



City of Roswell

38 Hill Street
Roswell, Georgia 30075

Meeting Minutes Mayor and City Council

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

Monday, April 11, 2011

7:00 PM

City Hall

WELCOME

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

Staff Present: City Administrator Kay Love; Deputy City Administrator Michael Fischer; City Attorney David Davidson; Assistant City Attorney Bob Hulse; Police Chief Dwayne Orrick; Fire Chief Ricky Spencer; Environmental/Public Works Director Stuart Moring; Transportation Director Steve Acenbrak; Recreation, Parks, Historic and Cultural Affairs Director Joe Glover; Planning and Zoning Director Brad Townsend; Finance Director Julia Luke; Human Resource Director Dan Roach; Environmental Deputy Director Yvonne Douglas; Land Development Manager Clyde Stricklin; Planner Jackie Deibel; Community Relations Coordinator Kimberly Johnson; Building Operations Technician Doug Heieren; Deputy City Clerk Betsy Branch.

Pledge of Allegiance

Keith Miller and Isabelle Miller

CONSENT AGENDA

1. **Approval of March 14, 2011 Council Meeting Minutes (detailed minutes to replace Council Brief minutes adopted on March 28, 2011); Approval of March 28, 2011 Council Brief; Approval of March 30, 2011 Special Called Council Meeting Minutes.**
Approved
2. **Approval to abandon old road access along Spring Drive per request by Alison Ayotte, 127 Spring Drive.**
Transportation
Approved
3. **Approval of a Resolution for acceptance of a land donation along Mansell Road.**
Transportation
Approved
4. **Approval for the Mayor and/or City Administrator to sign the annual Striping Contract with Artlantic/ PE Structures.**
Transportation
Approved

Approval of the Consent Agenda

Councilmember Orlans moved for the approval of the Consent Agenda. Councilmember Diamond seconded the motion. There was no public comment. The motion passed unanimously.

In Favor: 6

REGULAR AGENDA

Mayor's Report

1. **Proclamation of Day of Hope**

Mayor Wood read a proclamation of Roswell Day of Hope, launched in 2009 through a partnership with the national non-profit assistance organization – Convoy of Hope. Roswell Day of Hope represents a coalition of more than 50 local organizations, businesses and churches, that partner to provide practical help and hope to Roswell families and children in need. In 2009, the Roswell Day of Hope provided support to nearly 3,000 people in need. With the continued assistance of our devoted Day of Hope partnerships, the goal is to offer help to more than 5,000 guests this year. More than 1,000 dedicated volunteers at the 2011 Roswell Day of Hope will help distribute free groceries, provide free health and dental screenings, haircuts, and other services in this united act of compassion. The City of Roswell is committed to supporting Roswell families in need and the community efforts and organizations that serve them. The City of Roswell is a proud sponsor of the Day of Hope. City Hall will be the official sponsor site on Saturday, April 16, 2011 from 1 p.m. to 5 p.m. Mayor Wood proclaimed Saturday, April 16, 2011, as Roswell Day of Hope and encouraged Roswell community organizations, churches, businesses, and volunteers, to support and participate in this visible expression of compassion and generosity to our citizens.

Day of Hope Representative Kim Owens thanked the City of Roswell for its continued sponsorship and support. They expect 5,000 guests and estimate they will distribute 30,000-40,000 lbs. of groceries. There will be a kid's zone for children up to twelve years old. People can bring resumes for employment opportunities. Mayor Wood and Councilmember Orlans each thanked everyone who helps support the Day of Hope program of activities. Councilmember Dippolito, who has been involved in the program, noted that the press has been very helpful in getting the information out to the public. He encouraged everyone to participate in the activities or to help in some way.

2. **Announcement of the 2011 Alliance Ride and US Handcycling National Qualifier Race**

Mayor Wood introduced this item. Councilmember Wynn stated she had met Mr. Scott Rigsby and Mr. Scott Johnson recently at a North Fulton Chamber of Commerce breakfast, discussing Mr. Rigsby's participation in the Ironman Triathlon.

Mr. Rigsby, a University of Georgia graduate, is the first double amputee in the world to finish the Hawaiian Ironman. He explained that his success in finishing the Ironman race propelled him to form the Scott Rigsby Foundation, to help fund research advancing affordable prosthetics for children, athletes, and wounded veterans. The foundation also helps fund camps for wounded veterans.

Mr. Scott Johnson, Scott Rigsby Foundation Executive Director, stated a Charity Ride will be held May 7, 2011 in Alpharetta. He noted that the foundation would like to add a Roswell extension to this race event next year to make it a celebration honoring North Fulton wounded warriors. The foundation will join the Mayor's Annual Bike Ride this spring.

Environmental / Public Works Department - Councilmember Becky Wynn

3. **Recognition of Roswell student Katie Miller for winning the Georgia American Society of Civil Engineers (ASCE) contest, "What Do Civil Engineers Do?"**
Presented by Stuart Moring, Director

Councilmember Wynn recognized Roswell student Katie Miller for winning the Georgia American Society of Civil Engineer contest, "What Do Civil Engineers Do?"

Environmental/Public Works Director Stuart Moring stated Katie Miller, a 6th grade student at Queen of Angels, is the winner of the first annual contest of the American Society of Civil Engineers (ASCE) for 6th graders to answer the question "What Do Civil Engineers Do?" She received a certificate and a check for \$300.00. Mr. Moring spoke in detail of Katie's model. JoAnn Macrena, President of the Georgia section of American Society of Civil Engineers, stated the organization feels strongly about reaching out to young students for future engineers and they are very proud of Katie. Katie stated her motivation to enter the contest came from her mother, a civil engineer, and her father, an aerospace engineer, but also inspired by the monetary award and the ability to do a fun out-of school project. Mayor Wood asked which she thought was more fun, being an aeronautical or civil engineer. Katie replied civil engineering.

Community Development - Councilmember Betty Price

4. Steep Slope Variance with Front Setback Variance, 140 Robinwood Ct., Michael Adams/Magnolia Homes of Georgia Presented by Bradford D. Townsend, Planning and Zoning Director

Councilmember Price introduced this item. Planning and Zoning Director Brad Townsend explained this item had been deferred at the March 14, 2011 Mayor and Council meeting. He displayed an aerial photograph of the subdivision containing six lots. Four homes are currently built, two lots remain vacant. Mr. Townsend pointed out the stream adjacent to the subdivision to the south. A graphic was displayed indicating the buildable areas, the stream, undisturbed buffer, the impervious setback buffer, and the building setbacks. Building setbacks were reduced by a BZA case RBZA03-16, reducing front setbacks for lots 3, 4, and 6 to thirty (30) feet; lots 1, 2, and 5 to thirty-five (35) feet front setbacks. Mr. Townsend displayed a graphic indicating the buildable dimensions showing the thirty-foot front setback. This steep slope variance request is for lot 4. The applicant is requesting a twenty-five (25) foot setback and a reduction in the steep slope area. Mr. Townsend stated staff recommended approval.

Staff Recommendation: Approval of the two variances.

- Variance to the front setback from thirty feet to twenty-five feet.
- Variance to a portion of the steep slope buffer as identified on exhibit number 3 stamped "Received March 31, 2011 City of Roswell Community Development Department" with the following condition.

1. Release the portion of the steep slope buffer to allow for construction for a single-family residence. Place a 70 foot undisturbed stream buffer on the property as measured from the top of stream bank. Said buffer shall be accomplished by separate recorded deed in a form approved by the Roswell City Attorney and recorded prior to a Certificate of Occupancy.

Council comment:

Councilmember Dippolito called upon the Environmental staff to address whether or not there would be an impact to the stream.

Stu Moring, Director of Public Works/Environmental stated the City of Roswell Water Resources Engineer Danielle Volpe, conferred with City Engineer Jean Rearick, and met with Planning and Zoning Director Brad Townsend and the applicant to review details of this application. It was determined that by increasing the undisturbed buffer from fifty (50) feet to seventy (70) feet, leaving basically only a five (5) foot section of the setback for erosion sediment control devices, that would create additional protection for water quality. He said it was staff's understanding that the intention of the ordinance was for the protection of water quality. Having that additional forty percent (40 %) added to the undisturbed buffer provides additional control. It is staff's opinion that would be a suitable approach to protect water quality. Councilmember Dippolito said "Even though the dimensions do not necessarily meet up with the steep slope ordinance, you feel that it meets the spirit of the ordinance and the intent of the ordinance?" Mr. Moring replied yes, "to the extent that the objective is protecting water quality."

Councilmember Igleheart asked for clarification that there would be no movement on the undisturbed buffer during the construction process. Mr. Moring stated that would

be at any time, "effectively it is a conservation easement in perpetuity." Councilmember Igleheart stated it is very steep which would require fill. He asked how building something on that small space would be accomplished. Mr. Moring replied that would be the builder's challenge, but it was his understanding that was a part of the discussion. Mr. Townsend replied "That is why the extra five foot where he is able to put his erosion control fence as well as the other items, to make sure that he doesn't disturb the buffer, gives him some room to maneuver equipment as well as dealing with the construction process, so that he would not impact the buffer at all." Councilmember Igleheart asked what would occur if it were impacted. Mr. Townsend replied staff would conduct an assessment to determine what the builder would need to do come back into compliance. Councilmember Igleheart asked how the approval of these variances "does not basically gut the steep slopes ordinance for other properties and how this doesn't set a precedent for the next property coming along to do the essentially the same thing." Mr. Moring replied it has to do with the juxtaposition of the steep slopes area and the buffers. In this case, by extending the undisturbed buffer we are creating an additional zone that effectively mitigates impact through and edits heavily the vegetation which provides a primary benefit in terms of treating any discharge down there. The excavation that will take place for the grading will be limited simply by the fact that the situation of the lot. There will be need to be some grading to take place which will require digging in towards the front part, but because of that additional buffer, that will be a mitigating circumstance, which is what led to the City's engineer's original determination and then the adjustment following the meeting with the applicant. Councilmember Igleheart replied "Essentially we are saying that any other property that has any steep slopes can also be built on, now." Mr. Moring disagreed. He explained that it is a case-by-case analysis. He said he was involved in reviewing the determination that our staff member made, but did not review it as extensively as the City engineer did. Mr. Moring reiterated that it is a case-by-case analysis. Under the circumstances in this case, City staff felt the additional buffer offset the encroachment into the steep slopes area. Councilmember Igleheart asked if the original variance had not been granted by the Board of Zoning Appeals which allowed less setback and close to the street, and other things which allowed more space there, how many houses would be allowed. Mr. Townsend replied "There probably would have been just three of the lots as they are currently designed without the variances, would have very little building setback." Councilmember Igleheart replied "So that initially, from what would have been allowed, based on all of our zoning, it would be three. Right now, you can have five based on what is there and this would add the sixth. Generally, anytime you grant a variance, it is because you are trying to squeeze more than should be there."

