



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 Orleans
Council Member Betty Price
Council Member Becky Wynn

Monday, February 13, 2012

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 Orleans, Council Member Betty Price, and Council Member Becky Wynn

Staff Present: City Administrator Kay Love; Deputy City Administrator Michael Fischer; City Attorney David Davidson; Director of Environmental/Public Works Stu Moring; Transportation Director Steve Acenbrak; Director of Community Development Alice Wakefield; Community Development Planning and Zoning Director Brad Townsend; Economic Development Manager Bill Keir; Community Development Planning and Zoning Planner III Jackie Deibel; Community Relations Coordinator Kimberly Johnson; Assistant Director Recreation & Parks Morgan Rodgers; Administrator of Park Services Jeff Pruitt; Police Chief Dwayne Orrick; Deputy City Clerk Betsy Branch.

Pledge of Allegiance - Olivia Cown

CONSENT AGENDA

1. **Approval of January 9, 2012 Mayor and Council Meeting Minutes (detailed minutes to replace Council Brief minutes adopted on January 23, 2012); Approval of January 23, 2012 Mayor and Council Minutes; Approval of January 30, 2012 Mayor and Council Open Forum Brief.**
Administration
Approved
2. **Approval of a Resolution to request Fulton County to Transfer Community Development Block Grant (CDBG) funds from the Arts Village Infrastructure II Project to the Adult Recreation Center Expansion Project in the amount of \$1,200.**
Community Development
Approved
Enactment No: R2012-02-02
3. **Approval to reallocate the refund from the Oak Street Utility project to the AT&T Utility Relocation in the amount of \$105,047 and approval of Budget Amendment 02-14-7323G1 in the amount of \$105,047.**
Community Development
Approved
4. **Approval of use of City Hall steps for the Roswell Day of Hope Volunteer Rally on Saturday, April 14, 2012 from 9am to 10am.**
Community Development
Approved
5. **Approval of City Sponsorship and Road Closure for the Historic Roswell Criterium on April 29, 2012 from 7am to 8pm.**
Community Development
Approved
6. **Approval of City Sponsorship for the Hospitality Highway Century Ride on Sunday, July 8, 2012 from 6:30am to 4pm.**
Community Development

Approved

7. **Approval for the Mayor and/or City Administrator to sign a contract with Tri Scapes, Inc. for the Midtown Streetscape Project landscaping in the amount of \$42,586.**
Transportation

Approval of the Consent Agenda

Councilmember Orlans was not in the chambers when the Consent vote was taken.

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

In Favor: 5

REGULAR AGENDA

Mayor's Report

1. **Recognition of Olivia Cowen for her donation to the Armed Services.**

Recognition of Olivia Cowen who asked her friends coming to her birthday party to bring items for military troops rather than birthday presents. The Blue Star Mothers of North Metro Atlanta Chapter assisted in getting the donated items to the troops.

Recognized

Point of Personal Privilege:

Councilmember Price said she wanted to make a statement regarding the truth about incorrect information that was relayed at a prior council meeting regarding a reported recent Supreme Court finding and stated the following. She stated the United States Supreme Court has not found, ruled or otherwise decided upon hearing any case regarding municipal prayer. The Supreme Court has not ruled on this matter and there is no Supreme Court decision on this matter. The last time the Supreme Court took up prayer in municipal settings was in 1983 almost thirty years ago in the case of Marsh v. Chambers. While the United States Supreme Court has never ruled on prayer in municipal settings, in that case, the court decided that the establishment cause of the first amendment is not violated by hiring a chaplain to lead daily prayer in Nebraska state legislature. Within the body of the ruling, it was suggested however that invocations be non-sectarian and non-proselytizing. There were however, two cases in January of 2012 that had been ruled upon in the 3rd and 4th Circuit Courts against municipal prayer that tried to appeal to the Supreme Court, but as in 99% of the cases that try to go the Supreme Court, it was not heard. It takes four Supreme Court justices to ask to hear a case. These were in the 3rd and 4th U. S. Circuit Courts of Appeal and they do not have jurisdiction in Georgia. The Supreme Court did not take it up and there were no findings, no ruling, and no decision. It has no bearing in Georgia at the appeals level. The case that does apply to us here in Roswell was heard in the 11th U.S. Circuit Court of Appeals four years

ago in 2008. The case was *Pelfrey v. Cobb County*, and that was the Cobb County Commission. The 11th Circuit Court of Appeals that covers Georgia, Florida and Alabama held that governmental bodies in Cobb County may use prayers that include references to specific deities and it does not violate the United States Constitution. Judge William Pryor wrote the lead opinion and ruled that government should not have any role in determining the content of prayers and approved the Cobb County plan whereby the commissioners drew names randomly from a list of clergy to lead the pre-meeting prayers. Additionally, information the Georgia Municipal Association, as presented at the Carl Vincent Institute of the University of Georgia for newly elected officials, provided a sample meeting agenda that includes an invocation. Councilmember Price said she also wanted to straighten out something that was said which was the matter of having an invocation in the City of Roswell. She said this matter has not ever come up at a regular council meeting. She said Council has discussed it at Committee but has never taken a vote at a council meeting on the subject of having an invocation at the start of regular council meetings. She said the Mayor sets the agenda and he has determined that neither he nor the majority of Council wish to begin the meeting with prayer, invocation, or a moment of silence or other words of inspiration. Councilmember Price thanked everyone for this moment of personal privilege.

2.

Recognition of City of Roswell employees receiving the Resource Conservation Challenge Regional Team Award from the U.S. Environmental Protection Agency (EPA).

Director of Environmental/Public Works Stu Moring said the City of Roswell was proud to have received this Resource Conservation Challenge award recognizing the team members as follows:

- Brad Townsend, Planning and Zoning Director
- Jean Rearick, P.E., City Engineer
- Alice Champagne, Water Resources Manager
- Danelle Volpe, P.E., Water Resources Engineer
- Stuart A. Moring, P.E., Director of Public Works/Environmental

Mr. Moring said Roswell was the prototype community for this endeavor by the U.S. EPA Region 4 to develop a web-based framework for evaluating local processes and how building and zoning ordinances align with environmental goals. He said, ultimately, the team created a toolkit that is now on the U.S. EPA website so local communities can assess alignment of their processes with their goals. A spin-off from this was to create a review process whereby staff evaluated and streamlined city processes to approve land disturbance permits. He said Councilmembers Price and Dippolito were key members of the process review team and could answer questions about that process. He said staff is proud the City was selected by the EPA to assist with this endeavor and even more proud to receive this national notable achievement award.

Mayor Wood said it is wonderful to receive recognition from the EPA in a positive manner and thanked Mr. Moring.

Recognized

3.

Approval of the reappointment to the Board of Zoning Appeals - Richard O'Donnell.

Mayor Wood nominated Richard O'Donnell for reappointment to the Board of Zoning Appeals.

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

In Favor: 6

Community Development - Councilmember Nancy Diamond

4. **PV11-03, Parkway Village Small Tract, 300 East Crossville, Land Lot 447, Kevin Attarha.**
(This item was deferred from the December 12, 2011 Mayor and City Council meeting)
Presented by Bradford D. Townsend, Planning & Zoning Director

Planning & Zoning Director Bradford D. Townsend presented the item as follows stating this application is for Small Tract status at 300 East Crossville Road. The subject property has an underlying R-1 zoning designation and is within the Parkway Village. An aerial photograph was displayed showing the existing structures of the homes just north of east Crossville. The proposed site plan for the subject property is to construct three one-story office buildings totaling 12,000 square feet. This item was heard December 12, 2011 and deferred for the applicant to meet with neighbors and staff. The Community Development Department determined that the applicant has not provided sufficient evidence that it is not physically feasible to combine with the adjoining properties as required by Section 12.2.10 (a) (i) of the Roswell Zoning Ordinance that allows properties to become Small Tract. If they can be feasibly combined, they cannot be allowed Small Tract status. Mr. Townsend stated, "Because of the feasibility of physically combining it with the adjoining property it cannot take place, staff would recommend denial of this application at this time."

Councilmember Price asked Mr. Townsend if this had been recommended for approval in the past. Mr. Townsend replied that was correct. Councilmember Price asked why it is not being recommended for approval at this time. Mr. Townsend replied Council determined in prior cases that it should have been feasibly combined with the adjoining properties. Councilmember Price asked Mr. Townsend if there is a change in the application that makes staff recommend against at this time as opposed to when it was recommended for approval in the past. Mr. Townsend replied that it is Council's desire that they be combined. Councilmember Price asked the status of small and large tracts on the adjacent properties. Mr. Townsend replied the property to the east received small tract status to allow for parking in the front of the existing building and the property to the west received adaptive reuse for that to be utilized for the current building and the current use that is on that piece of property. There has been no change to the second parcel to the east, currently used as a single-family home. Councilmember Price asked what would be the most reasonable size of a property that might be developed if all these parcels were assembled. Mayor Wood asked if she was referring to the combined acreage of all four. Councilmember Price said correct, because Parkway Village prefers up to seven acres. Mr. Townsend replied all four parcels combined would be a total of approximately 7.5 acres and taking into consideration the 150 foot required buffer setback from the Parkway Village boundary line on the east, north and west, and the 40 foot buffer to the front, then approximately 3.5 acres or less than half of the property could be developed.

