



City of Roswell

38 Hill Street
Roswell, Georgia 30075

Meeting Minutes Mayor and City Council

Mayor Jere Wood
Council Member Nancy Diamond
Council Member Rich Dippolito
Council Member Kent Igleheart
Council Member Jerry Orlans
Council Member Betty Price
Council Member Becky Wynn

Monday, July 12, 2010

7:00 PM

City Hall

WELCOME

Present: 7 - Mayor Jere Wood, Council Member Nancy Diamond, Council Member Rich Dippolito, Council Member Kent Igleheart, Council Member Jerry Orlans, Council Member Betty Price, and Council Member Becky Wynn

Pledge of Allegiance - Roswell High Junior Varsity Girls Soccer Team

Welcome: Mayor Wood called the meeting to order and welcomed everyone present.

Pledge of Allegiance: Roswell High School Junior Varsity Girls Soccer Team.

Roswell High School Junior Varsity Girls Soccer Team Captain Ann Acenbrak stated the Junior Varsity Girls soccer team was undefeated this year; she expressed the team's gratitude to Coach MacDonald and Coach Harbin for their leadership. The Mayor presented each team member a letter of congratulations from Governor Sonny Perdue.

Staff Present: City Administrator Kay Love; Deputy City Administrator Michael Fischer; City Attorney David Davidson; Director of Transportation Steve Acenbrak; Transportation Deputy Director David Low; Transportation Planning Manager Chris Chovan; Transportation Accounting Specialist Karen Bernard; Community Development Director Alice Wakefield; Community Development Deputy Director Clyde Stricklin; Planning & Zoning Director Brad Townsend; City Engineer Jean Rearick; Fire Chief Ricky Spencer; Chief of Police Ed Williams; Finance Director Julia Luke; Purchasing Manager Richard Brownlee; Strategic Planning and Budgeting Director Keith Lee; Strategic Planner/Budget Analyst Denise Brown; Financial Analyst Lynn Williams; Environmental/Public Works Director Stuart Moring; Recreation, Parks, Historic and Cultural Affairs Director Joe Glover; Patrick Dale, Information Technology Division Manager; Community Relations Manager Julie Brechbill; Building Operations Technician Doug Heieren; and Deputy City Clerk Betsy Branch.

CONSENT AGENDA

- Approval of June 7, 2010 Council Meeting Minutes (detailed minutes to replace Council Brief Minutes adopted on June**

14, 2010); approval of June 14, 2010 Council Meeting Minutes (detailed minutes to replace Council Brief Minutes adopted on June 21, 2010); and approval of June 21, 2010 Council Meeting Minutes.

Administration and Finance

Approved

2. **Approval of a Resolution to apply for a GATEway Grant in the amount of \$50,000.**

Transportation

Approved

Enactment No: R2010-07-34

3. **Approval for Mayor and/or City Administrator to sign a Memorandum of Understanding (MOU) for a Regional Traffic Operations Program (RTOP) between the City of Roswell and the Georgia Department of Transportation (GDOT).**

Transportation

Approved

4. **Approval to accept the donation of right-of-way needed from Seven Pines Apartments for the Holcomb Bridge Middle School Sidewalk Connectivity Project - North side.**

Transportation

Approved

Approval of the Consent Agenda

A motion was made by Council Member Wynn, seconded by Council Member Diamond, to Approve the Consent Agenda. The motion carried by the following vote:

In Favor: 6

REGULAR AGENDA

Mayor's Report

1. **Recognition of the University of Phoenix for a donation to the Roswell Masons.**

Roger Wise, representing the Roswell Masons, recognized the University of Phoenix for their donation to the Roswell Masons Child Identification Program (GACHIP). This program provides parents or guardians a disc which containing color photographs of their child, a complete set of digital fingerprints, and identifying or

distinguishing information of the child, at no charge. This disc of information can be provided to local law enforcement agencies and nationwide, if the child is missing. Over 150 children recently participated in this identification program with the Roswell Masons. Brian Baldwin, the University of Phoenix Georgia Academic Alliance Manager and Brewer Garrett, the University of Phoenix Corporate Relations Director for Atlanta campuses, presented the check. Mayor Wood also recognized Brandon Beach of the North Fulton Chamber of Commerce, and the Georgia Department of Transportation Board for encouraging this relationship with the University of Phoenix.

Administration and Finance Department - Councilmember Jerry Orlans

2.

Approval of Budget Amendment 1585-07-12-10 to decrease the FY 2011 General Fund Budget by \$113,000.

Councilmember Orlans introduced the item and explained that this Budget Amendment will decrease the FY 2011 General Fund Budget by \$113,000 from \$63,092,471 to \$62,979,471. Police Patrol gasoline will be reduced by \$30,000; Fire Suppression gasoline will be reduced by \$10,000; Parks gasoline will be reduced by \$13,000; Parks sanitation services will be reduced by \$20,000; and Building Operations sanitation services will be reduced by \$40,000.

Councilmember Orlans stated FY 2010 sales tax revenue will be approximately \$900,000 above what was budgeted. Based on this recent information, staff conducted a review of individual line items to see how those items finished out the year, and determined these reductions to the FY 2011 General Fund budget. Although final year end figures are not yet available, staff believes there will be a surplus amount of \$1.5 million to \$2 million from the FY 2010 budget.

Motion: Councilmember Orlans moved for Approval of Budget Amendment 1585-07-12-10 to decrease the FY 2011 General Fund Budget by \$113,000. Councilmember Price seconded.

Mayor Wood inquired if an analysis was conducted regarding the items to be reduced. City Administrator Kay Love replied there was analysis, particularly in the area of gasoline. Staff reviewed the budget compared to actual expenditures for 2008, 2009, 2010 in Police Patrol, Fire Suppression, and Parks and Recreation; projections for 2011 were reviewed. This budget reduction of \$30,000, \$10,000, and \$13,000, respectively, would still place those divisions in a position to have adequate funding based on prior history of miles driven and gasoline consumption. Provisions were made for fluctuating gasoline prices based on average gallon prices throughout this past year. Ms. Love displayed a graph indicating actual expenditures and FY 2011 budget numbers. Keith Lee, Director of Strategic Planning and Budgeting, pointed out the FY 2010 estimated expenditures of \$276,000; after this reduction, \$312,000 will remain in the FY 2011 budget for gasoline. Mayor Wood stated even though the estimate for these fuel costs have been lowered, it is still more than the city spent last year, and within line with expected costs this year. After the review of the historic numbers, staff discovered they may have over estimated those charges. This will bring it more in line with a reasonable conservative estimate. Mr. Lee agreed with the Mayor.

Mayor Wood stated the budget principles which he asked Council to follow were a balanced budget; revenues greater than operating expenditures or maintenance capital. The Mayor asked if the budget meet the first budget principle if Council should pass the amendment with this reduction of \$113,000. Mr. Lee replied yes, it

would be a balanced budget. No further discussion. No Council questions.

Public comment:

Lee Fleck, Martins Landing, spoke on the following:

- *Use of reserves.* Mr. Fleck questioned Mayor Wood if his statement in the Roswell Neighbor newspaper regarding the use of reserves was correct that "At the current rate, Council will have spent all the available reserves above policy by 2012." Mayor Wood confirmed that was a correct statement. Mr. Fleck asked if it is correct that "from 2008, 2009, we will go from \$13 million and we are going to use up half our excess reserves in one year." Mayor Wood asked Keith Lee, Director of Strategic Planning and Budgeting if that was correct. Mr. Lee replied "Yes sir, based on the approved budget, the current year estimated fund balance, use of reserves is approximately half of that, of the reserves above policy."
- *Deficit.* Mr. Fleck asked if a Roswell Neighbor newspaper article was correct that mentioned an email from Mayor Wood to the local media which advised that "Including the cost to maintain our roads, the deficit for FY 2011 will exceed \$1.9 million." Mayor Wood replied "I would not use the term "deficit" because that has a legal meaning but to the extent that projected expenses exceeded projected revenues on those items you talked about, that would be a correct statement." Mr. Fleck noted that the newspaper had quoted the Mayor's use of "deficit." Mr. Fleck asked how \$113,000 in gasoline savings could eliminate a deficit. Mayor Wood replied "The numbers haven't changed but the basic principle I was trying to enforce, was that if we looked at our revenues, I wanted to make sure that our revenues were greater than operating expenditures and basic maintenance capital." He stated road maintenance could be put into the category of capital maintenance; he was looking at the regular maintenance and the operating budget. No further discussion.

