In The Matter Of:

City of Doraville

State of Georgia

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*_City Council Meeting_*

November 30, 2009

American Court Reporting Company, Inc.

52 Executive Park South

Suite 5201

Atlanta, Georgia 30329-2217

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

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CITY COUNCIL MEETING

CITY OF DORAVILLE

STATE OF GEORGIA

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Transcript of the meeting held at Doraville Civic Center, Doraville, Georgia; Mayor Ray Jenkins presiding, before Theresa Bretch, Certified Court Reporter, commencing at 6:30 p.m., November 30, 2009.

* * *

APPEARANCES:
Doraville City Council:
Hon. Ray Jenkins, Mayor
Councilwoman Maria Alexander
Councilman Robert Spangler
Councilwoman Donna Pittman
Councilman Bob Roche
Councilwoman Pam Fleming
Sandra Bryant, Assistant City Clerk
Murray J. Weed, City Attorney
Scott Haeberlin, City Planner

P R O C E E D I N G S

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

COUNCILMEMBER ALEXANDER: Here.

CLERK BRYANT: Councilmember Bates?

- - -

(No response)

- - -

CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Here.

CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Here.

CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Here.

CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Here.

MAYOR JENKINS: Brian is a little under the weather so he won't be here tonight.

But we need to amend this agenda to open the bids on the Central Avenue sidewalk so we can get those going. I'd like to have a motion to amend the agenda and go ahead and get that.

COUNCILMEMBER PITTMAN: So moved?

MAYOR JENKINS: Second?

COUNCILMEMBER ROCHE: Second.

MAYOR JENKINS: Call the roll.

CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BRYANT: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

MAYOR JENKINS: Pass them out, Luke. Thank you.

MR. HOWE: Yes, sir. This is just one. We only got one today.

COUNCILMEMBER FLEMING: Well, what about the eight that are still sitting on the City Clerk's desk? I was given an e-mail that said there were eight sitting on the City Clerk's desk.

MR. HOWE: There were eight copies of one proposal.

COUNCILMEMBER FLEMING: Okay.

MAYOR JENKINS: Go ahead and open it and look at it. If we just got one, we still have to bid on, is that correct, Murray?

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ATTORNEY WEED: The Council is not obligated to accept the single bid that they have received. They could always reject that bid. They could do the project themselves if they could. They can always rebid the project. Of course they can always accept that bid if they think it's satisfactory.

MAYOR JENKINS: Luke, it went out to more than one person; is that correct?

MR. HOWE: Well, it was advertised in the Champion and it was posted on our Web site.

MAYOR JENKINS: Okay. And this is the only bid you got.

MR. HOWE: Yes, sir.

Under the charter, they have to be opened in public, and my goal is to have a decision -- is to hopefully make a decision at next Monday's Council meeting, so I wanted to get the opening of the bids out of the way tonight. So I'm not necessarily asking for a decision.

MAYOR JENKINS: But you want the bids opened.

MR. HOWE: Yes, sir. Under the charter, they have to be opened in public.

MAYOR JENKINS: Anybody got any comments on it?

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COUNCILMEMBER FLEMING: As of right this second, I can't find where they have itemized their intent as far as cost is concerned.

COUNCILMEMBER ALEXANDER: Page 20.

COUNCILMEMBER FLEMING: Thank you.

COUNCILMEMBER ALEXANDER: Uh-huh.

COUNCILMEMBER ROCHE: What about the build, or is this really the design part?

MR. HOWE: Yes, sir. And just for clarification, we put this out for bid under the canopy of the Central Avenue Improvement Project, which will be a two-phased endeavor. Phase I will be the design and the construction management for the Central Avenue sidewalks. Phase II will be the same services for the streetscape, which is the two -- the two Central Avenue goals in the LCI.

I think that the same contractor should work on both projects. Phase II could come at the Council's discretion or when the funding presents itself.

COUNCILMEMBER ALEXANDER: And the Phase II you're referring to does not correlate to the Phase II in their project compensation because their Phase II is preliminary engineering.

MR. HOWE: Right.

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COUNCILMEMBER ALEXANDER: So you're talking about a different --

MR. HOWE: Yeah. They would not do the actual streetscape just like they won't do the construction.

COUNCILMEMBER ALEXANDER: Okay.

COUNCILMEMBER ROCHE: For the record, the bid for a total of all phases is $55,000 from Keck & Wood, Incorporated, from 2425 Commerce Avenue, Duluth, Georgia.

MR. HOWE: I haven't looked at them, Mr. Roche.

COUNCILMEMBER ROCHE: Sorry.

MR. HOWE: I haven't looked at them.

COUNCILMEMBER FLEMING: For the record.

COUNCILMEMBER ROCHE: Of course not.

COUNCILMEMBER FLEMING: For the record.

COUNCILMEMBER ROCHE: That's why they're sealed bids.

MAYOR JENKINS: Do we need a motion on this or how would we --

ATTORNEY WEED: If you wish to proceed, Mr. Mayor, you would make a motion to accept the bid that's before you.

MAYOR JENKINS: Can I get a bid on that?

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COUNCILMEMBER ROCHE: A motion, you mean?

MAYOR JENKINS: I mean a motion on the bid, yes.

COUNCILMEMBER FLEMING: Since there were no other bids received, I'll make a motion to accept Keck & Wood's $55,000 bid for services for design implementation of the Central Avenue sidewalk construction.

COUNCILMEMBER PITTMAN: Second.

MAYOR JENKINS: Good. Anymore discussion?

COUNCILMEMBER ROCHE: I'll --

MAYOR JENKINS: Call the roll.

Excuse me.

COUNCILMEMBER ROCHE: I'll support it since we've been trying to get this thing built for a couple of years now.

MAYOR JENKINS: Call the roll, please.

CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BRYANT: Councilmember Bates?

I'm sorry.

Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BRYANT: Councilmember Roche?

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COUNCILMEMBER ROCHE: Yes.
CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: All right. Thank you.
Scott?
Thank you, Luke.
MR. HAEBERLIN: Mayor, we did have one other item that we need to have a vote to amend the agenda. You see you have a revised agenda, and that is based on requested items.
No. 7 is Adult Entertainment, Mr. Murray Weed. So we'll also need a motion and a second to add that to the agenda.
MAYOR JENKINS: Item No. 7 --
MR. HAEBERLIN: Yes, sir.
MAYOR JENKINS: -- or 6?
MR. HAEBERLIN: Adult Entertainment, on the back side of your revised agenda.
ATTORNEY WEED: On the agenda I've got, it's Item No. 6
MR. HAEBERLIN: I apologize. No. 6.
MAYOR JENKINS: No. 6, right.
MR. HAEBERLIN: Yes, sir.
MAYOR JENKINS: That's what I thought.
COUNCILMEMBER ROCHE: I make a motion to

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accept the revised agenda which includes Item No. 6 which is Adult Entertainment Ordinance from Murray Weed.
MAYOR JENKINS: Do I get a second?
COUNCILMEMBER FLEMING: Second.
MAYOR JENKINS: More discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Thank you.
Scott?
MR. HAEBERLIN: Terri has notified me she's having a little trouble following you guys, so if possible, if you could pass the microphone. I think

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there is extensive lengthage on it to allow you guys to pass the microphone where possible so she can hear better for recording purposes.
MAYOR JENKINS: All right. Thank you. We'll do that.
MR. HAEBERLIN: The first item which is a public hearing is 5164-B Buford Highway, and this is a conditional use request. And the Council has the packages so I'm not going to go into a great detail about this. However, this is a conditional use request for that of Spa 18 and is for massage therapy, which is very specific in our code in the 2008-33 code.
As you're aware, this property has two buildings on it, and this is the property that's in the front of the -- this is the building that's in the front of the property which fronts onto Buford Highway, probably was previously a fast food restaurant.
So what has happened with this situation is there's been a couple changes in the organization of the establishment. It's been in operation since December 31st of 2008 without having a valid occupational tax license from the City, and there have been some warnings and citations that have occurred

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and some court activity as well.
Now, this item originally came to the Council on September 12, 2008, during the moratorium hearing, and that's when the City Council looked at specific applications for permits and rendered decisions based on those.
So the factors that are presented to us, that are based on the conditional use criteria, tell us, the staff, what exactly we're supposed to be reviewing and how a recommendation is to be structured. One of those factors is parking. And the applicant did submit an insufficient site plan which does not tell us fully that parking is met on the property, and that is a key item that is listed in the conditional use criteria.
Now, as we know, there have been changes to the regulatory codes for massage therapy -- excuse me -- massage parlors, and this application was received prior to the City enacting the ordinance 2009-31. And that changed our massage code based on regulatory fees and the hours of operation and also based it on population, so the city is limited in the amount of massage parlors that it can have.
The key factors in the standard of review, again, the property is highway commercial. It does

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have the highest commercial zoning. It is adjacent to C-1 property, which is Asian Square. It is also adjacent to a worship facility or a church that has some transitional housing, so there is some neighborhood effect. There are residents who are adjacent to this property if they're only present for shorter periods of time.

The site plan that was submitted to the City does not verify compliance with the parking requirements, dimensional requirements, et cetera. Now, the key factors on the dimensional requirements is this property is legally nonconforming, so basically it was built prior to our new codes. And so without any variances being achieved from the Council, they really cannot expand the building on the site, so I think that is important to consider.

In your package, you also have the City Council minutes from September 12, 2008, and you see that this originally came to the Council as V & W Day Spa.

There is also an as-built survey or site plan which is a requirement for the application for conditional use and structures how we the staff are to review these items.

You also have some visual pictures of the

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site to give you some bearings on the site and to also see that there's an office building behind here.

You have a letter of intent from the applicant, some information from the Georgia Board of Cosmetology.

It seemed unrefutable that there is an individual present that has a master of cosmetology license; however, the question of there being a licensed massage therapist is still unclear at this time, and I'm hoping we will find out more about that in this hearing.

As a result of some court activity, it's my understanding that the business was not supposed to be performing massages.

The City did issue a permit -- occupational tax license; excuse me -- for that of a hair salon so they could continue doing hair and nails and other things that are covered under the Cosmetology Act. And there are some indications, perhaps, that there were massage services being performed outside of the scope of that item which the City Council is aware of through conversation regarding this petition.

So based on the standards of review specifically with reference to the neighborhood aspect and compliance with the site plan, the staff did

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recommend denial of the petition request.

MAYOR JENKINS: Come up to the table, Scott?

MR. HAEBERLIN: Well, right now, we need to hear from the applicant as well.

MAYOR JENKINS: Okay.

MR. HAEBERLIN: And then we will have our public hearings where those will be able to speak for and against the item. And if you will simply raise your hand at that time, we will divide the amount of time by the number of individuals who wish to speak.

So there will be a public hearing after we hear from the applicant. I wanted to give the majority of the time to the applicant because the Council has had this package for an extensive period of time.

So at this time, I'd like the applicant or their representative to come forward.

MAYOR JENKINS: State your name, sir.

MR. THURMOND: My name's Tom Thurmond. It's T-h-u-r-m-o-n-d.

I'm a friend of the applicants, and they've asked me to represent them on their behalf. I have no business interest in the spa, but I am friends of the owners and I know them very well.

I would like to say that the City did issue

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a license for this business to operate last year in November.

The two owners of the spa are long-term successful businesswomen in the Doraville city community. Wendy runs, owns and operates Ming's BBQ and Van owns and operates Hair Capital. Both businesses are located in Asian Square Shopping Center.

They started this business last year. They obtained the necessary permits through the City. They expected or believed that the permit was for 12 months, did not realize that the permit expired on December 31st, and admit that the spa was operating technically without a license after December 31st of last year.

In October of this year, the code enforcement officer came to the business and cited them for operating without a license. At that point, they became aware that the license had lapsed. It was an honest mistake on the part of the owners. They immediately went through the City and took corrective action to re-establish the license. It's proven to be a challenging task, and they have done everything that they know to do to submit the information through the City to obtain the necessary permits to re-establish

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1 the license.
2 There was another citation for operating
3 without a license. They've shut the business down.
4 They've dealt with that issue with the courts. They
5 paid a fine; they admitted that they were wrong in
6 that respect.
7 And they have basically bent over backwards
8 to operate a good, legitimate, clean business. I
9 understand that there can be some possible negative
10 connotation to that kind of establishment, but I would
11 like to say that I've been to that place many times.
12 And I work with the Federal government, and I have a
13 code of conduct and I have to be accountable for my
14 behavior at all times and I could not go to an
15 establishment that might jeopardize my career.
16 And this is a good, clean business. Last
17 week, I was in the Northpoint Mall area, and I went
18 into another day spa over there just to see the
19 differences, and they looked remarkably similar.
20 These are two honest, hardworking business-
21 women, and they would not jeopardize a viable business
22 knowingly over a business license application fee. It
23 was an honest mistake, and they're willing to do
24 whatever the City requires and whatever the Council
25 would like them to do to comply with the city codes

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1 and to just operate a viable business.
2 Thank you very much for your time.
3 MAYOR JENKINS: Excuse me.
4 MR. THURMOND: Yes, sir.
5 MAYOR JENKINS: Any questions?
6 COUNCILMEMBER ALEXANDER: Yes. I have
7 questions for the applicant. I'm not sure that agent
8 Thurmond is qualified to answer my questions.
9 Would you like to come to the podium,
10 please.
11 MS. NEI: My name is Maggie Nei.
12 COUNCILMEMBER ALEXANDER: I'm sorry?
13 MS. NEI: Maggie, last name's Nei.
14 COUNCILMEMBER ALEXANDER: And you're not the
15 applicant?
16 MS. NEI: Actually, I'm representing two of
17 my best friend.
18 COUNCILMEMBER ALEXANDER: Okay.
19 MS. NEI: Yeah.
20 COUNCILMEMBER ALEXANDER: Are you an
21 attorney or --
22 MS. NEI: No. I'm just best friend.
23 Maggie. That's M-a-g-g-i-e. Last name's
24 Nei, N-e-i.
25 COUNCILMEMBER ALEXANDER: The applicants are

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1 comfortable with you answering legal questions --
2 MS. NEI: Yes.
3 COUNCILMEMBER ALEXANDER: -- on their
4 behalf?
5 MS. NEI: Yes, ma'am.
6 COUNCILMEMBER ALEXANDER: The moratorium
7 hearing where the original applicant applied for, I
8 asked the city planner to review that tape, and I
9 believe that the business was approved -- I was a
10 dissenting vote -- for foot massage only. I don't
11 believe there was ever approval for full-body massage,
12 and it was reiterated in that original hearing that
13 it's for foot massage only.
14 I don't know where the miscommunication
15 happened upon the business establishment itself, but
16 obviously something did.
17 In review of the identification documents
18 that we were given and research from the Secretary of
19 State Web site, none of these persons are licensed
20 masseuse according to the State of Georgia, and that
21 is a requirement of our massage ordinance.
22 MS. NEI: Okay. Yes, ma'am. We received
23 the order, so find out -- my two best friend find out
24 the license was expired. Okay.
25 And I have a question, is if we are not

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1 require, why City give us the license last year? If
2 we make a mistake, the license expire, and then the
3 same things. I've been backing on City Hall on and on
4 all day.
5 COUNCILMEMBER ALEXANDER: Can you answer my
6 question. Are these persons licensed by the State to
7 perform massage?
8 MS. NEI: Yes, ma'am.
9 COUNCILMEMBER ALEXANDER: I need a copy of
10 their license.
11 MS. NEI: I give all that to Scott.
12 COUNCILMEMBER ALEXANDER: We don't have a
13 copy of their State massage license, ma'am. We have a
14 copy of their driver's license.
15 MS. NEI: Actually Scott have all the
16 license copy. I gave it to him.
17 COUNCILMEMBER ALEXANDER: I can show you
18 what was provided to us.
19 MS. NEI: I have each one driver license and
20 massage therapy license all provide to Scott.
21 COUNCILMEMBER ALEXANDER: I have an
22 aesthetician and a cosmetology.
23 MS. NEI: This is the massage therapy
24 license. They get it from the State. That's what --
25 COUNCILMEMBER ALEXANDER: That's a different

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1 license than cosmetology.
2 MS. NEI: Well, that's all I understand this
3 is get from them.
4 COUNCILMEMBER ALEXANDER: Okay. Then,
5 they're not licensed by the State.
6 MS. NEI: From what I understand -- I'm not
7 a specialty on this -- and what I do, get all the
8 requirement from Scott, okay, because we try to do all
9 business. We spend more than $100,000 just on this
10 building to a place all business. And I started go
11 back to City Hall, Mayor, since now since the first of
12 October, try to get application filled out. Any
13 question I ask Scott, so anything I needed to be
14 doing, you know, let us know. We prepare anything to
15 do the business.
16 And everything just fine until last Friday.
17 I got a fax from City Hall, you know, having this as a
18 question deny us, well -- or for howsoever we cannot
19 operate the business.
20 And we try to find out. The things I can't
21 understand, we try to do business here, okay, we try
22 to fill out everything the City ask for, and I needed
23 some answer. If there's something we needed to
24 change, you know, we're prepared to do it.
25 But I got a fax, Friday, 6 o'clock afternoon

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1 faxed over, telling me my require has been denied, and
2 I have no way to come back Monday to ask anybody any
3 help to resolve the problem because city planner
4 Scott's on vacation on Monday until today.
5 So trying as much to run a business here.
6 Nobody's helping us. Everything on hold for the whole
7 month. We started October 22nd, and we do put a lot
8 of money on that, just trying to run a business here.
9 And what shall we do, you know? We not try
10 to hire a lawyer. We just try to do business here.
11 Is there anybody? Nobody can give me an answer,
12 nobody can help us. And those peoples been working in
13 Doraville for at least 15 years. You know, everyone
14 try to know, just having hard time get the license,
15 you know.
16 You know, but yet this is some bad image
17 about massage things. But we -- they even try to be
18 here, the city, never try to do any bad things.
19 We've been waiting for the whole month.
20 Anything you want, need to require change, not the
21 last minute, I cannot contact anyone. And I've been
22 thinking, you know, who going to be helping us. It's
23 a lot of regulation, and who going to be helping us.
24 And we spend a lot of money on that, you
25 know, just trying to prepare anything we can do, not

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1 the last minutes. So I ask the City Council, you
2 know, what's it going to do for us?
3 And I know I'm not professional at things,
4 but we do try to do anything. But last minute Friday,
5 fax over on 6:14 p.m. The next Monday, I'm trying to
6 ask. Nobody can help us until have to wait for Scott
7 coming back, I mean, today. And I hope, you know, the
8 Councilmen take consideration.
9 So do you have any questions I can answer?
10 COUNCILMEMBER ALEXANDER: Well, I don't feel
11 that your masseuses are licensed by the State because
12 we don't have copies of the State.
13 MS. NEI: Uh-huh.
14 COUNCILMEMBER ALEXANDER: I believe this is
15 a brochure from the location that says that you are
16 performing professional permanent make-up.
17 MS. NEI: That's on the Hair Capital.
18 COUNCILMEMBER ALEXANDER: Okay.
19 MS. NEI: It's just they send some brochure
20 on that, because there was just a lot of mistake. We
21 try to -- we do try to give them the right, because
22 the City have a new code for start from November 12th,
23 November 2nd, for the massage license.
24 But I have a question. Even --
25 COUNCILMEMBER ALEXANDER: Can I finish my

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1 question, please?
2 MS. NEI: Yes.
3 COUNCILMEMBER ALEXANDER: It's advertising
4 professional permanent make-up. You have to have --
5 that is the same as performing a tattoo, and you have
6 to have a health department inspection to perform
7 that.
8 Have you applied for health department
9 inspection to be approved --
10 MS. NEI: Oh.
11 COUNCILMEMBER ALEXANDER: -- to do tattooing
12 of permanent make-up?
13 MS. NEI: That question, I have to ask my
14 friend. I'm not willing to answer that.
15 COUNCILMEMBER ALEXANDER: Okay. Because
16 that's a health department issue.
17 MS. NEI: Yes, ma'am. Uh-huh. I will give
18 those notice.
19 Is the Councilmen taking consideration have
20 anymore questions to ask me?
21 COUNCILMEMBER PITTMAN: Were you aware -- do
22 you know if she was aware that she had to have a
23 license by the State?
24 MS. NEI: Yes, ma'am.
25 COUNCILMEMBER PITTMAN: She is aware of

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that.
MS. NEI: Yes, ma'am.
COUNCILMEMBER PITTMAN: Do they have the license?
MS. NEI: They do have the license but they got expired. And actually, two of my girlfriend have their own business, and there was more help at the store by which to make sure, you know. They hire this partner, you know, try to run the business. And we just make a real bad mistake. The license was expire. When they try to come back to -- you know, until the police try to go back to the spa, say we have a way out license doing business, which this is really, honestly mistake.
So they try to prepare everything to, you know, renew the license. The point is is we're getting renew. If the things is -- they're confused because some of it's language problem. They just want to get a renew, see what we need to be done. And then we do everything Scott was asking.
So I send him the plan, citation, every-thing. I ask anything I needed to be done to prepare to, you know, get a license, and my answers are everything just fine, until I get a fax on Friday, last Friday.

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COUNCILMEMBER PITTMAN: But they are currently expired?
MS. NEI: Excuse me?
COUNCILMEMBER PITTMAN: They are currently expired at this time?
MS. NEI: Yes. Yes, ma'am. They expire -- I think it expire on the June. The business license expires in June and they -- they think this lasted the whole year from November until this year November. And then when they find out, they try to just renew the license. That's the whole thing: we're just trying to re- --
COUNCILMEMBER PITTMAN: The State. I'm talking about the State.
MS. NEI: Yes, ma'am.
COUNCILMEMBER PITTMAN: And are they in the process of doing that now?
MS. NEI: No, ma'am.
COUNCILMEMBER PITTMAN: No?
MS. NEI: They have a State license. They're doing.
COUNCILMEMBER ALEXANDER: For cosmetology.
MS. NEI: They do have a State license, yes, ma'am.
COUNCILMEMBER ALEXANDER: For --

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MS. NEI: Um.
COUNCILMEMBER ALEXANDER: -- cosmetology.
MS. NEI: Yes, ma'am.
COUNCILMEMBER ALEXANDER: Not --
COUNCILMEMBER PITTMAN: For massage?
MS. NEI: For the massage.
COUNCILMEMBER PITTMAN: But not for the massage?
MAYOR JENKINS: The business license --
MS. NEI: Yes.
MAYOR JENKINS: The business license had elapsed. Was it for foot massage or whole-body massage?
MS. NEI: This is for both, for foot massage and body massage.
And I have real confuse here, because we don't have any time to prepare and try to get the license renew, and we send the application and we wait for the whole month. We don't get any result and nobody to telling me what to do, because I'm in chaos and depression, and I think this is not right, until last Friday, we get a fax. I don't have any time to ask anybody besides Scott's on vacation. So this is -- you know, I'm concerned.
COUNCILMEMBER ALEXANDER: I'm not

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comfortable with proceeding on this because we have no proof that you have a State license for massage.
MS. NEI: Okay. May I ask Councilmen, again I was not out of town a whole week, and we have a lawyer here because, you know, we really hadn't prepare anything because the whole week we cannot ask Scott anything, even all this question, because I was try to prepare the lawyer. But they recommend that we not go through the lawyer things, because we just try to get our business license renew, that's all, and not through this, they try to prepare anything.
And I'm not familiar with this kind of process. I just spoke with them. This how things has happen. And I'm not really comfortable because we been apply for the whole month. And it will be close the business right now. The business is close. It's just waiting for the license.
COUNCILMEMBER PITTMAN: Ms. Alexander, was -- make sure I understood, that the original -- because I was not present at that hearing -- that it was only for foot massage and not full-body massage?
COUNCILMEMBER ALEXANDER: I asked Mr. Haeberlin to review the tape today.
COUNCILMEMBER PITTMAN: Were y'all aware of that?

