

Mayor Wood clarified that staff prepares a budget which is presented to the Mayor for proposed changes. His three biggest changes to the budget presented by staff include budget changes within the Fire, Community Development, and the Recreation and Parks departments.

The Mayor stated that Fire Chief Spencer recommended the addition of three battalion chiefs who would be full time shift managers versus the part time management currently in place. Mayor Wood said he thought the general consensus of Council is that it is appropriate to fill those three positions in the fire Department; \$295,500 was budgeted to add three full time shift battalion chiefs.

Mayor Wood noted construction and construction services is substantially down across the entire nation and has been trending down the last few years and not expected to return to the 2006 peak for many years to come. The services provided by the Community Development department are related to construction activity. He explained that from the peak in 2006, building inspections in the city have declined 45 percent; inspections per employee have declined 32 percent; new commercial permits have declined 77 percent; new homes have declined 75 percent; annual land disturbance permits have declined 40 percent. Related to boards and commission business, he stated the Boards of Zoning Appeals is hearing 59 percent less appeals; the Design Review Board is hearing 59 percent less petitions; and the Planning Commission (primarily rezoning) is down 65 percent; however, the Historic Preservation Commission is actually up by 27 percent. Mayor Wood also noted the city's Code Enforcement office has experienced 5.2 percent decline in calls for service, although that would not be directly related to construction; calls for service per employee declined by 36 percent. The Mayor proposed a 30 percent reduction in the Community Development department stating "We have seen a substantial decline in construction and the demand for services, a decline which I don't expect to return for some time. This would be a transition year. That 30 percent from the peak would result in a cost savings, ultimately in 2012, of \$668,000; because there is a transition into that period we are budgeting a cost savings in this current budget year, if this is passed, of \$453,000."

Mayor Wood stated the Recreation and Parks department had requested Maintenance Capital of \$250,000; originally, \$75,000 was funded which he thought was under funded. The Mayor proposed adding \$150,000 into the maintenance budget coming from recreation participation fees. He noted that changes should be made regarding what is funded from the recreation participation fees; special events such as the Youth Day Parade should be handled like other special events; he proposed moving the Youth Day Parade into the General Fund Budget. Mayor Wood stated the Recreation and Parks adult programs, senior programs, and youth programs are subsidized by the city at an amount of almost one million dollars above what the participants pay; the subsidy amount for adult programming is \$139,000. Mayor Wood stated that under these times and the need for recreation, he did not think the city should be subsidizing these programs with tax payer money, he believes Roswell residents can afford to pay their own way. Mayor Wood stated he would move the \$150,000 from the Recreation and Parks subsidy into the Recreation and Parks maintenance but the budget will remain the same.

Community Development – Councilmember Betty Price

3. CU10-01, 1327 Holcomb Bridge Rd., North Fulton Land Acquisition, LLC.

Planning and Zoning Director Brad Townsend stated this conditional use was to allow a used car dealership on this property zoned C-3. The subject property is located directly east of Route 400 on the south side of Holcomb Bridge Road; it is a little over one acre in size and is surrounded by commercial development; it contains an existing bank building which was previously used as a used car dealership.

Changes in city code require that any used car dealer in the C-3 zoning district must have conditional use approval from the Mayor and Council, if it is accepted and meets the criteria that the subject property is over three quarters of an acre in size with a main building on the property. Mr. Townsend stated the Planning Commission reviewed this application and recommended approval with two additional conditions. He stated staff recommended approval at that time.

Staff Recommended Conditions:

1. The owner/developer shall develop a landscape plan according to the following specifications noted by the City of Roswell Arborist and Landscape Architect:

A. Applicant shall submit before final approval a detailed landscape plan of proposed improvements created by a landscape professional.

B. The Landscape Plan shall comply with Articles 15- Tree Protection & 16 - Landscaping in the Zoning Ordinance.

C. Specifically: Section 16.5.2 - Parking Lot Landscape Strips Adjacent to Street R.O.W. – Option 1
– Ten (10) shrubs and One (1) tree per thirty-five (35) linear feet of street frontage.

