



# 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, July 25, 2011

7:00 PM

City Hall

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### WELCOME

**Present:** 7 - Mayor Jere Wood, Council Member Nancy Diamond, Council Member Rich Dippolito, Council Member Kent Igleheart, Council Member Jerry Orlans, Council Member Betty Price, and Council Member Becky Wynn

*Staff Present: City Administrator Kay Love; Deputy City Administrator Michael Fischer; City Attorney David Davidson; Director of Environmental/Public Works Director Stu Moring; Fire Chief Ricky Spencer; Transportation Deputy Director David Low; Director of Community Development Alice Wakefield; Human Resource Director Dan Roach; Human Resources Benefit Manager Karin Grinstead; Planning and Zoning Director Brad Townsend; City Planner Jackie Deibel; Transportation Engineering & Design Manager Franco DeMarco; Construction and Street Maintenance Manager Neo Chua; Community Relations Director Julie Brechbill; Building Operations Technician Doug Heieren; City Clerk Marlee Press.*

**Pledge of Allegiance - Robert Avossa - Superintendent of Schools for Fulton County**

### CONSENT AGENDA

1. **Approval of June 27, 2011 Council Meeting Minutes (detailed minutes to replace Council Brief minutes adopted on June 11, 2011); Approval of July 11, 2011 Council Meeting Brief.**  
Approved
2. **Approval to extend Lakes and Ponds Partnership Program funding for Lake Charles Lakeowners Association, Inc. from Fiscal Year 2011 to Fiscal Year 2012.**  
*Recreation and Parks*  
Approved

3. **Approval of Budget Amendment #3250CP-07-25-11 for additional workstations and chairs at the Law Enforcement Center in the amount of \$25,000.**  
*Public Safety*  
Approved
4. **Approval to apply for a Technical Assistance Grant from the National Parks Service for Blue (Water) Trails.**  
*Recreation and Parks*  
Approved
5. **Approval for the Mayor and/or City Administrator to sign a contract with The L.C. Whitford Company, Inc. for bridge painting and maintenance in the amount of \$74,998.87.**  
*Transportation*  
Approved
6. **Approval for the Mayor and/or City Administrator to sign a contract with Daytech Limited to purchase pre-fabricated Palladian-style Bus Shelters in the amount of \$84,470.**  
*Transportation*  
Approved
7. **Approval to dedicate right of way to the Georgia Department of Transportation (GDOT) as part of the Holcomb Bridge Road Middle School Sidewalk Connectivity Project - Phase I.**  
*Transportation*  
Approved

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

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

In Favor: 6

## REGULAR AGENDA

### Mayor's Report

1. **Introduction of Robert Avossa, Superintendent of Schools for Fulton County.**

*Mayor Wood introduced the new superintendent. Mr. Avossa thanked Council and said he is honored to have the position as Superintendent of Fulton County Schools and was excited about the County's relationship with the City of Roswell. He said he and his family were previously in Charlotte, North Carolina where he served as Deputy Superintendent in the Charlotte Mecklenburg schools, a school district of about 140,000 students that in many ways resembles the Atlanta metro region in general. He said he looks forward to bringing into Fulton County some of the lessons he learned in Charlotte. He thanked Roswell for its rich history and tradition of supporting the local schools and looks forward to strengthening these partnerships. He said when they walked through the classrooms during the last couple of weeks of school he said most of the classrooms looked much like the classrooms he attended in the 1980's and early 90's and in order to prepare the children for the 21st century it is critical technology be improved. He said he is hopeful that SPLOST will allow them to do that. They need the parents and community deeply involved and they need to attract and recruit top talent and said he will work hard for the County of Fulton and looks forward to continuing their relationship with the City of Roswell.*

*Mayor Wood said the City looks forward to working with Mr. Avossa and the Council stands ready for any ideas he has for partnering. The schools play such an important part in not only teaching the children but also attracting and keeping people in the City of Roswell. He said they all appreciate that Fulton County is one of the largest employers in the City of Roswell and for the jobs the schools bring to the City as well as the cooperation over the years between the City's Recreation Department and the schools and the city looks forward to continuing that. He said Mr. Avossa is going to do a great job for the schools.*

**Community Development - Councilmember Betty Price**

2. **Approval of a Resolution to Transmit the 2030 Comprehensive Plan "Community Agenda" including Short Term Work Program and Capital Improvement Element.**  
*(Deferred from July 11, 2011)*  
*Presented by Bradford D. Townsend, Planning and Zoning Director*

*Planning and Zoning Director Bradford D. Townsend presented the item and said this is a request to transmit the Comprehensive Plan identified as the "Community Agenda" which includes the Short Term Work Program and Capital Improvement Element. Everyone had been emailed a list of 54 items that was part of the Special Called Work Session on July 22nd identifying items where staff needed clarification. He said in reference to discussions of page 25 of the document "Change the blue color on the East side of Old Alabama Road to fuchsia," originally it was discussed changing the blue category to Office/Residential and subsequently it was discussed to identify the entire area as fuchsia. There needs to be clarification from Council to staff for making a distinction of where Office/Residential will be allowed.*

*Mayor Wood asked how the plan will change if it is all changed from fuchsia to what is now shown as blue. Mr. Townsend replied the blue was originally identified as Office/Commercial and subsequently changed to Office/Residential for mixed uses. He said fuchsia includes all the mixes of uses including commercial, office and residential as a component.*

*Council Comment:*

*Councilmember Dippolito said he believed the intent was for the blue area in the southeast quadrant to be Office/Residential which is why they wanted to change the legend to read "Office/Residential" not realizing while they were only looking at the southeast quadrant, there was a separate larger diagram that included other blue areas. He said he thinks the suggestion of making it all fuchsia works and the text can explain that in the southeast quadrant the area to the east of Old Alabama Road would be Office/Residential.*

