



# City of Roswell

38 Hill Street  
Roswell, Georgia 30075

## Meeting Minutes Mayor and City Council

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

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Monday, September 13, 2010

7:00 PM

City Hall

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### WELCOME

**Present:** 6 - Mayor Jere Wood, Council Member Nancy Diamond, Council Member Rich Dippolito, Council Member Kent Igleheart, Council Member Betty Price, and Council Member Becky Wynn

**Absent:** 1 - Council Member Jerry Orlans

### **Pledge of Allegiance - Shelitha Robertson and Jayden Rutledge**

*Mayor Wood permitted local candidates running in the November 2, 2010 General Election to briefly address the public and Council.*

*Shelitha Robertson, candidate for Fulton County Superior Court Judge, provided her background, career experience, and reasons for running for this office.*

*Lori Henry, candidate for Fulton County Commissioner, District 2, provided her background, career experience, and reasons for running for this office. Ms. Henry is a previous Roswell Councilmember.*

*Steve Broadbent, a resident of Johns Creek and candidate for Chairman of the Fulton County Board of Commissioners, provided his career experience and background and why he is running for this office.*

*Kelly Lee, candidate for Fulton County Superior Court Judge, was recognized by the Mayor; he noted that Ms. Lee had previously addressed the public during a Roswell Council meeting.*

*Jayden Rutledge, an elementary student, was recognized by Mayor Wood; he noted that Ms. Rutledge had interviewed him before the Council meeting and was extremely interested in the Mayor's duties and responsibilities for the City.*

*Staff Present: City Administrator Kay Love; Deputy City Administrator Michael Fischer; City Attorney David Davidson; Community Development Director Alice Wakefield; Planning & Zoning Director Brad Townsend; City Planner Jackie Deibel; Transportation Deputy Director David Low; Transportation Traffic Engineer Muhammad Rauf; Environmental/Public Works Deputy Director Yvonne Douglas; Community Relations Coordinator Kimberly Johnson; and Deputy City Clerk Betsy*

*Branch.*

## **CONSENT AGENDA**

1. **Approval of August 9, 2010 Council Meeting Minutes (detailed Minutes to replace Council Brief Minutes adopted on August 23, 2010); approval of August 23, 2010 Council Meeting Minutes; approval of August 30, 2010 Open Forum Meeting Minutes; and approval of August 30, 2010 Special Called Council Brief Minutes.**  
*Administration and Finance*  
Approved
  
2. **Approval to accept the donation of right-of-way and two easements needed from PMC Properties, LLC and Calvin L. Rohda & Gina A. Carellas, and approval for the Mayor and/or City Administrator to sign a contract with Artlantic Inc./PE Structures in the amount of \$54,736.47 for the Warsaw Sidewalk Connectivity Project.**  
*Transportation*  
Approved

### **Approval of the Consent Agenda**

*Motion: Councilmember Wynn moved to Approve the Consent Agenda. Councilmember Igleheart seconded. The motion passed unanimously.*

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

**In Favor: 5**

## REGULAR AGENDA

### Mayor's Report

1. **Reading of a Proclamation for Constitution Week.**

*Mayor Wood read a proclamation designating September 17th through September 24th as Constitution Week, in observance of the two hundred and twenty-third anniversary of the signing of the Constitution of the United States of America. The Daughters of the American Revolution, Martha Stewart Bulloch Chapter was recognized.*

**Mayor Wood read the proclamation designating September 17th through September 24th as Constitution Week. The Martha Stewart Bulloch Chapter of the Daughters of the American Revolution was recognized.**

2. **Reading of a Proclamation for Family Day.**

*Mayor Wood read the proclamation designating September 27th as Family Day. Family Day is a national event meant to encourage families to eat dinner together and to emphasize the correlation between parental influence and the reduced risk for teen substance abuse, as indicated by surveys conducted by The National Center on Addiction and Substance Abuse at Columbia University. Joanne Rooks, local Roswell business owner was recognized.*

**Mayor Wood read the proclamation designating September 27th as Family Day. Joanne Rook was recognized.**

3. **Reading of a Proclamation for Rivers Alive.**

*Mayor Wood read the proclamation recognizing Rivers Alive 2010. The mission is to create awareness of and involvement in the preservation of Georgia's water resources. Keep Roswell Beautiful, in partnership with the City of Roswell, the City of Alpharetta, and the Chattahoochee Nature Center, will present a river and street cleanup on Saturday, September 25, 2010. Scott Hitch from the Keep Roswell Beautiful organization, explained the Rivers Alive clean up is the second largest in the state of Georgia, and a great family event. Mayor Wood encouraged everyone to come out and enjoy the Keep Roswell Beautiful activities.*

**Mayor Wood read the proclamation recognizing Rivers Alive 2010. The mission is to create awareness of and involvement in the preservation of Georgia's water resources. Keep Roswell Beautiful, in partnership with the City of Roswell, the City of Alpharetta, and the Chattahoochee Nature Center, will present a river and street cleanup on Saturday, September 25, 2010. Scott Hitch of Keep Roswell Beautiful was recognized.**

4. **Approval of a Resolution regarding "One Penny Sales Tax" to fund Regional Transportation System.**

*Mayor Wood explained that this resolution has been brought forward unanimously by all the mayors of Fulton County, with the possible exception of Atlanta Mayor Kasim Reed. The resolution is for the support of the one penny transportation tax, but opposed to a tax which would be inequitable. Mayor Wood stated "Fulton County and DeKalb County are already paying one penny for transportation, MARTA. The*

other counties are saying 'lets put another penny on the agenda to go for regional transportation.' We are fine with one penny, but everybody should participate in MARTA and unless we bring MARTA into that one penny provision, we are not going to support two pennies."

City Attorney David Davidson conducted a reading of the RESOLUTION OF THE CITY OF ROSWELL REGARDING "ONE PENNY SALES TAX" TO FUND REGIONAL TRANSPORTATION SYSTEM stating: Now therefore, be it resolved, that the Mayor and City Council of Roswell support a one cent sales tax to fund regional transportation improvements provided neighboring metropolitan Atlanta counties join Fulton and DeKalb Counties in forming a regional transit system, or in the alternative, the legislature requires them to join Fulton and DeKalb Counties to form and fund a regional transit system.

Mayor Wood noted that last month, on August 9, 2010, a similar resolution had been brought to Council for their consideration but they did not have sufficient time to thoroughly review it; he expected tonight there could be several questions from Council. The Mayor noted that Councilmember Price today had suggested an amendment to the Council.

Councilmember Price stated the resolve portion of the proposed resolution seems to indicate Mayor and City Council support for a sales tax but the voters will decide by a referendum; her concern was that the proposed resolution might be "ambiguous, that we were pushing people in that direction." The essential element is a regional solution to the problems.

Councilmember Price read an alternative Resolve portion from the resolution she proposed, stating: "NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Council of the City of Roswell, Georgia, are prepared to support a regional public transportation funding mechanism that takes into fair consideration the over 30 years of sales tax investment from Fulton and DeKalb counties that have been made to build and maintain MARTA, and call upon the Transit Governance Study Commission and the Regional Transit Committee of the ARC to move expeditiously toward the creation of a regional transportation authority which would provide governance for the transit systems across the region prior to presenting a referendum for a transportation sales tax to the citizens, and FURTHERMORE, that we will work cooperatively with the regional roundtable to help develop a robust project list that impacts our citizens' commutes as they travel across the region, and FURTHERMORE, that the Mayor and City Council of the City of Roswell, Georgia, direct the city manager to forward this resolution to the members of the Transit Governance Study Committee, the Georgia Department of Transportation, and the Atlanta Regional Commission."

Mayor Wood stated the referendum as proposed by the North Fulton mayors takes a position of support for the one penny sales tax. Mayor Wood asked Councilmember Price if she was saying the city should either abstain from taking a position, take a position, or some other course of action. Councilmember Price replied she was simply saying a regional solution is needed; we don't have the answer in that it is going to be in hands of the voters; the referendum would happen by law. City Attorney David Davidson explained the city cannot try to influence an election one way or the other; it can support what the legislature is trying to do, but cannot try to influence the referendum one way or the other. Mayor Wood asked Mr. Davidson if in his opinion, either of these resolutions would be appropriate. Mr. Davidson replied Councilmember Price's resolution supporting the public transportation funding mechanism was appropriate and could be incorporated by Mayor Wood into his resolution, if he chose to do so. Mayor Wood asked if the Mayor and City Council are

*prohibited by state law from supporting a one cent sales tax to fund regional transportation. Mr. Davidson replied "The Mayor and Council cannot try to influence a vote for the referendum." Mayor Wood asked "Could we pass a resolution in support of a one penny sales tax?" Mr. Davidson replied "As long as it is not trying to influence the referendum." Mayor Wood said he would withdraw his resolution but not his position. Mayor Wood clarified "I am very much in support of a one penny regional transportation sales tax provided that we don't have to pay two pennies and provided everybody participates in the regional system. I am going to continue to maintain that position, but I am withdrawing my resolution."*

*Councilmember Igleheart suggested a deferral until the Council Committee meeting on Tuesday, September 14, 2010, to allow more time for discussion. Councilmember Wynn supported a deferral until the September 14, 2010 committee meeting for more time to study the issue. Mayor Wood replied that would be appropriate; he noted the mayors of North Fulton County would be holding a press conference the morning of Wednesday, September 15th, when they would be taking a position consistent with the resolution he had proposed for the City of Roswell, in favor of the sales tax and opposed to the one penny.*

*Mayor Wood reiterated this resolution by the North Fulton mayors was originally brought forward to Council on August 9, 2010; it included some editing changes; he appreciated Council's wish to have more time to study and discuss this issue which affects everyone in Fulton County. Mayor Wood invited public comment. No public comments were made.*

