



**DRAFT MINUTES OF THE  
MAYOR AND COUNCIL  
CITY OF DULUTH, GA  
JUNE 10, 2019**

PRESENT: Mayor Harris, Council members Bomar (By Phone Conference), Carden, Jones, Kelkenberg and Whitlock, City Manager, Department Directors, City Attorney

A work session was held prior to the regular scheduled meeting to allow the elected officials to discuss this evening's agenda items.

Mayor Harris called the meeting to order at 6:30 p.m., and called for a motion to enter into an Executive Session for the purpose to discuss Real Estate, Pending/Potential Litigation, Personnel.

A motion was made by Councilmember Whitlock, seconded by Councilmember Kelkenberg, to adjourn to executive session at 6:30 p.m.

Those voting for: Council members Bomar (by phone), Carden, Jones, Kelkenberg and Whitlock  
Motion carried.

After the discussion, a motion was made by Councilmember Whitlock, seconded by Councilmember Jones, to return to regular session at 7:00 p.m.

Those voting for: Council members Bomar, Carden, Jones, Kelkenberg and Whitlock  
Motion carried.

*INVOCATION OR MOMENT OF SILENCE*

PLEDGE OF ALLEGIANCE led by Scout Troops members from 648, 420, 1534, 419 and 650 present to earn their Communication Merit Badge.

**I. ANNOUNCEMENTS**

1. AGENDA CHANGES
2. UPCOMING EVENTS - [www.duluthga.net/events](http://www.duluthga.net/events) for more information

"Fridays-N-Duluth" - May 3-August 23, 6-9pm & 6-10pm. Duluth Town Green & Parsons Alley

"Block Party on Main" - Friday, June 28 featuring Fool House (your favorite 90's tunes), 8pm-10pm. Premium tables available, Duluth Town Green

"Duluth Celebrates America" - Wednesday, July 3, 5:30pm-10pm.

"Flicks on the Bricks" - Friday, July 5 featuring *Aquaman*, Dusk, Duluth Town Green

"Whatever Floats Your Boat" - Saturday, July 20, Rogers Bridge Park

"Bubblepalooza" - Wednesday, July 24, 11am-1pm, Duluth Town Green

"Block Party on Main" - Friday, July 26 featuring *Fly Betty Band*, 8pm-10pm. Premium tables are available, Duluth Town Green

Special recognition to Major Mark Hunter for his 30 years of service to the Duluth Police Department.

## II. CONSENT AGENDA

1. APPROVAL OF MAY 13<sup>TH</sup> MINUTES {A}
2. AUTHORIZATION FOR INTERGOVERNMENTAL AGREEMENT – ELECTION EQUIPMENT {B}

Approval of this item authorizes the Mayor to execute the Intergovernmental Agreement between the City of Duluth and Gwinnett County Board of Voter Registrations and Elections for use of Election Equipment for the 2019 Municipal Election.

3. ORDINANCE TO AMEND THE FY19 BUDGET – \$13, 125 – POLICE AUCTION {C}

Approval of this item authorizes an ordinance (BA-FY19-32) to amend the FY19 budget. Recently, a police vehicle was sold at auction. After commission and fees, the City received \$13,125. In order to continue maintaining a vehicle fleet that is low maintenance and dependable, the Police Department is requesting the \$13,125 be added to the Police Vehicles - Consolidated Vehicle Maintenance - Vehicles line item. Discussion? Call for motion.

4. ACCEPTANCE OF DONATIONS – ORDINANCE TO AMEND FY19 – COMMUNITY CLEANUP {D}

On June 18th, the City once again held its annual Community Clean-Up Day for Duluth residents. In support of this event, staff received donations of \$300 from Terracon and \$250 from Pond & Co. to help offset the associated cost. Approval of this item authorizes a budget amendment (BA-FY19-33) to add \$550 to the Planning & Development - Planning & Development Administration - Community Betterment Program line item.

