

change of #15 still applied. The buffering, landscaping, and grading happening in Phase I still applied. The change to the item listed as #8, the change for additional buffering along Broughton Park, would be removed as its intent was to buffer the stadium. The change to #9 referencing the single row of evergreens would also be removed.

Councilwoman Henry said that Mr. Davidson had stated when this comes back to Council it would be for the site plan. If, for example, they decided when approving the site plan that they would be better off not allowing the Jones Road entrance because of the system improvements it would require that the City of Roswell would have to pay, could they make that change at that time. Mr. Davidson replied that the way the condition was stated, Council would have to approve whatever site plan came back, and they could condition their approval on closing the Jones Road entrance/exit.

Mayor Wood clarified that this was a vote to approve the conditional use without the stadium.

Vote: The motion passed unanimously.

A break was called at 2:20 a.m. The meeting resumed at 2:30 a.m.

5. RZ05-35 & CV05-08, Lifestyle Communities, 9050 Nesbitt Ferry Rd., Land Lot 835, FC-A (Fulton County annexed) to R-3A (Multi-Family Medium Density District) residential. Deferred at the request of the applicant from the January 9, 2006 Mayor and City Council meeting.

Ms. Peterson stated this was a rezoning application with a concurrent variance to develop 25 townhouses. The variance request is to allow a 20-foot building separation where 30 or 40 feet would be required, depending upon the height of the building. The applicant proposes a development on 5.03 acres of land for a total of 4.97 units per acre, which is not in compliance with the Future Land Use Plan, however, it is less dense than the category on the Future Land Use Plan of 5-8 units per acre. This item was deferred from a previous meeting to allow the applicant an opportunity to revise their site plan to take into consideration items such as saving some of the trees at the front of the property. The result of that has been a general shifting of some of the townhouses within the development to allow for the saving of a grove of trees at the front. There has been no change to the setback of the buildings. There are no variances requested along the frontage, and the applicant indicated in their letter that those units would have a front door fronting on Nesbit Ferry Road. In the landscape plan analysis, they have also submitted a study from Caldwell Tree Care indicating a tree save program to assure the preservation of a 47-inch oak tree, a 34-inch oak tree, and a 16-inch cherry tree. Staff recommends that same preservation program be applied to the 30-inch oak tree located just off site on a neighboring property but will have critical root zone on this particular site. Staff recommends the following conditions:

1. The owner/developer shall be restricted to 25 townhouses at a density of 4.97 units per acre.
2. The owner/developer shall develop and maintain the property in substantial accordance with the site plan received by the Community Development Department on February 3, 2006 or as approved by the Design Review Board and consistent with these conditions.
3. The owner/developer shall install a 5-foot sidewalk along the total property frontage of Nesbit Ferry Road as required by Roswell Transportation Department.
4. The owner/developer shall provide a sight distance study for the entrance along Nesbit Ferry Road prior to the issuance of a land disturbance permit.
5. The owner/developer shall close all existing curb cuts and add 24-inch curb and gutter as required by the Roswell Transportation Department.
6. The owner/developer shall install a guard rail in front of the transmission poles as required by the Roswell Transportation Department.
7. The owner/developer shall dedicate sufficient right-of-way to encompass the guard rail and anchors prior to the issuance of a land development permit as required by the Roswell Transportation Department.

Ms. Peterson stated as of 5:30 p.m. yesterday, the applicant agreed with all of staff's conditions.

Councilwoman Henry asked why staff was requiring a guard rail now in front of existing transmission lines. Ms. Peterson replied as an additional safety feature and since there would be a new entrance to the property to make general improvements within the right-of-way.

Applicant:

Jack O'Hanlon represented Lifestyle Communities, the applicant for the zoning petition. He stated that he serves as the development manager for Lifestyle and was a registered civil engineer. Also in attendance was Leslie Youb, their landscape architect with the design firm of Bradford and Associates and Dane Nesbit, one of the sons of the late Harriett Nesbit and other members of the Nesbit family. Mr. O'Hanlon asked that the record reflect that Lifestyle had filed a constitutional challenge with staff. As outlined by staff, Lifestyle sought to rezone the 5.033 acre parcel which was formerly zoned AG-1, agricultural, by Fulton County to R-3A, multi-family residential, for the purpose of developing a townhome community of 25 attached residential dwellings at a resulting density of 4.97 units per acre. They also sought a concurrent variance associated with separation of principal residential buildings. The requested variance is internal and does not reduce any of the required setbacks for the adjacent Devonshire community or Nesbit Ferry Road. He stated they were pleased that the Community Development staff supported their proposed use, density, and concurrent variance, and Lifestyle is agreeable with all 7 remaining conditions enumerated in their report. He also wanted to thank staff for their professionalism and willingness to answer his many questions. Mr. O'Hanlon read a section from Chapter 14 of the City's 2020 Comprehensive Plan on the development policies of the Atlanta Regional Commission. Policy No. 7 addresses in-fill development and states, "As vacant land supplies in Roswell have dwindled, large lots with small aging dwellings are increasingly being targeted for in-fill development. Often residential in-fill projects are proposed at slightly higher densities than the surrounding neighborhoods due to the inflation of the price of the land since the time the surrounding neighborhoods were developed. It was primarily for this reason that residential in-fill projects are controversial and meet with the opposition of the neighborhoods." Mr. O'Hanlon said describing their proposal as an in-fill development was accurate, and there had been a degree of controversy and neighborhood opposition associated with their rezoning request. It was also true that land prices had inflated considerably due to the scarcity and robust demand for new housing. In this particular case, however, Lifestyle was requesting a density that was lower than both the surrounding Devonshire neighborhood and Eagle Glen townhomes, which is directly across Nesbit Ferry Road. Their proposed density is below the suggested 5-8 units per acre depicted in the Future Land Use Plan. Mr. O'Hanlon said that many times developers seek densities beyond the Comp Plan's suggested density, or at least at the upper range of the suggestion. He said so as to favorably position their rezoning request before the City and stakeholders, they agreed from the onset to comport to the City's policy by restricting their proposed density to below 5 dwelling units per acre. He stated Lifestyle had addressed many of the concerns voiced by citizens, and he had attempted to follow up with many of those who spoke at the Planning Commission meeting to gain a better understanding of their concerns. Lifestyle Communities looks at the rezoning of property as a process. Last October they went before the Design Review Board with a plan comported to the Land Use Map and the R-3A zoning district standards with the exception of two minor variances. The DRB considered their initial plan, among other things, to be too intensive and lacking a community feel. A follow-up meeting with members of the DRB gave them further insight into those concerns. Subsequent to the DRB meeting, they revised their rezoning plan to include a centrally located pocket park as a passive amenity and eliminated their request for deck encroachments into the perimeter setbacks. The revised plan depicted a more curvilinear layout with significant reductions in the intensity of the development in terms of lot coverage and impervious areas. The revised plan also addressed concerns about the visual impact of their proposal by front orienting the dwellings adjacent to Nesbit Ferry Road. This revised plan received a generally favorable response from staff with the exception of the proposed removal of large oak trees adjacent to Nesbit Ferry Road. From a business perspective, retaining the oak trees was considered at the time to be burdensome. They went before the Planning Commission in December and several citizens spoke against the petition. It became apparent that some irrelevant and unfounded issues were surfacing such as contentions by Ms. Nesbit that Devonshire's adjacent buffer and wall established a single family covenant or additional buffering requirements on the subject property. Lifestyle saw no evidence that such additional requirements exist upon the property. The January 14, 2004 letter attached to the staff report from former Community Development Deputy Director Tom Wilson referred to by Ms. Nesbit during the Planning Commission hearing as evidence of a buffer along Nesbit Ferry Road states only that a 20-foot landscape strip would be required along Nesbit Ferry Road under the