**The resolution supporting a one cent sales tax to fund regional transportation improvements was read. Councilmember Betty Price proposed an additional resolution as a basis for discussion. Councilmember Kent Igleheart suggested discussion be deferred until the next Mayor and Council Committee meeting; Councilmember Becky Wynn supported deferral. Mayor Wood clarified this resolution would be deferred until the Tuesday, September 14, 2010 Mayor and Council Committee Meeting, to allow Council more time to study the issue affecting everyone in Fulton County.**

### **Community Development - Councilmember Betty Price**

5. **RZ10-05, CV10-01 & CU10-03, 2925 Holcomb Bridge Rd.,  
Land Lots 825, 832, Ramco-Gershenson, Inc.  
Presented by Bradford D. Townsend, Planning and Zoning  
Director**

*Councilmember Price introduced this item. Planning and Zoning Director Brad Townsend presented the rezoning application. The subject property is located on the south side of Holcomb Bridge Road between Steeplechase Drive and Nesbit Ferry Road with zoning designation of O-P (Office Professional). The applicant's request is to rezone 3.53 acres to C-3 (Highway Commercial District) with conditional uses to allow for day care; the remaining 6.18 acres will remain zoned O-P and kept in perpetuity as a conservation area. Mr. Townsend provided background history. The subject property was part of the 1999 Roswell East annexation. At that time, the subject property was zoned AG-1 (Agriculture) and contained the Holcomb Woods Baptist Church. In 2003, Mayor and Council created a new zoning classification, Fulton County Annexed (FCA); this new zoning classification was added to the subject property when it was annexed. In 2003, an application by the Holcomb Woods Baptist Church and Peter DeBenedictis was submitted to rezone the property from FCA to C-3 to build a convenience store, gas stations, a restaurant, and three*

two-story office buildings. On May 3, 2004, Mayor and Council approved an amended plan, rezoning the subject property from FCA to O-P District with eight (8) conditions. In 2004, a law suit was filed. On April 13, 2005, a settlement was agreed upon that included eight (8) office buildings totaling 48,000 square feet, a bank totaling 6,000 square feet, and a conservation area totaling 3.1 acres. The settlement agreement is the approved plan on the subject property; it is still in effect. Mr. Townsend used a map to identify the area where the applicant has requested amending the zoning. The Holcomb Bridge Center is across the street and north of the subject property; the Horseshoe Bend Subdivision is located to the south; Pike Nursery is to the east; a storage facility is to the west. An aerial photograph was shown; a zoning map of the area was viewed. The proposed site plan reviewed included the proposed car wash; proposed dry cleaner adjacent to Holcomb Bridge Road; proposed day care center adjacent to a detention pond; and the approximate 6.18 acres conservation area with stream and stream buffer indications on the rear of the property. Mr. Townsend stated staff recommended denial of the application as it was inconsistent with the existing Comprehensive Plan designation of office use for the subject property, and inconsistent with the settlement agreement approved by a "prior" Mayor and Council. The Planning Commission reviewed the application and recommended denial at their August 17, 2010 public hearing for "similar reasons."

Mr. Townsend at the Mayor's request, provided the settlement approved site plan and identified Holcomb Bridge Road; the proposed bank totaling 6,000 square feet; 8 office buildings with parking surrounding the office buildings; the stream; and 3.1 acres of conservation area. Mr. Townsend stated the site plan drawing "superimposes the approved office buildings on top of what they are proposing tonight."

Councilmember Dippolito inquired whether the proposed office buildings height can be multi-story or if they will be single-story and their location. Mr. Townsend stated the total square footage of the office buildings is 48,000 square feet. He pointed out that the site plan only includes three buildings; all are single-story, based on the calculated square footages. Councilmember Dippolito asked if it was correct that those three buildings would have to be single-story; the other four may not be, but the number would have to be reduced, and add the square footage. Mr. Townsend replied that was correct.

Councilmember Dippolito inquired how the conservation easement would continue into perpetuity. City Attorney David Davidson explained that by state law, the conservation easement would remain in perpetuity as long as it is stated in the easement itself. In response to Councilmember Dippolito's question regarding who would own the easement, Mr. Davidson stated ownership would depend on who the easement was given to; "if it was given to the city, the city would have the easement but the developer would still have ownership of the property." Mr. Davidson confirmed for Councilmember Dippolito that the owner would maintain the easement; the city would have no obligations or liabilities for taking the conservation easement.

Councilmember Price inquired about GDOT's recommendations related to this proposal. City of Roswell Traffic Engineer Muhammad Rauf stated GDOT has approved the permit for a traffic signal at this location. Mr. Rauf noted there are two issues: 1. Inadequate spacing with the adjacent traffic signals towards the east at Nesbitt Ferry Road, and west at East Steeple Chase Drive; 2. Traffic signal warrant analysis was based on the approved site plan which showed lane striping as for an exclusive left turn lane and a shared through right turn lane. Mr. Rauf stated that would not be the city's normal lane assignment; it would be preferable to have an exclusive right turn lane and a shared through and a left turn lane. That would reduce the impact on the main street since the right turn traffic would go through after

*yielding to the red light and the through traffic, before making the turn. Mr. Rauf stated "We requested GDOT to make the change in the lane assignments. They did not agree with it. We requested the traffic study be re-done based on these new land assignments, and that was not submitted, either."*

*Councilmember Price inquired how the traffic impact study analysis compares to the current zoning to the proposed zoning. Mr. Rauf replied he did not agree with the contents of the traffic study. His professional opinion was that due to inadequate spacing it is not advisable to place a traffic signal in between the two already existing signals. Mr. Rauf said his understanding, from talking to the city's attorneys, is that based on the settlement agreement the city is not to oppose the traffic signal. Mr. Rauf noted that he provided his professional opinion so that an informed decision could be made. Mayor Wood inquired if this traffic signal serves the development across the street. Mr. Rauf replied that it serves both the development to the north and to the south. Mayor Wood asked if Council's decision tonight will have any impact on whether that traffic signal goes in. Mr. Rauf replied that would actually be a question for Planning and Zoning Director Brad Townsend, but he did not think it would make a difference. Mayor Wood clarified the traffic light will be placed there anyway, regardless of the decision by Council tonight. Mr. Rauf replied that was his understanding. Mayor Wood stated the two long term possibilities for this property are that it will probably be developed as an office park or it may be developed as proposed tonight; those seem to be the two alternatives this Council is facing. Mayor Wood asked if there is an opinion as to what the two alternatives mean as far as the traffic on Holcomb Bridge Road. Mr. Rauf replied that when the traffic warrant analysis was previously done, with the old site plan, it met the warrants; there was a grocery store in the north development and it met the warrants at that time. Mr. Rauf further stated that with current development, traffic is much lower and so in his opinion, it would not meet the traffic warrants at this time; traffic was "higher" before. Mayor Wood stated that it is understood that Georgia DOT will allow it to go in, regardless of these warrant studies. He asked whether the congestion is expected to be worse under one plan or the other, as far as traffic on Holcomb Bridge Road in this location, or is it going to be the same; what is the possible difference between these two plans. Mr. Rauf replied that he expects the congestion to be worse with either of the two developments if a signal goes in; if there is no signal, other options could be used such as access from Steeplechase Road. Mr. Rauf confirmed the traffic would get worse with the traffic signal in between the two. Mayor Wood asked if the traffic signal or this development the cause of the problem. Mr. Rauf replied that the amount of traffic which already exists on Holcomb Bridge Road would cause the problem; the development traffic is little, compared to the traffic which currently exists on Holcomb Bridge Road and is a lot of traffic to be stopped at one more location in the middle of two more signals. Mr. Rauf confirmed that his concern has to do with the traffic light which the city has no control over. Mr. Rauf confirmed that he did not anticipate any significant difference, as far as traffic, in the office development on six acres versus the day care, car wash development on three acres, although with the office complex the traffic would be distributed in the peak hours but with the day care and car wash it could be distributed throughout the day. Mr. Rauf stated "With the office complex, impact on peak hours will be greater."*

*Councilmember Price inquired about quantitative analysis regarding fiscal impact on the project. City Administrator Kay Love explained the quantitative analysis results are based upon square footage of feasibility analysis that the city uses to look at additional services in an incremental value compared to those costs for each, either the proposed development or the settlement development, compared to the revenues from impact fees, ad valorem taxes, and property taxes collected on the parcel. There is an incremental difference in the first year; there is a substantial difference because of the amount of impact fees; over the life to 2031, there is approximately*

*\$40,000 less impact on the settlement development as compared to the proposed development. Ms. Love clarified that taking a "microscope look" at this parcel only, and considering the amount of services that would be required to service this parcel under the proposed development versus the settlement development (the office development is the settlement development), there is about a \$40,000 difference net impact in the difference between the anticipated revenues and the anticipated expenditures or costs to deliver services and the difference in the type of businesses that may be there; for instance, a retail business may require a higher level or more intense level of public safety services. Ms. Love noted this is a model used as a tool of comparison. Mayor Wood asked which would cost the city more to service over that thirty year period of time. Ms. Love stated that under this analysis, the proposed development would cost the city more to service over that time period; revenues were considered; it showed an approximate \$40,000 net difference.*

