



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

Tuesday, January 18, 2011

7:00 PM

City Hall

WELCOME

Present: 6 - Mayor Jere Wood, Council Member Nancy Diamond, Council Member Rich Dippolito, Council Member Jerry Orlans, Council Member Betty Price, and Council Member Becky Wynn

Absent: 1 - Council Member Kent Igleheart

(Rescheduled January 10, 2011 meeting canceled due to inclement weather)

Staff Present: City Administrator Kay Love; Deputy City Administrator Michael Fischer; City Attorney David Davidson; Director of Transportation Steve Acenbrak; Transportation Deputy Director David Low; Community Development Director Alice Wakefield; Planning & Zoning Director Brad Townsend; City Planner Jackie Deibel; Strategic Planning and Budgeting Director Keith Lee; Environmental/Public Works Director Stuart Moring; Recreation, Parks, Historic and Cultural Affairs Director Joe Glover; Community Relations Manager Julie Brechbill; Building Operations Technician Doug Heieren; City Clerk Marlee Press; and Deputy City Clerk Betsy Branch.

Pledge of Allegiance:

Roswell City Dance

Shannon Childers, Director of Roswell City Dance and the graduating seniors Class of 2011 in attendance invited Mayor and Council to their annual winter repertory concert to be held on February 4th and 5th at the Roswell Cultural Arts Center. Roswell City Dance will celebrate their 15th anniversary on February 4, 2011.

Introduction of Nate Jordan, Eagle Scout, Troop #1134

Mayor Wood invited Mr. Jordan to introduce himself. Mr. Jordan explained that he is working on his Eagle Scout project and is close to obtaining the rank of Eagle Scout. Mayor Wood congratulated Mr. Jordan.

Swearing in of Solicitor Krista Young

Roswell Municipal Court Judge Maurice Hillard introduced Krista Young, as the City's fourth solicitor and conducted her swearing in for the duties of the Office of Solicitor for the City of Roswell. Judge Hillard noted that he had also conducted Ms. Young's swearing in ceremony sworn two weeks ago in Court Services before she started on the job. Mayor and Council welcomed Solicitor Young to Roswell. Solicitor Young introduced her husband and three children and expressed her appreciation to Mayor and Council.

Appointment of Marlee Press as City Clerk

Mayor Wood invited Marlee Press to the podium to accept her appointment as City Clerk. The Mayor noted that Ms. Press has been employed at the City of Roswell for thirteen years, working as Council's executive assistant for over ten years. Councilmembers Orlans, Price, Wynn, Dippolito, and Diamond individually congratulated Ms. Press on her appointment and promotion to City Clerk and expressed appreciation for her years of dedicated service and friendship to Councilmembers.

Motion: Councilmember Orlans moved to confirm the appointment of Marlee Press as City Clerk. Councilmember Wynn seconded. The motion passed unanimously. Mayor Wood congratulated Ms. Press.

CONSENT AGENDA

1. **Approval of December 13, 2010 Council Meeting Minutes and approval of December 27, 2010 Council Meeting Minutes.**

Administration

Motion: Councilmember Wynn moved for Approval of the Consent Agenda. Councilmember Diamond seconded. The motion passed unanimously.

A motion was made by Council Member Becky Wynn, seconded by Council Member Nancy Diamond, that this Item be Approved. The motion carried by the following vote:

In Favor: 5

REGULAR AGENDA

Mayor's Report

1. **Recognition of 2010 Holiday Decorating Contest Winners and approval of Budget Amendment 1111-01-10-11 to recognize \$250 in revenue from Georgia Power and \$255 in expenditures for cash prizes.**

Mayor Wood announced the 2010 Holiday Decorating Contest Winners and Honorable Mentions. First place winners in each category receive a \$45 prize; second place winners receive \$25; and third place winners receive \$15. Mayor Wood expressed appreciation to Georgia Power for donating \$250 for cash prizes for the winners.

Residential:

1st - 1002 Branchwind Close - Al and Vicki Hopper

2nd - 2005 Windfaire Circle - Carolyn O'Brien

3rd - 9940 Coleman Road - Carole Gaston

Business:

1st - Common Wealth Financial, 1033 Canton Street -Norman Shirley

2nd - Great Oaks - 786 Mimosa Blvd.