5. ORDINANCE TO AMEND FY19 BUDGET - \$40,000 – ENGINEERING SERVICES {E}

The City's in-house engineering services for capital projects are performed by an on-staff outside consultant. The consultant's time is tracked by project and the cost is allocated to the individual capital project as work is performed, based on approved invoices. Prior approved SPLOST contingency funds for Parks & Recreation capital projects have been exhausted and additional funds are needed. Approval of this item authorizes a budget amendment (BA-FY19-34) to add \$40,000 in unallocated 2014 SPLOST Recreational Facilities funds to the 2014 SPLOST - Professional Services line item. These funds will be allocated to individual projects as invoices are approved.

***A motion was made by Councilmember Jones, seconded by Councilmember Carden, to approve the Consent Agenda as presented.***

***Those voting for: Council members Carden, Jones, Kelkenberg and Whitlock  
Motion carried.***

## III. PUBLIC HEARINGS

1. ORDINANCE OF SPECIAL USE PERMIT – CASE# SU2019-002 {F}

Mayor Harris opened the public hearing to consider an Ordinance of Special Use for Case #SU2019-002 and call forward Planning Director Bill Aiken to present.

The Mayor and Council to consider a request (SU2019-002) from TG Rogers, LLC for Special Use approval to operate a restaurant with drive-through window(s) on a +/- 5.07 acre property located at northeast corner of the Rogers Bridge Road and Buford Highway intersection, Duluth, Georgia 30096 (tax parcels R7201 002 & R7201 385). The property is currently zoned Duluth HC-R (Highway Commercial Retail District) and will not change. Notice of this public hearing was posted in the City's legal organ April 19, 2019 and on May 12<sup>th</sup> 2019. On April 19<sup>th</sup> 2019 notices of the Public Hearing was posted in conspicuous places within the public right-of-way fronting the subject property as required by the City of Duluth Unified Development Code and the State of Georgia Zoning and Procedures Law. O.C.G.A. 36-66-1. The sign indicates that a public hearing will be held at 7:00 p.m. on May 6<sup>th</sup> before the Planning Commission and on June 10<sup>th</sup> at 7:00 p.m. before the Mayor and Council.

Mr. Aiken explained the purpose of the Special Use request (SU2019-002) is to allow for the construction of a restaurant with a drive-thru. The proposed restaurant is approximately 2,800 square feet with a driveway access to Rogers Bridge Road and Buford Highway. The restaurant is being proposed as part of a larger development, which is intended to also include two retail buildings and a carwash as shown in the Master Concept Plan. The retail buildings are allowed by right and therefore do not need entitlements from City Council. The carwash does need approval and is also requesting Special Use approval (SU2019-003). In 2018, the City of Duluth amended the Unified Development Code (UDC) to require Special Use approval for restaurants with drive-thru in the HC-R zoning district. Prior to that amendment, this use was allowed by right.

The intent of the text amendment was to ensure certain types of uses would receive an additional layer of review prior to approval. The uses that were changed from allowed uses to special uses included drive-in and drive-thru restaurants, carwashes and automotive related retail uses. These types of businesses may be compatible in retail character areas located near prominent intersections. However, in a downtown character area where walkability and pedestrian-scale development is important, they may not be compatible.

The HC-R zoning district parallels Buford Highway on both sides of the road from Davenport Road to the subject property on the northern end of the City with two exceptions (District at Duluth zoned PUD and Woody's Nursery zoned C-1).

The subject site consists of two parcels totaling + / - 5.07 acres and was originally developed in 2007 with the intent of constructing a one story multi-tenant commercial building totaling 31,000 square feet. The site was graded and utilities were installed at that time. The site is bound to the north by the Norfolk Southern railroad right-of-way, to the east by Buford Highway, to the South by Buford Highway and to the west by Rogers Bridge Road. To the east, across from Buford Highway, is an established neighborhood known as Cresswell containing 142 single-family detached units. The other three corners of this intersection contain a variety of retail, financial and restaurant uses.