Applicant:

Kevin Attarha stated he is part owner of the property and they have been before Council for a number of years. He said he hoped Council received the email he sent over the weekend. He displayed an aerial picture that he said was included in that

package and referred to the left side of the property where there is an active stream buffer that is dictated by state and local jurisdictions. He said there is a 150 foot buffer from the residential property at 280 E. Crossville Road that goes all the way to the right to Mr. Caldwell's property that is Five Oaks Nursery and including his property at 300 E. Crossville Road in the center, the remaining property is practically in the buffer. He said it is not feasible to put the eight tracts together and have it purchased and then reduce it down to about 3.5 acres. He asked for the definition of feasible. He said the neighbors in the back have voiced their concerns and they are happy with the 150 foot setback. Mr. Attarha said if there is assemblage in the future and the Council allows it to go into the buffer and build on the stream buffers and not honoring the 150 foot setback, how could it possibly be assembled after all these years and all these tries. He said they attempted to talk to Mr. Caldwell but he is in complete opposition to doing anything with them. Mr. Attarha said there is a letter from 2009 from Mr. Caldwell's attorney where he offered to purchase the applicant's property for \$300,000 per acre but said he would sell his property for \$600,000 per acre. He said Councilmember Price had tried to set up a meeting in December 2011 but he was out of town and Mr. Caldwell was not available so that meeting was subsequently called by Councilmembers Diamond and Dippolito. Mr. Attarha said Fred Fatemi, also a partner in the property attended that meeting but thought nothing came out of it and added that Mr. Caldwell is not interested in combining any properties. He said over the years they had met with Councilmembers Dippolito and Wynn trying to work out every possible angle. He said two hearings ago, Councilmember Dippolito had an idea for combining all of this and they were assured this was workable but now find out before Council that the very same plan that was somewhat okay with Councilmember Dippolito is suddenly not going to work. He said he didn't know what else they could do as a property owner to satisfy the requirements and thought it ironic that staff has not brought up the stream buffer before because that information has been there for a number of years. He said it isn't a question of feasible; it is not possible to assemble this either economically or physically without going into the environment and tapping into the stream buffer. He said the neighbors want the 150 foot setback which they are willing to honor but that will completely take away all of Mr. Caldwell's property on 310 E. Crossville as well as the property on 280 E. Crossville and some of the property at 290 E. Crossville. That would leave about 3.5 acres for development; a developer would not pay for eight acres and only be able to develop 3.0. He said Mayor Wood has said the ideal for these long lots is a 150 foot setback and they are willing to honor that. Mr. Attarha said the staff report states the Community Development Department has determined that the applicant has. He asked what kind of judgment was used other than the fact that the Council keeps repeating it. He said this application was approved four times. Mr. Attarha said they do not understand why it is suddenly not approved. He said if it was the decision of the staff to make that call, they would have worked with them to come up with a conclusion because they have worked with Councilmember Dippolito on at least four or five occasions, and with Councilmembers Wynn and Price, and have requested to meet with other council members.

Mr. Attarha read portions of item #1 on page 2 of the staff report as follows, "The Water Resource Engineer has stated, 'The site plan does not appear to allow adequate space to address Stormwater requirements for the project. The PW/ENV department does not support the site layout. The PW/ENV strongly encourages the applicant to set up a concept meeting with the Water Resources engineer.'" Mr. Attarha presented an email dated February 3, 2012 addressed to the engineer, Derek Westfall and read a portion that stated, "Hi Derek... This looks good, a workable solution for the site. I am comfortable that a solution can be reached to meet the standards of the site and support going forward with the site plan showing." Mr. Attarha said now the staff report states that they do not recommend it. Planning and Zoning Director Brad Townsend asked to clarify that point. Mayor Wood said he

wanted the applicant to have a full presentation with clarification afterwards and said he would give Mr. Townsend an opportunity to respond.

Mr. Attarha said the second bullet point on the staff report reads, "We strongly encourage the applicant to meet with the department." He said they had a meeting on January 27, 2012 that Mr. Townsend and the City Engineers attended and items were discussed and a follow-up email was sent to the department along with the site plan on February 1, 2012 from the engineer. He asked the Council and Mayor why he was told the plan looks good and then the present package says they have not met and the site plan does not work. He said they do not understand why they received an email that says the City is happy with the site plan but then a report recommends that Council deny their application. He said we had a meeting in this building and followed up with an email. He asked Council to consider the facts and the four-page email he had sent to Council over the weekend. He said Councilmember Dippolito would like them to keep talking with Mr. Caldwell but said Mr. Caldwell is not interested. He said Mr. Caldwell had stated in front Council that he does not want this development, period and believed there was an email sent from him about this. He said also that Mr. Caldwell is not going to sell and not going to buy. Mr. Attarha said he knew Councilmember Dippolito had read that email because he received a comment from him referencing it. He asked if any of the other Councilmembers had read the email.

Mayor Wood stated this is not the time for the Applicant to ask the Council questions, only to make a presentation and said we will gladly hear everything you have to say, but this is not a question and answer period.

Mr. Attarha said he did not want to take time to go over a four-page detailed report to show past history of five filings going back to 2005. He said they don't know what else to do and believe they have given all the facts and have met with the city engineers and satisfied the requirements. He said they were not here tonight to see if their plan meets all the requirements and he didn't have to do full grading as Mayor Wood had mentioned in the last hearing because they are not required by law to do that. He said they are required to show enough information for Council to approve the Small Tract then there would be rules and requirements before being issued a Land Disturbance Permit (LDP) and they would be required to have professional drawings that must meet every local and state jurisdiction requirement before being issued permits. He said staff continues to talk about all these items and they are going to adhere to those and if the neighbors in the back have any concerns, they are willing to put additional trees in the 150 foot buffer. Mr. Attarha said that was all he had to present and would answer any questions that Council might have.

Mayor Wood asked for Council comment.

Council Comment:

Councilmember Price requested that the site plan be displayed. She said there are three buildings on the proposed site plan and asked for the height of each building. Mr. Attarha replied they are all single story, with the exception of the front building on Hwy. 92 where they wanted to give a better look and that building will have a half-floor basement, so it will be a 1.5 story and it will not be high because it will go down a half story with the grading. He said they were trying to give the same look from the side and the front of that building so it looks good from the neighborhood as well as going west bound on Hwy. 92. He said the center building and back buildings will be one-story.

Mayor Wood said the applicant would have an opportunity for rebuttal after hearing from the other citizens. He said this will not be an opportunity to bring up new

information but an opportunity to respond to any points that are raised.

Mr. Attarha asked to show something else to the Council. Mayor Wood replied he could. Mr. Attarha displayed a letter from Mr. Caldwell's attorney to the Applicant in 2008 showing that Mr. Caldwell had asked for \$300,000 for moving expenses and one year to move. Mr. Attarha said it was impossible to pay that and only end up with three acres of developed land.

Staff Comment:

Planning and Zoning Director Brad Townsend stated Mr. Attarha was correct and the staff report was wrong. He said we should have clarified that Public Works Environmental had a meeting on January 27 and reviewed a plan that they felt would be workable. Mayor Wood thanked Mr. Townsend.

Public Comment:

Joe Creech, 275 Putting Green Lane, Roswell said he owns part of the property adjacent to this lot and Mr. Hogue owns the remainder of the adjacent property. He said he has expressed his concerns to Council before and is concerned about the 150 foot setback requirement that he requested be at least one condition if the Small Tract status is approved. He said Mr. Caldwell leases out a part of his property that is also adjacent to his and when he goes out on his deck or if looking out the bedroom window, he is looking at a big container box sitting on that property which is 150 feet away. He said that is an example of what can happen with a Small Tract and he didn't know if that was legal but said he had expressed his concerns to Mr. Caldwell who said he would do something about it.

Mayor Wood asked Mr. Townsend to check into that to determine if they are in violation and told Mr. Creech that the City would have an answer for him.

Mr. Creech said he was also concerned, based on the most recent proposal at the last Council meeting, that there will be a detention pond within the 150 foot setback, which means there is actually a 40 foot buffer with nothing currently planted there. He said not knowing how well the detention pond would drain, he had concerns about it becoming a breeding ground for mosquitos and other pests for the neighborhood.

Mr. Creech said those were his two primary concerns and he thought the two buildings proposed on the site were okay because worse things could be there. He said he was not complaining about that, however it is incumbent upon the Council to protect the neighborhood and listen to the residents in the area and not only to developers and development consultants.

James Hogue, 265 Putting Green Lane, Roswell said at the last hearing, Council expressed they would like to see pictures of the property and he had brought some with him that he would display. He said the first photo was taken from the center of his backyard looking over the fence into the applicant's property that showed his entire backyard was adjacent to the proposed property. He displayed another photo looking at the applicant's property versus his neighbor's property to the right where there is a big decline of about five feet in elevation between the two properties. He said that concern along with what abuts his property is the 40 foot buffer with little vegetation which is an elevated part of his property; coming towards his fence line is where the water runs with a decline of about three feet. He said his concern is with the detention pond and not knowing how the elevation is going to work from the detention pond within the 150-foot buffer, if that is allowed. He said the site plan shows a 40 foot buffer from his property line to the beginning of the detention pond and the elevation grade is their biggest concern and what will happen with that. He said he had other photos depicting some of the trees within the 40 foot buffer which

were either dead or dying or very small. He reiterated his only concern is with the detention pond.