Councilmember Price referred to an email that was included in the Council's packet from applicant Mike Adams to City Planner Jackie Deibel which showed a steep slope well on adjacent lot 3. She asked if this is workable or unworkable or if it even suits this lot; was a condition placed upon this lot. Mr. Townsend said he thought the builder could address that question since the design of the home has been done in a manner which fits the lot and lessens the impacts. He said he did not know what the email was referencing in terms of a steep slope well. Mayor Wood suggested that question be reserved for the applicant since it was his lot.

Applicant:

Mike Adams, CEO and President of Magnolia Homes of Georgia, referring to Councilmember Price's copy of the email in question, apologized that the email text referencing a "steep slope well" was a typographical error; he explained that the picture attached to it simply showed the lot next door was approximately the same slope as lot 4.

Mr. Adams said he has met two of the five possible exemptions from the steep slopes variance of Section 7.3.4, because they will not be going back into the new undisturbed buffer and because exceptional circumstances exist.

Mr. Adams said the steepness of the slope, compared to a number of other housing projects; many have drops from the street to the back corner of the house as far as 24 foot, creating sub-walls in excess of ten feet high below the basement in order to get the house in place. Mr. Adams said on lot 4, the drop from the front of the house, or the road level to the back left corner, is less than 14 feet. To the far right corner of the house, the drop is only 8 feet. He explained that in the worst-case scenario, there would only be a small sub-wall on the left rear corner, across the back, about 10 to 15 feet and approximately 3 to 4 feet high; the sub-wall from the left rear corner to the front of the house of approximately 3 to 4 feet and extending approximately 15 feet. The drop will not be that steep. The slope once past the building site proposed does drop off much steeper. Mr. Adams said to mitigate the slope in the back, they propose to extend the 3-4 foot sub-wall coming off the back of the house, extending out about 10 feet, curve it back around to the right corner of the house, create that as an area that would be filled. That would allow the occupants of the house to exit their basement walking on level ground with the small sub-wall, back to the right side of the property, then a normal walk back up to the front of the house to the street level. Mr. Adams said the majority of the "really steep slope" takes place after the location of the proposed house. He asked if this lot was going to be unbuildable, why was it approved to begin with or platted as unbuildable or as an out parcel. The lots in this subdivision are one half to three quarters of an acre in size. The goal is to minimize the impact on the environment by increasing the rear on the undisturbed buffer up to 70 feet and build the house from there. Mr. Adams noted that after the deferral of this item on March 14, 2011, he met with Environmental/ Public Works staff, the City Engineer, and Planning and Zoning staff and discussed that the front setback reduction of five feet would allow him to move further away from the stream and from the undisturbed buffer. Homeowners of the Robinwood Subdivision have approved that the proposed home for this site would have only a two car garage and a narrower custom plan made to fit on this lot resulting in a smaller home than the other homes in this subdivision; a vacant lot could negatively affect the other home values of this subdivision. The final footprint of the proposed house would be approximately 85 feet from the top of the streambed at the back of the house. The undisturbed buffer will remain undisturbed.

Public comment:

Jeff Cunningham, 130 Robinwood Court, spoke on the following:

- Robinwood Estates homeowner.*
- Concerned regarding this vacant lot, maintenance of a vacant lot.*
- Supports approval of variance and builder's smaller custom home designed for this lot.*

Chris Garvey, 120 Robinwood Court, spoke on the following:

- Robinwood Estates homeowner.*
- Concerned regarding this lot, situated between two finished lots, remaining vacant.*
- Supports approval of variance and builder's smaller custom home designed for this lot.*

Melinda Matlock, 110 Robinwood Court, spoke on the following:

- Robinwood Estates homeowner.*
- Concerned that the two vacant lots blight the neighborhood, maintenance of vacant lot.*

- Supports approval of variance and builder's smaller custom home designed for this lot.

Lee Fleck, Martins Landing, spoke on the following:

- Steep slope ordinance is the "single impediment to the Shirley Properties in east Roswell."
- Changing the ordinance will set a precedent impacting his neighborhood.
- Exceptions to the original ordinance.

Mayor Wood asked City Attorney David Davidson for his opinion regarding whether or not granting this variance would set any legal precedent which would prohibit the City from enforcing the steep slopes ordinance on other properties. Mr. Davidson replied that it would not. The ordinance itself does provide for exemptions to this section. Article 7, Section 7.3.4, Subsection E states "The City Engineer, with the approval of the Mayor and City Council can grant a variance from the requirements of this ordinance because exceptional circumstances exist such that strict adherence to the provisions of this ordinance would result in unnecessary hardship and/or would not further the intent of this ordinance." Mr. Davidson noted that Subsection E has been included in the steep slopes part of this ordinance since 2002 and includes five exemptions.

Councilmember Igleheart stated his concern is that the hardship was created by the original developer that set it up as originally proposed. He said the hardship comes from a number of things after that which are not the issue of the City that have been created since then. Mr. Davidson stated there is an argument here that the homeowner's association covenants is what causes the hardship since the builder is required to build a certain size house on this lot. He did not know whether the developer or the homeowners' association had set that requirement, but the applicant did not set those bylaws. Councilmember Igleheart stated he understood that but a hardship is always claimed by the applicant. The hardship is often known at the point the property is purchased. Councilmember Igleheart stated that in some cases it has been created "other things" and not the City's responsibility to make up for that. Mr. Davidson agreed and said "A hardship is usually topography and other issues which is definitely the case on this one because the steep slopes ordinance does apply here. He has an argument which is for the Council to decide. He has an argument that this is not a self-created hardship on his part, it is the size of the house plus the topography of the land. He has requirements that he has to do." Mr. Davidson added that the fact that he bought the property the way that it is right now is something for the Council to consider. Councilmember Igleheart stated an example of a hardship is the lake at Hardscrabble Road and Highway 92 that prevents a portion of the property from being built on, but that is where it is.

Mayor Wood clarified that Mr. Davidson was not saying that there is a hardship or there is not hardship. There are exceptions within the ordinance. It is the discretion of the Council to decide upon a vote to decide whether or not a hardship exists or whether or not other exceptions exist, it is ultimately for the Council to decide.

Councilmember Wynn asked if adding the extra 20 feet to the undisturbed buffer would mitigate any type of "gutting" of the ordinance, since we now are requiring 70 feet of undisturbed buffer versus 50 feet. Mr. Moring replied that it is providing additional protection for water quality in the stream. The concern for water quality in the steep slopes ordinance has to do with the greater propensity to have erosion. By having that additional 40% greater amount of undisturbed buffer, so that should there be a problem such as the development of a gully, it would tend to spread out over that undisturbed buffer area. It is providing additional measures to protect the stream, which staff thought was the intention of the steep slopes requirement.

Councilmember Wynn noted she understood why Mr. Fleck referenced that particular property because there is a creek running through that property. Mr. Moring confirmed for Councilmember Wynn that this is a case-by-case basis and any other would be as thoroughly reviewed. Mr. Moring said that in his professional opinion, if Council approved this variance, it would not set a precedent; it is an ad hoc decision strictly about this particular situation and the way the steep slope area joins the buffer area. Councilmember Wynn asked what kind of assurance the City would have so that in the future, it is kept as 70 feet of undisturbed buffer. Mr. Davidson replied that according to the recommended staff condition terms, a deed is recommended, but an easement such as a conservation easement, could be done to ensure the area would remain undisturbed.

Mayor Wood clarified that staff recommended a deed be recorded which would put any buyer on notice from the deed records. City Attorney David Davidson agreed. He clarified for Mayor Wood that the language for the requested deed is included in staff's recommended condition.

Council comments:

Councilmember Diamond said she would support staff's recommendation with the understanding that approval of this would not set a precedent; it will not impair the quality, vitality, or stability of the protected area. She said she could not speak as to how this property was originally platted, but the subdivision looks unfinished. Councilmember Diamond said she trusted the City engineering staff's professional opinion and recommendation. Council is not looking to "gut" any ordinances.

Councilmember Dippolito stated he was confident that the determination made by Water Resources Engineer Danielle Volpe and Environmental Public Works Director Stu Moring will mitigate the impact to the stream.

Councilmember Igleheart noted that he had sent Council a steep slope variance issue which a previous City engineer had recommended denial of, although it was not as extreme as this variance request. He understands the homeowners' concerns regarding the two vacant lots and wants to help the individual homeowners, but he is strongly concerned that a precedent is being set up for the future. His opinion is that properties similarly situated with slopes will come up with building a wall exactly in the same way and may end up with issues after the fact.

