In The Matter Of:

City of Doraville

State of Georgia

-Special-Called Meeting with Public Hearings-

November 9, 2009

American Court Reporting Company, Inc.

52 Executive Park South

Suite 5201

Atlanta, Georgia 30329-2217

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

Original File 59210-1.TXT

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CITY COUNCIL MEETING

CITY OF DORAVILLE

STATE OF GEORGIA

SPECIAL-CALLED MEETING WITH PUBLIC HEARINGS

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Transcript of the proceedings held at Doraville Civic Center, 3770 Central Avenue, Doraville, Georgia, Mayor Ray Jenkins presiding, before Theresa Bretch, Certified Court Reporter, commencing at approximately 6:30 p.m. on Monday, November 9, 2009.

* * *

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

P R O C E E D I N G S

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

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Here.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Here.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Here.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Here.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Here.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Here.

MAYOR JENKINS: This is a special-called meeting and we're going to let Scott take over.

MR. HAEBERLIN: Mayor, we did have a request by the City Attorney to add one item to the agenda which is depicted as item number 4, so we will need a motion and a second to amend the agenda to accept -- excuse me -- to accept the amended agenda.

Is there anything else, Mr. Weed, that you'd like to add to that?

ATTORNEY WEED: No, sir. And I believe you

actually -- you had an item. Oh, the Clerk's got an item too as far as the bid.

MAYOR JENKINS: Yeah. We have a bid that we might say skipped over the other night when we opened the bids, so we want to add that as number 5 and adjourn will be 6.

So I have a motion on alcohol, number 4, Alcohol Beverage Ordinance. Do I get a motion we put that on the agenda?

COUNCILMEMBER SPANGLER: So moved.

COUNCILMEMBER PITTMAN: So moved.

MAYOR JENKINS: Second?

COUNCILMEMBER PITTMAN: Second.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

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MAYOR JENKINS: Okay. And item number 5, which would be opening of the last bid on the cleaning company?
COUNCILMEMBER PITTMAN: So moved.
MAYOR JENKINS: Second?
COUNCILMEMBER FLEMING: Second.
COUNCILMEMBER ALEXANDER: Was it received at the same time the other bids; we just missed it?
CLERK BLACKMON: Yes.
COUNCILMEMBER ALEXANDER: Okay.
CLERK BLACKMON: I had it in with stormwater inspector stuff.
COUNCILMEMBER ALEXANDER: Oh, okay.
CLERK BLACKMON: I mis- -- it was my fault. I misplaced it.
COUNCILMEMBER ALEXANDER: Okay.
MAYOR JENKINS: Any more discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll, please.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.

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CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BLACKMON: Councilmember Pittman.
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BLACKMON: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: All right, Scott.
MR. HAEBERLIN: Okay. Although we're going to hold a separate public hearing on 3A, 3B, 3C and 3D, I am going to talk about them collectively and I'm going to talk about 3A and 3B collectively since it's in the same property ownership of Interbrand LLC.
So we're going over presentation-wise 3A, 5849 Peachtree Road, rezone from M-2 to M-1, 5.64 plus or minus acres; and then 0 General Motors Drive, rezone from M-2 to M-1, 5.77 plus or minus acres.
If you recall, the staff was counseled by the Mayor and Council to look at the GM site and its vicinity in terms of its zoning. Well, this is a key component given its proximity, and many people would assume it's the GM site. And the City Council has the map. I'm going to show the general public who might be present. It's actually right here, two parcels

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that are on Peachtree Road. One is addressed as 0 General Motors Drive, which is a private street, but collectively they are right next to each other.
The Comp Plan does identify this as mixed-use retail development opportunity which generally means commercial, office and residential; however, the city does not have any heavy commercial district. And so things such as science and engineering technology, et cetera, are kind of left to lurch, meaning they have no really identified district, and so that's important later.
The Peachtree Road access is an urban local road, and that's within two jurisdictions; however, General Motors Way appears to be, again, a private road. There's also a railroad spur that's running more south that is behind this property as well.
Based on the zoning history, the property has been into the heavy manufacturing district, and that is consistent with the previous maps. And now the City is looking at down-zoning this property from M-2 to M-1, and this is being done in light of the GM petition that we're going to be doing next, again.
This is a developed property and it does have 206,000 square feet on it. We do have three businesses, which is Jim Ellis Collision Center, which

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is right now being looked at by Code Enforcement regarding their occupational tax license; Interface Signs, which has a current license Atlantic Limousine, which I understand is a common carrier, which excludes it now from being subject to the occupational tax licenses. So those are the three businesses we have there.
Under the standards of review, what's important to note is that the science and technology component that we keep discussing as being a core item within the GM rezoning area really needs a light industrial zoning category for it to exist. And so this is one of the reasons is why we look at rezoning this property to M-1, but M-1 with very specific restrictions.
And so you'll see that, over time, GM has sold off a number of its properties and these have been rezoned. Everyone is familiar with Peachtree Pavilion, BrandsMart, Hennessee Lexus, et cetera. There's also a pad site that's very nearby that was looked at as a restaurant. These are all C-2.
But in order to facilitate the technology and science base, this property will need to have some light industrial, and so that's one of the reasons why the staff is requesting that we consider this.

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Now, this property over time may expand in area depending on the end user, and I'm certainly hoping that the science and technology component is successful enough that they do consider that, because right now we're looking at collectively about 12 acres.

And so based on the core components of your Comp Plan and also, too, the studies that have been done on the GM site and its vicinity, the staff is recommending approval of the request to rezone from M-2 to M-1. We are not requesting any variances from code; however, we're having very specific permitted uses. And if you reference Ordinance 2008-23, these are engineering and architectural offices, intermediate impact facilities, which include the following: colleges, junior colleges, and universities. All other intermediate impact facilities are excluded. Scientific or research laboratories. All other uses which are not permitted . . . shall be prohibited. Also as well, we did eliminate as a recommendation all the conditional uses within M-1 being excluded from this site.

Now, whether this zoning becomes a placecard or not is unknown. Again, that will have to do in the future with the sale of the GM property. The

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industrial base might expand a little in terms of accommodating science and technology; it may decrease a little. But right now, these parcels collectively are developed and they are owned by the same property owner.

In the back of your package, I also have a little narrative by the property owner, Interbrand, LLC, and also too their registration with the Secretary of State.

So that you're aware, although there is space there, the space is perhaps being underutilized in its current capacity. It could be a core component of the redevelopment of the GM site for science and technology. That's why I think it's important that the current uses, which really should not be in M-2 anyway, be down-zoned to that of an M-1 zoning category. Now these uses will become legal nonconforming uses. So you have to look at the site. What is there today? If you consider this to be just for science and technology, will be legal nonconforming until it closes. So that's one core component for the Council to look at.

Are there any questions?

COUNCILMEMBER ROCHE: You have to remind me of the science and technology component. When did we

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actually decide that that's what we wanted there?

MR. HAEBERLIN: Well, I have not received any specific direction from the Council, but in looking at the studies that have been done on the site, that is one of the things that was mentioned; also, too, looking at the city's Comprehensive Plan documents that we've adopted as well.

Again, I think it is a good component. This site as -- and it's been discussed alot -- this site nothing but commercial retail. Commercial retail right now is not doing well. There's a surplus of it. It's not ready at this time to be a component of mixed use because the city does not have a mixed-use zoning category. So right now, it's being looked at as a placecard.

If we were to leave it M-2, all those uses that are normally allowed within M-2 would be there. We would have some control over the site if we down-zone it to M-1.

COUNCILMEMBER ROCHE: No. But I guess what I'm getting at is this: I don't remember -- I mean I'm not arguing --

MR. HAEBERLIN: Sure.

COUNCILMEMBER ROCHE: -- the merits or --

MR. HAEBERLIN: Sure.

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COUNCILMEMBER ROCHE: -- nonmerits of science and technology or whatever. But I'm just concerned that -- because it came out when we did our resolution. I mean we basically in the resolution said, you know, we're not interested in a stadium.

MR. HAEBERLIN: Correct.

COUNCILMEMBER ROCHE: But for some reason, there is this new language about biotech component, and, again, I don't remember us saying that that's what we wanted.

And my concern is that if the Council, if the City, if every chance we get, we talk about biotech, and some developer comes along and says, "You know what? I'd rather do something else," he's going to say, "Oh. Well, the city wants to go this way instead of that way," and we could be potentially closing a door. There could be other uses that may be just as beneficial to Doraville citizens and the surrounding area.

But it just concerns me that this language seems to be appearing everywhere, and pretty soon everyone says, "Oh, I guess that's what we're doing," but we've never actually agreed to do that. So I'm just not sure that that language is appropriate at this point.

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MR. HAEBERLIN: Well, one of the things I'm looking at -- And many of you are familiar with how Georgia Tech has moved to both sides of midtown. They were split by I-75, and over time, they immigrated from one side, which was the western side, and now they've come back on the eastern side and become part of the component of midtown. And obviously it being a teaching and science facility, but they've also integrated mixed use in what they've done over there, so they have become a participant in the redevelopment of that area. So I look at this site as kind of being akin to what Georgia Tech has done.

I am concerned about rezoning it to M-1 and allowing simply all uses within M-1. Right now we have a situation where it's zoned M-2, and some of those uses could be looked at as detrimental to the city. So if we do nothing, everything that's allowed in M-2 will have to be allowed at the site. If we down-zone it with very specific limitations, we will have control over what's placed there.

If we have an applicant that comes forward that the City entertains what they would like to do, of course they could rezone it. But this would not bring the property up to an M-2 zoning ever again. It would leave it in M-1 zoning.

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COUNCILMEMBER ROCHE: Well, I got all that. I'm just concerned about all this extra language. It looks like we are saying that we want science and technology, and again --

MR. HAEBERLIN: Okay.

COUNCILMEMBER ROCHE: -- I'm just concerned that this language has somehow found its way into, you know, official press releases, et cetera, of the City Council of Doraville when that's not necessarily what the City Council of Doraville wants or doesn't want or whatever and it may be sending a message that may be discouraging potential opportunities in the future. And unless this Council says, "Oh, we definitely want science and technology," I don't think it should be included in our documentation and I don't think it should be included in our press releases.

I'm okay with the concept of changing the zoning. That's not the issue.

MR. HAEBERLIN: Well, again, I -- I do respect that opinion. I will let you know that if you're not down-zoning it from M-2 to M-1, what -- what zoning category would you place it in?

COUNCILMEMBER ROCHE: No, I'm not saying that we don't down-zone it. I'm just saying we can down-zone it but it could be lots of other things

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other than --

MR. HAEBERLIN: Okay.

COUNCILMEMBER ROCHE: -- potentially science or technology.

MR. HAEBERLIN: Okay. (Overspeaking)

COUNCILMEMBER ROCHE: All I'm saying is it looks like we're setting --

MR. HAEBERLIN: (Overspeaking) Hm?

COUNCILMEMBER ROCHE: It looks like we're setting a direction and saying this is what we want.

MR. HAEBERLIN: Okay.

COUNCILMEMBER ROCHE: And that's not necessarily what we do want. That's not necessarily what the Council has agreed on --

MR. HAEBERLIN: I understand.

COUNCILMEMBER ROCHE: -- that we want that. That's why I'm concerned.

MR. HAEBERLIN: Sure.

COUNCILMEMBER ROCHE: The down-zoning, fine. I got that.

MR. HAEBERLIN: Well, I think the lucky thing that's about this is you have this education component and the colleges, junior colleges and universities to me would be a natural complement to anywhere in the city whether at this site or another

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site.

And so on that basis, if the Council would elect to change those permitted uses within M-1 that they would like to see at this site, or the whole list, I would not necessarily recommend that, but I think you've got at least three really good uses listed there. Whether you want to expand that list even greater would be up to the Council.

COUNCILMEMBER FLEMING: I had a couple questions. The 12 acres that we're working with right now, that is not part of the commented 165 acres of the GM property, or it is?

MR. HAEBERLIN: Well, it's interesting, because all the discussion about GM, the acreage has never panned out to what the County has represented it as, and I'm using their tax records to determine that, and so I think there's a misnomer out there about how much acreage is GM.

I'll be honest with you. When I first sent the Code Enforcement officers out there to this site, they were not even aware that this site was in the city. So a lot of people are not really for certain on what this site is and that it was independently owned separate from GM. Although it's completely surrounded by GM, it looks like GM, and to the naked

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1 eye driving by, you would think it's GM property, and
2 because it being industrial, there's not a lot of
3 activity there.
4 COUNCILMEMBER PITTMAN: This three
5 businesses, would that impact -- will this impact the
6 three businesses?
7 MR. HAEBERLIN: Well, it would render -- it
8 would render them legally nonconforming if they're not
9 included in that list, certainly.
10 The Atlantic Limousine, which we understand
11 is a common carrier, is kind of excluded from occu-
12 pational tax licensing. I don't know how you would
13 handle that in terms of zoning.
14 ATTORNEY WEED: It's irrelevant.
15 MR. HAEBERLIN: Irrelevant?
16 ATTORNEY WEED: Yeah. You know, as long as
17 they maintain, they can sell it for what it is now,
18 and as long as -- you know, for ad infinitum they can
19 -- as long as the next owner wants to keep doing the
20 same thing and it's not abandoned for six months --
21 MR. HAEBERLIN: Correct.
22 ATTORNEY WEED: -- it'll always be what it
23 is right now if they want it to be.
24 COUNCILMEMBER PITTMAN: So all three of
25 those businesses.