*Councilmember Orlans said he thought the intent was not necessarily getting at the specific in the categories but the fuchsia is already a mixed use southeast village, which would include Office/Residential/Commercial use. The intent was to not have that area split by Old Alabama Road for two different directions but have it all together. By using the fuchsia color written designation of mixed use this helps cover everything. He said that is his interpretation from hearing various comments. Mr. Townsend said that is why staff is asking for some clarification.*

*Councilmember Wynn addressed Mr. Townsend and said when they were talking about changing the blue to fuchsia, another thing brought up by several of the citizens was to maybe bring anything abutting a residential area in Martins Landing, east of Old Alabama, to the point of showing it restrictive to a low or low-rise Office/Residential on the east side of Old Alabama. She asked if that was something Mr. Townsend remembered being discussed and might be put into a caveat in the comprehensive plan. Mr. Townsend asked if she felt it would be best dealing with the design principles in the southeast quadrant. He said they would add a bullet point that would identify that as abutting residential. Ms. Wynn suggested the following wording: "should be restricted to low or low-rise office and residential on the east side*

of Old Alabama” or if you want to say “abutting residential” that would be more general and that would work if Council is in agreement.

Mayor Wood said he is concerned and doesn't want to mislead anyone. If someone looks at the map in the area that says it is going to be low-rise Office/Residential the public still needs to know that it is currently zoned for 7-9 story buildings. In the sense of full disclosure, it needs to be disclosed that it is currently zoned for that and if a developer wishes to develop it for that then the City Attorney has advised that they are not in a position to insist upon the comprehensive plan.

Councilmember Wynn said she is in agreement on that. She said this is a vision plan for 2030 but if someone comes in and wants to do something else and they want to use the existing zoning then they have no authority to tell them they cannot do that. This would be a vision for that southeast quadrant east of Old Alabama Road.

Mr. Townsend said the existing condition is identified on page 21 and does lay out those caveats of what are permitted.

Councilmember Orlans followed up on Councilmember Wynn's comments. He said it is a vision and that is why the thought process was to try to include that whole area so if someone comes in with a vision, we are looking at the entire area, and not trying to look at different parcels within the area. There is a lot of undeveloped land and he thought the idea for the future was to put it together and not have it be two different colors and categories.

Mr. Townsend asked if the direction should be “that the southeast quadrant of Old Alabama be a fuchsia color”. Mayor Wood asked that this be put in the form of a motion. He said currently it is proposed as two colors and he would like to have a vote in lieu of seeking direction.

Councilmember Wynn asked Mr. Townsend for clarification of the number of stories on item #18 of the list of items. Mr. Townsend responded it is six (6) stories. Ms. Wynn asked in reference to item #19 of the list of items if the word “additional” was being removed from “significant additional green space” per Mayor Wood's request. Mr. Townsend replied they are adding “significant green”.

Mayor Wood asked if the Short Term Work Program can be initiated now or does it have to wait for a final vote.

Mr. Townsend said he thought it must be adopted. Director of Community Development Alice Wakefield said it must be adopted before they start implementing but they can do some of the research and the background work on some items that are listed in the Short Term Work Program. Mayor Wood asked her to share what programs she suggests they initiate as soon as the program is adopted. Ms. Wakefield said that would be difficult, but staff proposes to have a Work Session with Mayor and Council where once this is transmitted they could go through the document and pull out various items and come back to Mayor and Council with a short term and long term strategy to implement those items within. It would be difficult to specify one item to start with first.

City Administrator Kay Love referred to page 78 of the plan and the category Economic Development and said there are some things already underway that Council has started. One of those is the Strategic Economic Development Plan. She added as a part of that, the staff and a consultant are gathering information on certain properties. She said some things are already underway related to population and census data monitoring. This is a living breathing document and many of those

elements are in place. She said she thought Ms. Wakefield was speaking in reference to the policy issues related to certain ordinances or policy changes that would be embarked upon in the future and the plan would need to be adopted before moving forward with those.

Mayor Wood encouraged staff to be prepared to move forward to implement the Short Term Work plan as early as possible. He said a plan is of no value unless it is implemented and if the work does not proceed immediately to implement plans, they may be forgotten. He didn't see why they have to adopt a plan to start discussing what is done.

Councilmember Price asked if all the items in bold had been clarified. Mr. Townsend replied yes.

*Motion: Councilmember Price made a motion for Approval of a Resolution to Transmit the 2030 Comprehensive Plan "Community Agenda" including Short Term Work Program and Capital Improvement Element with the changes as printed that came from the Special Called Work Session on July 22, 2011; additionally to change the the blue color (Office/Commercial mix) on the East side of Old Alabama to fuchsia which is mixed used Southeast Village (pages 25 and 28). Councilmember Orlans seconded the motion. There was no public comment. The motion passed unanimously.*

*1st Amendment: Councilmember Wynn made a motion to add a caveat regarding the Southeast quadrant of Old Alabama under intent that uses should be restricted to "no or low rise office and residential abutting existing residential." Councilmember Dippolito seconded. The motion passed unanimously.*

Mayor Wood asked what they are adding that is not already in there. Mr. Townsend said clarification that abutting residential on the Southeast quadrant of Old Alabama Road be low rise office or residential. Mayor Wood asked if that is currently in there. Mr. Townsend replied it is not currently there.

Councilmember Price said she didn't have the exact reference as to where, but believed it appeared twice in the plan: something where they described auto related strip malls and thought perhaps since there are a number of different types of strip malls perhaps auto related doesn't add anything to that, in fact limits it; if that would be acceptable and said she would make it into an amendment.

*2nd Amendment: Councilmember Price made a motion that anywhere it says auto related strip malls/ centers to change it to call it strip malls/centers. Councilmember Wynn seconded. The motion passed unanimously.*

Mayor Wood said this is a vote to transmit for approval by the State and not a final vote. They are still open to suggestions and they understand that those suggestions have to do with minor changes but minor changes may be very major in some people's opinions. It will continue to be open for discussion and there will be a final vote when it comes back from the State.