Councilmember Price noted that since the deferment in March, the neighbors have approved the reduced setback at the front of the house from the street and the reduction to the two-car garage. She said, "The situation we have here with four houses already completed, and I know that the steep slope exceeded 35 units so it was not indicated that this would have been buildable at one point, however, it is not all being constructed at the same time. Four houses have already been completed. As far as I know, there has been no damage to the stream, and with adequate protection presumably this one can be built as well without disturbing the stream. It is less than one acre, 0.74 acres, and a single resident home and there is heavy undergrowth behind it, and it is going to be well outside the additional buffer. Of course, stream protection is the highest priority from both our sentiment and our ordinance. At lot 4, we find that is going to have a maximum of up to 70 feet, now. The most impressive thing is our City engineer has looked at this and is comfortable with it. We have a letter of support provided by our Environmental department and even the prior City engineer; we have received an email from him, not that we would hold him responsible, but certainly that did not send off any red flags. In my estimation of our ordinance, I don't think we are looking at it correct. A comment was heard earlier. We are not changing an ordinance and I'm not certain that we are really asking for a variance. I think we are granting an exemption, that is really what

we are doing based on it being a single family home, less than one acre, and the heavy undergrowth, sort of mitigating in that steep slope analysis factors. Going forward, assuming that this does pass, I think we have to be quite certain that there are adequate environment safeguards during and after grading and construction, and a mitigation plan to prevent any sediment damage, and other protective measures as might be indicated on this very steep ravine. I don't believe we are setting a precedent because we are not granting a variance. This is an exemption and as always, we would be taking items case by case."

Councilmember Price moved to approve Steep Slope Variance with Front Setback Variance, 140 Robinwood Ct., Michael Adams/Magnolia Homes of Georgia, to grant a variance to the front setback from 30 feet to 25 feet and an exemption to the portion of the steep slope buffer as identified on Exhibit "3," stamped "Received March 31, 2011 City of Roswell Community Development Department" with the following condition:

- 1. Release the portion of the steep slope buffer to allow for construction for a single-family residence. Place a 70 foot undisturbed stream buffer on the property as measured from the top of stream bank. Said buffer shall be accomplished by separate recorded deed in a form approved by the Roswell City Attorney and recorded prior to a Certificate of Occupancy.**

The Mayor apologized to Mr. Adams for forgetting his opportunity for rebuttal. Mr. Adams declined the Mayor's offer to come forward at this point to make any further comments or statements.

Councilmember Diamond seconded the motion.

Further Council discussion:

Councilmember Dippolito noted the City Attorney had commented earlier that we would probably have an easement instead of a deed and asked whether that needed to be included in the motion. Mr. Davidson replied that it is done as approved by the City Attorney therefore, he could approve an easement in place of a deed.

Councilmember Wynn stated she was concerned about this item from the beginning since it involved a variance on the steep slope. Council understands how strict and stringent the Environmental and Public Works department is and why a review by that department had been requested. Councilmember Wynn said she was comfortable and confident with the determination made by Stu Moring, Danielle Volope, and Jean Rearick that this will not set a precedent; it will mitigate the 70 foot undisturbed buffer creating a pristine creek. She thanked staff.

The motion passed 5:1. Councilmember Orlans, Councilmember Price, Councilmember Wynn, Councilmember Dippolito, and Councilmember Diamond voted in favor. Councilmember Igleheart cast his vote in opposition.

In Favor: 5

Opposed: 1

5. **RZ11-01 Text Amendment for sign code changes to allow additional ground signage and wall signage for properties with 1200 feet of road frontage in C-3 Zoning district. *First Reading.***

Presented by Bradford D. Townsend, Planning and Zoning Director

Councilmember Price introduced this item. Planning and Zoning Director Brad Townsend stated this proposed text amendment to the ground signage and wall signage for multi-tenant centers contains changes to the text since the initiation. He reviewed the changes. The first change is to the base of a ground sign. Currently, the City of Roswell Code has a thirty (30) percent base with seventy (70) percent as the sign area. The Planning Commission recommended a clarification. Mr. Townsend said staff proposes a base minimum of three (3) feet and cannot exceed a maximum of five (5) feet. That would provide architectural change but it would not be possible to be really small or really big. Those numbers would work with the current twelve (12) foot height as well as fifteen (15) height that will be allowed for the sign base. Mr. Townsend said the initiation language allowed for a ground sign to maximize at a fifteen (15) foot height limit. He noted language initiated for the multi-tenant sign was only for the C-3 zoning district. The second change is shown on Page 2 of the text amendment language drafted in red which allows for all of the other multi-commercial districts having multi-tenant centers. If these include 1200 feet or more of road frontage, they are allowed to have a fifteen (15) foot sign. Two (2) signs per road frontage will be allowed. Those two signs can be no longer closer than six hundred (600) feet apart. The third change is shown on Page 3 related to wall signs in the commercial districts, this began with C-3; the other commercial districts of OP, C-1, C-2 I-1, H-R, PV, and OCMS with over 1200 feet of road footage were added. The maximum square footage was added. One sign per wall. Mr. Townsend stated this is the first reading of the text amendment.

Council questions:

Councilmember Wynn inquired about reasoning for the total square footage allowance for the store frontage related to business signs for individual establishments, on page 3. Mr. Townsend stated that is language that is currently in our Code. He explained that if someone has a 24-foot store frontage it would be possible to get a 32 square foot sign. It probably would not apply to any business that has 1200 square foot of linear road frontage. Councilmember Wynn asked if this was already in the City's ordinance. Mr. Townsend replied "Yes, in another area dealing with signs that are 400 linear feet."

Mayor Wood asked if by putting this into this ordinance, are we changing what folks are allow to do with the store front signs. Mr. Townsend replied yes. He confirmed that the businesses would be given more opportunity for signage. Mayor Wood said he supported that and asked what the logic was behind this. Mr. Townsend said it was initiated by Council. Councilmember Wynn asked what section of the Ordinance was the 32 square foot sign included. Mr. Townsend displayed the section of Code. He said any of the businesses in C-2 would have that language. Councilmember Wynn said he was not doing anything to the square footage but just adding more districts to be able to use the square footage. Mr. Townsend stated that was correct.

Councilmember Price asked when this amendment would expire. If it is not agreed to on May 9, 2011 how much time would there be after that. City Attorney David Davidson stated there could be sixty-five (65) days between the first and second readings. Mr. Townsend said if Council acts upon the text amendment at the first

reading, it would be necessary to have the second reading and act upon it within sixty-five (65) days in order for it to become effective or it would have to be sent back through the process. Councilmember Price asked if that requires it to be moved forward tonight. Mayor Wood clarified that it could be deferred, but if approved it is necessary to have the second reading approved within sixty-five (65) days. Mr. Townsend stated the first reading would be the date that Council decides it will take place. Councilmember Price stated "There is a question asking to reduce the 1200 foot to something smaller. If that were to be introduced or considered and I think it would require some study as to how many businesses that actually effected, or included, then if it came back at the second reading with a significant change such as that, it doesn't require any extra time after that or it does?" Mayor Wood replied that amendment could be made at the second reading if there is the support of Council.

Councilmember Diamond asked if Council deferred this item tonight and made a change, I would hope that it would go back before Planning Commission before it came back to Mayor and Council. She suggested that it be deferred this time to make the changes or at least investigate that. Councilmember Diamond stated she thought that 1200 feet might be on the high end. The City should itself in a position for multi-use property people to come in.

Mayor Wood replied the text amendment could be deferred, and pushed back which might take a little longer. Or, it could be moved forward and if there is not a consensus before the second reading then it could be initiated again. Councilmember Diamond stated she tended to defer this item, not approving it as it is.

Councilmember Dippolito asked staff to clarify what the M-R district is. Mr. Townsend replied it should be H-R. Mr. Townsend clarified for Councilmember Dippolito that under Table 22.18 Wall signs, the word "wall" in red replaced the word "establishment." Councilmember Dippolito stated that is probably the way it should read because if the building has three walls, then they would get three signs. There could be any number of walls but the intent is "per establishment." Mr. Townsend replied "The Code actually has it both ways in that section; per wall and per establishment." Councilmember Dippolito said typically we think of building signs in terms of establishments. Mr. Townsend said that was correct. Councilmember Dippolito clarified it would be his recommendation that language be changed on page 3 of the text amendment under Table 22.18, Number of Signs, "1 per establishment."

Councilmember Dippolito said the "70-30 rule" is somewhat confusing and does not lead to necessarily good design. The intent is for it to be a 70-30 split between the architecture and the copy area of the sign. Councilmember Dippolito said he was not certain that putting the base height in accomplishes what we are trying to accomplish. The original goal was to set some sort of an architectural standard. Some other municipalities say the copy has to have four sides of architectural treatment. There is a certain percentage of the overall sign that has to be architectural treatments. Councilmember Dippolito recommended that staff look at other municipalities, particularly Suwanee, to see if there is a way to achieve that original goal without necessarily saying what the base needs to be.

Councilmember Orlans referring to Councilmember Dippolito's point regarding "per wall or per establishment," stated there have been discussions before where there has been a business on the corner of a shopping center and the question of allowing them to have a sign on the side as well, when they had double exposure. He asked if that is why it is in the ordinance as "per wall." Mr. Townsend replied stated "The 'per wall' draft would allow a second sign on the corner of a building that has exposure on two streets. If it is one per establishment it is one sign." Councilmember Orlans

stated he thought there was some intent of allowing a sign on the side of the building whether that is good, bad, or ugly.

Councilmember Dippolito said he did not disagree with that but where it gets somewhat tricky is a building that has multiple faces and it is only facing the main street. He asked if someone has a recessed wall, would they get a sign on three sides. It would be necessary to craft the ordinance properly to get the correct wording. He agreed that when it is a situation where it is an end cap where you have two true sides to the building, I think we should have two signs.

Councilmember Orlans said it may have been we were trying to cap it at total size of the signage, split between the two walls. That would be another approach especially if there are multiple walls in some way or another, to limit the total square footage of the wall signs. If there was a situation where there is three sides, it would have to be split between the maximum size so the signs will all be smaller versus the one sign in the front.

Councilmember Wynn noted that M-R stands for Midtown Overlay District.

Councilmember Wynn asked if it could be stated one wall signage per road frontage or per public road frontage. Mr. Townsend acknowledged that Councilmember Wynn asked that the language suggestion be considered.

Councilmember Orlans stated the Planning Commission's suggestion on changing the 70/30 percentages is a good direction to provide more leeway for different looks if the minimum base size is enough.