A motion was made by Council Member Jerry Orlans, seconded by Council Member Betty Price, that this Item be Approved. The motion carried by the following vote:

In Favor: 6

3.

Approval for the Mayor and/or City Administrator to execute an amended contract with North Georgia Community Housing Development Corporation for the Neighborhood Stabilization Program (NSP1) Grant.

Presented by Michael Fischer, Deputy City Administrator

Deputy City Administrator Michael Fischer explained this was an update on this item from the June Mayor and Council Meeting, when it was first heard. North Georgia Community Housing Development Corporation is a Habitat for Humanity – North Central Georgia affiliate. He explained that at the June Council meeting, it was agreed that the city would work in a fifty-fifty partnership with both North Georgia Community Housing Development Corporation and Find A Way Home, Inc., for these grant funds totaling \$678,042. City staff subsequently met with both groups to discuss the partnership. After that first meeting, Find A Way Home, Inc. respectfully withdrew their participation from the NSP1 grant because they had been awarded two additional grants to expand and improve their existing education and affordable housing programs which would require significant dedicated time and resources from their organization.

City staff has met weekly with the North Georgia Community Housing Development and Mr. Russ Hayes, the CEO of Habitat for Humanity North Central Georgia Area. North Georgia Community Housing Development Corporation has been searching for homes, properties that would fit the qualifications of the grant and has made offers on

three properties; they have used the majority of the fifty percent of their funds. At the last Council meeting, the question was asked if those grant amounts could be changed. Mr. Fischer clarified the request tonight is to amend the contract to allocate the remaining fifty percent of the grant funds to the North Georgia Community Housing Development Corporation, Habitat for Humanity – North Central Georgia affiliate, which would allow them to make offers as other properties are identified that qualify under the terms of the grant. He noted that with the approval of the amended contract, the city would be able to meet the first grant deadline to encumber the total amount of the grant funds before the middle of August. Mr. Fischer confirmed for Councilmember Orlans that this amendment tonight is to move over that balance, the other fifty percent of the \$678,042 to Habitat for Humanity; there would be no change in the budget, it is only a change in the contract.

Motion: Councilmember Orlans moved for Approval for the Mayor and/or City Administrator to execute an amended contract with North Georgia Community Housing Development Corporation for the Neighborhood Stabilization Program (NSP1) Grant. Councilmember Diamond seconded.

Council comment:

Councilmember Price inquired if Mr. Hayes, CEO Habitat for Humanity – North Central Georgia affiliate had any comments. Mr. Hayes expressed his appreciation to Council for the original grant award; the additional funds which if approved, could possibly allow six houses; a total of \$315,000 has been committed. Contracts are being processed on three homes; four other houses are actively being considered; they expect to close on the first house on or before August 10, well before the August 20, 2010 deadline. The Habitat for Humanity – North Central Georgia affiliate office is located in the basement of the Roswell United Methodist Church on Mimosa Street. This year marks their 15th anniversary; they are also celebrating construction of their 200th home in October. Mr. Hayes commended city staff members Michael Fischer, Danny Blitch, Jennifer Erdman, and Richard Brownlee for their help on this grant. Councilmember Price asked if he anticipated any difficulty with the timeframe remaining to fulfill the requirements. Mr. Hayes replied that currently, the hardest thing right now is finding homes immediately in the Department of Housing and Urban Development's required target area which involves a foreclosure rate formula, but they have found two homes and are seeking permission to go into two more areas. Mr. Hayes stated all the houses should be under contract in the next three weeks.

Councilmember Orlans thanked Mr. Hayes and Habitat for Humanity – North Central Georgia for all this organization does for the City of Roswell.

No further discussion.

A motion was made by Council Member Jerry Orlans, seconded by Council Member Nancy Diamond, that this Item be Approved. The motion carried by the following vote:

In Favor: 6

4.

Approval for the Mayor and/or City Administrator to sign a contract with Wireless Town to provide free wireless internet access to select City of Roswell Facilities.

Presented by Michael Fischer, Deputy City Administrator

Deputy City Administrator Michael Fischer stated the Request for Proposal (#10-161-C) was issued to provide wireless internet access in five city facilities. A local company, Wireless-Town, was the one company that responded to the request.

This company provides wireless internet access to several local businesses. Patrick Dale, Information Technology Division Manager reviewed and inspected their services.

Council comment:

Councilmember Orlans inquired which facilities would be included. Mr. Fischer confirmed wireless internet access would be for the following facilities: City Hall Rotunda, Physical Activity Center at Roswell Area Park, Community Activity Building at Roswell Area Park, East Roswell Recreation Center, and Hembree Park Recreation Center.

Councilmember Dippolito inquired if there would be a cost to residents to use this wireless internet. Mr. Fischer confirmed there is zero cost; Wireless-Town will recoup the cost through advertising. Councilmember Dippolito stated he understood it is free for an un-secure connection; he asked if a secure option is available. Mr. Dale explained that there is a secure option for a nominal fee; a security mechanism on their network could provide robust, high end security. Councilmember Dippolito inquired if the free service is relatively secure. Mr. Dale replied yes, it would be no different than using those networks operating in coffee shops which are wide open. Mr. Dale clarified that the city's discretion related to acceptable advertising is stated in the RFP; Council has first rights to refuse advertising content.

Councilmember Price inquired about the contract length. Mr. Fischer replied there is a one year initial term, renewable up to three years; any company providing this service would need to install equipment. Mr. Fischer confirmed for Councilmember Price that the city will monitor network usage. No further discussion.

A motion was made by Council Member Jerry Orlans, seconded by Council Member Kent Igleheart, that this Item be Approved. The motion carried by the following vote:

In Favor: 6

Recreation and Parks Department - Councilmember Kent Igleheart

**5. Approval of an Ordinance to Ban Smoking within City of Roswell Parks. (Second Reading)
Presented by Joe Glover, Director**

Councilmember Igleheart noted that one of the primary goals of the Recreation and Parks department is to promote a healthy lifestyle. When the Recreation and Parks Commission brought this request forward last year, Council did want to place an entire ban on smoking within the parks. Council did pass an ordinance to provide designated smoking areas. Implementing that ordinance became too difficult and so the request was again brought forward to Council as a total ban for smoking within the city parks. This ban also includes any other tobacco products.

City Attorney David Davidson conducted the second reading of an ORDINANCE TO BAN SMOKING WITHIN CITY OF ROSWELL PARKS stating: NOW, THEREFORE, the Mayor and Council of the City of Roswell, pursuant to their authority, do hereby adopt the following Ordinance:

1.

Section 14.2.4 (k) of the City of Roswell Code of Ordinances is hereby amended by deleting it in its entirety and substituting the following section in its place:

(k) *Smoking. It shall be unlawful for any person to smoke or use any other tobacco product within any City of Roswell park.*

Motion: Councilmember Igleheart moved for Approval of an Ordinance to Ban Smoking within City of Roswell Parks. (Second Reading) Councilmember Diamond seconded.

Council comment:

Mayor Wood inquired how many parks are being considered. Joe Glover, Director of Parks and Recreation department replied there are 22 parks. Mayor Wood asked what the limits are for the Triangle Park on Canton Street. Mr. Glover replied the limits are to the sidewalk of the surrounding area; from curb to curb. Mayor Wood stated if someone was smoking on the Canton Street sidewalk, that person could be cited for being in violation. Mr. Glover replied that was correct, if the person was on the park side of the property. Mayor Wood asked how a visitor to Roswell would know that smoking was not permitted on the sidewalk. Mr. Glover replied signage in those locations would be necessary. Mayor Wood asked why that would be necessary under this ordinance the way it is read. Mr. Glover stated there is no legal requirement or obligation, but if we thought we were going to be citing people and writing tickets on a regular basis, we would feel obligated to place signage. Mayor Wood said "This Council could cite folks for walking down the sidewalk whether it was that location or many other parks that would be the equivalent of that." Mr. Glover replied "Not necessarily of the sidewalk scenario, but yes, there are other sidewalks in parks. Of course, it would be the same." Mayor Wood asked if someone walking down Azalea Drive, along the river, is within a park; would it be a violation to smoke while walking there. Mr. Glover replied yes. City Attorney David Davidson confirmed for Mayor Wood that the fine could be up to \$1,000 for smoking on the sidewalk within a park. Mayor Wood stated that should Council pass this ordinance, he would suggest that it only be for locations where the ordinance is posted; There could be problems should this ordinance pass without the requirement that it be posted; a challenge may be made that it is unenforceable in every location.

