

Motion

Joe Piontek made a motion that the Planning Commission recommend that Roswell mayor and city council grant approval for the property located in Land Lot 824, the First District, Second Section containing 5.94 acres of the requested rezoning and conditional use with concurrent variances to allow for an assisted living facility per case RZ12-11, CU12-05 and CV12-06 located at 2715 and 2725 Holcomb Bridge Road.

Harvey Smith seconded the motion.

Cheryl Greenway asked Joe Piontek about the conditions that were listed by staff regarding the two conditions that they listed. Joe Piontek stated that they were included in that. Greenway stated that she just wanted to clarify that the motion included that.

Cheryl Greenway called the question.

The motion passed unanimously, 6-0.

REZONING

12-0151

RZ12-05, CV12-02

EAH INVESTMENTS

12160 Etris Road

Land Lot: 1236

Brad Townsend stated that this rezoning was before the Planning Commission last year. It went in front of council; it was approved for R-1. The applicant then decided a law suit was appropriate. He decided to sue the city of Roswell. That litigation went into discussions with the council members, the neighboring homeowners and the applicant. And they have come to an understanding to rezone the property to R-1 on the west side of Etris Road and R-2 on the east side of Etris Road for a total of 27 single-family detached homes. The location of the property if the Commission can remember is separated by Etris Road as single-family and large lots along it and around it an unimproved Kent Road to the south. Townsend presented the aerial photograph of the existing property showing the large parcels.

Brad Townsend stated that the revised site plan with the settlement is what is before the Planning Commission this evening. This is a site plan schematic of what is included as part of the settlement. Actually that is the long one, that is the wrong plan. Townsend stated that he has it somewhere. Just a second.

Brad Townsend stated that this should be the plan that is in the Commission's backup material indicating the three lots on the west side of Etris, 24 lots on the west side of Etris, three lots on the east side of Etris, the two cul-de-sacs, the connection to the property to the north, fire connection to the property to Kent Road to the south.

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There were 29 agreed upon conditions in the settlement agreement as well as 13 requirements to be put in the homeowners' documents, covenants as part of the settlement agreed to by the applicant and the adjacent homeowners around the property.

Staff would recommend approval of the settlement site plan as included in the Planning Commission's backup material with the conditions.

Brad Townsend asked if there were any questions from the Planning Commission.

Cheryl Greenway stated that she just wanted to confirm the 29 conditions that are listed in staff's recommendation. She did not compare them word for word, but they are the same recommendations or conditions that were in the final settlement. Correct?

Brad Townsend stated that there were two, if one goes to the actual resolution which is the front two pages of the package, there were two...in essence we are indicating them as typos where on Condition No. 21 it says a northern property line...that should actually be western. As well as on Condition No. 23, the end of that the species is misidentified. It should be a holly species instead of the magnolia.

Those are the only two changes that staff corrected as part of their approval.

Cheryl Greenway thanked Brad Townsend and asked if there were any other questions.

Harvey Smith stated that as in similar cases like this where there is a settlement, there has been litigation and a settlement agreement. Really, there is not a lot of discussion.

Brad Townsend stated that there is not a lot of additional discussion but the Planning Commission is definitely welcome to hear from the public as well as the applicant and see if there are any further points of interest that need to be discussed.

Cheryl Greenway asked if there were any other questions for the city. There were none at this time. She thanked Brad Townsend and asked the applicant to please come forward and state his name and address.

Paul Corley with Edward Anders Homes presented the application. He resides at 365 Ivey Knoll. Paul Corley stated that he would like to thank staff because this has certainly been a long process and it certainly didn't go as smoothly as he would have liked it to have gone. He also wants to thank several council members that got very involved with this process after the initial zoning. And he wants to thank the specific residents that took a lot of their personal time to work with him on this project. It was interesting they were zoned for 22 units but really what was never addressed or asked was what the quality of the development or the quality of the homes was going to be. So, when they did file a lawsuit they immediately came back to the city of Roswell with several of the council members and several of the neighborhood representatives and said, "Look, we are not

that far apart but what they really haven't discussed is there is a 1500 square foot minimum on house sizes." Nobody paid attention to that. A lot of things that Corley thought were important to the residents, certainly we all have different opinions. So, they spent a lot of time working with Edenwilde, Hamilton Commons, Wexford and the council folks and tried to offer up a set of conditions that this community would be. What Corley wanted to do from the start was develop a high quality community with high quality homes. So, a lot of the conditions that the Planning Commission sees, Corley offered. The HOA restrictions, he offered. One of the main concerns was on the storm water and kind of an existing historical problem that Hamilton Commons has had to deal with in terms of flooding and some issues there. Corley offered to do a hydrology study when he is doing his. So, he thinks it has taken a long time but he thinks it is going to be worth the effort. He believes that the majority of all of the parties are very satisfied where they are at today.