Mayor Wood asked Councilmember Price if she intended to move forward with the first reading of the text amendment or a deferral. Councilmember Price replied she thought there were circumstances which were not making Council go with their usual expeditious behavior.

Councilmember Price moved for deferral of RZ11-01 Text Amendment for sign code changes to allow additional ground signage and wall signage for properties with 1200 feet of road frontage in C-3 Zoning district, First Reading, until May 9, 2011. Councilmember Wynn seconded the motion.

Councilmember Price stated that in the interim, staff should evaluate the numbers of properties at lower road frontage. Mr. Townsend replied there is current criteria in the Parkway Village of 1600 feet; 400 feet below and 400 feet above. Mr. Townsend stated staff would look at anything Council felt appropriate. No further discussion. There was no public comment. The motion to defer passed unanimously.

In Favor: 6

6. **RZ11-03 Text Amendment to add a definition for a boutique hotel, determine the Zoning District where the boutique hotel will be a permitted use and determine the parking requirement. *First Reading.***

Presented by Bradford D. Townsend, Planning and Zoning Director

Councilmember Price introduced this item. Planning and Zoning Director Brad Townsend stated this text amendment would be to allow for a definition of a boutique hotel. This type of use would be permitted in C-1, C-3 zoning districts, as well as H-R, OCMS, and MPMUD. This would have parking requirements of one (1) per lodging unit plus one (1) for each one hundred and fifty (150) square feet of banquet assembly, meeting, and restaurant area. It would have the limitation of not to exceed thirty (30) rooms as well as have the allowed accessory uses of full dining, public bar, retail use, special events, and/or conference center facilities. The Planning Commission reviewed this proposed text amendment and recommended approval. Staff recommends approval of the first reading.

City Attorney David Davidson conducted the reading of AN ORDINANCE TO AMEND THE CITY OF ROSWELL ZONING ORDINANCE REGARDING THE USE OF A BOUTIQUE HOTEL CREATING A DEFINITION OF BOUTIQUE HOTEL INCLUDING PARKING REQUIREMENTS AND ALLOWING THE USE OF A BOUTIQUE HOTEL TO BE LOCATED AS A PERMITTED USE IN THE CITY OF ROSWELL ZONING DISTRICTS H-R, OCMS, MPMUD, C-1, AND C-3, stating: Pursuant to their authority, the Mayor & City Council adopt the following ordinance:

1.

The City of Roswell is hereby amending Article 3 of the City of Roswell Zoning Ordinance, Chapter 3.2 Definitions, by adding the following definition of boutique hotel:

Boutique Hotel: A commercial lodging service not exceeding thirty (30) rooms with one (1) or more buildings devoted to the temporary shelter for the traveling public, and where entry to individual guest rooms is via a central lobby. A boutique hotel may include as accessory uses the following: full dining, public bar, retail uses, special events, and/or conference center facilities.

2.

The City of Roswell is hereby amending Article 6 of the City of Roswell Zoning Ordinance, Table 6.1 Permitted uses in Office and Commercial Zoning Districts, as follows::

TABLE 6.1

PERMITTED USES IN OFFICE AND COMMERCIAL ZONING DISTRICTS

Boutique Hotel

O-P: X

C-1: P

C-2: X

C-3: P

I-1: X

3.

The City of Roswell is hereby amending Article 7 of the City of Roswell Zoning Ordinance, Table 7.1 Permitted uses in Mixed-use Zoning Districts as follows:

TABLE 7.1

PERMITTED USES IN MIXED-USE ZONING DISTRICTS

Boutique Hotel

H-R: P

OCMS: P

MPMUD: P

(C-Conditional Approval Required, X-Not Permitted, P-Permitted)

4.

The City of Roswell is hereby amending Article 17 of the City of Roswell Zoning Ordinance, Table 17.3.1 Minimum and Maximum number of Off-street parking spaces required as follows:

Access, Parking, and Loading:

**MINIMUM AND MAXIMUM NUMBER OF OFF-STREET PARKING SPACES
REQUIRED**

USE: Boutique Hotel

MINIMUM PARKING REQUIRED COMMERCIAL USES:

One per lodging unit, plus one per each 150 square feet of banquet, assembly, meeting, or restaurant seating area

MAXIMUM PARKING PERMITTED COMMERCIAL USES:

1.2 per lodging unit, plus one per each 100 square feet of banquet, assembly, meeting, or restaurant seating area

Mr. Davidson noted that if approved, this would be the first reading.

Mayor Wood called for questions or comments. There were no questions or comments from Council.

Councilmember Price moved for approval of RZ11-03 Text Amendment to add a definition for a boutique hotel, determine the Zoning District where the boutique hotel will be a permitted use and determine the parking requirement. This was the First Reading. Councilmember Wynn seconded the motion. Public comments were invited. There was no public comment. The motion passed unanimously.

In Favor: 6

7. **Initiation of a text amendment for active recreational facilities in residential zoning districts.**

Presented by Bradford D. Townsend, Planning and Zoning Director

Councilmember Price introduced this item. Planning and Zoning Director Brad Townsend stated this proposed text amendment related to Chapter 10.5, dealing with permitted playground, community centers, and active recreation buildings allowed in residential districts removes it from Section 10 and places it into the individual single family residential zoning categories of E-1, E-2, R-1, R-2, R-TH, R-THA, R-3, R-3A, R-4, and R-5. This way it is not construed that it would be required for any commercial zoning district. Mr. Townsend said staff recommended approval of the initiation.

Mayor Wood invited Council questions. None were heard.

Councilmember Price moved for Initiation of a text amendment for active recreation facilities in residential zoning districts. Councilmember Dippolito seconded the motion. There was no public comment. The motion passed unanimously.

In Favor: 6

8. Jack Pitman Subdivision Impact Fee Credit Request.

Presented by Bradford D. Townsend, Planning and Zoning Director

Councilmember Price introduced this item. Planning and Zoning Director Brad Townsend stated this was a proposed Impact Fee Credit request for approximately 0.192 acres along Pine Grove Road at Lake Charles Road. The Transportation Impact Fee would be \$808.40. Mr. Townsend stated this is to offset some of the right-of-way that the City is receiving as part of roadway dedication for a small five-lot subdivision. Staff recommended approval of this request.

Council question:

Councilmember Dippolito stated he supported the request. He asked why Council had to approve this rather than approval by the City Administrator. City Attorney David Davidson explained that according to the terms of the impact fee ordinance, the City Administrator could approve it. City Administrator Kay Love stated "This has not been a usual practice. We have not had specific guidance on this and I felt that it was best to bring it forward in this fashion for these two very different situations. We have had a number of impact fee credits that had been given many years ago when I first came to the City of Roswell. There had been varying ways of how that had been handled." Ms. Love stated she felt that if these were brought forward and there was consensus from Council, then she could carry forward without having to bring such items back for Council approval.

Councilmember Price noted that the agenda item summary stated Financial Impact in not applicable. She asked if that is "entirely accurate or undeterminable." Mr. Townsend replied "The financial impact would be offset through the construction of five homes. Until they are built we are not going to actually know that impact."

Councilmember Price moved to approve the Impact Fee Credit at the Jack Pitman Subdivision; Jack Pitman Subdivision Impact Fee Credit Request. Councilmember Orlans seconded the motion. There was no public comment. The motion passed unanimously.

In Favor: 6

9. Aldi and Race Trac Impact Fee Credit.

Presented by Bradford D. Townsend, Planning and Zoning Director

Councilmember Price introduced this item. Planning and Zoning Director Brad Townsend stated this is to offset system improvements. The proposed improvement is the addition of a second right turn lane at the corner of Mansell Road and Highway 92. Mr. Townsend displayed a graphic of the intersection location indicating the locations of the system and safety improvements. The Mansell Road future extension will extend across Highway 92. Mr. Townsend stated "This is being offset. There is a proposed improvement of over \$200,000 in which they are looking to receive at least \$160,000 of Impact Fee Credits." Staff recommends approval.

Mayor Wood invited Council questions. None were heard.

Councilmember Price moved to approve the Aldi and Race Trac Impact Fee Credit. Councilmember Wynn seconded the motion. There was no public comment. The motion passed unanimously.

In Favor: 6

Transportation Department - Councilmember Rich Dippolito

10. **Approval for the Mayor and/or City Administrator to sign a contract with Heath & Lineback Engineers, Inc. for the Chattahoochee River Bridge Pedestrian Improvements in the amount not to exceed \$500,000.**

Presented by Steve Acenbrak, Director of Transportation

Councilmember Dippolito presented this item. Steve Acenbrak, Director of Transportation stated this proposed design concept would connect pedestrians with the City of Roswell and the City of Sandy Springs. Mr. Acenbrak stated the concept in using this Federal earmark is to rehabilitate the bridge, to include bicycle and pedestrian facilities. A standard procurement process was done with 15 responses and four firms were short listed. Heath & Lineback was the most qualified and responsible firm for this project. Mr. Acenbrak stated a fee was successfully negotiated under the Davis-Bacon Act.

Mayor Wood asked for a clarification of the photograph shown to the audience via the overhead projector. Mr. Acenbrak explained that the photograph includes the Chattahoochee River, "The current bridge over the at State Route 9, superimposed on our current Gateway Project, which means that we envision at some point, perhaps a great separation of Azalea-Riverside; there may be some sort of an intersection improvement off of the bridge." He noted that this is a concept where our bridge would tie into the new trail system associated with the Gateway Project. Mayor Wood asked what was shown in the lower left hand corner. Mr. Acenbrak replied that it is the artist's rendering by Heath & Lineback depicting a cable stayed bridge concept; one concept brought up as an option that would work to bridge the Chattahoochee River in a cost effective manner. Mr. Acenbrak confirmed for Mayor Wood that the City has not settled upon a specific concept at this time, and it is only a concept of the alignment. Mr. Acenbrak confirmed for Mayor Wood that this proposed project is in conjunction with the City of Sandy Springs. This project does not require the approval of the City of Sandy Springs. Mr. Acenbrak stated the City of Roswell is the sponsor for this project but the City of Sandy Springs has been a fifty (50) percent partner on the selection criteria. City of Sandy Springs has briefed their elected officials. Mayor Wood asked if the City of Roswell anticipates any differences between the cities if we select this consultant. Mr. Acenbrak replied no.