Councilmember Igleheart inquired if alcohol is prohibited in the Triangle Park. Mr. Glover replied that is correct although a sign is not posted there. Councilmember Igleheart asked if people regularly receive citations and \$1,000 fines. Mr. Glover replied no. Councilmember Igleheart stated the point is that the first step is to ask an offender to stop and to leave, if necessary; an actual citation and fine is highly unlikely. Mr. Glover stated our intent would be as a last resort to arrest or fine someone. Mayor Wood asked if the intent is not to enforce this ordinance. Mr. Glover replied "No sir. Our intent is to inform people that there is an ordinance that would prohibit smoking or drinking, and hopefully, they would abide by it. If they continue to engage in those activities, then I think our park police and Roswell police would have no other option." Mayor Wood asked if that is the intent then why not put it in the ordinance that a warning would be issued the first time; why it is necessary to put it in the ordinance that someone can be cited the first time. Mr. Glover replied he could not answer that. Councilmember Dippolito requested that City Attorney David Davidson respond to Mayor Wood's question. Mr. Davidson stated it is not necessary to include that wording in ordinances for other violations where warnings are issued. He explained that almost all ordinance violations are left to the officer's discretion; speeding tickets are the same; someone drinking in the park would be asked to dispose of the drink before a citation would be written.

Public comment:

David Mastro, spoke on the following:

- Consider the effect on local business. Some people who would normally come to*

Roswell might take their business to Alpharetta and other nearby communities; he would not return to Roswell if he came here as a tourist and was cited \$1,000 for smoking.

Bill Largen, Willow Bend Road, spoke on the following:

- *Opposed to the smoking ban; against a focused law that addresses someone taking part in a legal activity.*
- *Consider the consequences which could arise if a parent who has brought their child to the park for several hours of sports practice is forced to leave the park property in order to smoke, leaving the child unsupervised; this is unreasonable and will be far more reaching than what the Council might envision; parents should have the option to partake in a legal activity.*

Councilmember Igleheart responded that Council discussed that type of situation and it would be the main reason not to pass the ban. Smoking in the parking lot actually impacts a greater number of people since the parking lot is where all the children go after the event to get into their cars. As has already been passed, designated smoking areas could be as far away as going off the property might be.

Councilmember Igleheart stated "I don't see parents leaving their children unattended to go smoke for five minutes. If they are part of an activity such as football or soccer, yes it is possible they would leave, but they would be supervised." Councilmember Igleheart noted that when there is supervision by coaches a child is not left unsupervised. Anyone having an alcoholic drink in the park is also prohibited, which is the same issue in the sense of what is prohibited.

Jim Taudte, 10850 Stroup Road, spoke on the following:

- *Opposed to smoking ban; this is government removal of personal freedom.*
- *Suggested designated smoking areas.*

Ed Sendt, 1345 Parkline Drive, spoke on the following:

- *In favor of the ordinance to ban smoking; is dangerous and should be avoided at all costs.*

Councilmember Igleheart stated that the designated smoking area ordinance was passed, but part of the ordinance was to have the Recreation Commission create those areas. That process is ongoing and has not actually been set up, so smoking is permitted anywhere in the park and no signage has been placed. Councilmember Igleheart noted that if this ordinance does not pass, then the designated smoking area stays in effect.

Tony Cuzzucoli, 910 Thornington Place, spoke on the following:

- *Inquired if there was a study conducted or complaints tracked.*
- *Opposed to smoking ban in the park outdoor areas.*
- *Consider warnings before imposing \$1,000 fine and jail time.*

Councilmember Igleheart stated there was no study; complaints have not been tracked but once this issue came to the public's attention he received numerous comments from people who have dealt with smoking at concerts in the parks.

Council comment:

Councilmember Diamond stated this was driven by citizen complaints. There has been much time spent trying to find a solution that would work for everyone. She stated "Roswell has never been a city that looked for a way to fine people arbitrarily." City of Roswell police give a warning most of the time; it is not their intention to fine people. She went on to say "I really can't imagine a circumstance that doesn't involve some other behavior that would constitute an arrest or a thousand dollar fine.

But, it gives the police an option when someone is not going with the best practice and not acting like they should in a public place. That is reason I am supporting this."

Councilmember Wynn stated the Recreation and Parks Commission is appointed by Mayor and Council which is a respected, intelligent, free thinking group of people who inform the Council of complaints or concerns of the citizens, they also help with the ordinances and procedures. This proposed ordinance came about through the Recreation Commission. Councilmember Wynn stated she understood the side effects of smoking and second hand smoke and could not see how the city could not enforce this and be the healthy city that we want to be. Many cities across the country have enacted ordinances banning smoking. City Attorney David Davidson confirmed for Councilmember Wynn that the \$1,000 fine is for any general ordinance violation; or 90 days in jail.

Councilmember Dippolito asked what cities have implemented this type of ordinance. Mr. Glover stated within the Atlanta metro area the following have adopted similar ordinances: City of Kennesaw; City of Douglasville; Clayton County; City of Gainesville, Henry County; Rome Floyd County.

Councilmember Price inquired about the city parks sizes. Mr. Glover replied the Roswell Area Park contains 80 acres; East Roswell Park is approximately 60 acres; Big Creek Park is 106 acres; Leita Thompson Park is 142 acres; the remaining parks contain 20 to 40 acres. Councilmember Price replied that within those large areas there could be found locations where a person could be permitted to smoke, given that nicotine addiction is a tough problem to deal with.

Councilmember Price commented that she might be the only Council member opposed to this smoking ban in outdoor publicly owned parks. She said "We already have an indoor air ordinance that was developed to protect everyone from the aggravation and potential health hazard of second hand smoke inside buildings. I am not aware of any citizen complaint regarding smoking in the parks of Roswell. It is possibly a problem during the concerts. I think that is a very limited and specific instance that could be dealt with totally separately other than an ordinance of this sort. This is a clash between the legal rights of adult smokers to legally smoke outdoors and the desire of non smokers to breathe clean air, but it is going beyond this. As a physician I would never want to encourage smoking, but I do want to discourage the tendency of government to try to control every aspect of our lives and to take away our freedoms whether it be the foods that we want to eat, the doctors we see, or even the businesses that we engage in." She disagreed with imposing fines or jail time for those caught smoking in the parks and noted that would be for the judge to decide. She stated twenty percent of Americans smoke and although she does not know the exact statistic in Roswell, she represents one hundred percent of the people in the city and does not want to turn her back on one out of five Roswell citizens.

Mayor Wood stated he hoped Council would consider amending this ordinance to place some reasonable limits. He had no issue with passing an ordinance which designated places where smoking would be permitted; a total ban is not appropriate. It is appropriate to ban smoking at concerts and in the stands. Mayor Wood noted that he has not received any complaints in his office regarding smoking in city parks and does not think this proposed ordinance is driven by complaint. The Mayor stated "If you believe the purpose and goal of the city is to pass an ordinance to make a statement saying 'this is what you should do' than I think that would be an appropriate ordinance. But I don't think that is the role of government is to tell people what they should do. We can encourage people to do things but we should not make it illegal if they are not doing what we think they should do. I believe that the purpose and goal

of cities is not to pass ordinances to make statements about what you should do. We should limit ourselves to passing ordinances of what you should not do. This goes beyond the role of government. It is infringing on individual liberties and I hope this Council will reconsider and go back to the existing ordinance which says there should be designated areas within the park in which you can smoke and which you cannot smoke. Unless we are getting ready to make it illegal to smoke on all public sidewalks in Roswell, we should not make it illegal to smoke on any sidewalk whether it is in a park or not in a park. We have gone too far in this case." No further discussion.

