

9. Should the occupancy of the building change from a commercial recreational facility use, then a reevaluation of the parking shall be done prior to the issuance of a business license for a change in the use.
10. The owner/developer shall work with the Roswell Design Review Board to change the colors of the building, enhance its appearance and increase the landscaping to yield a product that is compatible with surrounding uses in the area.
11. The owner/developer will provide cross parking access with the adjacent lot presently serving the church center and the access shall run with the land.

Motion: Councilman Dippolito moved to approve **RZ07-07R and CV07-02R, (Conditional Use) H.I.T., 275 Rucker Rd., Land Lot: 1282, Christopher & Kyle Farnsworth**, with staff recommended conditions as amended. Councilwoman Wynn seconded and amended the motion by stating she wanted to be certain the words "opaque" and "substantially" were added to the conditions. Councilman Dippolito confirmed for Mayor Pro Tem Henry that he accepted the amendment. No public comment was made. The motion passed unanimously.

Parkway Village Small Tract

2. **PVST08-01, 300 East Crossville Road, FDB Roswell, LLC, 1.97 acres in Land Lot 447, 1st District, 2nd Section, Roswell, Fulton County, Georgia (Use - Office Building/new construction). (Deferred from February 11, 2008)**

Planning and Zoning Director Brad Townsend stated the applicant was requesting small tract approval within the Parkway Village Overlay District. He explained this site originally appeared before Mayor and Council with a request for small tract status and hardship in July 2005; Council denied both requests. The applicant revised their request to eliminate the hardship request and re-present plans to Mayor and Council (PVST05-03); Council denied this request. Mr. Townsend stated the applicant revised the site plan again to include the staff and Council concerns from the last submittal in 2005. It most recently appeared before Mayor and Council on December 10, 2007, at which time it was denied. Mr. Townsend explained this application for this site has no substantial changes from the December 10, 2007 submission. The site located at 300 East Crossville Road, is approximately 1.94 acres. A single office building is proposed for a total of 19,275 square feet of interior space. The application includes a forty (40) foot streetscape buffer as well as a forty (40) foot rear buffer as required by the Parkway Village District. The required landscaping of fifteen (15) percent of the parcel excludes the forty (40) foot streetscape buffer; it calculates to 11,748 square feet. The plan proposed sixty-four (64) parking spaces and is within the development range for the Parkway Village District. He stated the site is bounded on the south by Crossville Road; to the east by an existing landscape business; to the west by a landscape business; to the east is an existing fence company; and single family homes to the north. The site survey shows six (6) specimen oak trees between the driveway and the western property line. The applicant has indicated all of those trees are to be saved. Mr. Townsend said the City's landscape architect has reported that the critical root zone will be disturbed on at least three (3) of the trees and therefore will probably be lost. He stated the City's landscape architect/arborist reviewed the plans and has recommended that the applicant is in compliance and appropriate. The City's Transportation department has reviewed this proposal and has indicated numerous traffic improvements for Highway 92 and Crossville Road related to access in and out of the proposed site.

Mr. Townsend stated staff recommended approval of the Small Tract status subject to the following six (6) conditions:

1. The applicant shall select a revised tree selection from the City's Tree Species Selection List, and shall be approved by the Design Review Board.
2. The applicant shall coordinate with RDOT and GDOT regarding driveway design.
3. The development of the property shall provide inter-parcel access along the eastern boundary prior to the issuance of a land disturbance permit as required by the Zoning Director [Section 12.2.3 (m)].
4. The developer shall verify sight distance per AASHTO requirements upon submittal of Land Disturbance Permit/Development Permit documents.
5. The applicant is required to install sidewalk along Crossville Road.
6. Right-of-way may be required to encompass the deceleration lane, sidewalks and ramps.

At 7:50 p.m., Mayor Pro Tem Henry noted that Mayor Wood had arrived for the meeting and offered to yield the chair to Mayor Wood. Mayor Wood asked for City Attorney David Davidson's advice about entering the zoning discussion already underway. Mr. Davidson replied that up to this point, only Mr. Townsend's presentation had occurred. Mayor Wood noted that he would join the zoning meeting only if he could hear the entire presentation from the beginning. Mayor Pro Tem Henry stated that Mr. Townsend's presentation had been very brief. She recommended that Mayor Wood be permitted to preside over this zoning meeting.

Motion: Councilwoman Wynn moved to allow Mayor Wood to replace Mayor Pro Tem Henry at this point in the meeting; Planning and Zoning Director Brad Townsend would repeat his presentation of zoning item **PVST08-01**. Councilman Tolleson seconded the motion. The motion passed unanimously.

Mayor Wood apologized for being late and explained that he had been at a political function in Atlanta.

Planning and Zoning Director Brad Townsend repeated his entire presentation of **PVST08-01**.

Council comment:

Councilman Dippolito disclosed that he had received political support from the adjacent property owner of this site during his campaign for City Council. He asked for the City Attorney's advice as to whether he could participate in this discussion and vote.

Councilwoman Wynn disclosed that she also had received campaign support from the adjacent property owner of this site.

City Attorney David Davidson explained that under the City of Roswell's ethic code this would be an exemption but as long as they each had disclosed this support in their Campaign Contribution Disclosure Report there would be no violation.

Councilman Dippolito asked if even though the adjacent property owner is not the applicant, would there still be some connection if this was a typical zoning. Mr. Davidson replied that state law requires on a re-zoning case, that anyone who is going to speak in opposition to the re-zoning must notify the City of that intent at least seven (7) days prior to the hearing. He stated this is not a rezoning case so that would not technically apply; he further explained that it would not apply to Councilman Dippolito but would apply to the person who was opposing the re-zoning.

Mayor Wood asked Councilman Dippolito if this past political support would in any way influence their decision tonight. Councilman Dippolito replied it would not influence his decision tonight. Councilwoman Wynn replied it would not influence her decision tonight.

Applicant:

Allen Manheim, 25 Alexander Street, Marietta, GA 30060, represented the applicant. He stated this item had been heard by Mayor and Council on several occasions. Mr. Manheim stated the applicant concurred with the staff's six recommendations. He requested that the following list be incorporated into the official records as part of his presentation: the February 29, 2008 memo from Planning and Zoning Director Brad Townsend to Council with attachments: letter of intent of January 2, 2008; site plan and tree protection plan dated and received January 7, 2008; minutes of December 10, 2007; a supplemental document list of the Parkway Village requests from subject and adjacent properties; approval letters from May 26, 2004; minutes from May 10, 2004; approval letter January 4, 1994; minutes from December 13, 1993; 2007 aerial map, zoning map, land use map, future land use map, location map; Article 12.2.10 dealing with small tract requirements.

Mr. Manheim displayed, via the overhead projector, a letter addressed to Mayor and Council dated November 6, 2007 from Don Rolader. Mr. Manheim requested this letter be incorporated by reference into the official record; to include all of the statements and conditions set forth therein.