Table 2-C of the UDC allows Restaurants with Drive-Thru in the HC-R zoning district by way of Special Use approval.

Section 1105 of the UDC describes the Special Use Considerations.

The special use is designed to apply under any one of the following circumstances:

- (1) A special use listed under the zoning district is desired for development and a more intensive zoning district containing that use, as a use by right would not be appropriate for the property; or
- (2) A special use listed under the zoning district is desired for development and not zoning district contains that use as a use by right; or
- (3) A unique use not addressed in any zoning district is desired for development and is not likely to be duplicated within the City of Duluth; or

- (4) The density of development may be affected by the height of a building; or
- (5) The neighboring properties may be affected by the height of any structure; or
- (6) The special use would be consistent with the needs of the neighborhood or the community as a whole, be compatible with the neighborhood and would not be in conflict with the overall objective of the Comprehensive Plan.

In order to accommodate these particular uses, special use approval allows the City Council to approve such a use on a particular parcel without changing the general zoning district. Such approval shall be subject to the requirements set forth and any additional conditions deemed necessary to ensure the compatibility of the special use with the surrounding properties. All special use applications shall be for firm development proposals only. The special use shall not be used for securing early zoning for conceptual proposals that may not be undertaken for some time. A special use application shall be considered only if the application is made by the owner of the property or his/her authorized agent. Mr. Aiken noted the minimum requirements and Special Use Standards for a special use approval.

The proposed rezoning is not anticipated to adversely affect the existing use or usability of adjoining or nearby properties as conditions will be imposed on the development.

The proposed rezoning is not anticipated to cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools.

The Vision and Aspirations chapter and supporting Character Area Map of FORWARDuluth (also known as the Comprehensive Plan) identifies the Character Area of this property as Buford Highway North Corridor. The Buford Highway North Corridor is currently developed in a typical suburban pattern. There are individual stand-alone commercial establishments as well as strip commercial centers and a large grocery store anchored shopping center. There are, however, a number of establishments that may be better suited for a more industrial setting such as warehouses, rock yards, towing companies, etc. There is also a large amount of undeveloped and underdeveloped land along Buford Highway, including this property. As development pressure continues to rise, it is expected that this area will be targeted by developers due to its location between two quality cities and its easy access to I-85. The Comprehensive Plan encourages the development of vacant land and redevelopment of warehouse and non-retail properties into office, retail and mixed-used residential property.

Recent development in downtown Duluth has made the surrounding undeveloped land viable for new development.

Special Use approval is subject to the Master Concept Plan and conditions of approval.

The restaurant with drive-thru lane shall be developed in general accordance with the approved Master Concept Plan. Minor changes to the Master Concept Plan may be approved by the Planning and Development Director. Any changes that result in a development of such intent and character that has not been conceptually approved by the City Council shall require additional approval in accordance with procedures established in the Procedures and Permits Article of the Unified development Code for a revision of conditions of rezoning approval.

A final plat subdividing the property shall be approved and recorded by the Planning and Development Department prior to issuance of any development permit. Cross access easement allowing inter-parce31 access shall be recorded and noted on the final plat. All conditions shall be shown on the final plat.

The Architecture and Site Design, in addition to the building design meeting the minimum requirements of the Duluth Building Code and Duluth Unified Development Code, architectural elements for the building shall be generally consistent with similar decorative finishes and storefront elements (brick, glass, parapet, awning,

etc.) as other recently constructed buildings at or near this intersection. Final architecture shall be reviewed and approved by the Director of Planning and Development.

The entire development as shown on the approved Master Concept Plan shall be subject to a Master Sign Plan in accordance with the Duluth Unified Development Code.

Landscape plan shall be approved by the Director of Planning and Development prior to the issuance of any development permits and conforms to all applicable sections of the Unified Development Code. Landscape plan shall include additional landscaping to screen the view of the drive-thru land from the right-of-way. Enhanced landscaping may include trees, berms, shrubs, hedges and / or ground cover.

