAEBERLIN: Was that with the staff conditions outlined in the report?

COUNCILMEMBER BATES: Yes.

MR. HAEBERLIN: Thank you, sir.

MAYOR JENKINS: Anymore discussion?

- - -

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(No response)

- - -

MAYOR JENKINS: Call the roll, please.

ASSISTANT CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

ASSISTANT CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

ASSISTANT CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

ASSISTANT CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

ASSISTANT CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MAYOR JENKINS: Okay. We'll open the public hearing on Tract 2.

MR. HAEBERLIN: And for the record, this is being identified -- since it has the same address as Tract 1, let's identify this as 18-341-01-027, which is also addressed as 6477 Peachtree Industrial Boulevard. We're moving to

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a public hearing on a tract that actually has a building on it at this time.

MAYOR JENKINS: Table?

COUNCILMEMBER ROCHE: No. It's a public hearing.

COUNCILMEMBER SPANGLER: I just wanted to ask, in the end, Scott, you did make two attempts: one registered letter and one regular mail?

MR. HAEBERLIN: Yes, sir; as a good-faith attempt on behalf of the City Council. And I think it behooves me to do that, to make every attempt I can to contact the property owner.

Again, I received nothing back from them. I mean I'm not even for certain that the Dekalb County tax records reflect the current address that tax records are sent, but that's the most reliable information that I have available to me.

COUNCILMEMBER SPANGLER: And when did we do the certified letter?

MR. HAEBERLIN: At the same time we did the one without the certification. I always look at it from a multiple-process attempt, you

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[1] know; that if I'm the type person that refuses
[2] certified mail, I might read my regular mail.
[3] **COUNCILMEMBER SPANGLER:** Right.
[4] **ATTORNEY WEED:** And for what this is
[5] worth, neither attempt was required as long as
[6] the Zoning Procedures Act was followed, which it
[7] was in this case. So it's been multiple ways to
[8] try to contact the owners.
[9] **MR. HAEBERLIN:** Yes, sir.
[10] **COUNCILMEMBER ROCHE:** According to the
[11] information I have, the Planning Commission's
[12] recommendation is the same for all these tracts.
[13] **MR. CRAWFORD:** Yes, that's correct.
[14] Ben Crawford.
[15] At the time we had the meeting, we also
[16] asked if the applicants -- well, actually the
[17] owners in this case, not applicants, but if the
[18] owners of the properties were there at that
[19] time, and nobody was present at the Planning
[20] Commission meeting either.
[21] **MAYOR JENKINS:** Bonita?
[22] **MS. HOFFMEISTER:** No, no questions.
[23] I'm happy.
[24] **MAYOR JENKINS:** Stuart?
[25] **MR. ANDERSON:** No questions.

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[1] **MAYOR JENKINS:** We'll close the public
[2] hearing on Tract 2 and I'll ask for a motion.
[3] **COUNCILMEMBER SPANGLER:** Motion.
[4] **ATTORNEY WEED:** To approve with the
[5] conditions?
[6] **COUNCILMEMBER SPANGLER:** To approve
[7] with the conditions.
[8] **MAYOR JENKINS:** Second?
[9] **COUNCILMEMBER FLEMING:** Second.
[10] **MAYOR JENKINS:** Thank you.
[11] Anymore discussion?
[12] - - -
[13] (No response)
[14] - - -
[15] **MAYOR JENKINS:** Call the roll, please.
[16] **ASSISTANT CLERK BRYANT:** Councilmember
[17] Alexander?
[18] **COUNCILMEMBER ALEXANDER:** Yes.
[19] **ASSISTANT CLERK BRYANT:** Councilmember
[20] Bates?
[21] **COUNCILMEMBER BATES:** Yes.
[22] **ASSISTANT CLERK BRYANT:** Councilmember
[23] Fleming?
[24] **COUNCILMEMBER FLEMING:** Yes.
[25] **ASSISTANT CLERK BRYANT:** Councilmember

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[1] Roche?
[2] **COUNCILMEMBER ROCHE:** Yes.
[3] **ASSISTANT CLERK BRYANT:** Councilmember
[4] Spangler?
[5] **COUNCILMEMBER SPANGLER:** Yes.
[6] **MAYOR JENKINS:** I'll open up the public
[7] hearing on Tract 3.
[8] Scott.
[9] **MR. HAEBERLIN:** For the public.
[10] **MAYOR JENKINS:** Bonita?
[11] **MS. HOFFMEISTER:** No.
[12] **MAYOR JENKINS:** Stuart?
[13] **MR. ANDERSON:** No.
[14] **MAYOR JENKINS:** Close the public
[15] hearing and ask for a motion on Tract 3.
[16] **COUNCILMEMBER SPANGLER:** Motion for
[17] Tract 3 with the conditions.
[18] **COUNCILMEMBER ALEXANDER:** Second.
[19] **MAYOR JENKINS:** Anymore discussion?
[20] - - -
[21] (No response)
[22] - - -
[23] **MAYOR JENKINS:** Call the roll, please.
[24] **ASSISTANT CLERK BRYANT:** Councilmember
[25] Alexander?

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[1] **COUNCILMEMBER ALEXANDER:** Yes.
[2] **ASSISTANT CLERK BRYANT:** Councilmember
[3] Bates?
[4] **COUNCILMEMBER BATES:** Yes.
[5] **ASSISTANT CLERK BRYANT:** Councilmember
[6] Fleming?
[7] **COUNCILMEMBER FLEMING:** Yes.
[8] **ASSISTANT CLERK BRYANT:** Councilmember
[9] Roche?
[10] **COUNCILMEMBER ROCHE:** Yes.
[11] **ASSISTANT CLERK BRYANT:** Councilmember
[12] Spangler?
[13] **COUNCILMEMBER SPANGLER:** Yes.
[14] **MAYOR JENKINS:** Open up the public
[15] hearing on Tract 4, the same.
[16] Stuart?
[17] **MR. HAEBERLIN:** For those to speak for
[18] and against.
[19] **MS. HOFFMEISTER:** No.
[20] **MAYOR JENKINS:** Okay. I close the
[21] hearing on Tract 4 and ask for a motion.
[22] **COUNCILMEMBER ALEXANDER:** So moved wit
h
[23] conditions as outlined.
[24] **COUNCILMEMBER SPANGLER:** Second.
[25] **MAYOR JENKINS:** Anymore discussion?

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- - -
(No response)
- - -
MAYOR JENKINS: Call the roll, please.
ASSISTANT CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
ASSISTANT CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
ASSISTANT CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
ASSISTANT CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
ASSISTANT CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Let's take a break.
- - -
(Brief recess)
- - -
MAYOR JENKINS: Meeting come to order.
COUNCILMEMBER FLEMING: I wanted to ask

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in regards to our zoning map if you're going to do like a plastic overlay of those four R-1 tracts just so that it shows on this map over here now that it is now O-I.
MR. HAEBERLIN: What I will probably do is be asking you guys in the very near future as we collect -- I mean I can put an indication and even a tab on those -- is we collect and have the ability to send that map back to Keck & Wood to have it updated. We're going to need to do periodic updates of the map based on activities that occur with the Council.
COUNCILMEMBER FLEMING: Okay.
MR. HAEBERLIN: So for now I will just put a notification on there for me, to remind me.
COUNCILMEMBER SPANGLER: So when do you plan to send it back to Keck & Wood?
MR. HAEBERLIN: I'd like to collect -- You know, we have some other items that we need to perhaps look at fixing as well. Let's say fixing or changing. And so you know, I guess it's just all a matter of seeing what they bid to us to do it. If it's inexpensive, we'll try to do it sooner than later.

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COUNCILMEMBER FLEMING: You could possibly color-code your push pins indicating that that's what it's gone to, maybe?
MR. HAEBERLIN: Well, we did talk about some processes regarding doing an actual ordinance for the site. And I don't know if that's something the Council wants to pursue. We can probably discuss that at the next work session.
ATTORNEY WEED: Scott and I have been in communication about what do we do with regard to the map when these things come up. And what the law is, when you make a change in the zoning, that map has technically been changed already. You have just changed it tonight. And how Scott reflects that, if he takes a pin and colors it in, et cetera, he can do that. That's perfectly legal as long as you're aware that what he colored in accurately reflects what you voted on tonight. I'm not telling you that's the best way of doing it but that's legal to do underneath the Meriwether County case.
In order to get a brand new map printed, that can be done. You know, after 10, you can submit it to Keck & Wood, however you

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want to do it. If somebody came in tomorrow and asked for an official map, what Scott would do is he would reduce that map down and he would make the notation on the map and have a Clerk's certification attached to it reflecting the new zones.
COUNCILMEMBER FLEMING: Thank you.
MR. HAEBERLIN: And one thing, as I said, this is when we get an opportunity for another work session, not at this time.
We're going to discuss the aftercare for zoning properties. One of the things that Murray and I have been discussing is actually a document prepared attesting to the actions of the City Council. Whether that's required or not, it's just something that we're going to put forth to you guys. It's something that I'm used to in my other jurisdictions. Although it's not required, it would give you an ordinance number that we could actually affix on that map denoting it as O-W with conditions, for example, for the PIB properties. And that's something for a later Council meeting.
So at this time, we would move on to the text amendments. The next item that's a

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[1] public hearing is the Ordinance Defining the
[2] Planning Commission Roles and Responsibilities.
[3] You guys do have a copy of the latest
[4] version which is version number 3 that has been
[5] provided by the City Attorney. And these are
[6] reflecting some other changes that have
[7] occurred, and we've had some movement in the
[8] expansion of the types of items that the
[9] Planning Commission is being charged with
[10] looking at, and of course you guys will have the
[11] opportunity to debate that very soon.
[12] **COUNCILMEMBER ROCHE:** My first
[13] question, I have two copies. One says draft as
[14] of 11/15 -- sorry -- 11 February and one draft
[15] that says 18 February.
[16] **ATTORNEY WEED:** The 11 February, '09,
[17] is the draft.
[18] The way, according to my secretary, now
[19] that we've implemented this footer, when someone
[20] requests a new copy, we would need to look at
[21] the version because the date's going to change
[22] automatically. So Mr. O'Connor has got --
[23] **MAYOR JENKINS:** They are the same?
[24] **ATTORNEY WEED:** -- he's got the same
[25] document; however, his date also is later in

