



Meeting Minutes
Mayor and City Council Special Called

Monday, June 29, 2009

7:00 PM

Council Chambers

WELCOME

Present: 7 - Mayor Jere Wood, Council Member Rich Dippolito, Council Member Lori Henry, Council Member Kent Igleheart, Council Member Becky Wynn, Council Member Jerry Orlans, and Council Member David Tolleson

Staff Present: City Administrator Kay Love; Assistant City Attorney Robert Hulsey; Community Development Director Kathleen Field; Deputy Director of Community Development Clyde Stricklin; Planning & Zoning Director Brad Townsend; City Planner Jackie Deibel; Director of Transportation Steve Acenbrak; Transportation Deputy Director David Low; Transportation Construction and Maintenance Manager Neo Chua; Police Chief Ed Williams; Fire Chief Ricky Spencer; Environmental/Public Works Director Stuart Moring; Recreation, Parks, Historic and Cultural Affairs Director Joe Glover; Economic Development Manager Bill Keir; Strategic Planning and Budgeting Director Mike Erwin; Financial Services Supervisor Rahael Turner; Community Information Coordinator Kimberly Johnson; Administrative Assistant Chris Ward; Building Operations Technician Doug Heieren; and Deputy City Clerk Betsy Branch.

Consent Agenda

1. **Approval of March 30, 2009 Open Forum Meeting Minutes (detailed minutes to replace Council Brief Minutes adopted on April 13, 2009) and approval of June 15, 2009 Council Brief Minutes.** *Administration*
Approved
2. **Approval for the Mayor and/or City Administrator to sign Maintenance Agreements with the Georgia Department of Transportation (GDOT) associated with the Midtown Streetscape project.** *Transportation*
Approved

Approval of the Consent Agenda

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

In Favor: 6

Regular Agenda

Community Development - Councilman Rich Dippolito

1. **Approval for the adoption of the Short Term Work Program and CIE Update to the Comprehensive Plan.**

Presented by Brad Townsend, Planning and Zoning Director

*1. Approval of a Resolution to Submit the 2009 Annual CIE Update to the Comprehensive Plan. Presented by Brad Townsend, Planning and Zoning Director
Planning and Zoning Director Brad Townsend explained that any municipality which accepts or collects impact fees is required by state law to conduct an annual update of the Capital Improvement Element of their Comprehensive Plan. This annual update has been to Committee. It was reviewed by the Planning Commission and recommended for approval on June 16, 2009. Staff recommended the transmittal of this document to the Department of Community Affairs (DCA) for their review.*

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

In Favor: 6

2. **Initiation of a Text Amendment regarding the Expanded Use of Business Banners.**

Presented by Brad Townsend, Planning and Zoning Director

*2. Initiation of a Text Amendment regarding the Expanded Use of Business Banners. Presented by Brad Townsend, Planning and Zoning Director
Planning and Zoning Director Brad Townsend stated this item is in conjunction with the "Find It All in Roswell" campaign. During Committee discussions, staff was directed to initiate a text amendment to the sign code which would allow a business an additional 40 days of advertising per year if the "Find It All in Roswell" logo is used as part of the promotion. This text amendment will go through the normal process once it initiated. Staff recommends approval.*

Council comment:

Councilman Dippolito noted the creation of a "Find It All in Roswell" logo and asked about the program's banner size and the placement of the logo onto those banners. Mr. Townsend stated it was recommended that the maximum logo area should utilize approximately ten to fifteen percent of the overall banner; it will be criteria for permits issued to businesses requesting use of the logo.