3rd - The Chandlery - 950 Canton Street - Sally Johnson

Subdivision:

1st - Sentinel on the River

2nd - Willow Springs

3rd - Northcliff Trace

Honorable Mentions:

Residential: 125 Roswell Farms Cir

Business: Atlanta Union Mission Thrift Store - 10800 Alpharetta Hwy.

Subdivision: Wildwood Springs

First place winners in each category receive a \$45 prize, second place winners receive \$25, and third place winners receive \$15.

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Administration and Finance Department - Councilmember Jerry Orlans

2.

Approval of a Resolution to Establish Policies and Administrative Fees for Film and Photography Projects Within the City of Roswell.

Presented by Julie Brechbill, Community Relations Manager

Councilmember Orlans introduced this item. Julie Brechbill, Community Relations Manager stated this resolution, if approved, would set the fees for permits for film making in the City of Roswell at \$250 and a \$100 annual fee for professional photographers within the City of Roswell. Ms. Brechbill noted that the City has streamlined the process for applying for permits. This information will be available on the City's website.

Council questions:

Ms. Brechbill confirmed for Councilmember Orlans that the \$250 fee is a "per shoot" fee. She explained that film makers are normally in the City several days for a one time shoot. This fee is in line with the fees charged per day by surrounding communities. Ms. Brechbill noted that "the photo permit is also a one-time \$100 fee" instead of the current \$50 for each scheduled photo shoot on City property. Decatur, GA charges \$100 per day.

Councilmember Price inquired if this is now a "bargain" for photographers who do repeated film shoots. Ms. Brechbill explained that instead of paying \$50 every time they do photographs, they would pay \$100 for the year. For some photographers who do a lot shooting in Roswell, it would be much less expensive. Councilmember Price asked if the city would be losing money. Mayor Wood replied it would not be a lot. Ms. Brechbill stated photographers are becoming more aware of the requirement since signs have been posted at the historic properties. The number of permits applied for has increased. Councilmember Price asked if it was possible that this may suddenly attract a lot of people who will come repeatedly, who would previously have paid for each one. Ms. Brechbill replied "We are getting photographers that we have always had that were not aware of the fee, or the ones that did would come and get the permit fee and come several times a year, or more, depending on how many shoots they had, and then pass that along of course, to their customers."

Councilmember Price suggested that if this becomes a problem, it should be dealt with again.

Councilmember Dippolito asked for clarification that the resolution would not apply to personal or non-commercial purposes. Ms. Brechbill replied that was correct; the permit fee would apply to someone making a living taking pictures, or has a side business taking photos and portraits and it would not pertain to photography students in class.

Motion: Councilmember Orlans moved for Approval of a Resolution to Establish Policies and Administrative Fees for Film and Photography Projects Within the City of Roswell. Councilmember Diamond seconded.

*Public comment:**Forrest Buchanan, 225 Nestor Court, spoke on the following:*

- *Inquired if the resolution covered Google Street Scenes on the internet.*

Ms. Brechbill replied that the permits are specific to City owned properties; parks, historic homes, covered bridge.

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

- *Opposed to charging permit fees in City's public spaces.*
- *Social networking sites like Face Book would be free promotion for Roswell.*
- *Restricting use of Roswell logo.*

Sandy Passman, 435 Stonebridge Drive, spoke on the following:

- *Previously worked as the Barrington Hall weekend staff person; volunteer coordinator 4 years.*
- *Supports resolution.*
- *Develop photography policies to protect City property.*
- *Rather than money, the photographer should be required to provide insurance information; City of Roswell should be an additional insured.*

Mayor Wood inquired about the City of Roswell photography policy. Ms. Brechbill confirmed for Mayor Wood that after the last Committee meeting, she had met with Morgan Timmis, Historic and Cultural Affairs Manager, to set general guidelines for photography within the City of Roswell properties and another set of photography guidelines for the historic homes. Curators from all three of the historic homes helped to develop those guidelines.

Council comment:

Councilmember Price said she had heard from concerned citizens that often times they would be pushed aside by photographers. She stated proper policies need to be instituted.