requirements set forth in Roswell's Zoning Ordinance. He said their plan was in compliance with the landscape strip requirements, and all interior setbacks and landscape strips shown on their plan fully comply with the letter and intent of Roswell's Zoning Ordinance. It was his understanding that the Nesbit family sold the surrounding property to a real estate investor in the 1980s. That investor in turn sold the property to a developer who petitioned Fulton County for a rezoning sometime in the 1990s. He stated as an experienced and vocal activist motivated by a self-interest desire to maintain the rural character of the property, Ms. Nesbit vigorously opposed the Devonshire rezoning. She brought a law suit against the developer on her mother's behalf, a suit that was later dismissed. In the end, Ms. Nesbit successfully compelled Fulton County to require the developer to provide extraordinary protections to the remaining 5 acres. Thus, the 100-foot buffer along Nesbit Ferry Road forced development to the rear of the Nesbit house and the massive brick wall was placed as additional stipulations on the rezoning. He said that such requirements in no way established a single-family covenant or additional buffering requirements on the subject property. Lifestyle was not aware of any request by the Nesbit family to have the City of Roswell amend the Future Land Use Plan designation of this property to a lower intensity category, nor has the Nesbit family recorded any deed restrictions upon the property. There are currently existing dwellings, one within 100-feet of Nesbit Ferry Road. They have seen no evidence to support the notion of a regulatory buffer overlay on the Nesbit Ferry Road corridor. They recognize the City's goal of an appropriate ratio between single-family and multi-family residential dwellings. They believe the key component of a stable sustainable neighborhood was a strong ownership component. Lifestyle has never developed apartments or a for rent development. Their townhomes are at a price point that makes rental use unlikely. They will be upscale attached homes with 2-car garages, inviting floor plans, and richly appointed throughout. He noted on page 2 of the City's Comprehensive Plan Executive Summary, it groups the City's housing policy inventory into two distinct categories, the first being single-family detached and attached and the other being multi-family apartments and condominiums. He stated one could argue that the townhomes they propose were more akin to single-family than multi-family development. To insure a strong ownership component, Lifestyle was agreeable to restrict the rental of townhomes to a maximum of 3 units, or 12 percent of the development, with the exception of severe hardships, one of which is the death of a resident, which is required by mortgage lenders, and to record this restriction as part of the development's covenants. He noted they had successfully used that restriction in many of their other townhome communities throughout the Atlanta area. One speaker at the Planning Commission suggested that having too many attached homes in the area would hurt property values. From their experience and perspective with in-fills, they believe their townhomes with upscale price points will help values. Some members of the Planning Commission expressed concern that no attempt had been made to market the property under the current zoning district classification. Mr. O'Hanlon displayed a photograph of the existing house saying it and the property had fallen into disrepair and was nonconforming at a minimum in terms of the lack of a paved driveway, the extent and location of storage structures on the property, and the fence height adjacent to Nesbit Ferry Road. Development of the property as an E-2 single-family subdivision was economically unfeasible and would be out of character with the surrounding development. As he had mentioned at last month's meeting when this matter was deferred, the court appointed executor to the Harriett Nesbit estate has a fiduciary responsibility to the heirs. Since last month's meeting, Lifestyle has brought forward a revised zoning plan that protects two of the three large oak trees in question; one of the three is in the path of their proposed entrance. Traffic engineering considerations dictate the need to line up the proposed entrance with Eagle Glen Road. This coupled with grading considerations made retention of the one 28-inch oak tree unfeasible, if not impossible. He said it should be noted that such a cross alignment would likely be required under any development scenario for the property. The current plan depicts saving the two large oak specimen trees along with a large specimen size Yoshino cherry. To insure the greatest possible degree of tree protection, a retaining wall will be constructed to minimize intrusions into the critical root zone. Lifestyle retained the services of an ISA certified arborist to assess the condition of the two large oak trees to prepare a treatment prescription which will enhance the wellness and health of the oaks. Currently the area under the oak trees is used as a driveway turnaround area and for the storage of five additional vehicles. Development of the property would discontinue the current rutting and compaction of topsoil under the drip line. He noted the staff report should contain a letter from their tree specialist, Rob Swanson of Caldwell Tree Company, outlining his recommendations and outlook that the tree can be saved if the recommendations are carried out. Mr. Swanson had also prepared a preservation treatment proposal which Lifestyle was agreeable to perform as a condition of the rezoning. They propose to maintain the resultant tree save area as a passive open space amenity for the

development and as an aesthetic landmark along the Nesbit Ferry Road corridor. The tree save area will compliment the proposed pocket park and together will provide the community feel, which the DRB felt was lacking from their initial plan. The required three rail fencing along Nesbit Ferry Road will be used around the save area to limit access and to create a consistent visual appearance. Lifestyle was also agreeable to protecting the tree save open space in perpetuity by recording an appropriate protective easement on the final plat and within the restrictive covenants. As a result of revising their plan to save the large oaks, further reductions in lot coverage and impervious area have occurred and are now significantly below allowable maximums. Citizens at the Planning Commission also expressed concerns about traffic. He believed the design of their proposed access points and improvements to Nesbit Ferry Road are appropriate. Ingress to Eagle Glen Road will be improved by the inclusion of a left turn lane into Eagle Glen as part of the proposed improvements on Nesbit Ferry Road. They have recently submitted the requested sight distance study to the City's transportation staff which indicates appropriate sight distance at their entrance. Staff concluded that the development "will not cause an excessive or burdensome use of existing streets or transportation facilities." Because of concerns about the architectural elements of the townhouses' potentially visible fronts to Nesbit Ferry Road, they have agreed to front orient townhomes 22-25 towards Nesbit Ferry Road. As a further stipulation of approval, Lifestyle was agreeable to submitting elevations, material, and color samples for those four townhomes to the Design Review Board for their review as part of the final DRB approval process. They were also agreeable to prohibiting via the restrictive covenants items such as satellite dishes from being placed on the Nesbit Ferry Road side of the units. Mr. O'Hanlon concluded that he believed they had brought forth a reasonable and well thought out plan to develop the property and one that staff supported and he believed would result in a quality sustainable neighborhood. He asked Council to approve RZ05-35 and the associated variance. He asked Dane Nesbit to come forward and read a letter from himself and four of his siblings into the record.

