

July 12, 2010

Regular Meeting of the Mayor and City Council, Monday, July 12, 2010, 7:00 p.m., Mayor Jere Wood was presiding.

Councilmembers Present: Councilmember Jerry Orlans, Councilmember Betty Price, Councilmember Kent Igleheart, Councilmember Rebecca Wynn, Councilmember Richard Dippolito, and Councilmember Nancy Diamond.

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.

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

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 assémbage, 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 is 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.