**Councilmember Price made a motion for Approval of a Resolution to Transmit the 2030 Comprehensive Plan "Community Agenda" including Short Term Work Program and Capital Improvement Element with the changes as printed that came from the Special Called Work Session on July 22, 2011. Also added was to change the the blue color (Office/Commercial mix) on the East side of Old Alabama to fuchsia which is mixed used Southeast Village (pages 25 and 28). Councilmember Orlans seconded the motion. There was no public comment. The motion passed unanimously.**

**1st Amendment:** Councilmember Wynn made a motion to add a caveat regarding the Southeast quadrant of Old Alabama under intent that uses should be restricted to “no or low rise office and residential abutting existing residential.” Councilmember Dippolito seconded. The motion passed unanimously.

Mayor Wood asked what they are adding that is not already in there. Mr. Townsend said clarification that abutting residential on the Southeast quadrant of Old Alabama Road be low rise office or residential. Mayor Wood asked if that is currently in there. Mr. Townsend replied it is not currently there.

Councilmember Price said she didn’t have the exact reference as to where, but believed it appeared twice in the plan: something where they described auto related strip malls and thought perhaps since there are a number of different types of strip malls perhaps auto related doesn’t add anything to that, in fact limits it; if that would be acceptable and said she would make it into an amendment.

**2nd Amendment:** Councilmember Price made a motion that anywhere it says auto related strip malls/ centers to change it to call it strip malls/centers. Councilmember Wynn seconded. The motion passed unanimously.

Mayor Wood said this is a vote to transmit for approval by the State and not a final vote. They are still open to suggestions and they understand that those suggestions have to do with minor changes but minor changes may be very major in some people’s opinions. It will continue to be open for discussion and there will be a final vote when it comes back from the State.

In Favor: 6

### **Administration and Finance Department - Councilmember Jerry Orlans**

3. **Approval of an Amendment to Chapter 3, Alcoholic Beverages, of the City of Roswell Code of Ordinances to allow for the sale of alcoholic beverages by the package on Sundays and to add the Referendum to the November 8, 2011 General Election Ballot. (First Reading)**  
*Presented by David Davidson, City Attorney*

*Councilmember Orlans introduced the item. City Attorney David Davidson read an ORDINANCE OF THE CITY OF ROSWELL, GEORGIA TO AMEND CHAPTER 3 OF THE ROSWELL CODE OF ORDINANCES TO ALLOW FOR THE SALE OF ALCOHOLIC BEVERAGES BY THE PACKAGE ON SUNDAYS IF APPROVED BY A CITY-WIDE REFERENDUM TO BE HELD IN CONJUNCTION WITH THE 2011 GENERAL ELECTION; TO REPEAL CONFLICTING ORDINANCES; TO CALL FOR A REFERENDUM ON THE QUESTION AND FOR OTHER PURPOSES, stating it is hereby ordained, that subject to passage by Roswell voters of a public referendum, Chapter 3, Alcoholic Beverages is hereby amended as follows:*

1. *Article 3.5 Business Regulations, Section 3.5.5 Days When Sales Unlawful of the*

*Roswell Code of Ordinances is amended by deleting subsection (b) in its entirety and replacing said subsection with a new subsection (b) to read as follows:*

*(b) No person shall permit the sale of alcoholic beverages on Sunday unless such person is a licensee for a bona fide eating establishment, retail package licensee, caterer, private club or special events facility as defined by this chapter and the requisite fee for Sunday sales is paid.*

2.

*Article 3.5 is further amended by deleting subsection (a) of Section 3.5.6 Hours of Operation in its entirety and replacing said subsection (a) with a new subsection (a) to read as follows:*

*(a) A package licensee shall not engage in the sale of alcoholic beverages except between the hours of 8:00 A.M. and 11:30 P.M. Monday through Saturday, provided that if such package licensee is authorized for Sunday sales such package licensee may also engage in the sale of alcoholic beverages on Sunday between the hours of 12:30 P.M. and 11:30 P.M. Package licensees shall not permit their places of business to be open when sales of alcoholic beverages are not permitted except that where the primary business of the package licensee is other than the sale of alcoholic beverages, such restrictive hours shall apply only with respect to the sale of alcoholic beverages.*

3.

*BE IT FURTHER ORDAINED by the Mayor and Council that the City of Roswell hereby calls for a special election as provided by law for the purpose of submitting this question to the electors of the City of Roswell for approval or rejection.*

*The ballot shall have written or printed thereon the words:*

*( ) YES Shall the governing authority of the City of Roswell be authorized to permit and regulate package sales by retailers of malt beverages, wine*

*( ) NO and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M.?*

4.

*The Mayor and Council hereby authorize the City of Roswell authorized to contract with the Fulton County Department of Registration and Elections to conduct this election and the referendum on the question of Sunday sale of alcoholic beverages. Let the call for these elections issue according to law.*

5.

*The Ordinance amendment shall become effective on the date after the results are certified. All other portions of the Ordinance to be effective on the date of its adoption.*

*Council Comment:*

*Councilmember Dippolito stated he supports this ordinance. He asked for clarification as to why Sunday sales is a separate item. He asked if someone were to receive an alcohol license and this referendum passed wouldn't Sunday be included. He said the wording seems more complicated than it needs to be. Mr. Davidson replied the hours would be different on Sundays because they cannot sell until after 12:30 p.m. so it is being separated because of the hours. He said the hours are taken directly from the State.*

*Councilmember Price asked for clarification if they are voting on the amendment to*



the city ordinance or voting to allow a referendum. Mr. Davidson said the Council would be passing the ordinance subject to voter approval of the referendum. If the referendum passes, it will be in our code and it will not come back to Council. Ms. Price said the way it is worded it makes the referendum seem secondary. Mr. Davidson said they will be passing the ordinance with these new readings but it would be subject to voter approval, which is how the referendum method will work.

*Public Comment:*

Lee Fleck, Martins Landing said he is encouraged by the fact that Council has taken the recommendation he made in May. When five other local municipalities are putting this on their ballots, Roswell should do the same. Roswell needs all the revenues it can stand in light of its outrageous use of reserves of \$11.5 million that is 50% more than has been done any year in the past three years.

