



**WORK SESSION OF THE
MAYOR AND COUNCIL
CITY OF DULUTH, GA
OCTOBER 12, 2009**

PRESENT: Mayor Harris, Council members Bomar, Hall, Mundrick and Whitlock
City Administrator, Department Directors, City Attorney

ABSENT: Mayor Pro tem Jim Dugan

A work session was held prior to the regular scheduled meeting to allow the elected officials to discuss and ask questions of department directors regarding this evening's agenda items.

OTHER ITEM DISCUSSED:

1. WEBSITE LINK TO VOLUNTEER WEBSITE

[Exhibit "A"]

Council held general discussion regarding a request made by a Duluth citizen who has started a business that serves as a clearing house for volunteers. He asked the City to consider adding a "volunteer" link to the Duluth web page. After review of the City's website policy, Council agreed that this would clearly go against it, and Mayor Harris said she would inform the citizen that the City cannot accommodate this request.

**MINUTES OF THE
MAYOR AND COUNCIL
CITY OF DULUTH, GA
OCTOBER 12, 2009**

Mayor Harris called the meeting to order at 7:00 p.m.

INVOCATION/PLEDGE: Councilmember Whitlock

WELCOME RESIDENTS: Harris Mill/Rogers Creek

Mayor Harris reported on a recent tragedy whereby a Duluth woman lost her three daughters in a tragic house fire. This week there will be a candlelight ceremony in the Town Green.

ANNOUNCEMENTS:

1. CITY OF DULUTH WINS EXCELLENCE IN ARCHIVAL HISTORY AWARD

Mayor Harris announced that on Monday, October 5th, the City received the "Excellence in Archival History Award" from the Secretary of State and the State Archival Society for the "Duluth Revisited" project. By videotaping oral interviews with over 50 longtime community residents for production of a

90 minute film, this project was intended to preserve Duluth's unique history for future generations. In addition to film footage and pictures back to the 1900's, information was collected from people to represent diverse historical perspectives on topics such as business, education, government, leisure, general life and much more. "Duluth Revisited" brought many facets of the community together to both remember and appreciate Duluth's beginnings and to promote a sense of pride and responsibility to preserve our quality of life. The DVD is for sale at City Hall or the Historical Society.

I. CEREMONIAL MATTER

1. PRESENTATION OF MAYOR MURPHY PHOTOGRAPH

Michael and Gail Murphy, Betsy and Perry Bruce, and David and Jane Murphy presented the City with a photograph of Oliver Murphy, Mayor of the City of Duluth in 1956. Michael, the oldest son, introduced the family in attendance and recalled and reminisced of area landmarks. Mayor Harris thanked Mr. Murphy and his family for their contribution to the City "Mayor's Wall" on display in the Community Room.

II. CONSENT AGENDA

1. APPROVAL OF SEPTEMBER 28, 2009 MINUTES

2. RESOLUTION AUTHORIZING RIGHT OF WAY ACQUISITION - IRVINDALE SIDEWALKS
[Exhibit "B"]

Approval of this item authorizes the Mayor to enter into an agreement with the Georgia Department of Transportation to allow Planning Staff to move forward with negotiations to obtain the needed rights-of-way for the Duluth Residential Loop Project, City number CD-23-09, DOT CSCMQ-0006—00(838).

A motion was made by Councilmember Whitlock, seconded by Councilmember Bomar, to approve the Consent Agenda as presented.

Those voting for: Council members Bomar, Hall, Mundrick and Whitlock
Motion carried.

III. PUBLIC HEARING

1. ORDINANCE OF REZONING – PRD MODIFICATION - CASE Z#0207B-04
CITY OF DULUTH / BAXLEY RIDGE, LLC (C/O – FRANK MCGOWAN) PARCEL 7-207-160
[postponed indefinitely]

Mayor Harris opened the public hearing.

Planning Director Cliff Cross came forward to report that this public hearing is to consider an ordinance of rezoning for Case Z#0207B-04 a modification to the approved Planned Residential Development in order to alleviate concerns that have arisen regarding compliance with conditions 2.B and 2.C as amended in case number Z0207A-04 in June of 2008. These conditions read as follows:

1. 2.B—a minimum of fifteen (15) units shall have porte-cocheres.
2. 2.C—a minimum of fifteen (15) units shall have a combination of porte-cocheres and garages as shown on the elevations dated April 5, 2004.