Council questions:

Councilmember Orlans stated this concept in reality may or may not be attached to the bridge; during original conversations, Council thought that it would be attached in one way or another. Mr. Acenbrak replied "It will almost certainly not be attached to the bridge. We have already talked to GDOT Bridge about this. There are actually two bridges connected and in neither case was the bridge designed to have a structure attached and cantilevered off of it. It is almost certain that it is going to be some distance away from the bridge, standing on its own structure or supported by its own cables." Councilmember Orlans asked if staff has a concept what this may do to the cost versus what Council thought it might originally be, even if foundations need to be built. Mr. Acenbrak replied that it will be within budget and is confident that here are a number of light-weight structures there now that will be usable. Mr. Acenbrak noted this bridge is not designed for motorized vehicles. No further discussion.

Public comment:

Janet Russell, 260 Willow Springs Drive, spoke on the following:

- *Pleased about pedestrian bridge crossing the Chattahoochee River.*
- *Inquired if the \$500,000 for design or implementation.*
- *Disappointed bridge is on "one side." Concerned about access to other side of street since there are no cross walks for pedestrians; concerned about pedestrians with strollers and users of MARTA Bus Stop across the river; connections.*
- *Concerned about City of Sandy Springs share of the cost.*
- *Appalled that the taxpayers ultimately pay for amount of design cost.*
- *Encouraged design to include solar lighting for pedestrians.*

Mr. Acenbrak stated the \$500,000 would cover design costs.

Mayor Wood clarified that the City of Sandy Springs would be contributing about ten (10) percent and the City of Roswell is contributing about ten (10) percent; the remaining eighty (80) percent would come through the Federal government.

Mr. Acenbrak stated "We are getting this design for \$50,000. Sandy Springs is paying the other \$50,000. That constitutes the \$100,000 which is the match of the \$400,000 which the Federal government is contributing for its design. The design is within the \$500,000 limit. The City of Roswell's share of that is \$50,000."

Mayor Wood asked staff to explain how people will get from one side of Roswell Road to the other so that the bridge can be used in both directions. Mr. Acenbrak confirmed that the bridge is designed for use in both directions. The bridge will be between ten (10) and twelve (12) feet wide, the standard for multi-use trail for bicycles and pedestrians. Mr. Acenbrak noted that the sketch he displayed was simply for discussion purposes only and may be largely disregarded. He clarified that he has no idea which side the bridge is going to be, no idea how far away the bridge will be, and no idea how it is going to connect. He assured everyone that it will connect in the most cost effective and tasteful manner. Mayor Wood asked if it was fair to say that if you want to cross the road you will be able to go under the existing bridge to get to the other side so that you can cross the pedestrian bridge without having to cross Roswell Road or South Atlanta Street. Mr. Acenbrak replied yes.

Councilmember Wynn stated the proposal includes public involvement as part of the process. She invited Ms. Russell to attend these meetings for the public's involvement when they have been advertised to provide her suggestions to the consultant.

Councilmember Igleheart stated he agreed with Ms. Russell's concerns regarding design and planning costs.

No further Council discussion.

Councilmember Dippolito moved for the approval for the Mayor and/or City Administrator to sign a contract with Health & Lineback Engineers, Inc. for the Chattahoochee River Bridge Pedestrian Improvements in the amount not to exceed \$500,000. Councilmember Orlans seconded the motion. There was no public comment. The motion passed unanimously.

In Favor: 6

11.

Approval for the Mayor and/or City Administrator to sign a contract with Clark Patterson Lee for the Oxbo Road at SR 9 / Atlanta Street Intersection Realignment in the amount not to exceed \$435,000.

Presented by Steve Acenbrak, Director of Transportation

Councilmember Dippolito introduced this item. Steve Acenbrak, Director of Transportation stated this is another forward progress for the City of Roswell. This proposed project for the realignment of Oxbo Road with SR 9 / Atlanta Street Intersection has been discussed for many years. At one time, this was one of the highest accident locations in the metro Atlanta area. Mr. Acenbrak stated a concept has been developed for the realignment of Oxbo Road, south of the Roswell Hardware Store, continued over to Mimosa Boulevard. Elm Street would be extended down to the intersection of Oxbo Road, realign Pleasant Hill Street, making Pleasant Hill a two-way street. This would bring a grid to an area of town that desperately needs a grid system. It will meet the City's speed design, meet ADA requirements, be bicycle and pedestrian friendly, and allow numerous people who want to travel south on SR 9 to be able safely turn left onto Oxbo Road and into Sloan Street. This project will complement the efforts going on in the Groveway District, it will be the southern boundary of the Groveway revitalization. It will also compliment the Oak Street streetscape project. A request for proposal was solicited with twenty-one (21) responses received. Four firms were short-listed. Clark Patterson Lee was the most qualified and responsive proposer. This firm is also one of the City's on-call firms. They competed with the other firms. Staff still felt they are the most qualified firm to design this project.

Council comment invited. None was heard.

Councilmember Dippolito moved for the approval for the Mayor and/or City Administrator to sign a contract with Clark Patterson Lee for the Oxbo Road at SR 9/ Atlanta Street Intersection Realignment in the amount not to exceed \$435,000. Councilmember Orlans seconded the motion. There was no public comment. The motion passed unanimously.

In Favor: 6

City Attorney's Report**12. Public Hearing to consider revocation or suspension of the alcoholic beverage license of Byung Rok Kim/Green Trees, Inc. d/b/a El Paisa a/k/a Taco El Paisa.**

City Attorney David Davidson introduced this item. Assistant City Attorney Bob Hulsey presented this item for the City of Roswell stating this was a public hearing to consider the revoking the license of Byung Rok Kim / Green Trees, Inc. doing business as El Paisa, also known as Taco El Paisa at 10360 Alpharetta Street, Roswell, GA 30075. Mayor Wood confirmed that the Respondent was in attendance. Mr. Hulsey stated there is only one charge; the sale of alcohol to an underage person, a minor. The issue before Council is first, whether the sale was made and second, whether the person who did the serving was in fact an employee or acting as an employee for the business. Mr. Hulsey stated Myra Grenados, the confidential informant, was present. Ms. Grenados went into Taco El Paisa on January 20, 2011 with two friends where she was asked by Alma Espanoa (possibly Espinoza) whether she wanted to buy a drink and served. Mr. Hulsey stated he hoped the respondent could clarify the proper name. Mr. Hulsey explained they are being charged with a violation of the City of Roswell Alcohol Ordinance Section 3.5.4 (A), Article 3.5 of the Code of Ordinances of the City of Roswell, and State Law Section 3.323. Pursuant to Section 3.32 (A) of the Code of Ordinances, this Council has the power to revoke or suspend an alcohol license for any violation of the ordinance. This is a civil proceeding and not a criminal proceeding (a license revocation). The Standard of Review is the preponderance of the evidence. Mr. Hulsey stated he expected the evidence presented will justify Council in deciding to revoke but it would be within Council power to suspend rather than revoke.

Respondent:

John Fain, Attorney representing Byung Rok Kim, stated there are two issues framed for the City Council, whether or not the sale was made. Mr. Fain stated the sale was made but just not by his clients. Apparently, the sale was made by Alma Espanoa, who is not an employee of his clients, not an independent contractor, and not an agent of his client under any theory of the law. The second issue is whether or not the person who made this alleged sale is an employee. Mr. Fain stated the evidence to be presented will affirmatively prove that Alma Espanoa was not an employee. Mr. Fain stated that in order to prove the violation alleged, counsel will have to prove to the City Council that Alma Espanoa was an employee of his client. Mr. Fain stated he understood that Mr. Hulsey planned to do this through the theory of apparent agency. In Georgia, there is express agency, created by contract and express agreement between two parties, and agency by implication or apparent agency. Implied agency or apparent agency may be created when the statements of conduct of the alleged principal, his clients, reasonably caused the third parties, the confidential informant, to believe that the principal consents to having the act done in his or her behalf for the apparent agent. It is not predicated on whatever the third party, the confident informant, chooses to believe or think the agent has the right to or not to do, or even what the agent says they can do or cannot do. The only evidence presented is that a person as an agent of another party and it is a mere assumption that such an agency existed, which was the assumption made by the confidential informant, and would be very apparent when the case is presented, or an inference drawn by that third party, that he or she is an agency of the principal, has no value and is not sufficient to support a finding of agency. The manifestations of an apparent agency arise, only through the words or acts of the alleged agent; the evidence is insufficient to support a finding of agency relationship. First National

Bank of Gainesville v. Alvin Worley and Sons, 221 Georgia Appellate, 8/20/1996 and Howard v. St. Paul Fire and Marine, 180 Georgia Appellate, 1986. No further comments.

Assistant City Attorney Bob introduced three (3) exhibits. Exhibit "A," a certified copy of the City of Roswell Resolution For Public Hearing To Consider Revocation Or Suspension of Alcoholic Beverage License, passed by Council on March 14, 2011. Exhibit "B," the Certificate of Service showing the notice of hearing was served upon Taco El Paisa and Manager, Mr. Albert Jiwani for the originally scheduled hearing on March 28, 2011. Mr. Hulsey stated Exhibit "C" showed that this hearing was continued at the request of Taco El Paisa from March 28, 2011 to this meeting tonight. Mayor Wood confirmed that the respondent had no objection to the Exhibits "A, B, and C."

Mr. Hulsey swore in City of Roswell Police Sergeant Cameron Roe and informant Myra Grenados.