**A motion was made by Council Member Orlans, seconded by Council Member Wynn, that an Amendment to Chapter 3, Alcoholic Beverages, of the City of Roswell Code of Ordinances to allow for the sale of alcoholic beverages by the package on Sundays and to add the Referendum to the November 8, 2011 General Election Ballot. (First Reading) be approved on First Reading and be placed on the Mayor and Council agenda for 8/8/2011. The motion carried by the following vote:**

In Favor: 6

4.

**Approval of the City of Roswell Employee Benefits program for the period October 1, 2011 to September 30, 2012.**

*Presented by Dan Roach, Human Resources Director*

Human Resources Director Dan Roach said this item involves renewal of the City's employee health insurance and other employee benefits for the plan year covering October 1, 2011 to September 30, 2012. The insurance coverage was put out for bid and all bids were evaluated based on cost, coverage level, disruption rates and plan design. He said the quotes that were received to continue current coverage or plan design ranged from a 17% to 34% increase all of which would have fallen outside the budgeting amount and would have likely resulted in significant premium increases for the employees. To present a cost effective alternative, staff and the broker engaged in reviewing plan design alternatives and recommended renewing health insurance with United Health Care with the following plan design changes.

- Health Reimbursement Arrangement (HRA) – recommends implementation of co-insurance of 90% plan and 10% employee ratio and increase the out of pocket maximum expenses for employee only coverage from \$1,500 in the current plan to \$2,000 in the coming year and increase the out of pocket maximum expense for employee plus dependents from \$3,000 to \$4,000.
- Health Savings Account (HSA) – recommends implementation of co-insurance at the same 90/10 employee ratio with no changes to the out of pocket maximum expenses.

These plan design changes reduce the renewal from 18.4% to 2.8% for a total of \$139,000. Staff recommends this more reasonable increase in premiums be absorbed by the City with the understanding that the employee ownership stake is addressed through the implementation of the co-insurance and also the increase in the out of pocket maximum to be incurred by the employee. In this scenario an employee experiencing a difficult claims year could incur an additional \$500 in medical expenses under employee only coverage and an additional \$1,000 in medical expenses under the employee plus dependents coverage.

Mr. Roach said regarding the ancillary lines of coverage,

- *Short Term Disability (STD) and Long Term Disability (LTD) – staff recommends renewal of coverage with The Standard with no increase in premiums.*
- *Dental Insurance – staff recommends moving to The Standard with no increase in premiums over the current year. If renewed with the current carrier, there would be a 7% increase of premiums.*
- *Life Insurance – staff recommends renewing with The Standard with one plan design change to increase accidental death and dismemberment coverage to three times salary from \$50,000 that matches the basic life benefit. Renewal with this plan design change results in a modest increase of \$12,500.*
- *Vision Insurance – staff recommends the introduction of vision insurance at no cost to the City; employees who voluntarily enroll for this coverage will pay the full premium at approximately \$13 per month for employee coverage and \$37 for family coverage.*
- *Tobacco Surcharges – staff recommends increasing the bi-weekly surcharge per covered individual from \$20 to \$25. This brings the city more in line with what others in the market are doing and moves more in the direction of being a consumer driven health plan.*

*All these recommendations fall within the budgeted amounts for group health insurance benefits.*

**A motion was made by Council Member Orlans, seconded by Council Member Igleheart, that this Employees Benefits program for the period October 1, 2011 to September 30, 2012 be approved. The motion carried by the following vote:**

**In Favor: 6**

#### **Transportation Department - Councilmember Rich Dippolito**

**5.**

#### **Approval for the Mayor and/or City Administrator to sign a contract for Road Resurfacing with C.W. Matthews Contracting in the amount of \$1,801,409.10.**

*Presented by Steve Acenbrak, Director of Transportation*

*Transportation Deputy Director David Low said staff received five bids ranging from \$2,009,497.10 to \$2,460,905.20. C.W. Matthews Contracting was the lowest responsive bidder. After minor scope revisions, the final contract amount was modified to \$1,801,409. Mr. Low said the roads to be resurfaced are distributed over all the different regions of the City. Mayor Wood asked for an explanation of the selection process. Mr. Low said the roads are rated based on several criteria each year and the roads rating the lowest and most in need of improvement are given the highest priority with the worst road given first priority, the second worst road given second priority and so on. Mayor Wood asked if this is a political decision or is it done by staff without influence by Council based purely upon the merits. Mr. Low said it is based purely upon the merits.*

#### *Public Comment:*

*Jacob Lilley, 108 Spring Drive said he understands the road selection is based on the merits but is it also based on volume of use. Construction and Street Maintenance Manager Neo Chua said the volume of the traffic is part of the overall calculations and places a small factor into it.*

#### *Council Comment:*

*Councilmember Dippolito asked if the conditions of all the roads are reviewed each year. Mr. Low replied they are rated every year. Mr. Dippolito said they may not directly count volumes of traffic but they look at the condition of the roads each year*

*and if there is a higher volume, it is likely there will be more wear and tear on the road and asked if that is taken into account indirectly. Mr. Low replied that is taken into account. They don't count minor roads very frequently but they have an estimate of the amount of traffic that is on them.*

**A motion was made by Council Member Dippolito, seconded by Council Member Diamond, that this contract for road resurfacing with C.W. Matthews Contracting in the amount of \$1,801,409.10 be approved. The motion carried by the following vote:**

**In Favor: 6**

**6. Approval for the Mayor and/or City Administrator to sign a Project Framework Agreement (PFA) with Georgia Department of Transportation (GDOT) for a roundabout at the intersection of Houze Road at Hembree Road.**

*Presented by Steve Acenbrak, Director of Transportation*

*Transportation Deputy Director David Low said the City was offered some free Federal money to purchase the right-of-way and to design and construct a roundabout at the intersection of Houze Road at Hembree Road. Georgia DOT had proposed this location as a roundabout for an intersection improvement. The project framework agreement between the GDOT and the Roswell Transportation Department includes a waiver of the normal 20% local match and GDOT is committing up to \$1.6 million for design, right-of-way and construction.*