- Holcomb Bridge Road frontage: Remove five (5) existing “topped” willow oaks, including stumps and replace with new understory trees (ie Dogwood, Redbud, Crape Myrtle etc., See Appendix B – Section 15.7.2) 200 LF / 35 LF = 57 shrubs required.
- Market Boulevard Frontage: Save and protect existing maple trees and add shrubs between trees, north of driveway. 80 LF / 35 LF = 23 shrubs required.

D. Section 16.2.5 – Seasonal Color: seasonal color shall be added around the base of any ground sign.

E. General Notes/Requirements:

- Weed and clean out any and all debris and trash from all planting beds.
- Refresh all planting beds with new pine straw mulch.
- Replace any dead or dying plant materials.
- Prune out any and all broken or dead branches from existing trees.
- Weed and feed turf areas.

F. Submit Tree Removal Permit Application with fee prior to any removal.

2. The owner/developer shall submit their landscape plan to the Design Review Board for approval. The Design Review Board shall review the landscape requirements of the site. If the owner/applicant fails to implement the approved plan by December 31, 2010, their business license will not be renewed.

3. The owner/developer shall repair or replace the unsafe portions of the sidewalks along Holcomb Bridge Road and Market Boulevard by December 31, 2010.

4. The owner/developer shall upgrade all the ADA ramps to GDOT A3 or later ramp standard along the site frontage by December 31, 2010.

Planning Commission Recommended Conditions:

1. The owner/developer shall develop a landscape plan according to the following specifications noted by the City of Roswell Arborist and Landscape Architect:

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4. The owner/developer shall upgrade all the ADA ramps to GDOT A3 or later ramp standard along the site frontage by December 31, 2010.

5. Only pre-owned, luxury cars will be sold at this location. (Definition of luxury cars to be determined by staff).

6. Ten (10) designated parking spaces shall be reserved for customers and employees.

The Planning Commission requested that staff work with the applicant to define “pre-owned luxury cars.” Mr. Townsend stated “This definition was reviewed by the applicant. It is not perfect, but it was an opportunity to at least meet the criteria requested by the Planning Commission, including the requirement that the used car dealer would only allow the sale of pre-owned luxury vehicles.”

Council comment:

Councilmember Diamond inquired about information from the Neighborhood Meeting which was scheduled before the Planning Commission meeting. Mr. Townsend stated no one attended the meeting.

Councilmember Price asked if the new definition of luxury vehicle would necessitate an addition in the city's ordinances. Mr. Townsend replied it would apply only to this conditional use, if Council approved.

Councilmember Dippolito stated "Based on earlier conversation today with our other City Attorney, he had concerns over this definition and its enforceability." Mr. Davidson's legal opinion, as well as that of Assistant City Attorney Bob Hulsey, is that this definition is "far too vague" to withstand any kind of a court challenge. Mr. Davidson added that after much effort, neither of them has been able to come up with a definition of "luxury pre-owned vehicle" which they felt acceptable and able to withstand any kind of court challenge; the term "luxury" is very subjective. Mr. Davidson stated if Council elects to go forward with this, he would not recommend they include this condition. Councilmember Dippolito asked if it was the Planning Commission's opinion that this was a necessary condition in order to approve the rezoning. Mr. Townsend replied yes, it was included as part of their motion of approval.

Mr. Townsend confirmed for the Mayor that the property is currently vacant.

Applicant:

Dan Decraene, representing Advanced Realty, stated he has been associated with leasing of the subject property for the last seven years. A previous tenant who had signed a five year lease to lease high end cars went out of business after 14 months, the property been vacant since March 2009. Mayor Wood asked who had leased the property before this last car leasing tenant and the lease length. Mr. Decraene replied that AGN Auto Gallery (Lexius, BMW, and Mercedes auto sales) had leased the property for the prior four years. He noted that Advanced Realty turned down AGN's offer to buy the property, AGN then bought a building two doors up the street. Mayor Wood asked what business had been there prior to AGN.