Mr. Manheim stated the standard to apply in this small tract request is upon a finding by Mayor and Council that the tract cannot feasibly be combined with abutting property to create a larger tract of land, or development of the tract as proposed will result in a better land use than if the small tract were combined with abutting property the petitioner shall receive approval to develop in accordance with the sections subject to the reasonable conditions as may be imposed by Council. Mr. Manheim said the language was mandatory, not precatory. He urged Council to find that the applicant has done what was asked of them. He noted the applicants had met with Councilman Dippolito and the adjoining land owner in an effort to see how to resolve the issue of feasibility of this site; this involves time, economic value, and physical feasibility. Mr. Manheim stated they have exchanged offers done in good faith with the adjoining land owner, by the applicant as well as by the adjoining land owner represented by counsel. Unfortunately, an offer made did not make economic or physical feasibility sense. Mr. Manheim noted the applicant received another proposal at the close of business today by facsimile, from the adjoining land owner through his counsel. Mr. Manheim explained that the applicant rejected the proposal; the response was directed to Mr. Caldwell's counsel. Mr. Manheim reported that this proposal was the exact same dollar demand made previously in January. He said that to accept that proposal or, to assemble this property there would not be seven (7) acres. To make it economically feasible, it would require a six (6) story medical building rather than a two story building. He stated this is not possible; there is not enough parking and there is nothing available.

Mayor Wood asked that Mr. Manheim share the specific information of the offer and the counteroffer.

Mr. Manheim displayed, via the overhead projector, an appraisal provided to the applicant by the adjoining landowner; he stated this is exhibit two. He stated the appraisal of the property comes to approximately \$350,000 (three hundred fifty thousand) per acre, January 14, 2008; the appraisal seemed reasonable.

Mayor Wood asked if the property included buildings and if so, did they contribute any value to the appraisal; was this the acreage price or the price including the improvements. Mr. Manheim responded that it included the improvements but it would not make any difference in the monetary nature of the offers made back and forth. Mayor Wood asked if the appraisal was of the applicant's property. Mr. Manheim replied that the appraisal was of Mr. Caldwell's property. Mr. Manheim corrected himself stating the appraisal was actually from the applicant's property.

Mr. Manheim stated an offer was made by the applicant, to buy or sell at \$450,000 (four hundred fifty thousand) per acre; his client would sell to the adjoining land owner or would buy his property, for the same price. Mayor Wood asked if this would have been for both of his tracts, with the improvements. Mr. Manheim stated that was correct. He noted the applicant also offered Mr. Caldwell financing at a reasonable rate, in the event he desired to purchase his tract. Mr. Manheim stated Mr. Caldwell refused. He said the applicant thereafter received a demand/response from Mr. Caldwell's counsel to purchase his property at \$600,000 (six hundred thousand) per acre, plus \$300,000 (three hundred thousand) for the inconvenience of moving. Mr. Manheim stated their response to Mr. Caldwell's counsel was that it would not be economically feasible and was "silly" in light of the appraisal which Mr. Caldwell had done. Mr. Manheim stated that in addition, they responded the applicant's offer stood and "we would be happy to do it at \$450,000 per acre, either way." He stated they never heard another word from Mr. Caldwell until the close of business today when he received the facsimile which contained the same offer of \$600,000 per acre, plus \$300,000 for the inconvenience of moving. Mr. Manheim said he composed a brief letter to Mr. Caldwell's counsel stating the applicant appreciated the offer on the eve of this hearing but that it was not economically feasible and not practical; this response letter would be delivered or sent via facsimile.

Mr. Manheim reiterated that the applicant offered to buy the property to the east and west of the subject property; that offer was refused. He said the property to the far east of the applicant's property is owned by Mr. Mason who unequivocally will not sell, creating an impossibility of an assemblage of seven acres. Mr. Manheim said the proposed use of a medical office building is a higher and better use as well as a more attractive and desirable use of the property than currently exists, or what could be put there. He said "If you want to get technical, with what we have now, I suppose we could put in a tattoo parlor, if we wanted to, but, we choose not to do that. The neighborhood behind the applicant would not appreciate what could happen if there was an assemblage of this property by putting in an extension of a strip shopping center." He said that two of the adjoining land owners to the north have agreed that the applicant's proposed development, on the small tract, is acceptable with the conditions. He stated the applicant is willing to do all of those conditions. Mr. Manheim said Council approved the property to the east of the subject property for small tract; if Council denied this application "it would be an unfettered abuse of discretion, it would constitute a denial of equal protection of not only state but federal law, and a violation of the United States Constitution and the Georgia Constitution. In requiring this property to be developed as a minimum seven acre tract, and to require assemblage by your ordinance, it is unconstitutional, it destroys the marketability of the property, it renders it less valuable or without any reasonable economic value, and it constitutes, in effect, a taking of my client's property without just and adequate compensation and without due process of law in violation of the fifth and fourteenth amendments to the Constitution of the United States and the Constitution of the State of Georgia of 1983, as amended." Mr. Manheim stated that in requiring the conditions of assemblage and requiring the applicant to purchase and acquire property of abutting or nearby property owners, in order to be able to develop his property, would be unconstitutional as well as being an unreasonable restraint of trade. Mr. Manheim stated he thought it would be punitive in nature and would subject this Council to a lawsuit; the applicant would prefer to have this small tract approved. He said the applicant does not request any variances. The adjoining land owners to the north approve of the proposal. Mr. Manheim stated the applicant has exhausted all items of feasibility from an assemblage standpoint. He reiterated that it is not economically feasible or physically feasible; nothing has changed regarding this application since it came before Council December 2007, other than the attempt to accommodate requests made through Councilman Dippolito. Mr. Manheim stated the applicant meets the legal requirements of the Parkway Village District and the Small Tract District and asked that Council approve this application as recommended by Planning and Zoning Director Brad Townsend.

Council comments:

Councilman Dippolito noted multiple meetings were held with the applicant. He said the applicant acted in good faith in their attempt come to a solution. The offer which was made late today made it difficult for the applicant to react to in terms of the timing. Councilman Dippolito said at his initial meeting with Mr. Attarha and Mr. Stevens at the end of January, discussions occurred regarding possible assemblage and whether there was an interest in an office park. He said they indicated they were interested at that time but would have to work out the economics of it. Councilman Dippolito asked if was any sort of a site plan and how it could lay out so that this property could be maximized, from an office standpoint. Mr. Manheim asked if he was speaking from an assemblage standpoint, acquiring the Caldwell property, as well. Councilman Dippolito stated yes; assuming, what they had spoken of originally, the assembling of the three properties. Mr. Manheim responded "it is not feasible to do that, at this point, given the fact there is an economic impossibility to acquire or join the properties. Mr. Caldwell said unequivocally, he is not buying our property, even if we finance it for him, one hundred percent." Mr. Manheim stated the subject property is landlocked by a recalcitrant owner who refuses to sell at a price which is \$100,000 more than the appraisal and the applicant feels his property has been taken. Mr. Manheim stated the answer to Councilman Dippolito's question was no because it has not been feasible to do so.