Cheryl Greenway asked if there were any questions for the applicant. There were none at this time. She asked if there was anyone in the audience that would like to speak in favor of the application. For the record no one came forward. Greenway asked if anyone would like to speak in opposition of the application. She stated that she did not mention earlier that if one wants to speak there are cards in the very back of the room. If one would be so kind as to fill those out just for the record so that the staff has their information. Also, if one would speak directly into the mike and identify himself and give his home address..

Ron Bagwell
Aaronson Lake Court –Wynfield subdivision
Roswell

Ron Bagwell stated that he was part of the crowd that was here when the applicant asked for the initial zoning waivers. The place was full. And as has been mentioned before it was zoned R-1 . Bagwell has heard reference to a settlement and he would like to know what the impotence for a settlement was and what are the terms of the settlement. He would like to request that the settlement be posted on the Roswell web site within a week so that the public, the communities surrounding these parcels can review the settlement. The council at that time was fully in favor of R-1 so what Bagwell is requesting is an explanation, that's it.

Cheryl Greenway asked Bagwell if by settlement he meant the 29 conditions. Bagwell stated that he meant everything that is involved in convincing representatives of the city of Roswell, whether it is the council or the Commission or the legal team, whoever made the decision to accept a settlement. If it is reasonable, if Bagwell can understand it he will have no opposition. The last time he was exposed to these issues and the questions, all of the people in the benches, he thinks that there were one or two people that supported the applicant. Everyone else, the place was packed, was opposed to it and of course the council zoned it R-1. Something changed everyone in authority's mind. Bagwell would like to know what that was.

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Cheryl Greenway asked Brad Townsend if he could comment on this.

Brad Townsend stated that he was not part of any of the settlement discussions. All he had was the documentation in front of the Planning Commission.

Cheryl Greenway clarified that to Brad Townsend's knowledge there wasn't a settlement. It went to court and from the court it was determined....Townsend stated that it never went to court. The law suit was filed, the representatives he believes, when the applicant reached out to the council members and to members of the community and came up with what they felt would be appropriate. They brought it to closure where the mayor and city council then at the following meeting said to initiate this process to rezone the property to R-1 and R-2, maximum of 27 lots to the site plan in front of the Commission to the 28 conditions and the 12 or 13 covenant restrictions.

Cheryl Greenway clarified that the only thing they really could share with Ron Bagwell would be the final settlement conditions. Brad Townsend stated the documentation they have in their packages, yes. Greenway asked if that can be posted on the site. Townsend stated that he thinks it is on the web site now.

Sidney Dodd asked Brad Townsend if the homeowner's association was part of the....Townsend stated yes but that he was not sure if this particular homeowner's association was....Dodd assured Townsend that his was not. Townsend stated that Hamilton Commons and Wexford he believes were the two main homeowner's associations. The adjoining...

Sidney Dodd clarified that there was representation from those two communities. Brad Townsend stated that he is not completely sure who was represented because he did not attend those meetings. Dodd concluded that no one knows who represented the public, the communities. Brad Townsend stated that he is sure the people that attended those meetings... Dodd stated some unidentified people. Townsend stated that he is sure it wasn't the mayor. He is sure it was the council members that represented them. Dodd stated that obviously the city government is going to be involved. He would like to know who represented the communities that were so vehemently opposed to this process.

Brad Townsend stated that he was not there.

Petty Woods
Etris Road

Woods stated that he just wanted to back up. He is a single homeowner and not a part of the homeowner's association. So, he was at the first meeting also when the room was full. He has had no notification otherwise since that meeting. So he just wanted to back up what this gentleman is saying. If there is some kind of settlement he thinks it needs to be more publicly known to those that are living in the zone of this proposal.

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Wayne Foley
Etris Road

Wayne Foley stated that he was baffled by this honestly. This room was filled with hundreds of people. You people were all sitting there, they saw it. And they saw how adamant these people were against this. This little shell game that is going on changing a few lots around but they are still changing the R-1 to R-2 or whatever. Foley thought this was a dead issue. He thought they spoke loudly, they heard it and maybe they didn't have anything to do with this settlement, maybe that is out of their control. But that does not negate the fact that Foley felt they had an agreement that this was R-1. That is why he bought there, he likes it that way and now all of a sudden they want to come in and they want to put higher density in. And just because they threaten a suit, was the city of Roswell afraid to spend money on this suit? They couldn't have won. What was R-1, they could have said no. But somebody caved and that really upsets Foley. It upsets him for the same reason that those two gentlemen just said. The first time he heard about is when he saw a yellow sign up and he goes, "Oh no! They're back!" It was stated that somebody said that they agreed with this, it was some settlement in some court, it wasn't the Planning Commission. Someone in this city agreed with that. Foley stated that they pay a lot of taxes; they expect a lot of representation and defense of their rights and their property. He does not think the city of Roswell did that in this case. Somebody caved in to these people and Foley does not know why. But he thinks they need to have a little bit more transparency here with all of the people around. Just because one or two people somewhere in some organization waved the wand and said they were okay with that. Maybe the rest of them aren't. Because Foley never heard anything about it. These two other gentlemen never heard anything about it. The lady there never heard anything about it. All of a sudden it is a done deal because somebody settled. He thinks it is wrong .