Teresa DeVos, applicant and representative for the property owners North Fulton Land Acquisition, LLC, replied to the Mayor's question stating AGN occupied the building from November 2004 until October 2008; the prior tenant stopped paying rent in December 2008 and moved out in March 2009. Mayor Wood asked if the only use of this property since 2004 has been for auto sales and leasing. Ms. DeVos stated that was correct. Mr. Decraene has worked with the property owners regarding leasing and negotiations for many years. Ms. DeVos stated the property is zoned for commercial uses, but in May 2008, an ordinance was passed for the use for sales of pre-owned cars must receive conditional use. The tenant at the time was selling pre-owned cars and was allowed to continue operating although they were unaware of the change. When that tenant vacated, another Roswell business wanted to relocate their business to this property and during the process of signing the lease and applying for their new occupation tax certificate the ordinance change was discovered. Ms. DeVos noted the subject property is 1.07 acres; the building is 3,969 square feet in size; a variety of commercial uses surrounds the property, including a bank, shopping center, hotel, and a gasoline station to the west which has been vacant for numerous years. The applicant has worked with city staff and attended the Neighborhood Meeting although no neighbors were present; the applicant met with the Planning Commission and was agreeable to work with the Planning Commission regarding those recommended conditions. The applicant purchased the property in August 2001; until 2004, it was occupied by a doctor but since then it has been leased to re-sellers of used automobiles. Ms. DeVos stated the applicant's request is allowed under the zoning for conditional use; the applicant requests flexibility since finding tenants in this economy is difficult. They did enter into a lease with Auto House Web, the tenant earlier mentioned which has been located in Roswell for more than 6 years, but unfortunately, Auto House Web is now seeking a location outside of Roswell. Ms. DeVos stated the applicant decided to continue moving forward.

Dan Decraene stated rent was \$6,700 per month when AGN Auto Gallery leased the property; since it had a one time been a bank it is "a very specialized building" with a vault. Office tenants are not interested in the building because it is too high priced; they are searching for a retail type tenant. Since the building has been vacant, air conditioners have been stolen and windows broken. The rent dropping to \$4,700 per month attracted the Auto House Web business to sign a lease in January but they have since decided they could not be out of business any longer waiting on the process. Mr. Decraene stated that within the last month advertising for the property has again attracted high-end used auto car sales and a Titlemax business. He reiterated this is a very specialized type of property affordable for retail type business.

Council comment:

Councilmember Price asked if the applicant had reviewed the staff conditions and the Planning Commission recommended conditions, and if they were acceptable. Ms. DeVos replied yes, they were agreeable to the conditions.

Councilmember Wynn inquired about the statement Mr. Decraene made at the Planning Commission meeting that they had received interest from medical and dental clients and why they are holding out for the very restrictive conditional use. Mr. Decraene explained that the applicant did not want the buildings leased long term with low rates; they would go as far as a five year lease. Medical or dental use tenants want long term leases since they spend a lot of money to move walls and have the building re-plumbed. Councilmember Wynn stated that at the same Planning Commission meeting, "Ms. DeVos lamented about having too many restrictions on this property because that would continue to reduce the value of the asset." Councilmember Wynn asked her to explain what she meant by wanting "flexibility on this zoning." Ms. DeVos replied "I believe that when I stated the restrictions were that not allowing us to have conditional use restricts our ability to go out into the marketplace and market the property to users who have indicated to us, by listening to the market, that is highest and best use for the property. The restrictions that I am referring to are the restrictions of not being able to lease to a used automobile dealership. Flexibility, meaning approval of conditional use. We are asking you to be flexible with us." Councilmember Wynn stated that was not clear to her because "Conditional use is one use and one use only and that is a used car lot, plus you have also agreed to have it restricted even more to luxury cars." Ms. DeVos replied that was because the Planning Commission request and they were agreeable to working within that. Councilmember Wynn asked for more clarification regarding her meaning of "flexibility on conditional use." Ms. DeVos replied "I meant flexibility within the zoning, and approving conditional use gives us that flexibility to lease to a used automobile dealership. It is within the allowed zoning of conditional use."