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[1] time than 11 February, '09.
[2] **COUNCILMEMBER ROCHE:** Okay.
[3] **COUNCILMEMBER FLEMING:** Because it's
[4] the print date.
[5] **ATTORNEY WEED:** That's the print date.
[6] That's correct.
[7] **COUNCILMEMBER ROCHE:** I couldn't find
[8] any differences.
[9] **ATTORNEY WEED:** Correct. And if I can
[10] figure out how to change that, we might change
[11] it in the future, but my secretary swears that
[12] she can't do that.
[13] **COUNCILMEMBER ROCHE:** No, that's fine.
[14] **ATTORNEY WEED:** But it's version 3, and
[15] that's also in the footer.
[16] **COUNCILMEMBER ROCHE:** And essentially
[17] I'll just pick up real quick and maybe we can
[18] run through this.
[19] January 5th, 2009, the Council made a
[20] motion to authorize the City Attorney to begin
[21] the process of amending City ordinances to
[22] include allowing the Planning Commission to make
[23] nonbinding recommendations on variances, zoning
[24] ordinances, whatever they do not review at this
[25] time, and then the motion was seconded and

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[1] passed. And essentially what this is is the
[2] ordinance that came as a result of this motion
[3] that was passed back on January 5th.
[4] The motion was a little bit vague in
[5] terms of it says, well, whatever they don't
[6] review at this time. And I discussed it earlier
[7] I think with Councilman Spangler and
[8] Councilwoman Fleming, and we've had several
[9] discussions about this.
[10] I know that a couple of the members of
[11] the Planning Commission I believe have signed up
[12] to comment on that, and I'd be interested to see
[13] what they have to say.
[14] Essentially, it's been our custom, at
[15] least over the last year, that the Planning
[16] Commission has been asked to review zoning
[17] ordinance text changes and variances. Also, as
[18] most of the people here already know, back in
[19] 2006 there were a series of ordinances that were
[20] passed that basically also gave them the
[21] authority, I believe, to review variances, but
[22] there were procedural problems with the
[23] ordinances so they're null and void. And the
[24] goal here was basically to just restore that so
[25] that we have variances and other things sent to

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[1] the Planning Commission as has been our custom.
[2] My only question to the Planning
[3] Commission at this point would be we are saying
[4] variances, zoning text amendments, zoning map
[5] amendments, conditional uses and permits and
[6] special use permits. And my question would be
[7] for the Planning Commission, is that a list that
[8] makes sense to you guys, if that's okay with the
[9] Mayor.
[10] **MAYOR JENKINS:** Yes.
[11] **COUNCILMEMBER ALEXANDER:** Do you want
[12] to go ahead and open up the public --
[13] **MAYOR JENKINS:** Come on up.
[14] **COUNCILMEMBER ALEXANDER:** -- hearing
[15] and allow them to speak?
[16] **ATTORNEY WEED:** Yeah. This will be the
[17] public hearing anyway.
[18] **COUNCILMEMBER ROCHE:** Well, technically
[19] this is a comment on the text.
[20] **MR. CRAWFORD:** Ben Crawford, Planning
[21] Commission.
[22] **MR. O'CONNOR:** Joe O'Connor, Planning.
[23] **MR. CRAWFORD:** If I can reflect back on
[24] the meeting we had with Scott, it was actually
[25] probably on the one that was version 2.

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Is that the correct version that was before this version --

ATTORNEY WEED: Yes.

MR. CRAWFORD: -- version 2?

But anyhow, our last discussion with Scott, a few things we discussed. One was the amount of money the City spends on meetings and stuff, and he said it was part of his charge by the City, as an employee of the City, to control costs.

And what we did is we talked about, you know, looking at zoning proposals and also variances, and the other thing that we -- Scott also covered stuff like conditional use permits, special use permits, zoning map amendments.

And we seemed to be in agreement as the Planning Commission that we were good with the zoning variances and zoning proposals. But also we made a suggestion to Scott at the time, and he actually -- I believe he sent out an e-mail to City Council where there's yet to be a response -- in that we would, to help control City costs as far as reviewing zoning rewrites, is that if it was legal to do it -- he was going to talk to Murray but he had to get direction

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from City Council first; like I said, there was no response -- is that he would e-mail the rewrites to us, and we, as the Planning Commission would get a chance to review it. Therefore, there was no meeting involved, and it would save on time, labor and money and it would also be convenient for us. And we, not just working under the direction of City Council but also as being citizens involved with the community, would bring that information back to the community. So we thought it was kind of a good compromise, and we have yet to get a response.

Correct me if I'm wrong. Wasn't that the way we left it right there?

MR. O'CONNOR: Yes.

MR. CRAWFORD: So that was really the gist of our meeting that we had with Scott that night.

COUNCILMEMBER ROCHE: Okay. So you have a copy of the ordinance there.

MR. CRAWFORD: Yes, I've read it.

COUNCILMEMBER ROCHE: And under Definitions (a) 1, what changes would you be proposing that we would make to that?

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MR. CRAWFORD: Well, actually, I don't propose any changes to this document myself at all. I read the document, and I personally -- separate from Joe; I'm not speaking for Joe -- agree with the adoption of version 3.

COUNCILMEMBER ROCHE: Okay. Thank you.

MR. CRAWFORD: That's separate from Joe. Joe and I haven't discussed it.

COUNCILMEMBER ROCHE: You're speaking as a citizen, not as a --

MR. CRAWFORD: Well, no. I'm speaking as a Planning Commission member but I'm speaking as an individual Planning Commission member because we didn't have another meeting --

COUNCILMEMBER ROCHE: Okay. I understand.

MR. CRAWFORD: -- to discuss this. We all got this from Murray, and I've had a chance to review it before tonight's meeting, and I like what I see.

COUNCILMEMBER ROCHE: Do you want a copy of 3?

MR. CRAWFORD: I have version 3.

COUNCILMEMBER BATES: As the Chair, you are in agreement that you guys should review

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conditional uses and permits and special use permits?

MR. CRAWFORD: No, I'm not saying that, and I don't think that was Scott's intent from our discussion. His intent -- and I may be wrong; Scott can speak for himself -- us, as a body, agreed to review zoning requests and variance requests that didn't fall under 1404, which is the Mayor's variance and City Council's variance.

COUNCILMEMBER BATES: Okay. So just --

MR. CRAWFORD: Those two items, and then --

COUNCILMEMBER BATES: The e-mail text amendments.

MR. CRAWFORD: That's correct. That was what was left at our meeting.

And then the remarks I'm making tonight, to make it clear, on this rewrite of the zoning ordinance is that not as the chairperson but as a member of the Planning Commission, that I agree with it.

COUNCILMEMBER ROCHE: But the problem that Councilman Bates is pointing out, when you look at the paragraph under Definitions, Zoning

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[1] proposal means any application or request for
[2] rezoning, zoning ordinance text amendments,
[3] zoning map amendments, conditional uses and
[4] permits and special use permits.
[5] **MR. CRAWFORD:** Yeah. But I mean maybe
[6] I'm looking at this not in a legal sense or a
[7] sense from a city planner. But the way I see it
[8] is that our group is set up to cover the things
[9] that the City Council directs us to cover.
[10] **COUNCILMEMBER ROCHE:** Right.
[11] **MR. CRAWFORD:** So I don't see it's a
[12] conflict.
[13] **COUNCILMEMBER ROCHE:** I don't see this
[14] as -- this doesn't force you to do anything.
[15] **MR. CRAWFORD:** No. We're advisory by
[16] nature.
[17] **COUNCILMEMBER ROCHE:** I mean I'm asking
[18] the attorney.
[19] **ATTORNEY WEED:** Well, my position on
[20] that as your counsel would be that's what they
[21] are going to do, meaning they are going to
[22] consider the following things as far as what
[23] constitutes a zoning proposal.
[24] **COUNCILMEMBER ROCHE:** Right. And
[25] that's where I'm confused here because this

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[1] basically says we're going to give you every-
[2] thing.
[3] **MR. CRAWFORD:** Okay.
[4] **COUNCILMEMBER BATES:** What I'm hearing
[5] is that you don't want everything.
[6] **MR. CRAWFORD:** No, I'm not. That's not
[7] what I'm saying.
[8] I think that what I'm saying is that we
[9] had a discussion with Scott.
[10] And Scott, if you want to come up here
[11] and speak, it might help.
[12] Scott felt -- and maybe speak for your-
[13] self on conditional uses and special use
[14] permits.
[15] **MR. HAEBERLIN:** Yes, sir.
[16] At the time we had the Planning
[17] Commission, obviously we did not have these
[18] subsequent versions, so what they initially
[19] looked at was getting rezonings and variances
[20] firmly within their purview power and those
[21] would always come to them.
[22] **COUNCILMEMBER ROCHE:** Right.
[23] **MR. HAEBERLIN:** But what was conveyed
[24] to me is that they want to, as ambassadors for
[25] the City and as an arm to the Council, at least