Michael Kerlin, 285 Putting Green Lane, Roswell said he is Joe and Ann Creech's neighbor and stated other concerns they had not voiced. The multi-tenant development is somewhat different from the others in the area that already has Small Tract status and expressed concern about security lights and the runway style nature of the property with headlights directed towards the neighboring backyards. Additionally, on the plan it appears the dumpsters are placed as close to the properties as they could be within the proposed setback. He requested that Council address these issues.

Marshal Lichenstein, 530 Meadowglen Trail, Roswell expressed concern about how this project will affect other projects down the road. He said he wasn't aware this had been approved before and thought it had been denied several times and taken to court once. Mayor Wood said that is correct. Mr. Lichenstein said if it hasn't been approved in the past, why would we want to approve it now. He said property is a speculative investment and the investors knew what they had when they went into it, faced with Parkway Village rules. He didn't think it was the responsibility of the City to give approval to make this work, it is the applicant's responsibility to make it work. He said other properties along the district have done just that, for example a veterinary clinic recently opened at 40 E. Crossville and other businesses have gone into existing homes on existing property and made them work; therefore, why let this go the way it is going. He said if this project is approved, other properties along Parkway Village district would be in front of Council within the next year or so wanting the same privileges because what you do for one business in the district should also be done for the others and he didn't think that was a good thing to look forward to. He said there had been numerous appeals on this project and asked if there were limitations within the law about how many appeals could come before the board because each appeal consumes a lot of City money and suggested considering a law that would limit the process to one or two appeals.

Richard Mays, 1155 Martin Ridge Road, Roswell said he has lived in the area since 1968 and been a resident of Roswell since 1980. He said he chose Roswell as his home because it is a good place to raise children and the conservative values of the Council and the town have been very good in the way he likes to manage his life. He said several of the members have been re-elected to Council and one of the things that has been a good push was to be more responsive and proactive to new development and redevelopment and he was all for that. He said he had seen Roswell grow from sleepy two lane roads and that Holcomb Bridge Road was only two lanes when he moved here. He said the homes on these tracts were fairly new when he came here and he has seen on the East side of Roswell the same type of development with these homes. He said a few years ago, that there was a development where small tract homes existed on the properties. One type of business that was in one of those homes was an outdoor equipment company for children's playgrounds that sold totem poles and things of that nature; another was a computer fix-it store and those were viable businesses using those residences. He said the applicant's tract is similar to those. He said his company worked with Mr. Attarha in developing the plans for this development and as an engineer, he had seen how Mr. Attarha had responded to all of the pieces and concerns that have been forthcoming. He said he appreciates the residents who live behind this development, but as a combined tract, the development could have more of a shopping center type environment with lots of lights and that sort of thing. As a small tract, what Mr. Attarha is bringing forth as a concept is medical offices, most of these would be daytime businesses with no concern about lighting at night, and the traffic would be mainly during the daytime. With all the issues with the adjacent properties

and adhering to the overlay district's rules and stipulations that are appreciated, he said he thought the idea brought forth is a very good one for this small piece of property. He thought from tonight's presentation, it would not be feasible to join all these properties and create one big shopping center. He said as a long-standing resident, he is in support of this project and hopes Council will think about this in the way they have all stated in their campaigns and previous town hall meetings where they want to be able to redevelop because this redevelopment will bring in more revenue to the City. He said more individuals will come in from possibly Cherokee County as well as others for visits to a doctor's office and they will spend money in Roswell for lunch and whatever else one would typically do when going for a doctor's office visit. Mr. Mays said it would be a very good idea for Roswell to look at this very closely in light of what Mr. Attarha has presented and believes Council should move forward and grant the small tract status.

Bob Cornetti, [did not give address], said he had been a resident of Roswell since 1977 and stated his greatest concern is that the Parkway Village was established to protect the older developments along Hwy. 92 and believes that was established because we didn't want to look like Sandy Springs. He said those 7.5 acres helped us to imagine that that was going to occur; that someone was going to have to put something together, that they were going to have a lot of space in there for the parkways and all the parking and everything else. He said we have to come down here every couple of years and remind Council that this is a parkway project and the 7.5 acres had a purpose.

There was no further public comment. Public comment was closed.

Applicant Closing:

Kevin Attarha said some of the residents mentioned the 7.5 acres but he thinks they have proved there is no such thing. He said if anyone still feels there is 7.5 acres to assemble, please show me how and we will do it; it is impossible and not feasible. He said he has looked at the definition of feasible and it just doesn't fit. He said he appreciated the comments of the resident at 285 Putting Green Lane and believes the trashcans are 150 feet away and believes Mr. Caldwell's trashcan is sitting on his zero lot line. He stated these are professional office buildings and there will not be security lights and we are only talking about a 13,000 square foot development with three buildings with offices. He said we have a partner in this development who is a dentist and wants to occupy and develop and it is their right. He said he wanted their engineer, Derek Westfall to come forward to address the issues with the detention pond and water management. He said Councilmember Dippolito had always been concerned about grading and his comments were appreciated and they had spent a lot of money putting together grading plans and asked Mr. Westfall to make his presentation.

Derek Westfall, with Engineering Design Technologies, Inc. said he was hired as a civil engineer to create concept site and grading plans per concerns from the last hearing. He displayed an overhead of the site plan and said they are proposing two detention areas on the front of the property near Crossville Road. Mayor Wood asked if there would be detention ponds on the rear of the property. Mr. Westfall replied there will be. Mr. Westfall indicated an area on the site plan that is bio retention for water quality purposes with natural plantings that help filter out oil and other pollutants before the water is discharged. He then indicated a detention pond that will hold the water of the more impervious area as to not discharge as in pre-develop condition. He indicated two other small ponds that serve half the site; the rest of the site drains to the back of the site. He said to the front, the water drains through grass swells and sheet flow; to the back, because of the grading of the site, stormwater pipes provide draining. The same situation is in the back with a

bioretention pond, which will help filter the water that treats summer showers and a one-year storm and then goes into the large detention pond that contains the water. He said this is a concept plan but a detention pond this size reduces the flow off the site by 75% so concerns of additional water or erosion are drastically reduced. He said following the meeting with the City, they had another concern and have added a spilling pond stilling basin that takes a concentrated flow and turns it into a sheet flow. He said think of it as a bathtub overflowing and it will sit there and overflow when the storms come and keep it from being a single discharge point. He said the entire site is graded out and indicated an area with a steep slope that would not need a retaining wall. He said in order to preserve the trees which was another concern of Council, retaining walls are necessary around the tree areas. He said because of more than a 20% impact of the critical root zone, three of the trees may be lost but they will do what they can to save them and will provide plantings to adequately compensate for that loss. He said they are providing planting shrubs and oak trees along the slope and the back that he indicated on the site plan in between the detention area and the residential areas and said this is just a concept plan and we can work with the residents to plant evergreens or other kinds of screening methods and we can also move the dumpsters to another area. He said they chose to use bioretention, which is the preferred method of the City, and all the retention can be under ground with different structural methods that would meet all City requirements and the Georgia Stormwater manual. He said this is just a concept plan to prove we can fit everything and grade out the site.

Mr. Attarha said this is the fifth or sixth time they have been here and believe that they have presented enough information and addressed all of Councilmember Dippolito's many concerns about grading. He urged Council to vote in favor of this project because assemblage is not feasible.

Mayor Wood thanked Mr. Attarha for his efforts in working with Mr. Caldwell, the neighbors, staff and Council.

Council Comment:

Councilmember Diamond asked if when Parkway Village was first created and lot sizes were taken into account to create the larger tracts, was it a net seven acres or seven acres by plat. Mayor Wood replied it was seven acres by plat. She said she would like to address a question to Fred Fatemi from Engineering Design Technologies, Inc. Mayor Wood asked him to come forward. Councilmember Diamond thanked Mr. Fatemi for meeting with Council and staff a few weeks ago. She said she had a totally different understanding of how things were going to play out following that meeting because Councilmember Dippolito had talked about a grading plan for all the lots together that might be workable with the neighbors. There had also been discussion about possibly displacing tracts temporarily and grading out so all the lots could be combined. Councilmember Diamond asked Mr. Fatemi how he thought things might go following that meeting.

Fred Fatemi stated they looked at the stream buffer two weeks ago and found out it was more than what they expected. He said from looking at the plan, the stream buffer engulfs almost all of Mr. Caldwell's property and nothing can be done on that side. He said their engineer has designed a site plan showing what Councilmember Dippolito asked for, but they thought there was no reason to submit it because of the stream buffer problem. Councilmember Diamond said she thought they were going back to Mr. Caldwell at that point because there is still another lot over there on the east side and the lot after that.