Mayor Wood asked if the developed policies include the ability to revoke photography privileges from any photographer found to be habitually in violation of the City's photography policies. Ms. Brechbill confirmed that was correct.

Councilmember Wynn confirmed that Council was voting on the revised resolution each had at the dais.

Councilmember Dippolito stated agreed that social networking could be free advertising, and although he did want the fee to be a burden on anyone, there are administrative costs associated with issuing a permit, the costs associated with the permit should be reasonable and just. Ms. Brechbill noted that these permits are currently processed in Community Relations and if this item is approved, Community Development would then issue the permits.

Councilmember Diamond recalled a discussion regarding a mechanism for a waiver, if appropriate. Ms. Brechbill responded that the waiver had been considered if the photographer was a student photographer, as earlier discussed.

Councilmember Price said she favored a deferral until such time that the policies could be presented. She noted that it had previously been in the Community Development and seemed to have migrated into Administration and therefore, she would not support this resolution. Mayor Wood responded that only the fees were being voted upon; the policy could be brought back if Council felt it was appropriate.

Vote: The motion passed unanimously. Councilmember Price clarified that she supported the resolution.

Mayor Wood asked Ms. Brechbill to follow up with him regarding this policy going back to Committee and Council, and to make sure it is with the right Council liaison.

A motion was made by Council Member Jerry Orlans, seconded by Council Member Nancy Diamond, that this Item be Approved. The motion carried by the following vote:

In Favor: 5

Enactment No: Resolution 2011-01-01

Community Development - Councilmember Betty Price

3. **CU10-05, Zion Missionary Baptist Church of Roswell, Inc., 944 Myrtle St., Land Lot 425. (Deferred from the December 13, 2010)**
Presented by Bradford D. Townsend, Planning and Zoning Director

Councilmember Price introduced this item. Planning and Zoning Director Brad Townsend clarified that as part of the use, the applicant is required to have a variance to the district dealing with the existing home. The proposed use of the property is an approximate 1300 square foot residence which the church has proposed using for their small youth group events. There is existing parking at the church as well as "parking on the existing sidewalk." Mayor and Council reviewed this item at their December 13, 2010 meeting. Mr. Townsend stated the applicant was to meet with the adjoining neighbor to the south. That meeting did occur and both parties were attendance tonight. Staff recommended denial of this application. The Planning Commission recommended denial. Mr. Townsend stated if Council chose to approve the application, staff would recommend the following three conditions related to the application.

Staff conditions:

- 1. This structure shall not be used for overnight functions.*
- 2. All activities shall cease by 9:00 p.m.*
- 3. The church shall install a fence along the property lines which meets the height restrictions of the City of Roswell Zoning Ordinance.*

Council comments:

Councilmember Orlans wished to clarify that the Planning Commission vote was a 3-3 tied vote, which automatically would be a denial. Mr. Townsend replied he was correct.

Applicant:

Reverend Frank Lewis, 540 Sailwind Drive, stated he had met with the adjoining neighbors, Mr. and Mrs. O'Berry. Mr. Lewis said he decided to "forgo this application." He said the existing property on Myrtle Street would be used within the boundaries of the zoning. Mayor Wood asked Reverend Lewis if he was withdrawing this application. Reverend Lewis said he was not withdrawing but forgoing the request. Mayor Wood asked for staff interpretation as to whether the church would need a variance. Mr. Townsend replied a variance is not needed; the only variance that was needed was to use the house as a conditional use. Reverend Lewis confirmed for the Mayor that he was no longer asking for a variance; he also confirmed that they would use the property as a residential property. Mayor Wood replied that the equivalent would be a withdraw of the application. Mr. Townsend clarified that the withdraw would be for the complete application for the use as a youth center, as well as the variance. Mayor Wood said he wanted to be sure Reverend Lewis understood. Mr. Townsend replied "He wants to use the building as a house." Mayor Wood stated that use would not need a variance. Mr. Townsend replied that was correct. Reverend Lewis confirmed that he understood that he would not need a variance to use the house. Mayor Wood asked staff to confirm that there was no need to move forward with this application for a variance. Mr. Townsend replied that was correct. Reverend Lewis replied "There were too many encumbrances put upon this request, a fence and lighting that we could not have, so that we could be good neighbors in this community." Reverend Lewis confirmed for Mayor Wood that there was no reason to continue the public hearing on this subject. Mayor Wood thanked Reverend Lewis for his efforts to work this out with the neighbor. Public comments were invited by Mayor Wood. No further discussion.