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1 ATTORNEY WEED: Correct.
2 COUNCILMEMBER PITTMAN: That's what I'm
3 saying.
4 ATTORNEY WEED: You know, will it impact
5 them? Metaphysically, yes, but practically speaking,
6 no.
7 MR. HAEBERLIN: And again, it's -- it's my
8 assumption again -- and a lot of this is based on
9 assumption -- that as the development of the GM site
10 occurs, this property is going to be more attractive,
11 we assume, for the property owner to sell for a higher
12 density use, for a new use, than to maintain it as
13 light industrial.
14 Again, that's a big assumption that we don't
15 know that will pan out, but that is one of the
16 assumptions we'd have to put in there. Otherwise, we
17 could rezone the property, for example, to C-1. And
18 would the property owner be better served by it being
19 C-1? I don't know. Again that's a basic assumption.
20 But if you do want a science and technology
21 core or ability to have a university, you need to
22 reserve some land for that.
23 MAYOR JENKINS: If you zoned it C-1 the same
24 as the other, it wouldn't be legal, what's there now.
25 MR. HAEBERLIN: Well, it would be legal

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1 nonconforming uses till they closed, and of course the
2 six-month rule would come into play as well. So it's
3 all governed by your legal-conforming provisions of
4 the Code -- which of course the Council would rewrite
5 that section and would not address that in quite some
6 time.
7 COUNCILMEMBER FLEMING: Correct me if I'm
8 wrong, but did you not say that limousine service was
9 considered a common carrier and therefore they aren't
10 required to have a --
11 MR. HAEBERLIN: That is --
12 COUNCILMEMBER FLEMING: -- occupational
13 permit?
14 MR. HAEBERLIN: -- my understanding from the
15 occupational tax clerk.
16 CLERK BLACKMON: Correct.
17 COUNCILMEMBER ALEXANDER: They're regulated
18 like a bus line. The Public Service Commission
19 regulates them.
20 COUNCILMEMBER FLEMING: So we receive no
21 revenue from them.
22 CLERK BLACKMON: Correct.
23 MAYOR JENKINS: Excuse me, Scott.
24 MR. HAEBERLIN: Yes.
25 MAYOR JENKINS: We will open this for a

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1 public hearing --
2 MR. HAEBERLIN: Correct.
3 MAYOR JENKINS: -- shortly, sir?
4 MR. HAEBERLIN: Correct. We're going to do
5 them separately. Right now, we're just in the talking
6 phases of these two properties collectively.
7 COUNCILMEMBER PITTMAN: So the three
8 businesses was Atlantic Limousine, Interface, and Jim
9 Ellis Collision?
10 MR. HAEBERLIN: That is correct. Jim Ellis
11 Collision has been visited by the City Code
12 Enforcement Officers.
13 COUNCILMEMBER PITTMAN: For what reason?
14 MR. HAEBERLIN: Operating without having
15 paid the occupational tax license.
16 COUNCILMEMBER PITTMAN: How long have they
17 -- do you know?
18 MR. HAEBERLIN: My understanding, since it's
19 been there. They were under the assumption that
20 because they have an occupational tax license for
21 another address within the city that they were somehow
22 covered at that location as well.
23 COUNCILMEMBER ROCHE: I guess the whole goal
24 of this was to do something with the apparently 142-
25 acre GM property. I'm not sure why we're -- what the

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urgency is to also rezone these three small parcels that are adjacent to it.

MR. HAEBERLIN: Well, it's actually two. And I'll be honest with you. In looking at this map, if someone is to look at the property, GM property as having a value, and then they look at, well, I've got M-2 next to me, and all those uses are allowed in M-2, my concern is that that is -- that would be less than marketable in terms of selling the property. If the City is endeavoring to have its highest and best use and people see that there could be -- pick something in M-2, the automobile plant there, for example -- that they would feel that the property has not adequate controls in order to protect their investment.

Because if you look at the whole group of it collectively, by getting rid of this whole M-2 block here, effectively all the heavy industrial on this side of the city is gone, and we have a whole small area right here. And I would say to the City Council, you really need to consider, does that need to be M-2 as well?

COUNCILMEMBER BATES: What would be in your opinion the downside of allowing all of M-1 as a permitted use on the property? I'm good with

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excluding the conditional uses, but what's the downside of the M-1 list as it sits?

MR. HAEBERLIN: Of course the downside is is that, you know, perhaps the property owner feels that as it's currently being utilized is the best use for the property and they continue to allow those uses. You don't really develop any unique core, anything that's different than any other area of the city that's zoned light industrial in terms of it being -- if it is a specific location.

For example, let's say that we'll just use automobiles as an example. We want an automobile complex. So we zoned a bunch of land and it was only for that of automobile uses. Naturally, you would expect automobile sales people or corporations to flock to that area to locate together.

So if you are wanting the science and technology base -- which again, I don't know that the Council does want that -- then you need to have an exclusive enclave of that and make it different and unique from that of all the other light industrial in the city which allows essentially every light industrial use.

COUNCILMEMBER ROCHE: I'm just trying to get back to the original goal of being here tonight and

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that was to try to apply some sort of zoning on the GM property to where, you know, bad things wouldn't happen --

MR. HAEBERLIN: Correct.

COUNCILMEMBER ROCHE: -- for a better way to put it. And you know, I was kind of surprised to see these other properties also included, because I think that we -- you know, if and when a developer approaches the City or we approach a developer or however all that works out, whatever they want to do, if it works for us, we're going to rezone it anyway. We are just looking for some place that -- like a holding pattern to just kind of protect the property.

MR. HAEBERLIN: Well, and --

COUNCILMEMBER ROCHE: And --

MR. HAEBERLIN: -- I think that's what I'm trying to do in this situation because I'm trying to protect your GM property from not being redeveloped because it has heavy industrial next to it, because again, remember this is part and parcel of this property. There's GM property on the southern boundary of this, so it comes around it. And because these areas are between two public rights of way, it could be argued, again, that the land use encompassed within those two public right of ways collectively

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could at some point be all developed together, certainly.

So that is a key problem. If you leave the M-2, will that generate enough interest for the redevelopment of the GM site? I don't know. My general gut feeling based on land use is that people will not be as inclined to purchase the GM site if they have heavy industrial next to them. Again, that's an assumption.

COUNCILMEMBER FLEMING: I want to go back to the limousine service. I'm sorry. Please help me understand this.

If they don't have to apply for an occupational permit, are we saying that they can rent any building in Doraville because they haven't had to come and get an occupational permit?

MR. HAEBERLIN: I don't know that I'm necessarily saying that. I'm saying that we cannot apply making them pay the tax. I mean they still have to have a certificate of occupancy and all those normal things that a business would have. I mean we still would protect the public health/life safety component of it but we just cannot collect a tax. Again, that's why we don't use --

COUNCILMEMBER FLEMING: Okay.

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MR. HAEBERLIN: -- the word business license, because it's just a tax. It's the payment of a tax.

COUNCILMEMBER FLEMING: Okay. The next question I have, which is going to be throughout this hearing, is has Jim Ellis, Interface Signs, Atlantic Limousine Service and Interbrand Properties been notified that we're planning on rezoning their property?

MR. HAEBERLIN: No, ma'am.

COUNCILMEMBER FLEMING: Thank you.

MR. HAEBERLIN: It's not a current requirement of the City Code, nor when the Council discussed adding that as an ordinance amendment on the same night this item was discussed, I was not directed to notify these people particularly.

COUNCILMEMBER FLEMING: No problem. Just --

MR. HAEBERLIN: Okay.

COUNCILMEMBER FLEMING: -- wanted to ask the question.

MR. HAEBERLIN: Fair question.

COUNCILMEMBER FLEMING: Now, the other comment I have to make is that I'm reading the PC recommendation. And getting back to Mr. Roche's comment about scientific and research, though I think

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that would be a good fit, they're making a comment that -- if I'm reading this correctly, that intermediate facilities are excluded and they're commenting that scientific and research laboratories is one of those. And so I was a little bit confused as to what their --

MR. HAEBERLIN: It may have just been Joe's typo. I mean I -- He was at the --

COUNCILMEMBER FLEMING: It's in several different locations.

MR. HAEBERLIN: Yeah. He was at the meeting, and of course I was there as staff. And they did not specifically alter in any way staff's recommendation, so I think it's just simply the way Mr. O'Connor prepared his notes for you, which seems not to indicate that he was in agreement with the staff.

Again, when I was there and present, they read verbatim from the staff report, the conditions, when they made the motion. So it may have just been how he worded his discussion of the item with you. Unfortunately, that night they did not have a tape recording device present, so they took very detailed -- and a lot of discussion occurred -- very detailed notes, and Joe was in the process of transcribing that

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information in the form of making some minutes.

COUNCILMEMBER BATES: Ms. Fleming, I believe -- and it took me a little bit to figure it out -- that the following permitted uses are, A, engineering and architectural offices; B, intermediate impact facilities; and C, scientific and research laboratories; but under B, all other intermediate facilities with the exception of colleges, junior colleges and universities are excluded. So C is a new section of permitted uses.

COUNCILMEMBER FLEMING: I appreciate your comment, but that truly isn't the way it's reading, and I don't see anyone from the Planning Commission here.

UNIDENTIFIED SPEAKER: I was there and --

COUNCILMEMBER FLEMING: But it's listed more than once. If it was just a typo, I could understand it but it's listed more than once in this recommendation. So I'm just asking that as a question.

MR. HAEBERLIN: That was not my understanding. Like I said, I was in attendance and I didn't -- I was not directed any specific questions on that. And my understanding is -- and again, they used the staff report, the recommendation, in making their motion. It may have just been the vernacular of how

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he has prepared his minutes.

My understanding is that the Planning Commission was supporting staff's recommendation as it was written.

COUNCILMEMBER BATES: It's verbatim on page 7 of the staff report.

COUNCILMEMBER ROCHE: My concern about a college, junior college, university is there could potentially be something that would -- if it was a public entity, it could vanish from our tax base. That's something to be mindful of, so that's why I'd be a little concerned about that.

MR. HAEBERLIN: So I guess the core situation does come down to these 12 acres, do you consider it integral to the GM site or not? And like I said, since GM surrounds it -- it's essentially on three sides and there's a public right-of-way fronting it -- to me, it's part of the land use for how you would develop the GM site.

And then certainly on the southern boundary you've got some natural dividing lines such as railroads that cut off the land which we call the spur, south Peachtree Road, from this huge chunk of property. Again, that's an area that I think the City Council should entertain as to whether that should

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1 remain heavy industrial.
2 COUNCILMEMBER BATES: So if we were to down-
3 zone this from M-2 to just straight M-1, the three
4 recommendations, the engineering and architectural
5 offices, intermediate impact facilities, and
6 scientific and research laboratories would be included
7 in that comprehensive list of M-1 along with all the
8 other permitted uses. So --
9 MR. HAEBERLIN: That is correct.
10 ATTORNEY WEED: I think I can answer part of
11 Councilman Fleming's concern. I think what has
12 occurred here is they simply wrote a list without
13 using any intervening grammar, because on page 18 of
14 36 of the actual ordinance itself, at the bottom, you
15 find engineering and architectural offices, period.
16 And then on page 19 of 36, there is the
17 definition of intermediate impact facilities which
18 lists all the ones here but it also lists industrial
19 training facilities, simulated industrial environ-
20 mental classroom instruction, radio and television
21 transmission facilities, water and sewerage plants and
22 water storage facilities. Clearly, that's the list
23 that was not included. That's what they intended.
24 And then when you turn to page 21 of 36,
25 then the next thing on that list would be scientific

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1 and research laboratories, period.
2 So this is really just an example of it's a
3 laundry list. The scientific and research labora-
4 tories in my opinion is not connected to the middle
5 language.
6 MR. HAEBERLIN: Correct. You could label --
7 essentially the tile sets here, you label as one, two
8 and three. They're separate line-item categories from
9 your Zoning Ordinance, and I probably should have --
10 Well, our Zoning Ordinance does not even identify
11 those by numbers, and so there are separate -- three
12 separate categories, so Mr. Weed is correct. And it
13 was my intention to exclude those intermediate impact
14 facilities that you read out earlier.
15 COUNCILMEMBER FLEMING: And though Mr. Bates
16 was referring to your recommendation as page 7, I was
17 referring to the actual PC report --
18 MR. HAEBERLIN: I understand.
19 COUNCILMEMBER FLEMING: -- that Mr. O'Connor
20 provided.
21 MR. HAEBERLIN: And those were prepared
22 independently of me, so --
23 COUNCILMEMBER FLEMING: Correct. Thank you.
24 MR. HAEBERLIN: -- I just provided them to
25 you guys.

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1 Are there any other questions?
2 - - -
3 (No response)
4 - - -
5 MR. HAEBERLIN: I was really looking at this
6 core group in terms of this side of the city. You
7 know, if this property here was rezoned and then later
8 on this was down-zoned, the remaining heavy industrial
9 would be on the other side of the city, much of it
10 being tank farms, obviously; some of it, undeveloped
11 property.
12 COUNCILMEMBER BATES: So let me -- let me
13 summarize for you where I'm at.
14 MR. HAEBERLIN: Okay.
15 COUNCILMEMBER BATES: Part of me agrees with
16 your recommendation of the three types of business --
17 the engineering, the science and technology and the
18 intermediate impact.
19 I'm not particularly excited about creating
20 nonconforming uses of what actually may be viable
21 businesses on that property but I'm not interested in
22 allowing the comprehensive M-1 list to go in.
23 So I'm stuck in between modifying your list
24 to add in additional pieces compared to creating three
25 nonconforming properties or excluding possible

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1 businesses that may actually be viable and may be part
2 of a comprehensive redevelopment plan.
3 So I can't speak for anybody else on
4 Council, but those are my concerns with what we've got
5 before us right now.
6 MR. HAEBERLIN: And that's one of the things
7 I struggle with as well. And as you recall, we've had
8 so much discussion about the Jim Ellis site, okay, the
9 existing Jim Ellis Porche dealership. It does not
10 meet the requirements acreage-wise, obviously. It's a
11 legal nonconforming use. And should at some point Jim
12 Ellis consider purchasing additional lands around it
13 -- as you're aware, there's a lot of vacant properties
14 around this location, and I guess we would describe
15 that as the Carver -- Carver Circle or Carver Hills
16 locations -- Mr. Ellis could bring up the acreage
17 certainly of his site for that of being a legal use.
18 But like the Hennessee site -- You know, essentially
19 we have no car lot in the city that meets the
20 criteria. And so if he wanted to relocate his other
21 portion of his facility adjacent to where he is today,
22 he could look at purchasing land to bring up the
23 threshold and also, too, doing the appropriate zoning
24 together.
25 And so there still is potential. It's

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1 certainly not meant to drive any particular business
2 out of the city. I don't know why they chose to put
3 the body shop location on another tract of land
4 perhaps when they had available lands around them. I
5 don't know the full history on what is around them,
6 but there is a lot of vacant property.
7 So I do agree with your methodology,
8 Councilman Bates. And my mindset is that over time
9 as the land that Jim Ellis occupies now becomes more
10 valuable, that it's property owner redevelops that
11 site and then moves some of those tenants to other
12 locations or they perhaps purchase more land in the
13 city and develop their own sites. And certainly Jim
14 Ellis already has land in the city independently of
15 these other folks.
16 COUNCILMEMBER ROCHE: Moving right along.
17 MR. HAEBERLIN: Waiting to see if the
18 Council has --
19 MAYOR JENKINS: Any more discussion?
20 MR. HAEBERLIN: -- any additional questions.
21 If not, we can -- we can go to the public hearing
22 section, and we can always go back in further discus-
23 sion.
24 Let's do this. We're going to do this
25 separately. 3A, which is the 5.64 acres which is 5849