*Councilmember Dippolito noted a discrepancy between the stream buffer approved under the plan several years ago during the settlement, and the current stream buffer and inquired how it would impact the settlement plan, what can be built there versus what was agreed to. City Attorney David Davidson replied that at the time of the settlement, the developer was entitled to vested development rights if he expends a certain amount of money on the property. Mr. Davidson's legal opinion was that the developer would be entitled to develop what is on the approved plan, which at the time was the settlement plan. Councilmember Dippolito clarified that the proposed development site plan now shows a stream underneath one of the buildings and inquired how that building will be built considering state water laws. Mr. Davidson stated the developer will be required to meet the state buffers; the building will probably not be constructed. Councilmember Dippolito noted that the office building shown on the site plan as located over state waters probably could not get built but that building's square footage could potentially be moved somewhere else; one of the other footprints could become a multiple-story building but "not in the three to the left," as shown on the site plan. Mr. Davidson stated that is one of the "gray areas" in that they have an approved site plan that might require rezoning to move the square footage of that building, because it was subject to the site plan. Mr. Davidson confirmed for Councilmember Dippolito that if the developer was inclined to move the building, a re-zoning would be triggered; they also would have an argument that the city would be taking property from them, by it being redefined from where the stream was before, to where it is now. Councilmember Dippolito responded that is a state's definition, not the city. Mr. Davidson replied "It depends on who makes the determination and that would be us." Councilmember Dippolito replied he was trying to establish what is actually buildable under the current scenario versus the proposed scenario. He further stated "I understand there are significant grades which may impact all that but the stream buffer is pretty important in the whole discussion." Mr. Davidson agreed and stated the developer would have to adhere to the requirement of twenty-five (25) feet from state waters for that building. Planning and Zoning Director Brad Townsend pointed out that stream buffer requirement on the site plan. Councilmember Dippolito asked whether most of the buildings would be okay, just this one building is questionable. Mr. Davidson replied that was correct, unless the developer requested and received a stream buffer variance; he further stated that he did not think the developer would build on top of the stream head.*

*Councilmember Price asked if a noise analysis had been completed. Planning and Zoning Director Brad Townsend replied staff had not received any analysis related to noise associated with this proposed plan although there were discussions at the Planning Commission public hearing related to the car wash blowers. Representation provided to the Planning Commission indicated the car wash blowers are interior of the building. Mr. Townsend noted that he could not recall the specific number, but the applicant had provided a decibel level at the Planning Commission*



meeting. Councilmember Price asked if any suggestion had been made regarding decibel levels at any residential area. Mr. Townsend replied no.

*Applicant:*

*Don Rolader, Rolader & Shippel, Attorneys at Law, 11660 Alpharetta Highway, Suite 630, represented Ramco-Gershenson, Inc., the applicant. Mr. Rolader noted the project engineers were in attendance to address any concerns created by this re-zoning application. He said there has been an evolution of the plan based on resident feed back. The intent tonight is to provide Mayor and Council the facts regarding this application so that their decision could be based upon these facts.*

*Mr. Rolader stated that an intensive amount of time has been spent with the home owners most affected, those in The Glens. He explained that two points stand out: Under this application, the buffer has doubled from 3.1 acres to 6.2 acres; and, the large majority of the affected homeowners in The Glens are in support of this application. The subject property lies between a storage facility, zoned commercial and a Pikes Nursery, zoned commercial. A shopping center lies across the street which includes TJ's restaurant. Heading east, Holcomb Bridge Road has a substantial active commercial node including MacDonald's, Auto Zone, Kroger, and others. The request is to zone the front 3.5 acres of the subject property to C-3 for the following three uses: Mr. Clean Car Wash, Tide Cleaners, and a child development center. The property was zoned O-P in 2005 (all events transpired since 2005 were reviewed earlier in the meeting by Planning and Zoning Director Brad Townsend). Mr. Rolader noted that since the lawsuit settlement the property has been continuously offered for sale as O-P with a commercial and office property broker who is a Horseshoe Bend resident. Mr. Rolader referring to the newest survey results the company Jones Lang LaSalle, who generates office numbers for the Atlanta market, stated "There is about a 20.9% vacancy rate; there is a continuing loss of square footage of office; 69,673 feet of negative absorption in the second quarter; and the sub-market's losses year to date of more than 141,000 square feet." Mr. Rolader stated the applicant believes strongly that he is entitled to develop the plan approved in 2005 by court order, and is the correct zoning of this property presently. He noted that the state stream buffers have changed but their engineer studied the subject property with the new stream buffer in effect and informed them of the net impact. Mr. Rolader noted those buildings on the site plan which would be lost because of the stream, including a building which would be nicked. He said "It is about a two (2) percent change over the old stream buffer, it is a minimal impact, and does not affect the ability of the developer to build the perpendicular crossing of the green area and continue the road where it was, and develop those office buildings as they are." Mr. Rolader explained that the applicant wants to develop the front 3.5 acres to work in conjunction with everything around it, as commercial. If the front 3.5 acres are developed with C-3 zoning, 20,006 square feet would be developed. He noted the applicant is presently approved for 54,000 square feet of space; if the one building is "nicked out" because of the stream buffer, there is still about 50,000 square feet of developable space; the applicant wants to drop that to 20,000 square feet and have C-3 zoning. Mr. Rolader stated the applicant's proposal is to leave the entire remainder of the property zoned O-P, create a conservation easement acceptable to the city, and put that 6.2 acres in a permanent buffer and a protective space for the benefit of the homeowners in The Glens, who are those residents closest to the subject property. Mr. Rolader stated, that as related to green space and impact, the applicant would be dropping more than fifty percent in square footage and increasing the buffer size twice. Under the old site plan, property lines in Horseshoe Bend were from 145 feet away on the north to 292 feet away on the south; under the new plan, those distances are increased to between 401 feet on the north and 658 feet to the south. The applicant requested a sound impact analysis when the sound issue arose. Mr. Rolader stated their engineer's findings were "With*

that much distance between the operating facilities and the property lines in The Glens and Horseshoe Bend, the projected decibel level is about fifty (50) decibels, about the same noise as a quiet street; normal conversation is about 60 decibels. This does not factor in the amount of green growth in that 600 feet nor the ambient road noise from Holcomb Bridge Road which generates almost 49,000 trips per day. The net answer on the sound analysis is: at the property line there is no impact." Mr. Rolader explained the proposed uses for this development include a new upscale cleaning and car washing venture by Proctor and Gamble. He provided pictures to show "the standard appearance of cleaners built these days" and the appearance of a Mr. Clean Car Wash, as well as the proposed two story structure day care center. He stated there will be no environmental impact from the day care center. The applicant has requested a variance to allow a total of 8,000 square feet of playground space; the state requirement is 6,000 square feet. Mr. Rolader said "Right now the request here from the city's standard, is over 20,000 square feet. What that would do is encroach into the area that we have created as a buffer and a conservation easement for these impacted homeowners. The owner/operator of the day care center has committed to allowing no more than 40 children on the playground at any one time; their total number of children is limited to 180 children. I believe the staff has no objection to that variance request." The Mr. Clean Car Wash recycles eighty (80) percent of the water; it consumes approximately twenty (20) gallons of water per car; zero soaps and chemicals are released into the water ways. The Tide Cleaners uses a silicone based product and not the dry cleaning solvent PERC (Perchloroethylene). He noted that the State of California's review of the silicone based product says there is no environmental impact. Mr. Rolader reviewed the applicant's traffic study and suggested that Council look at the peak hour yields; the overall traffic impact of this proposed project is less than the impact that would be generated by the office park presently approved. He noted that the owner of the property has a commitment from the Mr. Clean company, the CEO was in attendance; a commitment from Tide Cleaners, their principle engineer was in attendance; and a commitment from Children of America, Inc. Mr. Rolader further stated "There is no speculation here, if you approve this project, as fast as the law permits, they would seek land disturbance permits and building permits for these uses. None of this would sit vacant." He noted that Ramco-Gershenson, the developer and owner of the subject property is also the owner of the shopping center across the street. Mr. Rolader said his project team went door to door in Horseshoe Bend to distribute information to the affected homeowners because they did not have a complete email list or other means.

Sean Corcoran, Mr. Clean franchisee and partner with Mark Norato, noted they both spent four weekends walking around the Horseshoe Bend neighborhood to inform the most affected residents about the facts of this project, address their concerns, and to receive their input. Information boards were shown illustrating the existing approved plan and the application plan.

Mark Norato, Mr. Clean franchisee and partner with Mr. Corcoran, stated this is their first foray into investing their money to start a business; this is a business they are proud of and the homeowners could be proud of. Mr. Norato stated they chose the Mr. Clean concept "not because it was the least expensive, it is probably the most expensive concept to develop." He noted personal visits with the residents most affected proved to be beneficial in that they were able to receive much information from those residents and to correct misinformation stated about the project. They visited with residents of The Glen whose property lines abut the back of this project and also with the residents directly across the street. They held discussions with 25 of 28 residents of The Glens; 24 expressed no problems or objections to the project; one looked upon the project unfavorably. They visited with the next most affected residents and had conversations with 40 of those 52 residents; 36 had no objections

to the project; 4 looked upon it unfavorably. Mr. Norato noted that overall, 90 to 96 percent of those individuals presented the same project facts that Mayor and Council received for this project had no objection and were in support after hearing the facts. These individuals wanted to be heard; in addition, they have also signed a petition. Mr. Norato stated "It was a little inaccurate and disingenuous of us to just come in with a petition with signatures on it because, I would suggest to you, that it is not a function of how many signatures did you get but how many people said 'no' in the process. Everyone that said 'no' did not sign our petition. We kept track of those individuals so that we could present to you the facts." Mr. Norato noted that some of those individuals were in attendance.

Sean Corcoran stated there had been some confusion at one time, regarding the lists; signatures were called into question as to whether they were listed in opposition or in favor, and so an attempt was made to reaffirm the list. In The Glens, they were able to receive 18 reaffirmed signatures from the 22 most affected residents. A few residents were not home, so there is "a slight mystery out there on a few within The Glens."

Mr. Corcoran noted that in Brentwood, the next most affected section of Horseshoe Bend, they spoke with 83 of 143 homeowners about the project; 75 were either in favor or had no opposition; 5 were opposed.

Mr. Norato noted that individuals opposed to the project preferred that the property remain undeveloped. A graphic was shown which indicated those Horseshoe Bend residents opposed, in favor, and those reaffirmed.