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MS. NEI: I have no idea until the Saturday we try to ask.

And the thing is probably I misunderstand, okay, the license when it expire. And I go to the City Hall, ask Scott anything, that he say just go get a license for hair salon. Well, I was license get wrong the business, and I don't understand. We're applying this business for foot massage, not for hairdresser. Why we apply the hairdresser for foot massage. And this is no (imperceptible) for anything like this. And then he want to keep business running, but doesn't make sense.

COUNCILMEMBER PITTMAN: So are you asking us for more time?

MS. NEI: Yes, ma'am. And I think this is fair.

COUNCILMEMBER PITTMAN: I don't have a problem.

MR. HAEBERLIN: Council, can I have a few minutes? I want to share some information with you.

COUNCILMEMBER PITTMAN: Okay.

MR. HAEBERLIN: I'm waiting on the public, certainly.

COUNCILMEMBER FLEMING: But we're not releasing her because I wanted to ask her a few

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questions.

MR. HAEBERLIN: If you guys are not finished, I would just like to reserve some time to address the Council when they have --

COUNCILMEMBER ALEXANDER: Correct.

COUNCILMEMBER FLEMING: I wanted to ask a couple questions --

MS. NEI: Yes.

COUNCILMEMBER FLEMING: -- if you don't mind.

In your letter dated October 27th to Mr. Haeberlin --

MS. NEI: Yes, ma'am.

COUNCILMEMBER FLEMING: -- on your Spa 18 letterhead, under the Spa 18 services, it's listed: Massage therapy is the scientific manipulation of soft tissues by trained practitioners.

I want to discuss the trained practitioners. And what Ms. Alexander is talking about is that if you have trained practitioners to do massage therapy, then those people would have licenses, and we need to see those licenses. Okay?

MS. NEI: Yes, ma'am.

COUNCILMEMBER FLEMING: So that's one thing we will require.

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MS. NEI: Yes, ma'am.

COUNCILMEMBER FLEMING: That's what's going to be required with old permits as well as new permits.

MS. NEI: Yes, ma'am.

COUNCILMEMBER FLEMING: Okay?

MS. NEI: Uh-huh.

COUNCILMEMBER FLEMING: So by just that statement, we want to see the masseuses' certificates.

MS. NEI: Yes, ma'am.

COUNCILMEMBER FLEMING: All right? Also, as far as the State that Ms. Alexander was talking about for Spa 18, though they have listed it as Spa 18 Beauty and Massage Salon --

MS. NEI: Yes, ma'am, I have the (imperceptible) right here.

COUNCILMEMBER FLEMING: -- okay, they've only indicated that and I can only assume that -- and I am assuming -- that these are the items that the State is saying that you will be performing.

I apologize. These are just the technicians and hair designers and cosmetologists, but they're not listing any type of masseuses and massage therapists in regards to the surety of their cleanliness. So I apologize. I shouldn't have brought that up. But

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that is dated until 2011. But it does say cosmetology salon.

So I don't know whether the State would require a massage license. Mr. Weed, do you have any idea?

ATTORNEY WEED: Well, my understanding is that the cosmetology license is distinct and separate from a masseuse license. My understanding is they are not the same thing.

COUNCILMEMBER FLEMING: Okay. So we are under the impression, based on what our attorney has said, is there is a separate masseuse requirement or certificate that would have to be applied for and obtained by the State as well.

MS. NEI: Yes, ma'am.

And another question I would like to ask Councilmen, give me some idea. When we try to renew the business license, okay, we having some problem with our corporation, okay, because our corporation regis [sic] is Triple V, you know, corporation, and the City won't issue our business license because there was no Spa 18. But when they -- when we -- they try to tell us they add it on Spa 18 Massage Parlor. They just wanted to add it on the corporation name, which we agree to do that, but actually it give us the

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1 same business last year, tax I.D.
2 This is the same thing. This is city's new
3 laws. Even we not can find, the business, why we get
4 the license last year. And this is the same thing.
5 This new law started November 2nd, and where is this
6 different on that time. It's having so much change.
7 We found so much change, why now, you know, before we
8 put it -- before new laws, new codes coming for
9 November 2nd.
10 COUNCILMEMBER FLEMING: Okay. But the two
11 items that I've mentioned --
12 MS. NEI: Yes, ma'am. In our --
13 COUNCILMEMBER FLEMING: -- were needed prior
14 to the November.
15 MS. NEI: The point is I'm not sure it's the
16 business of what they're applying for, but I'm sure
17 something. Since the business owner having so much
18 argument, that was create a lot of big mess on this
19 business, because the co-owner having big fighting,
20 say the original owner lied to them having without
21 the business license we service. So this is -- the
22 business ran us close waiting for the business
23 license.
24 And I'm just having so confused on the whole
25 thing. We were supposed to have lawyers representing

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1 us, and we think the Mayor should see the whole thing.
2 I was there.
3 So we try to do the right thing. And then
4 the business was running. You know, the last year,
5 everything just fine. It just simple mistake, you
6 know. Just expire, the license. Just try to renew
7 it. And why this is so difficult? Just tell us what
8 we should do, what should we do, and not until the
9 last minutes to shut us down and then just waiting
10 here for the hearing and not give us any help.
11 COUNCILMEMBER FLEMING: Well, Ms. Nei --
12 MS. NEI: Yes.
13 COUNCILMEMBER FLEMING: -- unfortunately,
14 okay, the Quality of Life, when they asked to see your
15 permit --
16 MS. NEI: Yes, ma'am.
17 COUNCILMEMBER FLEMING: -- they noticed the
18 expiration date. That triggered further investi-
19 gation, let's say --
20 MS. NEI: Yes.
21 COUNCILMEMBER FLEMING: -- in the fact that
22 --
23 MS. NEI: There was --
24 COUNCILMEMBER FLEMING: -- you don't have --
25 or not you, but the company itself, the establishment,

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1 doesn't have masseuse licenses on the walls like
2 cosmetologists do --
3 MS. NEI: Uh-huh.
4 COUNCILMEMBER FLEMING: -- or hair
5 salonists. They don't have their little certif- --
6 MS. NEI: That's why we --
7 COUNCILMEMBER FLEMING: That triggered that.
8 So just as a comment. I know that Mr. Haeberlin wants
9 to say a couple things.
10 So it's not just the November 2nd thing. It
11 just triggered.
12 MS. NEI: Yes, ma'am.
13 And I have something I'd like to address,
14 because massage is really culture for Asia people.
15 And even people being in Asia, you know, we do the
16 foot massage. I mean this is a lot different. You
17 know, we require a lot of healthy foot health. You
18 know, the lifestyle in here.
19 But in the culture, people go on the street,
20 maybe just go, okay, there's a spa, we sit down, get a
21 foot massage. This is really -- it's a lifestyle,
22 because the living space for those is built
23 (imperceptible). They want a release somewhere before
24 go back to the apartment to their lifestyle.
25 So what I'm telling here is we try to do

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1 legitimate business here. The two owner here been
2 here in Doraville city having their business in Asia
3 Square at least 15 years. They've tried real hard to
4 -- you know, they spend more than $100,000 try
5 remodeling the spa. You know, this is a lot of money.
6 And they just try to do the right things. You know,
7 we just want to see we can get things done to get our
8 license. That was real simple mistake. Nothing like
9 -- I know this is difficult right now for us
10 (imperceptible).
11 The City Councilmens supposed here to
12 helping us, you know, not make more strictly for us.
13 It's helping us how to get business running, how to
14 helping city, all of our city.
15 COUNCILMEMBER ROCHE: Would you prefer it if
16 we postpone this and gave you time to --
17 MS. NEI: Yes.
18 COUNCILMEMBER ROCHE: -- to organize?
19 MS. NEI: Yes. I will hope can get approved
20 because they -- you know, the people sitting there
21 waiting for license. The business is closed. You
22 know, there's no job. And we try to not doing -- you
23 know, bring our lawyer here just because we respect,
24 you know, the City Councilmen will understand what
25 we've been going through. The Mayor should know I've

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1 been here time to time, just try to get things done
2 right.
3 COUNCILMEMBER FLEMING: But you and
4 Mr. Thurmond both understand that before we could
5 possibly even make a decision, we would need to see --
6 if you're going to have a masseuse -- a massage salon
7 there, we need to have proof that your practitioners
8 have been --
9 MS. NEI: Yes, ma'am.
10 COUNCILMEMBER FLEMING: -- educated --
11 MS. NEI: Yes, ma'am.
12 COUNCILMEMBER FLEMING: -- and do have their
13 license.
14 MS. NEI: Yes, ma'am.
15 COUNCILMEMBER FLEMING: Okay, and that the
16 State has also given you a State license for a massage
17 salon.
18 MS. NEI: Okay. Yes, ma'am.
19 COUNCILMEMBER PITTMAN: I do have a ques-
20 tion. I know the original intent was foot massage --
21 MS. NEI: Yes.
22 COUNCILMEMBER PITTMAN: -- and I know you've
23 been performing --
24 MS. NEI: Well --
25 COUNCILMEMBER PITTMAN: -- full body. Are

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1 you going to be applying to do everything?
2 MS. NEI: Yes, ma'am. This is because,
3 well, I understand that this new codes change, from
4 what I understand, I'm just representing, try to, for
5 the county, whether before the license, for the state
6 license for the last year, the license was, you know,
7 including everything -- foot massage and full-body
8 massage. That's for them understand. Even this is
9 something new law, and unless you have notice anything
10 until this has happened, this is a lot of requirement.
11 COUNCILMEMBER PITTMAN: I don't think that
12 was a new law. I think it was their understanding at
13 the time that --
14 MS. NEI: Yes, ma'am (overspeaking).
15 COUNCILMEMBER PITTMAN: -- it was only foot
16 massage.
17 MS. NEI: This is a lot of misunderstanding.
18 That's why I (imperceptible) on the City Hall at least
19 a lot of time, try to get things clear, what need to
20 be done, what don't need to be done, and we have no
21 answer.
22 And I don't think this is fair, for the last
23 minute, fax me on their -- you know, the denial on
24 Friday, and Mr. Scott went on vacation Monday until we
25 come back today, and --

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1 COUNCILMEMBER PITTMAN: I'd like to hear
2 what Mr. Haeberlin had to say, but I don't really have
3 a problem with you coming back if you can work out --
4 MS. NEI: Yes, ma'am (overspeaking).
5 COUNCILMEMBER ROCHE: Procedurally, when --
6 could we make a motion to just postpone it until the
7 next session? Can we do that at any point or do we
8 have to go through the whole --
9 ATTORNEY WEED: You can do that at any
10 point. There's two ways of doing it. You can recess
11 the matter until another date certain. You can go
12 ahead and have a full hearing in this case. In other
13 words, if you want to hear from Mr. Haeberlin again,
14 if you want to ask questions of the applicant, if you
15 want to hear from the public, you can do that and then
16 recess it or you can recess it now.
17 COUNCILMEMBER PITTMAN: I'd like to hear
18 what Mr. Haeberlin had to say and then recess it.
19 COUNCILMEMBER ROCHE: Well, I think if we're
20 going to do that, we should just go through the whole
21 process and then maybe recess the decision.
22 MS. NEI: Excuse me, Councilman, I just
23 really hope sometimes you can give this womens break,
24 because business is being -- you know, it's been
25 closed quite some time. You know, we'll do anything

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1 to try to get a business, you know.
2 COUNCILMEMBER ROCHE: I understand.
3 MS. NEI: Uh-huh. All right. Thank you.
4 MAYOR JENKINS: Scott? Scott, the original
5 license that had run out, was it for foot massage or
6 full-body massage?
7 MR. HAEBERLIN: It said hair salon, sir.
8 MAYOR JENKINS: Hair salon?
9 MR. HAEBERLIN: Uh-huh.
10 MAYOR JENKINS: And no foot massage?
11 MR. HAEBERLIN: Well, our understanding from
12 that of the moratorium hearings is that they discussed
13 foot massage and there was some very directed
14 questions. They did not discuss anything other than
15 foot massage. My understanding from the occupational
16 tax clerk is the business license was actually issued
17 as hair salon.
18 And so I think there's -- there's a couple
19 of things that people are probably not realizing. A
20 master of cosmetology license is kind of the highest
21 level of doing certain services, okay, and so a master
22 cosmetologist can massage the neck and the scalp,
23 et cetera, but they cannot do full-body massages. So
24 if we have nobody that works at this establishment who
25 is a licensed massage therapist -- and there's only

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1 about 2,000 people in the state of Georgia who are
2 licensed to do that -- then we have nobody that can
3 hold a license to operate this business at this
4 location to perform massages, and I'm talking about
5 areas other than the scalp, the neck, et cetera.
6 And so when I originally received the
7 petition, I went to the Secretary of State's Web site
8 and then pulled every person's driver's license that
9 was shown in the package, their information, anything
10 that was provided to me that had a name on it, I
11 looked them all up. Okay.
12 According to the State, the State
13 cosmetology license for this salon is issued to --
14 and, please, I apologize, I will probably mess this up
15 -- Van, V-a-n, B-i-c-h is another word, and another
16 word is Ha, H-a. Okay. Now, that person is licensed
17 with the Secretary of State as a master barber -- not
18 a master cosmetologist, a master barber. So actually
19 there are some things that they have, that they cannot
20 do, that a master cosmetologist can do.
21 The next person on the list was Traci Thin,
22 T-h-i-n, Vo, master cosmetologist again. Another
23 name, F-e-n-g W-u, and a new word Zhu, Z-h-u, again,
24 aesthetician; and so on, nail technician, master
25 cosmetologist, master cosmetologist, aesthetician.

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1 So we have had nobody that has presented any
2 proof to the City that all of these individuals listed
3 in this application is a massage therapist. Again, we
4 have proof that we have a master cosmetologist
5 present, and that's great. That's the reason why the
6 City issued a hair salon license for this facility:
7 so they could continue to do hair and nails while the
8 discussion occurred regarding the massage. So I think
9 that's some of the confusion.
10 Now, regarding the facts -- that is, the
11 City staff report -- the staff is just a recommen-
12 dation to the City Council. That's typical for us to
13 fax it about a week in advance, as soon as we have it
14 finished, to the applicant. First I always want to
15 get it to the City Council because, again, that's who
16 I am employed by. I get it to the City Council first,
17 the second it goes to the applicant, and then they
18 respond to you, the Council.
19 So like I said, what we have had submitted
20 to us just affirmatively does not tell me that there
21 is any licensed massage therapist present. I think it
22 is an error on the part of the State to issue licenses
23 -- and if you look in your package -- to say on here
24 when this, the Van Bich Ha, that name, if you look in
25 your package -- and again I apologize for the

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1 mispronunciation -- they list this as Spa 18 Beauty
2 and Massage Salon. So the name itself is misleading
3 because these are not licensed massage therapists.
4 Now, this same individual, B-i-c-h, new
5 word, Van, V-a-n, last name Ha, H-a, on this license,
6 it says, if you hold a license issued by the
7 professional licensing boards, what is the license
8 number? So it's self-evident that this person is not
9 a licensed massage therapist or they misled the State
10 on their application for the cosmetology license.
11 So from what I am seeing, again -- and I've
12 done a pretty diligent search of the State records --
13 unless the records are incomplete or wrong, I have not
14 found anybody that's a licensed massage therapist.
15 COUNCILMEMBER ROCHE: When did you do that
16 research online with the State?
17 COUNCILMEMBER ALEXANDER: I did it last
18 night.
19 COUNCILMEMBER ROCHE: Well, I asked
20 Mr. Haeberlin.
21 MR. HAEBERLIN: When I began my research on
22 the project.
23 COUNCILMEMBER ROCHE: So that --
24 MR. HAEBERLIN: And this was from -- we got
25 this on about 10/22 --

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1 COUNCILMEMBER ROCHE: Right.
2 MR. HAEBERLIN: -- and I started my
3 research, my advertisement, all the things I need to
4 do. I have met with Maggie several times. In fact,
5 she came in today to see me.
6 But again, I have to go on what the
7 applicant provides me. The applicant has not provided
8 me information that indicates they are licensed to be
9 a massage therapist.
10 COUNCILMEMBER ROCHE: Okay. Well, again,
11 when did you find out that they were not -- you said
12 you did the research by going through the State --
13 MR. HAEBERLIN: Yes.
14 COUNCILMEMBER ROCHE: -- Secretary of State.
15 You know, when about did that happen?
16 MR. HAEBERLIN: I don't know. 20 days ago
17 maybe.
18 COUNCILMEMBER ROCHE: 20 days ago?
19 MR. HAEBERLIN: Again, when we receive an
20 application, we have to act on that application based
21 on the information we've received.
22 And I provided the information. The
23 applicant could have shown up tonight with a copy of a
24 State of Georgia licensed massage therapist, but it's
25 self-evident, if that item was present, it's not an

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1 item that they have readily handy.
2 COUNCILMEMBER ROCHE: Okay. I was at the
3 original hearing, and I remember specifically the
4 discussion. And I did not review the tapes or
5 anything, but, you know, we issued a couple of
6 business licenses back during the moratorium hearings,
7 and I'm pretty sure that specifically we did say that
8 foot massage did not -- you did not have to have the
9 State massage license to have foot massage.
10 MR. HAEBERLIN: That is actually -- based on
11 my information, that is incorrect. If you read your
12 definition in your regulatory codes, the city
13 regulatory code, it's very specific.
14 I know Councilman Spangler had me read this
15 out at a prior hearing on Stewart Road, and that
16 definition, it talks about kneading, massaging,
17 et cetera. Based on the criterion set forth in your
18 regulatory code, massaging feet is a massage parlor.
19 ATTORNEY WEED: Legally, I have to concur
20 with Mr. Haeberlin on that. I think the massage
21 definition is clear. That definition and also the
22 relevant regulatory code has been in effect in
23 Doraville since 1997, so it would have been in effect
24 the entire time that the business was operating.
25 Whether they had paid occupation tax or not, they

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1 should have been in compliance with that code.
2 COUNCILMEMBER ROCHE: So what you're saying
3 is during the moratorium, this Council approved
4 several business licenses for foot massage and they're
5 all illegal, from what you're telling us.
6 ATTORNEY WEED: Councilman, I don't know
7 that.
8 Please bear in mind that there is no such
9 thing as a business license. It is an occupation tax.
10 COUNCILMEMBER ROCHE: Whatever.
11 ATTORNEY WEED: That's extremely important
12 in this context that there be clear definitions that
13 we're all operating and we all agree to.
14 What's required by the ordinance is a State
15 license to even have a business that would have any
16 massage activity in it. In addition to that, every
17 individual masseuse must have a State license to work
18 in that establishment. So there are two licenses that
19 come from the State involved at a minimum right there,
20 assuming that the owner and assuming that the masseuse
21 have them. They could be the same person, so maybe
22 it's one. But that's a license that comes directly
23 from the State, not us. Our code requires that. It
24 requires that those be submitted before you can allow
25 the conditional use permit to go forward.

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1 With regard to the occupation tax, that's
2 simply the payment of a tax and that's a different
3 animal than the license that's required by the code.
4 The code itself does use the term, frankly, in my
5 opinion, sloppily. I didn't write this code. It
6 says, a valid massage occupation business license. I
7 would have taken out the term "occupation" there, but,
8 once again, I didn't write this code. But it's clear
9 that this is something different than the simple
10 payment of the tax.
11 COUNCILMEMBER ROCHE: I'm trying to under-
12 stand how and why we made those decisions back during
13 the moratorium, and then today -- you know, everything
14 we knew at the moratorium was that, you know, it was
15 okay to do this, and now we're being told that no,
16 everything was -- was not okay. So I don't know how
17 that -- I'm just -- I'm not understanding.
18 ATTORNEY WEED: Councilman, I mean human
19 beings make mistakes. I wouldn't suspect that anybody
20 would think that the Council knows every single
21 ordinance that's on the books.
22 If the Council allowed someone in the terms
23 of the moratorium to come in and pay occupation tax
24 when you shouldn't have, well, that's -- that's a
25 human error. Give them their money back. That's a

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1 solution to that problem. The applicant can request
2 back taxes that were improperly paid for up to three
3 years and the City can go after taxes that haven't
4 been paid to them for up to seven years. So if that
5 is a concern, give them their money back. But either
6 way, one -- one wrong doesn't make two rights.
7 COUNCILMEMBER ROCHE: I guess what I'm
8 saying is that, as you say, we're not attorneys up
9 here, and we basically had to make our decisions based
10 on what was told to us by staff, et cetera, et cetera,
11 and I know that we approved more than one business
12 license for these types of establishments.
13 So when is --
14 COUNCILMEMBER FLEMING: Without requiring.
15 COUNCILMEMBER ROCHE: Without requiring
16 anything, I guess, because it was always the under-
17 standing, and my understanding was that as long as it
18 wasn't above the ankle -- and I can remember Mr. Bates
19 just like it was yesterday, saying: Not above the
20 ankle. As long as you're not above the ankle,
21 everything's fine. And we're all saying, okay, we'll
22 nod our heads and we'll do it.
23 Now we're saying that there's a whole
24 'nother -- you know, and I'm --
25 ATTORNEY WEED: And it hasn't changed --

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COUNCILMEMBER ROCHE: -- surprised at this point that --

ATTORNEY WEED: It hasn't changed since 1997 to the present date. If the Council chooses to ignore the previous ordinance or, you know, change that ordinance, you can do so tonight.

COUNCILMEMBER ROCHE: I don't think we ignored anything at the time. I think we --

ATTORNEY WEED: I'm not accusing that.