Councilmember Dippolito stated he thought the confusion was whether the applicant can use the property for anything other than the conditional use that they are requesting, which is a question for staff to answer. Ms. DeVos replied "That is not what I am asking. I am asking to be allowed to use it for what we are requesting or what is allowed under regular zoning." Councilmember Wynn stated her understanding was that if this was approved for conditional use that is the only use for this property unless they come back and have that conditional use removed. Mr. Townsend replied that was not his understanding. Councilmember Wynn replied that was the interpretation she received from the Community Development department earlier in the afternoon. She further stated "My understanding is that if it is conditional to a use, which would be a used car lot; that is the only thing that can be used for." Mayor Wood requested clarification from Alice Wakefield, Director of Community Development. Ms. Wakefield replied "Basically, my response was that in previous positions that I have had when a conditional use was applied to a property that was the use in which that property was tied to. I did say however, that needs to be verified through the Legal department because when we had a meeting with the Legal department there

was an indication that you could use the underlying zoning.” She reiterated that her previous experience has been once there is a use permitted it is tied to that use permit until it is removed. City Attorney David Davidson stated that if Council approves this plan, it will be subject to a site plan. In order for another use to come in, it would require a different site plan. He clarified that in the City of Roswell, to change a site plan, the entire process is required. Mayor Wood stated if they did not have to change the site plan then they would not have to come back for approval. Mr. Davidson stated that was correct, if they did not have to change it at all. Ms. DeVos said that was her understanding because they meet the size requirements for consideration of conditional use; they have reviewed it with staff and all the conditions are met. Ms. DeVos added she did not know how to answer Councilmember Wynn’s question because she does not interpret the city zoning, but that was not the impression or indication they have been given.

Councilmember Diamond stated the Planning Commission consensus was that they were comfortable with the luxury zoning definition; defining that is a pertinent problem.

Public comment:

Bob Argroves, 434 Teal Court, Martins Landing Community Development Chair, stated the following:

- Has issue with doing a restrictive amendment for a zoning for a C-3 property; opposes the rezoning.
- Existing used car lot on the same street, next to the subject property.
- City staff cannot evaluate what a luxury car is.
- Developer has had other offers, but does not want long term leases; the city does not have a problem with a long term lease particularly if it is “locked in with something good for us.”
- Three used car dealers (some were luxury cars) have not made it; why do we think this zoning will change that.
- The existing 35 car lots Roswell is sufficient.
- Planning Commission wanted to restrict the zoning there based on luxury cars.

Mayor Wood asked if Mr. Argroves would support this if Council restricted it to luxury cars and the petitioner was comfortable with luxury cars. Mr. Argroves replied he does not see any reason to lock in a restriction like luxury cars or any other kind of car there. Mayor Wood asked if his opposition was to “any used cars.” Mr. Argroves replied his opposition was with it in C-3 and not with just a car lot. Mayor Wood stated this does not restrict it to just used cars, it expands the use to allow used cars in addition to other uses; it would not prohibit them from leasing it to a diamond dealer it would simply allow another use. Mayor Wood then asked if his opposition is with used cars other than luxury used cars or to any used cars. Mr. Argroves replied “Actually, I am opposed to more used cars. Whether or not the foundation is opposed to any more used cars I do not know the answer to that question. I know that we voted in favor of the C-3 zoning and that is what we need to stay with.”

No further public comment.

Council comment:

Councilmember Price asked if it is correct that with staff’s and Planning Commission recommended conditions the property would actually be enhanced through sidewalk improvements, etc. Ms. DeVos replied that is correct. Councilmember Price noted that if this property is left as just a regular C-3 zoning, none of these things would be required improvements to the property. Ms. DeVos agreed and noted they are improving the public sidewalks.

No further Council questions or comments.

Applicant rebuttal:

Ms. DeVos noted the comments made regarding offers were not accurate. A doctor had inquired about the property but it never turned into an offer; another offer regarding a jewelry store did not work out because of credit concerns. She noted their most recent used auto dealership occupant financially failed, but the auto dealership prior to that was so successful that they purchased the building three doors down. Ms. DeVos noted that the subject property is a very viable location for this type of business.

Mr. Decraene commented they tried for four or five months to work out a deal with a North Point Parkway jeweler who wanted to expand; ultimately, he decided that he could not afford an increased rent payment.