Mr. Rolader briefly addressed three remaining "side matters" included in their application for consideration in order for the zoning application to be approved: 1. Reduction in the amount of day care center play space. 2. Cross access easement with the Pikes Nursery site, in order to enable the traffic service to the red light, they would need to take the side setback from five (5) feet to zero (0) feet. He thought Pikes had no objection; it also makes good sense from a traffic pattern to get the cross access easement and alleviate the problems directly on the road. 3. Conditional use permit, in order to permit the car wash.

Mr. Rolader stated the applicant accepts, without objection, all proposed staff conditions which address contributions for traffic improvement, the way the conservation easement will be created, and a number of staff concerns which they have had the foresight to cover.

Mr. Rolader stated if the application is approved, the result will be a reduction in density, increased permanent buffers, protected in perpetuity, traffic improved by the signalized intersection and the cross access easement, no environmental concerns, no sound issue. He noted the most affected neighbors are protected and are generally supportive.

**Council questions:**

Councilmember Wynn noted the picture of the building's facade was dark and not easily viewed. She asked if the building is a module pre-fabricated building. Mr. Rolader replied that was correct. Councilmember Wynn stated she appreciated Mr. Rolader providing the percentage of office vacancies in the city, which he stated is at 20.9%. She asked if he could provide the percentage of commercial vacancies in the city. Mr. Rolader replied he could not, at this time, but thought perhaps the applicant's broker could provide that information when he addresses Council.

Mr. Townsend confirmed for Mayor Wood that this project will go before the Design

*Review Board. Mayor Wood inquired if Council was making a decision regarding the facade and the elevations tonight. Mr. Townsend replied no.*

*Councilmember Diamond stated "It looks like in the settlement, the 3.1 acres was set to be in a conservation easement already, has that happened?" Mr. Townsend replied that it has not. Mr. Rolader added that the property has not been developed.*

*Councilmember Dippolito asked for the actual square footage of the day care building, noting the plan Council was given showed a proposed day care of "plus or minus 10,000 square feet." Mr. Rolader replied it is 10,000 square feet. Councilmember Dippolito asked for the rationale for the reduction in the play area for the children. He said "I realize that is greater than the state standard. It is something that Roswell is proud of and something we like to have for our children. Is there a reason with this large buffer that we can't have room for our kids to play?" Mr. Rolader responded the square footage on the staff report assumes that all of the children are out on the playground at once; if the owner commits to only allowing forty (40) children at a time then that would be a different matter; the state requirement is 6,000 square feet and the applicant has offered 8,000 square feet. Mr. Rolader further stated he thought the developer did not have any strong objection to adding additional play area if that is for the benefit of the children, it just would encroach into the buffer area which was being provided to the residents of Horseshoe Bend. He reiterated that if it would be more important to have that much more play area for the children and reduce the buffer by that amount, it would not be a major issue for the developer. Councilmember Dippolito asked for further explanation regarding the additional variance requested regarding the landscaping and that need. Mr. Rolader replied that the first variance request was for size of the playground; secondly, the side setback between the subject property and Pike's Nursery. Mr. Rolader added "Under the ordinances it should be five (5) feet; if we are going to do the cross access and the driveway to the red light then that needs to go away and that's the reason for that request. It only impacts the nursery." Councilmember Dippolito stated "Actually, it is a reduction in the minimum landscape strip, is it not?" Mr. Rolader replied that was correct. Councilmember Dippolito stated he did not follow this explanation since Mr. Rolader stated "setback." Mr. Townsend stated "The clarification is between the parcel one and parcel two, The Tide Cleaners and the car wash." He indicated on the site plan where the landscaping would be reduced from the five foot requirement, between those two parcels, to zero; he indicated the location of the car wash and confirmed it is not between the car wash; that is being pushed over onto the Pike's Nursery property (the five foot with landscaping) to line up with the signal. Councilmember Dippolito asked if there is any reason to have a variance for a landscape strip for the property on both sides. Mr. Townsend replied "If they are ever sold off and they are identified as separate parcels then one of them would become nonconforming without providing the landscaping." Councilmember Dippolito asked if it would be in their best interest to go ahead and provide that or have a variance granted. Mr. Townsend replied yes. Councilmember Dippolito stated he had noticed in the photographs a number of canopies, detail bays, vacuum enclosures, all of which had covers and are actual structures but items not included in determining the total square footage; this project totals 20,066 square feet; he asked about the overall square footage of ancillary structures that are in addition to the building's square footage. Mr. Rolader replied he would soon provide that figure after it had been calculated it for him. In response to Councilmember Wynn's earlier question, he stated the retail commercial vacancy rate is presently 12%, as calculated by the broker.*

*Councilmember Igleheart stated the Economic Development staff had reported to him that the retail commercial vacancy rate as of today is at 22%, for the area east of Georgia 400. He stated the same number in 2005, in terms of a quantifiable number*

is about 400,000 square feet; today, it is 531,000 square feet.

Bruce Arnett, CEO, Mr. Clean Car Wash, stated the answer to Councilmember Dippolito's question regarding the overall square footage of the canopies is "somewhere in the range of thirty-six to thirty-eight hundred square feet." Councilmember Dippolito stated if that is around thirty-six hundred to thirty-eight hundred square feet, then the total square footage is approximately 23,900 of structures; that is about ten to fifteen percent more than we are talking with just the building, and is significant because every structure on the site is important. Councilmember Dippolito noted that the currently approved development is 54,000 square feet of which approximately 8,700 square feet is not buildable; bringing it down to 45,300 square feet shows a significant difference; narrowed the gap. Mr. Rolader replied "If the additional office square footage couldn't be relocated on the site." Councilmember Dippolito replied "Right, which we have determined it would require rezoning, more than likely."

Councilmember Wynn requested a clarification regarding the vacancy percentage he quoted for office vacancy and retail commercial vacancy; she asked if the percentage figure included all of North Fulton County. Mr. Rolader replied that he thought the percentage he stated earlier was based on all of North Fulton County; he confirmed that he did not have the percentages for the area east of GA 400 or for entire area of the City of Roswell with him, at this time.

*Public comments:*

Michael Brennan, 8450 Riverbirch Drive stated he is president of the Horseshoe Bend Community Association; Horseshoe Bend is a subdivision of 1,275 homes located on the east side of Roswell. Mr. Brennan expressed the appreciation of the association for having been able to talk with several Council members regarding this proposed project, and to the developer for also meeting with Horseshoe Bend residents to present the proposed plans and receive their thoughts and opinions of the project. According to Mr. Brennan, developers of the Target Development and the Centennial Walk area took a similar approach which resulted in quality development. He commented that the Horseshoe Bend Community Association has appropriately withheld their judgment of the project, but noted that it is a large project with heavy impact on the community and the quality of life in their neighborhood. Mr. Brennan stated "We decided to survey our residents. Before we did that, we opened up our newsletter that is produced monthly. We asked the folks at Mr. Clean Car Wash and Tide Dry Cleaners, actually we asked their representative to give us as much information as they wanted. They sent us the best looking pictures, marketing materials. So, they did have a distribution channel for their message and that message did go out. It went out the beginning of this year." He stated the survey produced "a pretty short turnout" with approximately 110 folks who replied overwhelmingly negative; about two-thirds were opposed; the remaining one-third were indifferent or in favor of the development. Mr. Brennan further stated that the survey was taken "a long time ago" and there has been talk regarding "dramatic changes." The discussion is regarding a car wash, and now with an added dry cleaner and a day care center. After the Planning Commission meeting, Mr. Brennan stated, the community association decided to redouble their efforts by sending out an additional electronic survey on September 7, 2010, "after all plans had been presented and competing messages had gone back and forth." This survey resulted in 252 responses; 230 residents were opposed to the rezoning; 14 residents were in favor; 8 residents responded in a way that could not be calculated. Overall, 91.2% of the respondents oppose the rezoning; 5% in favor. Mr. Brennan stated "This actually accounts for 19% of our community association. I've been on the board for five years; president for the last three years. We have never had that many people show up to a meeting. We have never had that many people respond." Mr. Brennan noted

that he represented everyone in his neighborhood, those opposed and those in favor. He was interested in seeing this community and its residents protected. He stated "I don't have a problem with those people who are opposed or in favor of this development. I do have a problem with the situation of the choice that they are being forced to make. What they are essentially being told is 'We have been sitting on some property for a long period of time, we have gone to court, and we have settled on it and we now have a decision in place and that decision we would like to go ahead and change. We are going to hold this over everybody's head and going to put some condos right behind your house and ruin your wooded view,' that is not exactly the case." Mr. Brennan stated "The Design Review Board had some pretty serious things to say about it. The Planning Commission voted unanimously to reject the plans. Transportation has thrown out their study and has talked effectively tonight to the case. I would like to go on record as saying that the Community Association, Horseshoe Bend and its elected representatives are standing here tonight in opposition for the request for rezoning."

Mr. Brennan, at the Mayor's request, provided a copy of the emailed message and survey. Mayor read the survey question into the record: "Let us know your position. Place an 'X' after the statement of which you agree. I do not want to see a car wash abutting the Horseshoe Bend community. I approve of the project and would like to see the car wash built."