COUNCILMEMBER ROCHE: -- tried to make --

ATTORNEY WEED: I said you can.

COUNCILMEMBER ROCHE: -- we tried to make our best decision based on the information that was provided to us at the time.

MR. HAEBERLIN: Well, I do want to clarify one --

ATTORNEY WEED: If you care to, you can simply get rid of the ordinance tonight. You can approve this despite the ordinance. I wouldn't advise you to do that, but that's up to the Council.

MR. HAEBERLIN: I do want to clarify one thing. These applicants, the first three that we're talking about, were three days before I actually was employed by the City, so we really did not have -- and I don't know what staff represented the petition to

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you. I know Mr. Calcaterra was in the audience. I don't think he said anything. And I know Mr. Howe was sitting in the audience. But other than that, you probably just had Rhonda Blackmon or Sandra. Sandra may not have been present. But needless to say, you did not have any planning staff that was available to you at the time you had this hearing, so it was unfortunate it was three days before my employment with the City. There were three licenses looked at during that moratorium exemption hearing.

But recall, the way your ordinance is structured, all these requirements in the regulatory codes involve the police department as well, so it would be normal process. And that's what we're expected to do is to involve ourself in these businesses, and Code Enforcement did that. Unfortunately, they were not complying with what they needed to do.

COUNCILMEMBER FLEMING: I have a couple of housekeeping questions if you don't mind.

MR. HAEBERLIN: Sure.

COUNCILMEMBER FLEMING: Do we prorate the tax -- we'll call it the occupational tax because it's not a business license, quote/unquote. Do we prorate it when they, you know, come in on November the 2nd or

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November the whatever or do we charge them the full year's?

CLERK BRYANT: We do prorate. But if they weren't in business the whole year and they just decided to come in in October and pay for the license, no.

COUNCILMEMBER FLEMING: So I'm talking this business right here. They started this business in November of 2008. And based on what I'm hearing now and something Mr. Roche has received just recently, that the renewal is supposed to be done by December 31st, two thousand -- of the same year.

And so like I'm saying, this is a house-keeping issue that I'm talking about that might be presenting a problem. How can you possibly renew an occupational tax when you haven't even closed out your year yet to determine how much sales you've had or how much such-and-such you've had?

I'm having difficulty understanding, and I can understand why they -- and I would have thought, I've started a new business in November, and, you know, most things are annual.

MR. HAEBERLIN: Well, ma'am --

COUNCILMEMBER FLEMING: The hers would have been, you know, a month later.

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MR. HAEBERLIN: Yeah. The license clearly does state on the front of the license the day that it expires, and it is always on December 31st. So I did want to make sure that the people were aware of that. That license hanging in the salon or whatever establishment says expires December 31st.

COUNCILMEMBER FLEMING: Okay. But now you can talk to me about the 12/31 of the same year. I have a problem. You know, I really have a problem with that.

ATTORNEY WEED: The state law on the subject is found in Title 48, 48-13 (1) through whatever the other codes are, and it's done that way throughout Georgia.

Essentially, your first year that you come into business, you don't have any kind of record whatsoever of what your gross receipts are going to be. So all you're required to do is give an estimate, and the government pretty much accepts your estimate on face value, under, you know, good faith.

And then after you get to the point of renewal, the same thing essentially applies. Renewals are usually triggered a few months in advance of the expiration date so that there isn't a mad rush to the city hall with every business in town, you know,

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1 trying to get renewed on the 31st. In fact, I think
2 renewals begin at least a month or two before the end
3 of the year.
4 CLERK BRYANT: (Inaudible)
5 ATTORNEY WEED: Speak up.
6 THE REPORTER: I didn't hear you.
7 ATTORNEY WEED: She said last Friday in
8 November, so it's about a month in advance of when the
9 actual termination occurs.
10 So with regard to year-end close-out, are
11 the numbers ever perfect? Probably not. But in this
12 case, the tie definitely goes to the runner because
13 the government ordinarily doesn't look into in great
14 depth what they've actually paid, particularly that
15 first year since it's just a gross estimate.
16 COUNCILMEMBER ROCHE: Well, I was requested
17 to provide -- I had to provide proof of what my income
18 was for the previous year, and this was around
19 February or so.
20 CLERK BRYANT: It's in March. That's for
21 the previous year.
22 COUNCILMEMBER ROCHE: Right. So that's how
23 they know how much you made, so how much, you know, to
24 adjust your taxes.
25 So yeah, I had to pay before the end of the

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1 year, whatever it is, 85 bucks or whatever it is, and
2 then in March, they look at what I actually made or
3 any business made, and at that point, they say,
4 whoops, you owe us another five dollars or whatever.
5 COUNCILMEMBER FLEMING: So the whole state's
6 doing 12/31? Is that what you're telling me? The
7 state of Georgia is doing December 31st of every year
8 as renewal for occupational tax?
9 ATTORNEY WEED: My memory of this is that
10 you could do them either based upon your budget cycle
11 or based upon termination of a calendar year. I
12 believe the original statute allowed either/or. Most
13 budget cycles are either a calendar year or the June-
14 July. So I believe that there may be some cities that
15 do them on a June-July basis but the vast majority do
16 them on a calendar year.
17 COUNCILMEMBER ROCHE: So they would have
18 received their license around September or October.
19 Do we know that they received the packet to renew
20 their license like three or four weeks later?
21 CLERK BRYANT: Every time somebody gets a
22 license from me and it's like this month or the month
23 of December, I tell them: This license is only good
24 for one/two months. Make sure you renew. I will send
25 you a renewal form. If for some reason you don't get

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1 it, it gets lost, make sure you renew your license
2 because it will expire December 31st.
3 COUNCILMEMBER ROCHE: So we can be sure that
4 the City sent them renewal stuff back in Sep- -- last
5 year.
6 CLERK BRYANT: If they come like right now
7 everybody -- I have to have everybody's renewal. If
8 they come after I sent the renewal, I give them the
9 packet when they get their license, for this year.
10 COUNCILMEMBER ROCHE: I guess my question is
11 this: If I had gotten my license three weeks ago,
12 would I still three weeks later have gotten a renewal?
13 That's a very close time frame.
14 CLERK BRYANT: If I already sent the
15 renewals, no. I will give it to you at the time you
16 get your license for this year.
17 COUNCILMEMBER ROCHE: Okay.
18 MR. HAEBERLIN: That's all I really had. I
19 just wanted to illuminate.
20 You know, again, I think there's a lot of
21 confusion about what a cosmetology license covers, and
22 it seems self-evident from what I've seen that there
23 is not the massage therapy. And that's -- it's a very
24 protected license. If I say I'm a massage therapist,
25 the Georgia Board of Massage Therapy wants to see my

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1 license. In other words, if I advertise massage
2 services but I don't say I'm a massage therapist,
3 that's a different situation. But representing one's
4 self as a massage therapist, there is a very limited
5 number in this state. It only appears to be about
6 2,000 people. So there's a very limited number of
7 people that actually have this that would be able to
8 comply under our rules, because it is a protected --
9 it is a -- I guess it could be look at as a property
10 right. Mr. Weed may not agree with me -- I don't know
11 -- but it's a very limited number.
12 And we have no proof otherwise. I have
13 discussed this with the applicant, and it continued,
14 and I have been asked whether the Council would
15 approve this. My comments was, I am only a
16 recommending body. The Council will make the ultimate
17 decision.
18 We have provided the applicant plenty of
19 information and time to submit information back to the
20 Council, and the Council packages were not out that
21 much further than when the applicant received their
22 information as well -- their staff recommendation. So
23 I just wanted to clarify some of those.
24 Are we going to continue on with the public
25 hearing or are you guys interested in recessing this

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1 item at the time?
2 COUNCILMEMBER ALEXANDER: I have an
3 additional observation.
4 Information that the applicant supplied,
5 they supplied the State of Georgia cosmetology salon
6 license, and it's expired. It expired in June.
7 MS. NEI: I already renewed it.
8 COUNCILMEMBER PITTMAN: I think we'd like to
9 hear the rest of the public hearing.
10 And we do appreciate you trying to make
11 efforts to rectify everything.
12 If you could possibly get with him and get
13 it in writing, and maybe you could help her to under-
14 stand exactly what we are requiring. And if she can
15 come up with those things, then certainly we could set
16 a date to come back.
17 MR. THURMOND: I think so. I'm trying to
18 make notes. Aside from the licensing issue and the
19 site plan deficiency, was there anything else that
20 needed to be addressed?
21 MR. HAEBERLIN: I would ask the applicant to
22 review the criterion that I the staff am given by the
23 City Council and to be able to address each one of
24 those points as listed in the standards of review of
25 the staff report which you received, and they go items

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1 one through eight. And that will require that she
2 respond to the Council while you feel that you have
3 met those criteria or how you feel that you meet it
4 differently than what I have addressed. And so,
5 again, that's what I am given, and that's what you
6 respond to the Council.
7 And we will need affirmative licensing
8 information from the Georgia Board of Massage Therapy,
9 which we've not been able to obtain. And your site
10 plan is deficient because it needs to show setbacks,
11 dimensional setbacks, it needs to show parking. It
12 needs to show all the criterion that are addressed in
13 the items one through eight, and it unfortunately does
14 not. So we'll need to know if there's no parking on
15 this site to satisfy the needs of these buildings.
16 Just on a general look-and-see, you know,
17 the small building that you're in is one space for 250
18 square feet, the office building in the back is one
19 space for 300 square feet. And so the parking
20 criteria on this site are not for that of a general
21 shopping center, and so you'll need to address that
22 parking in a very detailed function: How many square
23 feet? Is it devoted to office? And what is the
24 parking provided for the offices and how many square
25 feet is devoted to that of the retail salon or --

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1 excuse me -- massage location and the parking
2 provided for it.
3 MR. THURMOND: Okay. And somebody else
4 could work with you about --
5 MR. HAEBERLIN: Certainly. I would like to
6 receive the information, though, in writing that I
7 would be able to share with the Council.
8 MR. THURMOND: Okay.
9 MR. HAEBERLIN: So I guess my understanding
10 is we're proceeding with the public hearing?
11 MAYOR JENKINS: Is that correct?
12 COUNCILMEMBER PITTMAN: That's okay.
13 MR. HAEBERLIN: Okay.
14 MAYOR JENKINS: Okay.
15 MR. HAEBERLIN: So on the public hearing, we
16 want to hear from those for and those against, and
17 we're going to ask that you raise your hand.
18 If you'd like to speak for this petition,
19 please raise your hand.
20 MAYOR JENKINS: Raise your hand, please.
21 MR. HAEBERLIN: Anybody that would like to
22 speak for the petition. That means that you want them
23 to be approved as a massage location.
24 - - -
25 (No response)

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1 - - -
2 MR. HAEBERLIN: Okay. Anybody that would
3 like to speak against the petition, please raise your
4 hand.
5 Again, seeing nobody -- Oh.
6 MS. FRAYSSE: Can I ask a question?
7 MR. HAEBERLIN: Direct that, please, to the
8 Council.
9 MS. FRAYSSE: Are we talking about a foot-
10 massage parlor or are we talking about a full-body
11 massage parlor?
12 COUNCILMEMBER PITTMAN: That's what I --
13 MS. FRAYSSE: We're talking apples and
14 oranges?
15 MR. HAEBERLIN: There is no difference. If
16 you are massaging somebody, you have to be a massage
17 therapist unless it falls under the parameters of a
18 master cosmetologist while you massage the neck,
19 et cetera, while you're applying perms and treatments
20 to the hair and cutting the hair.
21 ATTORNEY WEED: Neck, face, scalp and hair
22 of a customer for cosmetic or beautifying purposes is
23 exempt.
24 MR. HAEBERLIN: So in this -- I guess we
25 would say this is a full-body massage, even though

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it's not the correct term, so it is covered under massage parlor.

COUNCILMEMBER ROCHE: When is our next public hearing scheduled?

MR. HAEBERLIN: December 14th, I believe, at 6:30.

COUNCILMEMBER FLEMING: December?

MR. HAEBERLIN: Yes, ma'am, because of the holiday. There was a discussion you may recall -- it's on e-mail -- about when should we hold the meetings, and they didn't want it at -- most of the Council did not want it at the remaining part of the year due to the holidays, and we tried to move it forward to accommodate some petitioners. So it would be December 14th if you choose to recess it.

COUNCILMEMBER ROCHE: Did you want to recess it or --

MS. NEI: (Inaudible)

MR. HAEBERLIN: Please come forward. So at this time, the public hearing section is closed, and we're going to hear back from the applicant.

MS. NEI: Well, I have been very confused, the whole massage license part. There's so many rules, we are confused, the Councilmen's confused. And if they issue last year was the problem for just a

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simple mistake, the point is, just real simple mistake, the license last year for renew, and then right now come back to so many.

And our question is, what are we doing here? Even you give to us last year to get a business, then this is really simple mistake. We pay the tax. The business run down. You know, people having no working for that, you know, until we get everything approved.

And I've been asking what do you need to be change, and I have no one to answer, and right now people sitting there. All the rules is even -- we get all confused, what license is for what license.

COUNCILMEMBER PITTMAN: So could we --

MS. NEI: And we have hired a lawyer for all this complicated things.

COUNCILMEMBER PITTMAN: Basically we're just asking for the massage license; is that correct?

ATTORNEY WEED: I would not --

COUNCILMEMBER PITTMAN: A copy of --

ATTORNEY WEED: I would not presume to know what the Council is asking for.

COUNCILMEMBER PITTMAN: Well, that's what --

ATTORNEY WEED: The Council best knows what the Council wants in order to make a decision.

COUNCILMEMBER PITTMAN: Well, isn't that

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required?

ATTORNEY WEED: My opinion is it is required, it has been required since 1997, and assuming for the sake of argument that --

MAYOR JENKINS: Tom, no.

ATTORNEY WEED: -- the Council adopted or somehow granted them the permission to do foot massage by virtue of letting them pay the occupation tax, they still would have had to get, outside of that, according to the ordinance, proper licenses. That still would have been a requirement whatever you did.

COUNCILMEMBER PITTMAN: Right.

ATTORNEY WEED: You just simply gave them permission to continue in light of the moratorium.

COUNCILMEMBER PITTMAN: Right.

And do you understand that?

MS. NEI: Yes.

COUNCILMEMBER PITTMAN: Okay. So if you could provide that.

And I appreciate the fact that you're saying that you were issued that before, but this is what we need now.

MS. NEI: Okay.

COUNCILMEMBER PITTMAN: Okay?

MS. NEI: All right. Thank you.

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COUNCILMEMBER PITTMAN: Thank you.

COUNCILMEMBER ROCHE: I have a question before you're done.

MS. NEI: Okay. Yes, sir.

COUNCILMEMBER ROCHE: Do you -- I mean the business license says for beauty salons. I mean you guys, do you cut hair, do you do nails?

MS. NEI: Okay. I am confused on that. Scott asked me to get a business license and to keep business running for businesses. You know, we have no license. That's what we say. So he want to get us whatever the license keep our business running.

And my confuse here, the whole massage, the Spa 18, they are seller for massage, foot massage, okay, and why we get a hairdressing/pedicure/manicure license to run the business, and I'm confused. And we having hard time get a license, too, and nobody can work in there.

COUNCILMEMBER FLEMING: So you have no hair salon --

MS. NEI: No, ma'am; no.

COUNCILMEMBER FLEMING: -- in Spa 18?

MS. NEI: No, ma'am; no. And that's why we been getting -- want to get us this license, and nobody can do nail and hair, and I -- the whole

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1 Council's -- we're hanging here. Why we want to get a
2 hairdresser for doing foot massage?
3 COUNCILMEMBER ROCHE: I understand.
4 MS. NEI: And I'm real -- I'm real angry
5 because all the people here try to get a license, run
6 the business. There's one rule, and not nobody
7 helping us. And I'm mad about because I'm back and
8 forth, try to get an answer --
9 COUNCILMEMBER ROCHE: I understand.
10 MS. NEI: -- and I have no one help.
11 COUNCILMEMBER PITTMAN: Again, we appreciate
12 that, and we're sorry that you feel that way. But if
13 you could get with him or whoever and the things that
14 we ask, and see if you could get that straightened up.
15 MS. NEI: I give it until October 22nd and
16 everything's okay, and that's why --
17 COUNCILMEMBER PITTMAN: Okay, but we need
18 that now. I understand. Okay?
19 MS. NEI: Is there anybody have any
20 question?
21 COUNCILMEMBER PITTMAN: No.
22 MS. NEI: No? Okay.
23 COUNCILMEMBER FLEMING: I need to make a
24 motion, please, that the seven conditional criteria
25 that's listed in addition to the massage certificates

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1 and the massage license be excluded from the criteria
2 before we make any type of decision.
3 COUNCILMEMBER ALEXANDER: I'm sorry. I
4 don't understand the motion.
5 COUNCILMEMBER FLEMING: As far as this is
6 being considered as a conditional use permit. This
7 company has been in business all year long until we
8 passed the massage parlor ordinance, and then Quality
9 of Life went out to distribute the massage therapist
10 or the massage parlor ordinance.
11 COUNCILMEMBER ALEXANDER: I don't believe
12 that's true.
13 COUNCILMEMBER FLEMING: Why did we get them
14 signed from all the massage parlor ordinance, um --
15 COUNCILMEMBER ALEXANDER: I believe their
16 business license was checked prior to our passing of
17 the ordinance.
18 COUNCILMEMBER FLEMING: Okay.
19 ATTORNEY WEED: That would be accurate.
20 That is correct.
21 COUNCILMEMBER FLEMING: All right. I
22 rescind that statement, then.
23 However, I do not believe that the
24 conditional use criteria should be considered in this
25 particular hearing because they were already in

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1 business and have been in business all year long.
2 They started in business in November. What
3 we're really wanting to see from them is proof of
4 massage.
5 If they don't have a hair salon, I'm not
6 sure why the City of Doraville permitted them for a
7 hair salon.
8 COUNCILMEMBER PITTMAN: Is that what they
9 were --
10 CLERK BRYANT: They do. They have a hair
11 salon. They did have a hair salon, and that's the
12 type of license that they provide to you, for them to
13 have a beauty salon.
14 None of them provide anything for -- and
15 that's why -- they did not provide the City with
16 massage licenses from the State since they did not
17 provide them for the massage occupational tax
18 certificates in 2008 nor in 2009.
19 COUNCILMEMBER ALEXANDER: Mr. Haeberlin, in
20 your review of the tape -- and again I could be wrong
21 -- I believe they were initially a hair salon and they
22 wanted to add foot massage to their services?
23 MR. HAEBERLIN: Correct. The folks that
24 came in during the moratorium hearing -- and I believe
25 that Ms. Wendy Chang was there with a gentleman named

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1 Steve, and it was not audible as to who he was. It
2 was a male and a female. They talked about doing hair
3 and nails and skin care, et cetera. Okay. And it was
4 asked specifically about massage, and they said foot
5 massage, something like foot massage at that time.
6 Now, since this time, the discussion about
7 this provisional license, when I was approached about
8 how can we stay in business to do hair and nails, I
9 said, well, if you can meet the requirements for that
10 business license, we can get you a business license.
11 And in that package, I have a letter directly from the
12 applicant that says, I understand I am to perform no
13 massage services. Okay?
14 We kept this business going relative to
15 having some income base but not massage, because you
16 have a group of people that are licensed to do the
17 hair and nails, et cetera, so it seemed logical and
18 valid for them to be in business doing that. And that
19 is the reasoning and rationale rather than them being
20 closed permanently until this application hearing.
21 But the understanding -- and it is in writing from the
22 applicant -- that they would not perform massage
23 services, so I think it's very clear because it came
24 from the applicant.
25 So I don't think there is this misunder-

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1 standing as purported here. Why would you apply for a
2 hair and nail salon and write specifically to the City
3 and sign your signature to it if you're not attesting
4 to that? So we have some areas where we're really not
5 clear what exactly is going on here.
6 COUNCILMEMBER ROCHE: Yeah.
7 COUNCILMEMBER FLEMING: I've made a motion.
8 COUNCILMEMBER PITTMAN: Also -- you did make
9 a motion?
10 COUNCILMEMBER FLEMING: I made a motion to
11 delete the seven criteria for a conditional use permit
12 and only require them to come to us with the
13 certificates of proof of masseuse licenses as well as
14 a certificate from the State that their business
15 license indicates that they are indeed a massage
16 parlor. Without those two items, I don't believe that
17 we could pursue it. But I do not wish to have the
18 seven criteria, conditional uses, considered.
19 ATTORNEY WEED: Now I'd like to say this.
20 If you want to go ahead and second that for purposes
21 of discussion before I make a legal statement, that's
22 fine with me, or I can go ahead and make a legal
23 statement. What would you prefer?
24 If you don't get a second, then there would
25 be no point in me making a legal statement. That's up

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1 to the Council.
2 COUNCILMEMBER ROCHE: I'll second it and
3 hear what you have to say.
4 ATTORNEY WEED: All right. You can't do it
5 that way. There may be a different way you can do it.
6 But in my opinion, if the Council -- the
7 only reason why you're constituted here for this
8 purpose was to either grant or deny a conditional use
9 permit. You have no other legitimate purpose to have
10 these people before you. So if you don't consider the
11 standards applicable for all conditional use permits,
12 then you have held an illegal hearing in my opinion
13 and you've wasted these people's time.
14 So where you might want to go is, perhaps
15 the ultimate question that you need to decide will be
16 whether it is the Council's opinion that your grant of
17 relief from the moratorium by allowing them to pay
18 occupation tax at the time that they did it last year,
19 if that somehow vests them or gives them some grand-
20 fathering from the other regulations of the ordinance.
21 That would achieve where you want to go.
22 Or you could make a decision that they meet
23 the criteria that are set out, and you can grant them
24 the conditional use.
25 But with regard to having a motion and

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1 second to simply not consider the criteria under the
2 law, my opinion is you can't do that, because you have
3 no other reason to be here to hear these people's
4 case.
5 COUNCILMEMBER ROCHE: Well, I was confused
6 about that because it seems like all we've been
7 talking about today is the occupational tax business
8 license.
9 COUNCILMEMBER FLEMING: But they want a site
10 plan, and he has to provide proper parking and --
11 COUNCILMEMBER ROCHE: We know all that.
12 COUNCILMEMBER FLEMING: -- da-da-da-da-da.
13 COUNCILMEMBER ROCHE: I'm just saying. I
14 mean I'm more confused.
15 ATTORNEY WEED: Well, let's --
16 COUNCILMEMBER ROCHE: I understand what
17 you're saying. But it just seems like the whole thing
18 had to do with the occupational tax license, because
19 that was apparently the whole thing that touched this
20 off; right?
21 ATTORNEY WEED: I don't know who you're
22 asking, but let me --
23 COUNCILMEMBER ROCHE: I'm just asking in
24 general.
25 And so instead of saying, oh, no, we --

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1 It is my understanding that it was
2 discovered that they did not have -- their
3 occupational tax license had expired, and it was
4 discovered that it had expired. And so wouldn't they
5 be simply applying for an occupational tax license
6 instead of a conditional use?
7 ATTORNEY WEED: To begin with, apparently
8 the original occupation tax permit was never for
9 massage. It was for cosmetology slash --
10 COUNCILMEMBER ROCHE: I got that.
11 ATTORNEY WEED: -- hair salon.
12 COUNCILMEMBER ROCHE: Even though it was
13 approved.
14 ATTORNEY WEED: So they never had -- they
15 never paid occupation tax or listed that they wanted
16 to do massage, apparently.
17 In addition, from 1997 until today, even if
18 they were given authority by this Council to move
19 forward because you exempted them from the moratorium
20 requirements, they still should have had all the state
21 licenses in order to do massage, either way.
22 So they can still achieve all those goals if
23 you want to give them the opportunity to achieve those
24 goals. But with regard to the present motion and the
25 present second, you would essentially -- you would be

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1 saying to staff to do something illegal, in my
2 opinion, and I would advise staff not to comply with
3 that order if the motion passes --
4 COUNCILMEMBER ROCHE: Right.
5 ATTORNEY WEED: -- which I hope that it
6 doesn't.
7 COUNCILMEMBER ROCHE: You've talked about
8 two different -- and I don't mean to pick on you
9 particularly, but we're talking about two different
10 licenses -- an occupational tax license and a
11 licensing as a massage therapist.
12 ATTORNEY WEED: At least two.
13 COUNCILMEMBER ROCHE: Fine. What does that
14 have to do with conditional use, though? Now we're
15 talking about conditional use. That, to me, is a very
16 different thing.
17 ATTORNEY WEED: Okay. Let's start at the
18 beginning. Let's start at the beginning.
19 There's one purpose that the Council is
20 sitting here tonight with regard to these applicants.
21 One purpose only. And that is they are before you
22 seeking a conditional use permit to be allowed to have
23 a massage parlor at a certain location in the city.
24 They have to come before you to do that, because
25 that's currently the law.