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[1] have an opportunity in a mass e-mailing the same
[2] as I do to you, the Council, is to receive text
[3] amendments from myself, the attorney.
[4] You know, they get to see all the
[5] workings, inner workings, and have the oppor-
[6] tunity on their own accord to go out into the
[7] community and discuss what the City is pro-
[8] posing. And they would have the opportunity
[9] again to comment just like any other City
[10] employee on any pending item coming before them.
[11] We hadn't broadened it to that scope of
[12] that they're going to be doing conditional uses
[13] and special uses. Special uses are telecommuni-
[14] cations towers, so we don't confuse anybody here
[15] that's present. Conditional uses are things
[16] that are in the zoning ordinance that require
[17] action by the City Council to determine whether
[18] they're going to be permitted on a site, so a
[19] particular type of use.
[20] They hadn't gotten that far because
[21] they didn't have that information. They didn't
[22] receive the next version of the ordinance from
[23] Mr. Weed's firm, and Mr. Weed provided them the
[24] copies that show them the full body of what
[25] they're doing now. And what you're hearing from

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[1] them -- I can't speak for them -- is they will
[2] do anything that you ask them to do --
[3] **MR. CRAWFORD:** That's correct.
[4] **MR. HAEBERLIN:** -- but they want to be
[5] involved in the process in general.
[6] But initially, the only thing that we
[7] discussed was zoning amendments and variances.
[8] **COUNCILMEMBER BATES:** Okay. Now I'm
[9] really confused and I'll --
[10] **ATTORNEY WEED:** And I want to help.
[11] **COUNCILMEMBER BATES:** Hold on.
[12] **ATTORNEY WEED:** Let me state some
[13] facts.
[14] **COUNCILMEMBER BATES:** Hold on. The
[15] version that I'm looking at, draft 1/29 of '09,
[16] clearly states zoning map amendments, condi-
[17] ditional uses and permits and special use
[18] permits. That's --
[19] **ATTORNEY WEED:** That is correct.
[20] Version 2 and version 3 have not changed with
[21] regard to the definitions.
[22] **COUNCILMEMBER BATES:** That is almost a
[23] month ago. So when you had your meeting to
[24] discuss this, was that before 1/29 or after
[25] 1/29?

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MR. CRAWFORD: What page are you talking about, Brian?
COUNCILMEMBER BATES: Page 4.
COUNCILMEMBER ALEXANDER: Of 11.
COUNCILMEMBER BATES: Page 4 of 11.
MR. O'CONNOR: We had not gotten this new one. And the one we had gotten actually didn't have -- had a lot of other conditions on it including 30 days --
COUNCILMEMBER ROCHE: Yes. All that's gone.
MR. O'CONNOR: -- all that stuff, as I read off -- Well, correct. That's the only one we were going with. We did not see this one.
MR. CRAWFORD: Brian, can you give us a second?
COUNCILMEMBER BATES: Yes.
MR. CRAWFORD: I'm going to look at --
COUNCILMEMBER ROCHE: Again, I mean --
MR. O'CONNOR: We have no problem with it as proposed.
COUNCILMEMBER ROCHE: As it is now.
MR. CRAWFORD: I think we had the 1/29 version, didn't we, Scott?
MR. HAEBERLIN: Actually, I think you

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guys have the original. I think you have the 1/13 version. I think that's the version you have.
The 1/29 version broadened the perspective of what they were looking. I believe at the time that we met --
MR. CRAWFORD: It didn't have it.
MR. HAEBERLIN: -- that we were on the draft 1/13/09 version, and we have not met since then.
ATTORNEY WEED: The 1/13/09 version did not have the definitions --
MR. CRAWFORD: No.
ATTORNEY WEED: -- in it.
COUNCILMEMBER BATES: I just wanted to make sure that I knew what you guys originally looked at.
MR. CRAWFORD: Well, that's what I'm saying, but I guess if I could ask --
ATTORNEY WEED: But since 1/29, on the Web site and everything else, the definitions have been there. They've been the same.
MR. CRAWFORD: Murray, let me ask you a question if I can. Let's say that City Council has decided to adopt this. Now, if I'm mis-

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taken, tell me. Aren't they the ones that assign our duties? Whether all these things listed are things we should -- can be doing, are they things that we have to do or are they things that we need to do or are they things that they can decide for us to do or we should need to do them all?
ATTORNEY WEED: My opinion would be if they adopt this ordinance, these are things you will be doing.
MR. CRAWFORD: That's fine. I still agree with this, what I read. I have no problem with what I read.
COUNCILMEMBER ROCHE: Okay.
MR. CRAWFORD: So, then, that keys back into what you were saying, that it's covering the things we used to cover before.
COUNCILMEMBER ROCHE: Right.
COUNCILMEMBER BATES: No.
COUNCILMEMBER ALEXANDER: No.
COUNCILMEMBER BATES: Because before, you didn't have conditional use and special use permits. Before, you only had zoning and variances.
MR. CRAWFORD: Well, yeah. But before,

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those things could have been given to us the way things were done, because there was no --
COUNCILMEMBER BATES: No.
MR. CRAWFORD: The whole process that we went through -- No; just hear me out, Brian. If the thought process is that we weren't legal doing what we were doing, anyway, it could have been done all along anyhow.
COUNCILMEMBER BATES: No, because 2-40 clearly states only zoning and 06-22 only states variances.
MR. CRAWFORD: But it was never advertised properly.
COUNCILMEMBER BATES: I understand that. But those were the only two things that were passed by this Council. Whether they were done in accordance with the ZPA or not, those were the only two things that were given. They did not give text amendments, they did not give map amendments.
MR. CRAWFORD: Okay. But those things were given to us all along, anyway.
COUNCILMEMBER BATES: Hold on. They didn't contemplate text amendments, map amendments, conditional uses or special use permits.

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They give the Planning Commission two pieces.
MR. CRAWFORD: Right, and I don't argue that point. But I'm saying that's not what happened over the period of time. That's all I'm saying.
COUNCILMEMBER ROCHE: Because also the ordinance said or anything else the Council --
MR. CRAWFORD: Yes.
COUNCILMEMBER ROCHE: -- asked the Planning Commission, and the Council did ask the Planning Commission to look at --
MR. CRAWFORD: All along.
COUNCILMEMBER ROCHE: -- text amendments.
MR. CRAWFORD: That was our whole point of the whole thing.
COUNCILMEMBER ALEXANDER: I had a question, and this is regarding an e-mail that Mr. Haeberlin sent regarding the power of the Mayor in the conditional uses. I believe you felt that it might perhaps generate a conflict especially regarding the cellular towers? I forgot the section code that you referred to.
MR. HAEBERLIN: Mr. Weed and I went over some of the subtleties that are unique to

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special use permit regarding telecommunications, which does provide for administrator review and then another item that's truly a public hearing. So there's some unique subtleties to telecommunications tower that the City Council will have to consider in their review of those items.
And I'm traveling through here briefly to find the e-mail I sent regarding it.
COUNCILMEMBER ROCHE: Personally, I feel like anything that we need to make a decision on, we would like to get the recommendations of the -- I mean as far as the planning and zoning, whatever, from the Planning Commission.
COUNCILMEMBER ALEXANDER: I believe I have it. It's 1501. You sent the e-mail on 1/29. I believe that's where you did it?
MR. HAEBERLIN: I do recall the e-mail that I sent. Subsequent to that, Mr. Weed, Mayor Jenkins, and also present was Councilman Roche, had a meeting and kind of went over some of those questions that I had. I think Murray can illuminate that he felt safe and comfortable in moving forward as a result of that meeting.
COUNCILMEMBER SPANGLER: Did you put a

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copy of that in my box, Scott?
MR. HAEBERLIN: I can't say specifically. I'll be honest with you. I have over an inch and a half of e-mails alone on this item, and I'm trying to flip through them, and there's been a significant amount of them.
On February 2nd, 2009, the Planning Commission did transmit their fact findings to Mr. Weed. So that would indicate that they had made some sort of discussion on their behalf before the 2/11 version. So yeah, that would make sense that the first version was the one that they looked at in a meeting with me, and we've not had a meeting since then. "Meeting," I'm referring to the Planning Commission and myself. So I feel for certain they did only look at the original document.
COUNCILMEMBER BATES: Okay. And thank you. I appreciate that.
MR. HAEBERLIN: Then they received --
MR. CRAWFORD: We requested a copy --
MR. HAEBERLIN: Yes, sir.
MR. CRAWFORD: -- of the other version.
MR. HAEBERLIN: Then they did subsequently receive e-mails from -- I believe I got

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consent from Mr. Weed to send them document number two, because of the attorney/client privilege. And I think Mr. Weed of his own volition as the City Attorney sent them document number three.
COUNCILMEMBER BATES: I want to be perfectly clear that I'm not looking to take away from the Planning Commission. I think the service that they provide to the City is terrific.
What I want to make sure doesn't happen is that we encounter a situation where there is a process that's put in place specific to conditional uses, special use permits, where we don't get into a hodgepodge of this-time-you-get-it/that-time-you-don't and set ourselves up for trouble down the road.
Additionally -- and Mr. Haeberlin, either you or Mr. Weed can speak on this -- are there circumstances regarding conditional use permits and special use permits that would preclude them or should preclude them from going to an advisory board?
MR. HAEBERLIN: Well, when you're looking at conditional use permits -- and I'm

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[1] used to many different facets in many different
[2] organizations I've been a part of -- you don't
[3] really have any sound criteria on conditional
[4] uses. And Mr. Weed and I have discussed that,
[5] and we'd like to review that in its entirety as
[6] far as amending that section of the Code.
[7] It would seem at this point in time it
[8] would not give them a lot of direction on how
[9] they should provide you a recommendation on
[10] conditional uses. That is one of my concerns.
[11] **ATTORNEY WEED:** And how the definitions
[12] came to be originally, as the Council reviewed
[13] the very first draft of the document, there was
[14] quite a lot of input from the Planning staff and
[15] also Councilmembers with regard to the intent
[16] and meaning of the actual motion. And I went
[17] back and was given a copy of the actual motion
[18] itself and looked at that carefully in addition.
[19] What I did essentially, I determined
[20] that if the intention was to give to the
[21] Planning Commission, quote/unquote, whatever
[22] they do not review at this time, I needed to go
[23] back to the actual State law on the zoning code.
[24] And underneath the definition of a zoning
[25] decision, it includes special use permits.