Derek Westfall displayed the plan design on the overhead and said he thought it was included in Council's packet. He said the plan assumed the minimum stream buffer if

somehow a variance was granted, just to show grading was feasible; it is feasible to connect with a cross access easement. He said the plan shows a 25 foot and 75 foot buffer, which we all know from the previous slides, isn't the case and also shows cross access in the back but cross access can't be done in the front because GDOT's setback for cross access between parcels is 100 feet from the right-of-way. He said getting the GDOT permit would be a concern; the plan basically shows all the inter-parcel access. He thought Mr. Attarha and Mr. Fatemi are willing to give any grading inter-parcel access easement; a grading easement would be needed; it is feasible to grade out all the properties, which this plan shows.

Councilmember Diamond said she thought that was just the part where the neighbors would then meet to talk about the next step in that. She thought that was something Mr. Caldwell had agreed to.

Mr. Attarha said Mr. Caldwell asked to go with the engineer to take some pictures and believes he acknowledged that in some correspondence, but said he was not going to tell Mr. Caldwell that his property was 100% in the stream. He said he is a good neighbor but doesn't think he would have appreciated him telling him that his entire property was in the buffer and can only get a single-story out of him. He said this information was presented; he called Mr. Caldwell but he wasn't able to meet. Mr. Attarha said what he understood from the last time was that Councilmember Dippolito had said the grading would not work. He said they have spent money and time to show that the grading works; there is nothing to stop Mr. Caldwell on either side of their property to come back and develop this as the engineer mentioned. He said they have told Mr. Caldwell they are willing to give easement today and will go on the record that they will provide cross-access easement for him to build his property out and make this a beautiful low density development, not a big shopping acre. He said if the neighbors are concerned about two trashcans, could they imagine a seven-acre shopping center development going in with all the security lights. He said this is the best that can be done with these properties and Mr. Caldwell is welcome to come back and ask for all sorts of variances from Council. He said Councilmember Igleheart is very concerned for the environment and hopes he does not grant that particular variance, at least but he could certainly do that later and then come and develop this. He said this is the plan that Councilmember Dippolito asked for and they will grant the easement.

Derek Westfall pointed out that this is a concept plan just showing the feasibility of grading, not necessarily, what could be developed on those other two parcels.

Mr. Fatemi said with this plan they would not have to go to Mr. Caldwell's property. The engineers are able to show a concept that without disturbing his property, we could give him a cross-access easement grant so later on he would be able to get on our property. He said this plan is better than originally thought because there is no retaining wall required; the only retaining wall requirement is on the back side to be able to grade up to make his grade match ours.

Councilmember Dippolito said one of the reasons he wanted the parties to meet was because it was obvious from the beginning of the project years ago, that it didn't comply with Parkway Village. He therefore suggested the parties work together to come up with a master plan for the entire property that could be built in phases and perhaps create a master plan. He said that was his goal for getting the parties together and that was done. He said the original plan was fairly reasonable but there was a problem with the grading and that was why he kept bringing up the grading; not because he didn't think the applicant could grade their parcel. He said he is still concerned about that because the grading still doesn't look consistent with what exists today. He asked what was used as the base for their grading. Mr. Westfall

replied this isn't based on tying into the existing grades; this is based on if the properties are both redeveloped. Councilmember Dippolito said you would still have to have a base on the existing property. Mr. Westfall said for our site it was survey and for the other sites where our survey starting running out it was based on "DIF" and site observations; he indicated on the slide a grade area that is pushed back because there is an existing retaining wall. Councilmember Dippolito said that was the reason for his question because there is a retaining wall all along that property line and there is a significant change in that. Mr. Westfall indicated an area on the slide and said that grade goes up; the wall is approximately 4-6 feet high; that grade is pushed forward along the property line where the wall is. He indicated an area where the grade is 1088 and the existing contour around there is 1092, and where inter-parcel access would be. He said the new retaining wall on the back side of the building would go back up. He said it is all feasible once a more accurate survey is attainable. He indicated an area that is a 1086 contour and said if need be that could be pulled back more and change the finish floor elevation of that building and the retaining wall on the other side would get larger.

Councilmember Orlans asked Mr. Townsend what staff would recommend if there were a site plan with the stream buffers laid out and the entire properties assembled with so much useable area eliminated. Mr. Townsend asked for clarification, if Councilmember Orlans wanted staff's recommendation if the property was assembled and the current stream buffers and current setbacks were combined. Councilmember Orlans said, "You can't meet the seven acres so it appears there are only two parcels that could even be assembled." Mr. Townsend replied that was correct. Councilmember Orlans asked if that was a true statement. Mr. Townsend replied, "All of the parcels can be assembled; it's what criteria and what current government requirements are impeding what develops and goes on them." Councilmember Orlans said, "In looking at this so many different times and trying to put this together and then seeing that a third of it, approximately, is not even useable, it does go back to the question of is this feasible or practical to even do it."

Councilmember Price asked Mr. Townsend how long ago this particular stream buffer was identified. Mr. Townsend replied he thought it was 1998 with the adaptive reuse to the west when Mr. Caldwell opened his first operation. He said the tributary ordinance was adopted in 2000, so it was existing non-conforming as the case may be when the ordinance was adopted. Councilmember Price asked Mr. Townsend if it was known to the department that this land would not be buildable as far as putting this together for any kind of development. Mr. Townsend replied the definition of whether it could be buildable or whether it could be adaptively reused in Parkway Village are two distinct differences. He said the property is utilized as an adaptive reuse because it was used as a home and the home converted to an office and behind the office was converted to parking and storage for the vehicles. He said if a person or owner was able to combine the adjoining property, they would have to find out what requirements and development limitations would be placed on it taking in to account those current Parkway Village requirements as well as the stream buffer requirements would definitely inhibit future development in dealing with the property. Councilmember Price said adaptive reuse could be done currently without any other status. Mr. Townsend said that was correct. Councilmember Price said it is unconscionable, as far as moving forward with an assemblage, and not know this information. She said she only learned of this on Friday, it was not in her packet and said she was shocked because this is critical information.

Councilmember Igleheart said "Any property along Parkway Village that is not currently developed would all have to meet the different setbacks and buffer things, so that is something that would impact any property regardless of size that would obviously decrease the overall size." He asked Mr. Townsend if that was correct.

Mr. Townsend replied correct. Councilmember Igleheart said "That is what that is set up to do and I guess we've had some of this discussion where, how long we are going to allow that to work and I guess that is one of the questions not only for this but for all the things we are looking out in the overlays." He added, "Well everything is not going to work out exactly every time and it is going to have to take some time to work itself out and if we just throw it out before we let it all work, then I'm not sure any of our long term plans work and that is something for us to consider." He said to Mr. Townsend, "You answered the question then that is the same issue that other properties have to deal with." Mr. Townsend replied correct.

Councilmember Price said to summarize her thoughts, she knew the intent of the Parkway Village overlay is great and it is a beautiful corridor and believes past and present Councils have wanted to preserve that as much as possible and applauds past Councils for their prudence to adhering to the vision of the Parkway Village. She said she also applauds the applicant for their persistence and thoroughness in responding to the neighbor's requests, but the application as coming to Council today is very different from what has been presented in the past. She said per the historical documents, in 2005 Mr. Caldwell had commented that some day after he is gone, they might want to put these parcels together. She said that is tough for the here and now and we are dealing with the here and now. She said we are now dealing with a reasonable use of this land with an incredibly generous buffer since Parkway Village only requires 40 feet and we are going with 150 feet. She said she thinks this is very workable and provides a great buffer to the neighbors and the applicant has expressed a great willingness to make these things work. She said another comment in 2005 said if a Small Tract was allowed, it would prevent any option for future assemblage. She said she was certain in the future, any kind of assemblage is possible and we wouldn't be preventing that by allowing a reasonable development there at this time. She said she walked the property and the buildings on all the properties are "pretty awful and unsightly and anything there besides what is there is an improvement to that area." She said we can certainly improve on what it looks like now and if we move forward with this, it would be with the understanding that all the Parkway Village conditions would be met aesthetically, etc. and that those conditions along with other easements, inter-parcel access, etc. would be considered. She said she was encouraged that although there have been some blips with law suits in the past that leaves a bad taste in people's mouths, she wasn't on Council when that occurred and hoped people could look beyond that and find that we have put together something that would be reasonable for this location.

Councilmember Diamond said she lived in this area but was not involved in the Parkway Village overlay although from having done Groveway recently, she knew how much time the stakeholders put into this kind of document and what it means to change it in midstream. She said to give it some flexibility and keep it from being impossible to do there are these two provisions. She said it concerns her that she thought after leaving the last meeting, that they would all be coming together about assemblage and it would have been nice to have this stream buffer information when the property owner was in town and available to address it and that is making this difficult. She expressed concern over orphaning a couple of pieces of property on the other side that down the road, the last one in particular, would be very difficult to do anything with given the way this is all set up. She said, "Having said that, this area looks like this may be one of many places that has developed in such a way that we need to take a look at what we can do there." She said we are about to embark on our Unified Development Code and give additional options to different properties and there may be housing opportunities there and other things we haven't had in our code before that may be new options. Since that is imminent, we are going to be analyzing all the parcels and said she didn't feel we are doing what is best long term for this area. She said the benefit of not being here through all the emotional part is

that we don't have the frustration and personal feelings about it. She said she understands that can be a positive or a negative but someday we will look at this and need to know we did the best thing for this area and said she was not sure we are there yet.