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1 And that has been the law since what time,
2 Scott?
3 MR. HAEBERLIN: I can't think of when
4 2008-33 was approved, but it has been since my
5 employment with the City.
6 ATTORNEY WEED: Since 2008 at least.
7 MR. HAEBERLIN: Sometime December, I think.
8 ATTORNEY WEED: Okay. So that's currently
9 the law. That's the only reason why you're here.
10 COUNCILMEMBER ROCHE: I got that. I guess
11 my --
12 ATTORNEY WEED: So you could decide -- you
13 could look at the criteria and decide that they meet
14 the criteria and allow them to go forward, grant them
15 the conditional use, order them to come back to you
16 and make sure that they get all the appropriate
17 permits. It's done. You could do that. You have no
18 basis in my opinion to deny the conditional use
19 permit. It's over. If they don't like it, they can
20 appeal.
21 You could make some determination that
22 somehow -- based upon the exemption you granted when
23 they came to you originally to be allowed to pay
24 occupation tax, that somehow that constitutes some
25 form of vesting, because that event I believe did

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1 occur before the 2008 ordinance that made this use a
2 conditional use.
3 COUNCILMEMBER ROCHE: Right.
4 ATTORNEY WEED: And if you do that, that
5 could be an option as well.
6 COUNCILMEMBER ROCHE: It just seems to me
7 that getting a massage license is a different thing
8 than a conditional use, and I'm not sure why that
9 would come to us.
10 ATTORNEY WEED: Well, it has to now because
11 the Council passed a law that said it had to.
12 In 1997, you passed a law that says that all
13 masseuses had to have a state license. And it's been
14 on the book since then, over 10 years; hasn't changed.
15 So that's always been out there.
16 With regard to the conditional use permit,
17 having to get that to have a massage parlor in town,
18 this Council adopted that as well. You adopted it in
19 2008.
20 So it comes down to, I think, essentially
21 three options: One, you can make a determination that
22 somehow the exemption you granted underneath the
23 occupation tax moratorium, that when you allowed that
24 to occur, that that somehow gives them permission to
25 have this use at this location. You still need to

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1 require them to get the other state licenses, but that
2 would take care of the zoning element of it.
3 COUNCILMEMBER ROCHE: Right.
4 ATTORNEY WEED: The other thing you could do
5 is, you know, you have the evidence. You could simply
6 determine as a majority that they meet the criteria
7 granted under the conditional use and grant them the
8 thing and still require them to get the state
9 licenses. That's another option.
10 You could recess this to some other date and
11 wait until they get more information to you, or they
12 get the licenses and revisit the entire thing.
13 I think your best option if you want to
14 grant this would be to make a determination that they
15 meet the standards, for them to bring back --
16 contingent upon them showing you proof of all the
17 state licenses if that's what you want to do.
18 COUNCILMEMBER ROCHE: Yeah, I got the first
19 part. I'm just not sure why a zoning hearing would
20 talk about occupation, you know, licenses.
21 ATTORNEY WEED: Because if it doesn't --
22 My analogy, if I were a doctor and I wanted to treat
23 patients in Doraville, I'd have to get an office in a
24 certain zone to do that.
25 COUNCILMEMBER ROCHE: Right.

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ATTORNEY WEED: But the Council would have a right to find out if I was a licensed medical practitioner. And if I wasn't, the Council I think would not only be embarrassed by granting me the opportunity to practice medicine without a license in your town but arguably you'd be contributing to perhaps criminal action.

COUNCILMEMBER ROCHE: Of course.

ATTORNEY WEED: That's why it matters.

COUNCILMEMBER ROCHE: But if the zoning was taken care of, then it would never come to the Council.

When you came to get your occupational license as a physician, you would show your physician's license and it would never come to the Council.

ATTORNEY WEED: That is correct, because it would go straight to the police department in this case, it being a masseuse, and they would either qualify or they wouldn't underneath that.

COUNCILMEMBER ROCHE: I guess I just --

ATTORNEY WEED: But the Council wrote a law because you wanted to have additional regulation on massage parlors, which is why you made --

COUNCILMEMBER ROCHE: But that law was passed recently.

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ATTORNEY WEED: In 2008. And then you have made an amendment since then to limit the overall number.

COUNCILMEMBER ALEXANDER: I have --

COUNCILMEMBER FLEMING: Remove my motion, please.

COUNCILMEMBER ALEXANDER: I have one more question. I want to make sure that everyone is on the same page.

It's my recollection, and confirming with the planner's review of that tape, that there was an affirmative vote to allow the previous applicant to do foot massage only, never full-body massage with the removal of clothing. I just want to make that distinction.

Is that what you recall, Mr. Roche, because you said you --

COUNCILMEMBER ROCHE: I believe so, yeah.

MR. HAEBERLIN: I mean that is my recollection as well, reviewing the tape. Obviously, although I was not an employee of the City at the time, I had the opportunity to review this on tape, and after reviewing the tape, it seems that that is a correct rendition of what occurred.

And obviously and as Mr. Weed has

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illuminated, all the regulatory controls such as a criminal background investigation, fingerprinting, photographing and all that stuff that the police department does for masseuses will still be there, I assume, regardless.

ATTORNEY WEED: That's --

COUNCILMEMBER ROCHE: Right.

ATTORNEY WEED: -- my opinion.

COUNCILMEMBER ROCHE: Of course. It would have to be.

So do all the foot massage parlors have occupational tax licenses for -- what is it? -- cosmetology or beauty parlor or whatever it is?

ATTORNEY WEED: I sure hope not but I don't know.

COUNCILMEMBER ROCHE: I think maybe their license was issued in error also.

COUNCILMEMBER PITTMAN: I was going to make a motion to continue this, give them the opportunity to get with Mr. Haeberlin and bring back the information that we are requesting, that he is requesting.

MAYOR JENKINS: Pam, did you --

ATTORNEY WEED: Councilman, would you withdraw your second first?

COUNCILMEMBER ROCHE: I'm sorry. I withdraw

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the second.

ATTORNEY WEED: Thank you.

MAYOR JENKINS: Pam's got to --

COUNCILMEMBER FLEMING: I did, sir.

COUNCILMEMBER PITTMAN: She did.

ATTORNEY WEED: Councilman Fleming withdrew her motion and Councilman Roche withdrew his second, and apparently there's a new motion on the table.

COUNCILMEMBER PITTMAN: And that would be on December 14th, 2009.

COUNCILMEMBER ROCHE: And I'll second that.

COUNCILMEMBER ALEXANDER: And I would like to make sure the applicant gets a copy of Article 9, the massage parlor regulatory ordinance.

MR. HAEBERLIN: I can do that. They have received the amended version with the hours, et cetera, and I have proof of that, obviously. And so I want to make certain that they have the regulatory codes that are overseen by the regulatory clerk as well, and I can do that.

COUNCILMEMBER FLEMING: But as of right this minute if they were doing a hair salon in that business, they could still be operating; correct?

MR. HAEBERLIN: But not performing massages.

COUNCILMEMBER FLEMING: No. I just said

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1 hair salon.
2 MR. HAEBERLIN: That's correct. However,
3 again, there may be evidence --
4 COUNCILMEMBER FLEMING: I just --
5 MR. HAEBERLIN: -- that suggests otherwise.
6 COUNCILMEMBER FLEMING: I just wanted to --
7 MR. HAEBERLIN: Yeah.
8 COUNCILMEMBER FLEMING: -- clarify that they
9 could be open doing business as a hair salon doing
10 hair --
11 MR. HAEBERLIN: Uh-huh.
12 COUNCILMEMBER FLEMING: -- only.
13 MR. HAEBERLIN: Correct.
14 COUNCILMEMBER PITTMAN: But no hair salon?
15 Never been a hair salon?
16 MS. NEI: She owns the hair salon on Asian
17 Square, okay, and there was never a hair salon, nails.
18 There is no hair salon and, you know, pedicure service
19 in that particular area.
20 And I have one more thing to say. I'm
21 sorry, everybody. We've been closed the business
22 since the day, and we will just be counting right on
23 the letter saying we not perform massage. We have
24 been tell right on the letter for the City and
25 (imperceptible) -- telling us right on the letter

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1 we're not performing massage. It's exactly telling
2 us. This is not right. We been (imperceptible) the
3 whole time.
4 COUNCILMEMBER ROCHE: What letter is that?
5 MS. NEI: My girlfriend today went to the
6 City to try to get things done, and there was a letter
7 asked her to writing for the City saying the license
8 we're getting is specially having, say, okay, the
9 license we're applying is not for massage. By the
10 way, we could get a hair salon, the license, we can
11 get a business running. That's the whole point.
12 And why we want to get a license for
13 hairdressings and pedicure for running a business for
14 massage? There was no increments to settle for the
15 hair salon. The increment, you know, purpose of the
16 service of hair and nail. And we been (imperceptible)
17 to turn about a letter telling us and writing down
18 this is no massage purposes using.
19 And we thought maybe this is honest
20 misunderstand. He try to get us back and forth, get
21 the spa open. That's what we understand. We try to
22 get the business license renew.
23 But why the other purpose if we don't have
24 any business increment service for hair and nail? And
25 the turn about the letter say we have specially it's

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1 turning down, it's have us write down that this is no
2 purpose for any massage uses.
3 So I'm confusing here, because right now
4 this is no employee in the spa, nobody, because we
5 don't do hair, we don't do nail. Why would we doing
6 that? And then business been closed.
7 And the whole thing is very confused. And
8 then we been telling one thing and doing another
9 thing. Maybe this is some of the misunderstanding,
10 try to get business open, but I think this is not
11 fair. You know, peoples been there, try to make a
12 living. There is rent need to be paid. And this is a
13 lot of the misunderstand. This business a big mess.
14 And then no matter what we say -- you know.
15 COUNCILMEMBER PITTMAN: What's the name of
16 her hair salon?
17 MS. NEI: Hair Capital.
18 COUNCILMEMBER PITTMAN: Hair Capital.
19 MS. NEI: Yeah. She's doing -- had a shop
20 just cutting hair and the other partner is having the
21 restaurant. One is having hair salon, one have a
22 restaurant. So what we doing get a license do not
23 perform massage, of hair and nail?
24 COUNCILMEMBER PITTMAN: What is Triple V
25 Salon?

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1 MS. NEI: This is actually -- this is some
2 misunderstand when they regis [sic] the corporation.
3 Okay. And when they come back to renew the business,
4 city license, they say that you must add the slash Spa
5 18 Massage.
6 COUNCILMEMBER PITTMAN: So it's Triple V
7 Salon doing business as Spa 18.
8 MS. NEI: Well, actually it is, but we had
9 to go back to state, re-change the name for the
10 corporation. This is another mess that we've been
11 getting done. So I was really -- didn't really want
12 to waste anybody's time. Just get us to get business
13 running.
14 Right now, even there is no employee. The
15 business is closed, and we just try to get business,
16 go back and forth and do the things because the rent
17 need to be paid and right now the economy's just real
18 bad.
19 And then even the Councilmen have a lot of
20 misunderstand. We just don't try to hire the lawyer
21 here to get things so ugly, who's wrong, because this
22 always comes from misunderstanding. And then people -
23 - the funny things is that people create a lot of hope
24 for the -- for I mean for what good? I mean we try to
25 pay tax here, I mean try to do the legitimate

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1 business, and then it just make one thing to another,
2 you know. I don't know.
3 I'm just real upset because we've been told
4 to write it down do not do massage. That's what we
5 told, because the second time I have write a letter
6 and tell because this is license not do any massage
7 part. But what I understand, you know, get a
8 hairdresser, you know, when we get a license, a
9 hairdresser license. So we just want to get us
10 business, have a license to running but not a
11 hairdresser.
12 I'm done.
13 COUNCILMEMBER ROCHE: Okay.
14 MS. NEI: Does anybody have questions?
15 COUNCILMEMBER PITTMAN: Thank you.
16 MS. NEI: Thank you.
17 MAYOR JENKINS: We got a motion and a
18 second; is that correct?
19 CLERK BRYANT: That's correct.
20 COUNCILMEMBER FLEMING: And the motion is?
21 CLERK BRYANT: Recess it until December
22 14th.
23 MAYOR JENKINS: What is the motion?
24 COUNCILMEMBER PITTMAN: It's to continue
25 this until December 14th, 2009, to give the applicant

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1 the opportunity to bring back the information that we
2 are requesting as well as Mr. Haeberlin.
3 MAYOR JENKINS: Do we already have a second?
4 COUNCILMEMBER ROCHE: Yes.
5 MAYOR JENKINS: Anymore discussion?
6 - - -
7 (No response)
8 - - -
9 MAYOR JENKINS: Call the roll.
10 CLERK BRYANT: Councilmember Alexander?
11 COUNCILMEMBER ALEXANDER: Yes.
12 CLERK BRYANT: Councilmember Fleming?
13 COUNCILMEMBER FLEMING: No.
14 CLERK BRYANT: Councilmember Pittman?
15 COUNCILMEMBER PITTMAN: Yes.
16 CLERK BRYANT: Councilmember Roche?
17 COUNCILMEMBER ROCHE: Yes.
18 CLERK BRYANT: Councilmember Spangler?
19 COUNCILMEMBER SPANGLER: I'll say yes, but
20 we need to specifically let these people know exactly
21 what they need to bring back for this December 14th
22 meeting.
23 MAYOR JENKINS: Motion carried.
24 Scott?
25 MR. HAEBERLIN: I apologize, Mayor and

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1 Council. In haste, I skipped 3A, 3B, 3C. This is
2 just general housekeeping. We need to recess these
3 items to January 25th, 2010.
4 And we don't have a recommendation from the
5 Planning Commission yet because the staff is still
6 working on preparing these documents.
7 The reason why I wanted to recess them, this
8 will avoid the City incurring further financial
9 concerns to readvertise these time and time again. So
10 if we could get a motion to recess these to January
11 25th, 2010, I'm hoping to have these before the
12 Planning Commission in January so that on January
13 25th, you guys can start working on these things and
14 hopefully get them approved in some format. So that
15 would be 3A, 3B and 3C.
16 COUNCILMEMBER PITTMAN: So moved.
17 MAYOR JENKINS: Second?
18 COUNCILMEMBER ALEXANDER: Second.
19 MAYOR JENKINS: More discussion?
20 - - -
21 (No response)
22 - - -
23 MAYOR JENKINS: Call the roll.
24 CLERK BRYANT: Councilmember Alexander?
25 COUNCILMEMBER ALEXANDER: Yes.

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1 CLERK BRYANT: Councilmember Fleming?
2 COUNCILMEMBER FLEMING: Yes.
3 CLERK BRYANT: Councilmember Pittman?
4 COUNCILMEMBER PITTMAN: Yes.
5 CLERK BRYANT: Councilmember Roche?
6 COUNCILMEMBER ROCHE: Yes.
7 CLERK BRYANT: Councilmember Spangler?
8 COUNCILMEMBER SPANGLER: Yes.
9 MAYOR JENKINS: Okay, Scott.
10 MR. HAEBERLIN: The next item which is a
11 public hearing is a conditional use request as massage
12 therapy per Ordinance 2008-33; Plaza One Shopping
13 Center, Treat Your Feet. The applicant -- again, I
14 apologize for mispronouncing his name -- is Zheng
15 Guang -- I believe that's correct -- 5938 Buford
16 Highway, and tax parcel 18-337-03-002, Suites 103,
17 104, 105, zoned C-2.
18 Again, like the previous application, this
19 property is zoned C-2. However, this applicant came
20 to the City Council for another location during the
21 moratorium hearing, but this a second location that
22 the applicant is proposing within the city. And so
23 based on our code that's in effect, the 2008-33, this
24 does require a conditional use to go before the City
25 Council to determine based on the criteria given to

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1 the staff as to whether you will entertain this
2 occupational tax license going forward with the
3 necessary items that include the criterion and of
4 course the regulatory code enforcement.
5 So we are looking at a two-acre site.
6 Everyone is aware that Plaza One is a recently-
7 constructed shopping center within the city. At this
8 time, there are no other businesses within the
9 facility so this will be an anchor tenant. Again,
10 this is shown as Highway Commercial on the Comp Plan.
11 This property benefits from multiple public road
12 frontages, that being on a prominent corner, three
13 road frontages.
14 And so what we're dealing with here is a
15 shopping center that, based on the site plan, was
16 broken down in very specific criterion as to a certain
17 portion of it would be retail and a certain portion of
18 it would be office. So therefore, all their parking
19 criteria are based on what they have provided to us,
20 and so we're going to have to be very diligent in
21 following their parking criteria and make sure that
22 they don't break down the parking different than what
23 was shown on their site plan.
24 Now, there has been a lot of discussion
25 about this shopping center. We are aware -- and

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1 again, this permit being issued predates my employ-
2 ment with the City -- that this site was not built in
3 compliance with the approved site plan. So if you
4 went out there today to the site, you would not find
5 on the ground what was supposed to be on the approved
6 plans, so there's been fairly significant deviation in
7 that.
8 Now, based on that deviation, I'm not able
9 to certify, based on the site plan they have provided
10 me, that parking is met. I just don't know, because
11 the site plan does not match that of the property, so
12 I wanted to bring that to your attention.
13 Again, this is another application that came
14 before the further amendments to the '97 ordinance
15 which Mr. Weed discussed with you, which is the
16 massage parlor ordinance.
17 COUNCILMEMBER ROCHE: Didn't we have a
18 building inspector to make sure that the building was
19 in compliance with the site plan?
20 MR. HAEBERLIN: Well, sir, I'm really not
21 aware of what the building official's contract
22 entails.
23 I know that as a building official it would
24 be normal for him to inspect the building, but
25 certainly he is not a site inspector. I would not

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1 expect him to be involved with the other aspects of
2 the site. So I really don't know that, because I
3 don't know the details of Mr. Calcaterra's contract.
4 COUNCILMEMBER ROCHE: So who would?
5 MR. HAEBERLIN: I guess the City Council.
6 ATTORNEY WEED: I have his contract, but I
7 don't have it here before me.
8 COUNCILMEMBER ROCHE: Never mind.
9 COUNCILMEMBER ALEXANDER: I believe this --
10 ATTORNEY WEED: If you asked for or --
11 COUNCILMEMBER ALEXANDER: -- was done before
12 Mr. Calcaterra.
13 ATTORNEY WEED: -- would like an official
14 opinion about whether he failed or breached his
15 contract, I'm happy to give that.
16 COUNCILMEMBER FLEMING: No. But if that's
17 not part of his duties, whose duties is it?
18 ATTORNEY WEED: I could -- I could tell you
19 what's in his contract. That's all I could address.
20 COUNCILMEMBER ROCHE: But that wasn't my
21 question. My question, as Councilwoman Fleming
22 stated, is it if that's not part of his duties, then
23 whose duties is it?
24 MR. HAEBERLIN: Generally it is a
25 development or a site inspector, and the City has not

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1 chosen to employ one of those individuals.
2 COUNCILMEMBER ROCHE: Okay.
3 MR. HAEBERLIN: So that being said, you
4 know, the site plan that's presented in the package,
5 if you go out there to the site today to look at it,
6 it doesn't look like that. I just wanted to make
7 everybody clear about it.
8 And so I have reviewed that site plan in the
9 context of the standards that you've given me. And
10 again, compliance with the site plan, I can't attest
11 to that. I mean that's self-evident. And so that is
12 one of the critical items in reviewing the standards
13 of review. I mean I just can't certify that.
14 So I have provided you a footprint of the
15 three suites that they're looking at. You'll notice
16 they are demarcated as retail on the footprint. And
17 then if you look at the site plan -- and of course I
18 invite the Council to go out and look at this site.
19 It's been discussed in great length in e-mail,
20 particularly with the landscaping, et cetera, that
21 this site just simply does not match it.
22 And based on the standards of review,
23 particularly the site plan -- you know, there has been
24 discussion about has there been some saturation point
25 of these services in the city. I don't know. That's

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1 really a decision for the City Council to make. But
2 based on the criteria of the standards of review,
3 particularly the site plan, the staff did recommend
4 denial of the petition request.
5 And again, I have nothing in my package from
6 the applicant that proves -- and I'm anxious to hear
7 from the applicant -- that they are licensed massage
8 therapists in the state of Georgia. And you as well
9 may want to discuss with them their other location in
10 the city that was approved in the moratorium hearing.
11 Again, I don't factually know that there are licensed
12 massage therapists at that location either.
13 Are there any questions from the Council?
14 COUNCILMEMBER ROCHE: So your concern with
15 the site plan is that there may be a lack of parking.
16 MR. HAEBERLIN: I mean that's certainly the
17 case.
18 I will tell you this: and this is not a
19 slur on the Council, but the consultants that have
20 previously been hired to do plan review for the City
21 did a very poor job, in my opinion, reviewing plans,
22 and this is how things go forward in this fashion.
23 This should have been caught at the time the original
24 -- seriously, originally, the footprint for the
25 building was put in place, and, unfortunately, it was

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1 not.
2 But the plan review itself didn't even meet
3 the code, so I don't know how it proceeded from there.
4 It's just one of those situations that if the City is
5 to employ consultants, they have to be knowledgeable
6 of the city codes, not Dekalb County codes or some
7 other code, because our codes are very different than
8 any other jurisdiction. And they need to be able to
9 review things and to approve or deny them based on
10 what your codes are. That was not occurring,
11 obviously, before I got here, based on some of the
12 site plans I've seen.
13 MAYOR JENKINS: At the time Plaza One was
14 built, did we not have a full-time person?
15 MR. HAEBERLIN: Well, my understanding when
16 I came on board -- again, I'm not privy to a number of
17 job descriptions -- Mr. Ronald Buice was the storm-
18 water inspector and my understanding is Mr. Calcaterra
19 is the building official. But we have no site
20 inspector. We have no person that's daily at the
21 site, reviewing the activities of the construction
22 folks.
23 Generally, most building officials only look
24 at the building. That's really all they deal with is
25 the technical codes. They don't deal with compliance

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1 on zoning.
2 MAYOR JENKINS: Chuck Entsminger was here at
3 that particular time.
4 MR. HAEBERLIN: I apologize. I'm not aware
5 of that. But at the completion time, certainly the
6 completion time, I don't believe Mr. Entsminger was
7 present at the City. So for most of the project, it
8 probably would have been that.
9 MAYOR JENKINS: But he would have had to
10 approve of all the plans; is that not correct?
11 MR. HAEBERLIN: I assume, based on my
12 limited knowledge of the code, that the building
13 official -- and if Mr. Entsminger was employed as the
14 city building official and met the criterion for being
15 that, that under the previous code, he would have been
16 the individual to approve it but only in accord with
17 your codes. Not a judgment call, not an interpre-
18 tation but in accordance with your codes.
19 COUNCILMEMBER ROCHE: Well, couldn't you go
20 back and find the site plans and find out who signed
21 off on it?
22 MAYOR JENKINS: Right.
23 MR. HAEBERLIN: I certainly can.
24 COUNCILMEMBER ROCHE: That would be
25 interesting to know.