Councilman Dippolito stated he discussed with Mr. Attarha that the Overlay District allows for some additional square footage beyond what we would typically provide with a normal office zoning. He asked if the applicant used that per square acre price, added additional square footage, what would be needed in order to make the project work financially. He noted that at the meeting it seemed as if 14,000 feet per acre was needed, which is a lot for Roswell. Councilman Dippolito asked if anyone took the time to take that 14,000 square feet per acre and apply it to a site plan to see if could work, to come up with a better project than what is presented today. Mr. Manheim consulted with the applicant and stated the answer is yes; it would have to be rented at \$34.00 per foot and only heavy retail would support that and it would require a traffic signal. Mayor Wood asked for the answer to be qualified. He asked what would have to be leased at \$34.00 per square foot, based upon what amount of square feet. Mr. Manheim responded that it would require a lease of square footage that is totally out of the market; it is impossible. Mayor Wood responded that he was trying to understand what the example is or what would have to be leased for \$34.00 per square foot to be feasible. Mr. Manheim stated the economic model would have to be retail in nature in order to command any where near \$34.00 per square foot. Mayor Wood asked how much square footage would be required. Mayor Wood asked the applicant, Mr. Attarha to step up to the podium. Mr. Attarha responded it would require a density of approximately 15,000 square feet per acre with heavy, heavy retail, along with a traffic light. He noted that GDOT stated it would not approve a traffic signal in that location. Mayor Wood asked if the applicant was saying that in order to afford to buy the adjacent property at \$600,000 per acre, he would have to develop it under current zoning at 10,000 square feet per acre, and to pay back the \$600,000 per acre plus his development costs, it would be necessary to realize \$34.00 a square foot on lease, which the market does not support today. Mr. Attarha agreed. He stated it would require heavy retail and density of 10,000 square feet. Mr. Attarha thought that with what Council would like to see, it would require approval for 15,000 square feet per acre and would require a traffic signal. Mr. Attarha stated again that GDOT said no for a traffic light there. Mayor Wood reiterated that it would require being developed at a higher density, a traffic light, and rent. Mayor Wood asked Councilman Dippolito if that made sense.

Councilman Dippolito asked if the applicant was saying that at current market rates would probably require approximately 15,000 feet per acre, plus in his opinion, it would require a traffic light. Mr. Attarha stated GDOT responded that the traffic light is not possible; approximately 400 feet away there is an existing traffic signal. Mr. Attarha said the neighbors are not in favor of a large development; there would be a lot of obstacles with heavy retail; currently it is zoned for office, medical office, or office

professional. Councilman Dippolito asked Mr. Attarha if he had attempted to take the 15,000 square feet and come up with site plan, to see if it physically could be possible. Mr. Attarha thought the acreage would support it. He said the development on six acres would get close to 90,000 square feet but it would require heavy retail but the pricing just did not work; they could not build a medical office building at 80,000 square feet. Mr. Attarha went on to say that it would be impossible to fill since this is not close to a hospital; the current model, submitted to Mayor and Council in December 2007, has three doctors who have committed to moving in there, fifty percent of the building is leased.

Councilwoman Wynn asked if the \$34.00 per square foot was based on Mr. Caldwell's offer. (Mr. Manheim's answer was not audible.) Councilwoman Wynn asked if they had any information regarding their offer to Mr. Caldwell. Mr. Attarha stated their current model for a medical office building at \$22.00 per square foot would work for their property. Councilwoman Wynn asked "if you can buy the properties at what you are offering to buy, would it be economically feasible?" Mr. Attarha responded that it would not be economically feasible if he purchased Mr. Caldwell's property at \$600,000. Mr. Attarha stated they would be able to work it out at \$450,000 with retail.

Councilwoman Wynn asked if the applicant had received written statements of support from the homeowners to the rear. Mr. Attarha stated yes. He reviewed the site plan with Mr. Creech and Mr. Samples before the December 2007 hearing and had a letter stating they had reviewed the site plan and agreed with it; he thought this letter had been submitted to Mayor and Council. Mr. Manheim stated he would mark that letter as the third exhibit. Councilwoman Wynn stated neither she nor Councilman Dippolito were on the Council when this was previously heard by Mayor and Council and that it was not part of their packet for this meeting. She asked how many letters the applicant had. Mr. Manheim responded two. She asked how many neighbors were abutting this property. Mr. Manheim responded there are three abutting neighbors; they have responses from two of the three neighbors; Ruben and Barbara Sample, and Joseph Creech, Jr., they do not have any objection with the conditions.

Mayor Wood asked if they knew what the third neighbor's position is. Mr. Attarha noted the third neighbor, Mr. Hogue, was in attendance tonight's meeting. He stated Mr. Hogue had been out of town when the December hearing occurred. Mr. Attarha stated he personally met last week with this neighbor to provide him the information. Mr. Hogue indicated concern regarding the buffer and the sight of the building. Mr. Attarha stated he explained that they will work with the DRB to provide the necessary evergreen buffer; their plan currently shows the building stands at approximately 38 (thirty-eight) feet tall; he thought that the Parkway Village Overlay District allows up to 65 (sixty-five) feet.

Mr. Hogue confirmed for Mayor Wood that he was in attendance. Mayor Wood invited him to personally state his position rather than hearing it second hand. Mayor Wood noted the Council was interested in hearing the concerns of the neighbors abutting this property.

Mayor Wood stated the applicant would be given time for rebuttal once the public had spoken at this meeting.

Mayor Wood called upon Kevin Caldwell, the adjacent property owner. Mayor Wood explained that Council would be interested in hearing if there are any differences in the facts; it would not be necessary for Mr. Caldwell to state any position he may have.