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[1] That's a zoning decision made by ultimately the
[2] Mayor and Council and it qualifies as a zoning
[3] decision under State law. And therefore, that's
[4] how that text got into the definition of a
[5] zoning proposal, because the zoning proposal
[6] definition tracks with the zoning decision
[7] definition in your State law. That's the origin
[8] of it, if that's helpful.
[9] And as long as -- if we meant what we
[10] said when it was said, "whatever they do not
[11] review at this time," that's everything they
[12] could possibly review -- the whole kit and
[13] kaboodle. There is nothing else. And
[14] therefore, that's how the definition came to be.
[15] **COUNCILMEMBER ROCHE:** Right.
[16] **MR. HAEBERLIN:** The meeting that I
[17] referred to with myself, the attorney, the Mayor
[18] and Mr. Roche, I believe was on 2/9. And then
[19] the 2/9 meeting elicited version two which was
[20] 2/11. And then of course then we've had a
[21] subsequent third version from then.
[22] It is confusing. There's just so much,
[23] and there's so much e-mail transcript on this to
[24] try to go back to a history of where we've
[25] gotten to where we've been.

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[1] **COUNCILMEMBER BATES:** My question to
[2] you, Mr. Haeberlin, is are there challenges with
[3] an advisory body, aside from the definitions,
[4] with reviewing conditional uses and special
[5] permit uses?
[6] **MR. HAEBERLIN:** I think you do have
[7] some challenges in terms of how they are to
[8] transmit a recommendation to you and what
[9] criteria they will be using. And it's not
[10] unusual, in jurisdictions that I have been in,
[11] that certain duties do not go to the planning
[12] commission. Typically, conditional uses and
[13] communication towers do not. However, some
[14] communities have telecommunication towers go
[15] exclusive to the planning commission and never
[16] to the council. So it's all on how you
[17] structure your documents.
[18] **COUNCILMEMBER BATES:** But in those
[19] circumstances, if I heard you correctly, the
[20] Planning Commission has binding authority.
[21] **MR. HAEBERLIN:** Yes, yes. Many juris-
[22] dictions do allow their planning commissions to
[23] do a broad range of things including approving
[24] plats.
[25] I will be honest with you, I would not

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[1] condone that because past history does not tell
[2] me that to be successful.
[3] However, it's all about, you know, how
[4] you structure your documents. And every juris-
[5] diction is different, and it depends on how much
[6] time you think that the planning commission can
[7] spend on items and how much staffing you have.
[8] It's a function -- and all our e-mails have
[9] talked about it's a function of staffing and
[10] costs. At this time, we know we're going over
[11] costs; we don't have a lot of staffing.
[12] **COUNCILMEMBER BATES:** I apologize for
[13] dominating. I just want to get some clarity.
[14] You've been with us now for six months?
[15] **MR. HAEBERLIN:** Maybe five and a half.
[16] **COUNCILMEMBER BATES:** Five and a half
[17] months?
[18] **MR. HAEBERLIN:** Yeah.
[19] **COUNCILMEMBER BATES:** How many
[20] conditional use permits have you seen? Now,
[21] granted, we've just modified our C1/C2, M1/M1
[22] and O-I/O-W.
[23] **MR. HAEBERLIN:** I've handed out a lot
[24] of applications. So they're waiting. They're
[25] waiting perhaps in the wings. I get a lot of

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[1] inquiries. And when I get inquiries, I have to
[2] get them an application.
[3] **COUNCILMEMBER BATES:** Can you quantify
[4] that number? Two a week? Five a week? Twenty
[5] a week?
[6] **MR. HAEBERLIN:** I'll be honest with
[7] you. I've probably given out 25 or 30 applica-
[8] tions on conditional use alone that I haven't
[9] received anything back from yet.
[10] But people -- generally, there is a
[11] delay. And they'll generally then call me and
[12] schedule a meeting when they're ready to do it.
[13] They're out searching for a legal description,
[14] they're out searching for a survey of the
[15] property, and when they get those, they'll come
[16] and see me.
[17] **COUNCILMEMBER BATES:** Compare that to
[18] the number of zoning change requests or variance
[19] requests.
[20] **MR. HAEBERLIN:** The zoning change
[21] requests right now have been low. But as you're
[22] aware, that's changing with the general economy
[23] and of course the discussion possibly about the
[24] development of the GM site. We're getting a lot
[25] of inquiries regarding rezonings relative to

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[1] that item.
[2] But the conditional use thing is a
[3] function of the daily business license or
[4] occupational tax license review, working with
[5] both Sandra and Rhonda. And I'm getting a lot
[6] of inquiries, and I'm handing out these
[7] petitions or applications for petitions and
[8] saying, you know, "This is what I need to
[9] receive from you to start processing the
[10] conditional use." And there are a lot of them.
[11] **COUNCILMEMBER ROCHE:** But how many of
[12] them have actually come up to the Council in the
[13] year since we've been here?
[14] **MR. HAEBERLIN:** Well, they haven't,
[15] because remember, we didn't --
[16] **COUNCILMEMBER ROCHE:** Right.
[17] **MR. HAEBERLIN:** -- have all these
[18] things listed as conditional uses. And I'm not
[19] for certain how the previous staff was enforcing
[20] the conditional uses that you had. I don't
[21] know.
[22] So you have a whole body, a very large
[23] body in all the ordinances that you've adopted,
[24] of things that require conditional uses. You'll
[25] have heavy activity if those businesses pursue

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[1] locations in the city.
[2] **COUNCILMEMBER ROCHE:** To me, that's all
[3] the more reason that we need as much help as we
[4] can get to make good decisions.
[5] **ATTORNEY WEED:** I don't know if this is
[6] going to help or not, but, Scott, maybe you need
[7] to explain that there are conditional uses and
[8] then there's a separate thing called a condi-
[9] tional use permit. I don't know if everybody
[10] understands the difference, and that might be
[11] relevant to the discussion.
[12] **MR. HAEBERLIN:** Well, I think that's
[13] really all terminology. You know, in different
[14] municipalities I've worked in, special use did
[15] not refer to telecommunication. It referred to
[16] churches. So it's all in terminology.
[17] As I see it in our Code, the condi-
[18] ional uses are those listed after permitted
[19] uses. In each zoning district, there is a
[20] section of conditional uses that have an
[21] opportunity to be reviewed on those specific
[22] zoned properties, and then the Council or,
[23] through the Planning Commission, the Council
[24] makes a decision as to whether they will allow
[25] that use.

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[1] **ATTORNEY WEED:** And that is different
[2] than a condition on a use of property, meaning
[3] that you rezone a property from Residential to
[4] Office-Institutional, that you have to make a
[5] buffer. That's a condition on the property that
[6] only applies to that one rezoning; in this case,
[7] what we talked about earlier tonight with the
[8] first zoning applicant.
[9] It's different than -- and I want
[10] everybody to understand that that's different
[11] than what's in the Code book underneath the
[12] listing of conditional uses after permitted
[13] uses.
[14] **COUNCILMEMBER ROCHE:** But, then, what
[15] you just described is what essentially comes in
[16] the recommendation of the zoning request from
[17] the City Planner and the Planning Commission.
[18] **ATTORNEY WEED:** I hope so, and I'm sure
[19] that it will.
[20] **MR. HAEBERLIN:** Well, I mean you're
[21] aware you have rezonings without variances, you
[22] have rezonings with concurrent variances; you
[23] have conditional uses. You're going to have
[24] conditional uses without variance and condi-
[25] tional uses with variances. You have telecommu-

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[1] nication towers, which is a very unique thing
[2] called a special use permit. Again, terminology
[3] is different in every municipality. But you
[4] have a number of things that come to you as the
[5] Council.
[6] **COUNCILMEMBER ROCHE:** I guess my
[7] question is that, you know, other than when one
[8] of these -- I'll call them zoning proposals,
[9] comes to you, other than making a copy or trans-
[10] mitting a copy to the Planning Commission, what
[11] additional staff involvement is there? Because
[12] once you hand it over to the Planning
[13] Commission, then they do their thing and then
[14] they come back and they report.
[15] **MR. HAEBERLIN:** But I wouldn't say it's
[16] that simple.
[17] **COUNCILMEMBER ROCHE:** Well, that's my
[18] question.
[19] **MR. HAEBERLIN:** Yeah. First of all,
[20] there is the advertisement of the Planning
[21] Commission meetings. There is the attendance at
[22] the Planning Commission meetings. There is
[23] preparing reports for the Planning Commission,
[24] the same report that you receive.
[25] **COUNCILMEMBER ROCHE:** Well, then, if

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[1] it's the same report, then you're going to make
[2] it anyway; right?
[3] **MR. HAEBERLIN:** Well, that is correct.
[4] However, their time frame is going to generate
[5] that report much quicker. I'm going to be
[6] constantly --
[7] And I always do this: I'm constantly
[8] turning around petitions. I'm trying to move
[9] petitions to that end point. People generally
[10] tell me, "I just want a decision from the City
[11] Council. I don't care if it's up or down, but
[12] get me a decision as quick as possible." And as
[13] staff, I think that is something that's
[14] reasonable.
[15] And as I've told you numerous times, if
[16] we're going more than 90 days on any one
[17] individual item, I'm becoming concerned. Are we
[18] being timely and are we going to be sued because
[19] we're not making timely decisions? That's my
[20] only concern.
[21] But yes, there is. There are
[22] significant costs involved in my attendance at
[23] the Planning Commission as well as my attendance
[24] here. You're fully aware of the costs we have
[25] incurred on an average one-hour meeting,