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1 MR. HAEBERLIN: I will find out that
2 information for the Council.
3 MAYOR JENKINS: Sure would.
4 COUNCILMEMBER ROCHE: Because Mr. Calcaterra
5 I believe was also working as a part-time building
6 official --
7 MAYOR JENKINS: He was, yes.
8 COUNCILMEMBER ROCHE: -- at the time -- at
9 that time.
10 MR. HAEBERLIN: Well, I do think --
11 COUNCILMEMBER ROCHE: We had a full-time and
12 a part-time, and now we just have a part-time.
13 MR. HAEBERLIN: Well, I do want to clarify
14 for the Council, you do employ an engineering
15 consulting firm, Keck & Woods, to do most of your plan
16 reviews.
17 This property met the criteria under the
18 local issuing authority. In other words, Georgia Soil
19 & Water had to see the site plan. In addition, Keck &
20 Woods had to see it, which is the City's engineers,
21 and then all the other staff who may have been
22 involved in the process.
23 COUNCILMEMBER PITTMAN: So it's not
24 necessarily the applicant's fault.
25 MR. HAEBERLIN: It's not necessarily the

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1 applicant's fault. However, the property owner is not
2 providing the proper site plan to the applicant; and
3 then we, the City, are relying on the information
4 supplied to us. So I mean that's what's submitted
5 with their application, and this has been an ongoing
6 problem with this site for quite some time.
7 ATTORNEY WEED: Council, I've got a limited
8 question if you don't mind, too.
9 Scott, is there an as-built, an actual final
10 plan that reflects what actually was put on the
11 ground?
12 MR. HAEBERLIN: There are a couple pages
13 that have been submitted to us. That was after the
14 fact. But it's not a complete site plan and it
15 certainly has not been stamped by Georgia Soil & Water
16 nor approved by any other staff member that I'm aware
17 of.
18 So there's a couple pages that reflect land-
19 scaping and some other things, but it's not a full
20 site plan, no, sir.
21 So if there are no further questions of the
22 staff, we'll hear from the applicant and then we'll go
23 to the public hearing.
24 COUNCILMEMBER PITTMAN: So they solely
25 denied -- the Planning Commission solely denied it

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1 based on the site plan?
2 MR. HAEBERLIN: The Planning Commission does
3 not see conditional uses so they've not seen this
4 item.
5 COUNCILMEMBER PITTMAN: Okay.
6 MR. HAEBERLIN: It's not a requirement of
7 your code. It only goes to you, the Mayor and
8 Council.
9 COUNCILMEMBER PITTMAN: Thank you.
10 MR. HAEBERLIN: At this time, we invite the
11 applicants to come forward.
12 Sir, are you the applicant?
13 UNIDENTIFIED SPEAKER: I'm not the applicant
14 (imperceptible).
15 THE REPORTER: I'm not understanding.
16 MR. HAEBERLIN: Please come forward so we
17 can hear from you.
18 Is that the will of the Council?
19 MAYOR JENKINS: If he's not the applicant --
20 MR. HAEBERLIN: Okay.
21 MAYOR JENKINS: -- no.
22 COUNCILMEMBER PITTMAN: He is going to
23 answer. He has some questions on the site plan.
24 MR. HAEBERLIN: Are you working in concert
25 with the applicant?

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1 UNIDENTIFIED SPEAKER: Right.
2 MR. HAEBERLIN: Do you want the applicant --
3 The applicant. Excuse me. The applicant,
4 do you want this person to address the site plan issue
5 for you or do you-all want to come forward?
6 UNIDENTIFIED SPEAKER: (Imperceptible)
7 MR. HAEBERLIN: If he is part of your
8 petition, I would say that would be correct.
9 ATTORNEY WEED: That's fine with me legally.
10 I'd rather hear it all now.
11 MR. HAEBERLIN: Please come forward.
12 ATTORNEY WEED: Put it on the record.
13 MAYOR JENKINS: Come on up, sir.
14 MR. YANG: Hi. My name is Brent, (spelling)
15 B-r-e-n-t Y-a-n-g. I'm from the Arcon, (spelling)
16 A-r-c-o-n, Construction Company. I'm here just to
17 answer the site plan, the matter.
18 Actually, we had this here approved by City
19 of Doraville.
20 COUNCILMEMBER ROCHE: Who signed that?
21 COUNCILMEMBER FLEMING: Could you tell us
22 the date and the signature, please.
23 MR. YANG: It's March 11, two thousand --
24 yeah, March 11, 2009. It has a signature. I don't
25 know the name on there. Can you . . .

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1 MAYOR JENKINS: That's Calcaterra, I
2 believe.
3 MR. HAEBERLIN: Sir, this -- and ma'am, I
4 apologize; the entire Council -- this is not untypical
5 of permitting authorities that the building official
6 typically does not sign certificate of occupancies
7 anymore. The authorized signature is that of the
8 permit clerk. In this situation, the signature is
9 Ruby M. Biggers, and she is the City's permit clerk.
10 She is my employee. She works with Mr. Calcaterra and
11 myself on all these items. So she did sign the
12 certificate of occupancy.
13 COUNCILMEMBER ALEXANDER: For whom?
14 MR. HAEBERLIN: For the Plaza One. I mean
15 this would be a shell occupancy permit.
16 COUNCILMEMBER ALEXANDER: Okay.
17 MR. HAEBERLIN: So if she received from the
18 building official a final sign-off that he had
19 inspected the property, whatever he inspects -- I
20 don't know the full details of that -- that he gave a
21 certificate of occupancy.
22 Now, since this time, you've adopted a CC,
23 certificate of completion, and so that would have been
24 done to address the outside of the building.
25 In my opinion -- again, I don't know

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1 factually -- it seemed like that the building was fine
2 to Mr. Calcaterra, he instructed Ms. Biggers to
3 prepare the certificate of occupancy, and, in his
4 normal process -- and I've seen this done in many
5 jurisdictions -- that the permit clerks are actually
6 the signatures, authorized signatures on the
7 certificate of occupancy.
8 MR. YANG: Before we got this here, so be
9 somebody to City of Doraville for the site plan. In
10 like two months, we never got any question about the
11 site plan. We waiting and waiting. I've been there
12 like twice, what's going on, they said so we -- then
13 after that, we done the old inspection, so we request
14 for the C.O. so they release the C.O. That's why we
15 form the sign saying anybody welcome to our store from
16 business owner. Yeah.
17 Then why they -- there was kind of a
18 question about the site plan. There was revised site
19 plan. They never request for it. We did that. I --
20 I don't know the City of Doraville, all the
21 processing, but they give us everything.
22 And also Mr. Chuck did all the inspection by
23 the code, it's okay, and also he say he want to see
24 all, revise the site plan, just send it to the City of
25 Doraville, so we did. So we got the C.O. That's the

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1 problem we think. My asking about the revised site
2 plan after -- after C.O. That's the situation right
3 now.
4 We did the right job. We did all the
5 inspection from Dekalb County for water and sewer,
6 underground, and also we have the permit. We always
7 backed it up, okay, okay, okay.
8 COUNCILMEMBER FLEMING: Did you happen to
9 see the site plan that the applicant in this
10 particular hearing has provided for us? Have you seen
11 a copy of it?
12 MR. YANG: We just got these pages from --
13 by Friday by fax.
14 COUNCILMEMBER FLEMING: And I was just
15 curious as to whether that is the same site plan that
16 you have.
17 That's what I believe there's some confusion
18 is the one that they supplied is not the same one that
19 we have. Is that correct?
20 MR. YANG: That is correct. That's not the
21 same one. This is the oldest one.
22 COUNCILMEMBER FLEMING: I'm sorry?
23 MR. YANG: This is old one.
24 COUNCILMEMBER FLEMING: Old one.
25 MR. YANG: Yes.

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1 COUNCILMEMBER ROCHE: But you have submitted
2 a site plan since then.
3 MR. YANG: We send this site plan.
4 I never got -- never got any question, you
5 know.
6 COUNCILMEMBER ROCHE: When was that
7 submitted?
8 MR. YANG: It was submitted -- it's March
9 1st, 2009.
10 COUNCILMEMBER PITTMAN: So we're denying it
11 but we don't really have anyone on site that can
12 approve it, anyway?
13 MR. HAEBERLIN: Well, I'll try to address
14 that.
15 The difficulty you have -- and certainly if
16 I was the city building official or development
17 inspector, if someone had built an entire building and
18 done an entire site that did not comply with the
19 approved site plans, that not only our city codes
20 address that, you know, they could have been written a
21 citation at any time during this process regarding
22 noncompliance with the site plan.
23 But the fact that it's a local issuing
24 authority issue, that the City's ability to issue
25 permits is based on compliance with their approved

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1 plans, and it got to the very end and it doesn't meet
2 those requirements, I'll be honest with you: if I had
3 been the building official, I would not have signed
4 off on the revisions either. I would have said,
5 "Resubmit a complete as-built. We'll send them back
6 to Georgia Soil & Water. We'll send them to all the
7 reviewing agencies and we will get the item re-
8 permitted." And again, I don't get to make that
9 judgment call because I'm not the building official.
10 I've never inspected the inside of this property. I
11 have no idea what it's developed as.
12 COUNCILMEMBER ROCHE: Actually, you are the
13 building official.
14 MR. HAEBERLIN: I am the assistant building
15 official for zoning purposes only, and this property
16 is zoned without conditions.
17 COUNCILMEMBER ROCHE: So our building
18 official -- we don't really have an employee that's
19 our official building official. We have a --
20 MR. HAEBERLIN: You have Mr. Calcaterra.
21 COUNCILMEMBER ROCHE: -- contractor who only
22 goes out and inspects when someone asks him to go out
23 and inspect.
24 MR. HAEBERLIN: Well, Mr. Calcaterra is
25 inspecting based on requested inspections. And like I

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said, I don't know the full context of the contract.
The City really does need a development or site inspector. That's my opinion. That's probably the reason this got to this stage.
COUNCILMEMBER PITTMAN: So we don't have that, and we've had no one along the way that you're aware of that's making those decisions?
MR. HAEBERLIN: I'm not aware that anyone is.
Again, based on --
COUNCILMEMBER PITTMAN: So --
MR. HAEBERLIN: -- the rate we're being charged that I know of when Mr. Calcaterra comes in, you know, he's going out and making electrical inspection and a footing inspection, et cetera. I don't know what else he may be doing.
He's certainly, in my opinion, qualified to do all these things, and I think him to be so. I don't know that that is within the context of what he's been employed by the City to do.
COUNCILMEMBER ALEXANDER: Do we have a copy of the site plans that the gentleman has right here? Do you have a copy of the site plans?
MR. HAEBERLIN: This is for the landscape only. I do have a copy of the landscaping. And this

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was what was discussed in the e-mail many, many months ago before this property was ever C.O.'d, with the City Council, that it did not meet the criteria of the site plan; the landscaping again, deviated; and the tree ordinance, which was not a very good ordinance with respect to requiring bushes, but this site met the requirements of the tree ordinance.
COUNCILMEMBER ALEXANDER: Do the buildings as built appear on that drawing?
MR. YANG: Yes.
MR. HAEBERLIN: I would assume so.
COUNCILMEMBER ALEXANDER: Okay. So this drawing was supplied by the applicant.
MR. HAEBERLIN: Correct.
COUNCILMEMBER ALEXANDER: Okay. So the applicant supplied us with the incorrect drawing.
MR. HAEBERLIN: That's correct.
COUNCILMEMBER ALEXANDER: With an incorrect drawing.
MR. HAEBERLIN: Correct.
COUNCILMEMBER ALEXANDER: Okay.
MR. HAEBERLIN: And I showed them what I had from Mrs. Wang, who I believe to be the property owner, and they said yep, and that is the item that was photocopied for them and they submitted it with

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their application.
So it appears that the property owner, who I believe to be Ms. Wang, again, and was previously involved in another conditional use request at this site, which was withdrawn if you recall, this was the same site plan that was submitted at that time too. So this is just a landscape plan. This is not the full site.
COUNCILMEMBER ALEXANDER: But that is irrelevant. That's not what was supplied with the application.
MR. HAEBERLIN: That's correct.
COUNCILMEMBER ALEXANDER: Okay.
MR. YANG: Because that time we submitted for revised site plan because Mr. Chuck said, before the C.O., revise the drawing, submit it to City of Doraville. So we revised the drawing and it was as-built survey. We send it. We're waiting the comment. (Imperceptible) at appropriate time, so we're waiting the comment from the City of Doraville. But I never got any paper, any e-mail from the City of Doraville. As soon as we pass old inspection, so we request for the C.O. City of Doraville give us these pages.
Also we done all the inspection. Not by myself.

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COUNCILMEMBER ROCHE: I understand.
MR. YANG: City of Doraville.
UNIDENTIFIED SPEAKER: Can I speak a little bit more? I can explain in more detail.
COUNCILMEMBER ALEXANDER: And your name?
MR. YOON: My name is Moses Yoon. I'm the general contractor, Arcon Construction.
During the bid for this Plaza One, the construction, the construction (imperceptible) that time, inspector, Mr. Chuck --
MAYOR JENKINS: Chuck Entsminger.
MR. YOON: That's right, yeah. He did the inspection by step, all the step. He came out the job site and he looked at it and then he signed it or sometime he give the correction, we revised it and fixed it and recalled inspection. He come out, check it out, and whatever he said the okay, we just keep following as he said.
Finally, middle of this construction process, that time I talked to him, leave the site plan, we will change it. That time he say you have to prepare the revised plan and submit it before final inspection. That's why we just prepare it before the final inspection. That time, I don't know what happened, but Chuck is gone.

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1 After that, we call, I call here for the
2 final inspection. Mr. Scott came out (inaudible).
3 MR. HAEBERLIN: With Mr. Calcaterra, to
4 resolve the issue on the dumpster.
5 MR. YOON: Yeah, right.
6 He come out together, Mr. Scott. He say,
7 you're a little bit different on the site plan, on the
8 permit drawing, he say. (Imperceptible) That's why
9 explain to I prepare the old site plan. That's why my
10 friend, he submit the -- right away, we submit the
11 site plan.
12 That time, first time I went to Scott, what
13 you want? Which drawing you want?
14 He say, okay, tree is different. Couple
15 tree location is different. Trash can location is
16 little bit different. Parking layout is a little bit
17 different. So just different things come up, we have
18 to change it, revise it and submit it. That's why we
19 following as he said.
20 And then we're waiting answer from City of
21 Doraville. No one give the answer to me. That's why
22 we try to call the final inspection. I don't know
23 what's going on.
24 And so after that, the inspector came out.
25 He walked through everything, building and site,

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1 everything, and he signed off and he give the
2 certificate of occupancy.
3 I don't know inside the City of Doraville
4 what process for this, but we got the C.O. That's why
5 I thought everything done.
6 Currently right now, you -- Scott have the
7 site plan issue. Couple months ago when we already
8 got the tenant improvement approval, one tenant, that,
9 you know, eye care tenant improvement, he already give
10 the approval there too. Why at that time he doesn't
11 issue this site plan issue then? I can't understand
12 either.
13 Please understand the situation. Thank you.
14 MR. YANG: Is there any other question?
15 COUNCILMEMBER FLEMING: No. Thank you.
16 MR. YANG: Thank you.
17 MR. HAEBERLIN: Just want to clarify for the
18 Council, the eye care place is not a conditional use,
19 and so the only thing I'm reviewing is the zoning.
20 And in that respect, the zoning was appropriate for
21 that of an eyecare situation. He's talking about an
22 interior finish permit, what each tenant in this
23 building will do once the shell is C.O.'ed.
24 So there's -- really in that respect, based
25 on zoning, I didn't feel I had any authority to deny

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1 it because it's not a conditional use; it is not site-
2 plan-specific. And so I did want to respond to the
3 Council with respect to that.
4 And we did meet on the site with the
5 Mr. Moses and we looked at that of the dumpster.
6 Again, the entire site had been built. And when we
7 went out there, there was no dumpsters, there was no
8 dumpster enclosures. Again, it wasn't compliant with
9 the site plan so they had to change the site plan once
10 again to accommodate the dumpster. And the inspection
11 on that dumpster would have occurred, I assume, by the
12 building official. I don't know. Again, I don't know
13 what the parameters of what he inspects at this time.
14 However, when they're talking about the as-
15 builts, apparently no City employee has signed off on
16 these as-builts. However, apparently a certificate of
17 occupancy may have been issued. I don't know if it
18 was issued in error. I can't attest to that.
19 COUNCILMEMBER ROCHE: Well, number 7 here,
20 it says, parking and loading are not installed in
21 accordance with the City-approved site plan.
22 MR. HAEBERLIN: That's correct.
23 COUNCILMEMBER ROCHE: What's the City-
24 approved site plan?
25 MR. HAEBERLIN: The one that is stamped by

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1 the local issuing authority that went to Georgia Soil
2 & Water, and this is the one that you have in your
3 package. And if you look on the front of this --
4 COUNCILMEMBER ROCHE: So subsequent site
5 plan changes . . .
6 MR. HAEBERLIN: I'm just -- again, I'm
7 trying to look in detail. I'm not seeing any of the
8 staff members' signatures on this copy. And again,
9 this is just a photostat. So you know, I see some
10 Dekalb County reviews, et cetera. Obviously, they're
11 only reviewing like water and sewer, et cetera.
12 They're not reviewing the city zoning ordinance for
13 the City.
14 COUNCILMEMBER ROCHE: Okay. So the denial
15 was based on -- help me understand this -- the lack of
16 parking? I mean there appears to be a lot of parking
17 for one store in an empty shopping center.
18 MR. HAEBERLIN: Correct; but we don't
19 factually know based on that breakdown.
20 Again, they hinge their bet. I would do
21 this as well, trust me, if I was out in the private
22 arena working on behalf of myself and not on behalf of
23 the City. I would try to get a site plan approved
24 that had the minimum bare parking that I could, to
25 provide my customer that much more ability to develop

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their property.
In this case, they did not base their entire site plan on that of a general shopping center. They have broken it down very specifically into office and very specifically into retail. That will probably hurt them in the future if they can't follow that breakdown.
COUNCILMEMBER ROCHE: That's the only reason you're saying that you're denying -- that you're recommending denial of this conditional use --
MR. HAEBERLIN: Well, that --
COUNCILMEMBER ROCHE: -- because of the parking.
MR. HAEBERLIN: That, and again, the whole property is not developed in accordance with the site plan. If the site plan is the key aspect of this and this was submitted with the application, it does not on its face meet the criterion to demonstrate approval.
COUNCILMEMBER ROCHE: We're talking about three units within -- I don't know how many units are in here. I'm just not sure I understand how that works.
MR. HAEBERLIN: Well, you know --
COUNCILMEMBER ROCHE: Are you going to deny

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everything?
MR. HAEBERLIN: Well --
COUNCILMEMBER ROCHE: If someone wanted to put a retail store there and it was zoned for that --
MR. HAEBERLIN: If -- if I review --
COUNCILMEMBER ROCHE: -- we'd deny that too?
MR. HAEBERLIN: -- the site plan and that tenant space is shown as retail or whatever, whatever is shown on the approved site plan, that's what I would review. Okay?
At this time, the approved site plan is the one in your package. These three sites are shown as retail. Okay? Absent going before a conditional use, these folks would have never come before the Council. They would never had a discussion about the site plan other than if the building official, if that's within the scope of his parameters, addressed this with them.
In the code, it says the building official can issue a citation for noncompliance. I believe it's Section 1308 of the code.
COUNCILMEMBER ROCHE: Let me ask the question a different way. If someone had come and wanted a retail thing that did not require a conditional use --
MR. HAEBERLIN: Uh-huh.