Motion: Councilmember Diamond made a motion that this item, PV11-03, Parkway Village Small Tract, 300 East Crossville, Land Lot 447, Kevin Attarha be Denied in its present form. Councilmember Dippolito seconded.

Further Council Discussion:

Councilmember Wynn said she agreed with Councilmember Diamond and heard what Mr. Mays said about development and redevelopment. She said Council also needs to look at protecting our neighbors. She said Mr. Lichenstein was very intricate in the Parkway Village overlay and that is why we have these overlays, but it is not development and redevelopment, it is how our citizens felt this area should be redeveloped. She said we might have to look at the Parkway overlay as Councilmember Diamond said about the Unified Development Code. Councilmember Wynn said she would have to stick with the Parkway Village and vote to deny.

A motion was made by Council Member Diamond, seconded by Council Member Dippolito, that this Item be Denied. Council Members Orlans, Igleheart, Wynn, Dippolito, and Diamond voted in favor. Council Member Price was opposed. The motion to deny carried by the following vote:

In Favor: 5

Opposed: 1

5.

RZ11-15, 11140 & 11160 West Road, Land Lot 46.

Presented by Bradford D. Townsend, Planning & Zoning Director

Mayor Wood said he would recuse himself because he had represented Mr. Broadwell in annexing this property and it would not be appropriate to sit on the decision. Mayor Pro-tem Becky Wynn filled in.

Planning & Zoning Director Bradford D. Townsend said this is a proposed zoning for two parcels of property that were annexed from Cobb County into Fulton County and from Fulton County into the City of Roswell. They do not have a current zoning designation; this is the zoning of the property to bring it properly into the requirements of the City of Roswell. The parcels are approximately one acre in size. Staff recommends these parcels be zoned E-2. The Planning Commission reviewed this and recommended zoning E-2.

Mayor Pro-tem Becky Wynn asked for public comment. There was none.

Mayor Wood welcomed Mr. Broadwell into the City of Roswell. The Mayor and said Mr. Broadwell had committed a lot of time and effort to having the county boundary moved so he could be a part of Roswell.

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

In Favor: 6

Recuse: 1

6.

CU11-06 & CV11-04, 1565 Holcomb Bridge Road, Heal Our Land Ministries Federation, Inc., Land Lot 613.*Presented by Bradford D. Townsend, Planning & Zoning Director*

Planning & Zoning Director Bradford D. Townsend stated this is a proposed conditional use with concurrent variances. The applicant is requesting conditional use of an existing building for a church, church offices and nurseries, and variances from the required setbacks to allow for the existing structure that conforms there at this time. Mr. Townsend referred to an overhead slide and indicated the location of the property that is east of GA-400 to south of Holcomb Bridge Road. The property has two structures, a gymnasium as well as an existing building which was used for offices and church facilities. The property has commercial area to the west and Martin's Landing subdivision to the south and east. The property is currently zoned R-3; the designation requires that churches have conditional use. Staff recommends approval of the seven draft conditions placed on this application and included in the draft resolution for this conditional use. Those conditions are as follows:

- 1. To the plan stamped "received November 1, 2011, City of Roswell Community Development Department."*
- 2. To allow for the church and accessory church uses on the property.*
- 3. The maximum assembly area is determined by the approved site plan indicating 970 square feet. Should the assembly area exceed this amount, sufficient parking must be established on site or as part of a recorded agreement prior to the expansion of said assembly area.*
- 4. The church owners shall install and maintain at least thirty (30) Leyland Cypress trees along the southern and eastern boundaries of the subject property. The trees shall be six feet in height and placed six feet on center and they should be planted prior to December 31, 2012 as approved by the Design Review Board and the City Landscape Architect.*
- 5. The southern and eastern boundaries of the property shall not be used for the children's play area.*
- 6. The church owners shall coordinate with the homeowners regarding the configuration and materials for the fence.*
- 7. A compliant pool cover shall be installed to cover the existing pool on the property.*

The Planning Commission through discussions with the arborist placed condition #4 that reads, "thirty (30) Leyland Cypress trees." Mr. Townsend said staff recommends changing that condition to allow different types of trees because in the event of disease with the same type of evergreen, they would all die. Staff prefers at least two different types of evergreens in lieu of all Leyland Cypress. Mr. Townsend said this is the only recommended change from the draft resolution.

Council Comment:

Councilmember Wynn said she sees the variance is so they can get into the setback with the existing buildings and asked Mr. Townsend if that was correct. Mr. Townsend replied that was correct, it doesn't have any additional setbacks. Councilmember Wynn said she assumes the church will be using existing buildings and asked if they were to tear the buildings down would they then have to conform to the setback. Mr. Townsend replied yes. Councilmember Wynn asked if the applicant is aware of that. Mr. Townsend replied they would be aware now. Councilmember Wynn said she wouldn't want the applicant to come back and ask to construct a new building and then find out they can't because they would that not conform. Mr. Townsend replied this is for the existing site plan.

Applicant:

Tad Ransopher, attorney for the applicant, Heal our Land Ministries, said they do not oppose any of the conditions set by the Planning Commission and is not asking for

outside lighting or amplification such as a speaker system or similar items. He noted that they had met with two of the homeowner association members in the area of Martin's Landing and with Mr. Curt Foster who also spoke at the Planning Commission meeting.

Mayor Wood asked for public comment. There was none.

A motion was made by Council Member Diamond, seconded by Council Member Wynn, that this Item be Approved with Conditions. The motion carried by the following vote:

In Favor: 6

7. **RZ11-14 Text Amendment to the Sign Ordinance related to the distribution of allowable ground and wall sign square footage. (First Reading)**

Presented by Bradford D. Townsend, Planning & Zoning Director

Planning and Zoning Director Brad Townsend stated this proposed sign code amendment to Article 22 of the Sign Code to accomplish two distinct issues. The current code requires that the division of ground sign and wall sign be split between the amount of road frontage for the parcel. Mr. Townsend clarified that this requirement to divide the allowable sign square footage between the wall and ground sign would be removed if this text amendment is approved. The sizes still will be maxed out at the normal fifty feet or one-hundred and twenty-eight feet, depending on the amount of linear frontage. The proposed text amendment would also allow for an individual establishment to have three signs facing the street frontage, as well as most sides of the building. As currently drafted, the building signage requirement is determined by the store frontage. This proposed text amendment was discussed at several Committee meetings and has come forward to Mayor and Council now for the first reading. The Planning Commission recommended approval with changes during their January 17, 2012 hearing.

*City Attorney David Davidson conducted the first reading of AN ORDINANCE TO AMEND THE CITY OF ROSWELL ZONING ORDINANCE REGARDING THE CHAPTER 22 SIGN CODE REGARDING THE DISTRIBUTION OF ALLOWABLE GROUND AND WALL SIGN SQUARE FOOTAGE stating: pursuant to their authority, the Mayor and City Council adopt the following amendment to the zoning ordinance: 1. The City of Roswell is hereby amending Article 22 of the City of Roswell Zoning Ordinance, Table 22.18(2), Ground Signs in Nonresidential Zoning Districts, as follows: *****(PLEASE go back to MEETING DETAILS: FILE # 11-0445, to view the Ordinance containing Table 22.18(2) Ground Signs in Nonresidential Zoning Districts and Table 22.18(3) Wall Signs in All Districts.)******

Mr. Davidson noted that if approved, this would be the first reading of the ordinance.

Council Questions:

Councilmember Igleheart said he thought there was significant confusion as this worked through the process. He felt that the Planning Commission minutes indicated their confusion. He was concerned that "We are going to produce something that we are all confused about." Councilmember Igleheart asked if this proposed text amendment has been resolved to the point that everyone could clearly understand it. Planning and Zoning Director Brad Townsend stated staff understands the intent of the ordinance. Mayor Wood asked City Attorney David Davidson if he had reviewed the ordinance for clarity of intent. Mr. Davidson replied, "It is clear in its intent. It was a long way to get there. The actual writing is clear." Councilmember Igleheart replied

he was not one-hundred percent clear himself on this but wanted to make sure that the answers are clear for anyone coming to the City with questions regarding the sign ordinance, and that all the questions can be answered. Mr. Townsend noted he understood.

Councilmember Igleheart stated he had no problem with separating the two issues and had no problem with separating the square foot based on "wall and frontal." He said "I do have concern about the overall impact of the second part because essentially, every business in the City can now add more signs, which may be a great economic development for our sign companies." He said there has been some control over the signage throughout the City and is concerned about what could happen with that. Councilmember Igleheart stated the one business and building that came forward with this was generated by another side business putting another sign on the ground, which they thought blocked some of that. Councilmember Igleheart said he sees no problem with seeing those buildings and signs without any problem, from either direction on the road while driving by. He said he is concerned that this is may be "a little overreacting as to what that ultimate goal really needs to be and whether we are not just putting more throughout, without that great of an ending purpose." Councilmember Igleheart reiterated that he was "uncomfortable with the second part but fine with the first."