Jeff Herr, 8545 Edwardton Drive, stated he represents the Friends of The Glens organization; The Glens residents are most impacted by this development. Mr. Herr stated that he has 27 years experience as a professional environmental engineer and is a registered professional engineer in the state of Georgia. Mr. Herr reported that those who support the project include 8 of the 10 property owners which connect to the development, along the perimeter; one of the ten homeowners did want any involvement in the process this time, and one other homeowner could not be reached; 90% of the approximately 40 people who live in The Glens provided signatures of support. Mr. Herr further stated that outside of The Glens as the applicant had reported, approximately 90% of the people which they were able to reach were in favor. Mr. Herr noted that when they spoke with people who live in The Glens regarding the project they were against it until they showed them illustrations and explained the options. Mr. Herr said "I don't know that the 200 people who voted against this really understood both sides of the story." He stated the reasons that The Friends of The Glens support the rezoning are: Commercial land use is consistent with the surrounding commercial land use; the development will create jobs and revenue for the city, county, and state; the developer is proposing state of the art businesses which are esthetically attractive; the development is substantially less intensive than the approved office professional plan (24,000 square feet versus 48,000 square feet); only 3.5 acres of the property will be developed instead of 6.6 acres. Mr. Herr added "What is the most important thing to us as homeowners in The Glens, no development will occur within 400 feet of The Glens as compared to 60 feet. I know that one of the buildings in the office professional was 150 feet, but on that plan there is pavement; there will be cars within 60 feet of our lots." He continued with the reasons for support. Landscaping will go beyond what is required by Code. The Glens residents ask for an evergreen buffer along the edge of the development, between the wooded area and the development. There will be less traffic with the new development plan versus the office professional plan; people using the car wash and dry cleaners may be combining their trips; office professional will draw people from all over the community; there will no longer be an eyesore of a vacant piece of land along this area of Holcomb Bridge Road. Development will only occur along Holcomb Bridge Road where it should occur; 6.2 acres of currently wooded natural land will remain undisturbed by being placed in a permanent conservation easement. He stressed the importance of having the 6.2 acres for

conservation legally protected. Mr. Herr stated "It has been very difficult for us since our own homeowners association has been against us. We have not had the same resources and not able to reach very many people who live in Horseshoe Bend." Mr. Herr noted those opposed had made several arguments for their opposition. Referring to those items argued, he briefly stated there will be less traffic with the new development versus office professional; the sound level or noise at the closest property line in The Glens will be less than background sound level (this did not consider the dense tree cover); activities of dry cleaners and car washes are permitted and monitored by the City of Roswell, the Georgia Environmental Protection Division, and the US EPA; permits will be required to construct something; monitoring and inspections occur during construction; NPDS permits will be required with annual inspections and reports submitted to the permitting agencies; a resident would use more water to wash their car at home than will be used at car wash and the residential water will eventually reach waterways; these businesses will not create any pollution; the existing 3.1 acre buffer will remain even if this rezoning is denied, but potentially, there will be pavement within 60 feet of the homes and potentially one or two story office buildings within 150 feet; the rear 3.1 acres of the 6.6 acre office professional development cannot be built due to steep slopes; streams has been addressed with at least 48,000 square foot of buildings; 6.6 acres can be developed. Mr. Herr clarified that the only financial interest they have in this development is in the value of their home and that of their neighbors. He asked Council to ask themselves which they would prefer if they lived up against the subject property; woods and wildlife, or an office park.

Scott Hitch, 325 Watercress Drive, board member of the Horseshoe Bend Community Association, stated their organization has recently learned of some interested people who may be considering this site for an indoor recreational facility, which he thought was consistent with office professional, under certain conditions. Mr. Hitch stated this community association would actively support that development but it is far too early for concrete information regarding this opportunity spoken about at the Planning Commission, and regarding the option of moving the fire station further down Holcomb Bridge Road which is being demolished due to termites. Mr. Hitch stated there is significant commercial vacancy east of GA 400; the long term land use plan calls for this property to be office professional. The community association would like Council to stick with the long term plan; the developer could look at a number of other commercial zoned properties. Mr. Hitch noted Councilmember Dippolito's and City Attorney David Davidson's discussion in which Mr. Davidson stated he thought there might be vested rights, but they were not a "slam dunk." Mr. Hitch noted that as a land use and environmental lawyer himself, he would agree with City Attorney David Davidson. He pointed out seven buildings on the office plan that lie within either the state mandated twenty-five foot buffer or the additional buffers that are required under Roswell's ordinance, Article 21, either for no development or for no impervious surface; that would include the drive, the parking lots, and the seven buildings on the plan. He further stated that while the applicant might have vested right in the zoning for office professional, based on the site plan, he did not believe anywhere in the record did the applicant apply for or received a site development permit. Mr. Herr said "I would argue that the site development permit would be the vesting document that would vest the right to encroach in those mandated buffers. If this development were to be built, which I don't believe it would be because of the length of time that has passed since this plan was put into effect, they would still have to apply for and receive a site development permit; there could be other changes on that plan that would make that necessary." He went on to say that current law should apply; the city has the obligation as the local issuing authority under the state law on stream buffers, to abide by what the buffers would require, at this point. Mr. Hitch said "The only way they could get a variance is to show a necessary hardship; the front three acres are developable and for that reason, I don't

*believe they would be able to show the necessary hardship to get a variance from those stream buffers."*

*Andy McGerry, 8595 Haven Wood Trail, vice-president of the Horseshoe Bend Community Association, noted that he was a real estate expert and represented the entire neighborhood. He referred to an aerial photograph showing the intersection at the location of the subject property. Mr. McGerry noted the zoning at the east entrance into Horseshoe Bend was created by Fulton County and the residents have to live with it. At the back entrance to Horseshoe Bend there is a self storage facility. Mr. McGerry said "The U-Haul Self Storage is a commercial zoning with variance that allows yard storage. You can not find that unless you go to an industrial or an M-1 zoning category. Honey Baked Ham has turned into Paint the Town Faux, has variances, as well." He further stated there are a number of issues that have become the "eyesore" at the back entrance and not what the entire homeowners would like; these are not just commercial uses, but very unique special uses that are not homogeneous or in balance. Mr. McGerry noted the subject property is zoned O-P and that Mr. Rolader had discussed some interesting data. Mr. McGerry noted he belongs to several professional associations and is a member of the Appraisal Institute. He clarified that Jones Lang LaSalle does not survey professional office space like owner-user condo space. He said "If you look at the one O-P property that abuts Horseshoe Bend which is across from the new Target, it is a beautiful office professional property, owner used, and 90% occupied." Regarding, absorption, Mr. McGerry stated there is one space that just went vacant that has now been occupied by a physician. Mr. McGerry pointed out a residential area which would be in balance and what they would prefer abutting their neighborhood. He stated "There was no advocacy of us board members to try to come in and make a presentation tilted one way or the other. It has always been our opinion, with the O-P zoning and with the topography, the creeks and buffers that our property owners were well protected; protected in the fact that the topography and the environmental issues, would not be developable; that the back six acres would probably always be protected." He said a car wash is a special use property and not commercial. Mr. McGerry stated "The only financing you can get today is doctors, lawyers, engineers for office professional space. Condo space is very feasible. They talked about 'this is going to be the biggest and best' but there is a land cost. What is legally possible, what is physically possible, and what is financially feasible." He noted that a proper noise study would have included a level of day-night noise and not decibels. Mr. McGerry stated the majority of the Horseshoe Bend residents do not want this proposed project.*

*Paul Frederickson, 480 Wayt Road, stated he has been a resident of Horseshoe Bend for approximately 30 year. Mr. Frederickson stated he received the email survey and voted against the project "based on those words" and thought it would help protect the residents of The Glens who would be near the car wash. After he voted, he learned from a local newspaper article that the residents of The Glens were actually in favor of the project. Mr. Frederickson stated he wished that the Horseshoe Bend homeowners association had provided "the whole story" so that both sides were brought out, instead of "asking us whether or not we wanted to oppose a car wash next to Horseshoe Bend." Mr. Frederickson stated his purpose for addressing Council was for them to be aware of how the survey was worded as they consider its opposition responses. He confirmed for Mayor Wood that he would take no further stand at this time.*

*Paul Herschberg, 1020 Downing Street, Johns Creek, Georgia, stated he lived in Horseshoe Bend for fifteen years until approximately a year ago. Mr. Herschberg stated he owns both the 1.8 acre parcel of land across Steeplechase Road from the storage center and the Kids R Kids preschool facility on that property; his building is 10,000 square feet and is licensed for 277 children. He said "The number 180*



children, probably doesn't stack up. It should stack up more like 277." Mr. Herschberg stated there is traffic grid lock at that corner with parents coming to his facility during the hours of 7:00 to 8:00 a.m. and 3:30 to 5:30 p.m. Children are not picked up all through the day. He stated that "he would be surprised in this market that somebody would license for 180 kids and find it profitable." Mr. Herschberg stated this is a very difficult corner to negotiate with the volume of traffic there. Another business combination with a car wash, a dry cleaner, and day care at that location will create a lot of traffic, and another stop light will make it more difficult. He was concerned with "clogging his business with so many people coming through that area." Mr. Herschberg stated "My guess is if this plan fails tonight, another plan will come up that will also have lower density than the original plan. There would be a better plan as far as the number of cars traveling through that intersection." He thought that with a strip of office buildings people would be coming and going at various times of the day. Mr. Herschberg said the area is "probably over daycares and over preschools in the area." He noted that another facility opened behind Auto Zone which could be licensed for 100-150 kids and, The Goddard School opened two years ago and is licensed for approximately 160 kids.

Alan Wiles, 1007 Lake Pointe Circle, resident of Roswell for 22 years, stated there are too many car washes or at least enough of them, at this time; in addition, they use lots of water and are noisy.

Jennifer Phares, 8515 Edwardton Drive, resident of The Glens, located directly against the wooded area, stated her biggest concern is the 6.2 acres of conservation easement which the developer has promised to be a permanent conservation area in their backyards. Ms. Phares thought that two or three more commercial buildings on Holcomb Bridge Road would not make a big difference. In regards to the email survey asking whether or not the residents wanted a car wash, they all preferred having a park if there was a choice; the residents want to have wooded land and do not want to look at an office park and parking lots, and would support the car wash if it preserves the wooded land area. Ms. Phares added "I don't believe the people that are saying they don't want anymore commercial building out there when they are the ones out there using it and going to Waffle House. Everyone is excited about the Studio Movie Grill going in and everyone is in support of it." She noted that some residents opposed to the car wash have said they would support a restaurant which they could walk to from home. Ms. Phares stated she was also concerned that property values would drop if the wooded area behind their homes is developed; noise from Holcomb Bridge Road is not an issue because it is buffered by the wooded area.