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COUNCILMEMBER ROCHE: -- would we have granted them what they need to open a business there?
MR. HAEBERLIN: Well, from my perspective, I would have just reviewed the zoning. If the zoning was appropriate, yes.
COUNCILMEMBER ROCHE: So the parking would not have been an issue.
MR. HAEBERLIN: Well, it's shown on the approved site plan, this is a designated spot for retail. And so this is a retail establishment. This is not an office establishment. Yes, I would have.
COUNCILMEMBER ROCHE: So then as far as the parking is concerned, that's not really an issue as far as the criteria as to whether or not we would grant a conditional use.
MR. HAEBERLIN: Well, again, that's your interpretation of the situation, sir.
COUNCILMEMBER ROCHE: Well --
MR. HAEBERLIN: As the staff, I read it literally. The site plan does not comport --
COUNCILMEMBER ROCHE: I give up.
MR. HAEBERLIN: -- or comply with the city codes, and I can only rely on that.
COUNCILMEMBER ROCHE: Mayor, could we get a five-minute break?

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MAYOR JENKINS: Scott?
MR. HAEBERLIN: Fine with me.
MAYOR JENKINS: Okay. Five-minute break.
COUNCILMEMBER ROCHE: Thank you.
- - -
(Brief recess)
- - -
MAYOR JENKINS: Yes, sir. Get up there and get it started.
COUNCILMEMBER FLEMING: We haven't actually heard from the applicant, have we?
COUNCILMEMBER ROCHE: No, we haven't heard from the applicant. We heard from the builder.
ATTORNEY WEED: That's correct.
MAYOR JENKINS: Okay. Who's the applicant that's applying for the license? Come on up.
MR. HAEBERLIN: All the applicants if you want to speak.
MR. CHEN: My name is Dave Chen. I'm a friend of Guang Zheng and I'm speaking on his behalf.
MAYOR JENKINS: You're going to have to speak closer.
MR. CHEN: I'm here to help aid in translation, and I am not an attorney and I have no business interest in this venture.

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MR. ZHENG: My name is Guang Zheng.
MAYOR JENKINS: Do you want to tell us what you're asking for, sir?
MR. CHEN: Yes. One of Guang's primary concerns was with the shopping center, why it wasn't -- why it isn't compliant with the code, because his site plan was actually furnished by Mr. Haeberlin when he submitted his application.
MR. HAEBERLIN: That is correct. That's what Ms. Wang supplied to us.
MR. CHEN: So is that currently an issue now?
MR. HAEBERLIN: That's a discussion for the Council. I don't know. I'm not the building official, sir.
COUNCILMEMBER FLEMING: Well, as far as I'm concerned -- I'm going to go on record here -- we are here to hear your conditional use, and your conditional use is a massage parlor, I believe. So let's address the massage parlor, and I don't want to hear anymore about parking or whether we have too many bushes or trees. I want to hear about your massage parlor or your foot massage, I believe it is.
MR. CHEN: Yes. Mr. Guang Zheng is applying for a foot massage parlor at the location 5938 Buford

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Highway.
COUNCILMEMBER ALEXANDER: The application says foot and full-body massage.
MR. CHEN: Yes, that's correct; foot and full-body massage.
COUNCILMEMBER ALEXANDER: The application says that he will employ 10 massage therapists but we have no identification of whom they are or their state licenses.
- - -
(Brief, inaudible conversation between Mr. Chen and Mr. Zheng.)
- - -
MR. CHEN: He confirms the names and all the current employees are either -- they either possess their massage licenses or they are pending.
COUNCILMEMBER ALEXANDER: Okay. We don't have any of that information.
- - -
(Brief, inaudible conversation between Mr. Chen and Mr. Zheng.)
- - -
MR. CHEN: Mr. Zheng, he confirms the ones that currently have the licenses and the other ones that are pending should receive them by the end of

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December.
- - -
(Brief, inaudible conversation between Mr. Chen and Mr. Zheng.)
- - -
MR. CHEN: And he's not able to hire these employees until his use license has been approved.
COUNCILMEMBER PITTMAN: Until what? I'm sorry? What did you say?
MR. CHEN: Until his use license has been approved.
COUNCILMEMBER PITTMAN: Okay.
MAYOR JENKINS: Scott, we don't have any kind of paperwork on what they want? See, I'm kind of like Pam now. This is about the site plans and all that. What about the background on what they want?
MR. HAEBERLIN: I supplied the Council everything that was supplied to me.
COUNCILMEMBER ALEXANDER: I have this packet. Do you have this packet?
MAYOR JENKINS: I don't have that one. I'm sorry.
You have this packet. Then, maybe you can figure out what they want.
COUNCILMEMBER ALEXANDER: They want to apply

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for a full-body massage parlor.
COUNCILMEMBER ROCHE: And to do that, they would have to be State-licensed massage therapists.
And I guess my question there is -- and this is kind of the same question we had a minute ago, is that this is a zoning question here versus a licensing question, which is a separate thing. But if we grant the conditional use for the massage therapy place, then we should be done. I mean as far as the licenses themselves, they have to provide the licenses to --
ATTORNEY WEED: The police --
COUNCILMEMBER ROCHE: -- somebody to be able to --
ATTORNEY WEED: -- department. That is exactly correct.
COUNCILMEMBER ROCHE: So we don't necessarily need to see any licenses, and I don't know why we didn't do that a minute ago.
ATTORNEY WEED: The important point, though, is underneath the conditional use permit, all massage establishments have to come before the Council for approval. And the Council adopted that, I believe it passed unanimously, and that's why it comes before you.
Prior to that, they would have gone straight

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1 to the police department. They would have either had
2 their state licenses or not and gotten approved there
3 or not.
4 COUNCILMEMBER ROCHE: So if we approve or
5 deny, I mean if we decided tonight to approve this
6 conditional use, then it would -- as a matter of
7 course, anyone that wants to work there as a massage
8 therapist would have to provide a massage therapy
9 state license to the police department before they
10 would be allowed to work there.
11 ATTORNEY WEED: That is correct. In fact,
12 you know, you could approve them tonight and they may
13 never be legally allowed to work there.
14 COUNCILMEMBER ROCHE: Right.
15 ATTORNEY WEED: And that would be a determi-
16 nation of the police department at that point because
17 they'd have to apply and still be approved again.
18 COUNCILMEMBER ROCHE: Do you understand what
19 we're saying?
20 Can you translate?
21 - - -
22 (Brief, inaudible conversation between
23 Mr. Chen and Mr. Zheng.)
24 - - -
25 MR. CHEN: Yes, he does understand.

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1 COUNCILMEMBER ALEXANDER: Has he been given
2 a copy of Article 9, Massage Parlor Ordinance, and he
3 understands he has to comply with all the legalities
4 in this ordinance?
5 - - -
6 (Brief, inaudible conversation between
7 Mr. Chen and Mr. Zheng.)
8 - - -
9 CLERK BRYANT: Yes, he does.
10 - - -
11 (Brief, inaudible conversation between
12 Mr. Chen and Mr. Zheng.)
13 - - -
14 MR. CHEN: Now, Mr. Zheng does have an issue
15 with the change in time, the closing time.
16 COUNCILMEMBER ALEXANDER: Sorry.
17 - - -
18 (Brief, inaudible conversation between
19 Mr. Chen and Mr. Zheng.)
20 - - -
21 COUNCILMEMBER PITTMAN: So if there wasn't a
22 conditional use, they would not be here at all.
23 ATTORNEY WEED: That is essentially correct,
24 but the Council decided that you wanted to have more
25 regulation of massage parlors than ordinary

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1 businesses. You have that legal right.
2 COUNCILMEMBER PITTMAN: Uh-huh.
3 ATTORNEY WEED: And when you did, you did it
4 in multiple ways. You did it in part underneath the
5 zoning ordinance, because when you made the changes to
6 the zoning ordinance you said that before any massage
7 parlor would be allowed in Doraville, it was going to
8 be a conditional use and had to come before you for
9 that approval. On top of that regulation, parallel to
10 it is the fact they still have to comply with the
11 massage ordinance which has never -- that's still
12 there, and they still have to get all the state
13 licensing required.
14 So it would be entirely possible that you
15 could grant them a conditional use permit which would
16 allow the hypothetical use of a certain location and
17 they still might not meet the state standards and they
18 may never open.
19 COUNCILMEMBER PITTMAN: Right.
20 ATTORNEY WEED: Or vice versa.
21 COUNCILMEMBER PITTMAN: All that other stuff
22 like the parking and the stuff like that, that --
23 ATTORNEY WEED: Well, it is relevant because
24 the Council made it relevant. The Council adopted
25 standards to apply in all of these cases. You did it

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1 when you amended Section 1501 -- you did it on
2 September the 28th of 2009 -- and one of the standards
3 that you can consider would be the effect of parking.
4 And the standards are plainly listed; it's on page 6
5 of 10 of the ordinance; there are eight of them. So
6 clearly, parking is a relevant issue.
7 Now, you can grant whatever weight you want
8 to to the evidence. All I can tell you is what the
9 standards are. And if you don't think that -- if you
10 think they meet the standards, approve it, and if you
11 don't, don't. But that is relevant because you made
12 it relevant.
13 COUNCILMEMBER FLEMING: I noticed that at
14 the Plaza One location, you're asking for three
15 suites. Could you tell me if you know what the total
16 square footage is for all three suites and will they
17 be three individuals or are they going to be a
18 combination?
19 MR. CHEN: It will be one room and approxi-
20 mately 3,000 square feet.
21 COUNCILMEMBER FLEMING: And I also noticed
22 that back in November, though I do not have the
23 minutes beyond November 3rd of 2008, that Treat Your
24 Feet Massage & Spa was applying for an occupational
25 tax permit at 5328 Buford Highway, Number C. And you

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are open at that location; is that correct?
MR. ZHENG: Yes.
COUNCILMEMBER FLEMING: Do you have a state license for massage therapy for that location -- the business itself?
- - -
(Brief, inaudible conversation between Mr. Chen and Mr. Zheng.)
- - -
COUNCILMEMBER FLEMING: For the state of Georgia.
- - -
(Brief, inaudible conversation between Mr. Chen and Mr. Zheng.)
- - -
MR. CHEN: Mr. Zheng has already applied for this license but he does not currently possess one for the existing location because it wasn't required when he originally applied.
COUNCILMEMBER FLEMING: For the state of Georgia?
MR. ZHENG: Yes.
COUNCILMEMBER ROCHE: Well, that was -- was it November 6?
COUNCILMEMBER FLEMING: No, no, no, no, no.

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This is November 3rd, 2008, when he came before us for the 5328 Buford Highway, Number C.
He is already in business. This is going to be his second location.
COUNCILMEMBER ROCHE: I got that.
Well, back in 2008, he said it's just a foot massage, and back then, we told everybody that if you were just doing foot massage, not above the ankle, you didn't need any other requirements, you didn't need any other licensing.
COUNCILMEMBER FLEMING: But does it not require a state of Georgia license?
ATTORNEY WEED: That's my opinion, and in fact it always did.
MAYOR JENKINS: Even for foot.
ATTORNEY WEED: Yes, apparently. The code never differentiated between foot and anything else. The only differentiation would be if you are a barber or a cosmetologist, you can rub someone's scalp, face, neck, hair to your heart's content. But other than that, if you're rubbing anything else, you've got to have a state license.
MAYOR JENKINS: So they're illegal where they are?
COUNCILMEMBER ROCHE: Well, they're in the

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process apparently of getting the permits straightened out.
COUNCILMEMBER FLEMING: How many employees do you have at the one on Buford Highway, Suite C?
MR. CHEN: Eight.
COUNCILMEMBER FLEMING: And do any of them or all of them have their own personal masseuse certificates?
- - -
(Brief, inaudible conversation between Mr. Chen and Mr. Zheng.)
- - -
MR. CHEN: All the employees currently have California licenses but their Georgia license is pending.
COUNCILMEMBER FLEMING: Do we have any idea about a date on those?
- - -
(Brief, inaudible conversation between Mr. Chen and Mr. Zheng.)
- - -
MR. CHEN: By the end of this month.
COUNCILMEMBER FLEMING: Thank you.
COUNCILMEMBER ALEXANDER: At the present location, are you performing services other than foot

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massage?
- - -
(Brief, inaudible conversation between Mr. Chen and Mr. Zheng.)
- - -
MR. CHEN: Currently, it's only foot massage and above the neck area.
MAYOR JENKINS: Anymore questions?
COUNCILMEMBER ROCHE: We have to do the public hearing.
MAYOR JENKINS: Scott, are you ready for the public hearing?
MR. HAEBERLIN: Yes, sir.
MAYOR JENKINS: Okay. Sit down, please.
We're going to open up the public hearing. How many do --
Go ahead, Scott. You can do it. Go ahead.
MR. HAEBERLIN: Those who'd like to speak in favor of the petition, please raise your hand. If you'd like to speak in favor, you want it to be approved by the Council.
- - -
(No response)
- - -
MR. HAEBERLIN: Okay. Seeing none, those

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who are opposed to the petition, believe the Council should deny the petition, please raise your hand. Anybody?

Tom?

MR. HART: (Inaudible)

MR. HAEBERLIN: Direct it to the Mayor.

MAYOR JENKINS: Are you opposed to it?

MR. HART: I don't have enough information. I'm kind of confused. I have a question.

MAYOR JENKINS: I'll allow it.

MR. HART: The City Council voted to put in eight foot-massage parlors. Two of them have come up tonight. Does that mean the other six are going to show up next week, or what are we doing?

And then we brought up all those parking issues, and we have the things like H-Mart and all these other companies that built all these buildings all over the place that are inspected that don't have parking, either.

MAYOR JENKINS: Tom, that's not relevant. If you don't --

MR. HART: That's why I'm just kind of confused about the parking issue.

MAYOR JENKINS: Yeah. Well, we'll worry about that.

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MR. HART: Okay. So the question is, if they turn these people down, are they going to -- the other six people that were approved on the same night, do they come under the same? I know the same City Council here voted for either foot-massage parlors to open and gave these people licenses and they opened a business and spent the money.

So the question is, are these other six people going to have to come in and do the same thing? And does the City Council bear some responsibility to these people, having approved their licenses, and these people spent the money and hired employees and they're in business and now you're saying that you can't do it?

I mean I'm a little confused, not only for them but other business in the city as to how trust-worthy the City Council is concerning opening a business in Doraville. Thank you.

COUNCILMEMBER FLEMING: Mayor, I need to ask the applicant another question, please.

MAYOR JENKINS: Okay. Applicant, come up.

COUNCILMEMBER FLEMING: Oh, I'm sorry. I apologize. You need to know the opposed. I'm sorry. Go ahead and do that and then I'll ask.

MAYOR JENKINS: Well, there was nobody

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opposed.

COUNCILMEMBER FLEMING: Oh, okay. I'm sorry.

MAYOR JENKINS: We didn't have either/or.

COUNCILMEMBER FLEMING: All right.

MAYOR JENKINS: So if you want to ask the applicant --

COUNCILMEMBER FLEMING: Yes, please.

MAYOR JENKINS: Would the applicant come back up.

COUNCILMEMBER FLEMING: Is your business at the Buford Highway, Number C, is it doing so well that you are needing a second location?

- - -

(Brief, inaudible conversation between Mr. Chen and Mr. Zheng.)

- - -

MR. CHEN: At his current location, it's only 1,400 square feet, and during peak hours, he's had customer requests to open a second location. If you look at the plan, it's on the other side of Buford Highway from there, and it would be more convenient for them, plus it would offload some of the traffic to his current location.

COUNCILMEMBER FLEMING: Do you have any

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plans of closing your existing location?

MR. ZHENG: No.

MR. CHEN: No, he does not.

COUNCILMEMBER FLEMING: Thank you.

COUNCILMEMBER SPANGLER: I have a question for you, Mr. Weed.

ATTORNEY WEED: Yes, sir.

COUNCILMEMBER SPANGLER: Is it possible that the Councilmembers that were not able to attend that meeting back on September 12th, 2008, could get a copy of that tape?

ATTORNEY WEED: Sure. If it exists, we certainly can.

COUNCILMEMBER SPANGLER: Well, I'm sure it does. I think Ms. Alexander or someone mentioned that Mr. Haeberlin had examined a copy of the tape. So whatever we need to do to get a copy of that tax.

ATTORNEY WEED: As far as I'm concerned, just ask.

COUNCILMEMBER SPANGLER: Okay. I'm asking.

ATTORNEY WEED: I would expect the staff to give it to you. I sure hope they would.

COUNCILMEMBER ROCHE: Can I ask Acting Chief Atkinson to weigh in on this. I realize we didn't ask this in advance.

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1 I mean do you have any concerns or issues
2 with their current operation at 5328, letter C?
3 ACTING CHIEF ATKINSON: I'm not familiar
4 with that.
5 COUNCILMEMBER ROCHE: In this case, we have
6 an existing business, and I was just wanting to find
7 out if we had any concerns from the police department
8 about the current business.
9 ACTING CHIEF ATKINSON: I don't know right
10 off the top of my head. I'll have to check and I
11 could certainly report back to you if there's anything
12 pending or any issues that we've had. You said since
13 November 2008? Okay.
14 COUNCILMEMBER ROCHE: I just didn't know if
15 it was . . .
16 ACTING CHIEF ATKINSON: Yeah. Nothing right
17 off the top of my head.
18 COUNCILMEMBER ROCHE: Thank you.
19 COUNCILMEMBER ALEXANDER: Captain, I want to
20 clarify something you said, Mr. Weed. So if Council
21 chooses to approve this conditional use, when are they
22 issued the occupational license? After he does his
23 investigation?
24 ATTORNEY WEED: Well, that's an excellent
25 question. And the way I read the ordinances, they are

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1 silent as to that issue.
2 What I think common sense would dictate
3 would be you would -- ordinarily if you were a new
4 business that had never been in Doraville before,
5 you'd walk in the door, you'd go up to the front
6 counter. Hopefully, you'd be directed to the zoning
7 office where the zoning office would essentially do a
8 zoning compliance check. At the same time or near
9 about then, you would be told that you have to pay
10 occupation tax.
11 If you went to the occupation tax clerk
12 first, then you'd be sent to zoning anyway, because,
13 once again, before we let you pay occupation tax, now
14 at least since Mr. Haeberlin's been here, and every-
15 where else I've ever known, somebody checks the zoning
16 to make sure that the city isn't inadvertently
17 granting someone permission to do something in an area
18 where they legally can't do it.
19 So the answer to your question is, is there
20 an order in which these things occur? I think legally
21 these applicants can come to you to seek a conditional
22 use permit. You can grant it or you can deny it. And
23 then they could arguably go back at that point, fill
24 out the proper applications with the police department
25 and they'd either be granted our denied the actual

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1 license.
2 What the code says, it says that the
3 business itself has got to have a massage occupation
4 business license, which, in my opinion, is different
5 than paying occupation tax, and that was the intention
6 back in '07 when that code was written. In addition
7 to that, every individual operator, every individual
8 masseuse, every human who puts their hands upon
9 somebody else or with some instrument, they also have
10 to have an appropriate license, which they would also
11 route that through the police department as well.
12 So what order it's done in is not set out in
13 the code. So can you legally have these hearings and
14 grant them a conditional use permit or deny it? Sure.
15 And then is it entirely possible that they don't meet
16 the standards relevant to the other code and never
17 open? Absolutely.
18 Can you consider other locations and whether
19 they comply with the ordinances of the city at the
20 locations? Absolutely. That would part of the
21 standards of consideration of that conditional use.
22 Can you consider the parking? Can you
23 consider pedestrian and vehicular impacts? Sure.
24 Whatever the standards are, that's what you can
25 consider here.

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1 COUNCILMEMBER FLEMING: The application
2 could be approved but the occupational tax document
3 that we give them to hang on the wall can be held
4 until all the criteria is met; correct? Because we've
5 got an existing, based on this is a second location,
6 and I am concerned also that he was -- back in
7 November of 2008, you know, 13 months ago, was
8 approved for his first location.
9 Now, we might not have been as specific as
10 we are trying to be tonight, that we are requiring you
11 to have the specific points, you know, the
12 certificates and so forth.
13 So based on his testimony that he gave us
14 this evening for his first location, he's probably not
15 legal in the city of Doraville.
16 ATTORNEY WEED: That would certainly be my
17 opinion.
18 COUNCILMEMBER FLEMING: So my point is, can
19 we not -- I'm not making this as a motion. I'm just
20 making a statement of procedures. Another house-
21 keeping procedure that we need to make is approving --
22 whether it be this or approving whatever, approving
23 the appli-cation based on the merit of the paper and
24 listing the criteria that must be presented prior to
25 them receiving the certificate to put on their wall.

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ATTORNEY WEED: Yes. And I believe that that is done. I believe that at Section 1501, you've adopted the basic standards that they had to comply with here tonight. You did that on the 28th of September of 2009. If they meet those standards, then I would advise you to grant them the conditional use permit. If you find that they fail to meet those standards, then I would certainly recommend you deny it.

With regard to if you're asking me should we write another ordinance that clarifies what order these things are done in, I would have to actually think about that a little bit because the massage industry is a very niche industry and ordinarily these things are not that problematic. Ordinarily, you simply walk in and you say, "I want to open up a law office. What do I have to do?" and you'd be told, "Well, you've got to pay, you know, X-amount of dollars for your occupation tax permit. There you go. But before we take the money, you've got to go see zoning to make sure that you're zoned properly."

When I get over there, that will trigger an inspection of my building to make sure that it's good for occupancy, and that's the process, and ordinarily it works pretty well.

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This is one of those rare occasions where you have two businesses that predated the cap on the number of massage parlors and so it just comes down to whether or not you think they meet the criteria of the conditional use permit.

COUNCILMEMBER FLEMING: Ms. Alexander, did you ask him if he had received a copy of our new ordinance?

COUNCILMEMBER ALEXANDER: I asked him if he had received a copy of the regulatory ordinance regarding massage parlors, and he said yes.

Mr. Haeberlin and Mr. Weed, so the adjustments we've made updated Code Section 6; is that correct?

MR. HAEBERLIN: Yes, regarding the hours of operation, et cetera --

ATTORNEY WEED: Correct.

MR. HAEBERLIN: -- that's my understanding. And we've actually, because there was such a limited number, had the code enforcement office visit all these locations in person and provide them copies and sign for those copies.

ACTING CHIEF ATKINSON: I have a copy of those on my desk as a matter of fact.

COUNCILMEMBER ALEXANDER: So the only change

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made to this was the hours and the limitation as far as the number per population; correct?

ATTORNEY WEED: With regard to the massage ordinance, that is correct.

COUNCILMEMBER ALEXANDER: So all these other things that have been in place since 1996, some of them still exist as they are.

ATTORNEY WEED: That is also correct.

MR. HAEBERLIN: I believe there was a fee as well, a regulatory fee proposed.

ATTORNEY WEED: That's also correct. The answer is yes to all of those questions.

COUNCILMEMBER FLEMING: So, then, they also need to be given a copy of our code from '97.

ATTORNEY WEED: Well, this is a matter of some debate between Council and I.