Ms. Grenados confirmed for Mr. Hulsey that she was eighteen (18) years old on January 20, 2011. She stated her birthdate. Ms. Grenados confirmed that she was asked by Sgt. Roe to go into Taco El Paisa on the night of January 20, 2011 to try to purchase alcohol. Ms. Grenados stated the following in response to Mr. Hulsey's question as to what happened when she went into the business. Ms. Grenados stated "Me and the other two of my friends sat down. Alma came up to us and asked us what we wanted to drink and I said I wanted a Corona. She never asked for an I.D. and she brought it to us. As soon as she brought it to us she charged us \$12.00 which was mine and the other two of my friends." Ms. Grenados confirmed that she paid Alma the money, giving her a twenty dollar bill. Ms. Hulsey asked if she saw Alma go to the bar and get the beers to bring back. Ms. Grenados stated yes, the beers were brought to them. Mr. Hulsey asked if she saw anyone at the bar giving the beers to her. Ms. Grenados replied no. Ms. Grenados identified a photograph of "Alma" as being a true and correct picture of that person. Mr. Hulsey stated that the licensee's counsel, Mr. Fain, has agreed that the photograph shown to the witness Ms. Grenados, is Alma and is being discussed in this case. The photograph was admitted into the record as Exhibit "D." Ms. Grenados confirmed for Mr. Hulsey that a second photograph shown was a picture of her and was what she looked like the night of January 20, 2011. The photograph was admitted into the record as Exhibit "E." Mr. Fain stated he had no objection. Mr. Hulsey said Ms. Grenados had stated that when she entered into El Paisa, Alma did not ask for any identification. Ms. Grenados stated that was correct. Mr. Hulsey asked if when she sat down did Alma come to her table as though she was a waitress. Ms. Grenados replied yes. Ms. Grenados confirmed that she appeared to be a waitress and asked directly what she wanted. She placed an order with Alma. Mr. Hulsey asked Ms. Grenados to state what happened after she purchased the alcohol. Ms. Grenados stated "We left it there and we stepped out. That is when Detective Roe went in the business." Ms. Grenados confirmed for Mr. Hulsey that she left the business and reported to Sgt. Roe and that she was specifically hired to work for the Roswell Police Department that night. Ms. Grenados confirmed that this was the second business that she went into to get alcohol that night working for the Roswell Police Department. Mr. Hulsey had no further questions for the witness.

Mr. Fain inquired with Ms. Grenados if she identified the photograph, Exhibit "D," as a picture of Alma. Ms. Grenados replied it was Alma. She replied that it was a true and accurate picture of what she looked like that night. Mr. Fain asked Ms. Grenados if she saw a logo for the business she visited that evening anywhere on the picture or if Alma was wearing a name tag. Ms. Grenados replied no. Ms. Grenados replied that Alma was not wearing a name tag when she came to the table.

Ms. Grenados confirmed that she had never been to this business before and had never seen her there before. Ms. Grenados confirmed that she did not see Alma get the alcohol from the bar. Mr. Fain said she gave Alma \$12.00. Mr. Grenados confirmed that she gave Alma a twenty dollar bill. Mr. Fain asked if she saw her take the money anywhere. Ms. Grenados replied no, Alma gave her the change. Ms. Grenados confirmed that she did not know what happened to the money Alma had. Mr. Fain asked if she knew where the alcohol Alma had come from. Ms. Grenados replied no. No further questions.

Mr. Hulsey said he had no further questions for the witness, Ms. Grenados and asked if she could be excused. Mayor Wood replied that he preferred she would not be excused in the event other questions come up for her. Ms. Grenados remained present.

Mr. Hulsey called upon Sgt. Roe. Sgt. Roe stated his name and spelled it for the record. Sgt. Roe stated he is employed by the City of Roswell as a Detective Sergeant with the Roswell Police Department. Mr. Hulsey asked if he conducted an operation involving a confidential informer with Taco El Paisa on the night of January 20, 2011. Sgt. Roe replied yes. Sgt. Roe explained to Council that once Roswell Police communicated with Ms. Grenados, she went inside. He said Roswell Police communicated with her and some other people she was with via text messaging. Sgt. Roe stated she came outside and informed the Roswell Police that she had purchased the alcohol. Sgt. Roe went inside and identified himself as law enforcement and went to find the individual that Ms. Grenados had described to the Roswell Police as being the server, being that she was in a short miniskirt and a red top and more specifically, her color eyes and that she had on a black top. Sgt. Roe stated they went inside and found her sitting at the bar on the right hand side. Sgt. Roe stated he asked her to come off of the bar and into the kitchen area. Sgt. Roe stated that at that time, he identified himself to her and asked what her position was at the business. Sgt. Roe replied "She told me, to begin with, that she was just visiting. I asked her again what she was doing there. She ultimately ended up telling us that she was a dancer."

Unidentified second speaker for respondent stated he objected to the statement by Sgt. Roe saying it was all hearsay.

Mr. Hulsey replied it was not hearsay when the individual to whom it was said was present and able to be cross examined. Mayor Wood replied that it may be hearsay because it is a statement made by someone who is not in court. Mayor Wood said "Unless we can show that they are an employee of the restaurant, I think you would have an exception. That is the whole issue here, is whether or not they are an employee. So I think trying to prove that she is an employee to get that evidence in sounds like hearsay to me." Mr. Hulsey replied "No sir, it is not given to say that she was a dancer to say what reason she gave Sgt. Roe for being on the premises." Mayor Wood asked if hearsay is admissible before this tribunal, if it is determined that it is hearsay. Mr. Hulsey replied "If it is hearsay, it is inadmissible. However, if you have someone testify to a statement made to the individual and that person is available for cross examination, that is not hearsay. It is then up to you as the trier of fact, the probative value of that." Mayor Wood replied "Mr. Hulsey, I am ruling against you on that issue."

Council question:

Councilmember Orlans said "You are getting direct testimony from a witness. Can you explain to me how it would be hearsay." Mayor Wood replied "It is something that someone told him. It is being offered to prove what that person told him. I have no other idea why he would be offering it. He can say what was done but as far as

what was said, it is hearsay." Councilmember Orlans replied "It is a direct question to him; he was there, he discussed it with her. He asked her direct questions." Councilmember Orlans stated he disagreed with the Mayor. Mayor Wood replied "That is what hearsay is. When you are testifying as to what someone told you who is not a party, who is not available for cross examination, that is hearsay in my opinion." Councilmember Orlans asked City Attorney David Davidson how Mayor and Council could make those determinations. Mr. Davidson replied "The Mayor is the presiding officer at this hearing. It is up to him to make that determination." Mayor Wood stated "I am ruling that what that person said is inadmissible. If it is an action she took it is not admissible. If it is what she said, I am ruling it is inadmissible."

Mr. Hulsey asked Sgt. Roe if this undercover operation that night was part of the check on several businesses and not one targeting El Paisa. Sgt. Roe replied that was correct. Mr. Hulsey asked if Alma presented a server permit. Sgt. Roe replied she was asked for one but had none. Mr. Hulsey had no further questions for Sgt. Roe.

Unidentified second speaker for respondent asked Sgt. Roe if server permits are required in Roswell, Georgia in order to be a server that deals with alcohol. Sgt. Roe replied yes. Unidentified second speaker for respondent said as a result of the incident at El Paisa, asked if there was one arrest. Sgt. Roe replied that was correct and confirmed the only person arrested was Alma. No further questions for Sgt. Roe.

Mr. Hulsey swore in Albert Jiwani. Mr. Hulsey asked Mr. Jiwani to explain his job at El Paisa. Mr. Jiwani replied he is a manager there. Mr. Hulsey asked what Alma's purpose was at El Paisa the night of January 20, 2011. Mr. Jiwani replied "Apparently she was just there as a customer." Mr. Hulsey asked "Do you recall telling Sgt. Roe that she was a volunteer dancer." Mr. Jiwani replied "I don't recall because he called me to translate because she could barely speak English. I was translating, helping him out translating back and forth from Spanish to English." Mr. Hulsey asked if it is the practice of the business to allow visitors to get alcohol from the bar and serve them to other people. Mr. Jiwani stated "If they are there with their friends, there is nothing you can do about it. She is old enough to buy alcohol if she comes up to the bar and buys them beer for her friends, there is nothing that we can do about it because she is old enough." Mr. Hulsey asked how he knew she was old enough. Mr. Jiwani replied they knew because they had checked her identification before. Mr. Hulsey asked when they had checked her identification before. Mr. Jiwani replied she had been in the bar several times before this incident. Mr. Jiwani told Mr. Hulsey that she was in the bar the other times as a customer. Mr. Hulsey asked Mr. Jiwani if he recalled talking to him on the telephone telling Mr. Hulsey that Alma was a volunteer dancer. Mr. Jiwani replied he did not recall. Mr. Hulsey had no further questions for Mr. Jiwani until rebuttal.

Unidentified second speaker for respondent asked Mr. Jiwani what position he has at El Paisa. Mr. Jiwani replied he is a manager. Mr. Jiwani was asked if he was familiar with the person he was shown in the photograph labeled Exhibit "D." Mr. Jiwani replied yes, Exhibit "D" appeared to be Alma. Mr. Jiwani confirmed that Alma is not an employee of his. Mr. Jiwani confirmed that Alma is not an independent contractor. Mr. Jiwani confirmed that he does not have any business arrangements whatsoever with Alma. Mr. Jiwani confirmed he does not pay Alma when she comes in the restaurant and does not tell her what to do when she comes into the restaurant and does not direct her actions in any way shape or form when she is in the restaurant. Mr. Jiwani confirmed that he does not provide her with a uniform and/or apron, and does not provide her with a pen and paper to take orders. Mr. Jiwani confirmed that he does not tell Alma when to arrive to the restaurant and does not tell her when to leave the restaurant. Mr. Jiwani confirmed that Alma is charged for anything she

wishes to purchase at the restaurant at the full public rate with no discount.