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1 Peachtree Road which is M-2 to M-1, is there anyone
2 present tonight that would like to speak for that
3 petition? If you'd please raise your hand?
4 We got one? Okay. You'll be allowed under
5 the rule, 10 minutes, up to 10 minutes since there is
6 only one. And also speak your name and your address
7 when you come to the podium.
8 MS. FRAYSSE: Susan Fraysse, 3971 Spanish
9 Oak Drive.
10 I don't need 10 minutes, but I sat through
11 the Planning Commission meeting, and it's unusual that
12 neither Joe nor, you know, Ben or some of the others
13 aren't here tonight, but I wanted to speak to you that
14 they did consider and ask lots of questions.
15 They were looking at and they were
16 persuaded, as was I, that Scott's idea of developing
17 all of those pieces together, of making it possible
18 for them to be developed together rather than just
19 chunking and piecing things with different sorts of
20 zoning. I think it open things up, gives it more
21 possibilities, and we want to do --
22 And there was a lot of discussion, too,
23 about the placeholder nature.
24 And I think, Mr. Roche, you sound like you
25 already understand how that works. That's a decent

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1 thing.
2 This is not the ultimate end-all zoning for
3 this property, any of them. It's a placeholder to
4 stop bad things from happening, and that's what most
5 people that I've talked to in the city want and it's
6 certainly what I want. It's while we're rethinking
7 what we want to do with that area. But it will stop
8 anything from coming in now to throw a monkey wrench
9 into our long-term plans, so I'm very supportive.
10 MR. HAEBERLIN: Okay. Those who would like
11 to speak against 3A, please raise your hand.
12 Just one, Tom. Again, up to 10 minutes
13 since there's only one.
14 MR. HART: There was quite a few statements
15 made about Ellis and all the property available to
16 them. When Ellis was put together as a dealership, it
17 was a GMC truck dealership there. They had to
18 purchase additional piece of property, and Dekalb
19 County got together with the City of Doraville and put
20 it all in one -- put it into the city of Doraville
21 with the help of Vernon Jones, and the Mayor at the
22 time was Gene Lively.
23 It's butted up against residential
24 properties with buffers. They're probably good
25 neighbor to that neighborhood. They can't fit into

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1 the current zoning because they don't have 600 feet of
2 frontage and probably never will. That's in the
3 current law. The Lexus dealer conforms to that
4 because they have a big, wide curve in the road there
5 that the property faces. So assumptions that they
6 could just move the body shop willy-nilly someplace
7 else in the city is not true. But like I said, I'm
8 not speaking on their behalf.
9 The second thing is that the property owners
10 and the people that rent those properties are not here
11 tonight to voice their opinion, and it goes back to
12 this doing the minimal notification. And we have a
13 piece of property dealing with General Motors. It's
14 142 acres or whatever. It's worth tens of millions of
15 dollars. And we've got property with people's
16 personal investment over there that are tens of
17 millions of dollars. And yet we don't notify them;
18 they don't have any voice.
19 And I think that the City needs to look at
20 that very carefully. And if we have problems with
21 surrounding cities such as Dunwoody, Chamblee and
22 Dekalb County, and all these properties could -- could
23 and sh- -- and are possibly adjacent to all those
24 cities because of the different property owners
25 involved here between the GM, the Ellis group, and the

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various dealership owners, they are adjacent to Chamblee. They are adjacent -- they could be adjacent to Dunwoody by the purchase of a couple pieces of property. And so you're going into a situation, if you're not careful, of forcing the hand of some people to move it into another jurisdiction. They don't have to stay there, you know.

And I would say that the use of those properties could be limited, but we're now muddying up C-1 and C-2 to accommodate this change from M-1 and M-2 down to C-1, and I don't believe any of these property owners have petitioned to have the City change it.

We're just going on again -- and this happened on Buford Highway with unintended consequences -- with property owners with empty buildings, they can't put anything in them, and the City is in -- we're in the middle of a recession, and the City continues with this anti-business attitude they have, hoping something good will happen.

And that's why I oppose it. Thank you.

MR. HAEBERLIN: The next public hearing would be 3B, which is 0 General Motors Drive, rezone from M-2 to M-1, 5.77 plus or minus acres.

If there's anyone who would like to speak

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for this petition, please raise your hand.

Susan? Just one. Up to ten minutes.

MS. FRAYSSE: Susan Fraysse, 3971 Spanish Oak Drive.

Again, there was discussion and elaboration of the proposal by the staff, and all of the Planning Commission agreed with it. I agreed with it and supported with it. We saw all three of these properties as -- you know, with the staff recommendation, and I hope that you-all will do so again tonight.

MR. HAEBERLIN: Those who'd like to speak against 3B, please raise your hand.

Tom, again up to 10 minutes. There was just one.

MR. HART: I believe this is the site that's adjacent to the retention pond that's on the property. I believe so. And the reason why there's a retention pond -- there's not only a retention pond; it's also a stream called Bolling Creek that runs through the GM property that comes out of the aquifer that makes what used to be a parking garage of MARTA until it fell over because no one figured out there was a water aquifer under there. And there's Chestnut Creek flows out the other side of that hill. And so we're not

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looking at the environmental issues here; we're just looking at protecting this piece of property for a use that is yet to be determined because no one has an idea of what they want to do. They just want to, quote, rezone it.

And I think it would be best if we -- if we talk to the property owners that own this property and work with them for the redevelopment of the property with a -- with a professional -- professional developing firm that has expertise in these large areas.

This is the most important piece of property probably in the state of Georgia, and what we're doing now, we're starting to parse it up. It's important because it's so large, but most of all it's important because of its transportation sources -- heavy and light rail. We've talked about this endlessly for the last five or six years, how important that piece of property is. It's even got a power substation there.

So it's not something that needs to be chopped up in tiny pieces or developed like the 46 acres are at the end of the plant property, which is BrandsMart, the Lexus dealer and the HMart. If that's a continuation of this property, and also when we break it up into pieces like this, that's the kind of

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development that we're going to be looking at.

So I think that, you know, for a variety of issues, that we need to maybe rethink this and work with the property owners there and come up with a better solution. Thank you.

MAYOR JENKINS: Discussion at the table?

COUNCILMEMBER FLEMING: I had one other question.

Mr. Haeberlin, we -- and Mr. Weed, I think you both talked about a village center zoning --

MR. HAEBERLIN: Correct.

COUNCILMEMBER FLEMING: -- or a PUD is -- were sort of known, you know, that --

MR. HAEBERLIN: Correct.

COUNCILMEMBER FLEMING: -- that you both would be working on that. I was wondering how soon we might be able to see some type of zoning, that particular ordinance, and is that what you intend to actually have as an overlay on all of that property over there eventually?

MR. HAEBERLIN: Well, we -- I have worked on our village overlay; however, there's a situation that kind of puts the cart before the horse.

You've got a bunch of other zoning categories which the City has not rewritten, and those

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1 zoning categories which would be critical to having
2 mixed use do not support having mixed use right now.
3 For example, you have apartments at 12 units an acre.
4 And I'll be honest with you. No apartment developer
5 is going to come to the city of Doraville and buy
6 apartment land for 12 units an acre. They want
7 somewhere between 35 and 50 units per acre. Okay?
8 So some of the underlying zoning categories
9 that we've not yet gotten to, even though we've got a
10 lot accomplished -- some of the underlying zoning
11 categories need to be thought through, and they will
12 provide the basis for this village overlay.
13 I don't like to use the word PUD, planned
14 unit development. Has a negative connotation and
15 generally means, number one, private roads, which we
16 don't want. Number two, it also means a relaxation on
17 dimensional standards -- lots of variances, no
18 buffers, more impervious, et cetera. And again, I'm
19 not necessarily advocating that.
20 And since these two parcels that we're
21 talking about just right now are separate and discrete
22 from that of GM, realizing that there's already a
23 building on the site -- of course it wouldn't meet any
24 stringent architectural requirements for a village
25 overlay.

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1 Additionally as well, these two parcels
2 exist as they are. They are separate tax parcels, and
3 somebody could essentially sell them today. There are
4 some environmental concerns on a portion of this
5 property. I think that you'll find that what GM was
6 it sold off some of its very environmentally sensitive
7 lands, and the person has bought land that has little
8 -- little development potential. So I think that's
9 really what we're dealing with now. Even though
10 there's a building on a portion of the site, there's a
11 lot of the site that's really not useful other than
12 for greenspace.
13 So would eventually this property be a
14 component of a mixed use or village overlay? Yes.
15 But I don't think the City is ready in terms of its
16 other ordinances to put that mixed-use ordinance
17 before the Council at this time.
18 COUNCILMEMBER FLEMING: But looking at the
19 overall picture and the vision for that, the GM
20 property --
21 MR. HAEBERLIN: Yes.
22 COUNCILMEMBER FLEMING: This is a stop-gap,
23 as we all know right now.
24 MR. HAEBERLIN: Correct.
25 COUNCILMEMBER FLEMING: So this stop-gap

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1 isn't going to last very long before a developer comes
2 in and we're going to have to do something. And if we
3 don't have something in place, then we are going
4 against our own ordinances if we don't have something
5 available.
6 MR. HAEBERLIN: Well, I caution you, there's
7 a lot of people that have come before the Council and
8 tried to act as though they were consulting you on
9 items. Okay. If you end-zone this property to that
10 of mixed use, you will never go through a development
11 of regional impact, okay, and you will lose out on all
12 that opportunity for information gathering or placing
13 conditions, for having infrastructure built by a
14 developer.
15 And so as your staff, I have to be very
16 cautious with you. Although I definitely want to
17 protect the city, and I think that the placecard
18 zoning is important, and portion of this property that
19 we're talking about now -- because remember, we're
20 only talking about this 12 acres -- some of it may
21 expand to be more, depending on the science and
22 technology base, some of it may decrease. Okay.
23 But in no respect do I want you to take this
24 to a zoning category which does not give you control
25 over the property. If you were to rezone this now

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1 mixed use, you would lose a lot of elements of control
2 of this property and you would have to be prepared as
3 the City to build lots of public roads, put in lots of
4 infrastructure without any real advice from folks such
5 as the Georgia Department of Transportation, GRTA,
6 MARTA, all these other components. And so for the
7 time being, this truly is a placecard zoning.
8 COUNCILMEMBER FLEMING: Back to my original
9 question, time frame.
10 MR. HAEBERLIN: Again, we don't --
11 COUNCILMEMBER FLEMING: Time frame of
12 village overlay zoning available for us.
13 ATTORNEY WEED: I could give you one
14 tomorrow. I mean I spent five years drafting one in
15 the city of Hapeville so I know quite a lot about
16 that.
17 What I will say, though, is Mr. Haeberlin's
18 convinced me of his particular position with regard to
19 this matter. As your lawyer, my main concern now is
20 to have a safekeeping zone here, whatever it may be.
21 The next step of course would be moving
22 beyond that to what is the appropriate zone long-term?
23 And I think the key there will be who steps up to the
24 plate to develop that?
25 And you know, bear in mind that, you know,

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you, the governmental body, have every legal right to work with whoever the owner or end user of that property is going to be. Some end user may want you to go ahead and rezone it to XYZ; some end user may want to work with you to get it zoned to ABC.

So I will say this. I've kind of done -- I wouldn't say I've done a one eighty, but Mr. Haeberlin has convinced me about the rightness of his position to have a safety cap placeholding zoning now and then get the right zoning on it when the developer comes forward -- or developers.

But as far as if you want to look at a couple of drafts, I can get those to you tomorrow.

COUNCILMEMBER FLEMING: No. Mr. Haeberlin indicated that he needed to or he felt that something more important was to get the -- the apartment --

MR. HAEBERLIN: Remainder --

COUNCILMEMBER FLEMING: -- the other --

MR. HAEBERLIN: The remainder of the zones, yeah.

COUNCILMEMBER FLEMING: So I'm not pushing to get this done. I just want to hear --

MR. HAEBERLIN: Yeah.

COUNCILMEMBER FLEMING: -- a realistic time frame. That's all.

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MR. HAEBERLIN: R-2, R-3, R-4, with the holidays coming up, I -- reasonable expectation, we had a lot more come on our plate than I expected. I would hope by the end of January of next year that R-2, R-3, R-4 have been addressed and adopted or at least significant work. Okay.

The village overlay is going to take a lot of work. Architectural, which we've already kind of put out a draft of, is going to take a lot of work.

But again this comes back to basic assumptions. If the Council is not wanting to support multi-family any greater than 12 units an acre, you can forget mixed use. It's not going to occur here. And so those are some difficult pills to swallow, I understand, because you've not had any true multi-development here in years and you -- you don't have what I would call Class A apartments -- Class A, I didn't want to say "classy" -- Class A apartments in the city. You don't have luxury apartments. Okay. And so you have some very difficult pills to swallow in terms of looking at density, because, again, if you won't support higher density multi-family, condominiums, single-family attached, townhomes, some sort of configuration -- you know, live/work/play -- if you can't . . . if you can't accept the density component,

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the mixed use will never occur. And so I think we need to get through those basic assumptions in those other categories and build towards that mixed-use zoning. Mixed-use zoning certainly, since we've worked on it, I've worked on it, could come very quickly after those remaining zones.

COUNCILMEMBER FLEMING: Okay. Thank you.

MR. HAEBERLIN: Next six months.

COUNCILMEMBER BATES: But couldn't the village overlay zoning have separate criteria for density?

MR. HAEBERLIN: It could.

ATTORNEY WEED: And indeed it will, I feel confident.

MR. HAEBERLIN: It could. But the rest of your code generally does not support any density. We have to be realistic on that.

COUNCILMEMBER BATES: Understood. But they're not -- they're not mutually exclusive. They could be done independent of each other.

ATTORNEY WEED: Absolutely. I mean it's -- well, I mean -- and I hate to refer back to Hapeville again but I will because we went -- the Council there went through all of these issues.

In Hapeville, they had over -- over 50

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percent rental, close to 60 percent rental -- I believe the actual number was 62 percent rental -- of the entire city were rental properties. And I've been a renter. You know, renters are not bad. But the point is for stabilization of most municipalities, that much rental is not appropriate to have a tax base and a viable community.