Councilmember Dippolito referring to the 128 square feet, asked if that is divided between the three signs or 128 square feet per sign, as shown in the third column, third row of Table 22.18 (2). Planning and Zoning Director Brad Townsend replied, "The 128 is a maximum size of sign. If they are building store frontage that exceeds 128 linear feet, then the size on that wall could not exceed 128 square feet, per wall." Councilmember Dippolito said the way the ordinance is currently written, there is 128 square feet total, for monument sign and wall signage. Mr. Townsend stated, "If you have the ground signage determined by the amount of road frontage and it is broken down into different categories." Councilmember Dippolito stated, "Assuming it is 128 feet, just to pick a number. Let's say you are allowed 128 square feet. That is divided between the building and the monument sign." Mr. Townsend replied, "The way the current ordinance is drafted. This draft will remove that requirement so they would be able to put all 128 square feet on the ground sign." Councilmember Dippolito replied, "Plus the 128 on the building or 128 times three on the building." Mr. Townsend replied, "Plus 128 on the building." Councilmember Dippolito asked if this is essentially doubling the amount of square footage. Mr. Townsend replied, "Yes." Councilmember Dippolito said he was okay with that although he thought that is not clear in the proposed text amendment. It could be interpreted, as each sign could be 128 square feet, which would be four fold what it currently is. Mayor Wood suggested the language, "To combine all three signs, not to exceed 128 square feet." The Mayor suggested that it be made clear that the combined wall signs are not to exceed 128 square feet rather than one sign. Councilmember Dippolito stated language was removed from the original ordinance that defined that and it may be necessary to add some of that back in for clarification. Mr. Townsend replied, "On page four of the proposed draft, we are looking to make sure that the combined square footage of all three wall signs does not exceed 128 square feet." Councilmember Dippolito said it does not really say that. Mr. Townsend agreed. Mayor Wood clarified that at Council's request for the second reading to add the language "The combined is not to exceed 128 square feet, of the wall signs." Councilmember Dippolito stated it would be 128 for ground signs; 128 square feet for total wall signs. Mr. Townsend confirmed if that was for total wall signage on the building. Councilmember Dippolito agreed.

Councilmember Diamond stated, "I thought we were actually going with a maximum based on the wall that faces the street. If that wall faces the street is 50 square feet

then that sign can be 50 square feet, the next side can be 50 square feet, the next side can be 50 square feet. No more than 128 on any one side." Mayor Wood asked if she meant that there could be three signs of 128 square feet. Councilmember Diamond replied that would be in a "pretty massive scale building." Mayor Wood said that is the way it is written right now. He noted that Councilmember Diamond would be making the motion, and Council could amend her motion if they wish. Councilmember Diamond stated she understood.

Motion: Councilmember Diamond moved for Approval of RZ11-14 Text Amendment to the Sign Ordinance related to the distribution of allowable ground and wall sign square footage. (First Reading)

Mayor Wood asked if that motion was with 128 square feet, per side of the building. Councilmember Diamond replied, "As written." Councilmember Price seconded the motion.

Public Comment:

Ralph Mills, property owner at 23 Oak Street, stated he was in agreement with Councilmember Diamond's motion, if he understood it correctly. Mr. Mills asked where he could obtain a copy of the ordinance.

Mayor Wood stated Mr. Mills would be able to obtain the first reading as soon as the changes are agreed upon.

The Mayor clarified that the motion made was for a maximum of 128 square feet per side. Mr. Townsend stated that was not correct. Councilmember Diamond stated it would be subject to the zoning. She noted that this ordinance is "mind numbing." She said, "It is a shift and is not going to be massive to see in any one direction. If you can have 128 square feet on one side, it is a big building and you are not going to see all three sides." Mayor Wood asked for illustration of the dimension using the 128 square feet. He thought it would be a little bigger than 10 feet by 12 feet. Councilmember Diamond replied, "But, if your wall frontage on your store frontage is small, it is going to be to scale with that." Mayor Wood replied that is correct, it could be smaller, but it could not be any greater than approximately 10 feet by 12 feet; that would be the largest, it could be smaller. Mr. Townsend clarified that most signs are a lot narrower than they usually are wide. Mayor Wood said he understood, but he had just provided an example.

Councilmember Dippolito said if you think about a typical free standing building, they are usually 50 feet or 60 feet wide, at the most.

Mayor Wood asked for example, if there are several buildings which are in one lot, would it be possible to have more than one wall sign; could there be three wall signs on one side as long as they did not exceed the maximum; they would be different businesses. The Mayor said there are places in Roswell with three stores fronting on the building. The Mayor asked if it would it be possible to have three wall signs not to exceed that 128 square feet. Councilmember Diamond stated that is not addressed, but it could be discussed. Mayor Wood reiterated that it could be three store fronts, all one building, a single property owner but three different businesses. Councilmember Dippolito said each business would get its own sign based on the linear footage. Councilmember Diamond replied it would be for the minimum. Mr. Townsend replied it would be based on the store front; the end ones would get sides. Mayor Wood stated that clarified it for him.

Mayor Wood called for further discussion.

Councilmember Igleheart asked if it would be possible at this point, to make an amendment to separate the two parts of the proposed text amendment. He

reiterated that he was fine with the first part but not the second. Mayor Wood replied he would be call for separate votes on the two parts of the text amendment.

Mayor Wood stated, "We are going to vote on separating the monument sign from the wall sign as one vote. We are going to vote separately so we can get some better direction, so it comes back again. I will break the motion into two."

Mayor Wood stated, "The first thing we are going to vote on is for those who support separating ground sign from wall sign. The ground sign has its own maximum. That would be a maximum of 128 square feet based upon road frontage." Mayor Wood opened public comment again for one more person who wished to make statement.

Public comment:

Lonnie Mimms, 1270 Jones Road, stated his concern that this could go in the "opposite direction." He is a retail center owner looking for all the signage they can get. He asked that Council not get "caught up" in viewing the maximum signage on a small free standing bank building because that is not "how the math works." Mr. Mimms suggested that Council think more in terms of a "gargantuan" building where it is not possible to see more than one side of the building at one time. He said he assumed that this proposed text amendment is expanding where the current code is. Mayor Wood stated that would be correct. Mr. Mimms said he wanted to be certain that Council does not get "too caught up" in the sum of the square footage of all sides. Mr. Mimms said that does not make sense because one would not be necessarily looking at all three sides. He suggested that this be considered not in terms of a McDonald's restaurant or a bank, but that Council think in terms of a 150 foot or 250 foot property. He suggested that the distance from the road also be a consideration. Mr. Mimms said a 10 foot by 12 foot sign sounds huge when thinking of it sitting in front of someone but it is never going to be that close, even when it is placed up on a façade. Mr. Mimms said he would be willing to bet that no one could guess the size of a given sign and would guess that it is much smaller than it really is when it is "up there." It would seem much bigger than from any distance. Mr. Mimms said he did not think that the City would be dealing with as much clutter and visual pollution as thought at this moment.

No further comments.

1st Vote: Mayor Wood reiterated that he first would call for the vote on the portion of the first reading, which separates the ground sign from the wall sign, and calculating the maximum square footage for the ground sign; the maximum square footage would be 128 square feet for the ground sign. This passed unanimously.

2nd Vote: Mayor Wood stated "All those in favor of the ordinance as read which allows signs on up to three sides of a building based upon the square footage of the store front on that street, not to exceed a maximum of 128 square feet, per sign, per wall. Theoretically, there could be up to three signs of 128 square feet.

Councilmember Dippolito asked, "Are we voting on your motion or the way it is read?" Mayor Wood replied, "No, that is the way it was read, as I understand it." Councilmember Dippolito stated that was not the way it was written. Mayor Wood replied, "Is that the way it was written, Councilmember Diamond?" Mayor Wood clarified that was Councilmember Diamond's motion. The Mayor stated, "That is her motion. I don't know how it was written. Her motion may not be the way it is written but her motion is 'To allow up to three wall signs, based upon the frontage on the road, not to exceed 128 square feet per sign.'" Councilmember Dippolito replied, "It is the linear feet of the building, which is different." Mayor Wood replied, "Linear feet of the building, fronting, but not to exceed 128 square feet. Is that your motion,

Councilmember Diamond?" Councilmember Diamond replied, "I was with you until a minute ago." Mayor Wood asked Councilmember Diamond to rephrase it for him. Councilmember Diamond replied, "Signage allowed on up to three sides of the building based on the linear footage of the store frontage to the road, with a maximum of 128 square feet, per side." Mayor Wood asked Councilmember Price if she seconded that motion. Councilmember Price replied, "Aren't we approving the whole." Mayor Wood replied, "No, we broke it down in half." Councilmember Price replied, "Aren't we approving Table 22, essentially? So, why are we having a motion that is defined differently?" Mayor Wood replied, "Because I am presiding officer and that is what we are doing." Councilmember Price asked, "Are we voting on the table separately?" Mayor Wood stated, "We are voting on that motion and staff is going to make sure the ordinance is consistent with that because I have different interpretations." For clarification, Mayor Wood asked Councilmember Price if she seconded that part of the motion. Councilmember Price replied, "I'm concerned that leaves open a totally new Table 22." Mayor Wood clarified that Table 22 would be made consistent with what her motion was, if this is approved. Councilmember Diamond noted that this is the first reading. Councilmember Price stated, "Somebody else could second it then." Mayor Wood called for a second. None was heard. Mayor Wood noted that Councilmember Diamond's motion died for a lack of a second. Mayor Wood stated to Councilmember Diamond, "You could either revise your motion and make a new motion, or I can hear a motion from someone else." Councilmember Diamond responded, "I am not sure what would get a second. I am not sure what I am missing." Councilmember Diamond stated, "My motion was: Up to three sides of the building can have signs. Each sign is based on the size of the linear footage of the frontage of the building to the street. For instance, fifty (50) square feet on the front means fifty (50) square feet of sign on each of three sides of the building, with a maximum of one-hundred and twenty-eight (128) square feet, per side, of the building, per wall." Councilmember Dippolito seconded. Mayor Wood clarified that Councilmember Dippolito seconded.