Harvey Smith stated that he was the co-chair, he ran the first meeting. For the record they moved for denial of the application. What goes forward again, even today, this is a recommending body. It goes back to the city council but Smith appreciates Foley's comments and what he is saying. But the Planning Commission is not involved with any kind of settlement.

Wayne Foley stated that he meant the city, not the Planning Commission. Actually, they were all at the city council meeting, too.

Harvey Smith stated that the next meeting where it comes before them again, let those people speak to those questions. He would agree with Foley in that regard that if one is not satisfied with how that process occurred that is the time or before then to bring it back up again. That is just his comment from where the Planning Commission stands as their body is they are just a recommending body to the city and for the record they recommended denial the first time around.

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Wayne Foley asked if the Planning Commission could recommend denial this time. Or is it because the settlement is already made their hands are tied and they just have to accept what they did.

Cheryl Greenway stated that is what the Planning Commission is here to look at tonight. Do they recommend approval or denial?

Brad Townsend stated that it why it is a public process. Cheryl Greenway added that that is what they are trying to do.

Wayne Foley asked if he said recommend denial. They had a room full of...all the people around. All of a sudden this comes out of nowhere that it is okay. What, did they change a couple of lots around? He does not know. It just seems like a shell game to him.

Lisa DeCarbo stated that she was not here for that original meeting. Unfortunately, she was out that month. But she is surprised, honestly too to see this. They have four neighborhoods listed: Wexford, Edenwilde, Hamilton Commons and Kent Road yet she would think that if there were a lot of negotiations that the Planning Commission would have letters from their boards of directors or whoever it was that represented those communities saying, "Yes, we sign onto this." She is kind of surprised not to see that here.

Wayne Foley stated that he was too. But he would also like to say the Williams, and himself and other people live on Etris Road. They are not in a community. Who is representing them? They have a voice, too. They more than anybody else...some of these people in Edenwilde are like a mile-and-a-half away and they are like 15 streets away. Foley stated that he and his neighbors are on the same street and they have to drive by it every day. But, their voice doesn't count? Obviously, it does because the Planning Commission is listening to him but he is talking about in this whole process.

Lisa DeCarbo stated that she was not trying to say that the folks that are not part of an HOA don't matter. But, the question still is, "who was invited and who was involved in these talks?" Whether it is individuals representing themselves and their own property or representing a larger group of residents.

Cheryl Greenway asked Brad Townsend who would have been the person from the staff that would have been in on this settlement. Townsend stated nobody. Cheryl Greenway clarified that there is really no one else that they can call or turn to at this point to get more information.

Brad Townsend stated that the elected officials handled the process after the litigation was filed and they were discussing it. Normally the city attorneys were dealing with the council members. Cheryl Greenway clarified that the city attorneys would have been there. Townsend stated not in these particular meetings, no.

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Lisa DeCarbo asked if they know which particular council members or the mayor.

Brad Townsend stated Councilmember Diamond is over community development. He is sure she probably included maybe a couple of other council members at the time but he is sure she was probably the lead one.

Cheryl Greenway asked the applicant share any information in regards to this as to who all sat down and negotiated.

Paul Corley stated that he absolutely can and one thing he wants to clarify and maybe there is...no, there is not any confusion. They were zoned for 22 homes. So we could have started building and developing 22 homes. They had limited conditions. They had no conditions on anything related really to the quality of the development. If one reads through the 29 conditions the applicant has come back and asked to add five additional homes. This allowed the applicant to develop the community and build the homes themselves versus just developing the lots and selling off lots. So, they went from an initial application of 38 homes, they were zoned 22, they came back. Corley stated that he reached out to everybody possible. He is sorry he didn't get everybody down Etris Road. But he certainly made himself available. They had numerous representatives from Hamilton Commons, Edenwilde and Wexford. They had councilwoman Diamond, they had councilman Dippolito, they had Orleans at the initial meeting. Corley has worked extremely hard. He cannot physically make sure that he hits every person. He apologized for that, he just can't. He tried. He made himself available but all of those council people were involved in the process. They had at least 25 or 30 meetings on this subject.

What the settlement was based on was okay, he would like to request five more homes. Not what he asked for but five more R-1 adjacent to any residential properties and then the R-2 on the interior. In return for the five they offered things like increasing the square footage from 1500 to 2600, to having no exposed concrete on the side. Nobody understands that the way it was zoned any builder could have walked in there with a much inferior product and built the house on 22 lots. Corley thinks it would have been something that would not have fit in the area, would not please the area. They are trying to do an upscale community with upscale houses. So, he offered a lot of things in terms of the houses and the development. Landscaping along Etris, landscaping along Kent Road, a pocket park within the community. They offered a lot of things that were not conditions of the original 22-home community.