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[1] something like $1200 for a one-hour public
[2] hearing. So that means if we had three public
[3] hearings one night, we would incur $3500.
[4] And those costs were highly
[5] conservative, and those were presented at the
[6] last City Council meeting to let you know how
[7] our current fee structure is too low, that we're
[8] losing money on petitions. For example, the
[9] Wilton Avenue variance, we got $100 and we might
[10] have spent $1500 to process it.
[11] **COUNCILMEMBER ROCHE:** Right.
[12] **MR. HAEBERLIN:** So that is just an
[13] example.
[14] I mean certainly I assume the Planning
[15] Commission can function on its own without the
[16] attendance of the staff planner; however, I'm
[17] not sure that that would be in the best
[18] interests of the City. I mean if I prepare a
[19] report for them, I would expect I would be there
[20] to discuss it with them.
[21] **COUNCILMEMBER ROCHE:** But technically,
[22] I mean absent you from their meetings, other
[23] than the advertising of the fact that they're
[24] having a public hearing and making copies of
[25] these things as they come in and making sure

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[1] that the Planning Commission gets a copy --
[2] **MR. HAEBERLIN:** Well, Planning
[3] Commission training and all these other factors
[4] add in. We have costs even in the perspective I
[5] gave to you. I didn't include your-all's
[6] salaries. I didn't include the light bill and
[7] heat bill for this building, the police officer
[8] standing out there. Again, I was very conserva-
[9] tive in what --
[10] **COUNCILMEMBER ROCHE:** Right. I under-
[11] stand that.
[12] **MR. HAEBERLIN:** -- I said to you as far
[13] as costs.
[14] **COUNCILMEMBER ROCHE:** Okay.
[15] **MR. HAEBERLIN:** Very conservative.
[16] **COUNCILMEMBER FLEMING:** If I understood
[17] Mr. Crawford's statement, however, in his
[18] discussions with you, Scott, and with Mr. Weed,
[19] they would be comfortable in receiving e-mail
[20] notifications for text amendments, and the
[21] conditional uses and special permits. Is that
[22] correct?
[23] **MR. CRAWFORD:** Pam, that was a
[24] discussion we had about the first version of the
[25] amendment. That was the first version.

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If you want my opinion, personal opinion tonight as a Planning Commission member, not as the chairperson because we haven't discussed this as a body, I like the ordinance that I read tonight and was in agreement with what was written, which is version 3.

COUNCILMEMBER ROCHE: Okay.

COUNCILMEMBER ALEXANDER: Mr. Weed, this question is to you.

ATTORNEY WEED: Yes, ma'am.

COUNCILMEMBER ALEXANDER: The 1/29 version --

ATTORNEY WEED: Yes, ma'am.

COUNCILMEMBER ALEXANDER: -- (j) was regarding -- I think Ms. Fleming had a question about this, too -- (reading) After any matter has been presented to the Planning Commission, the Planning Commission shall render a final recommendation within blank amount of days to the Mayor and Council. Failure to make a recommendation within blank amount of days shall be considered a recommendation of approval.

I think her thing was and I think we didn't feel it was enough time, perhaps, and that we didn't necessarily like a recommen-

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dation of approval.

I think your opinion on that was either approval or denial but it needed to be treated so that the petitioner would have -- you would see it as due process.

ATTORNEY WEED: That's correct. A definitive answer up or down.

And I think, once again, 30 days -- there's no magic number in 30 days any more than at some point someone decided a football field was a hundred yards long other than just good common sense.

The only reason behind 30 days was, in my conversations with the Planner, we wanted to create something that would keep the process moving forward to help the business community, to help individual applicants and just keep it going and keep the work inspired to move on. But it could be whatever time frame you set up or not.

COUNCILMEMBER ROCHE: I think it would be a very appropriate thing to add to the agenda for the next meeting.

COUNCILMEMBER ALEXANDER: I don't know why we couldn't add it to this before we approve

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it tonight and save extra money.

COUNCILMEMBER ROCHE: Well, because we've all -- I think that that's a little more controversial and I think I don't want to bog this down any. I think that Councilwoman Pittman already voted to basically, essentially do what we're going to do tonight, and I'd like to get it passed tonight.

COUNCILMEMBER ALEXANDER: I don't think that perhaps Councilwoman Pittman understood that we were expanding the role of the Planning Commission when the original motion was made, because of giving them things that they did not review before. And I don't think that she would have a problem with us passing this, because I mean I think it's the judicial thing to do.

COUNCILMEMBER ROCHE: Well, yeah. Like I said, the whole point of this ordinance is to make legal what we passed in the motion about a month ago, and I'd like to just proceed without adding extra stuff to this ordinance which may or may not be controversial, may or may not slow it down.

COUNCILMEMBER ALEXANDER: How do you see that following good legal advice being

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controversial on (j)?

COUNCILMEMBER ROCHE: Well, legal advice is all well and good, but the Council decided to do this. This is what the Council decided to do. The Council made a motion, it was passed 4 to 2 --

COUNCILMEMBER ALEXANDER: I'm trying to --

COUNCILMEMBER ROCHE: -- and this is the ordinance to --

COUNCILMEMBER ALEXANDER: Sir --

COUNCILMEMBER ROCHE: -- finish it up.

COUNCILMEMBER ALEXANDER: -- if you don't mind, I'm trying to save the --

COUNCILMEMBER ROCHE: I mean why are you adding all this other stuff?

COUNCILMEMBER ALEXANDER: I'm trying to save the City money. Let's get this done and get it done and be done with it. I don't want to spend any more money on this ordinance.

We're getting good legal advice here regarding we need to offer the petitioners due process. I don't understand why you see that as being controversial.

We've discussed education, the members

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of the Planning Commission and citizens. They appreciated us considering giving them education. And you take affront to that, and I don't understand why, when I see that as us giving them -- the City providing them education.

I believe that we're giving them better tools to do their job and taking stock in them, and we're investing in them and valuing their opinion even more by offering them education, which I think members of the Council should take that education opportunity also. But I don't understand why you are taking such affront to these things.

COUNCILMEMBER ROCHE: Well, because -- let's take the first question. We'd have to decide whether it was going to be 30 days or 15 days or 21 days. We'd also have to decide whether a lack of a result would be an automatic approval or automatic disapproval or automatic nothing at all. So those are two main questions that would have to be decided by six members of Council --

COUNCILMEMBER ALEXANDER: And I think he --

COUNCILMEMBER ROCHE: -- and

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potentially the Mayor.

COUNCILMEMBER ALEXANDER: He recommended not a nondeterminant. He said yes or no.

COUNCILMEMBER ROCHE: Well, we basically have a nondeterminant now, which, I mean if we don't hear from the Council [sic] -- when whatever it is that comes to the Council has worked its way through the process and it's on the agenda and we have to make a decision, if the Planning Commission doesn't show up and say, "Here's our recommendation" one way or another, we're not going to wait. We're going to go ahead and proceed without the recommendation of the Planning Commission if they don't submit one, which is essentially exactly what we just described: if after 30 days, they don't have a decision, we're going to proceed as if there was no decision.

MR. O'CONNOR: Well, I've got a problem with the 30 days. Is it 30 days from what?

COUNCILMEMBER ROCHE: Exactly.

MR. O'CONNOR: The date you held the hearing? The date you receive the application? The date you had a vote?

COUNCILMEMBER ROCHE: Right.

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MR. O'CONNOR: I mean I don't think we have been holding anything up. I think we presented our findings within two or three days after our hearing on this last matter.

COUNCILMEMBER BATES: Just for the record, it does state "After a matter has been presented to the Planning Commission." So I would interpret that as --

COUNCILMEMBER ALEXANDER: After you receive it.

COUNCILMEMBER BATES: -- after it's been given to you, that you've got 30 days as it was stipulated here.

MR. O'CONNOR: Well, you may have some problems with some notice, too, on that, depending on how much time it takes you to put it in the paper, that you're going to have a hearing on on a zoning matter. You may not be able to have the hearing within 30 days.

It's 15 days minimum, isn't it, Murray?

ATTORNEY WEED: Well, to begin with, let's all agree on the same terms.

It is not required ever that a Planning Commission meeting be advertised. That's not required by the Code. Never has been. So that

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concept of the 15 -- no less than 15 or more than 45 days with regard to a Planning Commission meeting is completely irrelevant for purposes of any decisionmaking.

But with regard to the Council, it clearly is relevant because you definitely have to follow the ad and you've got to meet the time frame, if that's helpful.

MR. O'CONNOR: It is, because we were notifying -- we have -- I went through six months of ads out of The Champion just to see if I could find what happened in that niche of time where this ordinance had been passed in sometime around I believe it was August of 2006. And everything was going well up through June. There was even an announcement regarding the Council and PC having discussions about what their duties would be on June 1st. And then after that, there was not a single public notice from Doraville for the next three months.

ATTORNEY WEED: There may have been a Clerk change. I don't know.