Dane Nesbit read a letter from his family noting that his sister Dale was not one of the undersigned. The letter stated that the undersigned were all heirs of Harriet G. Nesbit, deceased. They wish to issue their statement of support and endorsement for the proposed development described in the rezoning petition of Lifestyle Communities, Inc. They all have a vested interest in the proposed development of their family homestead and find that the proposal as presented to the City of Roswell exceeds what any of them had thought possible for that tract of land with regards to the aesthetics and preservation of the land. They asked Mayor and Council consider carefully the burdens and restrictions which certain community activists are demanding as a caveat to development. They firmly believe that continued efforts to undermine the value of this parcel are unwarranted and burdensome to the sale and transference of this property.

Leslie Youb with Bradford and Associates spoke on the landscape plan. She said coming in off Nesbit Ferry Road, they have aligned on either side of the street Japanese Zelkovas and on access is a gazebo and community bird and butterfly garden. She indicated the location of guest parking that is sunken 8-feet below the grade elevation of the gazebo. There is a shrub border around the exterior with red maples, so there will be a show of fall color and flowering plants throughout the year. The buffers are planted with a mix of American Holly. The frontage of Nesbit Ferry is more of a front yard look, specifically for units 22-25. She indicated an open space with a 4-foot retaining wall and a single point of access where five existing large trees are to be saved, two dogwoods, one Yoshino cherry, and two specimen oaks. They tried to screen the stormwater facility as best they can with ornamental shrub planting and Bald Cypress.

Public Comment:

Susan Miller stated she lives approximately a mile and a half from this project and had been in the area for 25 years. She stated that Champions Green should not be used as a standard and even Fulton County had recognized that in subsequent zonings in the area. She thought tying this project with the one across from it would create a traffic hazard and provoke the need for a traffic light. The Devonshire project had to adhere to a 100-foot buffer resulting in a quality project with great curb appeal. Other projects along Nesbit Ferry had also adhered to a greater setback than this development resulting in a "lovely" pathway down Nesbit Ferry. She said the application did not support Roswell's residential ratio of detached versus attached. If the townhouses were not so tall, 2½ to 3 stories, there would not have to be a variance. It was said that Devonshire residents approved this

project, but she was not so sure as she remembered them being concerned about the townhomes towering over their homes. Because this is so dense, the detention will have to run into the Devonshire property and over other people's property. She stated the Comprehensive Plan was a guide, and this project was too much for too little space.

Gary Lapidus, president of the Rivermont Village Homeowners Association which is a neighboring community to this proposal, agreed with Ms. Miller. The developer had been asked to make some changes, and he did not see that many changes. The density was at the top of the maximum range and did not make sense for Nesbit Ferry Road, a two-lane road. He stated Roger Finley, president of the Eagle Glen Homeowners Association, had said their major concern was traffic and having the entrances opposite each other on this part of Nesbit Ferry Road was very dangerous. No other developments on Nesbit Ferry Road have their entrances aligned. Saint Regis's entrance is at a traffic signal, and the two commercial entities by the shopping center near Holcomb Bridge Road also had a traffic light. The entrance should be closer to the location of the single-family driveway and not aligned with Eagle Glen's entrance which would possibly save the large oak tree slated to be taken down. Mr. Lapidus said the requested variance was not a hardship but due to the development's density. All of the major developments along Nesbit Ferry Road had provided 50-100 feet of buffer, but this was nowhere near that. Mr. Lapidus asked for denial of the rezoning.