This matter was Withdrawn by the applicant.

4.

CU10-06, Kings Court Chapel, SE Corner of Willeo Road & Highway 120.

(The applicant has requested deferral until the February 14, 2011 Mayor and City Council hearing.)

Presented by Bradford D. Townsend, Planning and Zoning Director

Councilmember Price introduced this item.

Motion: Councilmember Price moved to approve the deferral of CU10-06, Kings Court Chapel, SE Corner of Willeo Road & Highway 120. (The applicant has requested deferral until the February 14, 2011 Mayor and City Council hearing.) until February 14, 2011. Councilmember Orlans seconded. Public comment invited. No further discussion. Mayor Wood noted that the public would have another opportunity to make comments at the February 14, 2011 Mayor and Council meeting. Mr. Townsend confirmed for Councilmember Price that he had no comments to add. The motion passed unanimously.

A motion was made by Council Member Betty Price, seconded by Council Member Jerry Orlans, that this Item be Deferred and placed on the Mayor and City Council agenda for 2/14/2011. The motion carried by the following vote:

In Favor: 5

5.

Approval of Natural Area Conservation Easement.*Presented by Alice Wakefield, Director*

Councilmember Price introduced the item. Alice Wakefield, Director of Community Development stated this easement was provided by the developer to offset the water quality requirements as established in the Post Development Stormwater Management ordinance. The easement location is 11261 Alpharetta Highway, on property where the Sharpshooters business exists. This matter was brought before committee on December 22, 2010. The property owner has indicated to staff that they are unwilling to provide the trail easement given the nature of the facility. The environmental engineer and the city engineer both agree that a trail at this side of the stream would not be feasible and that it would be more appropriate on the other side of the stream. Staff recommends approval of this natural area conservation easement.

No Council comments were made.

Motion: Councilmember Price moved for Approval of Natural Area Conservation Easement. Councilmember Wynn seconded. The motion passed unanimously. No further discussion. The motion passed unanimously.

A motion was made by Council Member Betty Price, seconded by Council Member Becky Wynn, that this Item be Approved. The motion carried by the following vote:

In Favor: 5

Environmental / Public Works Department - Councilmember Becky Wynn

**6. Approval to amend Article 24.5, Water and Sewer, of the Code of Ordinances of the City of Roswell. (Second Reading)
Presented by Stuart Moring, Director**

Councilmember Wynn introduced the item. Stu Moring, Director of Public Works/Environmental stated the changes to this ordinance were reviewed by Mayor and Council at the first reading. These changes to the city's water and sewer ordinance have been directed by the Georgia Environmental Protection Department. The city is required by its permit to comply with the changes directed by GEPD, as well as by the city's participation with the Metropolitan North Georgia Water Planning District. Staff recommends approval.

Council questions:

Councilmember Price asked if there was anything contained in this ordinance that was any more onerous than the state requires. Mr. Moring replied no, it is strictly following the state requirements.

City Attorney David Davidson conducted the reading of AN ORDINANCE AMENDING ARTICLE 24.5, WATER AND SEWER, TO ADD STATE-MANDATED WATER RESTRICTION PROVISIONS AND PROVISIONS RELATED TO PRIVATE DECENTRALIZED WASTEWATER SYSTEMS stating: the Mayor and Council of the City of Roswell, pursuant to the authority vested in them do adopt the following ordinance:

1. Article 24.5, Water and Sewer of the Code of Ordinances of the City of Roswell is hereby amended by adding the following sections:

2. 24.5.23 Commercial Car Wash

A. General Provisions

(1) Purpose and Intent

The purpose of this section is to reduce water consumption from commercial car wash facilities by requiring all new conveyor car washes to install operational recycled water systems.

(2) Applicability

(a) This section applies to all new conveyor car washes permitted and constructed after January 1, 2011, regardless of the water source.