Council questions:

Councilmember Orlans asked Mr. Jiwani if he provides uniforms for all of his employees. Mr. Jiwani replied yes. Councilmember Orlans asked how Alma got the beer from the bar to deliver to Ms. Grenados. Mr. Jiwani replied he did not have any idea because he was in the office when the incident occurred. He noted that he was called upon when Sgt. Roe came in to talk with Alma. Councilmember Orlans asked if anyone could go behind his bar and get to any alcohol. Mr. Jiwani replied "Apparently she did not go behind the bar because when I was there translating for Sgt., he asked me 'Where did you get the beer from' and she specifically said that she got it from Mrs. Kim." Mr. Hulsey said he objected, based on hearsay. Councilmember Orlans stated Mr. Jiwani had just said he was not there but he was now telling him how she got the beer. Mr. Jiwani replied "Because Sgt. asked me to ask her how did she get the beer. I was a translator for him." Councilmember Orlans asked Mr. Jiwani if he has volunteer dancers at his bar. Mr. Jiwani replied "No, they come and go but I don't have anybody that I hire or pay anybody." Councilmember Orlans said they come and go, so you do have dancers at your bar. Mr. Jiwani replied "Now and then. We do not pay anybody." Mr. Jiwani confirmed for Councilmember Orlans that they do have volunteer dancers at his bar. Mr. Jiwani said their role is "To dance with the guys." Mr. Jiwani stated he did not know if they get paid for that. Councilmember Orlans asked if Mr. Jiwani keeps control of this bar and whether he is the manager and the leadership responsible for this bar, knowing what is going on in it. Mr. Jiwani replied "pretty much" but not all of the time.

Councilmember Diamond asked if Mr. Jiwani was called in to translate but was not there when this incident happened. Mr. Jiwani replied he was back in the office. Councilmember Diamond stated he was on site. Mr. Jiwani replied yes. Councilmember Diamond asked if he was there the whole evening. Mr. Jiwani replied "I was there the whole evening but I was back in the office." He confirmed that he only goes out front when he is needed. Mr. Jiwani confirmed that he has a bartender, the wife of the owner. She was working at the restaurant and not present at this meeting.

Councilmember Price asked about the price of beer. Mr. Jiwani replied it costs \$4.00. Councilmember Price asked if Alma paid \$4.00 for the beer. Mr. Jiwani replied he assumed she paid that amount but he was not present. Councilmember Price asked what price she sold it to underage people. Mr. Jiwani replied he would not know because he was not there.

Councilmember Igleheart asked if in previous other cases, have we ever seen where someone just gives alcohol who doesn't work there. Mayor Wood said it does happen where people who are underage have someone else buy liquor for them. Councilmember Igleheart said he understood but thought it was unusual that someone in the business already would come to them. Mayor Wood asked how much change she received for the twenty dollar bill. Mr. Hulsey replied eight dollars. Councilmember Igleheart asked if in the history of Roswell Police sting operations, has anything like this ever been seen. Sgt. Roe replied "In my twenty-eight years with the Police Department, I have never seen that happen."

Mayor Wood asked if there were any other questions for the manager of the business. None were heard.

Mayor Wood asked if there were any other questions on behalf of the respondent.

Unidentified speaker for respondent stated he had the owner present for questions.

Unidentified speaker for respondent asked if he could redirect with this witness. Mayor Wood replied yes.

Unidentified speaker for respondent asked Mr. Jiwani if he allowed people to go behind the bar and take beer. Mr. Jiwani replied no. Unidentified second speaker for respondent asked what would happen if he could someone doing that. Mr. Jiwani stated if they are not employees they are not allowed to go behind the bar (remainder of this answer was not audible). Mr. Jiwani confirmed that they do not give away beer freely. No further questions.

Council questions:

Councilmember Igleheart asked how many beers were served to the informant. Mr. Hulsey replied that according to Ms. Grenados there were three beers served; there were two girls with her and they ordered three beers. Councilmember Igleheart stated that at \$4.00 for each beer, equating to the \$12.00 total Ms. Grenados stated she had paid.

Mayor Wood inquired about the ages of her friends. Ms. Grenados replied they were over the age of twenty-one (21).

Unidentified second speaker for respondent swore in Byung Rok Kim, owner of Taco El Paisa.

Mr. Kim confirmed that he is the owner of Taco El Paisa. Mr. Kim confirmed that he recognized the person in the photograph of Exhibit "D." Mr. Kim explained that he recognized that person's face but did not know her name. Mr. Kim confirmed for the unidentified speaker for respondent that she does not work for him. Mr. Kim confirmed that he has not directed her what to do when she is in this establishment, he does not tell her when to come to the establishment, when to leave. He asked if Mr. Kim tells her to do anything related to employment such as wearing a uniform, aprons, or use of an order book. Mr. Kim replied no.

Council questions:

Councilmember Orlans asked who was working the bar that night that would have handed the beer to Alma. Mr. Kim replied "My wife." Councilmember Orlans stated he would like to ask her questions. Mr. Kim replied she was not present. Councilmember Orlans said he wanted to ask her some questions since she was brought into this issue as a witness. Mayor Wood replied "Mr. Orlans we are here to try this case and you may draw whatever conclusions you wish from her absence, but we need to move forward."

Councilmember Price stated there was a line of questioning defining "an independent contractor." She asked if it is essential that we make a distinction between an employee, an independent contractor, or some other odd arrangement. Mayor Wood replied "Agency has nothing to do with independent contractor employee. We simply have to show Mr. Hulsey acting as an agent. Mayor Wood asked if that was a fair statement. Mr. Hulsey replied yes, and that in this case Alma came to the table as a waitress, she acted as a waitress, took an order, she came back with the beer. He gave the analogy "If it quacks like a duck and walks like a duck it must be a duck." Mr. Hulsey stated it is the City's contention that she gave every appearance of working there and that if she does not work there, that they did not exercise any control over the serving of alcohol within their establishment and that this is not within what they agreed when they got their license.

Councilmember Price asked what the distinction is between "suspension" and "revocation." Mr. Hulsey replied Council has the right to revoke a license. If the

license is revoked, they do not have the right to serve alcohol; the licensee cannot reapply for an alcohol beverage license for at least five (5) years. It would affect all his other licenses he might hold in other jurisdictions. Any disciplinary action would have the same affect. Council could choose to suspend rather than revoke. A suspension could be done for any period up to the rest of the year since the license is good through December 31, 2011. It would be up to Council's discretion as to how long it would wish to suspend or revoke.

Mayor Wood asked if Mr. Kim holds any other licenses. Mr. Kim replied he only has this one alcohol license.

Councilmember Dippolito asked Ms. Grenados if Alma approached her when she entered the restaurant or did she approach Alma. Ms. Grenados replied "She asked what I wanted to drink and I said a Corona. She had no questions." Ms. Grenados confirmed that she walked in the restaurant and sat at a table, and Alma approached them to ask what they wanted to drink.

Councilmember Diamond asked if any other waiters or waitresses approached Ms. Grenados. Ms. Grenados replied no. Ms. Grenados confirmed that she was in the restaurant for approximately 10 minutes from the time she went into the restaurant. Mayor Wood asked how long she had been in the restaurant before she was asked if she wanted a drink. Ms. Grenados replied that she was approached right away when they sat down.

Councilmember Igleheart asked if there were any other people there who appeared to be waiters and waitresses. Ms. Grenados replied no.

No further questions. No further evidence.

Closing:

Unidentified second speaker for respondent noted Mr. Hulse states this Alma Espanoa is an employee of my client. The Council has been active during this hearing and you all have had questions except for Councilmember Wynn. That is very telling about the quality and quantity of the evidence that the City has introduced. Unidentified second speaker for respondent stated he did not know if in a civil proceeding like this in front of a municipal body whether or not the City Attorney has subpoena power, but Alma could have been called, her contact information is known because she was arrested, or she could have been brought here. Mr. Kim's wife could have been asked to come to the hearing to answer a few questions. He stated "What they have shown is an underage person went into a restaurant and was approached by somebody that was giving them alcohol. It seems like the Council has assumed that this alcohol came from stores that my client had." The witness said she did not see her get anything from the bar or see her turn over any money to anyone. He asked how it is known that it was even one of his clients. One person was arrested in this incident did not have a pouring permit and that person is not before this Council at this hearing. That person has not been shown to have any connection to this restaurant besides from somebody's supposition. He stated the City also says that walking like a duck and quaking like a duck is "good enough to show that somebody is employed, apparently under Georgia law, but that is not the law." There is a few different ways to show that somebody is an employee. Roswell Police Department could have a gotten a search warrant. There are magistrate judges all over North Fulton County who are available 24 hours a day. They could have looked at the books to see if Alma was an employee but there was not testimony that they did that or other ways to verify employment. There is no direct evidence. He noted there were questions regarding agency. He said the only way there could be any relationship between this restaurant and this alleged wrong doing

is agency theory. There is no contract, no employment records produced. The only thing is expressed or implied agency but it is not there. He said the law is old and well defined on this point. The law is where the only evidence that a person is an agent of another party is the mere assumption that such agency existed or an inference drawn from actions of that person, that person being the agent not the principal, that he or she is an agent of another party, such evidence has no probative value and is insufficient to authorize a find and affect that such agency existed by implication. He said the Council may not like this situation and may not be comfortable with this set of facts. Council must determine not whether they like this or want it to stop, but whether or not the City has legally shown that this woman was an employee of any kind of my client and whether or not he directed her or allowed her to do what he did. If they cannot prove where the beer came from and cannot prove what the relationship was between the parties and must assume, then they have not met their burden. He urged Council to follow the ordinance in the charging document and say if we do not like it, the evidence has not been presented to take away this man's restaurant livelihood. No further comments.