Mr. Cross noted that the City is the applicant and is making this request in order to ensure the fulfillment of these conditions by officially admitting a binding site plan to the file showing the specific parcels which will be utilized to meet these requirements. Approval of this binding site plan would alleviate both resident and staff concerns about conditions 2.B and 2.C being met in full as the development is permitted.

During the analysis, the Planning Commission determined that conditions 2.B and 2.C were redundant, 2.B requiring 15 lots to have porte-cocheres and 2.C requiring the same number of lots to have a combination of porte-cocheres and garages. The commission stated that it would be beneficial to remove condition 2.B for this reason.

Mayor Harris called for questions from the Council.

Councilmember Bomar said she appreciated staff being proactive.

Councilmember Whitlock asked what would happen if the required 15 units have been met before the specified lots are built.

Mr. Cross said he would like Council to give staff the administrative power to allow the builder to swap or trade out lots if need be.

Mayor Harris invited the public to come forward with comments.

Kimberly Rowell of 3749 Baxley Ridge Drive came forward in support of this request. She said that although it seems to be a good compromise, it is not ideal for what the residents would like but it does keep some of the spirit alive of the original community that she and her fellow residents bought into a long time ago. When the new builder came in, the residents were treated very poorly. At that point they formed an advisory committee to protect their interests.

Wilma Figueroa of 1907 Baxley Ridge Trace came forward representing the residents that could not attend the meeting but who all signed a petition in June of 2009. Their concerns focus on enforcement and monitoring action. They appreciate the proactive actions that the planning director has taken with these issues but are also concerned about whether there is enough enforcement with the binding agreement and would like to see it better defined. They asked for the next building permit issuance to be contingent upon it being porte-cochere model. While they agree and understand that the economy has been a factor, the reason they bought into the community is because of the character and what was promised in the plan from the Council in 2004.

Ms. Figueroa also said that the City's part-time inspector approved a lot which did not meet the specifications on the permit for porte-cochere. The residents feel that Council was more than accommodating to the builder with their approval of the 2008 zoning variance and she requested the Council to approve the modified re-zoning and binding agreement with a defined enforcement action to ensure that the rezoning modification percentage today is enforced. Lastly, she stated for the record that there are other plan aspects of this development that also need enforcement and monitoring such as the development community walking trails and parks.

Councilmember Mundrick questioned the number of vacant lots and how many of those need to have porte-cocheres to be in compliance.

Mr. Cross replied that 35 are vacant and an additional 12 should have porte-cocheres. He also said the residents are concerned that there is no exact ratio of the homes being built. In June of this year the builder gave the residents a brochure that did not include any homes of that design, because those were copyrighted by the previous builder, but the new builder is working on new elevations to offer. There was also a concern that the newer homes were much smaller.

Council member Bomar noted that the approved regulations go with the land and not the builder, and Mr. Cross confirmed that 1600 square feet is the minimum that was set for these homes.

City Attorney Steven Pereira commented that putting more stringent development guidelines or ratios was unfair to change without the builder being present since the City is the actual applicant in this case.

Mr. Brian Gorka of 3769 Baxley Ridge came forward to note that many families moved into this neighborhood years ago with the understanding that the integrity of the neighborhood would not be changed to suit the developer, and doing so would be unfair to the owners who have made their biggest investment of their lifetimes in their homes.

Fran McGowan of 6576 Mills Waters Drive, Flowery Branch, came forward and said he is the developer of the property. He stated he did not initiate the zoning and would not agree to building on a ratio. He confirmed that new plans for porte-cochere homes were being drawn up by an architect. He also committed to start two of them as soon as plans are revised, an appraisal obtained, working drawings available and a budget prepared to submit to the lender. He has been trying very hard to maintain this neighborhood's integrity even under current economic conditions.

Mr. McGowan explained the many issues regarding the second builder and the banks involved with certain properties. No ratio was originally set with the property, and therefore neither the City nor the developer had any legs to stand on. But at this point, he is not going to come forward as an applicant to modify or agree to a ratio. However, he is not going to walk away from this neighborhood.