Councilmember Orlans for clarification purposes, stated the sizes of the sign on the side of the building are not proportional to that side of the building. They are proportional to the front of the building. Mayor Wood stated there would need to be a definition as to which is the frontage of the building because some may be on two arterials. Mayor Wood said perhaps they would get their choice, but it should be clearly defined.

Councilmember Igleheart stated, "Thank you for highlighting the fact that this so confusing that no one is going to know what the end result is." He said he was not concerned about the bigger buildings that are further back. His concern is with the buildings that are like the one which brought this up. This will bring about a substantial amount of new signage throughout that in a lot of places is not justified.

Councilmember Price asked Planning and Zoning Director Brad Townsend to state if he saw inconsistencies in Table 22, which could be based on this motion. Mr. Townsend replied no, and assured Council he would look into them if any are found.

No further discussion.

A motion was made by Council Member Diamond, seconded by Council Member Dippolito, that this Item be Approved on First Reading and placed on the Mayor and City Council agenda for 3/12/2012. Council Member Diamond's motion stated: Up to three (3) sides of the building can have signs. Each sign is based on the size of the linear footage of the frontage of the building to the street. For instance, fifty (50) square feet on the front means fifty (50) square feet of sign on each of three sides of the building, with a maximum of one-hundred twenty-eight (128) square feet per side of the building, per wall.

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

The motion carried by the following vote:

In Favor: 5

Opposed: 1

8. **Approval of a text amendment to Chapter 10 of the City of Roswell Code of Ordinances to License and Regulate Mobile Food Vendors in the City of Roswell. (First Reading)**
Presented by Bradford D. Townsend, Planning & Zoning Director

Planning and Zoning Director Brad Townsend stated staff had been requested to put together regulations controlling mobile food vendors. The draft ordinance, includes definitions, licensing requirements, prohibited conduct, indemnity, revocation, and suspension. He said prior wording requiring fingerprinting and investigation by the Police Department was removed as requested by Council; other changes that were requested dealing with emitting sounds, and being able to sell non-alcoholic beverages are included. Staff recommended including a change regarding the times that sales be allowed which was originally between sunset and 6:00am. He said staff has added the language "an approved city" to Letter K on page 3 that allows mobile food vendors to cater special events with no time limitations in conjunction with such things as the filming industry doing night shootings and in need of on-site food access. This item now reads, "unless such sale is in conjunction with an approved city special event."

City Attorney David Davidson conducted the first reading of AN ORDINANCE TO AMEND CHAPTER 10 OF THE CITY OF ROSWELL CODE OF ORDINANCES REGARDING LICENSING AND REGULATION OF MOBILE FOOD VENDORS stating: pursuant to their authority, the Mayor and City Council adopt the following ordinance:

1.

Chapter 10 Licenses, Taxes & Business Regulations, of the Roswell Code of Ordinances is hereby amended by adding Section 10.15 Mobile Food Vendors, to read as follows:

10.15.1 - Definitions.

A. Commissary shall mean an approved catering establishment, restaurant, or other approved place in which food, containers or supplies are kept, handled, prepared, packaged or stored.

B. Mobile Food Vendor shall mean a retail food establishment that reports to and operates from a commissary and is readily moveable, is a motorized wheeled vehicle, or a towed wheeled vehicle designed and equipped to serve food.

C. Pushcart shall mean a non-self-propelled vehicle limited to serving commissary prepared or prepackaged food and non-potentially hazardous food, unless the equipment is commercially designed and approved to handle food preparation and service. Pushcarts shall not be required to comply with mobile vehicular safety requirements.

D. Temporary food establishment shall mean a retail food establishment, other than a licensed mobile food vendor or pushcart, that is not intended to be permanent and that operates at a fixed location for a period of time of not more than 14 consecutive days in conjunction with a single event or celebration.

10.15.2 - License required.

A. It shall be unlawful for any person to sell, or offer for sale, food of any type from a

commissary, mobile retail food establishment, pushcart or temporary food establishment without a license first having been granted under this section, except for city sponsored events.

B. An application for a license or a permit hereunder shall be submitted to the Zoning Director or his or her designee setting forth all information required hereunder and in compliance with this ordinance. The Zoning Director or his or her designee may develop a form of application for the purpose of compliance with this article.

C. The following information shall be provided with each application for a mobile food vendor permit:

- 1. Name of the Mobile Food Vendor*
- 2. Make, model, and license plate number of vending unit*
- 3. Owner's contact information*
- 4. Operator's contact information*
- 5. Type of vendor (street vending unit or sidewalk vending unit)*
- 6. Copy of approved permit from the Fulton County Health Department*
- 7. List of operating locations and times*
- 8. Signatures from property owners indicating consent for the use of their property*

- 9. Signature indicating agreement to the listed requirements*

10.15.3 - Prohibited conduct and requirements.

A. The mobile food vendor shall not conduct business or operate under this article on the public right-of-way.

B. The mobile food vendor shall not operate on any private property without the prior consent of the owners.

C. The mobile food vendor shall maintain a \$1,000,000.00 liability policy. Proof of current liability insurance, issued by an insurance company licensed to do business in the state, protecting the licensee, the public and the city from all claims for damage to property and bodily injury, including death, which may arise from operation under or in connection with the permit. Such insurance shall name the city as an additional insured and shall provide that the policy shall not terminate or be canceled prior to the expiration dated without 30 days' advanced written notice to the city.

D. The mobile food vendor shall not emit sounds, outcry, speaker, amplifier or announcements while traveling on the public rights-of-way or when stationary.

E. The mobile food vendor shall maintain all state licenses and follow all laws of the state and county health departments.

F. The license under which a mobile food vendor is operating must be firmly attached and visible on the mobile food vendor or pushcart at all times.

G. In addition, the Roswell Police Department may refuse to issue any permit to any applicant whose record shows one or more convictions for an alcohol related offense within the previous 12-month period or a drug related offense within the previous 36-month period or a pattern of convictions for traffic violations.

H. The business use must be a use that is otherwise allowed within the zoning district in which the vendor proposes to operate.

I. Mobile food vendors shall be located a minimum of 200 feet from the main entrance to any eating establishment or similar food service business unless just eating establishment grants written permission for the mobile food vendor to be located closer than 200 feet.

J. Mobile food vendors shall not be located within 15 feet of any street intersection or pedestrian crosswalk or 10 feet of any driveway.

K. No sale or offer for sale shall be made by any licensee between sunset and 6:30 a.m unless such sale is in conjunction with a special event permit.

L. Vending structures shall not be left unattended or stored at any time on the open vending site when vending is not taking place or during restricted hours of operation.

M. No sale or offer for sale of ice cream, frozen milk, frozen dairy or ice confection products shall be made from a mobile food vendor unless each side of the vehicle is marked, in letters and numbers at least three inches in height, with the name and

address of the mobile food vendor licensee.

N. The mobile food vendor shall comply with all state, federal and local health and safety regulations and requirements and shall obtain and maintain any and all licenses required by any other health, organization or governmental organization having jurisdiction over this subject matter.

O. The following safety regulations shall apply to any and all vehicles operating under this article or used for mobile retail food establishments:

1. Every vehicle shall be equipped with a reverse gear signal alarm with a sound distinguishable from the surrounding noise level.
2. Every vehicle shall be equipped with two rear-vision mirrors, one at each side, firmly attached to the outside of the motor vehicle, and so located as to reflect to the driver a view of the highway to the rear, along both sides of the vehicle.

P. The mobile food vendor shall sell food and non-alcoholic beverage items only.

10.15.4 - Indemnity.

As part of the permitting process set forth herein, any person or entity receiving a permit set forth herein shall execute an indemnity agreement indemnifying and releasing the City of Roswell, its agents, employees and elected officials from any and all liability against any and all claims, actions and suits of any type whatsoever.

10.15.5 - Revocation and suspension.

The city shall have the right to revoke or suspend any license granted hereunder.

10.15.6 - Fee.

The fee for every application for license under this section shall be set by resolution.

Mr. Davidson noted that if approved, this would be the first reading.

A motion was made by Council Member Diamond, seconded by Council Member Wynn, that this Item be Approved on First Reading and placed on the Mayor and City Council agenda for 2/27/2012. The motion carried by the following vote:

In Favor: 6

Enactment No: ORD 12-0001

Recreation and Parks Department - Councilmember Jerry Orlans

10.