Mr. Hulsey stated Mayor and Council is entitled to look at the entire circumstances. He asked Mr. Jiwani if he recalled telling me that Alma was there as a volunteer dancer because he and I discussed this situation on the telephone. Mr. Hulsey said that Mr. Jiwani did tell me she worked there as a volunteer dancer. The evidence shows that when Myra Grenados went into the restaurant, sat down with her friends at a table, she was approached immediately by Alma. Alma took a drink order. Alma got was requested, said it cost twelve dollars, was paid, and she went back. These circumstances illustrate that Alma was acting as a waitress at the restaurant. Mr. Hulsey stated Council will recall many cases, and I don't recall a single case where we have ever brought employment records in regarding an employee. I don't recall a single case where we have ever tracked beer from behind the bar to the table minutely as though it were illicit drugs. I believe Council is entitled from the evidence presented to draw an inference that the beer came. Nobody said Alma showed up at the restaurant carrying a cooler with her every time. Mr. Jiwani did not say that and Mr. Kim did not say that. They simply said she visited and didn't say where any beer might have come from. It seems preposterous to say that it came anywhere other than from the restaurant, in this case. I believe that when you weigh the preponderance of the evidence that the City has presented enough evidence for you to act on the license. It is the Council's decision if there has been a violation of the alcohol ordinance and if they can invoke the most severe penalty, which is revocation. Council can invoke a lesser penalty of suspension of a number of days, weeks, or months. That is solely in Council's discretion. Mr. Hulsey stated the City is asking for revocation in this case but as always, it is in Council's discretion as to what it may do.

Mayor Wood asked if there are any other questions from Council.

Council question:

Councilmember Wynn noted the respondent's attorney's assumption that Alma sold beer which was not purchased from the restaurant. She asked for clarification as to whether it is legal to sell alcoholic beverages that are not property of the restaurant, within that premise. Mr. Hulsey replied "One cannot bring your own bottles to a restaurant and serve it. The question there is going to be, and I think I would agree with Council, is that if that were the case, is there enough of a nexus with the restaurant, were they aware that she was bringing beer in. I would agree with them that there is no evidence that she ever brought any beer in. Therefore, that goes back to what I am arguing, that it had to come from their store. There isn't any other place it would come from within the four walls of the establishment."

Councilmember Price asked if there was any other infraction such as taking beer out or an infraction of the fifty percent rule. Is the only thing being discussed here is the serving to underage. Mr. Hulsey replied no. She asked for confirmation that this is not just a bar but is a bar/restaurant. Mr. Hulsey stated the City presumes that it is a bar/restaurant. The only charge is serving to an underage person. Mayor Wood asked if it is fair to say that if this person had been an agent, there would also be a violation of serving without a serving permit. Mr. Hulsey replied that was correct. Mayor Wood asked if the restaurant employed someone to serve who did not have a permit, would both the restaurant and the employee would be in violation of that ordinance. Mr. Hulsey replied that was correct. Mayor Wood said although it has not been charged, there appears to be another violation. Mr. Hulsey replied that was correct.

Councilmember Igleheart asked if it is known how many people were in the restaurant at the time. Mayor Wood stated it was too late to add new evidence at this time. Mr. Hulsey replied he did not know. Mayor Wood noted that the evidence has been closed.

Councilmember Orlans asked how long Mr. Kim has had his license. Mr. Hulsey replied four or five years. Mr. Hulsey replied Mr. Kim had previously held an alcoholic beverage license for Apple Bucks Restaurant.

Mayor Wood asked Mr. Hulsey if Alma was charged with anything. Mr. Hulsey replied "Alma was charged with serving to a minor and was cited. My understanding is it went to our Municipal Court and was bound over to State Court of Fulton County where it is still pending."

No further Council questions.

Mayor Wood stated he would allow both sides a chance for brief rebuttal although he knew it was not part of a closing.

Rebuttal Closing:

Unidentified second speaker for respondent stated "I think the really easy way to look at this case is let's say you all go up to the gas station down the road and you pull up, not you, but somebody underage pulls up and some guy in the parking lot comes up and says 'Hey do you need some beer?' The guy says 'Yeah, I need some beer.' The guy goes in and buys the beer. How can you hold the store owner responsible for somebody that he has no control of. The law of apparent agency is one hundred percent clear. Regardless of the actions by Alma, unless they ratified them or gave the confidential informant some cause to believe that she had agency, it just doesn't exist. There was no evidence presented was so ever, that my clients or any of their actual employees, or anybody at the bar that night ratified Alma's actions. With that being said I like to thank you very much for your time."

Mr. Hulsey confirmed for Mayor Wood that he did not have any closing rebuttal.

Mayor Wood noted that the evidence had been closed earlier and the arguments were now closed. There would be no further questions to the attorneys or witnesses. The Mayor said City Attorney David Davidson has stated that at this time there could be further discussion before the Mayor would entertain a motion.

Council discussion:

Councilmember Igleheart stated he learned tonight that anytime he goes to a restaurant he will ask the server as to whether or not they work there. He understood the questions regarding the situation but it left him more concerned with this type of

operation and who is responsible. Councilmember Igleheart said he did not know if it made sense at this point to revoke the alcohol beverage license but something needs to happen and be watched.

Councilmember Orlans stated he was concerned with this employee situation, but also the fact that when someone applies for an alcohol license, the City makes it clear and emphasizes it frequently, that it is a licensee responsibility. The applicant is questioned on their knowledge of the City of Roswell Alcohol Beverage Ordinance, the City's attitude toward serving minors, and checking for identification of customers who look under the age of forty (40) years old. He wondered why the owner, the owner's wife, who has an interest in the business, and the general manager was not observant and did not take control of how the alcohol is served. The owner of the establishment has a responsibility to accept under the City's alcohol licensing. The general manager should also know what is going on within the bar/restaurant. Councilmember Orlans said this situation was "pretty careless."

Councilmember Diamond stated she had trouble figuring out what Alma's motive would be, it doesn't appear as if she made any money. Councilmember Diamond wondered why the defense did not have Mrs. Kim present to explain what happened at the bar. She asked for background information from Council members who have done this before, to understand the different levels this rises to or how this is handled.

Mayor Wood asked City Attorney David Davidson to explain the burden of proof in this case as he understood it. Mr. Davidson stated "The burden of proof is the preponderance of the evidence. I've been here over ten years and have seen one suspension and about five revocations, for selling to minors."

Councilmember Wynn stated Ms. Granados said she saw no other servers present that night and that she and her friends were approached by Alma and asked for a drink order. Just because there are no employment records or a serving permit does not mean that Alma does not work for this restaurant/bar. She noted Mr. Jiwani's statement to Mr. Hulsey that Alma was a volunteer dancer. She agreed with Councilmember Orlans that there is responsibility on the part of the owner; the general manager should have been out there making sure everything was going correctly. Mrs. Kim should have been there as well. Councilmember Wynn said she was not convinced that Alma does not work for this restaurant/bar.

No further comments.

Councilmember Orlans stated there is a responsibility for the serving of the alcohol and for the owner to know what is going on in his establishment, and for the general manager to know. It is very strange that someone could just walk up to the bar and take beers out to a table and collect money. Councilmember Orlans moved for a fourteen (14) day suspension of the alcoholic beverage license of Byung Rok Kiom/Green Trees, Inc. d/b/a El Paisa a/k/a Taco El Paisa. Councilmember Igleheart seconded the motion. No further discussion. There was no public comment. The motion passed unanimously.

Mayor Wood emphasized that the owner should not look upon this as simply a 14 day suspension that he could survive and that it would be 14 days suspension the next time he is caught. The Mayor warned Mr. Kim that if he appeared again before Council his license would be revoked and in affect for five (5) years. Mr. Hulsey stated revocation is permanent but under the City's Alcohol ordinance, if a license is revoked, the licensee cannot apply for an alcohol license for a minimum of five (5) years after that, but the Alcohol Licensing Board will still take that into consideration. Mayor Wood clarified for

Mr. Kim that he would be prohibited from getting a license in Roswell for five years if it is revoked. It would affect his ability to obtain another alcohol license anywhere else.

Mayor Wood asked for an amendment to the motion that Mr. Kim go back and become re-educated as to what is required in the City of Roswell to hold an alcohol beverage license.

1st Amended motion: Councilmember Orlans moved for reconsideration to add to the motion as a condition, that Mr. Kim go back and become re-educated as to what is required in the City of Roswell to hold an alcohol beverage license. Councilmember Wynn seconded the amended motion.

Mr. Hulsey confirmed that the alcohol awareness program conducted by the City of Roswell Police Department is the TIPS program. Mr. Davidson stated he thought the TIPS program is offered once a month by the City. Mayor Wood clarified that Mr. Kim would have three (3) months in order to take the TIPS program at the City. This would ensure that Mr. Kim understands the alcohol beverage license rules. Mr. Hulsey confirmed for Mayor Wood that the beginning of Mr. Kim's fourteen (14) day suspension would be Tuesday, April 12, and extend through April 25, 2011. According to Mayor and Council, he would have three (3) months for TIPS training. April's TIPS class has already been completed, so it would be the months of May, June, and July 2011 in which he would be required to obtain the training. Mr. Hulsey stated he would prepare a letter to Council including the suspension and the condition. Mr. Hulsey confirmed for Mayor Wood that Mr. Kim, within the next fourteen (14) days, could operate his restaurant but cannot sell alcoholic beverages. Mr. Kim's attorney acknowledged that they understood how this Council ruled. Councilmember Wynn asked what would occur if the owner does not obtain the TIPS training within the 90 days. Mayor Wood stated they would face that if it happened but that he trusted Mr. Kim would obtain the TIPS training. Councilmember Wynn suggested that both the owner and the general manager take the training. Mayor Wood replied the owner is the one who is responsible to make sure this happens, it would be his decision to have the general manager attend. He stated the TIPS program is free of charge; all servers must be licensed in the City of Roswell according to the ordinance. The penalty for having unlicensed servers could be revocation of the alcoholic beverage license. Mayor Wood clarified that the Roswell Police could do a sweep and ask to see the servers' licenses, this is simply to make sure everyone who has an alcoholic beverage license is in compliance. Attorney for Mr. Kim replied it was understood.

In Favor: 6

13.

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

Councilmember Orlans moved for closure to discuss acquisition of real estate and personnel. Councilmember Wynn seconded the motion. There was no public comment. The motion passed unanimously.

In Favor: 6

Adjournment

After no further business, the Regular Meeting adjourned at 10:00 p.m.

The Work Session scheduled to follow the Mayor and Council meeting was postponed until a further date.