So they dealt with the density issue. That was one of the hardest things that they had to deal with for that very reason. They wanted, you know, single-family home ownership, they wanted multi-family/condo/townhouse ownership. And the compromise they reached were extremely high-end buildings that were initially rental units but after a certain period of time had to be converted to condominium form of ownership, and we went through all the legal machinations to have that guaranteed. That was the compromise that was reached.

So literally, Doraville is on the very beginning of all of that process. So will the zone, depending upon who the developer or developers are, will have a life of its own, its own identity, without reference to the rest of the zoning ordinance? Undoubtedly, it will. In fact, I think that's the only way to make it work in my opinion.

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1 MR. HAEBERLIN: Again -- and I think that
2 you're pursuing something that most people don't have.
3 Most communities that have, for lack of a better term,
4 PUD, what they do is they just take all the components
5 of the zoning categories, they zone parcel C-1, this
6 parcel O-I, this parcel R-1, this parcel R-2. Okay.
7 We're not seeking to do that. We're talking about a
8 vertical zoning situation where the first floor might
9 be retail or offices, the second floor might be
10 residential or a hotel or some component.
11 So we're seeking to do something that's
12 really different that doesn't exist in most commu-
13 nities, and I would feel more comfortable with you
14 addressing some of your other density concerns first
15 in terms of this ordinance even though they are
16 separate and distinct.
17 But if you cannot get past this basic
18 discussion of density, you're going to have to allow
19 density somewhere -- are you going to allow it in any
20 of the other areas of the city? -- because much of
21 your Comp Plan is based on a mixed-use redevelopment
22 strategy that includes these items; so really, your
23 New Peachtree Road is supposed to be developed in this
24 fashion.
25 So you've got a lot of core components.

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1 They all have to work together. I'm not looking at
2 the GM site as just one component sitting over here.
3 It's part of the overall development of the whole
4 city. And a fine example is New Peachtree because
5 that's what your Comp Plan tells you to do with that.
6 ATTORNEY WEED: One other thing I'd like to
7 add and then I'll turn this back over to Scott: this
8 is all contingent upon what the Council wants to do.
9 In other words, from the legal branch, I can write you
10 anything you need. I will create whatever tool you
11 need in your tool box. But first you've got to decide
12 what it is you want to build and then you're going to
13 figure out if you need a hammer or you're going to
14 need a saw or whatever tool you need, and that will
15 have to come from the leadership. The tools are --
16 that's easy. The easy part.
17 So if you want -- In Hapeville's case, they
18 didn't want -- it never occurred to them to have a
19 scientific university research center. Never was on
20 the horizon. What they wanted to combat was, you
21 know, continued degradation of the community. They
22 wanted single-family homes and they wanted more young
23 people and, you know, young couples with children and
24 places where people could grow old. That was their
25 stated goal. We built the zoning to accomplish that

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1 goal.
2 We can build you whatever you need, but
3 you've got to decide what it is you need, what is the
4 goal.
5 COUNCILMEMBER ROCHE: Well, but again, we
6 have to work with, you know, what the developer -- We
7 could decide we want, you know, apartment houses but
8 if no one -- if the developer says, well, there's a
9 million apartments now in this area, we're just not
10 going to build it, we can want it all day long.
11 ATTORNEY WEED: And that --
12 COUNCILMEMBER ROCHE: It doesn't mean it's
13 going to happen.
14 ATTORNEY WEED: That's exactly my point.
15 It's a two-way street.
16 COUNCILMEMBER ROCHE: Right.
17 ATTORNEY WEED: You can't just wait for some
18 -- the mythical developer to come. You're also going
19 to have to do something, too, I think. Now, that's up
20 to the Council to decide where that combination is.
21 The council in Hapeville, they literally
22 bought up all the land they could buy from Delta.
23 They literally went ahead and did a mixed-use type of
24 zone because they had a clear vision of what they
25 wanted to do. And then the developers came and the

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1 money came afterwards after the government spent the
2 money. So that's how it worked over there.
3 So you're going to have to figure out, you
4 know, do you want the -- What do you want? Do you
5 want the cart to follow the horse? Do you want the
6 horse to follow the cart? But those are the decisions
7 you're going to have to make, and we'll follow up with
8 the proper legislation whenever you need it.
9 COUNCILMEMBER ROCHE: Yeah. I think that
10 our point of being here tonight was just to put it in
11 some kind of a holding pattern so that if a developer
12 comes to us and says I want to build mixed use with a
13 million condos, then fine, or if General Electric
14 shows up and says we want to build our new
15 international corporate headquarters there, we can do
16 that, or if Piedmont Hospital says we don't like all
17 our big jumble of buildings, we want to start from
18 scratch and build a brand new hospital that's
19 efficient, you know, we can be open to that too, you
20 know, or whatever, you know.
21 MR. HAEBERLIN: I think if --
22 COUNCILMEMBER ROCHE: If someone wants to
23 build a golf course and it's financially viable, you
24 know, who knows, you know.
25 MR. HAEBERLIN: It's important, like I said,

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with the Comp Plan, if you could look at this broad category of mixed-use redevelopment opportunity and you look at where it's specified in the city, you say, wow, we have a lot of work we want -- we need to do.

We were talking about kind of doing it and perhaps they will come. I think that if you did change your density for multi-family right now, you would have people looking at your existing multi-family sites. They're not, because they don't see it as viable.

And so can we assist in some respects in these redevelopment scenarios? Yes. And so it's not just that site because your Comp Plan identifies that site no different than it does lots of other areas in your city, so we need to be prepared for those areas as well.

COUNCILMEMBER FLEMING: Thank you.

MR. HAEBERLIN: Uh-huh.

COUNCILMEMBER BATES: So are we considering changing this to a specified placeholder or a generic placeholder? That's what the question boils down to.

Mr. Haeberlin has suggested a very limited scope, a specific placeholder. I hear some concern from Council that there may be a desire to have a more broad placeholder. My concern with the broadness,

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even though it might be temporary, is that there are some noncombative, non- -- what's the word I'm looking for? -- -compatible uses that could go in there under an M-1 broad category, like wastewater treatment plant. I don't think that's compatible with a potential mixed-use redevelopment site.

COUNCILMEMBER ROCHE: I wouldn't think anyone would buy that property to put something like that there. I mean the property is I would think more valuable to something else. But I -- I think we're on the same page essentially.

Frankly where I'm at right now -- and I think we have one more public hearing on the main part, parcel -- but I don't feel like we need to really worry about 3A, B and C right this minute. I think that my main concern was 3D. And you know, to rezone these other areas, some of which have existing businesses on them, I don't -- unless it's really urgent --

COUNCILMEMBER BATES: But as it sits right now, if -- and we'll just use Jim Ellis Collision Center. If they wanted to sell it to Shooters II, they could do that, and we'd get a brand new adult entertainment facility.

COUNCILMEMBER ROCHE: They don't own the

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property.

COUNCILMEMBER FLEMING: Well, either way, it's a --

COUNCILMEMBER BATES: If Interbrand wants to put Shooters II there, guess what? We've got a brand new adult entertainment facility.

MR. HAEBERLIN: You know, a lot of this culminates from -- and this is when we wrote all these codes -- people kind of freaked out about all these uses being listed. Well, remember, your old code was so limited, so narrow, everybody was trying to figure out, does this fit under M-1? does this fit under M-2? Nothing was defined. So now we have these huge lists of permitted uses and it kind of freaks you out because you go, "Oh, my God. All that stuff is allowed in light industrial." Well, guess what? It was allowed before, because it was interpreted there. Now we've made a decision on where it is to go.

COUNCILMEMBER ROCHE: I'm just concerned, as Councilman Bates mentioned earlier, if we rezone this, then we've taken two existing businesses and suddenly turned them into nonconforming uses, and that concerns me.

COUNCILMEMBER BATES: If we limit -- if we limit the scope. If we expand it to include all of

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M-1, then they're perfectly fine and can function because they're both allowable under M-1. But then if we allow all of M-1, then we're allowing all of M-1.

MR. HAEBERLIN: And that seems to be -- some of your early endeavors -- remember I came here first when you guys first addressed the car lot ordinance, the M-1 ordinance that came before the rest of the M-1. Okay. It seemed to have been your endeavor at the time to limit certain uses in certain areas of the city. And so to me, this is -- it's naturally akin to that.

We're not shutting anybody down who has a valid operation. They are --

COUNCILMEMBER ROCHE: I got that.

MR. HAEBERLIN: -- choosing of their own volition to leave or to go out of business.

And certainly you're -- of the contracts I've had other than very rural areas, you're one of the few areas that I've ever had that has this much heavy industrial zoning.

MAYOR JENKINS: Any more discussion?

We're still on 3B; is that correct?

MR. HAEBERLIN: No, sir. We've actually -- in terms of order, we would act first, some activity I guess on 3A and then 3B, because we've heard from the

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1 public, we've conducted our public hearings, and you
2 guys are in your fact-finding portion of it.
3 COUNCILMEMBER FLEMING: I think there needs
4 to be some type of restriction, Mr. Bates.
5 COUNCILMEMBER BATES: I agree. It's just
6 how restrictive do we want to go? Do we want to --
7 COUNCILMEMBER FLEMING: Maybe we . . .
8 Of course that's probably not legal putting
9 a moratorium on those particular properties and all
10 uses come before us to determine whether we really
11 want them there or not.
12 ATTORNEY WEED: Well, you could -- you know,
13 we could -- you could draft an ordinance making, you
14 know, a certain area M-1 Conditional where every use
15 that's in M-1 is made conditional and they have to
16 have a conditional-use hearing before you. I mean you
17 could do that. You can't do it tonight because you
18 have to -- you'd probably have to -- you'd have to
19 write an ordinance to effectuate that.
20 MR. HAEBERLIN: Well, remember, of something
21 in M-1 comes before you on your plate that you really
22 desire, we can do what I call a zoning modification.
23 And Mr. Weed always calls it a rezoning. But it's
24 just changing the conditions of the property. Okay.
25 You could add back anything into those conditions that

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1 you wished, if you so desired, through a simple
2 -- through another hearing -- and again, Mr. Weed
3 calls it a rezoning; I call it a zoning modification
4 or a change of conditions -- amending that which
5 you've previously approved to include maybe one more
6 use or two more uses or whatever; again, whatever
7 comes before you.
8 COUNCILMEMBER ROCHE: What about the uses
9 that are there now? Why couldn't we add those uses?
10 MR. HAEBERLIN: You could. That's -- if
11 that is your desire.
12 COUNCILMEMBER ROCHE: That way, we're not
13 turning them into nonconform- --
14 I mean frankly, I think when a developer
15 comes along, they're going to want to purchase these
16 properties too, and, you know, it's going to be a moot
17 point but --
18 MR. HAEBERLIN: I would hope so.
19 COUNCILMEMBER ROCHE: -- eventually.
20 I just feel uncomfortable about changing
21 someone's current -- you know, suddenly making someone
22 a nonconforming use --
23 MR. HAEBERLIN: Again --
24 COUNCILMEMBER ROCHE: -- unless I've got a
25 really, really big reason not to.

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1 MR. HAEBERLIN: -- to me, it's no different
2 -- and I hate to say this, but in all the other zoning
3 categories we've done, as a result of the general
4 disarray for the last 40-some odd years of zoning in
5 the city, a lot of our ordinances have created legal
6 nonconformities, and it's there everywhere. And so
7 this really is no different than a Buford Highway
8 business. We had some criticism earlier over that.
9 But at some point in time, it had to be done. And you
10 the Council can always entertain adding back anything
11 into M-1 if you have a particular applicant that you
12 think has a use that will be perfect for that site.
13 COUNCILMEMBER ROCHE: But could we do it as
14 part of this rezoning for these specific parcels?
15 ATTORNEY WEED: Yes.
16 MR. HAEBERLIN: Uh-huh.
17 COUNCILMEMBER ROCHE: So we could make a
18 motion to rezone parcel 18-322-02-004 from M-2 to
19 M-1 plus include whatever the body shop is and the
20 sign store --
21 MR. HAEBERLIN: Uh-huh.
22 COUNCILMEMBER ROCHE: -- as an allowed --
23 MR. HAEBERLIN: Correct.
24 COUNCILMEMBER ROCHE: -- use for this parcel
25 and this parcel only.