Teresa Delonardo, 8530 Edwardton Drive, stated the majority of those opposed to the car wash do not live in The Glens and are not people who will have their home values affected. Ms. Delonardo responding to an earlier comment stated the area may be saturated with day care centers. She would like schools that have an academic program of value within walking distance.

Danielle Etzbach, 8270 Riverbirch Drive, stated she is extremely concerned about the traffic from Steeplechase Road onto Holcomb Bridge Road during peak rush hours and backups between Nesbit Ferry and Barnwell Road and also between Barnwell Road and the river. With the possible addition of a private K - 12 development school, there could be another 277 parents dropping off children at the same time, during peak hours. Ms. Etzbach stated there is a real concern that the area is oversaturated with commercial use. There are 5 day care centers within an eighth of a mile; 5 dry cleaners within an eighth of a mile; and 3 car washes within two miles; two more foreclosures recently occurred on her street in Horseshoe Bend. She asked why Council would want to approve facilities to be built that are predicated

on the number of nearby residents. Ms. Etzbach stated "there is just really no good justification for changing the variance."

Tom Carras, 300 Willow Wind Court, stated he had viewed a photograph of a Mr. Clean car wash and dislikes the appearance of the business. He asked that this land be used for something "a little more tasteful."

Charles Andrews, 8400 Edwardton Drive, stated he lives in The Glens and came to listen to both sides because both stress very strong arguments. Mr. Andrews encouraged Council to consider the process involved in the rezoning along with the recommendations made by staff and the Planning Commission. He noted that he had a different opinion regarding the project and did not care to share it.

Alex Qatsha, 795 Glen Royal Drive, stated he was opposed, but originally voted in favor of the rezoning after two individuals came to his residence representing themselves as Horseshoe Bend residents. He further stated that one is a resident but he was uncertain of the other; some information they provided was untrue and some was misleading. He stated both sides should stand on the merits of their argument. Mr. Qatsha stated he was told by Mr. Corcoran that "he needs 50,000 cars to go through that car wash a year" which made him wonder whether that is a break even or profit level need and would like more explanation of that, considering the size of the property, the number of cars per day necessary, noise, and pollution. Mr. Qatsha said he was told the decibel level from the blower would be about same as a conversation; that level, constantly, sixteen hours a day would be unacceptable.

Mayor Wood noted that Mr. Rolader would have an opportunity to rebut any comments that he believes are appropriate.

Rob Ballinger, 8555 Edwardton Drive, stated he supported the new proposal for a car wash. Mr. Ballinger pointed out that when looking at the number of people who do not support the project versus those who do support it, it should be noted that The Glens is a very small portion of the overall Horseshoe Bend community; 50,000 cars travel by the subject property on Holcomb Bridge Road everyday; a very small percentage of those cars would be required for the car wash to be successful according to the earlier statement.

Kim Harris Stevenson, Horseshoe Bend resident, stated the plan presented is much better than she expected, including the green space, but is opposed since there are enough car washes, dry cleaners, and day care centers in the area.

Paul Nagel, Horseshoe Bend resident and listing broker for the subject property, states "there is very little incentive right now in our submarket for office-condo development and there probably won't be for the next five years."

Terry Jaillet, 320 Brayward Chase, said "the entire support from anyone who lives where we are is based purely on the fact that there is 6 acres of protected land in the current proposal, and the threat of that only being 3 acres, and these properties being built only a short distance away from their house." He noted that no one has expressed a need for a car wash. His opinion was that if the primary use is something nobody wants and the "threat" being used to encourage people to support the project is not a significant likelihood because of the market, then the decision is pretty clear; it is being made to appear that the only two plausible uses for this piece of property are these two plans. Mayor Wood noted that the concern is for the long term.

Applicant rebuttal:

Mr. Rolader stated the portion of Holcomb Bridge Road where the subject property is located "is a committed commercial corridor and the present existence of this property zoned O-P is spot zoning." He said the public comments made indicate that is okay to have a movie theater, McDonalds restaurant, etc, but a car wash is not wanted. He reiterated that Holcomb Bridge Road is a committed commercial corridor. He agreed that both as office development and commercial development, the area has too many vacant spaces. Mr. Rolader stated approval of this rezoning would assure three new, environmentally sensitive full spaces and a six acre permanent nature preserve; half as much square footage as would be under the other plan which would be up front, beside the road. As for affecting the entrance esthetics, Mr. Rolader stated a Pike's Nursery and a storage center currently exist at Horseshoe Bend's entrance; he did not know that the proposed development would have any negative effect on their entrance. The plans shown at this meeting were shown to the 28 residents who are closest to the subject property and to the other 75 in Horseshoe Bend, information presented did not include the telling of any lies; four weekends were spent discussing the proposed plan with the residents. The development, if done as proposed, would protect the people closest to it; traffic figures from the applicant's study were provided; the other side did not provide any traffic figures; environmental concerns are not an issue with this newest product from Proctor and Gamble. A signalized intersection and a red-light and a cross easement would improve the traffic in this area. He noted that with the "re-birth" of the shopping center across the street, a traffic light is needed anyway. Neither the property owner nor the broker, have heard from anyone proposing an indoor recreational use for this property. There will be 180 students at the school facility, as opposed to 270 students as at Kids R Kids, in order to make sure there is enough room for each child and that they are properly taken care of; it will include an expanded program that also offers tutoring, it is not just a day care center. Mr. Rolader reiterated that the zoning is proper as this is a commercial corridor; the proposed project will include 6.2 acres of permanent wooded area instead of 3.1 acres. If Council should approve, he would ask that a condition be added that the land disturbance permit not be issued until such time as the conservation easement was signed and dedicated and approved by the Roswell City Attorney. Mr. Rolader stated this development is a good one; it has more buffer, less density, less traffic.

*Council questions:*

Councilmember Price requested clarification regarding the height of the proposed day care center; she had seen a discrepancy between one and two stories. Mr. Rolader stated that according to Mr. Townsend, it is one story.

Councilmember Wynn requested clarification regarding Mr. Herr's statement that "He would only have sixty feet from his house or from his property line to impervious." Mr. Herr replied it was his property line. Councilmember Wynn asked for the distance from his house to the impervious and clarification between what Mr. Rolader showed versus what Mr. Herr spoke about. Planning and Zoning Director Brad Townsend pointed out on the site plan the location of the office building, driveway, parking area, and back property line. Mr. Townsend stated "It is probably within fifty to sixty feet to the driveway or the parking spaces." He confirmed the location of Mr. Herr's residence and stated "It is probably another fifty feet to the actual back of his residence." Mayor Wood asked Mr. Townsend to discuss the distance with Mr. Herr. Mr. Townsend replied that Mr. Herr indicated his back deck is approximately ten feet from the property line; it is probably 75 to 100 feet, considering to the driveway, to the building, to the parking area.

Councilmember Dippolito asked if the buffer is an undisturbed buffer which cannot be graded or have trees removed. Mr. Townsend replied that was correct.

Councilmember Igleheart stated he want to confirm that when the Council rezones, it is to a site plan, but under this, Council is rezoning from O-P to C-3 with the specific uses as they are and the buildings where they are; if the businesses were to go out of business, those buildings will still be there and as long as whatever uses under C-3 can fit into those buildings, there would be the ability to do that. Mayor Wood clarified the question stating "Is this zoning conditioned to the uses or just conditioned to the site plan? Could the car wash be used for a drive through restaurant or would they be limited to a car wash use." City Attorney David Davidson replied "Unless the Council conditions it, they could use it for any of the uses allowed in C-3, the way it is proposed right now." Councilmember Igleheart stated "That was one of my concerns, longer term, as we have seen along this corridor; those uses could also come into play at some other point."

*Council comments:*

Councilmember Igleheart stated this is difficult since there are residents directly impacted in their back yards. He agreed with the last speaker's comments that it is not so much that these residents support this rezoning specifically, but the fact that it has a greater buffer to their property. He stated the subject property has been vacant for awhile and has office zoning, without much interest shown; that is probably true for many properties in the last few years or year and a half, so he was not sure how reasonable a justification that is for a rezoning. Fulton County provided the zoning in this area, it was "gifted" to Roswell and the reason for so much retail in that area. Council made the choice to keep Holcomb Bridge Road east of GA 400 free of commercial, south of the Holcomb Bridge, and has stuck to that decision but there is this one piece. Councilmember Igleheart stated it is not the city's responsibility to provide the applicant with a profit margin; when the applicant bought the property it was known what it was. He further stated that in his judgment "which could be incorrect, but what leaves the 3.1 acres is unlikely to be built and highly likely that there will be a greater buffer." If that is the case, those homeowners affected along that back property line may see ultimately the same thing but a different project. Councilmember Igleheart expressed his appreciation to the applicant for the work done going door to door to the residents to explain the project and address their concerns. Councilmember Igleheart stated Council has spoken about Roswell being "over retailled" for as long as he could remember, from 2000 up until today. He expressed his concern about this project moving forward, given the conditions all around.