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

In Favor: 6

Transportation - Councilwoman Becky Wynn

3. **Approval for the Mayor and/or City Administrator to sign a change order with Baldwin Paving Company for the Crabapple Road at Chaffin Road Intersection Improvement Project in an amount not to exceed \$50,000.**

Presented by Steve Acenbrak, Director

3. Approval for the Mayor and/or City Administrator to sign a change order with Baldwin Paving Company for the Crabapple Road at Chaffin Road Intersection Improvement Project in an amount not to exceed \$50,000. Presented by Steve Acenbrak, Director

Transportation Director Steve Acenbrak stated this request for a change order relates to the "potential" problem that the line item for asphalt leveling may exceed the current funding authorization for this project. The requested change order amount, not to exceed \$50,000, is an administrative allowance to cover potential overages during construction. Mr. Acenbrak displayed an aerial view of the project noting the flat topography of the project area and a graphic of the project area, including the proposed improvement. He explained that converting the road from existing to proposed, requires milling of the road to create the elevation and the asphalt leveling or filling. Mr. Acenbrak stated that after completion of the survey and plans, the designer came up with an estimate of quantities for the line items asphalt leveling and filling. The city procured the project; a contractor was brought on board with a surveyor. There is debate, at this point regarding the amount of leveling it will take to build this project. City staff believes that if the contractor builds this according to plans, there may be a slight increase in the amount of milling and the amount of leveling but this cannot be determined until the curb line is set and the actual construction is done. In anticipation that this project may run over budget, Mr. Acenbrak stated he was asking for permission to expand this line item allowance. He stated that he and Neo Chua, the city's Transportation Construction and Maintenance Manager, feel strongly that the need will be "significantly less than \$50,000, or even zero."

Council comment:

Councilman Orlans asked why the amount was requested at this time, why not wait until it is filled and there is an exact cost amount. City Administrator Kay Love explained it was her decision to place this request on the agenda, preferring to alert the Council and determine if there was a propensity for the city to proceed in this matter since it appears it may exceed the current funding authorization. She noted that due to timing and the significant increase, she did not want to get into a situation of not having authorization to proceed.

Councilman Tolleson asked if the entire amount of the city's portion, including this amended portion, is available under impact fees. Mr. Acenbrak stated that was correct.

Councilman Dippolito asked if it was correct that the project was bid out. Mr. Acenbrak replied yes. Councilman Dippolito asked if this was change from the original design. Mr. Acenbrak replied no; expectations are that they will "hold fast to the original design." Councilman Dippolito asked why a change would not be the contractor's responsibility by contract. Mr. Acenbrak explained that this project was bid out under the unit cost method with line items and a schedule of values for each. Mr. Acenbrak stated the contractor has lowered the unit prices from approximately \$80 per ton to approximately \$60 per ton. He confirmed this is unit cost versus lump sum and that trip tickets will be turned in from the actual trucks to provide a definitive cost.

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

In Favor: 6

Public Safety - Councilwoman Lori Henry

4. **Approval of Budget Amendment 3800-06-29-09 to amend the fiscal year 2009 E911 Fund expenditure budget by \$65,000.**

Presented by Ed Williams, Police Chief

4. Approval of Budget Amendment 3800-06-29-09 to amend the fiscal year 2009 E911 Fund expenditure budget by \$65,000. Presented by Ed Williams, Police Chief Police Chief Ed Williams stated this is a year-end accounting measure requesting the use of reserves to cover the cost of higher than expected expenses and to balance the budget of this line item. Chief Williams noted that the existing operating budget could not cover this amount. No public comment. No further discussion. The motion passed unanimously.

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

In Favor: 6

City Attorney's Report

5. **Consideration of Mayor's Veto.**

5. Consideration of Mayor's Veto.

Assistant City Attorney Robert Hulsey stated this is a consideration of the Mayor's veto entered on May 14, 2009. He explained that Council has carried this item over to each Mayor and Council meeting since May 14th, in the hopes that the applicant and the neighborhood would come to an agreement regarding a new site plan.

Planning and Zoning Director Brad Townsend stated the applicant had submitted an amendment to the approved application, requesting that the property previously rezoned to R-3A be rezoned to R-2. A revised site plan was submitted which staff has reviewed and analyzed. Mr. Townsend noted that if directed by Council, this revised site plan will go through the public hearing process and return to Mayor and Council for final action.