**Council Comment:**

*Councilmember Dippolito asked Mr. Low if he could provide a schedule to help the audience understand when public meetings are going to take place and said this approval is only to get started on the design. Mr. Low replied they would hire a consultant and develop a concept and during the time of the concept development, they would have public meetings where they will be able to provide input. He said there would also be an opportunity for public input during the development of preliminary plans and then before the project goes to construction as well. Mr. Dippolito asked if there is a schedule as to when the design consultant will start and when they expect the first public meeting to be held.*

*Transportation Engineering & Design Manager Franco DeMarco stated it will likely be two months before the engineer will begin design and it will take about a year for design because they will need to go through the Plan Development Process (PDP), which is Georgia's standard design process. Mr. DeMarco said after the contract is signed, it will be a couple of months before they get started and from there on, the concept will be perhaps another two months and the estimated design time will be about a year. Mr. Dippolito asked if by the end of the year they might have a public meeting and begin getting feedback on design concepts. Mr. DeMarco replied yes.*

*Councilmember Price asked how this intersection was selected as our second potential roundabout. She said the first one met with a good deal of opposition from the public even though we knew it was a terrible intersection and it was very accident prone there and now they are very happy that it has met with great reception from everyone who uses it. She asked if there is comparability in this intersection that has marked it as a potential for the next one. Mr. Low said they wanted to make sure the first one was successful and it was. He said it just happened that there is a need for an intersection improvement at this location and GDOT volunteered the free Federal roundabout money and asked if this is a suitable location for a roundabout and the geometry seemed to be well suited for a roundabout and it just worked out that way*

*from a timing standpoint. Ms. Price asked if there has been any public response at this point. Mr. Low replied staff has attended some neighborhood meetings and have received neither positive nor negative response about a roundabout.*

*Councilmember Wynn said she assumes this is going to be a joint venture between GDOT and the City of Roswell and asked how much control Roswell will have over the design and construction of the roundabout or does the city need to go through the GDOT approval for the design. Mr. Low replied that GDOT has a plan development process that goes into great detail about how to prepare plans and standards that are used and said we will follow the plan development process because the Federal money comes through GDOT. He said it would be our design and we would be asking GDOT to concur and approve our plans. He said it has not been determined whether the letting of the construction contract would be by the City or by GDOT but staff would propose that it would be by the city and they have been successful in prevailing on several other similar contracts. Ms. Wynn said we have had a good rapport with GDOT throughout the last three years and asked if it has been worked out as to who is going to let the consultant or the design firm to design this. Mr. Low replied the City will hire the consultant and said that is the next item on the agenda.*

*Public Comment:*

*Ricky Spencer, 710 Upper Hembree Road said he has lived on Upper Hembree Road for the past 25 years and has seen the traffic come to a standstill in front of his yard and it is hard to get in and out. He said traffic backs up on Hembree and Upper Hembree and said he would be the first to give a positive outlook for this because he has seen what Grimes Bridge has done and he thinks it is great and was a good move by the City and welcomes the construction even though it will cause problems because once it is over it will be great.*

*Council Comment:*

*Mayor Wood complimented the City's staff for this project, not just this project but also the initial project and complimented Councilmembers Dippolito and Wynn and the rest of the Council who approved this roundabout. He said he is convinced the reason we are getting this grant and this project is that we have showed ourselves as a pioneer in North Fulton County on the first roundabout and this is the payback. The second one is free and our citizens are getting a \$2 million roundabout at Congressman Price's expense and we appreciate that. He complimented everyone that made the first project a success and said he is confident the second project will be a success but it will be hard to duplicate.*

*Councilmember Price asked if this is a two-lane roundabout. Mr. Low said some of the approaches need to be more than one lane in order for it to handle the traffic. Ms. Price said as in the other one that never was completely closed down and didn't require any detours, will that be the same here. Mr. Low replied he is not aware there is a problem on this one like on the other one regarding having to take down a hill. There will not be anything like that on this one so they should be able to construct this one under traffic.*

**A motion was made by Council Member Dippolito, seconded by Council Member Wynn, that this PFA with GDOT for a roundabout at the intersection of Houze Road at Hembree Road be approved. The motion carried by the following vote:**

**In Favor: 6**

7. **Approval for the Mayor and/or City Administrator to sign a design contract with URS for the Hembree Road at Houze Road/SR 140 Roundabout project in the amount of \$300,000 and approval of Budget Amendment 4220G1-07-11-2011 to establish the grant account in the amount of \$300,000.**

*Presented by Steve Acenbrak, Director of Transportation*

*Transportation Deputy Director David Low said the City received proposals from our on call consultants. Four out of five of them proposed and one chose not to propose. He said because we are getting Federal money we are required to use the qualifications base selection and bidding of consulting fees is not allowed. The qualifications base selection process was used to determine which consultant team was best qualified to perform the work and the URS team was recommended by us and that includes a couple of sub-consultants that are extremely innovative. There is a national publication on state of the art roundabouts that was written by one of these sub-consultants, Kittelson & Associates based out of Portland, Oregon. It also includes Sprinkle Consulting who is expert in bicycle and pedestrian facilities. The scope of the project includes design of the roundabout and a multi-use trail along Hembree Road.*

*Council Comment:*

*Councilmember Dippolito said with respect to the design shown if that was staff's initial interpretation of the design and asked if that was subject to change as the consultants go through the design work. Mr. Low replied it is. Mr. Dippolito said a multi-use trail is in the process of being put in from Upper Hembree over to Hembree Park and asked if this will provide a connection to that multi-use trail over to Upper Hembree. Mr. Low replied that is correct. Mr. Dippolito said eventually we would like to take that multi-use trail all the way over to Crabapple and asked if there were any designs for that. Mr. Low said not at this point but they will look into that. Mr. Dippolito said the ultimate goal would be to connect Sweet Apple Elementary to Hembree Elementary and to the parks and said that would be a great future project. He said he just wants to give people a vision of where all of this is going and the need for the multi-use trails because they are providing a lot of connectivity in this area.*