Vote: The motion passed 5:1. Councilmember Diamond, Councilmember Dippolito, Councilmember Wynn, Councilmember Igleheart, and Councilmember Orlans voted in favor. Councilmember Price was opposed.

A motion was made by Council Member Kent Igleheart, seconded by Council Member Nancy Diamond, that this Item be Approved on Second Reading. The motion carried by the following vote: Council Member Igleheart, Council Member Diamond, Council Member Wynn, Council Member Dippolito, and Council Member Orlans voted in favor of the motion. Council Member Price voted against the motion.

In Favor: 5

Opposed: 1

Enactment No: Ord 2010-07-13

Community Development - Councilmember Betty Price

6. **RZ10-05, CV10-01 & CU10-03, 2925 Holcomb Bridge Rd., Land Lots 825, 832, Ramco-Gershenson, Inc.**
(Request deferral to August 9, 2010 Mayor and Council Meeting)
Presented by Bradford D. Townsend, Planning & Zoning Director

Councilmember Price noted the applicant had requested deferral until next month. Mayor Wood invited public comment; no public comment made.

Motion: Councilmember Price moved for Approval of the deferral of RZ10-05, CV10-01 & CU10-03, 2925 Holcomb Bridge Rd., Land Lots 825, 832, Ramco-Gershenson, Inc. (Request deferral to August 9, 2010 Mayor and Council Meeting) Councilmember Igleheart seconded. No further discussion. The motion passed unanimously.

A motion was made by Council Member Betty Price, seconded by Council Member Kent Igleheart, that this Item be Deferred and placed on the Mayor and City Council agenda for 8/9/2010. The motion carried by the following vote:

In Favor: 6

7. **CU10-02, Conditional Use, 800 A Mansell Rd., David M. Mastro**
Presented by Bradford D. Townsend, Planning and Zoning Director

Planning and Zoning Director Brad Townsend stated this is a request for conditional use to operate a hand car wash facility at 800 A Mansell Road. The subject property

is .6897 acres; zoned C-3. Mr. Townsend explained that Dr. Mastro's dental practice is on the eastern end of the building office space. The request is for a hand car wash on this building's western side with two bank drive-thru lanes. A site plan was reviewed. Mr. Townsend stated that staff recommends approval with the following conditions:

1. The hand car wash should be developed in accordance with the plans submitted on June 4, 2010, City of Roswell, Community Development Department.
2. Services shall be limited to a hand car wash only. No self or full serve equipment shall be installed.
3. Washing Bays shall be limited to 2.
4. Hours of operation shall be limited to the hours of 7:00 am and 7:00 pm, Monday thru Sunday.
5. A site and stormwater management plan must be submitted and approved by the Roswell City Engineer prior to the issuance of an LDP.
6. Compliance with all City, State and County rules and regulations regarding wastewater set forth in the Clean Water Act.
7. Compliance with all rules and regulations regarding carwash facilities as set forth by Fulton County Health Services Department.
8. The owner/developer shall submit a landscape /tree plan for approval by the City Arborist prior to the issuance of an LDP.

The Planning Commission reviewed this application on June 15, 2010 and recommended approval with the following recommendations:

1. The hand car wash should be developed in accordance with the plans submitted on June 4, 2010, City of Roswell, Community Development Department
2. Services shall be limited to a hand car wash only. No self or full serve equipment shall be installed.
3. Washing Bays shall be limited to two. The applicant, with the approval of the Community Development Department, shall have the option of which two bays will be utilized.
4. Hours of operation shall be limited to the hours of 7:00 am and 7:00 pm, Monday thru Sunday.
5. A site and stormwater management plan must be submitted and approved by the Roswell City Engineer prior to the issuance of an LDP.
6. Compliance with all City, State and County rules and regulations regarding wastewater set forth in the Clean Water Act.
7. Compliance with all rules and regulations regarding carwash facilities as set forth by Fulton County Health Services Department.
8. The owner/developer shall submit a landscape /tree plan for approval by the City Arborist prior to the issuance of an LDP.

Council comment:

Councilmember Orlans asked if the Fire department and other departments been included in discussions regarding which bay should be kept "free" and whether a decision had been made. Mr. Townsend replied staff's recommendation is that the left (outside) lane be kept open to allow for proper passage of the cars. Mr. Townsend confirmed the applicant would be agreeable to that.

Applicant:

David Mastro, stated his proposal is for a "wrap around hand car wash" on the western side of the building which had at one time been a bank. Attempts at leasing the building have been unsuccessful.

Councilmember Diamond asked the applicant how he planned to market this business; did he envision this strictly for his patients; would he use signage. Dr. Mastro responded he has a road sign with the ability to have a sign for this business

and a sign marquee which is built into the front of the building which also could be utilized.

Dr. Mastro confirmed for Councilmember Price that this would be a separate business.

No further Council discussion. No public comments.

Motion: Councilmember Price moved for Approval of CU10-02, Conditional Use, 800 A Mansell Rd., David M. Mastro, with staff conditions #1 through #8. Councilmember Orlans seconded.

Councilmember Orlans asked if the motion should include language that the outside lane be "free." City Attorney David Davidson stated suggested the wording: "The outside lane be left open for thru traffic."

Restated Motion: Councilmember Price stated she would add Mr. Davidson's suggested wording to her original motion. Councilmember Orlans seconded the restated motion. Dr. Mastro agreed with the restated motion. No further discussion. The motion passed unanimously.

A motion was made by Council Member Betty Price, seconded by Council Member Jerry Orlans, that this Item be Approved with Conditions. The motion carried by the following vote:

In Favor: 6

8.

PV10-01, Parkway Village, 300 E. Crossville Rd., F. D. B. Roswell, LLC.

Presented by Bradford D. Townsend, Planning and Zoning Director

Planning and Zoning Director Brad Townsend stated this Parkway Village small tract request is for the purpose of using the property for a multiple office building development; the site is approximate 1.94 acres. Three office buildings are proposed; two buildings would be one story; the third building would be two-story. Total square footage for the three office buildings is 25,600 square feet. Appropriate parking and landscaping has been proposed. The site plan indicates the removal of six specimen trees on this property.

Mr. Townsend displayed and reviewed the current City of Roswell Zoning Ordinance regarding Parkway Village small tract. He explained that "It includes two criteria dealing with Council's action in finding that the land is not feasible to be combined with abutting property to create a larger tract. The second issue or caveat, is that the development of the tract as proposed will result in a better land use than if the small tract were combined with abutting properties." The current City of Roswell Zoning Map shown indicates that the subject property is included in the Parkway Village overlay location; an analysis of the proposed location has been conducted. Mr. Townsend noted that the applicant has been before Council three other times. Analysis was provided of the square footage previously requested; the density per acreage; and design of the three previous proposals. Square footage for all three other proposals was less than 10,000 square feet per acre; the current proposal is for over 13,000 square feet in the three buildings, per acre. A site analysis conducted by the city's landscape architect of the existing specimen trees showed that the trees would be impacted in excess of the allowed twenty-five (25) percent in the critical root zone; none of the trees would survive with the placement of the buildings and the

parking location, as currently designed.

Mr. Townsend reviewed the following staff recommended conditions:

- 1. This approval is based upon site plan dated received on June 30, 2010 by the Community Development Department prepared by Engineering Design Technologies, Inc.*
- 2. The applicant shall coordinate with RDOT and GDOT regarding driveway design.*
- 3. The development of the property shall provide inter-parcel access along the three (3) ingress/egress locations that border the adjacent parcels prior to the issuance of a land disturbance permit as required by the Zoning Director [Section 12.2.3 (m)]. It shall be paved up to the property line.*
- 4. The developer shall verify sight distance per AASHTO requirements upon submittal of Land Disturbance Permit/Development Permit documents.*
- 5. The applicant is required to install sidewalk along Crossville Road.*
- 6. Right-of-way may be required to encompass the deceleration lane, sidewalks and ramps.*

Council comment:

Councilmember Orlans inquired about the square footage per acre and density of this proposal versus the previous proposals. Mr. Townsend replied that the requested total square footage for this current proposal is 25,600 square feet, which works out to over 13,000 square feet per acre; the site is 1.94 acres.