Kevin Caldwell, 185 Hamilton Way, stated he and his wife both are the property owners of 280 and 310 Crossville Road. Mr. Caldwell stated it was not his intention to get into "an articulated lawyer's debate." He wanted to make some clarifications to allow Mayor, Council, and staff to look at this as objectively as possible. Mr. Caldwell stated that he and his wife took the advice of the Community Development staff

to rezone their property at 310 East Crossville Road under Small Tract designation. Several years prior, they rezoned 280 Crossville Road, where his office is currently located, under the same set of circumstances but was advised to do the Adaptive Re-use designation. Mr. Caldwell stated he was not sure why since it is the same; there are three parking spaces in the front and commercial driveways. He said that he did not believe that this property in question, at 300 Crossville Road, should be analogous to the Small Tract zoning application at 310 Crossville Road; it would be erroneous and not proper. Mr. Caldwell said "FDB Roswell originally came to me on December 28, handed me a response and a request that was due by January 3, effectively giving me three business days to contemplate the future of my business and where I have been since 1998." He said he was requested to give them a decision in three business days regarding whether he was going to move or buy them out at \$866,000; this was unsolicited and unfair. Mr. Caldwell said he responded in good faith to their request; he noted that he had hired an attorney and paid for the appraisal which the applicant has used. Mr. Caldwell stated the applicant's response to his offer did not include the words "silly" or any provocative words; they responded nicely and said they would "help my relocation expense that I requested but did not respond to my request for the actual land values." Mr. Caldwell stated the appraisal he paid for and furnished to them has land values in the area from \$135,000 to \$770,000. He said his appraisal stated it was for a single small tract and did not take into consideration an assemblage, or rezoning. Mr. Caldwell stated he intended to attempt to buy their property or allow them to buy his property; that has never changed except for the fact that he cannot disrupt the flow of his business since that is how he derives his living. Mr. Caldwell said "I don't think, from a standpoint of a higher and better use in Roswell, and as the Chair of the Design Review Board, that this is not a project that I would have approved in this manner. This is a loaf of bread turned sideways facing Crossville Road, has no marketability, has no esthetic pleasure, and is not going to enhance the Village Parkway District." Mr. Caldwell stated that Planning and Zoning Director Brad Townsend suggested there are only two remaining potentially assembled areas as Village Parkway zoning and this is one of them, another is just beyond it. Mr. Caldwell stated there has not been a good, fair negotiation since December 28. He commented that the applicant has purchased the subject property through a very complicated set of transactions between 2005 and today. They knew he was the property owner on both sides and understood what they had bought into. Mr. Caldwell expressed that it was not fair that the applicant has created a sense of urgency and that it must be resolved tonight to avoid a lawsuit with the City; it is not in the best interest of the City.

Mayor Wood asked Mr. Caldwell what his use would be for this piece of property which is in question. Mr. Caldwell responded "An interim use, using the existing residential feel and structures, as dictated in the ordinance. In other words, use the site as is, as an interim use, just like I'm doing, and when there is a higher and better use, the rest of the properties could be assembled." Mayor Wood stated an interim use would be an adaptive use. He asked Mr. Caldwell what he thought would be appropriate for long term use for this site. Mr. Caldwell said all three properties need to be assembled and would proceed with that if something which works could be negotiated. Mr. Caldwell confirmed for Mayor Wood that the highest and best use would be assemblage with the adjacent property, the property which he owns. Mayor Wood asked what Mr. Caldwell thought would have to happen in order to put that assemblage together. Mayor Wood explained that an assemblage means it would be either a joint venture of the parties or one party sells to the other party, or the two parties sell to a third party. Mr. Caldwell said he could not assemble the property; either the applicant or a third party could assemble it. Mayor Wood responded the applicant has argued that the market would not support a use which would bring enough rent to pay \$600,000 per acre for the three parcels. He asked Mr. Caldwell if he had any opinion on this. Mr. Caldwell said "This is the first time I have heard that...and I could easily sit down and talk about this. We frankly haven't had that discussion." Mayor Wood asked for clarification as to whether or not Mr. Caldwell had an opinion tonight as to whether it would take the \$34.00 per square foot, or not. Mr. Caldwell stated there was one meeting when he was asked what it would take for him to sell his property, he made his offer, and they countered with a response of one piece of that offer; they did not address the land value. He thought they

were still trying to work something out; there has been miscommunication. Mayor Wood asked Mr. Caldwell if he assumed that his property is worth \$600,000 per acre. Mr. Caldwell responded that he was asked what it would take for him to leave and that was his answer. Mayor Wood responded that no one was condemning Mr. Caldwell for his response; it is his property. Mr. Caldwell said he took the higher end of the appraisal and what it would take to move and help the applicant move forward with a nice project. Mayor Wood asked Mr. Caldwell if he had an opinion regarding what type of development would be required to be economically feasible at \$600,000 per acre. Mr. Caldwell responded that he did not. Mayor Wood noted he appreciated Mr. Caldwell's patience with his questioning.

Mayor Wood called for Council comments; none were heard at this time.

Mayor Wood noted that he would make an exception to his normal rule and allow Mr. Caldwell the opportunity to make another statement later after public statements were heard and before the applicant's return for rebuttal evidence.

Mayor Wood called on Mr. Manheim who requested the opportunity to speak. Mr. Manheim stated he may have said that the neighbors behind the subject property are in favor; they do not oppose the development proposed.

Public comments:

Joe Creech, 275 Putting Green Lane, stated he, the Samples, and James Hogue, whose property also adjoins the properties in question, are the other land owners affected by this application. Mr. Creech stated he agreed with Mr. Manheim in that these land owners probably do not object to a medical office building although there are concerns regarding the Parkway Village development. He noted that Mr. Hogue, who lives a little further away from the subject property, but also on Putting Green Lane, was in attendance. Mr. Creech stated he purchased his home in 1998 before Highway 92 was widened. In 1992, he appeared at a Council meeting to express his concern that the Parkway Village overlay had insufficient safeguards to protect the adjacent property, especially the adjoining residential areas. Mr. Creech stated the Council seemed to be more concerned regarding what the development would look like from Highway 92 than what it would look like from the adjoining property owners' homes. He said he was assured at that time that whatever development took place, the ordinance would allow for sufficient berms, screenings, buffers and setbacks to protect the property owners and that it would be enforced. Mr. Creech recalled that a Council member repeatedly pointed out that Table 12.2.1 stated the rear areas would be shielded from view by use of landscape, earthen embankments, or berms. He said it was also implied if not explicitly stated, that at a minimum, residential areas would be protected by fencing and landscape buffers of forty (40) feet. Mr. Creech stated he did not speak to Council in 2004 when Mr. Caldwell's property was granted hardship and adaptive use of variance since he was not aware of it. Mr. Creech stated that from his windows he looks toward a 50' x 50' metal building, as is in the approved plan; he said Mr. Caldwell has stated he is not going to do that, and has assured him he is not, but it is there. Mr. Creech stated he did not object to a medical office building as long as the development complied with the requirements and setbacks of the ordinance and the buffer protected the residential property in the rear of the development. Mr. Creech stated he is not happy that there is potential for any kind of retail development on this property behind him. He said the record essentially shows that the buffers and setbacks are not taken into consideration in the discussions regarding these properties. Mr. Creech stated that in his discussions with the applicant and Mr. Caldwell, they have assured him that their proposed developments will preserve the buffer and will be landscaped to provide adequate screening, but it is not written in the plans. He said the original overlay district called for 150 feet; it drops down to 40 feet. Mr. Creech stated that it does not make a lot of difference to the homeowners whether it is small or large tract; the adjacent homeowners are interested in written assurances and commitments from the small tract owners and developers regarding fencing, buffers, and screens to separate the small tract

developments from the residential properties. City staff has the responsibility to ensure the proposed development is in technical compliance with the ordinance; their recommendation for approval is based on their judgment. Mr. Creech asked Council to consider establishing a procedure so that when non-residential developments adjacent to residential areas are proposed, development and zoning staff will be required to obtain input directly from the homeowners and to explain to the homeowners before the hearings what actions they will recommend to Council and the impact of that action. Mr. Creech requested that Council carefully consider the impact of these and future developments on the existing adjacent properties since it could adversely affect property values, safety of our neighborhoods, and the quality of life in the neighborhoods. He asked that when Council and the DRB review development site plans and landscaping, they consider what the view will be for the adjacent homeowners.