Planning Commission recommended approval of Case SU2019-002 at the May 6, 2019 hearing. Staff recommends approval with conditions. Condition 1 was omitted due to the flexibility clause in the UDC regarding rezoning. The condition stated that the site plan shall match what was originally submitted. The flexibility clause states that minor changes such as shifting parking or decreasing the building may be handled administratively without going before Council however major changes such as increasing the size of a building or changing use would need to come before Council.

Mayor Harris called for discussion from Council.

Mayor Harris asked if there is a condition regarding landscaping. Staff reported that there is a condition to increase landscaping in order to screen the drive-thru from the right of way.

Council member Whitlock asked about landscaping and if there is a requirement for a certain number of trees. Staff reported that there is a required tree density of 20 density units per acre. This can be accomplished by planting two to three large trees or by planting several smaller trees with a two inch caliber at time of planting.

Council member Carden asked if there would be sidewalk improvements. Staff reported that there will be sidewalks fully fronting Buford Highway and Rogers Bridge however there will not be a sidewalk added for access on both sides of the bridge. Council member Carden expressed his concern regarding safety with only one side of the bridge having a sidewalk.

Mayor Harris called forward the applicant.

Shane Lanthem, attorney representing the applicant came forward and reported that the development plan is compatible with the UDC, appropriate use of the land, and is community serving. Mr. Lanthem respectfully requested approval of the plan with conditions as presented.

Council member Carden asked about the grade of the land being sight prohibited. Mr. Lanthem stated that additional landscaping and being just below grade will allow for sufficient sightlines.

Council member Whitlock asked about the placement of signage. Mr. Lanthem stated that no signage would be in front of the right of way. It would be located on Buford Hwy and Rogers Bridge. Council member Whitlock also requested the planting of larger trees. Council member Whitlock asked about the dumpster location and visibility. Staff stated that the UDC requires the dumpster to be screened on three sides along with a locking front and added that there is an opportunity for additional landscaping in the area to block site lines of the dumpster from the road.

Mayor Harris called for questions/comments from the public.

Ms. McRath, 3516 Ashby Pond Lane, Cresswell Subdivision came forward to voice opposition to the car wash and fast food restaurant due to accidents at the intersection of Buford Highway, Old Peachtree Rd, and Rogers

Bridge. The increase in traffic and the entering and exiting of the area may increase the opportunity for additional accidents. Ms. McGrath stated that she was also opposed to the car wash and Arby's due to the proximity of other such businesses in the area and the amount of vacant retail spaces in the area. Lastly, Ms. McGrath spoke of her concerns about the difficulty of residents entering and exiting the Cresswell Subdivision.

Laura Balatic 3251 Heritage Walk Lane came forward to speak in opposition to the development. Her concerns about vacant buildings in the area and why the City isn't trying to get these filled before building new. In addition, Ms. Balatic spoke of her concerns with the increase in the traffic.

Council member Whitlock asked if a traffic study is required for this development. Staff reported that a traffic study was not required however the City would meet with Gwinnett County and GA DOT if requested by Council.

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

A motion was made by Councilmember Whitlock, seconded by Councilmember Jones, to approve, ordinance O2019-13 approving Case #SUP2019-002 as presented.

Those voting for: Council members Carden, Jones, Kelkenberg and Whitlock  
Motion carried.

## 2. ORDINANCE OF SPECIAL USE PERMIT – CASE# SU2019-003

{G}

Mayor Harris opened the public hearing to consider an Ordinance of Special Use permit for Case #SU2019-003.

The Mayor and Council to consider a request (SU2019-003) from TG Rogers, LLC for Special Use approval to operate a car wash on a +/- 5.07 acre property located at northeast corner of the Rogers Bridge Road and Buford Highway intersection, Duluth, Georgia 30096 (tax parcels R7201 002 & R7201 385) for an automated carwash. The property is currently zoned Duluth HC-R (Highway Commercial Retail District) and will not change.