**A motion was made by Council Member Dippolito, seconded by Council Member Orlans, that this contract with URS for the Hembree Road at Houze Road/SR 140 Roundabout project in the amount of \$300,000 and approval of Budget Amendment 4220G1-07-11-2011 to establish the grant account in the amount of \$300,000 be approved. The motion carried by the following vote:**

**In Favor: 6**

*Mayor Wood interrupted the meeting to recognize a Boy Scout troop and asked them to come forward. They introduced themselves as Dujan Simpson, Duwan Simpson and William Strickland from Troop 87 and stated they are working on community merit badges and as part of their requirement, are attending a City Council Meeting. Mayor Wood said they had done a good job.*

**City Attorney's Report**

8. **Public Hearing for an Appeal of the Issuance of an Alcohol License (retail package/ liquor, beer & wine) to R&B Wines and Spirits and Boniface Outta, 1425 Market Boulevard #300, Roswell, Georgia.**

*City Attorney David Davidson said on June 2, 2011 the Alcohol Beverage Licensing Board (ABLB) had a hearing and issued a retail package/liquor, beer & wine to R&B Wines and Spirits and Boniface Outta and after that hearing but during the meeting, two other people came forward and objected to the issuance of the license. One of those people, Gabe Whatley filed an appeal to Mayor and Council that states this liquor store is less than 500 yards from another liquor store and his attorney will be presenting his case. He said the applicant is also here represented by an attorney and the Standard of Review would be any evidence on this and if any evidence is found to support the ABLB's decision, Council must uphold their decision.*

*Mayor Wood asked if this is a State law or a City ordinance. Mr. Davidson replied this is a City ordinance and Mr. Townsend has the distance requirement. Mr. Davidson said when these applications are reviewed, all applicants are required to have a survey and this applicant presented a survey that was reviewed. Mayor Wood asked what the City ordinance says and how is it measured.*

*Mr. Davidson read the following from the City of Roswell ordinance, "No package distilled spirits license shall be issued for any place of business which is located within 500 yards of another licensed package distilled spirits business. Unless otherwise provided by law, all measurements to determine the distances referred to in this section shall be measured by the most direct route of travel on the ground and shall be measured in the following manner, in a straight line from the front door of the structure from which the beverage alcohol is sold or offered for sale to the front door of the building of a church, government owned treatment center or a retail package store".*

*The survey that was presented to the ABLB was shown. It was signed and stamped by the surveyor.*

*Mayor Wood asked for an explanation of how it was measured. He was told they go on the surveyor's word because he stamps it. Mayor Wood asked if he measured it by the street or the sidewalk and said it appears to run down the street. Mr. Townsend said that would be a question for the surveyor.*

*Mr. Lewis Levenson was representing both appellants, Mr. Whatley and Peter O'Daro who are the licensee at O'Daro Enterprises, Inc. dba Liquor Depot. He said the fundamental disagreement is the method by which the applicant is measuring the distance between his location and Mr. O'Daro's location, Liquor Depot. He said the applicant is measuring the distance under the old law, which was prior to April 1, 2007 as was reflected in the survey that was shown; a line that appeared to follow the streets. He said that is consistent with the laws that existed prior to April 1, 2007 as reflected in the regulations approved by the State and that is in a straight line to the nearest public sidewalk walkway and then along such public sidewalk walkway street or road by the nearest route to the front door of the building. He said the law changed after March 31, 2007 and the City's ordinance does reflect the new regulation approved by the State. He stated "it is to be measured in a straight line from the front door of the structure from which the alcoholic beverages are sold or*

offered to the front door of the building of a church, government owned treatment center or of a retail package store." Mr. Levenson presented a survey that Mr. Whatley had commissioned. Mr. Levenson said the distance as measured according to the new measuring system is 18' short of 500 yards and therefore they believe that the applicant's proposed location at 1425 Market Blvd. is within 500 yards and therefore violating both the City of Roswell's ordinance and the regulations. Mr. Levenson added that he consulted with Mr. David Dial who is currently the Chief of Operations at the Georgia Department of Revenue for Alcohol and Tobacco Division from which position he has directed investigators since 2006 and he has an original affidavit." He said Mr. Dial talked in his affidavit about the change in the law as is reflected in paragraph #3 saying that after April 2007 the rule was changed so that the measurement is made in a straight line on the ground from location to location without going to the nearest sidewalk pedestrian crosswalk or road. He said "Mr. Dial goes on to say that this distance is measured by one of those wheels; the thing that the people use and it is to be measured in a straight line even if jay walking occurs...I assume intending that you cross the street at an angle even if you are not going to cross the street at the crosswalk and the only thing that would interrupt the straight line would be an immovable object... a non-moveable object is what he refers to such as a tree or a building and that distance of course would be added to the measurement. What I thought was most significant about Mr. Dial's affidavit is that he opines when the law conflicts between two different jurisdictions, the more restrictive law is to be applied and he also opines in paragraph #6 of the affidavit that to the extent...obviously he has not investigated this property and does not know the specifics that we are presenting relative to the survey; but that if it were to be consistent with the survey that Mr. Whatley and Mr. O'Daro have commissioned for the Council...specifically he said the State may not approve such a license and I thought that was a significant conclusion that the State would reach which might bear on your decision. I don't know if evidence needs to be presented, but I think that is the thrust of our position that we are measuring this differently than the applicant is measuring it and that is pretty obvious from what I saw on the screen a few moments ago." **\*\*(this was typed exactly how it was said by Mr. Levenson)\*\***