Doris Thorn, 335 Spyglass Bluff in Rivermont Subdivision across the street from the area in question, read comments from residents of Devonshire. **David Stimson**, 35 Devonshire Court, said that the variance should not be granted; a variance should only be granted in the case of a hardship and this was not a hardship but rather a self-imposed hardship; the developer has not eliminated the number of homes; the developer is asking for 30-foot setbacks and the surrounding communities have a 50-foot buffer and 15-foot setbacks; and the current plan allows for drainage into the public sewer line which is on the Devonshire property. **Sally Waldrup**, 114 Devonshire Drive, asked Council to deny the townhome community; increased traffic congestion and dangerous curves will increase accidents; the Lifestyle Community will be on the top of the Devonshire community overlooking their amenities and the noise from construction will be a "nightmare"; the drainage pond will have to use Devonshire's buffer in order to get to the public drain drop-in which Devonshire will not approve; too many residential communities in Roswell now; this is over population for the area; Lifestyle is not being held to the same standards as Devonshire and Rivermont; Devonshire has amenities and two entrances and they will have only one; Devonshire's buffer is 100-feet and theirs will be 20; this will change the entire landscape of Nesbit Ferry; and this land was intended to be kept undeveloped since Devonshire was required to put in a 300-foot brick wall. Ms. Thorn said since she spoke against the rezoning, she received a call from Mr. O'Hanlon trying to convince her that changes had been made. She asked him if the number of units had been changed, and he said no. She asked him if the setbacks and buffers had been changed, and he said no. She asked if the entrance was still opposite Eagle Glen, and he said yes. Therefore, the main things she opposed in the beginning, she still opposed. Mr. O'Hanlon asked her what she opposed the most and she said density. She asked Council to deny the rezoning and the variance.

Donna Bustos, past president of Rivermont Community Association, was concerned that the health, safety, and welfare of the citizens in the Newtown community will be impacted by such a dense project on this piece of land. Allowing the requested variances and lowering the standards for buffers would set a poor precedent for the remaining properties in the area. The property is located at a dangerous curve on Nesbit Ferry Road adjacent to Champions Green, Devonshire, and Rivermont. One of the major issues that accompanies the location is the ingress and egress to the property. The project is not appropriate for the location. The integrity of the Newtown area was greatly compromised by zoning 20 years ago. She asked Council to deny the rezoning request.

An unidentified person read a letter from **Sandra Bourbon**, 420 Longs Peak in Rivermont. Ms. Bourbon indicated in her letter that Rivermont has an entrance on Nesbit Ferry Road and any proposed rezoning to increase density concerned them. The property is zoned single-family residential and should remain so in accordance with the Comprehensive Land Use Plan. The letter asked wasn't the proposed density in violation of Roswell's ratio for attached and detached housing. They were already burdened with heavy traffic and over crowded schools and why should Roswell allow this rezoning in opposition to the surrounding neighbors' wishes. She asked the

property be left single-family residential and save the oak trees. The unidentified speaker agreed with Ms. Bourbon and asked for denial of the request.