Approval for the Mayor and/or City Administrator to sign a contract with Thurgood Construction for the construction of the Adult Recreation Center (ARC) Phase I addition in the amount of \$475,100.

Presented by Joe Glover, Director of Recreation and Parks and Historic and Cultural Affairs

Approval for the Mayor and/or City Administrator to sign a contract with Thurgood Construction for the construction of the Adult Recreation Center (ARC) Phase I addition in the amount of \$475,100.

Administrator of Park Services Jeff Pruitt stated this is a request for approval of the contract for Thurgood Construction. He said they have worked with the Finance Department and their Purchasing division to solicit bids for the Phase I addition of the ARC. He said originally seventeen (17) vendors submitted pre-qualification papers and nine (9) were selected by Committee. Those nine (9) were given an opportunity to submit their RFP, prices came in within budget. Staff recommends approving the contract for \$475,100; those funds are currently available in the CDBG 2011 grant.

Council Discussion:

Councilmember Price asked what the \$475,100 will provide, how many square feet, and if any of the walls abut the current building. Mr. Pruitt replied he did not have the square footage with him at this meeting. Mayor Wood asked for the approximate dimensions. Mr. Pruitt said it is the width of the existing outside brick patio area and is the same one-level structure. It expands the fitness center. Mayor Wood asked if this would be filling in the patio area for the fitness center. Mr. Pruitt replied that was correct; they would remove the outside wall of the existing fitness center and open it up. Councilmember Price asked if it was basically a shell, a "\$475,100 shell." Mr. Pruitt replied that was correct but that it includes all of the HVAC and flooring equipment which must be redone. Mayor Wood noted that it was competitively bid. The Mayor asked how many bids were received. Mr. Pruitt replied nine (9) were received. Mayor Wood asked if this was the low bidder. Mr. Pruitt replied yes.

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

In Favor: 6

City Attorney's Report

11. **Approval of an Amendment to Chapter 22, Traffic and Motor Vehicles of the City of Roswell Code of Ordinances to Allow the Operation of Pedicabs within the City Limits of Roswell. (First Reading)**

11. Approval of an Amendment to Chapter 22, Traffic and Motor Vehicles of the City of Roswell Code of Ordinances to Allow the Operation of Pedicabs within the City Limits of Roswell. (First Reading)

City Attorney David Davidson conducted the first reading of an ORDINANCE TO AMEND THE CITY OF ROSWELL CODE OF ORDINANCES TO ALLOW THE OPERATION OF PEDICABS WITHIN THE CITY LIMITS OF ROSWELL stating: pursuant to their authority, the Mayor and City Council adopt the following ordinance:

1.

The City of Roswell Code of Ordinances is hereby amended by adding the following article to Chapter 22, Traffic and Motor Vehicles:

Article 22.8 Pedicabs

Section 22.8.1 Definitions. For the purpose of this article, the following definitions shall apply, unless the context clearly indicates or requires a different meaning:

Authorized route – the city streets upon which a pedicab is allowed to operate, as established by resolution of Mayor & Council and maintained by the director of Community Development or his or her designee.

City – the City of Roswell, Georgia.

Driver – any person who drives or operates a pedicab on city streets for a pedicab company.

Driver's license – that license issued by the State of Georgia pursuant to O.C.G.A. § 40-5-20 permitting an individual to operate a motor vehicle in the State of Georgia.

Operator – the holder of a permit to operate a pedicab business pursuant to this article, whether a person, partnership, corporation or other legal entity.

Pedicab – any non-motorized or motor-assisted vehicle with 3 or more wheels operated by one person for transporting passengers in seats or on a platform made a part of the vehicle.

Section 22.8.2 Pedicabs restricted to authorized route. Pedicabs may only be operated or driven along a route, or in an area, authorized by Mayor & Council by resolution. A map of such authorized route or area shall be maintained by the Director of Community Development or his or her designee and shall be made available to all applicants for a pedicab operator's permit. Mayor & Council may change the authorized route by resolution at any time.

Section 22.8.3 Pedicab permit required annually. No person, partnership, corporation or other legal entity shall engage in the business of operating a pedicab within the city without first obtaining an annual pedicab operator's permit. The fee for such permit shall be established by Mayor & Council by resolution. A pedicab permit may be issued to an operator that does not maintain a fixed place of business within the city. Pedicab permits shall be issued by the Director of Community Development or by his or her designee.

Section 22.8.4 Requirements To Obtain Pedicab Operator's Permit. In order to receive a pedicab operator's permit, an applicant must:

- (1) Be at least 21 years of age;*
- (2) Be a citizen of the United States or an alien admitted for permanent residence or a person who has otherwise been granted employment by the United States Immigration and Naturalization Service;*
- (3) Provide proof of insurance as required by this article;*
- (4) Provide the name of a person associated with the applicant's business to receive correspondence or complaints regarding the pedicab operation, and a permanent address and phone number for the pedicab business; and*
- (5) Pay the fee required for a pedicab operator's permit.*

Section 22.8.5 Required Insurance. No pedicab operator shall operate or authorize any other person to operate a pedicab in the city unless it is covered by a liability insurance policy issued by an insurance company authorized to do business in Georgia, which provides the following minimum coverage:

- \$25,000.00 - for injury to or death of one (1) person in one (1) accident;*
- \$50,000.00 - for injury to or death of two (2) or more persons in any one (1) accident;*
- and*
- \$25,000.00 - for injury to or destruction of property of others in any one (1) accident.*

Each pedicab operated within the city shall be required to carry and maintain in effect this minimum insurance coverage. Proof of such insurance coverage, including the name of the issuing company, the amounts of coverage provided, and the policy number shall be provided to the city before a permit shall issue. Such insurance shall provide specific coverage for the pedicab used in the business of transporting passengers. Failure to maintain such coverage shall constitute cause for revocation of a city permit.

Section 22.8.6 Requirements for pedicab. Each pedicab must:

- (1) be no more than 120 inches in length or 55 inches in width;*
- (2) be equipped with reflectors and electrically powered lights, including turn signals;*
- (3) use electrically powered lights when operating during the hours of darkness and when raining;*

- (4) have lights and reflectors mounted so that they are visible from a distance of 500 feet in any direction;
- (5) have the name of the pedicab operator displayed on each side of the pedicab;
- (6) be equipped with a brake that will enable the driver to make the braked wheels skid on dry, level pavement; and
- (7) be maintained in a safe mechanical condition and a clean and sanitary condition.

Section 22.8.7 Prohibitions. A pedicab operator or driver may not operate or drive a pedicab:

- (1) on any street with a posted speed limit of 35 miles per hour or greater, except for the purpose of crossing that street;
- (2) for the purpose of advertising, as with a "billboard bike," or with advertising for any person or entity who is not the pedicab operator;
- (3) to obstruct the flow of pedestrian traffic by remaining stopped on a sidewalk, except for the time necessary to pick up or drop off passengers;
- (4) without having rates displayed in clear view of all passengers, nor may a driver collect fares, make change, or allow passengers to board or exit the pedicab while it is in motion;
- (5) carry more passengers than the rated seating capacity of the pedicab. For the purpose of this subsection, a child under age five shall not count as a passenger; or
- (6) solely for transportation of cargo.

Section 22.8.8 Requirements for pedicab driver. Each driver of a pedicab operated within the city must be at least 16 years of age and possess a valid driver's license issued by the State of Georgia.

Section 22.8.9 Pedicabs must obey rules of road for bicycles. Pedicabs shall be subject to traffic laws governing bicycles as provided by O.C.G.A. § 40-6-291. Violations of traffic laws shall be punishable as allowed by state law or city ordinance.

Section 22.8.10 Violation of ordinance may result in revocation of pedicab permit. The Director of Community Development, or his or her designee, may revoke a pedicab permit for any violation of any city ordinance or state law. In order to revoke a pedicab permit, the city must send written notice of the revocation to the person and address listed in the permit application by certified mail, return receipt requested, or by statutory overnight delivery. Such notice shall specify the violation by date and ordinance or state law section. Revocation shall become effective no sooner than fifteen (15) days after the date such notice is sent to the pedicab operator or his or her designee. Before the effective date of the revocation, a pedicab operator may file an appeal in writing with the Director of Community Development. Such appeal will be heard by Mayor & Council at a regularly scheduled council meeting not later than forty five (45) days after such appeal is filed. The standard of review for Mayor & Council will be the "any evidence" standard.

Mr. Davidson noted that if approved, this would be the first reading.

Mayor Wood asked Mr. Davidson to describe the area where pedicabs would be allowed if this ordinance were passed. Mr. Davidson said it covers parts of the historic district; some included streets are Canton, Mimosa, Bullock and Oxbo. A map is available.

A motion was made by Council Member Wynn, seconded by Council Member Price, that this Item be Approved on First Reading and placed on the Mayor and City Council agenda for 2/27/2012. The motion carried by the following vote:

In Favor: 6

Enactment No:

12. **Recommendation for closure to discuss acquisition of real estate, personnel and litigation.**

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

In Favor: 6

Adjournment

After no further business, the Mayor and Council meeting adjourned at 9:58 p.m. Mayor and Council reconvened for a work session to discuss the North Fulton Tourism Report.