Planning Commission recommended approval of Case SU2019-003 at the May 6, 2019 hearing. Staff recommends approval with conditions.

Mayor Harris called for discussion from Council.

Council member Jones asked about auto usage near the property. Staff reported that the southern area of Buford Highway is zoned for mechanical usages and the northern is not.

Council member Whitlock asked if the car wash fails could another applicant use the parcel for mechanical use. Staff reported that mechanical usage would not be allowed. Council member also asked about screening from Buford Highway. Staff reported that the applicant has agreed to a knee wall and landscaping to buffer the view.

Mayor called forward the applicant.

Shane Lanthem, attorney representing the applicant came forward. Mr. Lanthem stated that the use is appropriate and compatible with existing businesses along Buford Highway. Mr. Lanthem discussed how the prior land use for a 30,000 sq ft retail establishment is not significantly different in regards to traffic patterns than the current development plan.

Council member Carden expressed his concern regarding the traffic patterns of two business that will have significant entering and exiting of traffic. Mr. Lanthem stated that the HC-R zoning includes fast food restaurants and car washes and that the current development plan is not a significant departure from the prior plan.

Council member Kelkenberg expressed his concern about using statistics from 2003 and 2007 and that traffic has increased significantly since that time.

Council member Carden asked, if the car wash is not approved is there a plan to replace it with something else. Mr. Lanthem stated that he was only involved in this land usage requirements and not familiar with any other plans.

Mayor Harris inquired about the time line and use of middle buildings. Mr. Lanthem stated that the site will be developed and constructed together.

Mayor Harris called for questions/comments from the public.

Verdi Avila, 3520 Merry Stone in Duluth discussed the issue of traffic in and out of Creswell. He also expressed concern regarding the entering and exiting the car wash and of the aesthetics of the property.

Ms. McRath is opposed to the car wash. Ms. McGrath asked if the owner will be the same for the restaurant and the car wash and requested a traffic study. Ms. McGrath stated that the noise level of the car wash could potentially affect property values and asks that the car wash be denied.

Mayor called for additional discussion from Council.

Council member Whitlock discussed appropriate use. He stated that the City wants to draw people to the intersection and to get the vacant buildings used as well. Traffic patterns will not be constant but it will have peak times. Whitlock asked if there could be just one entrance for this area. Staff stated that would be GA DOT decision and that driveways add value to the businesses. Mr. Lanthem stated that he supports two driveways and could provide a traffic plan.

Council member Kelkenberg asked about hours of operations. Mr. Lanthem stated the summer hours are typically 8am-8pm and non-summer hours are 9am-6pm.

Council member Whitlock requested that the dumpster for the property be moved or cleaned up. Staff stated that they would work with the developer on this issue.

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

***A motion was made by Council member Kelkenberg, seconded by Councilmember Whitlock, to approve, ordinance O2019-14 approving Case #SUP2019-003 as presented.***

***Those voting for: Council members Carden, and Whitlock***

***Those voting against: Council members Jones and Kelkenberg***

***Mayor Harris voted for approval.***

***Motion carried.***

### 3. ORDINANCE TO ADOPT THE FY2020 BUDGET

{H}

Mayor Harris opened the public hearing to adopt the FY2020 budget.

City Manager James Riker came forward to present. The Mayor and Council to consider approval of an ordinance for adoption of the Fiscal Year 2020 City of Duluth Budget. Per the State Code of Georgia, the Mayor and Council to hold a public hearing to receive public comment on the proposed FY 2020 Annual Operating and Capital Projects Budget. A public hearing was held before the Mayor and Council on May 13th to receive public comments. Prior to the public hearings, staff and council reviewed the proposed FY 2020 budget in a budget workshop, held May 6th which was duly noticed and open to the public.

Mayor to call for discussion from Council.

Being none, Mayor called for questions/comments from the public.