The new builder bought some lots directly from United Community Bank at such a discount Mr. McGowan cannot compete with the pricing they offer, and as a result they can build a much cheaper product just by virtue of buying the lots for less. This puts him in a difficult position of trying to build homes for an equal or higher price point related to what is already there.

Miguel Figueroa of Baxley Ridge came forward and noted that the developer owns the association so he is supposed to approve the designs regardless of which builder constructs them.

The Mayor asked Mr. Cross to comment and he said that the City has no jurisdiction on preferred design concepts; that would be between the association and the developer.

Council member Bomar commented that in her past dealings with Mr. McGowan she has found him to be a man of integrity and if he has committed to finish out the project, she has full confidence that he will do so. The designs all need to be available, but the buyer has the ultimate say in what they want to purchase.

There being no further comments or questions, Mayor Harris closed the public hearing and called for a motion.

A motion was made by Councilmember Bomar, seconded by Councilmember Whitlock, to approve the ordinance of rezoning modification as presented by staff.

Those voting for: Council members Bomar, and Whitlock
Those voting against: Council members Hall, Mundrick and Mayor Harris
Motion denied.

A motion was made by Councilmember Mundrick to postpone indefinitely the ordinance of rezoning modification pending opinion by (legal) counsel advice, seconded by Council member Bomar for discussion.

Council member Bomar asked for clarification on what Councilman Mundrick was requesting. Council member Mundrick stated that he could not vote on an issue that he did not fully understand and what the legal ramifications are, such as if we impose a ratio, is that supportable in court or not. He requested legal review to fully understand the issue since the City is the applicant in this case and he is not sure we can legally put post-zoning conditions on the property.

Councilmember Bomar confirmed her second.

Those voting for: Council members Bomar, Hall, Mundrick and Whitlock
Motion carried.

IV. MATTERS FROM COUNCIL/DEPT HEADS/CITY ATTORNEY

1. HOSPITAL CONNECTOR PRESENTATION - CD 47-09

Steve Roberts with Bron Cleveland Associates came forward to give a status report on the Hospital Connector. He first noted that the potential traffic signalization at the junction of the Hospital Connector (HC) and Abbott's Bridge Road (Hwy 120) plays a large factor in this entire project.

Mike Rushing with Kimley Horn & Associates came forward to state that the current status of the engineering only includes the HC and a roundabout, which is a separate project due to the funding mechanisms, but they are proposed to be constructed simultaneously. He explained that the intersection of the HC and Hwy. 120 does not warrant a traffic signal based on recent traffic counts, but this has not been evaluated with the proposed school driveway connection. The Federal Highway Administration is administering the federal funds slated for this project and the environmental clearance is tied to the project as it was originally conceived. Any time a change is made, several studies have to be repeated to include the new information. The GDOT has the ultimate say-so in permitting that signal connection, which would require another traffic study, new construction plans, and the potential for denial based on consideration for use of federal funding for signaling at a private driveway.

The school driveway was discussed and explained that it was only approved for a right-in right out. The school has not applied for a signal because they assumed the hospital connector project already included one.

Mr. Roberts provided a brief history of the project including the concept, status of the environmental clearance and what is left to be completed, as well as a brief discussion of the design. (History and Project report attached as Exhibit "B" to these minutes.) The Livable Centers Initiative (LCI) study was performed by Jordan Jones & Goulding in 2001 with the goal to promote pedestrian-friendly environment within town centers. The HC is one of the most vital parts of this plan and provides safe, expedient access to the City center. He detailed a typical section of the roadway which is proposed to be approximately 1,300 feet long.

Charlotte Weber with Jordan, Jones and Goulding came forward and reported on the environmental studies conducted and stressed that if any modifications are made to the plan, new environmental studies would have to be approved by the Federal Highway Administration. She outlined the next steps of the current schedule and said that the best case scenario would be March 2010 for approval of CE (for Hospital Connector only.)