Council comment:

Councilmember Diamond noted she was not a Council member in 2008 when this ordinance was put into place. She asked for clarification of the intent behind it and the reasoning. Her understanding is that without the ordinance, the C-3 zoning would have allowed this to happen without this discussion.

Councilmember Igleheart said he thought he was the one “pushing” for the ordinance at that time. He explained that the primary area for used car dealers is a section of Alpharetta Highway (Hwy 9), an area which the city is focused on for redevelopment; the focus was on that area and is the reason why the acreage is set at three quarters of an acre. The primary goal was looking at the long term aspects of redevelopment. A row of used car dealers is not conducive to long term redevelopment. He said the effort was specific to Alpharetta Highway, but Council did not want to do one or two properties but cover the entire city, and is where that became a conditional use for any property on which used cars are sold. He thought that at some point, Council probably will look at this area on Holcomb Bridge Road from a redevelopment standpoint, as it is a point of entry into Roswell.

Councilmember Wynn explained she voted for the ordinance in 2008 not only because of Alpharetta Highway but also because at that time, two used car dealerships existed on Holcomb Bridge Road (AGN and the dealership which followed and eventually failed); used car dealerships were part of C-3 zoning; there was no community input about having these cars in those areas because it was allowable. She reiterated that two used car dealerships existed on Holcomb Bridge Road with the possibility of more that would hinder redevelopment in that type of area; consideration must be made regarding what is good for the area and the type of business.

Councilmember Dippolito agreed with Councilmember Wynn’s points and further stated that Kings Market is obviously in need of redevelopment, as is the adjacent property; the city should encourage redevelopment in this particular area. A used car lot does not help the effort of redevelopment; other car lots, a gas station, or an auto parts store might consider it a complimentary use next door, but none of those types of uses are what they want when considering redevelopment. He noted that as much as he is sympathetic to the economic environment and truly understands what that is like, long term should be the consideration and not short term that will impair our ability for redevelopment in the future.

Mayor Wood asked Alice Wakefield to discuss what specifically is being done to encourage redevelopment on this site and adjacent sites. Ms. Wakefield replied that most significant for this area is that it is included in the Opportunity Zone Boundary which will open the doors for redevelopment. This is an area which will be prime for redevelopment when the city looks at the possibility of establishing incentives like TADs (Tax Allocation Districts). She noted that city staff is not in the position to actively market this area. However, staff is working closely with the property owner of King’s Market regarding

options for the property. This area has been identified as part of the upcoming Comprehensive Plan as an area that will require special attention.

Motion: Councilmember Price moved to approve **CU10-01, 1327 Holcomb Bridge Rd., North Fulton Land Acquisition, LLC., with staff conditions.** Councilmember Orlans seconded for discussion purposes.

Further Council discussion:

Councilmember Price noted not having been a Councilmember in 2008 she could only appreciate the discussions and the determination made at that time. She recognized that the economy has changed a lot since then. In this situation, there was a bit of confusion for the applicant in that they did not know the condition had been placed on the property until the property was to be rented to an entity moving from Alpharetta Highway to the location on Holcomb Bridge Road; this amounted to a net zero in used car dealerships into the city since it was moving from one location to another in Roswell. In the interim, with all this delay and discussion, a quality business was lost to the adjacent city while the subject property now unfortunately sits vacant. She noted the owner is willing to upgrade the property as long as they can rent it to the person of their choice. Councilmember Price said "They have expressed their desire not to enter into a long term lease which I think is wise in this economic climate since that would put them into a position to sell or be part of any redevelopment in the future. I think the use of this property as they are desiring to have that additional condition is not unreasonable and certainly wise on their part."

Councilmember Igleheart stated he agreed with many of Councilmember Price's comments since the applicant has an ongoing concern to take care of the property, there is also the larger concern regarding the long term. He said "We could probably allow any kind of business in any place in here and have a whole row of things which is not conducive to our long term health of the city. Specifically, the luxury car (lot), even as a used car, is probably a better use than many. The overall impact of having two used car dealerships, and the one down the street (car rental) sets a bad trend for what the city could be." He stated he would not support this.

