

In The Matter Of:

City of Doraville

State of Georgia

City Council Meeting

May 24, 2010

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CITY COUNCIL MEETING
CITY OF DORAVILLE
STATE OF GEORGIA

MEETING WITH PUBLIC HEARINGS

* * *

Transcript of the meeting held in the
Council Chambers at Doraville City Hall,
3725 Park Avenue, Doraville, Georgia, Mayor
Ray Jenkins presiding, before Theresa
Bretch, Certified Court Reporter, commencing
at 6:30 p.m., May 24, 2010.

* * *

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1 PROCEEDINGS
2 MAYOR JENKINS: Meeting come to order.
3 Call the roll, please.
4 CLERK BRYANT: Councilmember Alexander?
5 COUNCILMEMBER ALEXANDER: Here.
6 CLERK BRYANT: Councilmember Bates?
7 COUNCILMEMBER BATES: Here.
8 CLERK BRYANT: Councilmember Fleming?
9 COUNCILMEMBER FLEMING: Here.
10 CLERK BRYANT: Councilmember Pachuta?
11 COUNCILMEMBER PACHUTA: Here.
12 CLERK BRYANT: Councilmember Pittman?
13 COUNCILMEMBER PITTMAN: Here.
14 CLERK BRYANT: Councilmember Roche?
15 COUNCILMEMBER ROCHE: Here.
16 MAYOR JENKINS: We have no minutes to
17 approve, Mayor's comments is none, department report
18 is none.
19 And public comments on the agenda items,
20 this is old business which we've already had public
21 hearing so there'll be no public comments on this old
22 business.
23 Scott?
24 MR. HAEBERLIN: Yes, sir. The proposed CT
25 district was remanded back to the Planning Commission

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1 APPEARANCES:
2 Doraville City Council:
3 Hon. Ray Jenkins, Mayor
4 Councilmember Maria Alexander
5 Councilmember Brian Bates
6 Councilmember Karen Pachuta
7 Councilmember Donna Pittman
8 Councilmember Bob Roche
9 Councilmember Pam Fleming
10 Sandra Bryant, Assistant City Clerk
11 Murray J. Weed, City Attorney
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1 for review. The Planning Commission reviewed the same
2 draft that you have, which you modified by making
3 motions and seconds at the last City Council meeting,
4 and this is a draft 5/4/2010 and in the lower right-
5 hand corner Council Draft No. 4.
6 The Planning Commission reviewed the merits
7 of the items. They did hear it in public hearing.
8 The Planning Commission recommended approval of this
9 draft as was presented. They did hear a lot of
10 testimony from the various business owner.
11 The Planning Commission did counsel the
12 business owners as well that if they felt there was
13 something that was missing from this draft, to provide
14 some written response to the Council before today's
15 meeting, and so you may or may have not received from
16 written comments from the affected business owners
17 relative to this draft.
18 The Planning Commission did recommend
19 approval of this draft.
20 MAYOR JENKINS: Is that No. VII on the old
21 business?
22 MR. HAEBERLIN: Yes, sir --
23 MAYOR JENKINS: The CT district?
24 MR. HAEBERLIN: -- CT.
25 COUNCILMEMBER FLEMING: Mayor, did I

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1 understand you correctly that you were not going to
 2 hear any public comment this evening on this old
 3 business item?
 4 MAYOR JENKINS: No, unless the Council asks
 5 for it. It's either way.
 6 COUNCILMEMBER FLEMING: Since this is a
 7 public hearing and a continuation of such, I would
 8 think it would be appropriate.
 9 ATTORNEY WEED: Well, let's talk about that.
 10 I wasn't in attendance at the last meeting,
 11 but we've consulted with the planner. My under-
 12 standing from the planner was that the public hearing
 13 portion was completed at the last meeting.
 14 Now, that does not -- that means for the
 15 purposes of the Zoning Procedures Act you're not
 16 required to reopen it. However, if Council chooses to
 17 do so, you certainly have that right.
 18 COUNCILMEMBER ROCHE: I'd like to make a
 19 motion that people who are in attendance be allowed to
 20 make comments about this final draft before we vote on
 21 it.
 22 COUNCILMEMBER FLEMING: Second.
 23 MAYOR JENKINS: Any more discussion?
 24 - - -
 25 (No response)