Councilmember Price asked if the request is for this specific site plan, or merely for small tract status. Mr. Townsend replied the request is to receive small tract status for this specific site plan. Mayor Wood asked if Council would be approving this site plan if this request is approved. Mr. Townsend replied yes.

Councilmember Dippolito stated this applicant, before he submitted this application, had discussed with him, his desire to put together a plan that would allow for the three parcels to be developed together over time, in phases. The three parcels would work together, which is not consistent with the Parkway Village but starts to approach the Parkway Village intent. Councilmember Dippolito stated he noticed that one parcel does not have an interparcel access. He asked if a grading or topography plan exists showing how these parcels would work together. Mr. Townsend replied the application did not include a grading plan; staff recommended the driveways should go to the property lines for future interparcel access.

Councilmember Dippolito stated staff was concerned with two driveways being close together. He noted there is a driveway immediately to the west; if there was an interparcel access, it would make it possible to combine the two driveways into one shared driveway. Mr. Townsend replied this is a concern; the Transportation department would most likely want to look into that since this would be access to businesses and used more often. Councilmember Dippolito asked if that would be a Transportation department requirement or suggestion. Mr. Townsend replied that it would be a suggestion.

Applicant:

Alan Manheim, attorney representing FDB Roswell, noted the applicant had previously come before Council regarding this same property and worked with staff to bring forward a cohesive plan. The subject property is within the Parkway Village area and requires assemblage, which the applicant has tried to do; it is bounded on the east and west by another individual who owns both pieces. Mr. Manheim clarified

that the applicant has offered approximately \$200,000 (two hundred thousand) more than fair market value in an attempt for an assemblage, but they do not expect that to be successful. The applicant has again received staff's recommendation to approve this small tract application. Mr. Manheim displayed the proposed phase one, two, and three site plans. The applicant's proposal is "the middle part of phase one," and would allow for fair future development and assemblage, but would be almost seven acres. Mr. Manheim stated "It is not being done at this point because we do not have the adjoining land owner agreeing to go along with us." The applicant agrees with staff's recommendations for the existing plan and will work with the City to meet all conditions placed. Mr. Manheim stated "My client's position is that the City's zoning ordinance, in requiring that this property be developed as a minimum seven acre tract under the Parkway Village Overlay is unconstitutional in that it destroys the market ability of the property and renders it less valuable or without a reasonable economic value and it therefore constitutes an unconstitutional taking of my client's property without just and adequate compensation and without due process of law in violation of the Fifth and Fourteenth Amendments to the United States Constitution as well as Article 1, Section 1, Paragraph 1; Article 1, Section 3, Paragraph 1-A; Article 3, Section 6, Paragraph 2 of the Constitution of the State of Georgia of 1983 as amended." He added that it denies his client equal protection of the laws, the effect would be to impose "onerous, burdensome, and unnecessary conditions on the use of the property and the requirement that the property owner be forced to purchase and acquire property of other abutting or nearby property owners in order to develop and use his property." The applicant has "two potential tenants who have signed letters of intent to use up to 9,000 square feet office space in these buildings; one is an architect and one is a dentist and would have as little impact as possible on the surrounding property owners." The applicant's engineering firm and architect were present at this meeting to answer questions.

Council questions:

Councilmember Igleheart noted that he understood why Mr. Manheim had read his statement regarding constitutionality but wanted to know whether Mr. Manheim had read the Superior Court, the Court of Appeals, and the Supreme Court elements which basically did not support that. Mr. Manheim replied "that's correct."

Councilmember Price asked if the property acquisition occurred prior to or subsequent to the Parkway Village Overlay District being instituted. Mr. Manheim replied "Subsequent; it was purchased knowing it was in the Parkway Village."

Councilmember Dippolito noted the plan showing the inter parcel access would work if the three parcels are combined. The site plan submitted to the city shows this access to the west for the front of the subject property, but that potential future access is not shown on the plan. He asked whether or not that was inadvertently omitted.

Applicant:

Derek Westfall, Engineering Design Technologies, replied yes, there is existing access, but it does show on another plan. Mr. Westfall confirmed for Mayor Wood that he was comfortable with all staff recommendations.

Councilmember Dippolito asked if the intent is to have a driveway in that location on the subject property. An unidentified speaker representing the applicant located another site plan for Council to view and asked Councilmember Dippolito to clarify which driveway he was referencing. Councilmember Dippolito replied that he was interested in the inter parcel access headed west, that shows on the applicant's "master plan." It did not show on the plan or representation given to Council. Mr. Westfall verified the area and asked if the question was why there was not a "stub

out" shown on the proposed plan. The unidentified speaker stated "Partially, the area is not shown for the inter parcel access for the landscaping requirements, based on the tree recompense that is required for the site and the available site. It currently is shown on the north side and partially on the south side. For the current design that we have for the phase one proposal for this project, it is currently not shown from a graphical point of view and from the landscaping point of view for the requirements that we need. Obviously, with the potential phase two and phase three, that could be incorporated as part of that design." Councilmember Dippolito asked if there was no room on the site to put the trees elsewhere. The unidentified speaker stated, "If required, we would definitely take a look at that and relocate the existing trees to provide a little stub out to meet the setback requirements to have the interparcel access started there and terminating five feet from the boundary line to meet the parking developed." Councilmember Dippolito stated he thought that one thing that makes this plan work, is the inter parcel access. Mr. Westfall added they could add the inter parcel access stub out there. Councilmember Dippolito asked if a site topography study was done. Mr. Westfall replied that he visited the site and did some preliminary analysis on their actual site but also looked at inter parcel access. He stated there should be no problem grade wise, making everything work. Councilmember Dippolito replied "I went out to the site as well and I can't believe you could actually make that work." Mr. Westfall referring to a site plan stated "Right here you are not going to have inter parcel access; in this potential area there would have to be some sort of retaining wall but for driving on the outside where the inter parcel access, the cars will be. The grade that is relatively flat. If you look at the grading plan for the site this is just basically our site, there is a hill in the middle. Once you get to the outside, that is fairly flat and can connect in especially after we do some grading here to develop everything." He confirmed for Councilmember Dippolito that he was referring to an existing survey and not a grading plan. Councilmember Dippolito stated he did not actually measure it but the property drops off to the west at least six feet and probably fifteen feet toward the back. Mr. Westfall referred to site plan, and showed the area at the mid point and the area where a bank with steps for pedestrians would be needed. He stated the grades for the major inter parcel access for driving will work on the outside. Councilmember Dippolito replied "That is what I am saying. Towards the back, it seems virtually impossible. On the east side it goes up a hill. I have a hard time believing that you could execute this program." Mr. Westfall replied that on the east side there are the same issues; there will be a bank on the back of the building but then it is relatively flat around the retaining pond and the back. Councilmember Dippolito stated "It is flat on each parcel but it is not flat in between each parcel." Mr. Westfall said it is not flat in the middle and there would be grade transitions in the back of the buildings and in the landscaped areas but for vehicle inter parcel access, the grade is going to work. Councilmember Dippolito stated that if this plan is approved, it would appear that the applicant would have some significant grading challenges right to the property line. He asked if the applicant was planning to build large retaining walls on his property. Mr. Westfall replied they may need some, the sidewalk may be shortened if there are issues grading by pushing the parking lot in somewhat. Mr. Westfall stated "I am confident that we meet everything to code and stay on our property to make the site work and develop it." Councilmember Dippolito replied he had a hard time envisioning that.

Public comment:

Joe Creech, 275 Putting Green Lane, spoke on the following:

- Opposed to proposals; property slopes, drainage concerns; proposals do not appear to be keeping with the intent for property owners and the protection of property owners in that area.
- Property abuts the subject property; also represents James Hogue, whose property abuts the subject property directly to the rear.
- Plenty of vacant buildings in Roswell which could be made into office space

rather than establishing more.