Mayor Wood noted that looking at the procedure for future zoning is beyond the scope of tonight's hearing. Mayor Wood noting Mr. Creech's concerns regarding written assurance relating to buffers, berms, and setbacks, asked staff if there are conditions in this application or in the ordinance which address that. Planning and Zoning Director Brad Townsend stated if, this application is approved, it approves a site plan which shows the buffer requirements that meet the Parkway Village standard; if this application is approved, it will also be reviewed by the DRB. Mr. Townsend confirmed for the Mayor that the buffer is forty (40) feet on the front, next to Crossville Road, as well as forty (40) feet on the rear, adjacent to Mr. Creech's rear yard. Mayor Wood asked if fencing and landscaping would be addressed by the DRB. Mr. Townsend responded that was correct. Mayor Wood asked if there is a standard set by the DRB regarding this. Mr. Townsend stated the DRB will try to determine a proper screening of the adjacent property. Mayor Wood asked if this application is approved, would it be appropriate for Council to include additional conditions regarding screening and fences. Mr. Townsend stated yes, if Council felt it was appropriate. Mayor Wood asked Mr. Creech what he thought would be appropriate. Mr. Creech asked Mr. Hogue to participate. Mr. Creech stated they would request a solid evergreen barrier and a fencing which would assure there would be no foot traffic between those parking lots located at the rear of their property. Mayor Wood asked if the evergreen barrier and the fencing would be located within the fifty (50) foot buffer. Mr. Creech stated it would be within the forty (40) foot buffer. Mayor Wood asked if that would be acceptable to the applicant. The applicant responded yes from his seat. Mayor Wood stated that should this Council choose to approve this, it should be a simple matter to attach it. Mayor Wood asked Mr. Creech how high he would like the fence to be and asked if this is the flat ground or if he was above or below the subject property. Mr. Creech stated he is below the property. Mr. Hogue agreed that he was also slightly below the property. Mayor Wood asked if they both thought an eight foot fence would be high enough. Mr. Creech stated no, he was actually more concerned with what Mr. Caldwell is intending to do. Mayor Wood noted that this hearing was not to address what Mr. Caldwell is going to do, only this property. Mr. Creech stated he understood. Mayor Wood stated a site line study could be done to say his house would not be visible from ground level; he asked staff how high that might need to be and noted it might require site line approval. Mr. Creech stated it would take awhile for evergreen buffers to grow high enough. Mayor Wood stated he understood that Mr. Creech would like to have a level of comfort tonight but the DRB will review the plantings, diameters of the trees, and the height of the fence should this application be passed tonight and he would leave the height of the fence to the discretion of the Council. Mayor Wood noted that the applicant has shown a willingness to work with the neighbors on this. Planning and Zoning Director Brad Townsend clarified the location of the fence is on the property lines of the rear of these homes; the evergreen would be where the forty (40) foot buffer is, the fence on the property line. Mr. Creech requested that the fence be on the inside of the forty (40) foot buffer. Mr. Townsend confirmed for Mayor Wood that the DRB would determine the location where the fence would be most appropriate considering topography; he noted that Council may place further conditions. Mayor Wood stated two possibilities have been considered tonight for this property: 1) medical offices, as proposed by the applicant; 2) assemblage with retail, as proposed by Mr. Caldwell. The Mayor asked Mr. Creech what he would like to see there. Mr. Creech stated he preferred low level

office development such as what is further up the road near Crabapple Road; he did not want a strip mall. Mayor Wood noted that DRB would review the design of the building; Council would only be looking at the height of the buildings. The Mayor asked what the height is of the proposed buildings. Mr. Creech responded thirty-eight feet. Mayor Wood asked if that sounded in line with the other buildings which he had just referred to. Mr. Creech stated he did not know how to respond to that. Mayor Wood noted there were limitations on what could be done tonight and elevations would not be drawn at this meeting.

James Hogue, 265 Putting Green Lane, stated the neighbors had met numerous times with Mr. Creech; Mr. Creech spoke for all the neighbors. Mr. Hogue stated he concurred with the proposal for the medical building.

Mayor Wood asked Mr. Hogue if he concurred with Mr. Creech regarding buffers, fences, and landscaping. Mr. Hogue replied that he had spoken with Mr. Creech regarding what they would like to see on the subject property and agreed with Mr. Creech. Mayor Wood noted there have been discussions regarding many different possibilities for this property, including a possible retail center or offices. Mr. Hogue confirmed for Mayor Wood that he would rather see a professional building rather than a retail building.

Council comment:

Councilwoman Henry stated an assumption should not be made that the choice is either an office development or a commercial development if this property is assembled; we should not leap to that conclusion. She stated that if this property is assembled, there are chances that it would be an office use or another "soft use." Mayor Wood commented that Councilwoman Henry's statement was an accurate statement, anything could happen.

Mr. Hogue stated his concern was for the traffic behind this property and what he would see from his backyard.

Ben Sample, 255 Putting Green Lane, resident since November 2006, stated most of the acquisitions which have led to this point occurred before he acquired his property which abuts Mr. Caldwell's property. Mr. Sample's property is located immediately to the north of Kevin Caldwell's property and does not directly abut the proposed development. He said his concern, whether the tract is assembled or not, is that it ultimately affects the end use for Kevin Caldwell's property. Mr. Sample noted that Mr. Creech articulated the neighbors' position. Mr. Sample stated Kevin Caldwell has an approximate eight-foot high fence sitting approximately twenty or thirty feet back from his property line; this has worked well. The noise level from Mr. Caldwell's tree service business has been acceptable; Kevin Caldwell has been a good neighbor to them. Mr. Sample agreed that professional use would be preferable, professional use would have shorter hours of business than retail.