Mr. Hulsey explained that Crossville Hardscrabble, LLC had made a settlement offer on a lawsuit that was brought by them on June 12, 2009 regarding the Mayor's veto, there is pending litigation; the applicant's submitted revised site plan has been provided to Council for their consideration; the vetoed item had been automatically placed on the agenda of each Council meeting since the veto. Mr. Hulsey said "Council must override a veto within sixty days, therefore, Council has to take some action regarding the veto by July 13th or the veto automatically stands." He continued stating that the original site plan submitted on May 11, 2009 and originally approved by Council that night, and then vetoed by the Mayor on May 14, 2009, would have rezoned part of the site from E-2 to R-3A and allowed construction of 31 townhouses; the remainder of the site was governed by the Parkway Village Overlay

District regulations. The revised site plan submitted to the city dated June 23, 2009, changes the proposed R-3A zoning to a proposed R-2 zoning to allow construction of fourteen (14) single family homes; the remainder of the site plan remains proposed Parkway Village Overlay, as submitted on May 11, 2009. Mr. Hulsey stated that after the veto, Mayor and Council encouraged everyone involved, (i.e. applicant, Brookfield Subdivision, and other neighbors) to try to agree on a site plan which was acceptable to both; staff's understanding is that the revised site plan is a result of those efforts by everyone. Mr. Hulsey emphasized that Mayor and Council had not agreed yet to any settlement. Mr. Hulsey stated that if his understanding was correct, and offered that the applicant could confirm if he was correct, his recommendation would be for Council take this item to closure for consideration in the normal manner. Mr. Hulsey further stated that if Mayor and Council agree that this is a good settlement proposal and recommend that the city go forward with it, staff would then begin the process. If Mayor and Council authorize the Legal department to proceed with the settlement in the zoning case then the following procedure is used: 1. The City will advertise the process as it does with any application for rezoning. He noted that in an abundance of caution and as an accommodation to Crossville Hardscrabble, LLC, staff has begun the advertising necessary in order to bring this item forward as quickly as possible; this application has been pending since December 2, 2008. 2. There will be a Special Called Meeting of the Planning Commission on July 9, 2009 to consider the revised site plan with its intended conditions and requests for variance. 3. The application will be brought before Mayor and Council at their July 13, 2009 meeting for a public hearing. Only after that hearing and if Mayor and Council approve the revised site plan and the proposed R-2 rezoning with the Parkway Village Overlay for the remainder of the site, will the proposed settlement become effective. Mr. Hulsey stated that as part of the negotiations between the applicant and the Brookfield Country Club Homeowner's Association, Crossville-Hardscrabble, LLC, and Brookfield Country Club Homeowner's Association have reached a private agreement on issues, as set out in a June 26, 2009 letter from Brookfield to Mayor and Council. Mr. Hulsey said "While the Mayor and Council can recognize this agreement, and have it reflected in the minutes of its meetings, the city has no power to enforce certain provisions of that agreement. Legal has made that clear to both the applicant and to the Brookfield Country Club Homeowner's Association."

Mayor Wood called for any questions. None were heard.

Mayor Wood called upon Planning and Zoning Director Brad Townsend to discuss the Standards of Review. The Mayor noted that his veto was based upon Mr. Townsend's recommendation for denial of this zoning. The Standards of Review document, which included the R3-A rezoning, was projected overhead and on Council computer screens for reference. Mayor Wood read the following items from the Standards of Review:

1. Whether or not the proposal will permit a use that is suitable in view of the use and development of adjacent and nearby property? (O.C.G.A. § 36-67-3(1))

Mayor Wood asked what Mr. Townsend's response had been to the adjacent single family homes. Mr. Townsend replied "I felt that the R-3A townhome would be in conflict with the existing homes in the area to the east and to the north."

2. Whether or not the proposal will adversely affect the existing use or usability of adjacent or nearby property (O.C.G.A. 36-67-3(2))

Mayor Wood asked Mr. Townsend if he believed that the townhouses would have adversely affected the adjacent single family homes. Mr. Townsend replied he did.