Bryan Chamberlain asked Paul Corley to speak to the question at hand on the floor. Who was involved outside of city people from these neighborhoods? Can he address that? Corley stated that Cheryl Hennenblock is here from Hamilton Commons, she was kind of the lead representative for Hamilton Commons. Lee Petit was a lead representative for Edenwilde along with several others and Hennenblock had several others. Dave Rittenhouse from Wexford as well as many others were all at the meetings. Bryan Chamberlain was thinking that that information may be helpful to these folks in an understanding of was this done in a dark room filled with smoke and if it was only city

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people and Corley. Corley stated that they had meetings at Edenwilde clubhouse, he had meetings individually, they had meetings at city hall with city council members and residents. It was a group effort. They didn't get here without a lot of hard work. He knows that may appear that way but that is absolutely not correct

Bryan Chamberlain thanked Paul Corley.

Ron Bagwell
Aaronson Lake Court and Wynfield Estates


Ron Bagwell stated that if he recalled the question was directed to the applicant about whether or not the homeowner's association leadership was involved in discussions and giving approval for this recommended rezoning request. Bagwell is here to answer that question. Paul Corley named some individuals, Bagwell does not know if they are self-appointed representatives. He does not know how many people within those communities were notified. Bagwell stated that he was not notified. He can tell the Commission for a fact the president of his homeowner's association had no clue what was going on. Because of a severe lack of information, data the Planning Commission members are in a serious bind. Bagwell would recommend, he would suggest if he had the authority he would propose a motion that this discussion be postponed until such time as to all of these questions can be answered. They have a public hearing with no information.

Cheryl Greenway stated that Ron Bagwell mentioned the president of his homeowner's association, which homeowner's association? Bagwell stated Wynfield Estates. It opens onto Etris Road. Greenway clarified that Bagwell talked to that president and they said that they had no knowledge of this. Bagwell stated that they were clueless. That was two ago. One could probably tie it in to the time that the signs when up on Etris Road. Greenway stated that the signs have been up on Etris Road for...Brad Townsend stated for this particular application, probably two weeks.

Wayne Foley
12585 Etris Road

Wayne Foley stated that the question he has is where are of all these agreements posted. He heard that they were posted on the site. He guessed that there are 10 zillion things posted on sites but it is not obvious where they are. So, they would just like to know where they are so they can take a look at them. Who knows, maybe they would even agree with it, he does not know but this has all been kind of like under the radar.

Cheryl Greenway stated that they will get Foley a location. She asked if there was anyone else that would like to speak in opposition of the applicant.

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Charles Williams
100 Hamilton Way

Charles Williams stated that he has attended the meetings in the beginning and everything else so he will just scan through some of the things. One thing that they will want to make sure that they do under the covenants is around who is responsible for the maintenance of those detention ponds and everything else. It would be the homeowner's association and that will be spelled out that the homeowner's association would be responsible for that because what happens is if one has, and he lives on one of the lake side Hamilton Commons side. What happens is if one needs to get something done with those ponds or detention ponds, whatever they may be, that means he has to coordinate with eight different homeowners to try to get something taken care of. Usually, one cannot afford to do that as a homeowner's association on his own or with eight homeowners. If it is something that is critical to maintaining the property overall, that would be spelled out. That would be the homeowner's association's responsibility to be able to take care of that as opposed to the individual homeowners. That was just one of the comments Williams had or question of how that is going to proceed.

Cheryl Greenway stated that she will let the applicant respond to that.

Bryan Chamberlain asked Charles Williams if he is saying that his preference would be those areas would become a common area to be maintained by the homeowner's association?

Charles Williams stated that was correct. He knows nothing about construction outside of providing financing for it. He is a finance guy so he is not an expert in that. He just knows from his own experience is that....he lives down where there is all of this runoff. He is one of the homeowners that sits on that pond where all of that is just out there. So, if one gets an estimate to be able to get that done to even dredge that it is in the hundreds or thousands of dollars. If Williams just wanted to do right behind his house, it would be \$30,000 just to dredge that out. So what he would like to suggest is that if one has a common area like that, especially if it is related to runoff, which will impact everyone else down the line, it should be maintained by the homeowner's association as a common area. Because that will ensure that it is maintained and that is the responsibility of the homeowner's association as supposed to the individual homeowners. One has to get them coordinated to be able to do it or he has to take some action to be sure that they do it.

Cheryl Greenway offered a suggestion. On the 15th item of the 29 is the open space within the subdivision shall be listed in the homeowner's association covenants related to maintenance of the area. Would that then cover that? Or would that kind of be outside of that?

Charles Williams stated that they need to specify in the covenants specifically who will maintain what. They have some things over in, even in Lakeside like there are some things there that no one understands how those got into the covenants because no one has

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a chance to see it. It is in someone's back yard, they have never seen it. Williams stated that he was in a homeowner's association years ago where there was a wall there. That is part of the covenants and everyone was like, nobody even knows where that wall is and it is not something that everyone can see but it is in the covenants while the place that everyone can see was not in the covenants. That is why Williams is saying that that does not specify...