Roya Sobhani, 565 West Crossville Road, resident for twenty years, thanked Council for their service to the City. She noted her commercial and consumer lending experience. She has followed the subject property rezoning throughout the last six years. She noted her involvement with Adopt-a-Rode street clean-up on Canton Street. Ms. Sobhani stated "there is no mystery about the purchase of this property with the new owners. It is a very straightforward deal; it changes hand because of hardship for one owner versus the other." Mayor Wood stated transactions prior to the acquisition of the current owner are not an issue. Ms. Sobhani asked why small tract status has not been approved; there should be consistency in the decisions; citizens should be notified of exceptions. Ms. Sobhani asked who will pay for court costs if this goes to court. She said "the subject project is within the ordinance with zero, zero exception." Ms. Sobhani asked why this has not gone forward.

Mayor Wood said the reason why this has not gone forward is because it has not been approved by this Council; tonight Council would make a decision.

Mayor Wood stated City Attorney David Davidson had reminded him this is not a re-zoning hearing; it is a hearing for qualifying under the Small Tract Status, despite what some people may have characterized this as.

Lisa Peverill, 545 Meadowglen Trail, stated the Parkway Village Overlay exists primarily to protect the home owners and the neighborhoods which existed before Highway 92 was widened and is the reason it is difficult to have small tract status approved. She said existing structures should be used as adaptive re-use; Mr. Caldwell's property is used for adaptive re-use. Ms. Peverill stated she does not understand why the subject property, the existing house, cannot be used unless or until there can be an assemblage. She said "Making this small tract, tearing down the existing structure and developing what would have to be a sideways loaf of bread on that lot, doesn't make any sense for the streetscape on 92 or for the homeowners who reside behind these properties." Ms. Peverill explained that she has a vested interest because she lives in one of the few neighborhoods where there still are existing structures within the overlay; some of those structures have gone commercial and some are residential. Ms. Peverill stated what happens on this property will affect those last few remaining potential assemblage properties. It would be a "nightmare" for this small tract to be developed, leading to two-story small tracts on shallower lots in similarly situated locations; she was concerned that a precedent could be set. She noted that her neighbor, Judy Lichtenstein was in attendance; they are not directly adjacent to the subject properties. Ms. Peverill thought the existing structure could be suitable for office and professional and would not need to be torn down and re-built to accomplish the same goal. She thought that because of the way it would be necessary to situate a two-story building fronting Highway 92 on this property it would not be attractive and would reduce property values.

Dale Nesbit, 950 Nesbit Ferry Road, stated she is concerned with whether or not this land is appropriate for small tract status and development. Ms. Nesbit stated the Parkway Village corridor was difficult; it was important to protect the residential homes which would be behind these properties. One of the biggest goals was the assemblage of property. She stated that all the different pieces, intensity of uses and what could be done, should be looked at and considered. She was not certain that the tract in this case which was re-zoned small tract is actually being used as small tract. Ms. Nesbit said that although these two tracts have different designations, the goal was still assemblage whether or not it happens today, ten years from now or never. She said the goal of the Parkway Village is not to impact the neighborhoods behind to the point that there is a devaluation of their property. Ms. Nesbit stated there is a reasonable use there. The owners of this particular piece of property, between two pieces of property already owned by someone else, knew the situation and that perhaps there would be assemblage later on, or that they could use it the way it was designated under adaptive use. Ms. Nesbit noted that it is necessary to be very careful in how the neighborhoods are protected. She stated this property has an economic use. It does not meet the standard for small tract. She thought that if it turned out that a piece of property had received a small tract designation that somehow offended the constitution, then it still should be considered in terms of how the property is being used and if that particular use is within the context of Council's intent. Ms. Nesbit stated she would rather have an assemblage for the possibility of better projects, but urged Council to keep it as it is and to protect the neighborhoods.

Rouha Sabhani, 505 Hembree Hollow, property owner and resident of Roswell for twenty years, stated she has four children involved in local sports. She expressed concern regarding the distance to North Fulton Hospital from Roswell High School, Roswell Area Park, and other schools. She stated she and many other parents were supportive of the proposed medical office building for this property as an alternative to North Fulton Hospital.

Powell Harrison, 205 Jumper Trace, stated his subdivision is impacted by Parkway Village. Mr. Harrison agreed the Parkway Village ordinance encourages assemblage and is in part intended to protect the interests of the adjoining homeowners. He stated assemblage is a great concept and goal of Parkway Village. This is a free market, cannot be controlled or manipulated, therefore assemblage cannot be commanded. Mr. Harrison stated another principle which has been seen in action for many years, is the appropriate use of small acreage lots if they are not assembled; this is a use which is in keeping with the interests of adjoining homeowners and property owners. He thought that the size of the proposed facility on a small lot in Parkway Village is out of character with the adaptive re-uses seen taking place of single family homes. Mr. Harrison noted there are three Parkway Village properties to the west of Bowen Road with numerous single family homes existing on small lots; there are single family homes which have been converted to adaptive re-uses as business and assemblage has not taken place. These lots have not been leveled with large square footage office buildings placed on them; that would not be in keeping with the market in which the Parkway Village serves. Mr. Harrison stated he was opposed to approving this application and expressed his appreciation to Council.

Kevin Caldwell, thanked the Mayor for the opportunity to speak again. He noted that he has always been concerned with his neighbors. Mr. Caldwell requested that City staff update the file (LDP) for his property at 310 East Crossville Road to indicate that the property does not include a metal building so that Mr. Creech and the other neighbors understand that he is not constructing any other buildings. Mr. Caldwell stated "That is an agreement that I had to strike, with the City Engineers, and it cost me \$5,000 to strike that agreement, on top of \$25,000 more I already spent. If there is not going to be a metal building, I can't do it." Mr. Caldwell stated in 1999, he personally planted a buffer of trees on the property at 300 East Crossville Road for Jimmy Sobhani. He noted a meeting with Roya Sobhani in 2005 and "attempted to entertain her reasons for redevelopment which did have retail use." Mr. Caldwell stated he told her at that time that he did not agree and that the numbers would not work. He stated he has shown good faith and has made attempts to speak with everyone involved in this. Mr. Caldwell stated Mayor Wood implied that he would be in favor of retail. Mr. Caldwell clarified that he had not ever recommended retail and had opposed retail in a past use. Mr. Caldwell emphasized "I am not in favor of retail for any use on any of this property, mine, theirs, or anybody's to be assembled in that area." Mr. Caldwell stated he had been contacted by Sunrise Living, an assisted living facility, through a broker and that he had disclosed that information to Council in December 2007. Mr. Caldwell stated he thought the property was for sale and would attempt to put them in contact with his neighbors and that he would also be interested in selling for the right price which is very close to what he offered. Mr. Caldwell stated that Sunrise Living decided to pursue facilities in Alpharetta and Johns Creek although there is still active conversation occurring with that broker; he noted the money is not a problem for them. Mr. Caldwell stated there is currently a two story building which is one hundred percent empty behind Steak and Shake, Mellow Mushroom, and Chevron, which he believed is designated medical. Mr. Caldwell said that is a beautiful two story building which is much larger than the proposed medical building that has not been occupied by a tenant in several years and is just down the street. He disagreed that we are missing some other building of medical quality.