Dale Nesbit, 9050 Nesbit Ferry Rd., stated she was one of the six siblings and heirs of Harriet G. Nesbit. She responded to some of Mr. O'Hanlon's comments by saying the letter he referred to by Mr. Wilson was in response to an inquiry she made when Georgia Transmission Corporation was looking to acquire utility easements along Nesbit Ferry Road. Mr. Wilson said the requirements are 20 or 30 feet but in obtaining a rezoning there was a requirement for 100-feet of buffer, that 100 feet of buffer had to be outside the utility easement. Knowing that and what kind of hardship that could cause upon a rezoning, her family received compensation at a Special Masters Hearing where it was decided on what the easement was worth. Mr. O'Hanlon had also said that as the result of a lawsuit she had initiated at the behest of her mother, extraordinary conditions were put in place on the property. Ms. Nesbit stated that was false. The lawsuit had to do with a modification of a condition that had been in place since 1986 where the wall was made a requirement. Devonshire Subdivision was required to build an 8-foot at grade wall as a condition to protect this property to be single-family at the request of her family because the property was going to be used as single-family. The lawsuit was about the length of the wall and had nothing to do with putting conditions in place, as conditions were already there. Ms. Nesbit said if density was going to be used a precedent, then they had better use the conditions put on other properties of similar densities as a precedent. Devonshire, which surrounds the property on three sides, has a required 100-foot buffer, undisturbed, replanted to buffer standards along Nesbit Ferry. They had to give a 200-foot buffer to Ashley Crossing, replanted where sparsely vegetated with a fence. She said that meant between the fence at Ashley Crossing and between the fence at Devonshire is 200 feet of open green space area. Additionally, this same development had to give 200 feet of buffer to another apartment complex and had to give 50 feet in addition to the wall plus a 15 foot setback to their property. Ms. Nesbit said all of those conditions were put in place because an error occurred in 1977 which skewed the densities through there. Champions Green was built at 10 units per acre but was zoned at 6. As soon as the error was discovered, the person who had an option on a portion of the property bought the property their mother had sold, which was intended to be single-family homes. The property ended up being zoned at 8 units per acre. The conditions that protected her mother's property, the estate's property, were already in place. It was the Commission's recognition of the mistake and wanting to make sure it was not perpetually perpetrated upon the community that they find themselves today. Ms. Nesbit said the Commission had not zoned a multi-family development in that area for over 20 years. She noted they down zoned the Devonshire property and did not remove the conditions from around their property in recognition of it being single-family. She stated the record in Fulton County was replete with Ms. Nesbit's comments and not once did any other member of her family represent her mother or sought to represent or say that anything entered into the record was incorrect. Ms. Nesbit said if this property was rezoned without conditions similar to the other areas, it would be damaging to the people adjacent. She stated if they had to have a variance because they can't meet minimum standards, there was a problem with the development. Devonshire, Rivermont, Eagles Glen, Champions Green, Ashley Crossing, nor Ashley Forrest had variances, but this proposal needed a variance because they had to get the buildings too close together and wanted to make them taller. The detention pond impacts Devonshire's oak tree. In Fulton County, there has to be a setback to a buffer to protect the trees in the buffer, and Devonshire had to do that with a 50-foot buffer. The detention pond itself will impact the existing buffer. Ms. Nesbit said an easement was never granted to put in any kind of detention pond. That is the only place on the property that it has to drain through, and it would have to disturb an undisturbed buffer to get to the drop inlet which is outside of an 8-foot high brick wall. She said that was the same situation with a sewer line. A sewer line was not run to the property line as there was no contemplation of the property being anything other than what it was zoned today. Ms. Nesbit said zoning was basically about health, safety and general welfare. Regarding the access point, it was her understanding that the traffic engineer had not said that and a different location would solve some problems. Since the deferral, the density has not been decreased, the variance is still being requested, and the access point has not been moved to save the oak tree. In response to her brother Dane and the letter he read, during a family discussion he said he did not care if the largest oak was cut down and made into furniture grade plywood. She said her siblings would be happy with it getting rezoned but they were not involved in the process over the last 20 years where at her mother's behest she went to most of the zoning hearings and protected the property saying the property was going to be used for single-family use and they needed the protections. No one in her family had objected, helped defend the property, or asked their mother if that was what she wanted done. She asked that the residents be

protected by saying the multi-family ends and that there is a use for the property. The administrator, while having a fiduciary responsibility, had not tried to settle this or try to sell it as what it is zoned for now. She stated just the impact on Devonshire was enough, if rezoned, to put in place the same conditions. She further stated that the true intent of this property was to be maintained as single-family, not multi-family. She asked for a denial of the rezoning.

Richard O'Donnell, 555 Lakemont Court, a member of the Planning Commission, stated the Planning Commission denied this because of concerns about the trees, density, and traffic. He stated in case Council wanted to do something with this project, he wanted on the record something that he had discussed with Cindy Jenkins in the Roswell Transportation Department immediately after the Planning Commission meeting. The entrance, according to Ms. Jenkins, had always been proposed as indicated. At the Planning Commission meeting they were told that by the entrance coming in there, there would be some critical damage to some roots on one of the specimen trees. He had asked her if anyone had considered bringing the entrance down. At the following Planning Commission meeting she related that she had sent someone to check that out, and it was more desirable from Transportation's perspective in that it was not across from Eagle Glen, which would take care of their concerns. By moving the entrance down, it was staggered from Eagle Glen by as much as Eagle Glen is from Champions Green. It would also take care of some of the density concerns because the property could not be developed as densely. There would also be no concerns with affecting any of the specimen trees.