- If Council approves this application, consider moving the buildings somewhat more to the front of the property rather than the rear of the property.
- There has been enough time for the subject property owner to plant trees and establish the berm; no trees have been planted.
- Density too big for the subject property.

Lisa Peverill, 545 Meadow Glen Trail, spoke on the following:

- Opposed; the proposed plan for three office buildings is too big for the parcel, is not appropriate and does not meet the intent of small tract status.
- Owners of this subject property have never invested in it to make it look like and be as viable as the others around it; the owners knew what they were buying as one parcel in a line of several parcels; eventually it can be made an assemblage.

Jacqueline Hand, 1075 Grace Hill Drive, spoke on the following:

- Opposed; consider what the combining of these tracts will do to the aesthetics of that area, traffic, parking; buildings proposed are too large; Mr. Caldwell's properties look fine.

Michael Martino, 120 Pine Glade Trace spoke on the following:

- Opposed; will hinder and hurt the residential properties and residential values in the area.

Marshall Lichtenstein, 530 Glen Trail, spoke on the following:

- Opposed; agreed with previous comments that the two abutting properties work; do not change the intent for small tract.

Kevin Caldwell, 185 Hamilton Way, spoke on the following:

- Property owner of adjacent properties.
- Opposed to proposal; proposed site plan does not take into account the topographic changes between the properties he occupies and the applicant's project; plan does not create a compatible environment to the existing business or the intent of the Parkway Village district; if it is approved, it will place undue burden on adjacent property owners to perform tremendous site work to match with this development.
- Suggested that a centrally placed group of four to six buildings or one building facing East Crossville Road, with a campus-like feel would be a quality village development on these six acres and provide more than ample landscape, green buffers, and a perimeter and facade facing the best line of sights on East Crossville Road.
- Never has been opposed to discussions with the applicants for sale, purchase, or assemblage; interruption to his business operations impacts the value of his properties in disproportion to his neighbors; attempt two years ago to negotiate an assemblage failed; he recently had to cancel a meeting with the applicants at the last minute.

Applicant rebuttal:

Mr. Manheim, displayed photographs of property on the overhead projector for the Council and the public to view. Mr. Manheim stated the standard Mr. Townsend placed on the overhead for view is clear, that upon a finding by the Mayor and City Council that the tract cannot feasibly be combined with abutting property to create a larger tract of land, or that is disjunctive, not conjunctive or development of the tract as proposed will result in a better land use than if the small tract were combined with abutting property, the petitioner shall receive approval; the applicant's proposal is that plan. The applicant would be willing to make the two story building a one story building, reduce the parking, and move the building on the north side of the property more than forty feet from the residential area behind it. Mr. Manheim commented

that he wanted to show 'the beautiful landscaped property that adjoins.'

Kevin Attarha, the applicant, displayed photographs of the site. He stated the idea of interparcel access was provided by Mr. Caldwell, as he currently accesses his properties from west and east of the subject property; he has not complained. Mr. Attarha said he previously spoke with the neighbors to the rear and told Mr. Creech to bring any concerns to this Council meeting. He would be willing to move the building another ten or fifteen feet. Mr. Attarha said should the proposed plan be approved by Council he would be required to obtain proper grading plans, engineering approval, and the Design Review Board approval; "All of those issues will be resolved once we get approval. I just could not see spending more money grading, on design, on drawing and plans. Our approval is conditioned upon us satisfying City of Roswell codes. That means we get elevation, we talk to the neighbors, we find out what it is going to look like. If the grading doesn't work, it doesn't work. The engineers of the City of Roswell are not going to sign off on a drainage plan that does not work. We just need an approval to bring the appropriate plan. I am not opposed to make that second story a story and a half, only two thousand square foot or completely give it up. That was actually put in the plan to try to give it character for the City of Roswell. The building that sits in the front is going to have elevation." Mayor Wood stated "Where we are right now though is not in a negotiation, but we have been presented a two and three story building and you are asking the Council to approve that site plan, not some lesser site plan. If you would like to offer up a lesser site plan and put it in front of this Council, I think you would have to do another presentation." Mr. Attarha stated they would be willing to accept, upon approval, a condition for the removal of the second story. Mayor Wood replied that he appreciated the applicant's willingness to compromise. Mr. Attarha displayed photos of the topography, the detention pond on Mr. Caldwell's property. Mr. Manheim added that was the landscaped property of Mr. Caldwell's. Also shown were photos of the rear area of the subject property including a gate to the interparcel access parcel being used; eighteen wheelers and equipment cross the property. Mayor Wood commented that it was good that Mr. Caldwell and the applicant are working together to the extent they are. Mr. Attarha clarified that they did try to speak with Mr. Caldwell but he was out of town, and obviously they could not get together. Mr. Manheim added "We are not going to rehash two years ago." Additional pictures were displayed showing the property to the east of the subject property with an existing detention pond; property to the west; Mr. Caldwell's back yard and equipment; the gate to access the other property; and storage for Mr. Caldwell's equipment.

Mr. Manheim stated "Our position is, what we have proposed with these buildings with professional office space, landscaping, would be an improvement." The pictures provided a visual of what the adjoining properties look like.

Council discussion:

Councilmember Igleheart said that staff comments state "The Water Resource Engineer has stated that the proposed detention ponds appear as though they will not meet GSMM requirements." He asked if that was resolved or remains an issue. Mr. Townsend replied it still is an issue, which prior to the issuance of a land disturbance permit, would need to be resolved.

Councilmember Wynn asked Mr. Creech if he was approached by the applicant regarding this new project. Mr. Creech replied yes and confirmed for Councilmember Wynn that he did not support this project. He stated that he did not believe that his neighbors supported the plan; Miss Sample, and two of his neighbors across the street from his property were present at the meeting; he believed that Mr. Hogue had previously made his comment earlier about his feelings. Councilmember Wynn

confirmed that Mr. Creech was approached but he did not give any type of approval to the applicant. Mr. Creech stated that was correct.

Councilmember Wynn stated she was concerned about the six specimen trees which would be impacted. If the applicant only does phase one and does not combine all three phases, those trees would have to be removed. There is a better way to do the project without taking out the trees. She was concerned with "cramming in" thirteen thousand square feet where in the city's regular ordinance, the maximum for C-1 zoning is ten thousand square feet.

Councilmember Wynn noted that she had previously walked the property. The pictures shown by the applicant which were to show "not good landscaping" were of an area on the property which is actually behind between six and eight foot wooden fences; this was "disingenuous of the applicant." The equipment on Mr. Caldwell's property does not show from the driveway. Mayor Wood reminded Councilmember Wynn that this time was for questions and not for opinions which could be stated after questions. Councilmember Wynn asked the applicant if he was aware that those pictures were taken behind fencing and not from the outside. Mr. Attarha replied "Yes, I walked Mr. Caldwell's property with one of his employees' permission. We went back there to understand the topo better to answer some of the water management issue and the combination. We took those pictures simply to understand from a topographic of how it is going to work for the three plans, yes." Councilmember Wynn was concerned about how the first parcel could be graded for this use and not affects the surrounding areas; it six foot in some places and fifteen feet in another. Mr. Attarha replied that engineering studies show that it can be done and how the water would be taken to the detention pond in the front. Councilmember Wynn asked why the buildings could not be reconfigured, saving at least four specimen trees. Mr. Attarha replied that it was tried in the past; with this plan they have put all these buildings way in the back. He added "It is not like we are taking those trees and not recompensing for it. I understand your concern." Mayor Wood stated this was the time to ask questions. Councilmember Wynn replied "That was my question. I was wondering if there was an opportunity for them to look to be able to save some of those trees." The applicant replied that with the current site plan they may be able save one tree.

Councilmember Price stated she was struggling with the definition of "feasibility," given that for small tract, that the tract of land cannot feasibly be combined with abutting properties to create a larger tract. She asked "At what point does feasible become unfeasible given the long history of litigation and inability to come to an agreement to combine these properties. I just need to know in my mind when have we reached the unfeasible point." City Attorney David Davidson replied "According to the ordinance, it says when the petitioner presents sufficient evidence to the Mayor and Council to convince you of that."