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1 - - -
 2 MAYOR JENKINS: Call the roll.
 3 CLERK BRYANT: Councilmember Alexander?
 4 COUNCILMEMBER ALEXANDER: Yes.
 5 CLERK BRYANT: Councilmember Bates?
 6 COUNCILMEMBER BATES: Yes.
 7 CLERK BRYANT: Councilmember Fleming?
 8 COUNCILMEMBER FLEMING: Yes.
 9 CLERK BRYANT: Councilmember Pachuta?
 10 COUNCILMEMBER PACHUTA: No.
 11 CLERK BRYANT: Councilmember Pittman?
 12 COUNCILMEMBER PITTMAN: Yes.
 13 CLERK BRYANT: Councilmember Roche?
 14 COUNCILMEMBER ROCHE: Yes.
 15 ATTORNEY WEED: Ladies and gentlemen, we
 16 have reopened a public hearing. Now, you have an
 17 opportunity to speak either in favor or against the
 18 ordinance which is the CT district ordinance that's
 19 before the Council tonight.
 20 MAYOR JENKINS: Murray, is this exactly like
 21 we left it the last time, what has been added or
 22 whatever?
 23 ATTORNEY WEED: According to Mr. Haeberlin,
 24 the planner, it is, Mr. Mayor.
 25 MAYOR JENKINS: Excuse me?

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1 ATTORNEY WEED: According to the report made
 2 by the planner, it is, sir.
 3 MR. HAEBERLIN: Yes, sir. What I did, after
 4 the last meeting where the Council considered and made
 5 motions and seconds and voted essentially on each item
 6 they wanted to change, I went back and altered the
 7 text to reflect what the Council's intention was. I
 8 did e-mail it out to the public -- excuse me -- out to
 9 the Mayor and Council and to the Planning Commission
 10 as well, and I believe that Mr. Howe placed this on
 11 the City Web site. So the document that you have in
 12 your package tonight is the document that was
 13 discussed in the last meeting.
 14 MAYOR JENKINS: Does this have the
 15 grandfathered in?
 16 MR. HAEBERLIN: Sir, that was not discussed
 17 at the time that staff viewed this with the Council so
 18 there is no provision that addresses any perception of
 19 grandfathering or vesting. I believe that was brought
 20 forth by the business community.
 21 ATTORNEY WEED: Mr. Mayor, if I could, we
 22 might want to do this the old fashioned way. Since
 23 the Council's reopened this public hearing, I would
 24 encourage the planner to call for those who wish to
 25 speak for and those who wish --

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1 MAYOR JENKINS: Yeah. Well, I --
 2 ATTORNEY WEED: -- to speak against.
 3 MAYOR JENKINS: Nobody said anything, so I
 4 did.
 5 ATTORNEY WEED: I hear you.
 6 MR. HAEBERLIN: I understand.
 7 Those who would like to speak in favor --
 8 MAYOR JENKINS: When you're ready, come on
 9 up to the podium, please.
 10 MR. HAEBERLIN: -- in favor, please raise
 11 your hand. The number who would like to speak in
 12 favor of the CT district.
 13 MR. STOKES: Does this CT district involve
 14 grandfathering?
 15 MR. HAEBERLIN: I mean it's just -- you're
 16 either speaking for or against the creation of the
 17 district, so I mean you will decide whether you're
 18 either for or against.
 19 MAYOR JENKINS: Come on up, Stuart.
 20 MR. HAEBERLIN: There's like three, maybe,
 21 so we have three-and-a-half minutes apiece.
 22 ATTORNEY WEED: Mr. Stokes, although the
 23 court reporter will record that she is well familiar
 24 with you -- and to the members of the audience -- if
 25 you would state your name and residence address for

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1 the record, we'd appreciate it.
2 MR. STOKES: Deane Stokes. I live at 4020
3 West Campbell Lake Court in Atlanta. I've got
4 business in 5312 Buford Highway. I've had my office
5 there for years and have property on Buford Highway
6 and on New Peachtree Road, 2620 New Peachtree Road.
7 First, I know that this is an item that has
8 probably been very frustrating and taken a lot of the
9 Council's time, and I appreciate you-all indulging.
10 Believe me, it's been frustrating to us too as
11 business owners.
12 I just want to review just for a minute, if
13 I may, and they were letters that I got out at the
14 last meeting and so did David Shanahan, that I think
15 covered what I'm going to briefly review again, and
16 that's the fact that CT zoning, Commercial
17 Transitional, really came in to repair the damages
18 that were done when the code changed in November of
19 '08.
20 So suddenly after November '08, we come in
21 with people that normally a variety of uses for
22 office/warehouses, they were turned down. I had two
23 turned down. One was -- I'll just mention two. There
24 have been others I know from other owners. One was a
25 hardwood floor -- commercial hardwood floor