3. Whether the property to be affected by the proposal has a reasonable economic use as currently zoned (O.C.G.A. 36-67-3(3)).

Mayor Wood asked Mr. Townsend if he believed it had a reasonable economic use as currently zoned. Mr. Townsend replied he did.

Mayor Wood asked for Mr. Townsends' opinion in regard to the policy intent of the Comprehensive Plan. Mr. Townsend replied "The R3-A was inconsistent with the existing Comprehensive Plan designation for the property."

Mayor Wood asked for Mr. Townsends' opinion as to whether or not the 6.8 acres zoned as E-2 Single Family designation, could be developed as currently zoned. Mr. Townsend replied "I believe it could have, yes."

13. Suitability of the subject property under the existing zoning district and/or overlay district classification for the proposed use.

Mayor Wood asked for Mr. Townsends' opinion regarding suitability of the property for the townhouse zoning. Mr. Townsend replied "I felt it could be used as E-2, currently designated." Mayor Wood stated there was no need to rezone it. Mr. Townsend replied "Correct."

17. The possible creation of an isolated zoning district unrelated to adjacent and nearby districts.

Mayor Wood asked for Mr. Townsend's opinion regarding an isolated zoning district. Mr. Townsend replied "This would have been the only R3-A zoned designated property within the area."

18. Possible effects of a change in zoning or overlay district map, or change in use, on the character of a zoning district or overlay district.

Mayor Wood asked what conclusion Mr. Townsend came to regarding possible effects of a change in zoning or overlay district map with the character of the zoning district. Mr. Townsend replied "I felt it would change the dynamic of Hardscrabble as it would from its existing single family designation to a multi-family use, used in the R3-A townhomes."

22. The consideration of the preservation of the integrity of residential neighborhoods shall be considered to carry great weight. In those instances in which property fronts on a major thoroughfare and also adjoins an established residential neighborhood, the factor of preservation of the residential area shall be considered to carry great weight.

Mayor Wood asked Mr. Townsend if he had an opinion about the preservation of the integrity of the residential neighborhood of single family homes across the street. Mr. Townsend replied "Yes, I felt it needed to be maintained in a single family manner."

Mayor Wood reiterated that his decision to exercise the veto was based on these Standards of Review recommendations. The Mayor called for comments.

Assistant City Attorney Robert Hulsey stated "Given the fact that we have a request for us to consider a settlement proposal, I would recommend to Council that they defer any action on the veto pending their decision in closure regarding the settlement." Mr. Hulsey confirmed for the Mayor that Council must make the decision on the veto by July 13, 2009.

Mayor Wood inquired if Council wished to make a motion to defer. No motion was made. Mayor Wood asked Mr. Hulsey if a motion to defer was necessary or would the lack of a motion handle it. Mr. Hulsey replied that either way would have the same effect. Mayor Wood asked again if any Council member wished to make a motion to defer, a motion to override the veto, or if Council felt the need to take a position or make a comment. No comments were made. Mr. Hulsey stated "I would

recommend Council make a motion to have closure to consider litigation."

This matter was Presented

6.

Recommendation for closure to discuss litigation.

6. Recommendation for closure to discuss litigation.

Councilman Dippolito expressed his appreciation to the "members of the Brookfield Country Club and members of CORO for all their hard work over the last, almost, sixty days." Councilman Dippolito expressed appreciation to Michael Gould for his outstanding efforts representing his community. Councilman Dippolito also thanked Paul Ludwig and John Lundeen from CORO. Councilman Dippolito said "I think the end results here, hopefully we achieve, will be something that will be good not just for Brookfield Country Club but good for the city overall."

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

In Favor: 6

Adjournment - The Special Called meeting adjourned at 7:28 p.m. for the Open Forum Meeting; after the Open Forum meeting, Mayor and Council reconvened for closure to discuss litigation.