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1 MR. HAEBERLIN: Correct.
2 COUNCILMEMBER ROCHE: All right. I'll make
3 that motion. Get out of here sometime tonight.
4 COUNCILMEMBER BATES: Do we have to do these
5 one at a time, A and B, or can we combine then?
6 COUNCILMEMBER ROCHE: That's what I meant.
7 We'll --
8 MR. HAEBERLIN: Yes.
9 COUNCILMEMBER ROCHE: -- do 3A and --
10 MR. HAEBERLIN: Let's do 3A first.
11 ATTORNEY WEED: Yeah, I'd rather do them one
12 at a time.
13 COUNCILMEMBER ROCHE: 3A has the existing
14 businesses on it.
15 MAYOR JENKINS: Do we get a second on that?
16 COUNCILMEMBER ROCHE: I make a motion that
17 we rezone Parcel Number 18-322-02-004 which is 5.64
18 acres, 3849 [sic] Peachtree Road, rezone from M-2 to
19 M-1; however, for this parcel only, include whatever
20 the conditional uses for the two current -- three
21 current businesses that are there.
22 ATTORNEY WEED: So that the uses --
23 COUNCILMEMBER ROCHE: You'll have to help me
24 with --
25 ATTORNEY WEED: The permitted uses would be

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1 engineering and architectural offices, intermediate
2 impact facilities including the following: colleges,
3 junior colleges and universities. All other inter-
4 mediate impact facilities listed in the M-1 ordinance
5 in effect on today's date would be excluded.
6 Scientific or research laboratories but including the
7 uses that are on the property as of today --
8 -- which include what, Scott?
9 MR. HAEBERLIN: Auto body repair shop, sign
10 company, and limousine or common carrier service,
11 whatever term you'd like to use, Mr. Weed.
12 ATTORNEY WEED: That's fine.
13 MR. HAEBERLIN: And for a correction, it was
14 5849, sir. I think you had 3849.
15 COUNCILMEMBER ROCHE: Sorry.
16 MR. HAEBERLIN: I just want to make sure
17 that was correct.
18 COUNCILMEMBER FLEMING: So is Interface
19 Signs a manufacturer?
20 MR. HAEBERLIN: Uh-huh.
21 COUNCILMEMBER FLEMING: Okay.
22 MR. HAEBERLIN: Yeah.
23 COUNCILMEMBER ROCHE: So did that make
24 sense?
25 COUNCILMEMBER BATES: I'll second that

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1 motion.
2 MAYOR JENKINS: Okay. Any more discussion?
3 MR. HAEBERLIN: Did you wish to put in the
4 statement that all other conditional uses that were
5 not listed are excluded from the site?
6 COUNCILMEMBER ROCHE: Yeah. I guess I
7 thought that would have been there.
8 COUNCILMEMBER FLEMING: That was the way
9 Mr. Weed read it.
10 MR. HAEBERLIN: Okay. I apologize. I
11 didn't hear that that way.
12 MAYOR JENKINS: Okay. Call the roll.
13 CLERK BLACKMON: Councilmember Alexander?
14 COUNCILMEMBER ALEXANDER: Yes.
15 CLERK BLACKMON: Councilmember Bates?
16 COUNCILMEMBER BATES: Yes.
17 CLERK BLACKMON: Councilmember Fleming?
18 COUNCILMEMBER FLEMING: No.
19 CLERK BLACKMON: Councilmember Pittman?
20 COUNCILMEMBER PITTMAN: Yes.
21 CLERK BLACKMON: Councilmember Roche?
22 COUNCILMEMBER ROCHE: Yes.
23 CLERK BLACKMON: Councilmember Spangler?
24 COUNCILMEMBER SPANGLER: I'm going to say
25 no. I like the idea of rezoning with the conditions,

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1 but I agree with Ms. Fleming. I think that we really
2 should have notified the property owner.
3 CLERK BLACKMON: Motion carried 4 to 2.
4 COUNCILMEMBER ROCHE: And I tend to agree
5 with that, frankly, but --
6 MR. HAEBERLIN: The next item would be 3B
7 which is the 5.77 plus or minus acres.
8 COUNCILMEMBER ROCHE: And there's nothing
9 currently on that land that I can see; right?
10 MR. HAEBERLIN: Not that I am for certain
11 of; however, again, our parcel overlay information is
12 only so consistent. I assume, based on your previous
13 action, that you would want to do the same motion or
14 the exact motion on this parcel as well. I assume
15 that that's your intent.
16 COUNCILMEMBER ROCHE: Well, no, because if
17 there's no current business there -- That was my main
18 concern, frankly, was that we would make current
19 businesses legal nonconform- --
20 MR. HAEBERLIN: Correct.
21 COUNCILMEMBER ROCHE: -- or nonconforming
22 uses. Well, if there is no business here, then it's
23 kind of a moot point.
24 MR. HAEBERLIN: The thing that concerns me
25 is I do not have an as-built survey of that property,

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1 and what if one of the buildings happens to ride over
2 a parcel line? And so I would generally feel more
3 comfortable with knowing that these two parcels were
4 treated consistently just in case that was the case.
5 COUNCILMEMBER BATES: And Mr. Roche, if you
6 won't, I will. I'll make --
7 COUNCILMEMBER ROCHE: That's fine.
8 COUNCILMEMBER BATES: -- make the motion to
9 rezone Parcel 18-322-02-005 from M-2 to M-1 with the
10 conditions previously agreed to.
11 COUNCILMEMBER ROCHE: Second. Conditions
12 agreed to for --
13 COUNCILMEMBER BATES: For the previous
14 parcel.
15 COUNCILMEMBER ROCHE: -- for parcel 18 --
16 5849 Peachtree Road. I'll second that.
17 MAYOR JENKINS: Any more discussion?
18 - - -
19 (No response)
20 - - -
21 MAYOR JENKINS: Call the roll.
22 CLERK BLACKMON: Councilmember Alexander?
23 COUNCILMEMBER ALEXANDER: Yes.
24 CLERK BLACKMON: Councilmember Bates?
25 COUNCILMEMBER BATES: Yes.

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CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: No.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BLACKMON: Councilmember Spangler?
COUNCILMEMBER SPANGLER: I'm going to say the same thing. I agree totally especially with Scott treating both properties the same, but again I feel like we should have notified the property owner before we initiated this rezoning.
MR. HAEBERLIN: Okay. We will take the next two kind of discussion again like we did previously and then handle them independently.
The 15.66 plus or minus acres which is 5801 Peachtree Road, rezoning from M-2 to C-1, this is the property that's at the southern boundary. The Council has a map. It's the southern boundary of the two parcels we just discussed. So this carries down to that of the railroad tracks, and this is what people generally refer to as the GM site.
And then you have the 142.616 acres which is the rest of this large gray area that's shown on the zoning map that is bound on -- obviously by the C-2

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portion that was previously discussed and on the southern boundary by the railroad tracks again.
And so again we see a discrepancy between the acreages of what has been represented as GM and what is there.
And again, this property is listed in the Comp Plan as a mixed-use redevelopment opportunity, which generally means commercial, office and residential commingled in some fashion, and not part of the LCI but it has been discussed of adopting an LCI for the GM property.
Now, this property does abut Motors Industrial Way. This is conceivably GDOT right-of-way, appears to be built in the state right-of-way. And as well we have, again, this private road and we have the abutment on Peachtree Road which is a shared jurisdictional situation again.
And again, the zoning history is consistent with that of being heavy industrial. This is looked at as a placeholder zoning to that of C-1. And in checking with Atlanta Regional Commission, this is not site-plan oriented. We have no specific end product on how we are to develop this property. And so this is not subject to a DRI; however, these would be addressed if there was an applicant that would come

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forward to rezone this property for perhaps from C-1 to C-2 or C-1 to some sort of mixed-use category.
Again, history-wise, it's very consistent that GM over time has been rezoned to accommodate other uses within the city. Many folks are not aware that a lot of properties in the city were GM properties. A good example is the properties that are depicted as O-W on the map which are on Flowers Road, and some may call this Peachtree -- or excuse me -- PIB, the triangle area where the maltese sign is, that area, many of those were GM properties, again, and over time, GM felt the need to rezone those properties and sell them off. Of course, the building of the interstate probably had a little impact on that.
Looking at this as purely again a placecard holding until we develop a mixed-use category and we have an applicant, it is an opportunity for this property to not be a heavy industrial classification, to provide a level of protection for that of the city.
So staff did recommend approval of the rezoning from M-2 to C-1, no variances from code are recommended, and the conditional uses, the entire list within the C-1, shall be excluded from the site.
I know there were some concerns from Councilwoman Alexander regarding some terminologies

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that we might need to go over.
COUNCILMEMBER ALEXANDER: Yes. Indoor amusement and recreation, businesses including theaters but excluding drive-in theaters, billiards and pool halls, paintball facilities and water parks.
I guess my concern was indoor recreation businesses. I was concerned about that terminology may be extrapolated to mean something else.
MR. HAEBERLIN: Correct. And those other uses are listed elsewhere in the Zoning Ordinance. It would be my opinion in administering the Zoning Ordinance that that does not include that of a stadium, but I think you want clarification on that or you want to place some sort of limitation on size, perhaps, that those indoor amusement facilities be limited to a certain square footage which would not then accommodate that of a stadium or an organized sports facility.
ATTORNEY WEED: When this first came up some months ago, Scott actually called me, and we had a long conversation about that, and he and I concurred that based upon the other limiting language found elsewhere in the ordinance, that legally the ordinance as-is is fine. It would prevent a stadium with a retractable roof.

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However, bearing our opinions in mind, if the Council wanted to clarify the language further, you have every right to do so.

COUNCILMEMBER FLEMING: How large is Atlanta Sports Arena?

MR. HAEBERLIN: Soccer facility?

COUNCILMEMBER FLEMING: Yes.

MR. HAEBERLIN: I'm trying to think of the square footage of that facility. I don't know it off the top of my head.

COUNCILMEMBER FLEMING: Because we have to incorporate that in too.

MR. HAEBERLIN: Well, remember this is specific only to that of the GM site. It would have no effect on general C-2 or C-1 zoning.

COUNCILMEMBER FLEMING: Okay.

MR. HAEBERLIN: We're only tailoring this to that of the GM property.

So if you wanted to say whatever, indoor amusement facilities no greater than 5,000 square feet or whatever, whatever the Council thinks appropriate, that would tend to limit what could be put there. You might even choose a lower threshold.

COUNCILMEMBER ROCHE: We don't have the zoning ordinance online. C-1, would that allow a mall

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or another big shopping center or another BrandsMart?

MR. HAEBERLIN: Well, C-1 allows components of retail, yes, sir, but it's a little more limiting. It's more neighborhood oriented than that of C-2, which allows a whole lot of other uses, particularly automotive-styled uses, and then again remember your fairly exhaustive list of conditional uses.

COUNCILMEMBER BATES: Mr. Roche, I believe anything that's retail's got or most everything that's retail has a maximum square footage of gross floor area.

MR. HAEBERLIN: In C-1.

COUNCILMEMBER BATES: In C-1.

MR. HAEBERLIN: As you recall, you have very little C-1 in the city and you have some things that are C-1 particularly along New Peachtree -- Asian Square, some properties up near Oakcliff where we just recently had a conditional use for a church. You have just not a lot of C-1 in the city. And its thought process on why it was placed is not fully understood, obviously, but C-1 really should be tailored to being adjacent to the neighborhoods.

And so you are correct that most of these are listed as -- when we restricted them, we said something like greater than 2,000 -- not greater than

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2,000 square feet of gross floor area or something of that nature.

COUNCILMEMBER ROCHE: I just want to make sure we're not talking about flea markets or --

MR. HAEBERLIN: Correct.

COUNCILMEMBER ROCHE: Because a little flea market could be less than . . .

MR. HAEBERLIN: Well, we actually -- again, flea market is specifically listed in another category.

COUNCILMEMBER ROCHE: I know. I know. I just want --

MR. HAEBERLIN: There's an ordinance that Mr. --

COUNCILMEMBER ROCHE: Just want to be clear on this.

MR. HAEBERLIN: -- Mr. Weed and I would like to go over with you related to business size, but that'll probably be for another night.

COUNCILMEMBER ROCHE: I just don't want to do something -- I mean preferably, we would have a zone called N-1 for nothing, you know.

MR. HAEBERLIN: You have to have -- my understanding, you have to have at least one permitted use in a zone for it to be defensible. The court

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cases I've looked at that had no permitted uses and everything was a conditional use, they failed. And Mr. Weed is nodding in agreement, so --

COUNCILMEMBER BATES: I don't . . . Do you have any other?

COUNCILMEMBER FLEMING: I'm waiting on Ms. Alexander to put a --

COUNCILMEMBER ALEXANDER: Looking at my flags.

COUNCILMEMBER FLEMING: -- square footage on the amusement center --

COUNCILMEMBER BATES: Oh.

COUNCILMEMBER FLEMING: -- or gross floor area.

COUNCILMEMBER BATES: On the indoor?

COUNCILMEMBER FLEMING: -- or put a condition that that's --

MR. HAEBERLIN: Do you guys need a --

COUNCILMEMBER FLEMING: -- not going there.

MR. HAEBERLIN: -- copy of C-1 and C-2 to look at?

COUNCILMEMBER ROCHE: Yes, please. We don't have that online yet, do we?

COUNCILMEMBER ALEXANDER: Yes, we do.

MR. HAEBERLIN: Yes, sir.

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COUNCILMEMBER ALEXANDER: It's on the City Web site.
MR. HAEBERLIN: If you -- if folks are looking and they want to look online, they go to the City Web site, and in the function box on the left-hand corner of the Web site, the main page, you'll type in "ordinances." I think it brings up currently about 36 hits. I believe that either number five or six is all the new ordinances that the City has adopted. You can basically click on them and then bring them up and you'll see them listed. You'll have to have in many cases 35 to 40 pages of paper loaded, and you just hit print and you'll have a free copy.
ATTORNEY WEED: That's a good segue into a little brag that I'm going to share with the Council.
The Clerk and Mr. Haeberlin and I spent about six-and-a-half hours, but we have the zoning book and the code book in order with all the new ordinances that we've adopted, and they'll be going off to the Municipal Code Corporation by the end of the week.
- - -
(Applause)
- - -
UNIDENTIFIED SPEAKER: Thank you.

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MR. HAEBERLIN: And then obviously depending on the outcome of tonight's meeting, I think it's incumbent on the City -- it's time for another official zoning map update adoption because there'll be significant changes after tonight.
MAYOR JENKINS: Pam?
COUNCILMEMBER FLEMING: Oh. Are we putting a condition on there, Maria?
COUNCILMEMBER ALEXANDER: Do you want to have the public hearing first or do you want to answer my question?
ATTORNEY WEED: I didn't know you asked a question.
COUNCILMEMBER ALEXANDER: I haven't, no. I haven't asked it.
Per Ms. Fleming's comment, instead of putting a square footage, what about putting a capacity?
ATTORNEY WEED: An occupancy capacity?
COUNCILMEMBER ALEXANDER: (Nods head affirmatively).
ATTORNEY WEED: I think you could do that. I don't see a legal problem with that.
MR. HAEBERLIN: From what I'm seeing here, I might have access to a site plan for one of the

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facilities you're discussing.
COUNCILMEMBER ALEXANDER: For some reason, I think that building's 25,000 square feet but I'm not sure.
MR. HAEBERLIN: I think that you're right, and I just wanted to see if the lease for another item had addressed that. We're working on that on an unrelated item, obviously. I just wanted to see if the lease had that.
And you'll recall that that building, over time, they've tried to parcel it out as various booths for subtenants so it's not fully engaged with just that of soccer.
48,000, uh-huh. That's bigger than both you and I thought.
And again, as a placeholder zoning, if you put some -- some number on it, whatever it is, and you have a use that you feel for some reason you want more square footage, we can always come back and amend it. So I think you're safe in whatever probably you put on there as long as it's a relatively low number.
COUNCILMEMBER FLEMING: The 48,000 was the occupancy; correct?
COUNCILMEMBER ALEXANDER: That was the square footage.