Attorney Mike Sard was representing the applicant and the respondent on the appeal. He stated "first with regard to the evidence induced by Mr. Levenson, we would object to the survey and to the affidavit for several grounds...first obviously it is hearsay...the folks who gave the testimony in the affidavit and who have produced the survey are not here subject to cross examination. Secondly, with regard to Chief Dial's affidavit, Chief Dial talking about the State requirements, we are here before you on a city ordinance. Third, Chief Dial is the Chief of Operations of the Georgia Department of Revenue Alcohol and Tobacco Division; the interpretation of this regulation and its enforcement falls under the purview of the Chief of Enforcement, which is not Chief Dial's position. Last but not least, the Georgia Department of Revenue Alcohol and Tobacco Division for which Chief Dial is the Chief of Operations has issued an alcohol license to our client on the basis of this same survey that we have submitted before you. For all those reasons we ask that you exclude reference to the survey produced as well as the affidavit for Chief Dial." **\*\*(this was typed exactly how it was stated by Mr. Sard)\*\***

Mr. Sard added that Chief Dial is not qualified to give that affidavit because he is not here and because of his position, it's the wrong position. His office has already acted by issuing the alcohol license. He said Chief Dial is commenting about State law, and they are here because of the City ordinance.

Mayor Wood asked to hear a response to the objection from Mr. Levenson. Mr. Levenson said he didn't know how to respond because he doesn't know what the rules are here relative to evidence. Mayor Wood wanted to hear what Mr.

*Levenson's response is to the substance of his objection. The first being that their surveyor is not here and the second being that Chief Dial is not here and they are basically both hearsay objections. Mr. Levenson said in a court of law that would be correct and said he could not deny that. Mayor Wood asked if the surveyor was present in the original proceeding. Mr. Levenson stated he did not know because he was not present.*

*Mayor Wood asked City Attorney David Davidson if when we admit the survey from a surveyor is the surveyor required to be present. Mr. Davidson replied no. Mayor Wood said we admit that evidence as hearsay in the form of the survey. Mr. Davidson replied it is part of an application that is turned in. Mayor Wood said the same rule should apply to both then. If we admit surveys with the application without the surveyor being present, we should admit surveys at the appeal without the surveyor being present.*

*Mr. Sard said their surveyor is here and he is subject to cross-examination.*

*Mayor Wood replied to Mr. Sard that the appellant didn't know their surveyor needed to be present. He said when they came to the first hearing, the City accepted their survey without question and in this case, as the presiding officer, he is going to rule that the same rules apply as at the initial hearing which is that they admit surveys. He said if Council wants to establish a rule requiring surveyors to be present, they can, but at this time, we do not require surveyors to be present at the application and there is no reason to hold the appellant to a higher standard. He said there are two different surveys and both surveys will be accepted as accurate unless they have evidence to the contrary that this survey is not accurate. He said he didn't think the argument is over the accuracy of the surveyors. Both sides are accepting that both surveys are accurate so it's the manner of measuring that is in dispute.*

*Mr. Sard said he will offer evidence to contradict that affidavit.*

*Mayor Wood said they will hear from that evidence and as far as the surveyor, we are admitting it. As far as Dial is concerned, he is going to sustain the objection. He said Mr. Davidson could testify as to what the State's practice is and let Council know that but said he would sustain the objection because Mr. Dial is not present.*

*Mr. Levenson said the Council is essentially making a legal decision rather than a factual decision and assuming both surveys are for now before the Council, he asked what is the correct measurement system when the new legislation is applied. Mayor Wood said he agreed 100%, not for the conclusion but as far as the issue before the Council.*

*Mr. Levenson said he is trying to make it easier for the decision makers and would be happy for Council to hear from the applicant's surveyor but he didn't think they would be disputing the survey or the method by which the surveyor drew the dotted lines on the survey. He said legal counsel for the City has advised on the ordinance and the application of the ordinance and Council must now determine which survey is the accurate reflection of the ordinance.*

*Michael Barger who was the surveyor for the survey that was with the application came forward. Mr. Sard said he would discuss the survey that was offered by the appellant and other findings that he made. Mayor Wood asked if he would address the second survey. Mr. Sard said he would address the second survey as well as some other methods of measurement.*

*Michael Barger stated his home address as 405 Lancaster Drive, Canton, Georgia*



and said he has been a registered surveyor for seven years. He explained how he became a registered land surveyor which was through a combination of education and experience and examination and maintains his certification through a continuing education process. Mr. Sard asked Mr. Barger to describe for Council the various methods of measurement that he considered to get the most direct route of travel between R&B Wines and Spirits and Liquor Depot. Mr. Barger stated the original measurement of 1840 feet was chosen as the most direct route of travel based on how he would walk the property getting from point A to point B being the two opposing beverage stores. Mr. Sard asked if that is the most unobstructed way. Mr. Barger replied yes in his opinion. Mr. Barger said he chose a route where he did not go through private property mainly and also there are obstructions on some of the properties that do not show up on the other survey but he visually witnessed the obstructions on the ground such as fences, retaining walls, and berms. Mr. Sard asked if one could not travel on the ground over those obstructions. Mr. Barger replied correct. Mr. Sard said it appears he had also provided in this survey a couple of other methods of measurement and asked if he could describe the results of those and why he did not use those in the survey that was presented with the application. Mr. Barger replied he had explored other routes but he did not use them mainly because you would have to go through some landscaping conditions. He said you would have to crisscross through the parking lot and assume there are no vehicles to maneuver around and also at the landscaping area there are bushes and a berm area in that location and then it comes up to the sidewalk and then follows down the sidewalk staying off the private properties and then goes through the parking lot. He referred to the overhead and said there is a pink line that was around 1600 feet. Mr. Sard asked if that method was still compliant with the 500 yards even though he had to traverse automobiles, trees and berms. Mr. Barger replied correct and said there was another route where he did not crisscross the parking lot but went down the street and up the parking lot lanes and then crossed over into the same location and that distance was 1700 feet. Mr. Sard asked if there was another method that he had explored. Mr. Barger said on the other route he traversed across the parking lot in a diagonal line all the way to the nearest roadway and then followed the roadway as he had done in the initial route and that measurement was 1750 feet. Mr. Sard asked if that was still more than 500 yards. Mr. Barger replied correct. Mr. Sard said and you would still have to assume there were no automobiles to traverse and you would be able to go through trees and berms. Mr. Barger replied correct. Mr. Sard asked if it was his opinion that the correct method of measurement for the most direct route of travel on the ground as required by Section 3.4.2 of the City's Code of Ordinances is the 1840 feet that he had put on the survey. Mr. Barger replied that is correct.