There is case law -- and the old adage applies; it is a truism: ignorance of the law is no excuse. No one has hidden these statutes from them. And in my point of view as a lawyer -- and I think it's something the United States of America has lost -- people are individually responsible for what they do. It is their responsibility to come to the government and inquire, not the government's responsibility to hold their hand and give them

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everything they could possibly want, because the government cannot know everything that they might possibly want.

COUNCILMEMBER FLEMING: Well, you're right; we do disagree on that.

ATTORNEY WEED: Yes, ma'am.

COUNCILMEMBER FLEMING: Because we are hearing this evening that because of the varied ranges of nationalities that we have in Doraville, there is definitely a language barrier. We may not understand them, they may not understand us. So the more proactive we are as a city to accommodate business coming into Doraville and staying in Doraville, that's what we need to be doing.

ATTORNEY WEED: Councilman, I hear you. From my point of view, I just worry about the law.

If you create a class of people, whatever class it is, whether they're English speakers or non-English speakers, and you give them preferential treatment, you know, I think you're violating my rights and I would protest that. But I understand your point of view.

COUNCILMEMBER ROCHE: We had a situation recently where someone, you know, had to do an open records request to get copies of the zoning ordinance

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and hoped they happened to request the right part. So I just think that we need to -- obviously, yes, ignorance of the law may not be an excuse, but I think we should make every reasonable effort to make the law available to our . . . to our people, and whether it's business or citizens or whatever and we should have an attitude of trying to be helpful and we should be -- I think we should have a user-friendly city hall.

ATTORNEY WEED: Councilman, I don't disagree with that.

- - -

(Applause)

- - -

ATTORNEY WEED: If this Council wants to mail a copy of the code to every person in Doraville, I couldn't support that more. But when you fail to mail one to every single person, you've violated their rights --

COUNCILMEMBER ROCHE: I'm not saying we're going to.

ATTORNEY WEED: -- and I'm going to tell you you're violating their rights. That's my job.

COUNCILMEMBER ROCHE: And I do want to say just for the sake -- and I know we have some citizens here, as far as they're concerned -- I was concerned

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too about the number of massage parlors in town. And we did pass an ordinance that strictly limits the number of massage parlors.

Basically if there's a massage parlor there, except for these two, basically, that were already existing, we can't -- legally, they will not increase the number of massage parlors. So don't be concerned even if we do approve additional -- well, not really additional -- but reapprove -- in this case approve an additional.

All I'm getting at is we are strictly limiting the number of massage parlors in town. It may not look like it right this minute, but that is part of this new ordinance. These applications came in under the wire before the new ordinance took effect. I just wanted to say that for the record.

In this particular case, because we've limited the number of hours, it sounds like some of that business is spilling over and that's why they want to open another --

COUNCILMEMBER FLEMING: It is 9 o'clock.

COUNCILMEMBER ROCHE: It's 9 o'clock.

COUNCILMEMBER SPANGLER: I guess the question I have, Mr. Weed, and I've asked you several times in past meetings, why can't we simplify things a

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little more? These ordinances especially, or maybe the procedures for new businesses to come in and make applications for. You know, at that time, you could give them copies of the ordinances and whatever they needed.

But you know, I've heard from other business owners that they can go to Chamblee or they can go to Norcross and they can fill out a one-page application and get their occupational license. I mean we need to . . . we need to make things a lot more simpler for people to do business in Doraville.

ATTORNEY WEED: Councilman, I certainly don't disagree.

- - -

(Applause)

- - -

ATTORNEY WEED: I'm not at City Hall every day. I don't know what they do to conduct business on a day-to-day basis, you know.

You know, with regard to my end, all I can tell you is that I stake my reputation on the ordinances I draft. I am responsible for those. And the ordinances I draft are good ordinances that comport with the law. What's done with them, I do hope for the best, because I'm not here every day to

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administer those ordinances.

COUNCILMEMBER ROCHE: Well, I'm going to go ahead and make a motion that we grant this conditional use. Again, we're going to be strictly limiting the number of massage therapists in town, so --

Well, obviously, you know, we're just granting the conditional use. They would still have to comply with 2009-31 and everything else, because as I said, just us allowing this particular conditional use does not necessarily mean they're going to open.

COUNCILMEMBER ALEXANDER: They would have to comply with 2009-31 and Article 9, Massage Parlors.

COUNCILMEMBER ROCHE: Right.

COUNCILMEMBER ALEXANDER: And when would the occupational tax license be granted? After police investigation?

ATTORNEY WEED: Well, that's -- you know, that --

COUNCILMEMBER FLEMING: And all the criteria has been supplied.

ATTORNEY WEED: Okay. The --

COUNCILMEMBER ALEXANDER: That was a question, if it could be added to the motion.

ATTORNEY WEED: Sure. Well, the license -- the occupation tax permit -- that's why I care about

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this language so much -- it's simply proof you paid a tax.

They also have to get a number of licenses completely separate from that. They got to get at least two from the State: one for everybody who works there and then one for the business itself, the owner of the business, whoever that's going to be. And in addition to those two, they take those two to the P.D., before they can even get the local, actual license or regulatory license. There are at least four things they got to do: they got to pay the tax and they got to get these three licenses out there at a minimum. Two at a minimum, assuming that the owner was a masseuse too and it was a one-person shop.

So the only thing I think that they could be exempted from, so to speak, would be the fact of their existence at all, because they would be grandfathered with regard to that element of it. You have now capped the number of massage parlors.

COUNCILMEMBER ROCHE: Right. And that's why I mean I could -- I mean if you prefer, I can make the motion and say "and must supply" -- "must also comply with ordinance number -- passed 2009-31, which is Sections Chapter 6, 6-2," blah-blah-blah. I can say all that, but that's going to happen anyway.

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ATTORNEY WEED: Yes.

COUNCILMEMBER ROCHE: So there's no real reason to add that to the motion.

So anyway, I'm only making a motion to grant the conditional use application.

MAYOR JENKINS: Do I get a second?

COUNCILMEMBER SPANGLER: Second.

MAYOR JENKINS: Anymore discussion?

COUNCILMEMBER FLEMING: Yes, I've got some discussion.

We need to revisit Spa 18 if we're going to approve this tonight because they're already an existing business. And the criteria, it's specific that the City of Doraville does require operators to have their permits by the State of Georgia, not California, okay -- not California; Georgia -- and that the business itself must be licensed by the State of Georgia.

And I believe, as Mr. Weed says, that's in our current code as of 1997, and if neither of you two have that ordinance, you need to be getting it and getting a translator if needed.

And I'm sorry I've talked so long, but by enumerating what we need from them is a better policy than saying yes or no. So that's my discussion.

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COUNCILMEMBER ROCHE: And I tend to agree with all of that, frankly, and I would hope that, you know, until -- because we have new requirements as of this new -- effective this month, November 2nd, that we grant some forbearance as far as the enforcement of this to give people a chance to comply with the new ordinances.

But anyway, the motion that I made only talks about granting the conditional use for this particular -- which one?

[To the Clerk] Could you read back the motion?

CLERK BRYANT: The motion is to grant the conditional use for location 5938 Buford Highway, Suites 103 through 105.

COUNCILMEMBER ROCHE: Thank you.

MAYOR JENKINS: We've got a second. Anymore discussion?

- - -

(No response)

- - -

MAYOR JENKINS: Call the roll, please.

CLERK BRYANT: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: No.

CLERK BRYANT: Councilmember Fleming?

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COUNCILMEMBER FLEMING: Yes.

CLERK BRYANT: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BRYANT: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

CLERK BRYANT: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

COUNCILMEMBER ROCHE: Would you like to make a motion to reconsider?

COUNCILMEMBER FLEMING: Mayor, I'd like to make a motion to reconsider --

MAYOR JENKINS: Motion carried.

COUNCILMEMBER FLEMING: Sir?

ATTORNEY WEED: Councilman, I assume that you're going to want to make a motion to reconsider Item --

COUNCILMEMBER FLEMING: Yes, sir.

ATTORNEY WEED: -- I believe it's 4A?

COUNCILMEMBER FLEMING: Yes, sir.

ATTORNEY WEED: Here's the legal problem: This is a zoning hearing. Essentially, the zoning hearing must comport with state law and it must comport with the Zoning Procedures Act.

Council has elected to recess that hearing until a date certain, and the date you selected was

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1 December 14th at 6:30 p.m. It's my opinion that you
2 can't readdress that because you can't comply with
3 state law with regard to the requirements for the
4 advertising.
5 What you did is perfectly legal but you
6 can't go back now and undo it.
7 COUNCILMEMBER FLEMING: We won't be
8 advertising.
9 ATTORNEY WEED: That's correct. And the
10 reason why you won't be advertising it again is
11 because you recessed it to a date certain. But you've
12 already taken that action and now you can't undo that.
13 COUNCILMEMBER ROCHE: And the reason we did
14 recess --
15 COUNCILMEMBER FLEMING: I can't make a
16 motion to reconsider the date certain?
17 ATTORNEY WEED: No, ma'am, not in my
18 opinion.
19 COUNCILMEMBER SPANGLER: And she can't
20 rescind that motion?
21 COUNCILMEMBER FLEMING: No.
22 ATTORNEY WEED: No, sir, not at this point;
23 not in my opinion in compliance with the current state
24 law.
25 COUNCILMEMBER FLEMING: Okay.

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1 COUNCILMEMBER ROCHE: And the reason, by the
2 way, at least in my mind, why we did postpone it was
3 because we thought we had to see all this regulatory
4 stuff that's not really part of what we're doing here
5 tonight, but anyway . . .
6 COUNCILMEMBER ALEXANDER: Thank you, Captain
7 Atkinson.
8 MR. HAEBERLIN: The next item which is a
9 public hearing is 5A, Text Amendment, Deletion of
10 Sections 1302, 1303, 1304, 1305, 1306, 1307, 1308,
11 1309 from the Zoning Ordinance for possible inclusion
12 within Chapter 5, Buildings and Building Regulations.
13 This item went to the Planning Commission
14 back on October 8th, 2009. They did recommend
15 approval of the deletion, and you guys have had a
16 chance to review the draft which was August
17 27th, '09, prepared by the city attorney.
18 This does go back to some of our earlier
19 discussion about why the city zoning ordinance is
20 primarily administered by the building official and
21 all these overlapping and sometimes misleading areas
22 of responsibility or these areas of responsibility
23 that we cannot decide where they fall.
24 And so what Mr. Weed is trying to do is
25 clean up the zoning ordinance, get all the things out

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1 of the zoning ordinance that really should not be in
2 there, like when we removed flood plain and other
3 items from the zoning ordinance. In this situation,
4 he's trying to put the building official's responsi-
5 bilities in the building code rather than in the
6 zoning code as they currently exist. And so while
7 these things are not going to disappear, they're going
8 to be a non-zoning code, and that's one of the reasons
9 why the Planning Commission recommended approval of
10 the item.
11 COUNCILMEMBER ROCHE: But it's not in our
12 regular ordinances now.
13 MR. HAEBERLIN: It is in your regular zoning
14 code. Again, it gives responsibilities in your zoning
15 code to that of your building official. And so the
16 zoning code is, for lack of a better term, muffed up
17 with overlapping responsibilities. It primarily
18 designates the zoning code enforcement to that of the
19 building official. And a lot of his daily actions
20 that he does do not need to be in the zoning code;
21 they need to be in the building codes.
22 So my area of responsibility at some point
23 hopefully will become the entire zoning ordinance;
24 Mr. Calcaterra's area of responsibility would be the
25 building codes.

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1 ATTORNEY WEED: And Councilman, I think the
2 answer to your question was if we -- if the counsel
3 elects to delete these sections from the zoning
4 ordinance, is there otherwise coverage --
5 COUNCILMEMBER ROCHE: Right.
6 ATTORNEY WEED: -- in the building code,
7 and my opinion is yes.
8 I don't think it's the best coverage yet.
9 In fact, that's why I have two other ordinances that
10 have been prepared, were prepared in August and in
11 October. They're in the hands of the planner and the
12 hands of the building official, and I've been reading
13 comments from them. I think that we'll be fine for a
14 limited duration of a few months until we can address
15 those other two ordinances.
16 COUNCILMEMBER ROCHE: Thank you.
17 MR. HAEBERLIN: Just for the audience edifi-
18 cation, Section 1302 is Building Permits Required,
19 Section 1303 is Building Permits Issuance, Section
20 1304 is Expiration of a Building Permit, Section 1305
21 is again Certificate of Occupancy; Section 1306,
22 Issuance of Occupancy Permit; 1307, Occupancy Records;
23 Section 1308, Construction and Use as to be Stated in
24 the Application Plans and Permits -- we discussed that
25 earlier -- and Section 1309, Permits Not to be Issued.

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All of these items are currently in the zoning ordinance. They are creating, obviously, confusion among who administers what. And this is an ongoing effort with Mr. Weed to get all the building official's functions in a code that he would administer, all my functions in that of the zoning ordinance.

COUNCILMEMBER ROCHE: Can we vote to hire a full-time building official while we're at it?

ATTORNEY WEED: Any time you want to, sir.

In this case, you have to technically modify the agenda, and this is a special-called meeting, but yes, sir, you can do that.

COUNCILMEMBER ROCHE: Can I make it part of my motion?

ATTORNEY WEED: I wouldn't do it that way, but there's a way to get there.

COUNCILMEMBER FLEMING: And this requires a public hearing so we have to do the yeses and the nos before --

MR. HAEBERLIN: Yes, ma'am.

COUNCILMEMBER FLEMING: -- we make a motion?

MR. HAEBERLIN: Yes, ma'am.

COUNCILMEMBER FLEMING: Okay.

MAYOR JENKINS: Are you ready for --

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MR. HAEBERLIN: I'm ready if the Council's ready.

MAYOR JENKINS: We don't have an applicant on this.

MR. HAEBERLIN: No, sir. This is a text amendment initiated by us.

MAYOR JENKINS: It is a public hearing.

MR. HAEBERLIN: Yes, sir.

MAYOR JENKINS: Okay. Let's go with the public hearing.

MR. HAEBERLIN: Those who would like to speak in favor of the text amendment that we just discussed, please raise your hand.

I see none.

Oh, one individual? Please come forward. Please state your name and legal address as well.

MS. FRAYSSE: I'm Susan Fraysse. I live at 3971 Spanish Oak Drive.

And it's been a while, but I was at the Planning Commission meeting when these amendments were considered, and we talked about it at length. I had more detail at that time. I was comfortable and supported it then and I am comfortable in supporting it now.

MAYOR JENKINS: Thank you.

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MR. HAEBERLIN: Anyone who would like to speak in opposition, who is opposed, would like this text amendment denied, please raise your hand.

I see Mr. Hart. Mr. Hart, you wanted to speak in opposition? And please state your name and legal residence as well.

MR. HART: Tom Hart, 2708 Bonnie Avenue, Gordon Heights.

We've had all these problems tonight that had to do with somebody inspects something or somebody didn't do something or confusion as to whether we have variances or no variances and who's in charge of what. The problem all boils down, we don't have a building official.

And the building official, what they're trying to do now, they're trying to take the building official out of charge of the building and zoning of the city and put them in a separate category by themselves. And the zoning ordinances of the city take precedence over all other ordinances.

So it basically puts the planning -- the planner of the city in charge of the city instead of the building official. In most cities, the building official basically is in charge of that department. So what we've done now is the tail is now going to wag

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the dog. Instead of doing what we need to do, which is hire a full-time building official to run the building department, we're now breaking it up further, causing even further confusion.

This is one of those big decisions you're going to make and then six months from now realize what you've done. It works well with the building official in charge of the zoning of the city along with those laws.

And this also goes over to code enforcement. Code enforcement should be in the building department. It's under the direction of the building official for the city. Again, this is not done. It's done in the other cities; just not done in Doraville.

We had problems tonight with the codes not matching Dekalb County's. They don't match Dekalb County's because we think we're an island here, and we wonder why development doesn't have the same quality as the surrounding cities and counties. It's because we don't understand what we're doing here; we're passing laws that don't function with the surrounding areas.

So we need to hire a building official. The building official should be in charge of zoning and building for the city, and that's the way the other

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1 cities do it. Thank you.
2 MR. HAEBERLIN: Close the public hearing.
3 MAYOR JENKINS: All right. What do you
4 need, a motion on that?
5 COUNCILMEMBER FLEMING: I'd like to make a
6 motion to delete Section 1301 through 1306 from the
7 zoning code. I'm sorry.
8 ATTORNEY WEED: Councilman, I think it's --
9 COUNCILMEMBER FLEMING: My apologies. It's
10 1302 -- and evidently the book I have is not current
11 even through I printed it last year -- through 1309.
12 MAYOR JENKINS: Second?
13 COUNCILMEMBER ALEXANDER: Second.
14 MAYOR JENKINS: More discussion?
15 COUNCILMEMBER ROCHE: Yeah. I can't support
16 this because I don't really understand completely what
17 all is being deleted. The draft ordinance just says
18 that we're deleting this stuff. It doesn't really
19 tell us the whole language. And I glanced over what
20 was there, but I don't really have a full copy yet so
21 I can't support that at this time -- maybe next time.
22 Until I really understand what we're deleting here and
23 what we're really doing, I can't support it.
24 COUNCILMEMBER FLEMING: The administration
25 of it is going into Section 5, building codes; is that

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1 correct?
2 MR. HAEBERLIN: That's my understanding the
3 intention of Mr. Weed.
4 MAYOR JENKINS: Anymore discussion?
5 - - -
6 (No response)
7 - - -
8 CLERK BRYANT: Councilmember Alexander?
9 COUNCILMEMBER ALEXANDER: Yes.
10 CLERK BRYANT: Councilmember Fleming?
11 COUNCILMEMBER FLEMING: Yes.
12 CLERK BRYANT: Councilmember Pittman?
13 COUNCILMEMBER PITTMAN: Yes.
14 CLERK BRYANT: Councilmember Roche?
15 COUNCILMEMBER ROCHE: No.
16 CLERK BRYANT: Councilmember Spangler?
17 COUNCILMEMBER SPANGLER: No.
18 MAYOR JENKINS: Motion carried.
19 MR. HAEBERLIN: The next item we have, which
20 is a public hearing again -- and I don't want people
21 to get upset, but I've broadly advertised this thing
22 and I need to make for certain that I didn't leave
23 anything out in terms of originally I didn't know what
24 the entire text would be and I wanted to include 1601,
25 1602, 1603, 1604, 1604A, 1605 and 1606. I wanted the

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1 attorney to have the full breadth of the ability to
2 change anything that he needed in order to accommodate
3 the request, the petition that was supported by
4 Councilwoman Flaming. And so that's why it's so
5 broad, so I don't want people to get upset about that.
6 Since then, I believe you've had two
7 versions of this ordinance, and the original version
8 went to the Planning Commission. The Planning
9 Commission generally did not support the petition. To
10 say that the motion was for approval was to say that
11 they cut out all the language that required notifica-
12 tion to property owners. So essentially, they sliced
13 the ordinance in half, and so they struck everything
14 that required notification, and I'm in agreement with
15 the actions of the Planning Commission.
16 You've heard from the city attorney. We are
17 not comfortable with this; however, it's the decision
18 of the City Council.
19 And this regards City-initiated rezonings
20 and notification to property owners. Again, you were
21 talking about affected classes earlier -- some people
22 being notified, other people not being notified.
23 That's why state law exists.
24 So I kind of stand on my recommendation that
25 we leave it as-is. The state law has worked well, and

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1 I think that in the future the city would find itself
2 experiencing potential litigation from going over the
3 state law requirements.
4 As it's been discussed earlier, perhaps the
5 building official should administer the zoning
6 ordinance. All I would have to say is good luck to
7 that individual. They would not have an understanding
8 of the complexities of what a zoning or a planning
9 director would do or a city planner.
10 So again with this I would turn back to the
11 City Council and we do need to conduct a public
12 hearing.
13 COUNCILMEMBER FLEMING: Well, since it's my
14 crafted ordinance, let me try to find the one that we
15 corrected, Mr. Weed, or at least I thought we had.
16 MR. HAEBERLIN: This draft number two is
17 November 17th, '09. That may have been received by
18 the Council by e-mail while I was perhaps on vacation.
19 I don't know. But you did receive an additional copy
20 by e-mail, and I printed a copy in case anybody needs
21 to see it.
22 COUNCILMEMBER ALEXANDER: November 17th?
23 MR. HAEBERLIN: November 17th was draft
24 number two from Mr. Weed's office. I believe that
25 Penny Tapia, his secretary, was not present that day

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and it was actually e-mailed by another associate.
COUNCILMEMBER SPANGLER: You say you had an extra copy?
MR. HAEBERLIN: Yes, sir.
I think where we moved from is the discussion about a certified letter and that of a sign to perhaps either/or. And correct me if I'm wrong, Mr. Weed.
We had a lot of discussion about where the sign should be placed: should it be in the public right-of-way? should it be on the private property? The City is concerned about coming on somebody's property without their permission to put a sign up -- but then the case law, we don't know if it's been tested -- and if it's in the public right-of-way, does it meet the requirements for on-site notification? So we've kind of gone the full gamut of this, that business owners or property owners might try to issue a trespass warrant against the City for putting a sign on their property. So then the natural next location is to put it adjacent to the property in the public right-of-way, but then does that meet state law?
The way Mr. Weed has crafted it is an either/or. He's trying to cover both cases. Again, this is going well above the state requirements, the

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minimum requirements. He's trying to be very careful that if we do this, the City does not come into a litigation situation.
So I think that's my understanding as it exists today, is either/or the City installs a sign in the right-of-way or we send a certified letter to City-initiated rezonings of properties, which is an infrequent occurrence, however, based on the direction of the Council to address the map itself, we have had some activity in the last year. And I can't recall how many petitions. It may be five or six, but we did do some City-initiated rezonings.
COUNCILMEMBER FLEMING: Okay. In regards to the letter -- that's the first requirement -- the letter needs to be sent to the property owner that is listed on the Dekalb County tax register at the present time of the City doing a City-initiated rezoning or considering rezoning. It does not have to be -- I've come off of that. It does not have to be a certified return-receipt-requested letter as long as we are notifying personally the owner of the affected property.
The second requirement that I am proposing is that we do indeed post a public notification via the sign that we don't have any problem in putting in

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right-of-ways, you know. So I don't see where this is going to be a problem in putting it on a right-of-way so that the public will know that that particular affected property is being rezoned.
And the City-initiated rezonings would be either for the parcel such as what we did the other night regarding the GM property as well as map amendments. If Mr. Haeberlin sees that we've got an error on the map, then we need to notify that owner that we are changing our map. Their specific property needs to have a sign on it so the people around them will know that the zoning is being changed.
And that's what my proposal is.
COUNCILMEMBER ROCHE: Yeah. I can say initially I had some misgivings about this because I was concerned initially we would have to have some evidence that the notice was received before we could proceed at all. And since that's been -- basically, rezoning would have been contingent on, you know, receipt by an owner. Since that's been removed, I think that I'm okay with this. I think it's a no-brainer.
COUNCILMEMBER ALEXANDER: So Ms. Fleming, you want to change the wording in Section 1 on page 5 under (B)?