Brad Townsend stated no.12 of the draft covenants he believes is trying to represent that the maintenance is covered by the homeowner's association. But that isn't going to be a legal document. It is going to be drafted as part of the subdivision.

Charles Williams stated that he was talking about the runoffs and everything else. If the detention ponds are going to impact that...let's say that everything is set up perfectly on day 1. It is great, they have done everything. It has to be maintained over the years. So, if it is not maintained then they are going to have issues years down the line when everyone is gone and then it will be up to those homeowners who will sit there and say...

1. If it doesn't impact me why would I need to do anything about it?
2. If it is going to cost me a lot of money, I can't afford to do anything about that on my own.

Cheryl Greenway stated that the section Brad Townsend was referring to is the requirements of what is to be included in the homeowner's association documents. And no. 12 on that says that homeowner documents/covenants should specify who is responsible for the maintenance of the detention ponds and landscaping. So, that is in the process to be identified and included.

Charles Williams agreed but stated that it was still vague. It needs to be specific. homeowner's association is responsible for maintaining and upgrade...of the detention ponds. If it is left to be vague or if it is left up to someone can make those changes in there his recommendation is that it is very specific that the homeowner's association and the covenants specify that they are responsible for maintaining those detention ponds that impact everything that happens down stream.

Cheryl Greenway stated that she understands.

Harvey Smith stated that he would have a comment with this gentleman's concern too that just for the record that when the final LDP, construction documents, everything are approved and of course the hydrology study isn't done yet until they....the developer has not gotten to that step. But with a 27-lot subdivision one is not going to have a lot of money in the pot down the road if there is an issue with it. Smith knows that Hamilton Commons had this same issue he thinks when it went from Fulton County to city of Roswell. The Planning Commission discussed this the first time the application came up. He thinks there was a lot of frustration that the citizens that pay the taxes felt like the city should be responsible but it is clear, they never are in these situations. Smith thinks it is the city's responsibility to make sure it is properly designed and since it is uphill,

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upstream from where Williams is, and it is not a large subdivision but potentially if it is not done correctly it would impact developments downstream. But the city does have a responsibility to make sure that everything is properly designed. Smith thinks if it goes through the next step he thinks they will hear these minutes too and he thinks the comments should be reiterated again at the council meeting because that is a valid concern. Even though the document can say legally they are going to be responsible for it, but what are they going to do? They are going to lien an individual lot if they turn around and have a special assessment. Harvey Smith stated that he has been there and done that, too and he knows how it works. It is a valid concern and he thinks it should be noted for the record.

Lisa DeCarbo stated that she agrees with Harvey Smith. She has been in a subdivision where there is a huge amount of common property and a huge amount of maintenance. The best way to handle it in her opinion is to deed that property as well as the pocket park over to the homeowner's association. Make it a mandatory homeowner's association. Have a reserve study in place and all of that kind of thing. Her question to staff would be, is that the kind of thing one looks at, at any point, say when the plat is done? Do those documents have to be in place?

Brad Townsend stated that HOA documents are not normally reviewed by staff. But since this is probably the most unique one they are dealing with and if these conditions as well as the document are approved he thinks staff is going to have to look at them in some manner. And the legal department is going to have to weigh in. Does this legally bind the parties as related to the conditions and the representations by the applicant in a way that the parties are to be bound? So the simple answer is staff is going to get their nose in on as much as they can at this level at the request knowing that it has to be done a particular way since this is part of what they are dealing with.

Cheryl Greenway thanked Brad Townsend and asked if Charles Williams had anything else he would like to add. His assumption is once the study is done that will be made public so they will understand what the impact is and those types of things and all of the homeowner's associations are aware of that. As long as they are a part of that process. When they finished up Edenwilde he saw what happen with all of that silt and now with everything it just comes down. So, definitely they have concerns along those lines in making sure that everything is maintained as they move forward.

Cheryl Greenway thanked Charles Williams. She asked if there was anyone else that would like to speak in opposition of the applicant.

Peter Williams
12575 Etris Road

Peter Williams stated that he had two points that he just wanted to raise to have noted in terms of concerns on the proposal. The first once and it may be in the number of points that have been discussed, but one is the traffic study. Etris Road at the Sweet Apple end

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in morning traffic is already a nightmare. Adding these 27 homes would increase that. So he thinks a traffic/transportation study if not already required is an essential element of any proposal on developments on Etris. The second point has really more to do with this plan and the density, the aesthetics of the plan. If one looks at the linear footage of construction fronting onto Etris on this proposal, he wonders what that is within 50 feet of Etris Road as a percentage of the total property line and how that fits into the surrounding properties on Etris. It looks to him like it is totally out of character with Etris Road. Being a resident of Roswell, Williams knows that Roswell is strong on aesthetics and those things in development so to him this seems to be totally out of character. He may be wrong but he does not know if anybody has looked at that in terms of the linear footage of construction fronting onto Etris Road within 50 feet of Etris.