(b) The provisions of this section do not apply to conveyor commercial car washes that were permitted or constructed before January 1, 2011.

(c) The provisions of this ordinance do not apply to self-service car washes or in-bay car washes.

B. Definitions

The following words and phrases, whenever used in this section, have the meaning defined in this section:

(1) "In-bay automatic car wash" means a commercial car wash where the driver pulls into the bay and parks the car. The vehicle remains stationary while a machine moves back and forth over the vehicle to clean it, instead of the vehicle moving through the tunnel.

(2) "Conveyor car wash" means a commercial car wash where the car moves on a conveyor belt during the wash. The driver of the vehicle can remain in the vehicle or wait outside of the vehicle.

(3) "Recycled water system" means a water system that captures and reuses water previously used in wash or rinse cycles.

(4) "Self-service car wash" means a commercial car wash where the customers wash their cars themselves with spray wands and brushes.

C. Commercial Car Wash Water Recycling Requirement

All new commercial conveyor car washes, permitted and constructed after January 1, 2011 must install operational recycled water systems. A minimum of 50% of water used will be recycled.

24.5.31.1 Restriction on Outdoor Water of Landscape

Outdoor watering for purposes of planting, growing, managing, or maintaining ground cover, trees, shrubs, or other plants may occur only between the hours of 4:00 p.m. and 10:00 a.m.; provided, however, that this limitation shall not create any limitation upon the following outdoor water uses during non-drought periods:

(a) Commercial raising, harvesting, or storing of crops; feeding, breeding, or managing livestock or poultry; the commercial production or storing of feed for use in the production of livestock, including, but not limited to, cattle, calves, swine, hogs, goats, sheep, and rabbits, or for use in the production of poultry, including, but not limited to, chickens, hens, ratites, and turkeys; producing plants, trees, fowl, or animals; or the commercial production of aquacultural, horticultural, dairy, livestock, poultry, eggs, and apiarian products or as otherwise defined in O.C.G.A. § 1-3-3;

(b) Capture and reuse of cooling system condensate or storm water in compliance with applicable ordinances and state guidelines;

(c) Reuse of gray water in compliance with O.C.G.A. § 31-3-5.2 and applicable local board of health regulations;

(d) Use of reclaimed waste water by a designated user from a system permitted by the Environmental Protection Division of the Georgia Department of Natural Resources to provide reclaimed waste water;

(e) Watering personal food gardens;

(f) Watering new and replanted plant, seed, or turf in landscapes, golf courses, or sports turf fields during installation and for a period of 30 days immediately following the date of installation;

- (g) *Drip irrigation or irrigation using soaker hoses;*
- (h) *Hand watering with a hose with automatic cutoff or handheld container;*
- (i) *Use of water withdrawn from private water wells or surface water by an owner or operator of property if such well or surface water is on said property;*
- (j) *Watering horticultural crops held for sale, resale, or installation;*
- (k) *Watering athletic fields, golf courses, or public turf grass recreational areas;*
- (l) *Installation, maintenance, or calibration of irrigation systems; or*
- (m) *Hydroseeding.*

24.5.31.2 Other Outdoor Uses During Non-Drought Periods

For outdoor uses not associated with landscape watering: car washing, pressure washing, outdoor cleaning, pool filling, etc. The following rules apply during non-drought periods:

- (a) *Odd Numbered addresses: Outdoor water use is allowed on Tuesdays, Thursdays, and Sundays.*
- (b) *Even Numbered addresses: Outdoor water use is allowed on Mondays, Wednesdays, and Saturdays.*

24.5.31.3 Outdoor Water Use Schedule During Declared Drought Response Levels

Outdoor water use and exemptions during state-declared drought levels are in accordance with O.C.G.A. § 391-3-30-.04 and O.C.G.A. § 391-3-30-.05.