MR. O'CONNOR: Yeah, I think there may have been a Clerk change. The only thing that was in there was the PC's notices that we had

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sent in.
And another thing I was going to say was all we wanted was what was given to us by the Council in 2006. I mean that -- what I don't understand is we've been going through three or four months now of trying just to set straight what was done in 2006, because this Council that proposed the ordinance, voted on the ordinance, relied on its City Council and also representations by whoever was the acting City Clerk, that the publications had been done, notices had been done. They weren't up there trying to pass some -- you know, something illegal or trying to hide what had been done.
I believe that we should have the law just done the same way it was in 2006.
I do agree with Scott that we had not heard conditional use permits and special use permits, and I don't see any reason for us to start hearing them now.
Our zoning hearings and variance hearings, we don't really have that many, you know, every year. I'll bet you we will probably have between six to eight meetings just to hear those particular subjects. And if we don't have

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anything, we don't have a hearing -- I mean we don't have a meeting. There's just no sense in just people sitting around looking at each other.
So that was all I wanted to add to this. Thank you.
COUNCILMEMBER ROCHE: Thank you.
Do we have anyone else signed up, Mayor?
MAYOR JENKINS: Yes.
MR. HAEBERLIN: Well, we haven't gone to the public hearing part. We still need to do our public hearing; right?
MAYOR JENKINS: Yeah.
MR. HAEBERLIN: Can you open up the public hearing and have those for or against the amendment and then close it and then you guys can deliberate.
MAYOR JENKINS: Okay. What we're going to do is continue the public hearing but we need a little break. Discussion people, we need a break; five minutes.
- - -
(Recess)
- - -

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MAYOR JENKINS: Meeting come to order.
Do we need to hear from the other people from the audience before we go any further?
Clint, come on up.
Then we'll get back into it. Is that all right?
COUNCILMEMBER ROCHE: That's fine.
MR. HOWARD: Clint Howard, Oakcliff Estates resident.
I've got a couple questions. As far as the Planning Commission seems to go along with the ordinance, which actually I haven't even seen --
COUNCILMEMBER ROCHE: Here's a copy (presenting).
MR. HOWARD: -- so I don't what's going on with some of this stuff. But it seems to me from sitting back there, that they're okay with what you have here.
And also I wanted to ask, too, aren't they on an advisory type committee and isn't it, according to your bylaws or whatever, that you can either A., decide to give them whatever or not give them whatever; is that correct? As far

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as if it's a special type of variance or what-ever tasks you give the Planning Commission, isn't it up to the Council whether you give it to them or not?
COUNCILMEMBER BATES: No, it's not, because then you create -- and correct me if I'm wrong, Mr. Weed -- but what you end up doing is if we determine Petitioner A needs to go to the Planning Commission and Petitioner B doesn't, then we've created an unfair process that creates a potentially more harmful or more beneficial level of criteria for a petitioner -- of Petitioner A over Petitioner B.
MR. HOWARD: So every petitioner regardless, everything needs to go through the Planning Commission.
COUNCILMEMBER BATES: Under this proposed ordinance, yes.
COUNCILMEMBER ROCHE: Yes.
MR. HOWARD: Okay, which was different from the one before.
COUNCILMEMBER BATES: That is correct.
MR. HOWARD: Okay. See, that's what I didn't know and I haven't read. That's a couple of the questions that I was wanting to ask.

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So regardless of whether it's a special type thing or regular type thing, all projects, zoning ordinances or zoning variances or whatever are supposed to go through the Commission.

COUNCILMEMBER BATES: Under this proposed ordinance, yes.

MR. HOWARD: Under this proposed ordinance. Okay.

Okay. See, that's what I didn't know.

And as far as whether you take their advice or not is completely up to you-all.

COUNCILMEMBER BATES: They are a recommending body.

MR. HOWARD: Right. So that's all. Okay. I didn't realize that. And can I get a copy of that?

COUNCILMEMBER ROCHE: That's yours.

MR. HOWARD: Oh, thanks.

Okay. I just had a few questions.

MAYOR JENKINS: Thank you.

Bonita?

MS. HOFFMEISTER: Will you please pass these down (presenting).

All right. I direct your attention --

Number one, I'm very in favor of

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passing this ordinance as it is. And yes, our Planning Commission does need to review conditional uses. It's very, very important. We have ordinances in this town to prohibit or limit massage parlors and staffing places -- in other words, businesses that deteriorate the quality of our life here in Doraville.

I direct your attention to page number 58, column number five. In column number five at the top of the page, you will see Royal Spa. Royal Spa is advertised as a health service.

If you go to the Internet and you Google "Doraville massage Georgia," it comes up. Now, this isn't very hard police work, and you h ve to Google a couple of sites to find out the address because one time it gives you the first part of the address, the second time the back part of the address. This massage parlor is located right here where New Peachtree and Shallowford Road connect, in that business park back there or that commercial area.

This particular Web site allows you to review the services. Try it sometime. It's explicit. There is no way this is just a massage of your hands or your feet or your back.

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It's very explicit.

Now, bear in mind, this is advertised as health, and it's probably licensed that way. I would hope our police would look into this.

Page 58, column number seven, Treat your Feet. I'm sure they came here saying they were going to do reflexology. This definitely doesn't look like reflexology. One site was enough to Google, and I really didn't care to submit my sensibilities to more of these sites.

Page number 61, column one, the Blue Star. Here I learned when I drove past Royal Spa and Blue Star Spa, the techniques for advertising their services at night is the same. It's dark windows with an "Open" on it and either a yellow or a blue or an orange light so it stands out in the darkness. This really doesn't take extensive police work to do.

Again, this would be conditional usage. Again, I want our Planning Commission to review conditional uses.

On page 62, at the bottom we have Midori. It's in Peachtree Plaza. We aren't trying to hide where we are. And again, the ad does not suggest it's for medicinal purposes.

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And of course there are several others which may or may not be in Doraville city, but we are a town that is close to 3.5 square miles. You take out the tank farm, you take out the MARTA station, you take out the government buildings, you take out the highways, and I would dare say there's somewhere between 2 and 2.5 square miles for our police to monitor and for our city to inspect. I don't think it would be too hard to close any of these down, and yes, I definitely want my Planning Commission to review special uses and conditions.

And as far as the time, I don't want to have an affirmative. If you feel like you have to legally do something, it should be something like 60 or 90 days and then it is automatically denied. Thank you.

MAYOR JENKINS: Thank you.

Stuart?

MR. ANDERSON: Stuart Anderson.

Several things, I guess.

I like the ordinance but not quite as written. From page 6 where the -- in fact I mentioned this in the last Council meeting, alluded to it at any rate. From page 6 through

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7 and 8, I believe, I would take those out of this ordinance. They do belong in our ordinances but they belong in our zoning book. They are the criteria for zoning investigations and for variance investigations as it were. I believe that, once again, they should not be in this ordinance. They should be in the zoning book itself that the Planning Commission refers to and that the City Council refers to. That lessens some of the complexity here and confusion.

COUNCILMEMBER BATES: Before you go on -- I'm sorry.

Correct me if I'm wrong, Mr. Haeberlin and Mr. Weed. This is moving the Planning Commission into our zoning ordinances. Is that correct?

ATTORNEY WEED: Yes.

COUNCILMEMBER BATES: So it does address that. It takes it out of 2-40 and creates it as 2201 and 2202 in our zoning book.

MR. ANDERSON: Thank you, Brian. That's actually my point. It shouldn't be in the zoning ordinance. It should be a stand-alone ordinance that creates the Planning

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Commission just like a stand-alone ordinance creates the Ethics Committee. Then those stand-alone ordinances should be just that, which is the first several pages of this, which is just fine. It's page 7 through 8 and 9, I guess, or through 8, anyway, that I object to -- or not object to but feel should be --

This ordinance should be to just form the Planning Commission, period. It shouldn't be in the zoning book. When we want to change the Planning Commission, we shouldn't have to advertise a zoning change or a variance. That was Mr. Weed's contention and correct contention that 06-22 was listed as changes to 1401 and 1402, et cetera, which were items in the zoning book, which brought the Planning Commission and its changes into the zoning book. It shouldn't be or doesn't have to be in the zoning book itself. It's as separate as 0606 was a modification of 2-40. That was a stand-alone -- that was an ordinance in itself, and that was fine.

Then the City Council, in my opinion, made an error and created 0622 which did give the variances to the Planning Commission but

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also put the Planning Commission in the zoning book. They should be two separate entities. You guys look at the zoning book when you make your decisions and the Planning Commission should look at the zoning book when it makes its decisions. It will read these criteria, the criteria for variance and for zoning changes just as you do when you interview applicants for a variance. So that's my main contention there.

On item (j) on page 8, I have probably the very first, 1/13 version of this. I'm not sure. But it is the 30-day issue.

What Joe referred to when he looked at The Champion, at some point, the City Council stopped advertising apparently but the Planning Commission continued on advertising, because I was chairman of the Planning Commission and I made sure that our hearings were advertised. The point in my saying that is that the City gets the application for variance or zoning or special use, et cetera, whatever it is, and the City Clerk would immediately let me know that there was a variance. Chuck in that case was the arbiter. He decided ah, there's a variance needed. Scott in this case lets the City know

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that this is not a standard application, there is a variance involved.

Okay. It goes to the Planning Commission. Same time it gets advertised for 15 to 45 days. In our bylaws -- and this addresses this item (j). In our bylaws, it says that the Planning Commission will provide for the City Council within five days its decision.

So as soon as the Planning Commission has its meeting, which is right now standard the Thursday after the first City Council meeting, it has a meeting on whatever has come in, it has a meeting on whatever has been advertised in the 15-to-45-day rule. At that point, it negates this 30 day discussion. Whatever it gives, it gives its result to the City Council. If it postpones things because it didn't get information, it normally had special-called meetings to move the process along, and once again, so that in a timely manner it could give its recommendation to the City Council.

And I would raise question with what Murray said about the Planning Commission needing to have its meeting advertised. If it's under -- if it's an authorized agent by you, it

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is supposed to have an advertised meeting. And by having an advertised meeting, that criterion is done. It's addressed.

COUNCILMEMBER BATES: Let me interrupt and get clarification --

MR. ANDERSON: Go ahead.

COUNCILMEMBER BATES: -- because we've got two different types of advertisements. We have the official advertisement in the legal organ that is required by the ZPA and then we have the advertisement that's required by posting notice of a meeting of the City Council or an agent of the body.

ATTORNEY WEED: That's correct.

COUNCILMEMBER BATES: So when you were referring to the Planning Commission doesn't need to advertise, you were referring to the ZPA advertisement in the legal organ and the 15-day requirement there.

ATTORNEY WEED: That is correct.

COUNCILMEMBER BATES: They are required to advertise their public meetings 24 hours in advance of actually having a meeting.

ATTORNEY WEED: That's correct.

COUNCILMEMBER BATES: Okay. I just

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wanted to make sure that I was clear on that.

Does that help?

MR. ANDERSON: Again, it was not the procedure that was set up by Betty Cloer, myself and Planning Commission and the City Council at that time.