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1 subcontractor. He was turned down. Another one was a
2 glass man, did glass repair. He was turned down. And
3 then under the old code, originally, that was pretty
4 standard.
5 Now the reason it's called Commercial
6 Transition is that down the road these properties will
7 lend themselves to higher and better use -- there's no
8 question about it; we all want that -- more productive
9 than they are today, but we're not there yet. The
10 market will determine when that can occur.
11 In the meantime, this is our livelihood.
12 This is my livelihood in keeping these spaces leased
13 out to decent and good people. I must say that at the
14 meeting Thursday, I was not here. I was out of town
15 on a health issue with my wife. I flew back in last
16 night, will go back out again Wednesday. But I came
17 back in for that, and I think a statement was made
18 that the Council -- as I understand it, the Planning
19 Council heard that we must not be too much concerned
20 about this because so few people were at that meeting
21 Thursday night. And that's just not true. We've been
22 here I think representing a group of people that have
23 been very much concerned with the office/warehouse
24 usage and to have wording in it that just allows us to
25 do business as we have.

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1 I've got two tenants that have been with me
2 six and seven years. These would be denied to get a
3 new license under the CT zoning, but with
4 grandfathering, there'd be no problem. They are wine
5 merchants, specialty wines. One of the people
6 distributes wines to the diocese of the Catholic
7 churches in metro Atlanta. I was a teetotaler for
8 years. I got back on wine because I found out it had
9 a lot of medical benefits to drink a glass of wine.
10 Anyway, these are good people. They're --
11 (buzzer sounds).
12 Can I continue a few minutes?
13 MAYOR JENKINS: Yes.
14 [To the Clerk] Do it three.
15 MR. STOKES: These are people that have
16 orderly business. They've built their businesses up.
17 Hard-working folks, as other tenants. And I look at
18 the tenants as not just tenants but as family and
19 friends, many of them. And under the current setup,
20 they would be ousted, they'd have to leave, and this
21 is just not right.
22 So I'm just going to leave with that request
23 to you folks. Business has gotten a bad rap,
24 unfortunately, from the top down, and it's business,
25 particularly small business, that fuels the machine of

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1 our -- of our economy. And let's try to cooperate
2 with that. That's what we're involved in, in small
3 businesses. And we just want to keep the people that
4 came in, that have been paying their taxes, that have
5 been orderly and have had productive usage of the
6 premises for several years. We just want those people
7 to be able to remain. Thank you.
8 MAYOR JENKINS: Next?
9 [To Mr. Anderson] Speaking for; is that
10 correct?
11 MR. ANDERSON: That's correct.
12 MS. CARDEN: Hi. Lynn Carden. 6039 through
13 6043-B New Peachtree Road.
14 I hope we're addressing the question of
15 vesting. I'm sorry I'm late. I had people in my
16 office.
17 I had sent out an e-mail -- it was a little
18 tardy -- requesting vesting for one of my tenants,
19 Dr. George Xu (phonetic), who's on the front of my
20 building. George has been in the building for 11
21 years. He's an acupuncturist and he owns an herb shop
22 called Shallowford Herbs.
23 We are probably going to do the split
24 zoning, split zoning that Scott suggested, but I'm
25 sort of caught in between because if I opt in for CT

1 ordinance, then George becomes nonconforming, and I
2 don't know how long it'll take for me to get the split
3 zoning. So what I think I -- what I'd like, if it's
4 possible, to include George as a vested -- George Xu
5 as a vested business and then he'll be conforming
6 under CT, and then when I split zone, I guess he'll
7 still be conforming because then the front of my
8 building will be C-1/C-2, I hope. But he is
9 temporarily sort of in no-man's land because of his
10 use.