Mayor Wood noted the public comment portion of the meeting had occurred and everyone had a full opportunity to speak.

Mayor Wood noted that he was involved in drafting the ordinance. He explained that a couple of principles of the ordinance always need to be reviewed when the Parkway Village district in discussed in relation to the combining of parcels; (1) a 40 foot green space along the front, which this has maintained; (2) the protection of the neighbors, a buffer of either 175 feet or 150 feet, with a berm so that when adjacent to a residential community, there would be a buffer between those communities. Staff and the applicant have looked at a site plan for assemblage. It is interesting to note that in that site plan, we are at a forty-foot buffer. The ordinance states the buffer shall be a minimum of forty feet. The intention was to build in flexibility into this

ordinance; some of the lots have shallow property lines along Highway 92 and are less than 175 feet in depth. The idea was that when considering those small lots, less than 175 feet in depth, to require 175 or 150 feet buffer; to try to work out something that was flexible on the lots which where it is not feasible to combine but were trying to be combined, and then those lots which were very shallow and flexibility was needed in the rear buffer. This is a deep lot; by going from 150 feet with a berm to only 40 feet, we have just violated one of the basic principles of the Parkway Village Ordinance which is the buffer between the residential properties and the neighborhood. In this parcel, there is no good reason not to have a generous buffer to the rear. Mayor Wood stated that for that reason, not the feasibility of combining, he would not support this site plan because it would encroach on these neighbors. They are losing the 150 to 175 feet buffer, which everyone else in the Parkway Village had when it was a "deep" ordinance. The neighborhoods should object; it does not meet the principles of the Parkway Village Ordinance of a generous buffer between the property along the frontage and the property to the rear. Any site plan with these "deep" ordinances needs to have more than the minimum buffer of forty feet.

Motion: Councilmember Price moved to approve the small tract status of PV10-01, Parkway Village, 300 E. Crossville Rd., F. D. B. Roswell, LLC, with staff conditions, with the additional condition of showing interparcel access on the west side and another condition of returning to Mayor and Council with a plan showing a one story building, rear setback of 150 feet and a berm. The motion failed for a lack of a second.

2nd Motion: Councilmember Price moved to deny PV10-01, Parkway Village, 300 E. Crossville Rd., F. D. B. Roswell, LLC. Councilmember Dippolito seconded the motion.

Council comment:

Councilmember Wynn thanked Mayor Wood for articulating the intent of the Parkway Village. Her concern is with the removal of the specimen trees and the topography of the site. She noted that she spent more than two hours on the site and cannot understand how this proposed plan can be done there. There is an opportunity for an assemblage on this piece of property. She noted that photographs shown by the applicant made it appear that equipment on Mr. Caldwell's property is visible from the road when it actually is concealed, behind fencing. She expressed disappointment the applicant did this since it really was a moot point. She would support the motion to deny.

Councilmember Igleheart disclosed that in the past, he had received campaign contributions from the Caldwells. He explained that has no direct interest either way, even if the Caldwells were the applicants, therefore, he would not recuse himself. He stated that Council considers each proposal on its own merits every time. Councilmember Igleheart said he opposed this proposal; it is similar or worse than the applicant's previous proposals for this property. Comments which he made regarding previous proposals still apply, so he would not repeat them.

Councilmember Dippolito commended the applicant for giving some thought to the impact on surrounding properties, taking into consideration the impacts to adjacent properties. He agreed the impact to the residential area behind the site is significant; any future applications ought to address that. Councilmember Dippolito stated Mr. Caldwell had referenced his attempts to bring the parties together. He noted that while the magnitude of this plan may not be in the right direction, the idea of having multiple smaller office buildings which feel residential that include adequate buffers

from the rear residential area, is a good way to move forward on this property. Mr. Caldwell has some existing businesses there that probably could continue to stay as they are; things just need to be moved around, making sure that all parties, including the residents behind, are protected. Councilmember Dippolito encouraged them to continue or renew their dialogue.

Councilmember Igleheart expressed his displeasure that this item has returned four times with basically the same approval and recommendations from staff "word for word" and each time Council has been opposed to those. There must be a professional opinion, but "at some point we have also got to consider the impact and the intention of this Parkway Village," including consideration of it in the Comprehensive Plan; it has been "pretty clear where we think we ought to go on this."

No further discussion.

Vote: The motion to deny PV10-01, Parkway Village, 300 E. Crossville Rd., F. D. B. Roswell, LLC. passed unanimously.

At this point in meeting, the Mayor issued a break; the meeting resumed at 9:57 p.m.

A motion was made by Council Member Betty Price, seconded by Council Member Rich Dippolito, that this Item be Denied. The motion carried by the following vote:

In Favor: 6

9.

**RZ10-04 Text Amendment regarding companion animals.
(First Reading)**

Presented by Bradford D. Townsend, Planning and Zoning Director

Planning and Zoning Director Brad Townsend stated this proposed ordinance was initiated by Mayor and Council to control companion animals. At their June public hearing, the Planning Commission recommended approval of the proposed ordinance with changes; he discussed those text changes and additions as indicated in red print on the ordinance draft version.

City Attorney David Davidson conducted the first reading of the ORDINANCE TO AMEND THE CITY OF ROSWELL CODE OF ORDINANCES AND THE ZONING ORDINANCE REGARDING THE KEEPING OF COMPANION ANIMALS, WITHIN THE CITY LIMITS OF ROSWELL stating: NOW, THEREFORE, pursuant to their authority, the Mayor & City Council adopt the following ordinance:

1.

The Zoning Ordinance of the City of Roswell Article 3, Section 3.2 Definitions, is hereby amended by adding new definition "Companion animals" to read as follows:

Companion animals: Any domesticated animal or pet kept by humans for such purposes as pleasure, company, or health benefits, rather than for utility or sale, as further defined in the Code of Ordinances Section 8.1.1.

2.

The Code of Ordinances of the City of Roswell Article 8.1 Section 8.1.1 Definitions, is hereby amended by deleting the definition of Companion animal in its entirety and

replacing it with a new definition of "Companion animals" including cross reference to read as follows:

Companion animals: Any domesticated animal or pet kept by humans for such purposes as pleasure, company, or health benefits, rather than for utility or sale. A companion animal is either bred, raised, or trained to live in close proximity to humans and is dependent on humans for its food and shelter. Companion animals include, but are not limited to, birds, cats, dogs, hamsters, guinea pigs, mice, fish, reptiles, pygmy goats, and Vietnamese potbelly pigs. Companion animals do not include livestock or poultry, except as specifically permitted by law.

Companion animals may include wild or exotic animals, which requires a current state permit for the keeping of such animals pursuant to O.C.G.A. § 27-5-4.

Companion animals do not include livestock or poultry, except as specifically permitted by law.

Cross reference: Code of Ordinances: Article 8.1 (Animal control), Section 8.1.1 (Exotic animals), Section 8.1.5 (Wild, exotic, and companion animals), Section 8.1.7 (Kennels, Permits), Article 8.8 (nuisance); and Zoning Ordinances: Chapter 3.2 (Definitions: Livestock, Poultry), Chapter 10.7 (livestock), Chapter 10.41 (Poultry), Table 5.1 (Permitted uses in residential districts)

3.

The Code of Ordinances of the City of Roswell Article 8.1 Section 8.1.5 is hereby amended by adding new Section 8.1.5 (b) to control the number of dogs, pygmy goats and Vietnamese potbelly pigs each owner is allowed to keep at a residential unit, the limitation and cross reference is to read as follows:

8.1.5 Wild or, exotic and companion animals.

(a) Each owner, custodian, or harbinger of any wildlife or exotic animal must obtain all necessary state and/or federal permits and/or meet and comply with all state and/or federal requirements for keeping such an animal.

(b). The following companion animals are limited to no more than three (3) per residential unit: dogs, pygmy goats, and Vietnamese potbelly pigs.

(c). The following companion animals are limited to no more than ten (10) per residential unit: cats.