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ATTORNEY WEED: That was the square footage.
MR. HAEBERLIN: That was the gross square footage of --
COUNCILMEMBER FLEMING: Oh, okay.
MR. HAEBERLIN: -- a facility that --
COUNCILMEMBER FLEMING: Well, that's what I had asked about, but then she asked about occupancy.
COUNCILMEMBER ALEXANDER: Yeah.
COUNCILMEMBER FLEMING: Do they list an occupancy?
MR. HAEBERLIN: In that case, no, because of the different type uses in there.
COUNCILMEMBER FLEMING: Okay.
COUNCILMEMBER ALEXANDER: Wild question: Does anybody know how the fire marshall calculates occupancy?
ATTORNEY WEED: Well, I mean I know about it broadly. Every human being is deemed to have X-amount of space that they are required to have whenever they occupy a certain space, and that's how they come up with a formula under the life safety code. I don't happen to remember how much space per human being, but I know that's how they do it.
COUNCILMEMBER ALEXANDER: Too bad a fire-man's not here. They could answer it.

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ATTORNEY WEED: If only there were a fireman here who could answer these questions; that's true.
COUNCILMEMBER ROCHE: Thank you.
MR. HAEBERLIN: I think you're safe in putting a relatively low number on it. I mean, again, if it ever needs to be amended, you can always go back and amend the zoning. I mean we don't know that this property will ever be developed as C-1 and we obviously don't think it would be or we would have zoned it to something else.
COUNCILMEMBER ROCHE: Right.
MR. HAEBERLIN: Conceivable, though.
I'll let you guys mull that through, and we can do the public hearings at this time.
So we're going to open the public hearing on 3C, which is 5801 Peachtree Road, rezoning from M-2 to C-1, which is the 15.66 plus or minus acres. This is the parcel that fronts on Peachtree Road.
So if those who would like to speak in favor of the rezoning would raise your hand. Anyone? Susan?
MS. FRAYSSE: I am really sorry that neither Ben or Joe nor any other members of the Planning Commission are here, because we had a good long

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meeting and we went through all of this in a great deal of detail. They accepted the planner's recommendation each step of the way after discussion. And I am supportive of this one, and the next one in advance. Thanks.
MR. HAEBERLIN: There's no one else for?
- - -
(No response)
- - -
MR. HAEBERLIN: Anyone against, please raise your hand. Anyone against on 3C?
- - -
(No response)
- - -
MR. HAEBERLIN: Seeing none, I return to the Council.
COUNCILMEMBER FLEMING: My favorite question, and you can answer it the same way: Was GM notified?
MR. HAEBERLIN: No, ma'am.
COUNCILMEMBER FLEMING: Thank you.
MR. HAEBERLIN: Yes, sir.
COUNCILMEMBER SPANGLER: My question is, what kind of recourse does GM have, if any, if we rezone this to C-1?

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ATTORNEY WEED: None whatsoever or else we wouldn't do it.
COUNCILMEMBER SPANGLER: Well, there's a way around it, I guess.
ATTORNEY WEED: I mean, you know, we wouldn't purposely do something illegal.
COUNCILMEMBER SPANGLER: Just a question.
ATTORNEY WEED: And that's the answer, sir.
MR. HAEBERLIN: Let's do the public hearing portion on 3D just like we did the last one.
3900 Motors Industrial Way, rezone from M-2 to C-1, 142.616 plus or minus acres. This is the preponderance of what you see on the zoning map that you recognize as GM.
Those who would like to speak in favor of the rezoning, please raise your hand. We got one lady. Excuse me. Anyone else? Just one?
MS. BINKLEY: Hi. I'm Connie Binkley, 3277 Raymond Drive.
I'm in support of rezoning this property tonight. From my understanding, there's always room to go and make some changes but this rezoning will lock us in and protect our futures and then we're able to go forward with that. So I'm in support of this whole rezoning of GM property. Thank you.

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MR. HAEBERLIN: Anyone else in favor?
- - -
(No response)
- - -
MR. HAEBERLIN: No.
Those who'd like to speak against 3C, 5801 Peachtree Road. Anyone against the rezoning action tonight?
- - -
(No response)
- - -
MR. HAEBERLIN: And hearing none, I return it to you, the Mayor and Council.
MAYOR JENKINS: Anymore comments at the table?
- - -
(No response)
- - -
MR. HAEBERLIN: And again we'll take those, when you actually -- if you are going to do a motion, we'll take those independently, 3C and 3D.
CLERK BLACKMON: He needs to restate that for the record.
ATTORNEY WEED: Yeah. Scott, would you restate that we did for and against for both 3C and

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for and against, both, for 3D.
MR. HAEBERLIN: That is correct. We did a public hearing for and against 3C and for and against 3D.
MAYOR JENKINS: Okay. Do I hear a motion?
COUNCILMEMBER ROCHE: I make a motion that we rezone that parcel known as 5801 Peachtree Road, 18-310-06-001 -- and I have no idea what that number means but it must be important, so -- from M-2 to C-1.
And did we have to do anything on --
COUNCILMEMBER FLEMING: Yes.
COUNCILMEMBER ALEXANDER: With the condition that indoor amusement and recreation businesses including theaters but excluding drive-in theaters, billiards and pool halls, paintball facilities and water parks do not exceed a capacity of 1,000 persons.
Is Council okay with that figure?
COUNCILMEMBER FLEMING: But there was also conditional uses put on this property; is that not correct --
MR. HAEBERLIN: My recommendation --
COUNCILMEMBER FLEMING: -- that within the conditional uses, the entire list that are stated in C-1 would be excluded from the site?
MR. HAEBERLIN: That's correct.

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COUNCILMEMBER BATES: And I'll second that.
COUNCILMEMBER ROCHE: You're the only who didn't -- weren't part of the motion.
COUNCILMEMBER BATES: Who? Me?
MAYOR JENKINS: Anymore discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: No.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BLACKMON: Councilmember Spangler?
COUNCILMEMBER SPANGLER: You know, I'm glad we're doing this, but again I'm going to vote no because again I agree with Ms. Fleming, we should have notified General Motors. You know, they're already a little bit perturbed with us, and I just think it

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would have been a good gesture to let them know that we were changing the zoning, for whatever that's worth.
MAYOR JENKINS: Motion carried.
CLERK BLACKMON: 4 to 2, yes, sir.
MR. HAEBERLIN: 3D?
COUNCILMEMBER BATES: Same motion. Motion to rezone 3900 Motors Industrial Way, parcels 18-322-02-002, 18-322A02-002, -B,-C, and then 18-322-02-006.
COUNCILMEMBER ROCHE: I second that.
MAYOR JENKINS: Anymore discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll, please.
CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: No.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?

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COUNCILMEMBER ROCHE: Yes.
CLERK BLACKMON: Councilmember Spangler?
COUNCILMEMBER SPANGLER: No, for the same reasons.
CLERK BLACKMON: Motion carried 4 to 2.
COUNCILMEMBER ROCHE: And I have to say just for the record, I mean it amazes me that there's not someone here in Doraville that's not in pretty much constant contact with GM and potential developers. That astounds me, but I understand, so --
MR. HAEBERLIN: Next item, Mayor, Alcohol Beverage Ordinance, Penalty Sales to Minors.
MAYOR JENKINS: Excuse me a minute.
MR. HAEBERLIN: Yes, sir.
MAYOR JENKINS: We're going to take a five-minute break --
MR. HAEBERLIN: Okay.
MAYOR JENKINS: -- before we get into the other two.
- - -
(Brief recess)
- - -
MAYOR JENKINS: Okay, Murray.
ATTORNEY WEED: Mr. Mayor and members of the Council, the ordinance before you tonight comes out of

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a motion Council had made and adopted on September the 8th of 2009. It deals solely with penalty provision for sales to minors and it changes the code which formerly had what I call loosely a two-strikes-and-you're-out rule to have gradiated disciplinary program of a first violation in a calendar year with a suspension period for up to 15 days, which means you could do less than 15 days, some part thereof; the second violation in the same calendar year, suspension for a period of up to 30 consecutive days -- once again, you don't have to do 30; you could do something less than that -- and for the third violation in the same calendar year, revocation for a 12-month period, and beginning with the date of the Mayor and Council finding the relevant offense having occurred.

With that, in conversation with Councilman Alexander today, she had suggested that underneath subpart (2), 3-70(d)(2), that the language be identical to section (1) in that I had used originally the license shall be suspended for a period up to 15 days. That isn't the exact wording of subsection (2), and she had recommended that to read: Second violation in the same calendar year set out in (d)(1) -- the license shall be suspended for a period up to 30 consecutive days.

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So with that, it's up to the Council if you want to formally adopt it. Once again, you've already adopted the basic concept. This simply memorializes it in a piece of legislation.

COUNCILMEMBER ALEXANDER: Prior to the meeting, Ms. Fleming and Mr. Bates and I were discussing, I guess I have concern with the wording "calendar year" --

ATTORNEY WEED: Yeah. I --

COUNCILMEMBER ALEXANDER: -- because if I break the law December 31st, that's one violation within a calendar year, but if I break the law January 2nd, that's a violation in the next calendar year.

ATTORNEY WEED: That's correct.

COUNCILMEMBER ALEXANDER: So I would rather it be a block of a year. You understand what I'm trying to say?

ATTORNEY WEED: Yeah, but we need to clarify. The problem that you're going to have is you want to be careful to not have an indefinite period that floats with the offender, so --

COUNCILMEMBER BATES: So could you go 12 consecutive months?

ATTORNEY WEED: Within 12 consecutive months of what period?

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COUNCILMEMBER BATES: First violation with -- a first violation, the license may -- I'm going to ad lib here a little bit.

ATTORNEY WEED: Sure, yeah. Let's do it together.

COUNCILMEMBER BATES: First violation, the license shall be suspended for a period up to 15 consecutive days. So I took out "a calendar year." I took just "first violation."

ATTORNEY WEED: That's the same problem that we currently have. What we want to avoid is an ex post facto law. We don't want a floating time period where from the dawn of time if you had an offense until now, you could be punished, and the only way to do that is to specify what's your statute of limitations, so to speak.

COUNCILMEMBER BATES: How about . . .

COUNCILMEMBER FLEMING: But this is the first violation, so --

COUNCILMEMBER BATES: Yeah, period.

COUNCILMEMBER FLEMING: -- it wouldn't have made any difference what time period it was.

COUNCILMEMBER ROCHE: I'm looking for the original motion. Do you remember what day it was? Was it 9/8?

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COUNCILMEMBER FLEMING: 8, uh-huh.

COUNCILMEMBER ROCHE: 9/8 or 8 --

ATTORNEY WEED: It was September the 8th.

COUNCILMEMBER BATES: Ms. Fleming is correct, though. A first violation is a first violation. Doesn't matter whether it was today or in 30 years from now. It's your first violation.

ATTORNEY WEED: Yeah. That is if we're assuming -- if we're making everybody equal and having a tabula rasa where we no longer consider any previous sales to misdemeanor --

COUNCILMEMBER BATES: How about if we --

ATTORNEY WEED: -- to minors.

COUNCILMEMBER BATES: How about if we do this: If no -- if no violation has occurred within the previous 12 months, a first violation, the license shall be suspended for 15 days.

ATTORNEY WEED: Previous 12 months from when? Of what?

COUNCILMEMBER BATES: From --

ATTORNEY WEED: From the accusation?

COUNCILMEMBER ALEXANDER: The date of the infraction.

ATTORNEY WEED: From the date the Council deems an infraction has incurred? We can do that.

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COUNCILMEMBER ALEXANDER: The police are going to --
ATTORNEY WEED: But I mean I'm --
COUNCILMEMBER ALEXANDER: -- deem that an infraction has incurred, not Council.
ATTORNEY WEED: Well, no. I mean --
COUNCILMEMBER ROCHE: No.
COUNCILMEMBER ALEXANDER: They come to us --
ATTORNEY WEED: -- the judge. The judge will --
COUNCILMEMBER ALEXANDER: -- and we --
ATTORNEY WEED: -- actually deem --
COUNCILMEMBER FLEMING: The judge.
COUNCILMEMBER ROCHE: Yeah.
COUNCILMEMBER ALEXANDER: The judge, exactly; not.
ATTORNEY WEED: -- that an infraction has incurred, so -- but the problem is if you -- I was hesitant to tie it to an actual conviction.
Let's talk about this. Hypothetically, Joe Smith sells to minors. He is caught, he is arrested, and he goes to city court where he could plead guilty, he could plead nolo and/or he could win at a trial or the solicitor might dismiss the charges for whatever reason or he might insist upon a jury trial and it be

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bound over to state court so he can have a jury trial with six. So there's at least four options right there.
Now, depending upon if he pleads guilty or pleads nolo, that's the easy part, because he is deemed to have been convicted of the offense essentially with regard to an administrative action that might occur later on.
If he gets a jury trial, it would be a year later or -- or it'll never come to trial. If it gets dismissed, it's over; there's nothing -- arguably, there's nothing you could do.
So it's okay if you pin it to 12 months preceding a date of something, but you need to determine what the something is.
It doesn't matter to me. Football field's a hundred yards long. I don't care. All I care about is making sure that whatever -- we're definite about whatever period of time we use.
COUNCILMEMBER BATES: How about this. Keep (1) the same: first violation in a calendar year shall be suspended for a period up to 15 consecutive days. Second violation within a 12-month time period --
COUNCILMEMBER ROCHE: But again, is that based on when the infraction occurred or when he was

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convicted or -- I see the point. We have to pick -- say what the event was. I mean you can't -- the event doesn't mean anything if you're not convicted one way or another, whether you -- by pleading guilty --
COUNCILMEMBER FLEMING: Can you not --
COUNCILMEMBER ROCHE: -- pleading nolo, whatever.
COUNCILMEMBER FLEMING: Can you not put within 12 months of the first violation?
ATTORNEY WEED: Yes, we could do that. That would be fine. And in fact, I think that was probably the original idea.
After we determine language you like with regard to the first violation, two and three become easy because you'll trigger those based upon whatever date the first violation occurred. But the hard one we have to go through is when do you want the first violation -- you know, what magical time period you want for that.
COUNCILMEMBER FLEMING: The first violation, in my estimation, is when they come to us and we make the decision as to how many days up to 15 we're going to give them.
COUNCILMEMBER ROCHE: Well, the problem --
COUNCILMEMBER FLEMING: Because they come to

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us -- excuse me -- they also come to us as part of section (e) -- (c) on this code -- if I'm not mistaken, it was (c) -- that that's when they get the thousand dollar fine also, where they get the thousand dollar fine at court. Which is that? Because the thousand dollars is part of this code.
ATTORNEY WEED: Yes. It's either -- well, the thousand dollar fine is a core determination for a violation of any part of the ordinance.
Alcohol beverage ordinances have two parallel tracks. One track would be the administrative proceeding that deals with the license and the other track is the criminal proceeding for violation of the ordinance itself, and that's done by the court. What you are in command of, of course, is the administrative proceeding with regard to granting a license, suspending and revoking it, et cetera, and the thousand dollar fine, you can't -- the Council can't issue a fine, arguably, unless you have that charter power, and I think that's even questionable today. The court can.
COUNCILMEMBER FLEMING: Because up until the time they come to us, they're still operating.
ATTORNEY WEED: Yes, that's correct.
COUNCILMEMBER FLEMING: So that's why I

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1 think that the fine -- that the suspension should be
2 from the date that we set it here. You know, when
3 we're talking about the one-year time period from the
4 date that we set it here, because that's when they're
5 going to put the sign on their -- you know, make their
6 sign that says they're --
7 COUNCILMEMBER BATES: In violation --
8 COUNCILMEMBER FLEMING: -- you know --
9 COUNCILMEMBER BATES: -- and suspended and -
10 COUNCILMEMBER FLEMING: -- in violation, no
11 sales from period such-and-such to so forth, so --
12 COUNCILMEMBER ROCHE: I guess my concern on
13 that would be if I get nailed, okay, you got me once,
14 all right. So I'm guilty, all right. Well, eight
15 months later, you nail me again. Well, I'm going to
16 do everything I can to delay that to make sure that
17 that second go-round -- if I can wait until I'm
18 convicted, because it's not based on when the vio-
19 lation occurred, then I can simply delay it past 12
20 months and then I'm starting over again. I don't have
21 to worry about the 30 days. I know, worst case, I'm
22 going to get 15 days. I may get all 15 days, but I
23 can manipulate the system to space it out. I mean
24 eventually I guess it would catch up. But as you
25 said, I could demand a jury trial; it could be a year.