His home has 150 feet he thinks it is setback from the road. That is one of the requirements of his house. It very different to this and the character that this will drive on Etris and his property value if this construction is indeed continued.

Cheryl Greenway thanked Peter Williams. She asked if there was anyone else that would like to speak in opposition of the applicant. No one came forward. She stated that the applicant would now have a chance for rebuttal or any comments that he would like to make at this time.

Paul Corley stated that he does not really want to rehash the past, but he reminded the Planning Commission that this zoning didn't start off too well. When they filed for the R3-A, there is a lot of confusion in that the R3-A allowed an attached product and he thinks that really caused an uproar even though their intent was never to do that. Corley stated that he wanted to make it abundantly clear that they have, since that point worked extremely hard with these neighborhood groups and with the council people. It has been all above board, the site has been advertised, everything is on the web site. So from a public information standpoint the applicant has done everything he possibly could. He is certainly willing between now and the city council meeting to meet with these gentlemen and try to address any of their concerns. Some of the specific concerns regarding the detention ponds being specified that they are the HOA's responsibility, that is not an issue.

Regarding traffic, Corley stated that he has worked with the transportation department from the beginning. They will review the plans prior to any LDP. In terms of the aesthetics along Etris Road he is thinking that he is going to point this out again. They are already approved for 22 homes. He is asking to add five additional homes. But they are already approved for 22. They have taken a lot of effort in what people will see. Their residents, the residents of Roswell, what will they see as they drive on Etris? One can see the BC landscape plan that they came up with to address, so that it properly landscaped and it is a pleasurable experience and doesn't detract from the area.

Paul Corley stated that he will certainly make himself available and give them his business cards after. He would certainly ask that the Planning Commission votes to

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approve this or vote their recommendation and do not postpone it. Corley stated that they have been working on this since the original zoning. They have worked that hard on this project. He thinks that the conditions that they have offered and in working with the homeowner's association groups are going to make this a much better project and community in the long run.

Cheryl Greenway thanked Paul Corley. She asked if there were any other questions from the Planning Commission be it for the applicant or for the city.

Harvey Smith stated that he has a question for staff. He is good with Corley. He asked Brad Townsend to give the Planning Commission a little more information on how this settlement...where they are? This isn't typical. He knows he is familiar with where it has actually gone to say Fulton County Court and the superior court judge has come up with a ruling in this case. Have they ever had a settlement...they have had litigation; it was settled without going to court. What he is hearing...he does not doubt the merit of the development. He is a builder/developer himself. He thinks what he is hearing a little bit from the folks that are here tonight is just the concern that maybe not everybody had the opportunity to understand how they reconciled to this point.

Smith stated that his question is, is this a precedent were they have had a settlement without actually going to court in the past year? Or is he asking the question correctly? He is trying to understand how they make sure that everybody even people on Kent Road, Etris Road, there are a lot of individuals on estate lots that are not part of those major subdivisions. Smith stated that he lives around the corner on Cox Road. He is very familiar with the area; he goes to Sweet Apple Park. So, he is a little fascinated to hear these comments. How do they dissuade those concerns that they were not part of the process or they just wonder how was the deal cut between, who had the authority between the HOAs if they didn't get a voice? How did we get to this point?

Brad Townsend stated that once the mayor and city council approved the R-1 designation there was a 30-day window in which the owner/applicant of the property could start litigations, sue the city to say that it acted arbitrarily and capriciously with their rezoning it to R-1. I want something different. Once that takes place it is out of staff's hands and into the legal department's hands to control that process and say okay, which judge are we going to be in front of, when do they have to provide him information? When will they be on a court date? Once that took place, the council person over community development, Townsend believes, took the initiative with the applicant and reached out to them and said, can we find some middle ground that they don't have to get in front of the judge? Townsend believes she took the initiative of starting the meetings and the discussions, who do we need to talk to? Townsend does not know that there was any intent not to be inclusive with as many people that wanted to be part of the process. But it was not handled by any staff to coordinate the meetings, to take minutes, to run emails back and forth. None of that was done through staff after the lawsuit was submitted to the city.

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Harvey Smith stated that there has been a settlement as far as...they are not under order to really abide by or just rubber stamp these condition. That is the question he is asking.

Brad Townsend stated that the information of the settlement was taken to the full mayor and city council at a closure which they handle usually after one of their Monday night meetings. They go into that meeting in session because they are dealing with litigations, they are dealing with law suits, and other issues that they deal with in closure are purchases of property and personnel things and things of that nature. So they discussed it in closure with the city administrator and legal counsel there. They then provided staff the information. The zoning administrator processed this rezoning to an R-1 and an R-2 with 27 homes with that layout and these conditions back through the rezoning process so the signs get posted. Staff mailed the notices again and put it in the newspaper and went through the same process so these types of issues can be brought out if they were not vetted through the settlement process. And no, Harvey, the Planning Commission is not a rubber stamp. The Commission is the sounding board from the community back to the city council as to is this appropriate or not appropriate to deal with.