11 He also is a massage therapist and
12 acupressurist. I've informed George that due to all
13 the problems you guys have had in Doraville, I'm not
14 going to pursue that for him, and he's agreed that he
15 will just stay on -- he has two suites -- he'll just
16 stay on in one of the suites as his acupuncturist and
17 herb shop. He is completely licensed and legitimate
18 and he's been in Doraville in my building for 11
19 years. So if you have any questions about George, I'm
20 more than happy to ask you [sic]. That's the only
21 vested use that I need at this time, and it's only
22 until I get the split zoning thing done.

23 Make sense?

24 MAYOR JENKINS: Thank you.

25 MR. ANDERSON: Stuart Anderson.

1 appropriate.

2 Another issue has come up about the list of
3 tenants. It seems to me that we've just gone through
4 our zoning-appropriateness processes, all the
5 businesses -- I'm one of them -- and that the City has
6 that information at hand. So as far as coming up with
7 a list of -- holding this up for a list of tenants,
8 the City has that already.

9 So I'm for keeping the residential uses that
10 are already in place in the new CT and I think that
11 wholesaling and warehousing and roll-up doors is
12 appropriate in this area. Thank you.

13 MAYOR JENKINS: Thank you.

14 Anybody else for it?

15 MR. HAEBERLIN: A show of hands, anybody
16 that would like to speak against?

17 Oh. We have a gentleman for.

18 MR. CHAMBERS: My name is Richard Chambers,
19 5899 New Peachtree Road.

20 And I'm presuming we're working from the
21 fourth draft. Is that a correct assumption?

22 Okay. There is one portion in there about
23 legal support services, that I don't know that the --
24 Since the fourth draft was approved as is, and it
25 seems that there was some ambiguity to that, I would

1 At the last City Council meeting concerning
2 CT, I believe there were two items that were going to
3 stop progress -- residential occupancy and
4 warehousing, wholesaling and distributorship issues.

5 Regardless that the 1986-2006 zoning
6 ordinances show boarding houses as allowed use in C-1
7 and C-2 indicating permitted residential -- indicating
8 that residential was permitted, I believe that pre-
9 existing residential in the CT area should be allowed
10 and that mixed use be considered in the future for C-1
11 and C-2; that is, the current uses of residential in
12 the CT area should be continued to be used, permitted
13 or grandfathered as it were, and that mixed use should
14 be considered in the future of C-1 and C-2 as well as
15 for M-1/M-2 for security purposes. So that's my
16 indication on residential in CT, in the new CT.

17 Since we have wholesaling on Buford Highway
18 which is C-1 and C-2 and that default zoning before
19 and after CT -- the default zoning before and after CT
20 is C-2, it seems to me that this area of aging
21 structures and roll-up doors is at least appropriate
22 for warehousing, wholesaling and distributorships
23 until, of course, when the LCI mows 'em down. But for
24 right now, that sort of use for these, for these
25 structures is -- to my way of thinking, is

1 just like to see if court reporting and transcription
2 services could either be included or not excluded,
3 because I am one and I'd be kicked out.

4 COUNCILMEMBER PITTMAN: I'm sorry. You're
5 what?

6 MR. CHAMBERS: Court reporting services and
7 transcription services, because the planning
8 department talked about wanting to exclude that. I
9 guess since they passed as-is, that it might be a moot
10 point, but, and I believe that is it, and then
11 whatever time remaining I have, I'd like to donate to
12 one of the others that might come up with another
13 reason after hearing the other public comments. Thank
14 you.

15 MAYOR JENKINS: Thank you. Anybody else
16 for?

17 MS. FRAYSSE: Susan Fraysse.

18 I just want to say that the -- I appreciate
19 the work, the effort of the Council and the Planning
20 Commission, the first ever joint meeting, the business
21 meetings that took place before that. All of this has
22 led up to working and refining and fine tuning, you
23 know, something that resolves those unique issues of
24 those few warehouses on New Peachtree Road, and I'm
25 hoping that this fourth revision of this temporary