Applicant:

Mr. Manheim noted that he had marked as Exhibit 4, an email from Gary Stevens to Jim Hazlewood, the alleged person assembling these properties into an assisted living facility dated January 10, 2008. Mr. Manheim said this email written stated "Jim, To insure I have a clear understanding, of our telephone conversation yesterday, I listed the major topics we discussed. 1) Currently, neither you nor your perspective client have any interest in assembling any property along Crossville Road, which includes Mr. Caldwell's two properties and FDB Roswell LLC's one property. 2) You are not aware of the December 6th email from Karen Shannon, Properties of Georgia LLC to Mr. Kevin Caldwell, which addresses 'consideration by my client as an assemblage for an assisted living site.' Please see attachment. In

addition, you are not aware of any communication between your real estate company, Properties of Georgia LLC, and FDB Roswell LLC. At the close of our conversation you mentioned you would keep me posted of any opportunity for the assemblage of the above referenced properties. I will presume you have the same understanding on these items unless I hear from you. Thanks, Gary M. Stevens, Senior Vice President, EDT Group." Mr. Manheim stated there was never any response.

Mr. Manheim stated in 2004, there was no question that small tract was approved for Mr. Caldwell's property and that the site plan approved a metal building; Council has already deemed small tract development on Mr. Caldwell's adjoining property to the east.

Mr. Manheim stated the applicant met in January with the help of Councilman Dippolito; the proposals for the moneys were made at that time. He asked if it was not a reasonable period of time, since January until March, for Mr. Caldwell to respond with another offer as opposed to an offer being made less than two hours before this Council was to occur tonight, knowing the meeting was going to occur. Mr. Manheim stated the answer was obvious; if Mr. Caldwell is not in favor of retail, then assemblage will not be possible because retail is about all the applicant would do on this piece of property at the price which has been quoted. Mr. Manheim stated a medical facility is the highest and best use, is a great use for this property and for the neighborhood. He stated the applicant has agreed with the concerns of Mr. Creech. He stated the applicant understands that an appropriate buffer at the rear of this property which is clear and distinct is necessary; they agree to whatever the conditions and qualifications are.

Mr. Manheim stated that he wanted to be certain the minutes from the December 10, 2007, Mayor and Council Zoning Meeting, pages 1-25 are part of the record and marked as Exhibit 5.

Council comment:

Councilman Dippolito asked City Attorney David Davidson to state the standards of review.

Mr. Davidson said "Upon a finding by the Mayor and City Council that the tract cannot feasibly be combined with abutting property to create a larger tract of land, or development of the tract as proposed will result in a better land use than if the small tract were combined with abutting property, the petitioner shall receive approval to develop in accordance with this section, subject to such reasonable conditions as may be imposed by Council, and shall be entitled to develop as a small tract use."

Councilwoman Henry asked staff how many small tracts or single lots still have their underlying zoning existing along Parkway Village. Planning and Zoning Director Brad Townsend stated that he did not have that number. Councilwoman Henry asked if it was safe to assume that there are several opportunities in the corridor for assemblage. Mr. Townsend responded yes.

Councilwoman Henry asked City Attorney David Davidson if in the Parkway Village Overlay, at the time the road was widened, those properties had the underlying zoning of residential. Mr. Davidson said that was correct.

Councilwoman Henry stated in our attempt to promote the assemblage of lots into larger village style developments with interparcel access and one hundred fifty foot buffers against the neighborhoods, what we would allow is the underlying zoning and allow adaptive re-use which would provide somewhat of a buffer for shifting over; so the adaptive re-use is a way to use a residential property on a very busy road that would be more in keeping for the types of uses along that road until that property could be assembled; she asked if it would be safe to characterize it that way. Mr. Davidson stated it was correct that the existing structure could be used in an adaptive re-use.

No further comments or questions.

Councilman Dippolito thanked the applicants and Mr. Caldwell for getting together to discuss the matter. He noted that even though they did not get to a point of resolving anything, the discussions were productive. There was an attitude of cooperation on both sides, although it has been difficult for each side to communicate on what each thought was a timely basis. Councilman Dippolito stated the use is a good use for the corridor. Medical use is appropriate; future land use for this particular property is for office and it makes sense to have an office zoning there. He said "As I have expressed to the applicant, I think it is appropriate, per the Overlay, to try to have some sort of assemblage of the property and one of the outcomes I had hoped to achieve with some of these meetings with the applicant and Mr. Caldwell was to help facilitate what the ultimate end goal is for the City through this ordinance." Councilman Dippolito stated this particular plan is not truly in keeping with the spirit of the ordinance. The spirit of the ordinance is to have a small tract that has no other way to be assembled. He said in this particular case he believed that it is feasible. The first standard in the Standards of Review is that the tract cannot feasibly be combined with abutting property to create a larger tract of land. He stated we have seen that physically they can be combined but given where the discussions are at this point between the parties, he did not feel that there has been a resolution whether these properties can be economically combined. Councilman Dippolito stated he was concerned that if we went with a project of this type and particular fashion, what would be the end use of the adjacent properties should Mr. Caldwell decide to sell in the future; would we wind up with three identical buildings sitting on this property in this particular fashion. He did not think that was something that would create a better development than if the property were combined now. He said the second standard of review is development of the tract as proposed will result in a better land use than if the small tract were combined with abutting property. Councilman Dippolito stated the surrounding neighborhoods need to be protected; this is a fairly significant building to have in such close proximity to the neighborhoods and would be a detriment.

Councilman Dippolito moved to deny **PVST08-01, 300 East Crossville Road, FDB Roswell, LLC, 1.97 acres in Land Lot 447, 1st District, 2nd Section, Roswell, Fulton County, Georgia (Use – Office Building/new construction).** Councilwoman Wynn seconded.

Council comment:

Councilman Orlans said this has been a difficult issue ever since the Parkway Village was developed. There have been many issues regarding whether there could be assemblage of properties or not. Council was successful on some but others were not successful; he noted the CVS Drug store is small tract. He noted that Council has delayed and deferred this item and tried to put the assemblage together. Assemblage cannot be demanded and in this particular situation it does not seem feasible to obtain. Councilman Orlans said since the neighboring tract is zoned small tract he did not see how we could legally defend not allowing it on this piece of property. He expressed concern regarding spending tax payer money for the legal costs and whether it is a legal battle the City could win. Councilman Orlans suggested deferral if there was the possibility of an agreement between the property owners, but thought it seemed unlikely an agreement could be reached. He expressed concern for the rights of property owners and was not certain he would like a building placed perpendicular to Highway 92. Councilman Orlans complimented Councilman Dippolito for getting the parties together to discuss possible assemblage of the property. Councilman Orlans stated he would not support the motion as presented.