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1 ATTORNEY WEED: I'm thinking aloud here just
2 scribbling down some notes.
3 COUNCILMEMBER FLEMING: That's a very good
4 point.
5 ATTORNEY WEED: Something like a first -- a
6 first violation -- I'm just going to talk this through
7 until we come up with something. Something like a
8 first violation shall be based upon a Mayor and
9 Council determination administratively of a violation
10 of sales to misdemeanor -- sales to minors. So I
11 still think we're tracking down a good path.
12 COUNCILMEMBER ROCHE: Well, why not just use
13 the date that the infraction occurred: the day that I
14 sold to minors, okay, I get that ticket, okay.
15 ATTORNEY WEED: That's true. I mean you
16 could do it that way.
17 COUNCILMEMBER ROCHE: And then that way, you
18 know, so if I get another ticket six months from now,
19 it doesn't matter if you wait three years before it
20 comes to court and you plead guilty. You're still
21 liable because you had two infractions in a six-month
22 period or some period less than a year. So that means
23 the Council can nail you for 30 days.
24 ATTORNEY WEED: Yeah, and that's good, and
25 you can do it that way.

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1 Here's the down side, which is -- just bear
2 this in mind -- is that let's say that you are found
3 legally not guilty of committing a crime. It doesn't
4 mean -- you could still find someone guilty adminis-
5 tratively with regard to action against their license.
6 But if they come up and turn up not guilty in the
7 court system, then you could arguably -- if it was the
8 third offense, you would have terminated someone's
9 alcohol beverage license, and then they would have
10 been found to be not guilty of a crime. Can you do
11 that legally? Yes. Are you going to get sued over
12 it? Yes.
13 COUNCILMEMBER ROCHE: Well, I guess what I'm
14 -- well, in that case, you know, if I get -- okay.
15 February, bang. You got me. I'm guilty; fine.
16 October you got me again. Okay. So I'm going to play
17 the game. I'm going to wait a year before it actually
18 comes to court. Finally, I know that's it; I plead
19 guilty. Okay.
20 So, now at that point in time, that's when
21 it would come to the Council, and we could say, well,
22 let's see. He had two violations in one 12-month
23 period; therefore, we can give him up to 30 days
24 suspension.
25 You see what I'm saying? It could be five

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1 years later, but that still -- those two violations
2 occurred within a 12-month period, or three violations
3 or whatever. And that way, it's simple because you
4 keep it all based on when you actually broke the law.
5 ATTORNEY WEED: Right; a 12-month period
6 based upon the point of infraction --
7 COUNCILMEMBER ROCHE: When you --
8 ATTORNEY WEED: -- as determined by --
9 COUNCILMEMBER ROCHE: -- broke the law.
10 ATTORNEY WEED: -- the Mayor and Council.
11 COUNCILMEMBER ROCHE: Exactly.
12 ATTORNEY WEED: I think we can make that
13 work legally.
14 COUNCILMEMBER ROCHE: I mean if that makes
15 sense to everybody else.
16 COUNCILMEMBER SPANGLER: So at what point
17 would you close him down for selling the alcohol for
18 that 15- or 30-day period? When they went to court?
19 ATTORNEY WEED: Well, I mean you wouldn't
20 have to. The Council could choose to wait until there
21 was a judicial adjudication of the event.
22 And in the situation we're currently in, the
23 offenses went out in very, very late May. I think
24 like May the 29th is when they had their operation.
25 Those cases only filtered through the system in

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1 September. That's when they finally --
2 COUNCILMEMBER ROCHE: Right.
3 ATTORNEY WEED: -- all of them worked their
4 way through, in September, so a four-month period of
5 time. And it could be longer, you know.
6 COUNCILMEMBER ROCHE: It would seem that a
7 conviction would have to be part of the formula some-
8 where. I mean you're right. I don't think we could
9 shut someone down unless they were legally committed
10 -- I mean convicted, because we're not a judge and
11 jury and all that.
12 ATTORNEY WEED: Legally, you can,
13 administratively. You have that authority. Now,
14 whether you want to exercise it or not, you know,
15 that's up to the Council.
16 COUNCILMEMBER ROCHE: Well, again, like you
17 say, we'd probably get sued --
18 ATTORNEY WEED: Yeah.
19 COUNCILMEMBER ROCHE: -- and probably lose.
20 So you're right; that's a good point: it
21 could be a year before they actually suffer the
22 penalty of what they did a year before. I'm just
23 trying to keep something that's simple that we can,
24 you know --
25 ATTORNEY WEED: And as long as some -- as

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1 long as there's some, you know, human being assigned
2 the task of keeping up with it, it can work out. And
3 you know, the people -- it may be a year later, but,
4 by gosh, when you plead out or you got convicted or
5 whatever, the day of reckoning will come.
6 COUNCILMEMBER ROCHE: Right. And then you
7 just have a file of all your convictions somewhere,
8 and you just thumb through and, whoops, here you are,
9 six months, a year ago. That's what the judge does
10 when he declares you victory or -- "victory" --
11 guilty, and then he looks up on his little --
12 Not that I would know that, because I've
13 never been con- -- no.
14 ATTORNEY WEED: But having taken a civics
15 course, that's true.
16 COUNCILMEMBER ROCHE: Yeah.
17 ATTORNEY WEED: So I mean, yeah, we could do
18 it that way.
19 And bear in mind, most of the time, you're
20 going to have a few extreme cases where you're going
21 to have to shut someone all the way down --
22 COUNCILMEMBER ROCHE: Right.
23 ATTORNEY WEED: -- and close them and take
24 their license. That will happen eventually, but that
25 will be an extreme case.

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1 Most of the time, these offenses will occur,
2 and about four to five months later, they will have
3 been adjudicated --
4 COUNCILMEMBER ROCHE: Uh-huh.
5 ATTORNEY WEED: -- and, you know, you could
6 have the admin proceeding during that time frame, you
7 could wait until the five months has passed and then
8 do it, either one, and you'd be armed with the con-
9 viction or the guilty plea or the nolo plea, whatever.
10 It's hard to show up when you've pled guilty on some-
11 thing in court, at your administrative hearing, and
12 say, oops, I didn't mean it. So you can do it that
13 way.
14 COUNCILMEMBER ROCHE: So how are you going
15 to word it?
16 ATTORNEY WEED: So how am I going to word
17 it? I would --
18 COUNCILMEMBER FLEMING: I mean I think on
19 page two where you have, upon a finding by the Mayor
20 and Council, that -- that sentence is perfect.
21 COUNCILMEMBER ROCHE: Well, that's when you
22 start the suspension, but what we're talking about is
23 what's the period --
24 COUNCILMEMBER FLEMING: I know, but he was
25 trying -- it sounded like he was trying to change

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1 that, and --
2 COUNCILMEMBER ROCHE: No.
3 COUNCILMEMBER FLEMING: -- I think it's fine
4 the way that he's got it there.
5 ATTORNEY WEED: As determined -- give me
6 just one second.
7 COUNCILMEMBER ROCHE: Because, yeah, the
8 wording would just say in the event of a second
9 violation within 12 months, blah, blah, blah, blah,
10 blah.
11 ATTORNEY WEED: Yeah, you're right. I think
12 (2) and (3) are going to be pretty much . . .
13 COUNCILMEMBER FLEMING: I think if we just
14 leave off in a calendar year in the first one.
15 COUNCILMEMBER ROCHE: Uh-huh.
16 COUNCILMEMBER FLEMING: A second violation
17 occurring within one year of first violation shall be
18 suspended for a period up to 30 consecutive days.
19 ATTORNEY WEED: Hold that thought.
20 How about -- how about: a first violation
21 in a 12-month period starting upon the date of the
22 accusation of the offense, and then, dash, the license
23 shall be suspended for a period up to 15 consecutive
24 days.
25 And then for (2) and (3), it would just be

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second violation in the same period as set out in (d)(1) and (3) would be third violation in the same period as set out in (d)(1).

COUNCILMEMBER ROCHE: Because the original motion, it essentially says second violation in a one-year period. And it's talking about violations, not convictions or anything else.

ATTORNEY WEED: That --

COUNCILMEMBER ROCHE: I mean if that's --

ATTORNEY WEED: -- sounds --

COUNCILMEMBER ROCHE: -- what you're saying, that's fine with me.

ATTORNEY WEED: -- okay.

COUNCILMEMBER BATES: You didn't say calendar year, did you?

ATTORNEY WEED: I did not.

COUNCILMEMBER BATES: Good.

COUNCILMEMBER ROCHE: Right.

ATTORNEY WEED: I said --

COUNCILMEMBER ROCHE: Because the motion didn't say calendar year either.

ATTORNEY WEED: Yeah. I said a 12-month period; however, starting upon the date of the accusation of the offense -- not the conviction but the accusation of the offense.

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So if you're accused of selling to minors on January 1 of 2010, and administratively, five months later, you know, the board -- you determine that that actually occurred, then that's your first offense at that point that you could be punished for from one to 15 days.

And then the summer of that year, you have your second violation, then once again, within the preceding period from the first accusation of the first offense, there's your period.

Did that accomplish what you wanted to accomplish?

COUNCILMEMBER ROCHE: I think so.

I have a different question if we're ready to move.

My second question -- and it is the language in the motion -- I was just curious as to how you could -- to me, revocation means you've lost it and you have to reapply.

ATTORNEY WEED: That's correct.

COUNCILMEMBER ROCHE: Where according to the actual words in the motion it says will be revoked for one year, does that mean at the end of the year, you automatically get your license back?

ATTORNEY WEED: My stance on that would be

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you'd have to reapply for it --

COUNCILMEMBER ROCHE: Okay.

ATTORNEY WEED: -- because if you're revoked, you have no license at all, and, therefore, you're starting as if you're brand new and fresh.

COUNCILMEMBER ROCHE: Good.

ATTORNEY WEED: Now, the interesting thing is: one of the standards even in your current ordinance would be if you have evidence of a prior revocation, that might quality you from getting a license. But that's the chance you take, so hopefully you don't let it get to the point where you're going to get revoked.

COUNCILMEMBER ROCHE: But the way it reads is you can't get one for at least a year.

ATTORNEY WEED: Right; that is correct.

COUNCILMEMBER ROCHE: That's --

ATTORNEY WEED: Couldn't even -- we couldn't even take your application.

COUNCILMEMBER ROCHE: Just making sure.

MAYOR JENKINS: Murray, would you have to give them their money back on that revocation?

ATTORNEY WEED: No. No, sir. No.

No, because when you think about it, the -- you know, part of the licensing fee is -- inherent in

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that is the regulatory fee of what it costs us to process the thing, et cetera, so that's just the cost of doing business.

COUNCILMEMBER FLEMING: Would you repeat (2) again?

ATTORNEY WEED: Yes. I believe it will read, subsection (1): first violation in a 12-month period starting upon the date of the accusation of the offense -- the license shall be suspended for a period up to 15 consecutive days. (2) would be: the second violation in the same period as set out in (d)(1) -- suspended for a period up to 30 consecutive days. (3) would be: third violation in the same period as set out in (d)(1) -- revocation for a 12-month period beginning upon the date of the Mayor and Council finding.

COUNCILMEMBER FLEMING: I make a mo- --

COUNCILMEMBER BATES: Should --

COUNCILMEMBER FLEMING: Go ahead.

COUNCILMEMBER BATES: Should it say consecutive 12-month period?

ATTORNEY WEED: Sure. That's fine.

MR. HAEBERLIN: That one year would have some impact on some places in terms of the zoning that are legal nonconforming uses.