Councilmember Dippolito thanked the homeowners on both sides of this issue for being part of the process and expressed appreciation to the developers for their efforts and energy trying to move the plan forward. He stated there were comments reiterated by many residents tonight regarding the preservation of their home values and the quality of life, which is what the issue is really about and how to best accomplish it. Councilmember Dippolito explained that it is important for Roswell to be business friendly but this issue is really more about home values and quality of life; there is a "pretty easy argument that six acres of conservation easement is extremely compelling" versus three acres of conservation easement. When it is really broken down for consideration, "what does that additional three acres get for you and incrementally, is it actually worth what you are giving up for what you are getting." Councilmember Dippolito said the city previously did a good job in working with the property owner to come up with a settlement that is a "pretty good plan that is fairly low impact on the community." The three acres is a great undisturbed buffer for Horseshoe Bend. He noted that Mr. Herr admitted that he is the most impacted, but he probably also has 75 to 100 feet undisturbed buffer before his property. Councilmember Dippolito stated what also is important about the way this property is situated is that where the nearest office building would be has a grade of 30 feet below Holcomb Bridge Road; even if the office building was built 10 feet higher than

that, he still is 15 feet below Mr. Herr's house, so how much would he really be impacted by this. Councilmember Dippolito said he thought the city had protected him previously by the plan that was settled; if this ever does get developed, particularly because it has been determined that these buildings will need to be smaller, Mr. Herr would still have that protection. Councilmember Dippolito noted the car wash and dry cleaner use will have cars coming in and out all day long; office use will have traffic at peak times but during the day it will be relatively quiet, and at night there will be no impact with noise to the neighborhoods; office use would be a better neighbor to the residences. Councilmember Dippolito reiterated Councilmember Igleheart's concern regarding C-3 use for long term since these are specialty use buildings with a limited number of uses that could go in there as opposed to office

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

**In Favor: 5**

**6.**

**RZ10-08 Text Amendment** regarding a revision to Chapter 10.39, Sidewalk Cafes

*Presented by Bradford D. Townsend, Planning and Zoning Director*

Councilmember Price introduced the item. Mr. Townsend stated this proposed text amendment is a revision to clarify the development standards, to increase the minimum clearance distance of three (3) feet to five (5) feet, and to include the requirement that barriers meet ADA requirements. On August 25, 2010, the Community Development & Transportation Committee recommended initiation of the text amendment. If initiation is approved, the text amendment will be processed through the Planning Commission and return to Mayor and Council for two readings. Staff recommends approval of the initiation.

*Motion: Councilmember Price moved for approval of RZ10-08 Initiation of a Text Amendment regarding a revision to Chapter 10.39, Sidewalk Cafes. Councilmember Wynn seconded. No further discussion. The motion passed unanimously.*

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

**In Favor: 5**

**7.**

**Text amendment regarding Precious Metals and Gems ordinance. (First Reading)**

*Presented by Bradford D. Townsend, Planning and Zoning Director*

Councilmember Price introduced the item. Mr. Townsend stated this is a proposed text amendment dealing with the precious metals and gems ordinance within Chapter 10 of the Roswell Code of Ordinances; it would amend the current regulations to allow for the City Administrator to be responsible for the issuance of the business license instead of being brought forward for public hearing with Mayor and Council. Mr. Townsend stated that in his research, he found fifteen (15) references to Mayor and Council; thirteen (13) of those were changed. Mr. Townsend stated this proposed text amendment also includes an appeal process. He explained that if the City Administrator denies an application, it can be appealed to the Mayor and Council. Mr. Townsend noted that the section regarding bond requirements is being removed from the current ordinance, as requested by Committee.

City Attorney David Davidson conducted the first reading of the ORDINANCE TO AMEND THE CITY OF ROSWELL CODE OF ORDINANCES DEALING WITH PRECIOUS METALS AND GEM DEALERS BY THE DELETION OF THE PREFORMCE BONDING REQUIREMENTS AND THE DELETION OF THE REQUIREMENTS FOR A PUBLIC HEARING BY THE MAYOR & CITY COUNCIL, ADDING AN APPEAL PROCESS TO THE MAYOR AND CITY COUNCIL FOR ANY DENIED LICENSES FOR A PRECIOUS METALS AND GEMS DEALER stating: pursuant to their authority, the Mayor and City Council adopt the following ordinance to remove the requirements for a performance bond and the public hearing. Also, change the license approval from the Mayor and City Council to the City Administrator and include an appeal procedure of denied licenses to be heard by the Mayor and City Council:

1.

Chapter 10 Article 10.4 Precious Metals and Gem Dealers, of the Code of Ordinances of the City of Roswell, amending Section 10.4.3 Definitions as follows:

Section 10.4.3 Definitions.

Chief of police shall mean the chief of police of Roswell or his/her designated representative.

City administrator shall mean the city administrator of Roswell or his/her designated representative.

Renewal, when used in connection with an application for a license, shall relate to an unrevoked license of purchase and sale of precious metals and gems to a designated licensee for a designated location, on expiration of which unrevoked license the identical owners thereof, but no other, may be entitled to a new annual license upon filing of the necessary renewal application, clearance of the chief of police, payment of a twenty-five-dollar investigation fee, payment of the license fee and approval of the mayor and city council city administrator.

2.

Chapter 10 Article 10.4 Precious Metals and Gem Dealers, of the Code of Ordinances of the City of Roswell, deleting Section 10.4.5 (i) and renumbering existing Section 10.4.5(j) to Section 10.4.5 (i) Application for Permit as follows:

Section 10.4.5 Application for Permit.

(i) License and indemnity bond. Each person shall furnish a license and indemnity bond conditioned upon the said principal faithfully performing the obligations and duties set forth in this article of the Roswell Code of Ordinances, as such may be amended from time to time. The purpose of the bond is to indemnify and save harmless the city council of Roswell, its officers and employees, on account of any judgments, claims, demands or losses by reason of the issuance of the business license to a licensee and to provide a means for payment of losses caused by said licensee's violation of this article for which the said licensee principal has been held responsible for in a civil court of competent jurisdiction to an owner or former owner of precious metals and items covered under this article. A prospective licensee shall also be allowed to satisfy the surety requirements under said form bond by signing the principal portion of the bond and pledging cash, certificates of deposit or other unencumbered assets with established market values as security. Said assets shall

*be held by the treasurer of the city council of Roswell subject to the terms of the license and indemnity bond. Any profits, rents, or interests on any assets shall go to the principal. The performance bond will be in the amount of \$100,000.00.*

*(j)(i) Payment by check. Dealers shall pay for items covered under this article by check rather than cash in order to provide a more complete record of transactions.*

3.

*Chapter 10 Article 10.4 Precious Metals and Gem Dealers, of the Code of Ordinances of the City of Roswell, amending Section 10.4.8 Issuance as follows:*

*Section 10.4.8 Issuance.*

*Upon receipt of an application for a license in accordance with the provisions of section 10.4.5 and a check for \$25.00 to cover the investigation fee, the chief of police shall cause such investigation of the applicant's business responsibility or moral character to be made as he deems necessary for the protection of the public good. The chief of police shall make a report of his investigation to the city council city administrator. The chief of police may, after investigation and finding that the health, safety, or welfare of the public so demands, recommend that a license not be issued to an applicant for reasons including, but not limited to, the following:*

*(a) Conviction of any felony under the laws of this state or any other state of the United States, provided, however, this shall not apply to any person who has been convicted of a felony after ten (10) years have expired from the date of completion of the felony sentence;*

*(b) Conviction of any crime within the ten (10) years immediately preceding the date of the filing of the application involving moral turpitude;*

*(c) Fraud, misrepresentation or false statement of material or relevant facts contained in the application;*

*(d) That the applicant has engaged in a fraudulent transaction or enterprise; or*

*(e) An applicant for a license may, in the discretion of the mayor and city council city administrator be issued a temporary permit based upon a preliminary investigation by the chief of police, which permit shall remain in effect until the issuance or denial of a license as herein provided. A confidential record of the investigation shall be kept on file by the chief of police.*

4.

*Chapter 10 Article 10.4 Precious Metals and Gem Dealers, of the Code of Ordinances of the City of Roswell, amending Section 10.4.13 Requirements and Unlawful Activities as follows:*

*Section 10.4.13 Requirements and Unlawful Activities.*

*(a) It shall be unlawful for any dealer in precious metals or gems or any agent or employee of a dealer in precious metals or gems who makes purchases of precious metals or gems or of goods made from precious metals or gems to:*

*(1) Make any false statement in the application for a license as provided for in this article;*

(2) Fails to maintain and make entries in the permanent record book as required by section 10.4.9 of this chapter;

(3) Make any false entry therein or skip any pages in the record book;

(4) Falsify, obliterate, destroy or remove from the place of business such permanent record book;

(5) Refuse to allow any duly authorized law enforcement officer to inspect such permanent record book or any precious metals or gems or goods made from precious metals or gems in his possession, during the ordinary hours of business or at any reasonable time;

(6) Sell, exchange, or remove from the legal possession of the buyer or to alter the form of any precious metals or gems or goods made from precious metals or gems purchased by remounting, melting, cutting up, or otherwise altering the original form until at least fifteen (15) calendar days have elapsed from the time of purchase or acquisition;

(7) Fail to make the written reports as required in this article or make a false report; or

(8) Purchase any precious metals or gems from any person under seventeen (17) years of age.

(b) It shall be unlawful for any person to advertise or transact business as a dealer in precious metals or gems without first registering pursuant to the provisions of this article. Provided, however, those dealers in the business at this time must make application for a license within ten (10) days after the effective date of this article, but may continue to transact business under the terms of this article unless the chief of police recommends that their license be revoked and the mayor and city council city administrator refuse to allow such licensee to continue in this business.

5.

Chapter 10 Article 10.4 Precious Metals and Gem Dealers, of the Code of Ordinances of the City of Roswell, deleting Section 10.4.16 Public Hearing and placing the following Section 10.4.16 number in Reserved as follows:

Section 10.4.16 Public Hearing[Reserved].

No application of any kind or nature except an application for a license renewal shall be granted or approved by the city council until after a public hearing has been held thereon by the city council after due publication of notice by applicant one time in each of two (2) consecutive calendar weeks in the official newspaper of Roswell, a notice of the filing of an application and of the time and place of the public hearing thereon before the city council, the name of the applicant, and if a partnership the name of the partners and if a corporation the name of the principal officers. The street and number location shall be shown on the advertisement.