Councilman Tolleson agreed with Councilman Orlans in that the Parkway Village decisions have been difficult. Councilman Tolleson stated he would support the motion. He said the ordinance calls for whether or not an assemblage is physically possible and it is possible. Councilman Tolleson said it was mentioned several times that it would not be possible to reach seven acres for this assemblage. He explained that the ordinance does not require that we reach seven acres. It encourages applicants to

assemble as many as possible. Councilman Tolleson explained that the overlay for Parkway Village does have an underlying use which can still be used and it has adaptive re-use. He noted that one of the adjacent properties is designated adaptive re-use although the other side has small tract designation. Councilman Tolleson stated he hoped a court would review that and see that it is being used as adaptive re-use; all the history should be explained as to why it ended up the way it has. Councilman Tolleson said it is being used as adaptive re-use in the hopes that assemblage will eventually occur there. It would reduce curb cuts on a state highway, which makes it clearly a safety issue. He said the goal of Parkway Village is to protect the community and to increase property values; he noted there has been discussion of increasing property values in terms of one owner trying to assemble the other. Councilman Tolleson said the zoning director has indicated that this is one of the few remaining areas which can be reasonably ventured for assemblage. He stated that he understood the concerns regarding the distance to North Fulton Hospital. He explained that as he understands it, there have been no plans proposed for an urgent care or hospital type facility, or a pediatric medical office on the subject property; any medical use for the subject property would not be required to always remain medical use. Councilman Tolleson stated there are too many concerns outstanding that would interrupt the integrity of what the overlay ordinance was intended to provide.

Mayor Wood asked City Attorney David Davidson if the meaning of the term "feasibility" as used in the findings, and also used in past meetings of Council, had been further defined or clarified. Mr. Davidson explained that the ordinance originally read "Not physically feasible." Several years ago, Mayor and Council changed the ordinance to include the second paragraph to read: "Upon a finding of the Mayor and Council that the tract cannot feasibly be combined with the abutting property to create a larger tract of land." Mr. Davidson said that this change occurred after discussion at a Council meeting that a property can always be physically feasibly combined. He said that was not always the case, but the plan had to be a better plan.

Mayor Wood noted that he had been involved in the drafting and the passage of this ordinance and voted many times on small tract statuses. He explained that in the past, this Council's standard has not been whether it was physically feasible, but whether it was economically feasible. In the past, when making that determination, the Council looked at whether or not the parties negotiated. The Mayor said if it appeared that the parties were not going to reach terms for assemblage, then Council said that would support a decision that it was not feasible to do the assemblage.

Councilwoman Henry clarified for the applicant, that the May 10, 2004 Mayor and Council Zoning Meeting Minutes are a matter of public record and were included in Council's packet tonight.

Councilwoman Henry referring to the presentation from staff regarding the small tract status for Mr. Caldwell's property, stated the May 10, 2004 minutes read: "Mayor Wood asked why this was not adaptive use. Ms. Canon replied it was not adaptive re-use because the applicant was showing parking on the side and the front. To be adaptive re-use, there could not be parking in the front; therefore, this was a hardship and small tract status." Councilwoman Henry noted the Mayor went on to ask if there was future assemblage of the three lots, could they require one curb cut instead of three. Councilwoman Henry noted her agreement with Councilman Tolleson relating to the safety issue of reduced curb cuts. She stated Mayor Wood went on to say in the May 10, 2004 minutes, that he could support the site plan but could not support a much higher density site plan than this. She said the site plan in question was the footprint of the existing home on the lot as well as the fifty (50) square foot barn in the back which Mr. Caldwell said is no longer on the table. Councilwoman Henry expressed her concern regarding the statement that a precedent has been set by small tract status on Mr. Caldwell's property. She said "We were not counseled that by granting that, that the rest of these properties would have to be granted small tract status. Staff clearly said this is the site plan, he's got an existing footprint that he wants to use for an

adaptive re-use. The only reason we are going down this road is for a parking space." Councilwoman Henry thought that Council's decision on Mr. Caldwell's property was for the right reasons; tonight's motion is for the right reasons. Councilwoman Henry went on to say a reduction in curb cuts could possibly save three of the six specimen trees that would be removed; this site plan basically has a shopping center on its side, being called office use; it is not appropriate and is not better than if the properties could be assembled. Councilwoman Henry stated that it does not do the Parkway Village justice to say Kevin Caldwell's property is setting precedent for the rest of the overlay district. She said "This corridor still has enough remaining small lots that we could turn a success story around real quickly and I would hate to see that happen. I will be supporting the motion."

Councilman Igleheart stated the applicant's attorney has stated the timeframe makes this impossible; it is incorrect to think that feasible has to mean "an immediate timeframe." Councilman Igleheart stated that was not the intention and it is not reasonable since it has been more than a decade since the Parkway Village Overlay was created; clearly it was never intended to mean "immediate." He said that adaptive re-use seems to be a better use not only for the property itself but also for the surrounding property and for the current property owners. Councilman Igleheart agreed with Councilwoman Henry in that this is not a better site plan than what could be created. He said that following our own rules, it would not make sense to make this small tract status.

No further comments or questions.

Vote on the Motion to Deny: Councilman Igleheart, Councilman Tolleson, Councilwoman Wynn, Councilman Dippolito, and Councilwoman Henry voted in favor. Councilman Orlans opposed.

Transportation – Councilwoman Becky Wynn

3. Approval to proceed with the proposed improvements at Old Alabama Connector and Roxburgh Drive/Pinebloom Drive project # 05TRA012 in conjunction with the Georgia Department of Transportation (GDOT). (Deferred from March 3, 2008)

Transportation Director Vasilios Andreou stated that on February 7, 2008, the City's Transportation Department in conjunction with the GDOT, held a meeting in the City of Roswell regarding the Old Alabama Connector project. Results of the public meeting were presented to the Community Development and Transportation Committee and also to Mayor and Council at their Regular Meeting on March 3, 2008. Mr. Andreou noted that members of the Willow Springs Subdivision HOA had questions at the Mayor and Council meeting. Mayor and Council advised the Transportation Department to seek more input from the Willow Springs Subdivision HOA members. Mr. Andreou explained that he and a member of his staff, along with City Administrator Kay Love, Councilwoman Wynn, and the consultant for GDOT met with two members of the Willow Springs HOA. He believed that they had satisfied the Willow Springs HOA concerns. Mr. Andreou noted a representative of the Willow Springs HOA was in attendance. Mr. Andreou requested Council's approval to proceed with improvements to Old Alabama Connector in conjunction with the Georgia Department of Transportation.

No Council comments or questions.

Motion: Councilwoman Wynn moved for Approval to proceed with the proposed improvements at Old Alabama Connector and Roxburgh Drive/Pinebloom Drive project # 05TRA012 in conjunction with the Georgia Department of Transportation (GDOT). (Deferred from March 3, 2008) Councilman Dippolito seconded.