Dan Nesbit, one of the heirs to Harriet Nesbit's estate, stated his mother prior to her death almost seven years ago suffered a massive stroke which left her incapacitated for at least five years prior to her death. He said during that time his sister never brought to his or the other heirs' attention any problems or any issues due to zoning in the area. Ms. Nesbit took upon herself the running of the estate and did not seek out their opinions or advised them of any meetings to voice their concerns. He said their mother's intention was to have the house remain as a single-family house. Prior to having her stroke, she said she planned to downsize and was trying to get his sister out on her own because she had been living at the house for free for quite a while and had been living at the house since. It was in her best interest to leave the house single-family. Mayor Wood noted he did not want to get into family issues, although he appreciated Mr. Nesbit's position. Mr. Nesbit said he had brought that up because she had mentioned that her siblings showed no interest when they had no knowledge of any of the zoning issues.

Ms. Peterson stated she had a letter of opposition that had been requested to be read into the record. The letter from **Mim Eisenberg**, 2695 Shadowpine Drive, stated that it saddened her that a family that had fought for single-family protections for over the past 25 years now proposed a high density zoning. Such zoning, with the increased traffic it would bring, is appropriate only where the infrastructure can accommodate it, and it cannot along a two-lane road near a curve. As she had said previously before Mayor and Council, she lobbied for the annexation of her area into Roswell because she believed that local government would be responsive to the wishes of the community and its concerns about inappropriate development. The community does not want this project. She urged Council to deny the application and abide by the vote of the Planning Commission which in December unanimously voted to deny the rezoning proposal.

There was no further public comment.

Councilman Orlans asked the Transportation Department to comment about the alignment with Eagle Glen Road. Interim Transportation Director Angelia Parham responded that it was not dictated to line up with it, although, it is common and had some benefits. It would also provide a left turn lane going into Eagle Glen. She said there was an option to move it to the south if there is adequate sight distance and it may improve sight distance. To her knowledge, though, no alternate plan had been submitted. She stated as long as they had proper sight distance and proper spacing from the drive at Eagle Glen, it could work.

Councilman Orlans asked Ms. Peterson to address the buffer issue on that side of Nesbit Ferry Road. Ms. Peterson displayed a picture showing the buffers at Devonshire directly south and west requiring a 100-foot buffer off Nesbit Ferry Road as a condition of zoning. Directly south of that is the Ashley Crossing subdivision which has a 20-foot buffer off Holcomb Bridge Road and Nesbit Ferry Road. North is Ashley Forest apartments which

has a 50-foot buffer with an additional setback which was a condition of zoning. The Rivercrest Subdivision has a 30-foot building line off Nesbit Ferry which was located on the plat. Directly north of that is the Ardenplace Subdivision currently under construction which requires a 20-foot setback off Nesbit Ferry. North of that is the Nesbit Lakes Subdivision which has a 100-foot buffer off Nesbit Ferry which is a condition of zoning. Councilman Orlans asked if the variance allowed increased density. Ms. Peterson replied that staff supported the variance. The density was not increased, per se, by granting the variance for this site. It simply arranged the buildings differently on the property given where they fell as appropriate to the zoning range requested, given they are below the future land use plan for the site, and given the fact that they have property to consider to keep that density and differently distribute the buildings. The proposal is to push the buildings a little closer together to create a community area and save the trees.

Rebuttal:

Jack O'Hanlon said regarding traffic, he referred to the staff report which said this development will not cause an excessive or burdensome use on the existing streets and transportation facilities. They have submitted a site plan study which fully complied with the requirements set forth by Roswell's DOT which are reflected in the State manual and the Federal Highway policy. Regarding moving the entrance, it placed it too close to the Devonshire entrance. Based on their reading of the policies in the AASHTO Green Book and the run out distances required for the various turning motions requested by the DOT, that distance from the Devonshire entrance would be too close to provide the tapers and stacking distances for an appropriate left turn lane and would impact the left turn lane motions and operation of the Devonshire intersection. They looked at that closely and believe the cross alignment, which is encouraged by AASHTO, as opposed to jogged alignments which some have suggested would be safer, was the best remedy for ingress and egress from the development. As staff mentioned, the added benefit of a cross alignment was to provide a left turn lane into Eagle Glen which provides them protection from getting off the main travel lane and safely stack themselves waiting for holes in traffic coming from the other direction. They firmly believe the entrance they currently depict is the best solution. Regarding infrastructure issues, he had a copy of the final plat from Devonshire showing a sewer easement on the recorded plat that extends directly to this property. The sewer line itself, the manhole, would stop short of the property just behind the wall. He asked why the developer would be required to place a manhole that had no connections to it on the back side of the brick wall and then be requested to record an easement that further extends through that easement to the property. Logic would dictate that Fulton County was requesting that a sewer line be made available for the redevelopment of the five remaining acres and was consistent in their policy of requesting other developers to extend their sewer to the upper portion of the basin in anticipation of further development up in the basin. The only other property up in the basin, in terms of sewer capacity and need for sewer, is the Nesbit property. Regarding the drainage easement, future drainage easements are not required to be recorded by Fulton County but there is currently a large orifice in the brick wall, a round hole, that was placed in the wall for the specific purpose of allowing the drainage from the Nesbit property to go through that wall into the storm system to accommodate the water and send it down to the nearby flood plain just beyond the Devonshire development. He thought the development of Devonshire fully anticipated in its development and as required by Fulton County that this property would be developed and tied in from both a sanitary sewer and a storm sewer perspective. Regarding density, rarely did he go to a zoning meeting where there was not a cry for lower density. He did not know what they would propose on the property other than what Ms. Nesbit suggested, a low density single-family subdivision, where there would probably still be some comments about density. Mr. O'Hanlon said the density of their proposal was below the suggestion of the land use map. The variance they requested was not trying to "cram" more product onto the property but to arrange the property in a better manner and provide two passive amenities on the property, a pocket park and an open space, and allowed them to place townhomes on the property that were more indicative of today's housing trends and price points which dictate larger townhomes than are on the Devonshire property. Their price point is going to be substantially higher than that in Devonshire, therefore, they have to have a slightly larger footprint than Devonshire. Devonshire probably averages 1700 to 1800 square feet with current re-sales running from \$180 - \$200,000. Their price point will be at least the high \$300,000s if not low to mid \$400,000s for their townhomes. They were not trying to push the density too high but were trying to comport to the land use map and coming in at a density below the adjacent neighborhood. Regarding the variance, he showed a picture of an aerial view of the Devonshire community, which he called a dense community with up to 8-units in a building. Their site plan has a maximum of 6 units in a building, and

they have split the buildings up to eliminate long continuous buildings. He asked what would be better, two buildings separated by 20-feet or one continuous building because one continuous building would not require a variance. Regarding the protection of the property as single-family, he stated that Ms. Nesbit's history with the property was much longer than his, but he had discussed it at length with her siblings. He still believed the primary reason for the extraordinary steps taken by the developer of Devonshire to buffer the Nesbit property was compelled on the developer by Dale Nesbit. She wanted to protect her property which had been a homestead for their family back when this area was extremely rural. He could understand her desire to keep that little niche left, after selling off the surrounding property, in as much of a rural context as possible. She, however, was trying to make the leap that the protection she wanted for the existing house was to also affect future development of the property. He reiterated that the Nesbit family never placed any deed restriction that would limit the density of the property and never came before Council to request that the Comp Plan be modified. Mr. O'Hanlon said this proposal was below the density limit established by the Comprehensive Plan and below the density of the adjacent properties. He did not think the rallying point of density was valid but rather an attempt to block a reasonable development of the property. Since their meeting with the DRB, they had created amenities on the property and reduced the intensity of the property. They felt they had put together a plan from the start that comported with the City's policy of limiting residential density to a maximum of 5 units an acre even though the land was shown on the land use plan as being potentially developed up to 8 units an acre. They had decided to focus on the issues of a good plan for the property and something that would be economically viable for Lifestyle but still fit within the context of the surrounding developments. He thought this was a good plan worthy of support and asked for approval of the rezoning.

Councilwoman Henry noted the City by ordinance did not allow any rezoning to any zoning category greater than 5 units per acre, and this proposal was 5 units per acre. Mr. O'Hanlon responded that the City's land use map showed a density of 5-8 units per acre and the zoning categories supported those densities. Councilwoman Henry responded that the City did not allow any rezonings to those.

Motion: Councilman Orlans moved to approve RZ05-35 and CV05-08 with all of staff's conditions and the additional condition mentioned by the applicant tonight for the maximum of three units as rentals. The motion failed for lack of a second.

New Motion: Councilman Orlans moved for denial of RZ05-35 and CV05-08. Councilman Tolleson seconded the motion. The motion passed unanimously.

Adjournment:

After no further business, the Zoning Meeting adjourned at 4:00 a.m.

Date Approved: April 3, 2006

Sue Creel
Sue Creel, City Clerk

Jere Wood
Jere Wood, Mayor