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COUNCILMEMBER FLEMING: I'm looking at November 17th.
COUNCILMEMBER ALEXANDER: Correct.
COUNCILMEMBER ROCHE: Written notice shall be sent to the occupant via regular mail to the parcel address to be rezoned.
COUNCILMEMBER ALEXANDER: And A, which is by certified mail.
COUNCILMEMBER FLEMING: That is correct. Certified mail return-receipt-requested is not necessary. It needs to be a personal letter sent to the last known of the property to be rezoned as the owner is listed on the Dekalb County tax records.
COUNCILMEMBER ALEXANDER: So written notice shall be sent by mail.
COUNCILMEMBER FLEMING: Correct.
MR. HAEBERLIN: Can we have some order, please, Mayor? Can we have some order? It's very difficult to hear anything.
MAYOR JENKINS: (Pounds gavel)
COUNCILMEMBER ROCHE: I don't know. I mean, to me, the certified mail thing would show evidence that we at least mailed the envelope --
MAYOR JENKINS: And it should be --
COUNCILMEMBER ROCHE: -- one way or another,

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and I would think that we would want to leave that in.
MAYOR JENKINS: Yes.
COUNCILMEMBER ROCHE: Because that way, we're either going to get a little signature card and that's our evidence that someone did receive it or we're going to get back an envelope showing undeliverable and that's our evidence that we attempted to mail it.
COUNCILMEMBER FLEMING: Okay. I don't have a problem with that, but I know that we need to personally notify the owner that's on the Dekalb County tax records by mail of some sort. And we need to notify the public also, and the way that we do that is to put a sign on the affected property.
COUNCILMEMBER ROCHE: And as far as (B), I can understand why -- to the occupant, I don't know how you would send a certified letter to an occupant.
COUNCILMEMBER FLEMING: No.
ATTORNEY WEED: Do you remember, it was actually going to be two letters?
COUNCILMEMBER ROCHE: Right, exactly. So there are two letters. One's going to the property itself.
COUNCILMEMBER FLEMING: No, no. There's only going to be one letter, a personal letter.

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I sent this out before Thanksgiving to all of us.
COUNCILMEMBER ROCHE: Okay. Well, I'm just saying, then we need to take out (B) here is what you're saying, because here you have (A) is written notice by certified mail to the last known owner and (B) is to the occupant of the address itself.
COUNCILMEMBER FLEMING: All of this comes out, actually. After 30 days, da-da-da-da-da, all that comes out.
COUNCILMEMBER ROCHE: Okay.
ATTORNEY WEED: So let's -- because I'm the poor devil who's got to craft this --
COUNCILMEMBER FLEMING: Okay. (A) should be --
ATTORNEY WEED: -- at the end of the day --
COUNCILMEMBER FLEMING: -- written personal notification shall be sent to the last known owner of the property to be rezoned, and the owner is listed -- such owner is listed on the Dekalb County tax records.
ATTORNEY WEED: I'm with you. And we're going to delete --
COUNCILMEMBER FLEMING: Delete 3 -- (B).
ATTORNEY WEED: Yeah, (B). Let's go one at a time. We're down to 2.

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COUNCILMEMBER FLEMING: Delete it. Delete it.
ATTORNEY WEED: 3 --
COUNCILMEMBER FLEMING: Yes.
ATTORNEY WEED: -- we're deleting. Okay. And then 4 --
COUNCILMEMBER FLEMING: And 4, we're deleting.
ATTORNEY WEED: Well, actually, 4 we might still need to have.
COUNCILMEMBER FLEMING: Well, we're not having a return receipt.
ATTORNEY WEED: But we still need to --
COUNCILMEMBER FLEMING: We're not having a return receipt.
ATTORNEY WEED: As long as you can prove we sent it to somebody over on the tax roll, we're okay. All right. That gets us down to --
COUNCILMEMBER FLEMING: 4 completely.
ATTORNEY WEED: That now gets us down to it's now going to be -- it'll read lowercase (b) (1), that sentence, "Where the rezoning is for a single parcel of land," blah-blah-blah. "Written notice shall be sent by certified mail, return receipt requested" is no longer required.

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COUNCILMEMBER FLEMING: I'm sorry. Where are you?
ATTORNEY WEED: I'm sorry. Let's go back to page 5, 5 of 9. We're at lowercase (b)(1) which would now read, "Where the rezoning is for a single parcel of land."
COUNCILMEMBER FLEMING: I don't have a lowercase (b).
COUNCILMEMBER ROCHE: Yeah. Here it is (indicating).
COUNCILMEMBER FLEMING: Oh, excuse me. I'm sorry. Go ahead.
ATTORNEY WEED: Okay. "Where the rezoning is for a single parcel of land, the same notification procedures shall be followed," which will either be, right now, (b) (1) -- we'll leave it at that until we get back.
COUNCILMEMBER FLEMING: No, there's no "either."
ATTORNEY WEED: All right. So let's talk about that.
COUNCILMEMBER FLEMING: "Shall be," (A).
ATTORNEY WEED: All right. "A written notice shall be sent by certified mail, return receipt requested --"

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COUNCILMEMBER FLEMING: No.
COUNCILMEMBER ROCHE: No, no. We need that.
ATTORNEY WEED: You do need that to prove that we sent it. As long as we don't have to have --
COUNCILMEMBER FLEMING: No signature, though.
COUNCILMEMBER ROCHE: Yeah. And it just comes back --
ATTORNEY WEED: Yes.
COUNCILMEMBER ROCHE: -- and then we have evidence that --
ATTORNEY WEED: What would literally happen is -- the Councilman's absolutely right. We would get back -- if someone didn't sign for it, we'd still get back the unsigned envelope.
COUNCILMEMBER FLEMING: Okay.
ATTORNEY WEED: And we would have our receipt that we posted it by virtue of the mechanism of certified mail. So that language is actually okay.
COUNCILMEMBER FLEMING: Okay.
ATTORNEY WEED: So "to the last known owner of the property to be rezoned as the owner is listed on the Dekalb County tax records," and then the remainder would no longer be relevant.
And then we're now at 5 on page 6 of 9.

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Originally it said, in the alternative to the procedure above, the City can post at least one sign. I assume you'd like to delete the first part of that sentence to the comma.
COUNCILMEMBER FLEMING: That is correct.
ATTORNEY WEED: Capitalize "the" underneath "the City." Do you still -- do you want to make it --
COUNCILMEMBER FLEMING: "Shall."
ATTORNEY WEED: -- mandatory? "Shall." Okay. All right. And then the remainder should be fine.
I'll clean up the rest of the language that -- I think the rest of it will be okay other than I'll take out the parts where I explain that -- actually, I think we should leave that in there: that failure of the recipient to accept the notice or, et cetera, et cetera, might result in the failure of actual notice, I think we should still leave that caveat language in there --
COUNCILMEMBER FLEMING: Okay.
ATTORNEY WEED: -- just in case. All right.
COUNCILMEMBER FLEMING: Okay. The corrections that we made from the previous ordinance that was read or heard at the last public hearing, a City notification procedures shall be followed which

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shall be (A), written notice shall be sent by certified return-receipt-request to the last known owner of the property to be rezoned as the owner is listed on the Dekalb County tax records.
ATTORNEY WEED: If you'll grant me the editorial privilege, I will justify -- the way these things are usually done is in reverse outline form, it's odd. You actually do it in lowercase (b) and et cetera. I'll change the proper designations. For example, in subsections 6 and 7, I'm going to have to change a little bit of the wording there. If you will just give me the editorial license to amend it in accordance with what was discussed tonight --
COUNCILMEMBER FLEMING: Okay.
ATTORNEY WEED: -- I'll clean that up. I don't want to take the time to do it right now, although we could.
COUNCILMEMBER FLEMING: Okay.
ATTORNEY WEED: But I need 10 minutes to do that.
COUNCILMEMBER FLEMING: That'll be fine.
ATTORNEY WEED: Okay.
MAYOR JENKINS: Do we need a motion?
COUNCILMEMBER FLEMING: No, not yet.
COUNCILMEMBER ROCHE: Public hearing.

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COUNCILMEMBER FLEMING: Public hearing.
MAYOR JENKINS: Oh, okay. Public hearing.
MR. HAEBERLIN: Those who would like to speak in favor of the revisions that have just been discussed, please raise your hand.
In favor? You're in favor of the text amendment?
COUNCILMEMBER ROCHE: In favor of the new ordinance, the notification.
MAYOR JENKINS: Notification or --
MR. HAEBERLIN: Three, four. Okay. About a minute and a half apiece, something like that.
MAYOR JENKINS: Go ahead. Who's first? Let's go. Give your name, please.
MR. STOKES: I think it's a no-brainer not to do this. Dean Stokes, property owner here for 41-odd years.
And for a zoning ordinance that affects a business, that affects the occupancy of a building, not to have proper notification is absolutely insane. I've spoken about it before. You can go by the letter of the law but you're not going by the spirit of the law. It's just too much involved. I cannot see how anybody could object to certified mail going out.
If I had gotten a letter with regard to the

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zoning that took place, the rezoning, changing the ordinance, before it happened, I don't think it ever would have happened. I think we -- there would have been enough people, enough business owners, enough building owners that would have attended this City Council, and that never would have occurred. We wouldn't be having this problem today.

Thank you.

COUNCILMEMBER FLEMING: Thank you.

- - -

(Applause)

- - -

MR. HAEBERLIN: Mayor, for the record, I think people are slightly confused. This only involves City-initiated rezonings of properties, not text amendments. And so this is only specific to parcels, not the zoning code. Thank you.

MAYOR JENKINS: Okay.

MR. CUSHMAN: Jimmy Cushman, 3299 Pine Meadow.

And actually Scott's got a good point there, too, that he made: if we could add that to that, the notification for the zoning ordinances.

But I thank you-all very much for taking up this issue. It's very important to -- you know, that

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you notify people, and I think that's a great way of doing it, through the letters and also through the -- through the signage. So thank y'all very much for taking this on.

MAYOR JENKINS: Next?

MR. ANDERSON: Stuart Anderson, Doraville.

I'm very much for passing this ordinance. I'm against some of the deletions we've made tonight. I like the idea of two letters.

I certainly like the idea of letting the City off if people aren't able to be contacted, by taking out the after 30 days; if nothing is returned by the Post Office either in the form of receipt, evidence of being undeliverable, then the zoning can proceed. That makes it legal for the City to do this, proceed with the zoning.

I certainly agree or feel that text amendments should be involved in this notification, absolutely. Text amendments should be involved in the notification.

And as far as signs in a right-of-way, if the municipality can't use the right-of-way, then you can't put stop signs or anything in the right-of-way. That's what right-of-ways are for is for a municipality to use. So as far as signs go, they

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certainly can go in the right-of-way. It's what we pay taxes for and municipalities have the right to use. We give them that right or --

But I'm for two letters, the certified letter and the occupant letter, and I'm certainly for the 30-day thing that lets the City out from under the requirement as well, and text amendments. Thank you.

- - -

(Applause)

- - -

MR. HART: Tom Hart, Gordon Heights.

I have to agree with virtually everything that Stuart had to say. There's three people that need to be notified here. It's the property owner, it's the people that are renting the property from the property owner, so they know what's going on, and the public, and that's done by the two letters and by the signs.

And that needs -- and these major text amendments, all these problems we've had in the last two years of passing all these ordinances that have rezoned C-1/C-2, M-1/M-2, the problems resulted because the people that were involved or impacted had no idea what was going on. So these major text amendments should be included as well. Thank you.

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- - -

(Applause)

- - -

MR. SHANAHAN: David Shanahan, New Peachtree Road. Thank you for addressing this. I appreciate it.

I agree with what Tom said, that the text amendments as well, they're having a big impact on many of us on New Peachtree Road.

The adoption of the zoning map apparently changed some properties. I don't know. Ten years here thinking I was O&I. Now I'm not quite sure what I am, and I'm not sure when it happened or how, but I would have liked to have been notified about that.

Thank you.

- - -

(Applause)

- - -

MR. FRANK: Joe Frank.

I think we need to notify the property owners whose properties are being affected. Also when you are passing overlays or when you are passing any other thing what affects those properties, the property owners needs to be notified about that.

This whole Buford Highway thing, rezoning

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everybody's property, some kind of an overlay, that was, I think, an extremely bad thing. It damaged a great number of people, a great number of businesses. And again, this probably would have never happened if everybody would have been notified. None of us had been notified of this, and we need to avoid this kind of a thing from reoccurring again. Thank you.

- - -

(Applause)

- - -

MAYOR JENKINS: Anybody else?

MR. HAEBERLIN: I think we covered those for -- I don't think we did. Did we? Did we ask those who would like to speak in favor? I apologize.

COUNCILMEMBER ALEXANDER: Yes.

MR. HAEBERLIN: We did cover that. Thank you. I just want to make sure.

Close the public hearing and turn it back to the Mayor and Council.

COUNCILMEMBER ALEXANDER: We didn't speak to against.

COUNCILMEMBER ROCHE: Is anyone opposed?

MR. HAEBERLIN: Pardon me?

COUNCILMEMBER ALEXANDER: Against.

COUNCILMEMBER FLEMING: You didn't do

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opposed.

MR. HAEBERLIN: Oh, I apologize. I apologize. I got confused.

Those who oppose the adoption of the text amendment we've just discussed, would you please raise your hand. Anyone like to speak in opposition?

- - -

(No response)

- - -

MR. HAEBERLIN: Seeing none, return it to the Council.

MAYOR JENKINS: Thank you.

COUNCILMEMBER PITTMAN: I had a question about the 30 days. You're wanting to take that out, Pam?

COUNCILMEMBER ROCHE: Uh-huh, it was taken out.

COUNCILMEMBER PITTMAN: So --

ATTORNEY WEED: That was my understanding --

COUNCILMEMBER PITTMAN: So --

ATTORNEY WEED: -- with regard to the notes that I've changed.

COUNCILMEMBER PITTMAN: So in the event that we don't get anything back, then?

ATTORNEY WEED: As it stands right now, at

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least upon Councilman Fleming's concept, the burden would be on the City to make a good-faith attempt by a certified mail after looking at the last known owner on the tax records at a certain date and time, and they would send out the letter based upon that same date and time. And if it got there, great; if it didn't get there, great. Either way, we would know that we sent it because we'd have our proof that we had mailed it, at least.

And then there would be no time frame. We could go ahead and act in accordance with the general state law with regard to having the hearing and having the meeting where you make whatever change might be necessary.

COUNCILMEMBER PITTMAN: After how long?

ATTORNEY WEED: Well, the general rule is no less than 15 days, no more than 45, and the advertisement's got to be run in the local legal organ. And we've always complied with that, at least since May 2008 when I came on board.

What happened before me, I can't tell you, but I can tell you that since that day, it sure happened.

MR. HAEBERLIN: It's back before the Council.

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MAYOR JENKINS: Good. Anymore discussion?

Have a motion?

COUNCILMEMBER FLEMING: Please. Finally.

I'd like to make a motion to adopt Section 1604, Notification and Public Hearing, that there will be a notification policy for -- City-initiated policy for City-initiated rezonings as well as map amendments.

MAYOR JENKINS: Second?

COUNCILMEMBER SPANGLER: Second.

MAYOR JENKINS: Anymore discussion?

COUNCILMEMBER ALEXANDER: As outlined in draft two, dated November 17?

ATTORNEY WEED: And further modified by --

COUNCILMEMBER ALEXANDER: Further --

ATTORNEY WEED: -- the special (overspeaking).

COUNCILMEMBER ALEXANDER: -- modifications.

Per draft number two, dated November 17, and per Ms. Fleming's modifications.

MR. HAEBERLIN: Point of clarification because I'm not for certain I'm understanding Ms. Fleming. Are you referring to text amendments as well?

COUNCILMEMBER FLEMING: I said map amend-

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1 ments.
2 MR. HAEBERLIN: Only map amendments. Okay.
3 Thank you.
4 MAYOR JENKINS: Anymore discussion?
5 - - -
6 (No response)
7 - - -
8 MAYOR JENKINS: Call the roll, please.
9 CLERK BRYANT: Councilmember Alexander?
10 COUNCILMEMBER ALEXANDER: Yes.
11 CLERK BRYANT: Councilmember Fleming?
12 COUNCILMEMBER FLEMING: Yes.
13 CLERK BRYANT: Councilmember Pittman?
14 COUNCILMEMBER PITTMAN: Yes.
15 CLERK BRYANT: Councilmember Roche?
16 COUNCILMEMBER ROCHE: Yes.
17 CLERK BRYANT: Councilmember Spangler?
18 COUNCILMEMBER SPANGLER: Yes.
19 MAYOR JENKINS: All right.
20 MR. HAEBERLIN: The next item you have is
21 the Adult Entertainment Ordinance, and that's
22 Mr. Murray Weed.
23 ATTORNEY WEED: Mr. Mayor and members of
24 Council, it came to the attention of the planner that
25 there have been some apparently serious inquiries with

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1 regard to our commercial zone for the development of
2 businesses that concentrate in the adult entertainment
3 industry from the aspect of production and studio
4 facilities rather than what I'd call the end product
5 which might be nude dancing or, you know, movies or
6 videos that are already completed.
7 Although I think the definition section of
8 the existing adult entertainment ordinance probably
9 covered those concerns with regard to studio
10 production facilities, live cam, Web streaming, things
11 of that nature, I felt it was important after
12 discussing the matter with the planner that we clarify
13 the ordinance to make sure that those types of
14 businesses were definitely included as well.
15 In conversation with Councilman Fleming
16 today, in the version of the ordinance you have, which
17 is November the 23rd of 2009, the definition of adult
18 business reads: an establishment other than those
19 expressly specified in the section where employees,
20 contractors, models or patrons expose specified
21 anatomical areas or engage in specified sexual
22 activities for profit.
23 After conversations with my partners today,
24 I think it might be appropriate to change "for profit"
25 to "for consideration," and I make that recommendation

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1 here tonight before you consider the ordinance. I
2 think that, frankly, legally, there's a legal reason
3 to do that: that obviously a person could engage in
4 that activity but not be very good at it and not make
5 a profit; therefore, I don't think that ought to be
6 the standard. It ought to be something less than
7 that. Simply getting the exchange, the quid pro quo
8 exchange should be enough rather than how much, so
9 I'd recommend that.
10 And that's essentially the purpose of the
11 ordinance, and I'd recommend that you approve it. We
12 think there's a good reason to move forward on this,
13 and it certainly does clarify the new technology.
14 And what this is about is new technology. Laws
15 traditionally follow technology because technology is
16 far in advance of the statutes that are created to
17 deal with that issue as a result of the technology,
18 and that's what this is about.
19 You've already technically adopted this. I
20 mean you've amended your agenda to consider this, and
21 tonight, since it's a police-powers ordinance and not
22 zoning, you could choose to waive first reading and
23 adopt it tonight or not.
24 We think there's good cause to go ahead and
25 adopt it tonight and that's our recommendation.

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1 COUNCILMEMBER FLEMING: May I ask a
2 question?
3 COUNCILMEMBER PITTMAN: Yeah.
4 COUNCILMEMBER FLEMING: I feel the ordinance
5 is extremely important, but having just received it,
6 what, late last week, I guess, I am not inclined to
7 waive first reading because I don't believe anybody
8 else has -- not Council, but I'm just wanting to get
9 into a habit of not waiving first reading.
10 Is there a problem with putting this off
11 until next Monday? I mean -- I'm sorry -- the 14th.
12 ATTORNEY WEED: In my opinion, I think you
13 take a terrible risk, but that's always the Council's
14 choice.
15 COUNCILMEMBER PITTMAN: I have no problem
16 waiving first reading.
17 ATTORNEY WEED: And I think you know the
18 answer to this. The staff wouldn't have brought it up
19 in the manner in which we did unless we felt there was
20 a good reason to do so. But those are decisions for
21 Council, not the staff. We are giving you our best
22 advice.
23 COUNCILMEMBER PITTMAN: Well, I'd like to
24 make a motion to waive first reading.
25 COUNCILMEMBER ALEXANDER: I'm sorry. What

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was the motion?
COUNCILMEMBER PITTMAN: To waive first reading.
COUNCILMEMBER ALEXANDER: I second.
MAYOR JENKINS: Anymore discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: The ordinance is extremely important, and because of that, I will vote yes.
CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: Motion carried.
Motion to adopt?
COUNCILMEMBER PITTMAN: So moved.
MAYOR JENKINS: Second?

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COUNCILMEMBER ALEXANDER: Second.
MAYOR JENKINS: More discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll, please.
CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
ATTORNEY WEED: Thank you very much.
COUNCILMEMBER SPANGLER: Motion to adjourn.
MAYOR JENKINS: Thank you.
COUNCILMEMBER ROCHE: Second.
MAYOR JENKINS: Hold on just a minute.
Is this concerning what, sir?
MR. THURMOND: I just would like to ask the city attorney if there's any legal method that the Council can give Spa 18 the same consideration tonight

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the other spa got.
MAYOR JENKINS: Okay.
ATTORNEY WEED: Obviously I don't answer questions of the public unless he wants to pay me, unless the Council directs me to do so. So if you'd like me to answer the question, I will be happy to.
COUNCILMEMBER FLEMING: Mr. Thurmond, that is what I had requested. I was going to make a motion to reconsider, and Mr. Weed advised that it would be illegal for me to do that, to reconsider the motion.
MR. THURMOND: My question was is there a legal vehicle other than that to accomplish the same thing?
COUNCILMEMBER FLEMING: Mr. Weed?
MAYOR JENKINS: Wait till the next meeting. That was when? The 15th? 14th?
COUNCILMEMBER PITTMAN: Well, my understanding, there was not; is that correct?
ATTORNEY WEED: That is my opinion, it was my opinion earlier and it still is my opinion now.
MAYOR JENKINS: Okay.
COUNCILMEMBER SPANGLER: Motion to adjourn.
MAYOR JENKINS: Second?
COUNCILMEMBER ROCHE: Second.
MAYOR JENKINS: Call the roll.

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CLERK BRYANT: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BRYANT: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BRYANT: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BRYANT: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BRYANT: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
- - -
(Meeting adjourned at 10:15 p.m.)
-o0o-

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 30th day of December 2009.

_____

Theresa Bretch, CCR
Permit No. B-755

[SEAL]

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