1 zoning known as CT will be passed tonight.
 2 I would also speak in favor -- If court
 3 reporting is not in there, then I hope that we would
 4 allow that there because that has been a business, you
 5 know, for quite a while. So I hope we're going to be
 6 able to resolve it tonight.
 7 MR. SHANAHAN: T.M. Shanahan, 5871 New
 8 Peachtree.
 9 The ordinance looks good and it looks like
 10 it's, you know, a long way towards where we want to
 11 be.
 12 I still do have concerns unless we find, as
 13 has been previously stated, some way to accommodate
 14 those people who are, well, a tenant, for instance.
 15 That's the only thing that I see in here that has not
 16 been addressed, that's been continuously brought up,
 17 and that is a person who is a caretaker and --
 18 COUNCILMEMBER ALEXANDER: I'm having a hard
 19 time hearing you.
 20 MR. SHANAHAN: I'm sorry?
 21 COUNCILMEMBER PACHUTA: I couldn't hear you.
 22 MR. SHANAHAN: Okay. The issue we're
 23 talking about is the tenant in the piece of property
 24 that's been occupied that way for 48 years
 25 continuously, and that's 5879. So some way that will

1 -- it would be good that -- we needed to have that
 2 addressed in some fashion.
 3 I appreciate your attention to that. Thank
 4 you.
 5 MAYOR JENKINS: Thank you.
 6 MR. ANDERSON: Is that the residential?
 7 MR. SHANAHAN: It's occupied as residential.
 8 MAYOR JENKINS: Excuse me. Is anybody else
 9 for it?
 10 ---
 11 (Inaudible comments from audience.)
 12 ---
 13 ATTORNEY WEED: Order, please, ladies and
 14 gentlemen. If you've got something to say, go to the
 15 microphone.
 16 COUNCILMEMBER FLEMING: I'm wondering
 17 whether the microphone's working because I'm sitting
 18 right next to the microphone and I can't hear the
 19 people.
 20 ATTORNEY WEED: It may not.
 21 Terri?
 22 MR. ANDERSON: I don't know.
 23 MAYOR JENKINS: If you talk into the mike,
 24 it works.
 25 MR. ANDERSON: What Mr. Shanahan was

1 referring to I think is a residential situation that
 2 has been occupied for 40-some years. It's what I was
 3 referring to earlier. And since that's been occupied
 4 and --
 5 MAYOR JENKINS: [To Ms. Fleming] Can you
 6 hear him now?
 7 MR. ANDERSON: -- it's -- it's -- consider
 8 that residential should be grandfathered or left in
 9 place. Thank you.
 10 MAYOR JENKINS: Anybody else for it?
 11 ---
 12 (No response)
 13 ---
 14 MAYOR JENKINS: Against?
 15 MR. HAEBERLIN: Anybody against?
 16 MAYOR JENKINS: Come on up.
 17 MR. HAEBERLIN: Two, five minutes apiece.
 18 MS. CRAWFORD: Susan Crawford. Do you need
 19 my address? 3959 Red Oak Drive, Doraville.
 20 I'm sure these are very nice people, all of
 21 them that are involved, and I certainly have nothing
 22 against wine or priests, but we have -- there was a
 23 reason you voted on this the way you did. And I would
 24 ask you to consider, we can be a green, which is what
 25 I think you want to be -- green city, we can be a

1 lively city or we can be an industrial area on the way
 2 to somewhere else.
 3 And please, for traffic going -- I mean
 4 let's be reasonable of course and as charitable as
 5 possible, but keep in mind this is our downtown area
 6 that we're talking about and we're trying to, you
 7 know, have a city for the people who live here and
 8 certainly for the people who have businesses here.
 9 But if we do want to be a green city, which I think is
 10 our intent, let's keep that in mind.
 11 Thank you.
 12 MAYOR JENKINS: Thank you.
 13 MS. HOFFMEISTER: Honorable Mayor, City
 14 Councillors; Bonita Hoffmeister, 3948 Spanish Oak
 15 Drive.
 16 I'm not familiar with this, but I do know
 17 this about zoning. If you put M-1 or the equivalent
 18 of M-1 -- and I don't care whether you call it -- you
 19 know, it's a rose by whatever name you call it or it's
 20 the other whatever you call it -- be very, very
 21 careful, because when you do this you could easily
 22 turn this into an M-1 situation. Once you have M-1 in
 23 an area, everybody has the right to be M-1 next to it,
 24 or if from an aerial photograph the disparity is so
 25 great, you can win a case and have your M-1.

1 This is why you have zoning. This is why
2 you're very careful about how you zone it. There's a
3 tool to keep these good people in business. It's
4 called grandfathering in. It's not completely
5 changing the zoning so in the future you have
6 something that you didn't call M-1; you called it a
7 Commercial Transition district, but in reality, it's
8 M-1. And that's not the way to solve the solution.