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

***A motion was made by Councilmember Kelkenberg, seconded by Councilmember Carden, to approve, the ordinance to adopt the Fiscal Year 2020 budget as presented.***

***Those voting for: Council members Carden, Jones, Kelkenberg and Whitlock  
Motion carried.***

## IV. NEW BUSINESS

### 1. AWARD OF CONTRACT – SCHOOL ZONE PHOTO ENFORCEMENT - REDSPEED GEORGIA LLC {I}

As discussed at the April 22 work session, the Mayor and Council to consider awarding a contract for a photo enforcement program of speed violations for certain school zones within the City of Duluth. Staff recently obtained the necessary approvals from Gwinnett County DOT and Gwinnett County Public Schools and proposes to utilize a public private partnership with Redspeed Georgia, LLC for enactment of the program. Staff will provide a presentation outlining the contract terms and public education strategy that will be used prior to the photo enforcement program going live.

Council member Jones asked how the violators will receive a warning during the 30 day rollout phase. Staff stated they would be mailed a warning.

Council member Whitlock asked how many violators there were in the traffic study that sped 15 mph over the speed limit. Staff reported thousands. Duluth Middle School and Mason Elementary had the highest number of speeders. Council member Whitlock also asked if the cameras are set up independently or tied into the school flashing lights. Staff reported that the cameras are independent and they will run all day. The police department has authority to remove batches of tickets prior to them being mailed if the cameras were issuing tickets when school is not in session. Council member Whitlock as if there is a quality control mechanism to change processes if mistakes are being made. The representative from RedSpeed Georgia stated the police department will have final authorization of the parameters set for the cameras.

Mayor Harris asked about operating hours of the cameras. Staff reported that it is different depending on the location of the school (state routes vs county routes).

***A motion was made by Councilmember Jones, seconded by Councilmember Whitlock, to approve the City approved contract award with RedSpeed Georgia, LLC relating to photo enforcement of school zone speed limits as presented.***

***Those voting for: Council members Carden, Jones, Kelkenberg and Whitlock  
Those Voting against: Council member Kelkenberg  
Motion carried.***

2. AWARD OF BID – ANNUAL LANDSCAPE MAINTENANCE CONTRACT {J}

Council considered an award of bid for the annual landscape maintenance contract. Staff issued the Request for Proposals in May; five bids were received on June 4, 2019. The responses are as follows:

	Bid
Imagescapes, Inc.	\$ 142,716.50
Russell Landscape	\$ 134,260.00
ACS Landscape Management	\$ 124,830.00
Yellowstone Landscape	\$ 120,000.00
Select Landscapes, LLC	\$ 69,907.00

All bid packages were checked for completeness and compliance with requirements of the Request for Proposal (RFP) which evaluated cost (70%) and references (30%). After reviewing the criteria, staff recommends awarding the contract to Select Landscaping, in the annual amount of \$69,907.

***A motion was made by Councilmember Kelkenberg, seconded by Councilmember Jones, to approve, the contract award of annual landscape maintenance to Select Landscapes in the amount of \$ 69,907.00 and further authorize the City Attorney to prepare a contract for said service.***

***Those voting for: Council members Carden, Jones, Kelkenberg and Whitlock  
Motion carried.***

**V. MATTERS FROM DEPT HEADS/CITY ATTORNEY**

No comments brought forward

**VI. MATTERS FROM CITIZENS**

No matters brought forward

**VII. MATTERS FROM COUNCIL**

No matters brought forward.

**VIII. MATTERS FROM CITY MANAGER**

GWMA was held at the training center in Lawrenceville. Acknowledgement was made to all law enforcements/first responders.

**IX. ADJOURNMENT**

***A motion was made by Councilmember Whitlock, seconded by Councilmember Carden, to adjourn at 8:55 pm.***

**Those voting for:**        **Council members Carden, Jones, Kelkenberg and Whitlock**  
**Motion carried.**

*There is no 4<sup>th</sup> Monday work session due to the GMA conference. The next scheduled meeting of the Mayor and Council is July 8, 2019 at 6:00 p.m.*