Cross reference: Code of Ordinances: Article 8.1 (Animal control), Section 8.1.1 (Exotic animals), Section 8.1.7 (Kennels, Permits), Article 8.8 (nuisance); and Zoning Ordinances: Chapter 3.2 (Definitions: Livestock, Poultry), Chapter 10.7 (Livestock), Chapter 10.41 (Poultry), Table 5.1 (Permitted uses in residential districts)

4.

The Zoning Ordinance of the City of Roswell is hereby amended by adding as a permitted use in all residential zoning districts the keeping of Companion animals to Table 5.1 to read as follows:

TABLE 5.1

USES PERMITTED IN RESIDENTIAL DISTRICTS

USES

RESIDENTIAL ZONING DISTRICTS

P = Permitted use

C = Conditional use

X = Not

permitted

(*) = Specific use regulations apply

Zoning District	E-1	E-2	R-1	R-2	R-TH	R-THA	R-3	R-3A	R-4	R-4A
R-5 R-PUD R-HIST										
Companion animals			P	P	P	P	P	P	P	P
P	P	P	P	P	P	P	P	P	P	P

(see also City Code Article 8.1)

Council questions:

Councilmember Dippolito asked that the ordinance purpose be defined. Planning and Zoning Director Brad Townsend stated "The purpose really was crafted from the Legal department when we were viewing the poultry ordinance and had a request. A homeowner was concerned about their neighborhood having more than two pygmy goats. Once the determination that the pygmy goat would fall under the definition of a companion animal, that definition did not control the number of pigmy goats. We then had a request for how many potbelly pigs a resident could keep in their back yard. That was not controlled either. In discussions with the Legal department this was crafted, brought to Committee, initiated, and taken to the Planning Commission." Councilmember Dippolito stated that is the reason for the change. He asked what it is that we are trying to accomplish with this ordinance. Mr. Townsend replied that Section 8, within the Companion Animals Ordinance, is to identify what would be a nuisance; how do we control exotic animals which are defined by the state. Councilmember Dippolito asked if this then is for animal control and to define acceptable animals and all others would not be. Mr. Townsend replied that was correct. With the purpose defined, Councilmember Dippolito said he had a problem with the sentence which stated "Companion animals include, but are not limited to..." because "it opens it up, it sounds like we are trying to contain it." He noted that the last sentence in the first paragraph is redundant. Councilmember Dippolito asked if someone theoretically could have three goats and three pigs on a townhouse lot since townhouses are listed in the ordinance. Mr. Townsend replied that was correct. Councilmember Dippolito stated it would be helpful before the second reading to understand the square footage requirements of town house lot sizes.

Councilmember Price inquired about the Planning Commission discussion notes which mentioned an issue of "precedence of a county over the city or vice versa, whereby if they had fourteen and we had ten." Mr. Townsend replied "Our ordinance would then rule, correct." Councilmember Price asked what else is in this proposed ordinance which is not already covered by the county and how much more onerous or specific is this, compared to the county or the state. Mr. Townsend replied the county uses regulations in dealing with controlling animals and categories for

animals, horses, hogs, dogs, rabbits, guinea pigs, hamsters, chickens, turkeys, geese, ducks, pigeons, and fowl; broken into four different categories. Councilmember Price asked if they numerically limit the animals. Mr. Townsend replied "There is a limitation in a couple of different ways; a distance in feet that the enclosure is from a residential property line; they control the area per animal; the animal has to have a certain size pen; they control a maximum number of animals allowed." She asked if the city is bound to that. Mr. Townsend replied that was correct. Mr. Townsend confirmed the county's requirement for dogs and cats is ten. Councilmember Price asked if this would be superfluous since it is already spelled out in the county. Mr. Townsend replied that was correct.

Mayor Wood asked if there have there been any complaints about mice other than wild mice, or complaints about fish. Mr. Townsend said there had not been any complaints regarding mice or fish that he was aware of. The Mayor asked if a city ordinance regarding mice is really necessary if there have not been any complaints received. Councilmember Price replied the state requires a resident to have a permit to keep a mouse, so an ordinance would not be necessary. Mayor Wood noted that Council previously has discussed dogs, cats, poultry, and livestock and asked why go beyond that if there have not been any complaints.

Councilmember Orlans stated he was under the impression that this proposed ordinance was driven by the Legal department as something that should be done or redefined.

Councilmember Dippolito stated this is an existing ordinance modified to add pygmy goats and Vietnamese potbelly pigs because apparently, there have been some issues.

Mayor Wood suggested that it might be good to look into ordinances which are not needed.

No further discussion.

Motion: Councilmember Price moved to table RZ10-04 Text Amendment regarding companion animals (First Reading), to an indeterminate time. Councilmember Wynn seconded. Public comment invited. None was heard. No further discussion. The motion passed unanimously.

A motion was made by Council Member Betty Price, seconded by Council Member Becky Wynn, that this Item be tabled. The motion carried by the following vote:

In Favor: 6

10.

Consideration of a Precious Metals and Gems Dealers License Application

Presented by Alice Wakefield, Director of Community Development

Alice Wakefield, Director of Community Development stated the applicant had submitted a complete application for a Precious Metals and Gems Dealers license on behalf of RB Gold Buyers, LLC. The property is located at 710 Holcomb Bridge Road, Suite 210. Ms. Wakefield reiterated the application is complete. The application has been reviewed and approved by Ed Williams, Chief of Police. The application was presented on June 23, 2010 to the Community Development & Transportation Committee. The recommendation of staff is approval.

No Council comments or questions.

Motion: Councilmember Price moved to approve the Consideration of a Precious Metals and Gems Dealers License Application. Councilmember Wynn seconded.

Applicant:

Harvey Rubin, 1975 Nocturne Drive, Alpharetta, stated he looked forward to doing business in Roswell. Mayor Wood and Council welcomed Mr. Rubin to Roswell.

Vote: The motion passed unanimously.

Mayor Wood referenced a point which Councilmember Dippolito had previously made regarding the necessity of bringing these applications to Council for approval. The Mayor noted this was the first occasion he has had to review one of these applications, and questioned as well, the need for this type of application to come to Council, taking up the applicant's time.

A motion was made by Council Member Betty Price, seconded by Council Member Becky Wynn, that this Item be Approved. The motion carried by the following vote:

In Favor: 6

Transportation Department - Councilmember Rich Dippolito

11.

Approval of the Transportation Master Plan Update. Presented by Steve Acenbrak, Director

Councilmember Dippolito introduced the item and noted that Council had reviewed the plan multiple times. Steve Acenbrak, Director of Transportation briefly reviewed the plan. The original Transportation Master Plan was adopted in November 2006. During the past year, internal Transportation Department staff made improvements, updating the original plan; details were provided to Mayor and Council throughout the process. City of Roswell Transportation staff walked and became very familiar with almost the entire forty-two square miles of Roswell; six public meetings were held throughout the City; extensive data, including feedback collected from those public meetings was incorporated into the final document; coordinated with other city departments; outreach was conducted with the surrounding governments. The Transportation Department also conducted a needs assessment and considered the problems facing the city to come up with innovative, cost effective, and fundamentally sound engineering solutions; this is the basis of this Transportation Master Plan Update. Mr. Acenbrak expressed appreciation to Mr. Chris Chovan, the city's Transportation Manager, for producing the document. Mr. Acenbrak stated the Transportation staff understands the transportation needs and issues of the city and is ready to execute the plan to see the projects come to fruition; a project schedule was shown. He noted that the plan/projects overlap well as a North Fulton community to integrate with the other North Fulton municipalities.

Council comment:

Councilmember Dippolito commended Mr. Acenbrak and his Transportation staff for another outstanding job and for the enthusiasm this department has for the city.

Motion: Councilmember Dippolito moved for Approval of the Transportation Master Plan Update. Councilmember Diamond seconded. Public comment invited; none was heard. No further discussion. The motion passed unanimously.

A motion was made by Council Member Rich Dippolito, seconded by Council Member Nancy Diamond, that this Item be Approved. The motion carried by the following vote:

In Favor: 6

Adjournment

After no further business, the Meeting adjourned at 10:15 p.m. for a work session regarding the ARC 2010-2011 Community Choices Implementation Assistance Program; and the 2030 Comprehensive Plan.