Harvey Smith stated that then again the question is it would probably be more beneficial to the developer tonight to have a decision from the Commission either for or against it as opposed to a deferral because a deferral would drive it back.

Brad Townsend stated that a deferral gets no one anywhere really. Smith agreed. Townsend stated that a decision tonight is what moves this to the next process where a final decision can be made.

Harvey Smith stated again that the Planning Commission is a recommending body regardless of what they do. It is up to those politicians to take care of....Smith asked that that be put on record. The Planning Commission is just trying to get the information out and for and against. That is the purpose of his question, too. He is not trying to say they are against the developer but also he thinks they do want to, and Smith is taking more of a personal interest too because he was at the initial meeting and there was a lot of input. He did not come to the city council meeting but he knows it was a full house. He thinks he was out of town. But the Planning Commission just wants to make sure that everybody is being heard in the process. That is his point with the questions. Smith thanked Brad Townsend.

Cheryl Greenway asked if there were any other question for the city or the applicant.

Joe Piontek stated that he looked through these things and he doesn't see the first time around they were asking to pave Kent Road. They are not doing that anymore?

Brad Townsend stated that that is not part of what is in this agreement and transportation has still not...they will be at the public meeting in council and he is sure there will be some questions. Because they still have some concern about it is at least represented that

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it is only going to be fire access to Kent Road and transportation thinks there might be a reason to have a secondary access open so Townsend is sure that it will be discussed.

Joe Piontek stated that he was surprised too, because he was at that meeting. And it was wild. There were a lot of people here and a lot of people talking about. All the end notes Piontek sees from city council were all of the people, the representatives from the HOAs all spoke against it at that time. But apparently everybody came together. There is not a settlement, right? There is no settlement, there is an agreement.

Brad Townsend confirmed that there is an agreement.

Joe Piontek clarified that there was not a settlement. Brad Townsend stated that was correct. Piontek clarified that there was no law suit; there was no settlement to a law suit. Brad Townsend stated that there is a law suit. Piontek clarified that a law suit was filed, pulled back and an agreement was made which is different from having a settlement, right? It occurs to Piontek that he does not see anything. Dave Rittenhouse seems to write letters to the Planning Commission a lot. But Piontek doesn't see anything from the president of Wexford, the president of Edenwilde, the presidents of these other HOAs. They are not here now and a sign was put up two weeks ago about this meeting?

Cheryl Greenway asked if there were any comments or questions. Greenway stated that she feels like they are dealing with a very unusual situation for something that normally comes before the Planning Commission because there has been involvement by mayor and city council that the Commission is really not privy to all of the discussions relating to those decisions. She feels like the Commission is trying to make a decision on something that they don't really have all of the information. Is there another option for the Commission besides a motion yay or nay? Would that be a deferral? Can it be that the Commission cannot make a recommendation because they don't feel that they have enough information and it needs to go on to city council since they have already done their own little settlement? Is that an option for the Commission?

Brad Townsend read Section 31.1.17 The Planning Commission's review and recommendation. It is two paragraphs long and he is just going to read it to the Commission. Nowhere in the two paragraphs does it say approve, denial or other. It just says recommendation.

The Planning Commission will convene hearing on the third Tuesday of the month; hear all applications referred to as subject to the limitations on the applications specified by this chapter. The Planning Commission shall hold a public hearing and provide recommendation on all applications specific in this chapter. The Planning Commission shall make recommendations after careful study of the application criteria set forth in Table 31.1.4 as appropriate and after review of any investigations and recommendations by the zoning director and the Design Review Board.

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The Planning Commission's recommendation shall be submitted to city council and its recommendations and if any, its report shall be available upon request to interested members of the public. A public hearing on the matter shall be held by mayor and city council. The Planning Commission shall have 65 calendar days from the date of the public hearing within to submit its recommendation. The Planning Commission may submit an addition to move forward if deemed appropriate. The recommendation of the Planning Commission shall have an advisory effect only and should not be binding upon the mayor and city council.

Brad Townsend stated that if one can find the middle ground that he feels is appropriate which is a recommendation to council, Townsend stated that he will be their legal attorney and say you're on solid ground doing that, full well knowing that every other recommendation to them, at least on a zoning case has been an up or a down or up with conditions or down with conditions.

Cheryl Greenway stated that it has been that way but the Planning Commission has not had a "settlement" condition already done by mayor and city council at the time it came to them is the difference.

Sidney Dodd stated that it is unusual that the Planning Commission sees once the mayor and city council have made a decision that it comes back to them. Obviously, that was the intent here. Can Townsend speak to why that occurred?

Brad Townsend stated that with the rezoning of any piece of property there are mandatory state statute requirements of a process that needs to take place. As well as Roswell's own codes require that the Planning Commission as the recommending body do provide a recommendation to mayor and city council on any rezoning application.