*Council Comment:*

Councilmember Wynn addressed Mr. Barger and said it is very difficult to see the immovable objects talked about on the aerial. She said Mr. Levenson had shown a survey in which there was almost a direct line from one front door to the other front door and asked why that direct line is not feasible on the survey that Mr. Barger presented. She said she knows there is private property there but wanted to know why there could not be a straighter line. Mr. Barger replied this is the first time he has seen the other survey and has not had much time to review it. He pointed out where the line goes across the AGN Auto Gallery and said there is a private property line that has a wall and fence in that area and said he would have to come up and over and then continue. Ms. Wynn said he was correct on that since she lives over close to that area.

Mr. Levenson addressed Mr. Barger and asked if he could explain to Council how he interprets the difference between the legislation, as it existed before April 1, 2007 and how it exists after April 1, 2007. Mr. Barger replied there was a difference in the way the law was prior in that it did give more leeway in describing the direct route of

travel and the new law is more vague. Mr. Levenson asked Mr. Barger to explain to Council what is vague about the law that says to be measured in a straight line from the front door of the structure from which alcoholic beverages are sold or offered to the front door of a building, church, government owned treatment center or retail package store and asked what about that is more vague. Mayor Wood stated to Mr. Levenson that he could ask Mr. Barger's opinion but to say more vague is argumentative and the Council will have to make that determination of what the law is. Mr. Levenson asked Mr. Barger in reference to Ms. Wynn's question; where he had observed a fence. Mr. Barger replied he was not exactly sure where on this drawing the property line is. Mr. Levenson stated he was referring to Mr. Barger's survey and asked him to indicate on his survey where the fence exists. Mr. Barger indicated two points on the survey where there was a big retainer wall that comes around and comes back up part of the way and the rest of the way it is fence, so he would have to go up to the fence over and then down. Mr. Levenson asked if he measured that to determine if it was more or less than 500 yards other than the straight line that the Georgia land survey reflected on there. Mr. Barger replied he did not measure that route.

*Council Comment:*

Mayor Wood stated this is a question of first impression for the Council. He said Mr. Davidson has said that generally we have an Any Evidence rule and said he thinks that has to do with the facts and here we don't have a factual issue but rather a question of what is the legal interpretation of our ordinance - is it measured on the ground and what is that interpretation. Mayor Wood asked Mr. Davidson if it would be appropriate to render a decision after having a discussion. Mr. Davidson replied Council can adjourn and discuss this in Closure but they can't hear any other evidence after closure. Mayor Wood said unless Council wishes to proceed now he suggests discussing this further in Closure.

Mr. Sard asked if they could offer a closing argument. Mayor Wood replied yes and said he is trying to decide first whether Council wants to make a decision tonight or take it to Closure before making that decision. He said he would like him to know what the procedure is going to be.

*Council Comment:*

Councilmember Dippolito asked what would be the purpose of bringing it to Closure. Mayor Wood said they have legal issues here not just factual issues to discuss. They need counsel from the city attorney as to what the interpretation of our ordinance is going to be. This is not just a factual issue. This is the first time this has come to this Council and it needs to be decided what the interpretation is going to be and it is appropriate for the Council to discuss after hearing from our attorney.

Mayor Wood said he was not sure what Council's decision is going to be but they may wish to make a decision following adjournment and said at this time we will have closing arguments.

*Closing Statements:*

For Applicant: Mr. Sard said you have heard the opinion of Mr. Barger who is the only registered land surveyor here this evening and he is the expert. We think we have provided to you the Any Evidence standard that this survey Mr. Barger's testimony supports the conclusion of the alcohol review board. Importantly, you heard the testimony of Mr. Barger describing the fence area and the wall. If you were to rely upon the survey provided by the appellant you would have to go up and over the fence or the wall and that is not what the city code says. It says that you are going to take the most direct route of travel on the ground, so climbing up over a fence or a wall is rising above the ground. It is not on the ground. He said Mr.

*Barger has offered three ways that are all compliant with the code and each of them are greater than the 500 yards. We ask that you deny the appeal and sustain the issuance of his client's alcohol license.*

*For Appellant: Mr. Levenson said to the extent that you are essentially taking this under advisement and to the extent that you are acting in a judicial function in one of those rare instances where you are not just legislating but acting in a judicatory role, perhaps the Council would consider taking the entire matter under advisement and getting further legal advice both from the City Attorney and from the State department. This is probably not the first time this issue has come up in other municipalities or counties and perhaps some benefit would come from consulting other disputes along these same lines in the Council's decision. I know we have an appeal and we would hope for a decision but we would prefer the correct decision rather than a more immediate decision so they have no objection to Council taking this under advisement and ruling whenever is appropriate.*

*Mayor Wood said that concludes the hearing and we will take it under advisement.*

*Council Comment:*

*Councilmember Price said the license was granted and asked if the business is operational. Mr. Sard replied his client is prepared to open on August 10th. It has already received its state alcohol license. Mayor Wood said he hopes to have an answer if not tonight, shortly thereafter. He suggested Council make a decision but would like to have a discussion and hear more from the City's attorney.*

**Due to further discussion needed, this has been taken under advisement.**

**9.**

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

**A motion was made by Council Member Igleheart, seconded by Council Member Wynn, that the recommendation for closure to discuss personnel and acquisition of real estate be approved. The motion carried by the following vote:**

**In Favor: 6**

**Adjournment**

*After no further business, the Mayor and Council meeting adjourned at 8:35 p.m. Mayor and Council reconvened for a Work Session on a Discussion of the Defined Contribution Pension Plan Design.*