24.5.31.4 Right to Curtail Water usage During Emergency Conditions

(a) *Authority. The City of Roswell may, upon application to and approval by the director of the Environmental Protection Division of the Department of Natural Resources of the State of Georgia, for good cause shown, impose more stringent restrictions on outdoor water use during non-drought periods or state-declared periods of drought than those applicable restrictions, if any, imposed by the state during such periods. For purposes of this subsection, 'good cause' means evidence sufficient to support a reasonable conclusion, considering available relevant information, that such additional restrictions are necessary and appropriate to avoid or relieve a local water shortage. A variance granted pursuant to this subsection shall be valid for such period as determined by the director.*

(b) *Emergency conditions. For the purposes of this section only, emergency conditions shall include, but not be limited to times of drought, low stream flows, interruptions in the raw water supply due to breaks or contamination, inability of the filter plants to meet demand, excessive losses or demands in the distribution system due to breaks, fires or other causes, contamination in the finished water, or any other purpose for which the curtailed use of water might be reasonably required in the best interest of public health, safety and welfare as determined by the city's Director of Environmental/Public Works.*

(c) Restrictions. The water conservation measures may include restrictions or prohibitions on nonessential uses such as swimming pool filling, watering of lawns and gardens, washing of recreational or other vehicles, equipment, sidewalks, driveways, parking areas, tennis courts, patios and other paved areas, recreational uses, and other uses that the City of Roswell's Public Works/ Environmental Director may deem to be nonessential and that have been approved by the Director of Environmental Protection Division.

(d) Notice. A notice of the restrictions or prohibitions imposed under this section and approved by the Director of the Environmental Protection Division shall be published in the City of Roswell's legal organ in a non-legal section. The notice shall set forth the specific nature of the restrictions or prohibitions, the reasons for the imposition of the restrictions or prohibitions, the date upon which the restrictions or prohibitions become effective, and their duration. The restrictions and prohibitions shall become effective no sooner than the first day following the publication date of the first notice. The notice shall be published once a month while the restrictions and prohibitions are in effect.

24.5.31.5 Enforcement

(a) No person shall use or allow the use of water in violation of the restrictions on outdoor water use contained in this section.

(b) The Public Works/ Environmental Department shall be the enforcement authority for this section. The city administrator may also authorize other departments as may be deemed necessary to support enforcement.

(c) Criminal and alternative penalties. Any violation of this section may also be enforced by a citation or accusation returnable to the municipal court or by any other legal means pursuant to section 1.1.3. Water service may also be terminated and the customer or consumer will be subject to a disconnection fee and reconnection fee once water is restored as per 24-5-6.

24.5.31.5 Section Cumulative. The provisions of this section are cumulative to those set out in 24.5.31.

24.5.40 Private Decentralized Waste Water Systems

(a) All sanitary sewer collection, maintenance and treatment in the City of Roswell is owned and operated by Fulton County.

(b) Use of private decentralized waste water systems by multiple property owners and construction or reconstruction of private decentralized waste water systems capable of servicing multiple property owners is prohibited unless such private decentralized waste water systems meet the requirements of Fulton County.

(c) Private decentralized waste water systems shall be designed and constructed in accordance with plans and specifications required by Fulton County Ordinance and in compliance with the Fulton County Health and Wellness Department regulations.

Mr. Davidson noted that if approved, this would be the second reading of the ordinance.

*Motion: Councilmember Wynn moved for Approval to amend Article 24.5, Water and Sewer, of the Code of Ordinances of the City of Roswell. (Second Reading)
Councilmember Diamond seconded.*

Public comment:

Lee Fleck, Martins Landing, said he presumed that the permit referred to was in relationship only to city water. Mr. Fleck stated he understood the intent but thought the wording was poor under the section related to the Right to Curtail Water Usage During Emergency Conditions. Mr. Moring confirmed for Mayor Wood that the ordinance tracked the state language and perhaps the state language may be confusing. Mr. Fleck replied he wanted to be certain that the restrictions were only related to the quadrant which the city supplies water to and not where Fulton County supplies water. Mr. Moring stated the city requirements for the city water system are just for our service area but Fulton County will have the same requirements because they are imposed by the state. Mayor Wood asked if Mr. Moring thought there was any confusion in the language. Mr. Moring replied that it could be interpreted clearly; section (c) of Right to Curtail Water Usage During Emergency Conditions, stated "Water conservation measures may include restrictions or prohibitions on nonessential uses" and then goes on to list those uses. Mayor Wood noted the use of the word "may." Mr. Fleck stated the use of setting rules regarding the ability to water on odd or even days of watering during non-drought periods has nothing to do with Fulton County. Mr. Moring replied "I don't know what Fulton County is doing, but I presume that they will comply with the state requirement. This is mandated by the state. We have not changed that one bit." Mr. Fleck replied he found that he it hard to believe that the state has mandated when he can water during non-draught conditions. Mr. Moring said the GEPD websites dictates exactly what the requirements are, including various drought contingency levels. The city is tracking the state language. No further discussion.