No notice will be printed in letters less than ten-point capital and lower case with at least one-inch, two-column arrangement. Each application on which the city council holds a public hearing shall be granted or denied by the city council within thirty (30) days from the day on which such public hearing is concluded.

6.

Chapter 10 Article 10.4 Precious Metals and Gem Dealers, of the Code of



*Ordinances of the City of Roswell, deleting Section 10.4.19 Public Hearing not required for Renewal and placing the following Section 10.4.19 number in Reserved as follows:*

*Section 10.4.19 Public Hearings not required for Renewal[Reserved].*

*Applications for renewal of licenses shall not require a public hearing unless written objections thereto are filed with the city clerk at least fifteen (15) days before such licenses, or last renewal thereof, expires; but if such objections are filed, a public hearing of such objections will be held by the city council after publication of notice thereof as required for an original license.*

7.

*Chapter 10 Article 10.4 Precious Metals and Gem Dealers, of the Code of Ordinances of the City of Roswell, amending and renaming Section 10.4.20 Approval by City Council Required for Renewal; Filing Objections as follows:*

*Section 10.4.20 Approval by City Council City Administrator Required for Renewal; Filing Objections.*

*(a) A city license or renewal thereof shall not be issued hereunder until the application therefore is approved or granted by the city council city administrator. All licenses expire on December 31 of each calendar year; provided, however, when timely objections to an application for a renewal license are filed, the life of the current unexpired license is hereby extended to and through the date on which the city council city administrator grants or denies such renewal application, or until the first Tuesday next after the first Monday in the next February, whichever date is first, if the annual license fee for such renewal shall have been deposited with the city treasurer for such renewal period within five (5) days after being notified that objections have been filed to his application for renewal of his license.*

8.

*Chapter 10 Article 10.4 Precious Metals and Gem Dealers, of the Code of Ordinances of the City of Roswell, amending Section 10.4.21 Issuance of License after Approval and Fee Payment as follows:*

*Section 10.4.21 Issuance of License after Approval and Fee Payment.*

*When an application for a license, or renewal thereof, has been approved by the mayor and city council city administrator, and the applicant has deposited with the city clerk the annual license fee, the clerk shall issue such license.*

9.

*Chapter 10 Article 10.4 Precious Metals and Gem Dealers, of the Code of Ordinances of the City of Roswell, amending Section 10.4.23 License a Privilege only as follows:*

*Section 10.4.23 License a Privilege Only.*

*Licenses hereunder shall be mere grants or privileges, and the city council city administrator of Roswell, Georgia, shall have the discretion to approve or deny any application for a license to sell precious metals and gems or to revoke the same under the provisions of section 10.4.25.*

10.

*Chapter 10 Article 10.4 Precious Metals and Gem Dealers, of the Code of Ordinances of the City of Roswell, adding new Section 10.4.24 Appeal procedure as follows:*

*Section 10.4.24 Appeal procedure.*

*(a) In the event of a rejection of the license by the city administrator of Roswell or his/her designated representative, the police department or any other person (other than mayor and city council), the applicant shall, within ten days after he has been notified of an adverse determination, submit a notice of appeal to the city clerk. The notice of appeal shall be addressed to the mayor and city council and shall specify the subject matter of the appeal, the date of any original and amended license or requests, the date of the adverse decision (or receipt of notice thereof), the basis of the appeal, the action requested of the council, and the name and address of the applicant. The clerk shall place the appeal on the agenda of the next regular council meeting occurring not less than ten (10) or more than thirty (30) calendar days after receipt of the application for council action.*

*(b) When an appeal is placed on the council agenda, the council shall set a hearing date and instruct the city clerk to give such notice of hearing as may be required by law.*

*(c) Whenever the city clerk has scheduled, an appeal before the city council, at the time and date set therefore, the mayor and city council shall receive all relevant testimony and evidence from the applicant, from interested parties and from city staff. The city council may sustain, over-rule or modify the action dealing with rejection of the license. The action of the mayor and city council shall be final.*

11.

*Chapter 10 Article 10.4 Precious Metals and Gem Dealers, of the Code of Ordinances of the City of Roswell, renumbering Section 10.4.24 to Section 10.4.25 and amending License Fees; Conduct of Business Prohibited after Expiration of License; Fees Nonrefundable as follows:*

*Section 10.4.245 License Fees; Conduct of Business Prohibited after Expiration of License; Fees Nonrefundable.*

*(a) All licenses and renewals thereof must be obtained and all fees paid by the applicants therefore by certified check or cash within fourteen (14) days from the date of approval of the license application by the city council, city administrator or no later than the last business day of the calendar year that the city hall is open for business. The effect of a failure or refusal to pay such annual license fee within such time shall be to nullify such approval which then expires, and the license or renewal shall be void. No business shall be conducted after revocation or expiration of a license, or renewal thereof, unless a further renewal has been issued and paid for or the life of the expiring license has been extended as herein authorized.*

*(b) If after approval by the city council city administrator of an original application for a license, or the renewal thereof and the payment by the licensee of the annual fee, the licensee fails to exercise the privilege conferred by the license within nine (9) months from the date of approval of such original application or renewal by the city council city administrator, the license shall be automatically forfeited for the unused term of*

*the license, without refund of any fee paid.*

12.

*Chapter 10 Article 10.4 Precious Metals and Gem Dealers, of the Code of Ordinances of the City of Roswell, renumbering Section 10.4.25 to Section 10.4.26 and amending Cancellation of License for Cause after Hearing as follows:*

*Section 10.4.25 6 Cancellation of License for Cause after Hearing.*

*No license which may hereafter be issued hereunder shall be suspended, revoked, or cancelled except for cause as herein defined, after a public hearing upon at least ten (10) days' prior written notice to the licensee of the time, place, and purpose of such hearing, with a statement of the reason for such hearing.*

*"Due cause" for suspension, revocation, or cancellation of a license hereunder shall consist of any violation of this article, or any part of it, or any laws or ordinances of this city or state prohibiting or regulating the business of purchasing, selling or dealing in precious metals and gems, or violation of regulations made pursuant to authority granted for the purpose of regulating such businesses, or for the violation of any state or federal law involving moral turpitude, or violation of city ordinances other than traffic ordinances. It shall also consist of willfully making false statements, being involved in any scheme for himself and/or herself or that of another applicant which misleads the city in granting a license or renewal, or willful concealment of material matters of fact in obtaining or preventing another from obtaining a license hereunder.*

*Notice to a licensee to show cause why his license should not be revoked shall consist of a certified copy of a resolution of the city council letter from the city administrator charging the licensee, or information and belief, with the violation of a law or ordinance provision, or violation of a provision of this article or state law, which alleged violation, if true, warrants revocation, and notifying such licensee of the time and place of a public hearing, which certified copy shall be served on the licensee in person or by delivery of it to the licensee by delivering it to the licensee's authorized agent in this city or if neither of the foregoing methods of service can be effected, then by tacking it to the front of the precious metals and gems outlet in said city. Service may be perfected by a city police officer of this city or some other person authorized to serve such papers.*

*City Attorney David Davidson stated that if approved, this would be the first reading of the ordinance.*

*Mayor Wood noted that he supports the ordinance. The Mayor further stated that a legal associate of his pointed out that thieves who steal gold and silver jewelry are now going to businesses that buy gold and silver because they immediately melt it down; essentially those businesses can become fences for stolen jewelry since the stolen property can be turned over quickly. Mayor Wood stated "In Cherokee County, it has become the fence of choice now because they get their money immediately." Mayor Wood noted he would be bringing this up with the state legislature. The Mayor asked if the city could require these businesses to hold gold and silver for a period of time, just as pawn shops have to hold gold and silver for a period of time. He thought that pawn shops and the precious metals shops should be on the same footing. City Attorney David Davidson stated he would check into this issue.*

*Councilmember Dippolito stated he had similar concerns as Mayor Wood regarding this type of business. He explained that when Council first began discussing this text*

*amendment, the city had primarily had requests for temporary licenses related to this business but it was discovered at the Committee meeting that this involves all permanent licenses, as well. Councilmember Dippolito asked how this ordinance will impact the city's pawn shop ordinance and trying to limit the number of those types of uses; will we be providing a loop hole for this type of business and opening the door for a use that we do not really want, or providing opportunities for illegal activity. He suggested Council think beyond this ordinance, those types of shops may be skirting around the pawn shop issue. Mayor Wood asked about distances between pawn shops and possibly including that requirement between gold shops. Mr. Townsend replied "If we amend the ordinance to include a 5,000 feet for any existing pawn shop." Councilmember Dippolito asked how that would play into this precious metal ordinance. Mayor Wood replied that is does not right now, but it would possibly be added. Councilmember Dippolito replied that would certainly help. Mayor Wood inquired if Council wanted to consider saying 5,000 feet from a gold and silver shop or 5,000 feet from a gold and silver or pawn shop. The Mayor suggested this item be brought back to committee for discussion prior to the second reading in order for Mr. Davidson to look into regulations for pawn shops and placing similar requirements for pawn shops on gold and silver shops, as this is an alternative to a pawn shop.*

*Motion: Councilmember Price moved to approve the Text amendment regarding Precious Metals and Gems ordinance (First Reading), with interim discussion at committee. Councilmember Wynn seconded. No further discussion. The motion passed unanimously.*

**A motion was made by Council Member Betty Price, seconded by Council Member Becky Wynn, that this Item be Approved on First Reading and placed on the Community Development and Transportation Committee agenda for 9/29/2010 for further discussion. The motion carried by the following vote:**

**In Favor: 5**

### **City Attorney's Report**

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

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

**In Favor: 5**

### **Adjournment**

*After no further business, the Mayor and Council Meeting adjourned at 10:22 p.m. and reconvened for Closure.*