Once again, the City received its variance or zoning, the advertisement was made, and the advertisement was made as to the Planning Commission meeting and --

COUNCILMEMBER BATES: So you were advertising in The Champion --

MR. ANDERSON: Absolutely, absolutely.

COUNCILMEMBER BATES: -- for the Planning Commission meeting.

MR. ANDERSON: And that's what Joe referred to is he went back and looked in all those advertisements, and some of them had my name on them. I was advertising. As soon as we got word of this thing, I was getting an ad out so that we could have a meeting -- a public hearing, I should say, capitals, in a timely manner.

Once again, and still in our bylaws, I'm sure, is that we will produce a response to

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the City Council within five days or so.

So that's kind of a problem we see in working around or trying to work around. I thought I knew what the procedure was, the correct procedure was, and I stand by that explanation that I just gave. And I'm sure you'll chew on this a little bit.

(Reading), (j) (k), (l), about advocating, shall not advocate against or . . . such matters except for recommendation, delivery to the planner.

COUNCILMEMBER ROCHE: Excuse me. That's no longer in this ordinance.

MR. ANDERSON: Thank you. All right. That's done.

COUNCILMEMBER ROCHE: Yeah, it ends at (i).

MR. ANDERSON: Thank you. But we shouldn't be advocating one way or the other for applicants.

No automatic approvals.

Conditional uses. Comment on the conditional uses situation. If you look in the original zoning, in our 2006 as-revised zoning book, you'll find very few conditional uses.

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There's one or two under O&I and C1/C2. As Scott is rewriting our zoning, he's having a lot more conditional uses. There are longer lists of them, and so that is why the Planning Commission should hear them.

And I definitely agree with him in his comment earlier that the criteria for our conditional uses is way lacking. We have almost no criteria for conditional uses. It's wide open. And so that needs to be changed or tightened up or given more criteria, more thought.

MAYOR JENKINS: Stuart?

MR. ANDERSON: I apologize for you putting up with me.

MAYOR JENKINS: Stuart.

MR. ANDERSON: Yes, sir.

MAYOR JENKINS: We've given you more time than all the rest put together.

MR. ANDERSON: Yes. Well, you've had a lot of issues. I apologize.

MAYOR JENKINS: Stuart?

MR. ANDERSON: Right.

MAYOR JENKINS: Thank you.

MR. ANDERSON: Thank you.

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[1] **MAYOR JENKINS:** I hate to do that.
[2] Anymore discussion at the table?
[3] **COUNCILMEMBER FLEMING:** Yes, sir.
[4] Mr. Weed?
[5] **ATTORNEY WEED:** Yes, ma'am.
[6] **COUNCILMEMBER FLEMING:** Are the bylaws
[7] of the Planning Commission a binding agreement
[8] with the City?
[9] **ATTORNEY WEED:** No, ma'am. The current
[10] ordinance, the last version of it -- well, what
[11] is current in your Code book gives the Planning
[12] Commission the authority to create bylaws for
[13] their own governance; however, they're not
[14] binding. It's not a contract or they're in no
[15] way binding upon the City Council.
[16] **COUNCILMEMBER FLEMING:** So when Mr.
[17] Anderson commented that their bylaws stated that
[18] they would produce a decision within five days
[19] is null and void for us basically?
[20] **ATTORNEY WEED:** I think it --
[21] **COUNCILMEMBER FLEMING:** We don't take
[22] that into consideration?
[23] **ATTORNEY WEED:** That's correct, in my
[24] opinion. But that would govern the behavior of
[25] the Planning Commission. However, since they've

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[1] got the authority to create their own bylaws,
[2] they can just as easily change them any time
[3] that they wanted to. So they have that bubble
[4] of reality that only affects them, and,
[5] therefore, it couldn't change a decision of the
[6] Mayor and Council, couldn't give you more time,
[7] less time, that type of thing. They've got no
[8] authority. They've only got the authority to do
[9] what you've granted to them.
[10] **COUNCILMEMBER FLEMING:** So their bylaws
[11] are in-house? It's not a publicized Municode
[12] scenario --
[13] **ATTORNEY WEED:** No, ma'am.
[14] **COUNCILMEMBER FLEMING:** -- or anything
[15] like that?
[16] **ATTORNEY WEED:** They're publicized by
[17] virtue of it's a matter of public record. You
[18] know, the Planning Commission would give them to
[19] anybody who asked. But they are not an
[20] ordinance. They're not adopted by ordinance,
[21] therefore, they are not law. They are not
[22] binding upon the Mayor and Council or the City
[23] in any way in my opinion.
[24] **COUNCILMEMBER FLEMING:** Thank you.
[25] **COUNCILMEMBER ROCHE:** Are we still in

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[1] the public hearing?
[2] **MAYOR JENKINS:** I think the public
[3] hearing's over with. We brought it back to the
[4] table. I apologize.
[5] **COUNCILMEMBER ROCHE:** Okay. Well, from
[6] what I've heard so far, I'd like to make a
[7] motion to I guess waive the --
[8] Do we have to waive the first reading
[9] on this or --
[10] **ATTORNEY WEED:** I think there's been
[11] plenty of first reading. However, just for the
[12] record, there's nothing wrong with waiving the
[13] first reading.
[14] **COUNCILMEMBER ROCHE:** I make a motion
[15] that we waive first reading on this ordinance in
[16] this form.
[17] **MAYOR JENKINS:** Do I get a second?
[18] **COUNCILMEMBER SPANGLER:** Second.
[19] **MAYOR JENKINS:** Anymore discussion?
[20] - - -
[21] (No response)
[22] - - -
[23] **MAYOR JENKINS:** Call the roll, please.
[24] **ASSISTANT CLERK BRYANT:** Councilmember
[25] Alexander?

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[1] **COUNCILMEMBER ALEXANDER:** Come back to
[2] me, please.
[3] **ASSISTANT CLERK BRYANT:** Councilmember
[4] Bates?
[5] **COUNCILMEMBER BATES:** No.
[6] **ASSISTANT CLERK BRYANT:** Councilmember
[7] Fleming?
[8] **COUNCILMEMBER FLEMING:** No.
[9] **ASSISTANT CLERK BRYANT:** Councilmember
[10] Roche?
[11] **COUNCILMEMBER ROCHE:** Yes.
[12] **ASSISTANT CLERK BRYANT:** Councilmember
[13] Spangler?
[14] **COUNCILMEMBER SPANGLER:** Yes.
[15] **ASSISTANT CLERK BRYANT:** Councilmember
[16] Alexander?
[17] **COUNCILMEMBER ALEXANDER:** No.
[18] **MAYOR JENKINS:** What's the score?
[19] **ASSISTANT CLERK BRYANT:** No.
[20] **ATTORNEY WEED:** The Council has voted
[21] not to waive first reading, which means that
[22] this meeting will be considered a first reading,
[23] and if you want, this item can be put on the
[24] next available agenda.
[25] **MAYOR JENKINS:** Next available agenda.

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Okay. Do you have any idea where you want to put it?

COUNCILMEMBER ROCHE: Well, the next available agenda -- March?

MAYOR JENKINS: Will it still be a public hearing?

ATTORNEY WEED: The way this has gone forward -- I'm looking to Scott, but I think we're probably going to want to readvertise this item. There was a full public hearing and the public hearing was closed. All the protocols were followed with regard to that. A motion was made and seconded with regard to waiving first reading. That failed. And I think it goes to the next available agenda, but I would feel better readvertising it underneath that very unique circumstance.

MAYOR JENKINS: But will it be a public hearing?

ATTORNEY WEED: No, sir, it won't be a public hearing.

COUNCILMEMBER FLEMING: If you readvertise, are you talking about newspaper advertisement now?

ATTORNEY WEED: Yes, ma'am. What Scott

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and I are thinking about right now would be this is a situation that's unlike what you ordinarily do, which is recess an existing public hearing to another date.

What has occurred here is you completed a public hearing and you've actually brought the ordinance forward for a vote, which you ordinarily don't -- you know, you either vote it up or down, et cetera, whatever.

In this particular procedural context, I'd feel more comfortable advising you to run an ad. So I'm turning to Scott to find out when's the -- the minimum time is 15 days. When's the soonest we can run an ad to have a meeting? You can have a meeting any time you want to as long as you meet the minimum 15-day requirement.

COUNCILMEMBER FLEMING: Mr. Weed --

ATTORNEY WEED: Yes, ma'am.

MAYOR JENKINS: We've had -- Excuse me.

COUNCILMEMBER FLEMING: In regards to this is the Planning Commission ordinance.

ATTORNEY WEED: Yes, ma'am.

COUNCILMEMBER FLEMING: This is not a zoning hearing. This is not a variance --

ATTORNEY WEED: Yes, it is.

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COUNCILMEMBER FLEMING: -- hearing. This is --

ATTORNEY WEED: It actually is, Councilman. That's the problem. This is a zoning ordinance. It changes the text of the zoning ordinance; therefore, under 36-66-3(4) under Zoning Decision, an adoption of an amendment to an ordinance which changes, quote, the text of the zoning ordinance, we've got to follow the Act.

COUNCILMEMBER FLEMING: Okay. Then, why wouldn't --

MR. ANDERSON: That's why I was asking for it to be taken out.

COUNCILMEMBER FLEMING: Why would we not, then -- We waived the first reading. We voted to waive the first reading. Why could I not come back now and make a motion to do a date specific for us to have the second reading? Just like we did before --

ATTORNEY WEED: No.

COUNCILMEMBER FLEMING: -- we would do a date specific.

ATTORNEY WEED: We've never done that. We've never done this before.

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Every other time you've ever recessed or tabled, quote/unquote, to another date certain, you never fully closed out the entirety of the hearing. You never closed everything up.

By virtue of having an actual vote on the ordinance itself, my best advice to you is I think you have now closed the hearing portion, moved to a vote on the actual document, and that vote essentially was you didn't want to waive first reading.