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COUNCILMEMBER FLEMING: Correct.
MR. HAEBERLIN: So, you know, to have the third would be very significant for lots of places in the city based on the code changes that you guys adopted.
COUNCILMEMBER ROCHE: Well, let's just hope they don't serve alcohol to minors.
COUNCILMEMBER BATES: More than twice in a year.
MAYOR JENKINS: If --
COUNCILMEMBER BATES: And I -- go ahead.
MAYOR JENKINS: If they don't -- if it's 12 months -- actually, if this period runs out, then they actually start over after the first 12-month period or whatever.
ATTORNEY WEED: They do. If they would be -- you would be revoked, and then it would be as if they never had a license, essentially. They'd have to come in and reapply for a license.
And the only problem with that, which is a problem for them, not for the government, would be they would now have to report that in their past they had a revocation somewhere in their background, which you can use as a reason not to grant them another license. But you can do that. I mean that's how it

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is the world over.
MAYOR JENKINS: My point is: if they get the 15 days, their license taken away from them, and they don't -- nothing happens within, say, 14 months, actually, they start over again; is that correct?
COUNCILMEMBER FLEMING: Yes.
ATTORNEY WEED: Yes, that's correct.
MAYOR JENKINS: Okay. That's all I --
ATTORNEY WEED: And that's been part of our problem is that it wasn't really clear before, with our two-strikes-you're-out rule, whether it began at the dawn of time, you know, when Adam met Eve, or whether it was a one-year period from each renewal period of your license or whatever. So that's the one thing I wanted to make sure we dealt with however we dealt with it.
COUNCILMEMBER ROCHE: One question: when we discussed this before, part of the whole point of, you know, making these changes was because we had outstanding people who had been, you know, given tickets or whatever. So if we pass this ordinance tonight, would that cover those people that had --
ATTORNEY WEED: No.
COUNCILMEMBER ROCHE: Because I thought that was why we were --

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ATTORNEY WEED: It --
COUNCILMEMBER ROCHE: -- doing that at the time --
ATTORNEY WEED: No. It --
COUNCILMEMBER ROCHE: -- was to change it.
ATTORNEY WEED: No. I mean that may have been the Council's thought, but it won't make any difference, and I sent you an e-mail with regard to that.
The people that we're dealing with now have an advantage and a disadvantage. Essentially, if we change the law on them to make it more harsh than the time that they were committing the offense, that's an ex post facto law. We can't do that constitutionally because you can't criminalize something today -- you can criminalize it but you can't retroactively punish somebody for doing something that was legal at the time that they did it or the punishment wasn't as harsh.
On the flip side of that, there's a general kind of rule that you get the advantages of whatever -- the advantages or disadvantages of whatever the system was in play at the time it was in play with you.
So in other words, the people could still be

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subject to the two-strikes-you're-out rule which is mandatory, which is why, you know, I sent you an e-mail about my suggestions about how we handle that, and I'd like you to rely upon that attorney/client-privileged e-mail rather than me outlining here in public what the strategy is. But I think there's a way to resolve that --
COUNCILMEMBER ROCHE: Okay.
ATTORNEY WEED: -- but this won't do it. And in fact, if we rewrite the entire code of ordinances -- I mean the whole alcohol beverage code, that won't help the people that we're dealing with right now.
COUNCILMEMBER FLEMING: Even if I make the motion to supersede any and all outstanding ordinances that reflect 3-270 prior to any violations on the books?
ATTORNEY WEED: I think you could make a motion that you wanted to revoke the relevant penalty portion of the alcohol beverage code and that any -- and the secondary impact of that might be for any current offender who might be subject --
COUNCILMEMBER FLEMING: Any --
ATTORNEY WEED: I'm coming back --
COUNCILMEMBER FLEMING: -- pending offender.

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ATTORNEY WEED: Yeah. You know, you could simply eliminate the process -- in other words, just give them a pass -- and that's perfectly legal, and, you know, you may end up having to do that to a certain degree -- and then going forward after we resolve these code issues, you know, go and sin no more.

So yes, you could do that, but what you would have to do would be you'd have to dismantle the relevant system to, you know, decriminalize or, in this case, to non-punish administratively the people that are in this category of people that are traveling through right now. So can you do it? Yeah.

COUNCILMEMBER ROCHE: Could you make it effective as of January 1st, 2009?

ATTORNEY WEED: Well, I don't feel very comfortable making it retroactive like that.

If you're going to do something like that, I would recommend -- you know, enforcement's always discretionary. The Council could simply choose not to pursue administrative cases against the relevant violators who might get shut down underneath the two-strikes-you're-out rule, simply choose not to do it, and underneath your police powers, rewrite that chunk of the ordinance, and it's over because that law is no

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longer in effect.

COUNCILMEMBER ALEXANDER: Why couldn't you choose to treat them all as first offenders?

ATTORNEY WEED: Well, that's probably okay. And the reason why it's probably okay practically is because as long as the -- who is going to complain? If the punishment is something that's palatable administratively to the offender, they're not going to complain; they'll simply take the punishment. If I'm the offender and the first-offense rule is 15 days suspension where I can't sell, I will sue the government.

COUNCILMEMBER ALEXANDER: Up to 15 days.

COUNCILMEMBER FLEMING: But both ordinances are 15 days, so I don't know why we're even commenting.

COUNCILMEMBER ALEXANDER: The first one is a mandatory --

COUNCILMEMBER ROCHE: Right.

COUNCILMEMBER ALEXANDER: -- 15 days.

COUNCILMEMBER FLEMING: Okay.

ATTORNEY WEED: What's on the books right now, it's mandatory 15 days --

COUNCILMEMBER FLEMING: Okay.

ATTORNEY WEED: -- second offense, mandatory

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revocation.

COUNCILMEMBER FLEMING: Okay.

ATTORNEY WEED: The Council voted to take themselves -- not to give themselves any choice.

COUNCILMEMBER FLEMING: My apologies.

ATTORNEY WEED: Yeah.

COUNCILMEMBER FLEMING: I was just thinking about the 15 days.

COUNCILMEMBER ROCHE: And that's the concern. I mean I'm --

ATTORNEY WEED: Exactly.

COUNCILMEMBER ROCHE: -- not really inclined to let them go scott free, but I would rather let them -- give them a pass versus putting them out of business.

ATTORNEY WEED: I hear you.

COUNCILMEMBER ALEXANDER: They broke the law.

COUNCILMEMBER BATES: I would like to review the memo that Mr. Weed has sent to us regarding this and get some clarity internally as to what our options are on the administrative side and pass this as it is tonight going forward and address the administrative side when it's time to address the administrative side.

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ATTORNEY WEED: And I want to clarify this again. I know we talked about it before. All this ordinance does, it doesn't resolve any of the problems in your code --

COUNCILMEMBER ROCHE: Right.

ATTORNEY WEED: -- period, and all it does, it's only applicable to underage sales.

COUNCILMEMBER ROCHE: Right.

ATTORNEY WEED: That's it, period. It doesn't affect any other penalty and it doesn't affect any other issue that may or may not exist in your code.

COUNCILMEMBER FLEMING: Yes, sir.

COUNCILMEMBER SPANGLER: Make a motion?

COUNCILMEMBER BATES: I'll --

COUNCILMEMBER ROCHE: Well, I think Pam made the motion.

COUNCILMEMBER SPANGLER: Oh.

COUNCILMEMBER BATES: Ms. Fleming, did you make the motion?

COUNCILMEMBER FLEMING: I was trying to but I wanted to get his wording proper and --

ATTORNEY WEED: Are you okay with just --

COUNCILMEMBER FLEMING: Yes, sir.

ATTORNEY WEED: -- adopting what I --

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COUNCILMEMBER FLEMING: I'd like to --
ATTORNEY WEED: -- read in the record?
COUNCILMEMBER FLEMING: -- make a motion to amend ordinance 3-270 which is the penalties affixed to violators for the sales to minors to read as follows (gesturing):
ATTORNEY WEED: Penalty, Section 3-270(d): Upon a finding by the Mayor and Council that a violation of sales to minors has occurred, the license shall be suspended or revoked as follows: (1), first violation in a 12-month period starting upon the date of the accusation of the offense -- the license shall be suspended for a period up to 15 consecutive days; (2), second violation in the same period as set out in (d)(1) -- suspension for period of up to 30 consecutive days; (3), third violation in the same period as set out in (d)(1) -- revocation for a consecutive 12-month period beginning upon the date of the Mayor and Council finding, period.
COUNCILMEMBER BATES: Second.
MAYOR JENKINS: Anymore discussion?
- - -
(No response)
- - -
MAYOR JENKINS: Call the roll.

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CLERK BLACKMON: Councilmember Alexander?
COUNCILMEMBER ALEXANDER: Yes.
CLERK BLACKMON: Councilmember Bates?
COUNCILMEMBER BATES: Yes.
CLERK BLACKMON: Councilmember Fleming?
COUNCILMEMBER FLEMING: Yes.
CLERK BLACKMON: Councilmember Pittman?
COUNCILMEMBER PITTMAN: Yes.
CLERK BLACKMON: Councilmember Roche?
COUNCILMEMBER ROCHE: Yes.
CLERK BLACKMON: Councilmember Spangler?
COUNCILMEMBER SPANGLER: Yes.
MAYOR JENKINS: All right. We're going to open this bid for the cleaning service, the one that was left over.
ATTORNEY WEED: Mr. Mayor, I want the record to reflect what occurred in this case.
Rhonda, would you raise your right hand? I want to give you the oath.
- - -
(Whereupon, Clerk Rhonda Blackmon was duly sworn by Attorney Weed.)
- - -
ATTORNEY WEED: What is your name?
CLERK BLACKMON: Rhonda Ann Blackmon.

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ATTORNEY WEED: And where are you employed?
CLERK BLACKMON: City of Doraville.
ATTORNEY WEED: What do you do for that city?
CLERK BLACKMON: City clerk.
ATTORNEY WEED: Before the Council tonight, is there an envelope which may or may not contain a bid for a cleaning services contract?
CLERK BLACKMON: Yes.
ATTORNEY WEED: Are you familiar with that envelope?
CLERK BLACKMON: Yes.
ATTORNEY WEED: Have you examined the envelope?
CLERK BLACKMON: Yes.
ATTORNEY WEED: Did you open that envelope?
CLERK BLACKMON: No.
ATTORNEY WEED: And was that envelope included in a grouping of other envelopes that would have been a part of the bid opening meeting?
CLERK BLACKMON: Yes.
ATTORNEY WEED: It was? My understanding was it was not included.
CLERK BLACKMON: Okay. I thought you were

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clarifying when it came in.
No, it was not included in the original opening night.
ATTORNEY WEED: And why was it not included?
CLERK BLACKMON: It was misplaced with other documents that we were holding for review.
ATTORNEY WEED: Okay. And is that bid in the same or substantially the same condition as it was when you found it?
CLERK BLACKMON: Yes.
ATTORNEY WEED: Should that bid have been included in the materials that would have been presented to Council on the relevant night?
CLERK BLACKMON: Yes.
ATTORNEY WEED: Okay. Is that the same bid that's before them tonight?
CLERK BLACKMON: Yes.
ATTORNEY WEED: Okay.
- - -
ATTORNEY WEED: Thank you, Mr. Mayor. I think that's going to establish the record that the bid's been identified so you can open it tonight.
MAYOR JENKINS: Thank you.
COUNCILMEMBER BATES: This is from William S. Howard of 3061 Oakcliff Road, Apartment 2A. It is

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a letter addressed to the City of Doraville indicating that the individual, William S. Howard, is interested in a janitorial job with the City of Doraville, looking for a full-time position with a salary of $9.25 to $9.75 per hour.

The letter goes on. I won't read it for the record, and I'll let Mr. Pittman make his recommendation.

MAYOR JENKINS: These were bids for contract services. This don't seem to --

COUNCILMEMBER SPANGLER: This --

MAYOR JENKINS: -- follow the same line.

COUNCILMEMBER FLEMING: Did not the bid say cleaning service?

MAYOR JENKINS: Excuse me?

MAYOR JENKINS: Did not the RFP ask for cleaning service?

MAYOR JENKINS: Bid three days a week, not full employment.

COUNCILMEMBER FLEMING: Pardon me?

MAYOR JENKINS: Three days a week, not employment. Contract services.

ATTORNEY WEED: Yeah. I mean --

MAYOR JENKINS: Wait a minute.

ATTORNEY WEED: Correct, Mayor. I mean the

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Council could choose not to forward this bid on to Mr. Pittman as being noncompliant but it may just be easier to let, you know, this bid go forward, and he can pick up the top three or whoever he's going to pick and, in accordance with your instructions, get back with you.

COUNCILMEMBER ROCHE: Well, $9.75 an hour, that's only $12,000 a year for three days a week plus benefits.

COUNCILMEMBER BATES: And again, not going through the fine print of the other providers, the letter indicates that the individual will not provide his own equipment --

COUNCILMEMBER ROCHE: Right. I understand.

COUNCILMEMBER BATES: -- be reliable upon the City's. I don't know if the other providers were providing their own equipment and supplies and things along that nature. So I'd really like to let Mr. Pittman evaluate them and come back to us with a recommendation.

COUNCILMEMBER ROCHE: Yes. I did not mean the $12,000 was in any form of -- any kind of a bid or anything.

MAYOR JENKINS: Will this one be included in Mr. Pittman's --

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COUNCILMEMBER BATES: I believe that's a fair thing to do, yes, sir.

COUNCILMEMBER ROCHE: Right.

MAYOR JENKINS: Well, then, we didn't give -- my point is you didn't give the other people the bid by the hour.

ATTORNEY WEED: If you're asking -- Mr. Mayor, if you're asking me, in my professional opinion, based upon the RFP, whether that bid is compliant with the RFP terms, my opinion would be no, that is not.

However, in light of the circumstances of the fact that it was not presented to you with the original grouping, I think it would be fair for Mr. Pittman to take a look at it --

MAYOR JENKINS: That's fine with me. I'm just making a point.

ATTORNEY WEED: -- and it might make the top three or it might not. But my professional opinion is that this current bid in the format is not compliant with the RFP specifications as they're set out.

COUNCILMEMBER ROCHE: Would that leave us exposed at all by all the other people who submitted bids and then they say, well, we went to all the trouble to submit a bid and then you hired somebody?

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ATTORNEY WEED: Well, what we put in the RFP is our usual language, which says that we've got the right to waive formalities. So we've already covered that. We've got the right to do that.

COUNCILMEMBER ROCHE: Okay.

COUNCILMEMBER SPANGLER: Motion to adjourn.

COUNCILMEMBER BATES: Second.

MAYOR JENKINS: All right. Thank you.

CLERK BLACKMON: Can I call the roll?

MAYOR JENKINS: Call the roll, please.

CLERK BLACKMON: Councilmember Alexander?

COUNCILMEMBER ALEXANDER: Yes.

CLERK BLACKMON: Councilmember Bates?

COUNCILMEMBER BATES: Yes.

CLERK BLACKMON: Councilmember Fleming?

COUNCILMEMBER FLEMING: Yes.

CLERK BLACKMON: Councilmember Pittman?

COUNCILMEMBER PITTMAN: Yes.

CLERK BLACKMON: Councilmember Roche?

COUNCILMEMBER ROCHE: Yes.

CLERK BLACKMON: Councilmember Spangler?

COUNCILMEMBER SPANGLER: Yes.

- - -

(Meeting adjourned at approximately 8:50 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 7th day of December, 2009.

_____

Theresa Bretch, CCR
Permit No. B-755

[SEAL]

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