Council comments:

Councilmember Wynn clarified that the language was taken straight from what the state has now required the city to do. No language was added or embellished. Mr. Moring confirmed that was correct. The language was dictated by the Georgia EPD. Councilmember Wynn stated "The content of this amendment to the ordinance is mandated by the State EPD and if we do not it we will have to explain why." Mr. Moring replied yes.

Councilmember Diamond said she thought the confusion on the restrictions is not that sidewalks, tennis courts, cannot be used it is the washing of any of those items.

No further discussion.

Vote: The motion passed unanimously.

A motion was made by Council Member Becky Wynn, seconded by Council Member Nancy Diamond, that this Item be Approved on Second Reading. The motion carried by the following vote:

In Favor: 5

Enactment No: Ordinance 2011-01-01

City Attorney's Report

7. **Initiation of a settlement per order from Superior Court Judge in reference to Civil Action File no. 2010CV19250. City of Roswell Case #'s RZ10-05, CV10-01 & CU10-03, 2925 Holcomb Bridge Road, applicant/petitioner Ramco-Gershenson, Inc.**

City Attorney David Davidson stated the Legal department recommends initiating this rezoning conditional use and concurrent variance.

Motion: Councilmember Price moved for Initiation of a settlement per order from Superior Court Judge in reference to Civil Action File no. 2010CV19250. City of Roswell Case #'s RZ10-05, CV10-01 & CU10-03, 2925 Holcomb Bridge Road, applicant/petitioner Ramco-Gershenson, Inc. Councilmember Wynn reluctantly seconded.

Public comment:

Forrest Buchanan, 225 Nestor Court, asked how much money Ramco-Gershenson was asking for. City Attorney David Davidson replied "No monetary damages right now, per the Judge's order. It appears that they might have been entitled to attorney's fees and other damages but right now there is no damages. Mr. Buchanan inquired where in the order it is stated that the city must settle. City Attorney David Davidson replied the order does not say the city must settle with them but the judge has stated in the order that the applicant had proven their case, there are no issues of fact, and the city will lose. Mr. Buchanan disagreed and noted that the document was prepared by Richard Robbins, who was the plaintiff's attorney. Mr. Buchanan said "If he wrote this and a judge signed it, it is very prejudicial to the City of Roswell." Mayor Wood stated "It may be prejudicial to the City of Roswell, but it is the judge's order. The practice of judges is that they will dictate an order and ask the attorney that is prevailing to draft up the order based upon the judge's dictation. That has been the practice for the 30 years I have been practicing law." Mr. Buchanan replied "If you are an attorney, then why would a judge pre-decide an issue without hearing all of the facts in a trial?" Mayor Wood stated he could not explain the actions of all judges, that is up to the judge. Mr. Buchanan stated "He won't hear it if you read the order. It says the court has advised the incoming judge, the Honorable Kelly A. Lee, of the terms of this order. So, Westmoreland will not hear this case, correct?" The Mayor noted the case could be reassigned and he could say who would hear this case. Mayor Wood stated "Our attorney has advised us that even whether it was the judge who signed the order or the judge who it is assigned to, judges typically defer on matters like this from the previous decision." Mr. Buchanan replied "Deferred to a judge that has decided on his own?" Mayor Wood explained that Mr. Buchanan was arguing "whether it was right or wrong" and we are arguing "what is." The Mayor noted that Council does not disagree with Mr. Buchanan's position as to whether the judge was wrong in the decision but that is no longer a matter for discussion because the judge made his decision. He said he did not know in particular what theory of law the judge had based his decision on, but that the judge having made the decision, and appeals on zoning matters being discretionary and seldom, it would be his opinion and the opinion of the city attorneys, that an appeal would not be successful. If we oppose this, then the city is very likely to not only lose the case, but to incur substantial attorney's fees and other potential damages. Mr. Buchanan stated his idea would be for the city to counter sue them for our fees. Mayor Wood replied that case would be thrown out. Mr. Buchanan replied if this was not opposed, the city would be opening flood gates to every developer that comes to the city and is