That's fine. You will now have another meeting, but this will now be first reading automatically, whatever happens.

You will now have another meeting where you're actually going to vote on this ordinance. You don't have to have another hearing but you have to have another meeting. And that meeting in my opinion, unless Scott disagrees with me -- and I'm open to suggestions -- you have to run a ZPA ad.

MR. HAEBERLIN: Yeah. I'm concerned if they were to backtrack tonight and start going into further motions they might impugn the action. You know, this ad was run on 2/5/09 for this meeting tonight, and I'll have to get with

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The Champion to see what I can do as far as advertising.

MAYOR JENKINS: Can you get it advertised by the meeting we set up the 23rd?

COUNCILMEMBER ALEXANDER: March 23rd?

MR. HAEBERLIN: I'll give it my best shot.

COUNCILMEMBER FLEMING: We need to do something with the Planning Commission before March 23rd, though.

MAYOR JENKINS: Well, could you get it advertised by our next meeting?

MR. HAEBERLIN: Pardon me?

MAYOR JENKINS: Can you get it advertised by our next regular meeting?

COUNCILMEMBER ALEXANDER: No.

MR. HAEBERLIN: No.

MAYOR JENKINS: What about the 16th?

MR. HAEBERLIN: I have consulted with Attorney Weed on a general question that all planners have. I can certainly run a display ad, I will tell you, or a legal ad.

I'll tell you, with The Champion, neither one of them really helps you. A display ad is more expensive. A legal ad is more

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convenient, obviously. But with The Champion, because of their deadlines, neither one really helps us. I mean I'm just going to have to get with the paper and see what I can do.

ATTORNEY WEED: It doesn't matter what kind of ad's run, in my opinion.

MAYOR JENKINS: Well, you can --

ATTORNEY WEED: You just have to run an ad.

MAYOR JENKINS: -- get it in something for the next meeting.

COUNCILMEMBER ALEXANDER: No.

MR. HAEBERLIN: It won't happen for the next meeting, sir, unfortunately.

MAYOR JENKINS: When would it be? Mid-month?

COUNCILMEMBER SPANGLER: He might get it.

MR. HAEBERLIN: Yeah, I think I can get it advertised for the March 23rd that you discussed earlier.

For this meeting, I sent it, and she promised to run it on 2/5. So in other words, I just barely made the hair of the advertisements last time. So I'll see what I can do for that

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time.

MAYOR JENKINS: Okay.

COUNCILMEMBER ROCHE: So in the mean-time, the Planning Commission will not be reviewing any of this stuff. Okay. Just so we understand where we are.

MAYOR JENKINS: Okay.

ATTORNEY WEED: They'll be reviewing everything that they're currently allowed to review, whatever that may be.

COUNCILMEMBER ROCHE: Right.

MR. HAEBERLIN: Which I would assume would be rezonings?

COUNCILMEMBER ROCHE: Just rezonings, I think.

MR. HAEBERLIN: Yeah. I think we're clear on that.

ATTORNEY WEED: Bear in mind, you know, my job is to give advice. You know, you're the client. You can always elect not to take it. But my best advice to you -- because this is a highly sensitive issue and because of the way that procedurally this thing has occurred, my best advice is to run another ad. We don't have to have another hearing.

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MAYOR JENKINS: All right.

ATTORNEY WEED: And we would have the first reading has happened. You're going to vote on it up or down.

MAYOR JENKINS: That's what we're going to do.

COUNCILMEMBER SPANGLER: Let's make a motion to adjourn.

And Scott, as soon as you can get the information as to whether or not you've got an ad placed, could you please let us know?

COUNCILMEMBER ROCHE: I second the motion to adjourn.

MR. CRAWFORD: Before you adjourn, can I make a --

MAYOR JENKINS: Call the roll, please.

ASSISTANT CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

ASSISTANT CLERK BRYANT: Councilmember Bates?

COUNCILMEMBER BATES: No.

ASSISTANT CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: What are we

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[1] voting on?
[2] **COUNCILMEMBER SPANGLER:** To adjourn.
[3] **COUNCILMEMBER BATES:** To adjourn.
[4] **COUNCILMEMBER ALEXANDER:** To adjourn
[5] the meeting.
[6] **COUNCILMEMBER ROCHE:** But someone wants
[7] to talk.
[8] **MR. CRAWFORD:** I'm just kind of
[9] curious, Mayor, when we had the -- and I know
[10] you don't have to have a list up there and I
[11] know that --
[12] **MAYOR JENKINS:** I don't have to have
[13] what, sir?
[14] **MR. CRAWFORD:** Ben Crawford.
[15] I know you don't have to have a list up
[16] there and have public comment on these things,
[17] but I actually did sign up for the public
[18] hearing part of it. And when I was up here
[19] speaking --
[20] **MAYOR JENKINS:** Yes, you did. You were
[21] up there.
[22] **MR. CRAWFORD:** No, Mayor. Excuse me a
[23] minute. Let me finish.
[24] When I was up here before, it was to be
[25] asked questions as a Planning Commission member.

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[1] And I actually signed up for the thing as a
[2] citizen and so did Mr. O'Connor. And when you
[3] got into the public hearing part, I didn't feel
[4] like we were in the public hearing part on the
[5] first part of that, and then after we took the
[6] break, we got into the public hearing. So
[7] that's why I signed my name up there actually as
[8] a citizen.
[9] So you know, it's not a problem.
[10] You've already voted to waive the first reading.
[11] But when people's names are on the list, if
[12] you're going to continue to do that, I'd
[13] appreciate it if you --
[14] **MAYOR JENKINS:** The last meeting --
[15] **MR. CRAWFORD:** Some things I comment on
[16] and some things I don't.
[17] **MAYOR JENKINS:** Last meeting, you were
[18] on two different places. One of them you told
[19] me you wasn't on there.
[20] **MR. CRAWFORD:** I was not, sir.
[21] **MAYOR JENKINS:** Now, I don't know how
[22] to treat you, Mr. Crawford.
[23] **MR. CRAWFORD:** No. Mayor, if you look
[24] back at --
[25] **MAYOR JENKINS:** I do the best I can.

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[1] **MR. CRAWFORD:** -- the sign-up sheet --
[2] **MAYOR JENKINS:** And Mr. O'Connor, I
[3] apologize if I didn't let --
[4] **MR. CRAWFORD:** Mayor, Mayor, excuse me.
[5] **MAYOR JENKINS:** You stood up there more
[6] than all the rest of them put together.
[7] **MR. CRAWFORD:** If you looked at the
[8] items --
[9] **MAYOR JENKINS:** I gave you --
[10] **MR. CRAWFORD:** -- that are listed on
[11] the sign-up sheet --
[12] **MAYOR JENKINS:** -- all the chances.
[13] **MR. CRAWFORD:** Mayor, I'm not arguing.
[14] But the last meeting, when you called me for
[15] item 21, I was actually signed up for item 20.
[16] **MAYOR JENKINS:** I went back, and you
[17] people told me you had signed up in the wrong
[18] place, and I --
[19] **MR. CRAWFORD:** No, sir, that's not
[20] correct.
[21] **MAYOR JENKINS:** -- called you when the
[22] time came.
[23] **MR. CRAWFORD:** Look back at the sign-up
[24] sheet from that last meeting. I'm accurate on
[25] that. You said that I had signed up for 21, and

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[1] I believe I signed up for 20.
[2] But I'm not talking about the last
[3] meeting. I'm talking about this meeting. And
[4] when I got up here, I felt -- and you know, I'm
[5] not asking for Scott to speak for me, but we
[6] were asked questions as Planning Commission
[7] members. That was my only point. And as I
[8] signed up on the sign-up sheet, that was done as
[9] a citizen. Two different things. And I would
[10] have liked to make some remarks tonight on this
[11] because I think that maybe it would have
[12] resulted in a vote.
[13] **MAYOR JENKINS:** You didn't make any
[14] remarks tonight?
[15] **MR. CRAWFORD:** Not as far as when we
[16] got to the public hearing part, I did not. No,
[17] sir, I did not. And I think that it might have
[18] helped a little bit if I had.
[19] **COUNCILMEMBER ROCHE:** So is this a
[20] point of order that would --
[21] **MR. CRAWFORD:** It's no problem.
[22] **COUNCILMEMBER ROCHE:** If we had the
[23] wrong procedure --
[24] **ATTORNEY WEED:** Councilman Roche, my
[25] opinion is the procedure was followed.

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MR. CRAWFORD: It was followed.
ATTORNEY WEED: It's in the transcript.
MR. CRAWFORD: I agree.
ATTORNEY WEED: Mr. Crawford has admitted the procedure was followed.
MR. CRAWFORD: I agree; it was followed.
ATTORNEY WEED: And his comments -- and they're on the record but they are completely irrelevant. You were in the middle of a vote anyway. The chairman didn't have to recognize Mr. Crawford; in my opinion, shouldn't have.
If you want to continue with your vote, you can. I believe you have a motion and a second and you're in the middle of the vote.
Is that correct, Clerk?
ASSISTANT CLERK BRYANT: Yes.
ATTORNEY WEED: I think you should continue with the vote.
MR. CRAWFORD: I agree. I wasn't arguing that, Mayor. That wasn't the point.
I just made a point that I had signed up as a citizen, and that was it, that was all.
MAYOR JENKINS: You had plenty of comments made.

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MR. CRAWFORD: I made plenty of comments tonight, sir. That's correct.
ATTORNEY WEED: Mr. Mayor, if this is helpful --
MAYOR JENKINS: Call the roll.
ASSISTANT CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes again.
ASSISTANT CLERK BRYANT: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
ASSISTANT CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
ASSISTANT CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
ASSISTANT CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Thank you.
- - -
(Whereupon, the meeting was concluded at 9:10 p.m. the same day.)
-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 20th day of March, 2009.

_____
Theresa Bretch, CCR
Permit No. B-755

[SEAL]

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