Sidney Dodd agreed with Townsend but said that the mayor and city council have the power to approve it and just move on. Yet, this rezoning application has come back. Brad Townsend stated that was correct.

Cheryl Greenway stated that at this point she wanted to just go ahead and close the public session.

Brad Townsend stated that he would like to answer Sidney Dodd's question. Any litigation, rezoning applications usually they have gone to the point where they have gotten to a judge and a judge has given them, "You are thoroughly with their right to rezone the way you did it or you acted arbitrary and capricious and the owner of the property has a right to a particular zoning." Once that takes place, the city of Roswell still then has to initiate a rezoning, which the council has done in this case, go through the public process again and rezone it appropriately. The one step they have not had here is a judge telling the Planning Commission one way or another on this case. It has not gotten to that point for this particular application because the two parties felt that they could come to some agreement and process it that way.

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Cheryl Greenway stated that she just wants to make it official that she is closing the public session and what they are doing now is just strictly discussion so they can figure out how to make a motion or what to do.

Harvey Smith thanked Brad Townsend for his information. His concern is that there are some citizens that don't feel like they had their input on this process or in this process and they are going to be missing out on it. That is why Smith feels like this is different in that regard.

Lisa DeCarbo stated that she would agree with Harvey Smith. The Commission has heard that these meetings were posted on the website. Well, what website was that? Was it the city website? This is different but it didn't go to court. It wasn't actually a part of the public record. All these different negotiations where these terms were put together, it doesn't sound like they really were open. She hasn't quite figured out where they were posted. It is not the same.

Brad Townsend stated that those five meetings probably were not posted. They weren't part of staff saying this is a public hearing of dealing with that.

Lisa DeCarbo stated that these may be terms of a settlement per se, or one could talk about it that way but they are substantially different from a settlement that was reached in court which is open to the public and would be published and available.

Harvey Smith asked Brad Townsend if there was any reason to this point with staff under these conditions he would not recommend approval or denial. Is there a particular reason that Townsend summarized the settlement in his letter to the Planning Commission? For example like the prior applicant with the Tapestry House of course they have engineering, transportation, fire comments. They had all of that with the initial application for 38 lots. Of course it went through that process. So how does the Commission stand? Why is there no opinion from staff now?

Brad Townsend stated usually when council makes the decision they make the policy. And their policy was to initiate this rezoning application.

Bryan Chamberlain stated that he will do a little bit of restatement here but he thinks it might clarify some of the confusion and question but possibly give the Commission some direction to go on a solution here. It has been represented that members of the city council, city attorneys, the applicant got together after the threat of a law suit or the filing of a law suit and met with then also people who represented the various homeowners around the property. What is missing this evening is they know who the council people are, they know who the applicant is, they know who the city attorneys are. They have no verification of who from that private side was at those meetings. Chamberlain stated that he personally would look to the applicant to provide that information in the absence of that information being anywhere else for him to feel comfortable with making a

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recommendation one way or the other. They have had previous cases that they have heard where the representation was made that the homeowner's association felt one way about it and in the second meeting they found out that part of the homeowner's association felt positive and part felt negative and those who were negative were extremely negative. One of the confusing and disappointing factors this evening is they have no one here from the homeowner's associations. Not being at the first meeting and then the city council meeting, he understands that the room was filled with people from the homeowner's association particularly in opposition. On one hand Chamberlain can take it as "well, these people are satisfied". On the other hand he can take it that these people are so discouraged they just don't even want to be here anymore. He personally does not feel comfortable making a decision with those facts in his hand.

Cheryl Greenway stated that because the Planning Commission from what was read needs to make some type of recommendation. Could it go along the lines of a recommendation that this move forward to city council for the April 8, 2013 meeting without the Commission voting in favor of or against it due to the lack of information and that they recommend the council consider any inclusion of homeowner's associations and other residents to discuss with them before the next meeting or else be prepared to have that discussion at the city council.

Brad Townsend stated that they could.

Motion

Bryan Chamberlain made a motion to accept Cheryl Greenway's motion. Harvey Smith seconded the motion.

Cheryl Greenway stated that is the Commission recommendation and motion. She called the question. The motion was approved unanimously.

Cheryl Greenway reminded the Planning Commission to be sure that they are at the April 8, 2013 council meeting if they want to express their feelings.

APPROVAL OF MINUTES

Cheryl Greenway gave kudos to the person that had to type the February 19, 2013 meeting minutes because it was a very lengthy meeting. She asked if there were any other comments or corrections that the Planning Commission wants to have made.

Harvey Smith stated that he was here for four hours that night and he thinks they were recorded probably just as it was said. Thank you, Sylvia.

Harvey Smith made a motion to approve the minutes. Lisa DeCarbo seconded the motion. The minutes were approved 5-1. Sidney Dodd abstained as he was not present for the meeting.

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