Councilmember Diamond asked if the term "luxury car" was included. Mayor Wood replied the motion was made and included the luxury car condition; the applicant indicated they would accept the luxury car condition which mitigates City Attorney David Davidson's concern.

Councilmember Orlans stated Council was basically trying to stop the proliferation of the small used car lots; Council set certain criteria and certain minimums such as acreage and landscaping. While the city does not want too many used car lots around, he disagreed with not making it available on this particular site since the owners have agreed to improve the property and meet the criteria Council outlined and passed within the last approximate year. He asked if Council would rather see a Titlemax or see broken windows at this property; he noted the building currently sits empty on the property. Councilmember Orlans agreed with Councilmember Dippolito's comments regarding where it is located but this particular site is next to an empty gas station, a gas station across the street, and a very viable used car lot three doors over which at one time was located on this property. Councilmember Orlans stated that although he would not necessarily approve this use in any location this property is located just off Route 400, and viable used car businesses have been located on it since 2003 or 2004 (except for one failure). He supported the motion.

Councilmember Dippolito clarified that this criteria is not criteria used to evaluate whether it should be accepted or not. It is not even allowed to come in as a conditional use if these criteria are not met; it is a minimum and does not set a standard. Adjacent to this property are some of those less desirable uses, a

problem is already there. He asked do we want to compound an existing problem or set a tone to make it a more productive environment.

Councilmember Diamond asked if this is not approved, would Titlemax be an option within the zoning this property presently has. Mr. Townsend confirmed the answer was yes, as currently zoned.

Councilmember Wynn said her understanding is that this would give one more usage out of the C-3; if Titlemax comes in before a luxury pre-owned car lot comes in we can still have a Titlemax. Mr. Townsend confirmed that was correct. Councilmember Wynn replied this conditional use only gives them one more use out of numerous C-3's; there is no tenant waiting to go in and it will stay vacant until the property owner determines who they want to rent to. She agreed with Councilmember Dippolito and Councilmember Igleheart that the long term effect needs to be considered, especially since this is part of the Opportunity Zone. Councilmember Wynn said she would not support the motion.

Councilmember Dippolito stated he thought that with the last ordinance change the only Opportunity Zone location was on the west side. Mr. Townsend replied that there is now a separation requirement which will have to be considered; he said "The statement that it would be allowed under current C-3 is accurate, but we would have to look at what we provided for in the separation requirement. I think we put a 5,000 foot separation between existing title places."

Vote: The motion passed 4:3. Councilmember Orlans, Councilmember Price, Councilmember Diamond voted in favor; Councilmember Dippolito, Councilmember Wynn, Councilmember Igleheart were opposed. Mayor Wood cast the deciding vote for the motion.

The Mayor stated he understood Council is trying to set a tone for redevelopment. He explained that he was in favor of the conditional zoning because the tone being set by a building sitting vacant for 14 months is not good; a car dealership (even luxury cars, which mitigates this) may not be the best tone but it is a better tone than broken windows and vacant property. Mayor Wood noted the Opportunity Zone will encourage things but due to the current economic environment, redevelopment may not occur in this area for many years.

Councilmember Wynn said there will be problems with this conditional zoning, based on Legal's stated opinion that the definition is unenforceable.

4. RZ10-03 Text Amendment regarding real estate directional signs for agent caravans. (First Reading)

Planning and Zoning Director Brad Townsend stated this text amendment will amend the Zoning Ordinance Chapter 22, Section 22.12 (b) Temporary Signs to allow the placement of real estate signs between the hours of 6:00 p.m. on Monday and 5:00 p.m. on Tuesday. The Planning Commission recommended approval during their April 20, 2010 hearing; staff recommended approval of the first reading of the ordinance.

City Attorney David Davidson conducted the reading of an **ORDINANCE TO AMEND THE CITY OF ROSWELL ZONING ORDINANCE REGARDING REAL ESTATE DIRECTIONAL SIGNS WITHIN THE CITY LIMITS OF ROSWELL** stating: The Zoning Ordinance of the City of Roswell is hereby amended by adding new section to Chapter 22, of the *City of Roswell Zoning Ordinance*, Section 22.12 (b) (10) as follows:

Section 22.12 Temporary Signs