defeated in a variance on real estate and then sues the city; precedence would be set. Mayor Wood replied "It is precedent for once a judge makes a ruling; it is not productive to ignore the judge's ruling. It is not precedent for what that ruling may be before the judge makes the ruling." Mr. Buchanan said the judge will approve the settlement. Mayor Wood asked the city attorney to respond. Mr. Davidson replied the judge, with his order, has basically put the city in a position where we as Legal, advise the Council that it is in our best interest to settle this lawsuit. We do not want to incur attorney fees if we are going to lose. Mr. Buchanan replied "What if Charlie Brown goes back. I don't know if the statute of limitations has run on his yet." Mr. Davidson replied that was a totally different lawsuit. Mayor Wood directed Mr. Buchanan to ask all of his questions that he wanted a response to and reminded him that this was not a debate, but an opportunity to ask questions or state an opinion. Mayor Wood noted that understood from Mr. Buchanan that he was opposed to this. Mr. Buchanan asked if every developer who loses could come back to the city for his costs. Mr. Davidson replied "As far as the attorney's fees and other costs, I have been here 10 years and every lawsuit that ever has been filed against us, they have always asked for attorney's fees and their cost, so this is nothing new at all. We defend every one of those lawsuits to the utmost, but when a judge tells you that you are going to lose, sometimes it is better to go ahead and not incur those costs." No further discussion.

Vote: The motion passed unanimously.

City Attorney David Davidson confirmed for Councilmember Orlans that this item, when it returns, would go through the full zoning process and to the Design Review Board.

Councilmember Price asked if Legal fees were incurred that were outside internal work. Mr. Davidson confirmed there were no outside legal fees incurred.

A motion was made by Council Member Betty Price, seconded by Council Member Becky Wynn, that this Item be Approved. The motion carried by the following vote:

In Favor: 5

8.

Election of Mayor Pro-Tem.

Motion: A motion was made by Councilmember Wynn to elect Councilmember Dippolito as Mayor Pro-Tem. Councilmember Orlans seconded. No other nominations were made. No further discussion. The motion passed unanimously. Mr. Davidson confirmed Councilmember Dippolito's term as Mayor Pro-Tem would begin immediately. Councilmember Price thanked Councilmember Orlans for his prior year service as Mayor Pro-Tem.

A motion was made by Council Member Jerry Orlans, seconded by Council Member Becky Wynn, to elect Council Member Rich Dippolito as Mayor Pro Tem. The motion carried by the following vote:

In Favor: 5

9. **Approval of a Resolution to set qualifying fees for the 2011 municipal elections.**

City Attorney David Davidson stated the qualifying fee for Council members is \$540; the qualifying fee for Municipal Judge is \$2730. The qualifying fee is three percent of the total gross salary of the office paid in the preceding year prior to the election. The qualifying figure is established by state law. The resolution would be in compliance with state law.

Motion: Councilmember Wynn moved for Approval of a Resolution to set qualifying fees for the 2011 municipal elections. Councilmember Diamond seconded. The motion passed unanimously.

A motion was made by Council Member Becky Wynn, seconded by Council Member Nancy Diamond, that this Item be Approved. The motion carried by the following vote:

In Favor: 5

Enactment No: Resolution 2011-01-02

10. **Recommendation for closure to discuss personnel.**

Motion: Councilmember Diamond moved for Recommendation for closure to discuss personnel. Councilmember Price seconded. The motion passed unanimously.

A motion was made by Council Member Nancy Diamond, seconded by Council Member Betty Price, that this Item be Approved. The motion carried by the following vote:

In Favor: 5

Adjournment

After no further business, the Mayor and Council Meeting adjourned at 8:12 p.m.