Mr. Roberts discussed the preliminary plans as designed by Clark Patterson Lee and reviewed by Moreland Altobelli . He outlined the steps for right-of-way acquisition, final plans and construction. Once notice to proceed has been given to contractor, work should be started within 30 days and construction should last 12-18 months.

Ossie Brewer of Clark Patterson Lee came forward and summarized the design elements including the current alignment and profile that will meet desirable design criteria earthwork volumes. Using control points, they attempt to use 90 degree angles for the intersection. Their company also designed the driveway for the High School, which was intentionally aligned with the connector. The school had to go forward with their plans because they already had ROW negotiations with property owners that were going to expire. Without the light in place, the plans were revised for right-in right-out, and they are not planning to it until the connector is finished.

Ms. Brewer said her company was asked to look at an alignment alternative. She explained that it would create a significant impact on the property owners located on the west side of the proposed Hospital connector. These property owners could potentially lose half of their properties or be displaced due to the location of septic, topography of the land, and contours of the property creating a significant chance for erosion.

The current Hospital Connector alignment will create approximately 16,000 cubic yards of waste material, which could be used to flatten some of the proposed 2:1 fill slopes or storage for future use at the Ridgeway Extension project; since that will require approximately 50,000 cubic yards of borrowed material.

V. MATTERS FROM CITIZENS

1. HOSPITAL CONNECTOR CONCERNS

Property owner Jim Hambrick of 3716 West Lawrenceville Street came forward to ask questions regarding the alternate proposal and fairness to all landowners.

Diagrams of the project site were shown and it was explained that the project must meet ADA requirements by constructing no more than a 5% grade. Since the road is 40' higher at the roundabout then it will be at the entrance to 120, this presented a small challenge. The only other alternative is to create a specially designed retaining wall which would involve very expensive construction costs of approximately \$100-200,000.

Mr. Hambrick again requested to see the alternate alignment and asked for Council to seriously consider it. He also noted that two houses would not be able to get into their driveways with the current design.

The engineering studies have shown the alternate alignment would significantly impact three landowners as opposed to one.

Property owner Walter Nash of 3172 Crestview Circle came forward in support of the original design. He asked when Council would be deciding and the Mayor replied that there would be no vote on it this evening.

He asked for further assurance and Mayor Harris confirmed that the original proposal stands as is.

V. ADJOURNMENT

A motion was made by Councilmember Hall, seconded by Councilmember Bomar to adjourn. All voted for.

MAYOR HARRIS ANNOUNCED THAT THERE A WORK SESSION WOULD BE HELD AFTER THE MEETING IN THE MAIN STREET CONFERENCE ROOM, AND THAT THE PUBLIC WAS INVITED TO ATTEND.

POST COUNCIL MEETING WORK SESSION CITY OF DULUTH OCTOBER 12, 2009

1. MULTIPLE REQUESTS - ALCOHOL GIVEAWAY

Several local merchants and groups have requested to serve wine in conjunction with their scheduled events or sales promotions. Under the current City ordinances, this practice is not allowed. Staff requested Council directive on how to proceed with enforcement and/or amendment of the ordinance. A memo from the City Attorney was sent to Council dated September 9th with specific questions for discussion, in order to help the City clearly define the parameters of the ordinance.

The City Clerk said she does not have a full time compliance officer, but when we are made aware of a situation, it is handled at that point.

Council directed the City Clerk to take the request to the Alcohol Review Board for review and to bring back a recommendation.

Councilmember Bomar asked that all parties be notified when Council would hear the recommendation, as she feels current license holders ought to know if there is an issue, and other businesses should be given the opportunity to express their opinions as well.

Ms. Shelly Howard was present and said that she initiated the request on behalf of the monthly Art Walk, several businesses are interested in giving away wine (inside the stores only) in order to add to the ambiance and celebration of this monthly event.

Discussions were held on what constitutes a "private event," and the purpose of the event, defined as being held by a business, or being done for promotional reasons. The City Attorney agreed that the ordinance language could be a bit clearer in some instances.

Councilman Mundrick asked for a clear, written opinion from the City Attorney.

There being no further business, the meeting adjourned.

Approved this _____ day of _____, 2009.

Mayor Nancy Harris

ATTEST:

City Clerk Teresa S. Lynn