9 Grandfathering people in is the way to solve
10 the solution. You don't need to drive people out of
11 business but you don't need to set the future up for
12 an industrial park instead of a downtown. Thank you.

13 MAYOR JENKINS: Thank you.

14 Anybody else against?

15 On the same line, I have a comment to make
16 about the C-2 zoning as she mentioned, the M-1 zoning.
17 What we're doing when we do this is we're spot zoning.
18 In other words, you have C-1 and C-1, M-1 and all.
19 And we're spot zoning -- And if we were in a
20 neighborhood, the Council would probably say, "Oh,
21 you're spot zoning. No."

22 But I just thought I'd throw that out. It's
23 the same thing as like she mentioned. It'll be an M-1
24 but you're putting a C-2 right in the middle of all
25 these other zonings.

1 forced on the Council, you rubber-stamped everything
2 through there quick or didn't really think about it;,
3 and the CT, after all these problems are caused, you
4 spend a lot of time trying to address some issues in
5 the downtown area.

6 If you were to revisit C-2 with the same --
7 COUNCILMEMBER FLEMING: Diligence.

8 MR. HAEBERLIN: -- diligence, I think that
9 you would come up with something that might work in
10 the downtown without this spot zoning as the Mayor
11 talked about.

12 You know, you have two-story buildings here
13 and next door you've got 10-story buildings. None of
14 it fits together. And so you need to take this CT, go
15 back and visit C-2 again and try to use the lessons
16 learned from the CT zoning and try to address all
17 those things in C-2, and I think you'll have something
18 then.

19 I just think that, you know, this is trying
20 to address a problem but the problem is overall rather
21 than just spot zoning in this one area. So that's why
22 I'm against it. Thank you.

23 MAYOR JENKINS: Thank you.

24 Anybody else, speak up.

25 - - -

1 So I didn't say I was against it or for it.
2 Just thought I'd comment on that.

3 COUNCILMEMBER PACHUTA: Scott, we have one
4 more person who wanted to speak.

5 MAYOR JENKINS: Who?

6 COUNCILMEMBER PITTMAN: Mr. Hart.

7 COUNCILMEMBER PACHUTA: Mr. Hart. He had
8 raised his hand.

9 MAYOR JENKINS: Why didn't you say
10 something?

11 COUNCILMEMBER PITTMAN: He did.

12 MR. HART: I did, but --

13 COUNCILMEMBER PACHUTA: He had raised his
14 hand.

15 MAYOR JENKINS: All right.

16 MR. HART: I think the lesson here is that a
17 lot of time has -- the more time that's spent on this
18 CT, and then C-2 -- And important lessons can be drawn
19 from what was put in CT. It was a careful selection
20 of businesses to be put on New Peachtree Road that
21 would fit into the community. And a lot of that same,
22 you know, time wasn't spent on the C-2 zoning. We
23 would have ended up with 90 percent of the problems
24 already solved, you know, that we created in C-2.

25 C-2 was one of those things when y'all

1 (No response)

2 MAYOR JENKINS: All right, Scott.

3 We close the public hearing and bring it to
4 the table.

5 MR. HAEBERLIN: That's correct.

6 MAYOR JENKINS: Pam?

7 COUNCILMEMBER FLEMING: I'd like to start at
8 the other end. I believe Mr. Bates has some comments.

9 MAYOR JENKINS: You want to start it out,
10 Maria?

11 COUNCILMEMBER ALEXANDER: I was under the
12 impression that legal support services did include
13 court reporting. I didn't realize that we needed to
14 specify what all that included. But I mean if we need
15 to add that language to it --

16 MR. HAEBERLIN: Yeah. It was not defined.
17 What was discussed in the Planning

18 Commission although they did not make it part of the
19 recommendation since it wasn't defined, there was a
20 broad range of things that possibly would fit in such
21 as the bail bondsman, et cetera. So I mean that was
22 kind of the discussion that occurred, but it did not
23 come into the vote. So there is no exclusion on court
24 reporting, and I think it would be legally defensible
25 -- and Mr. Weed, chime in -- that court reporter would

1 fall under legal support services.
 2 ATTORNEY WEED: That would be my opinion.
 3 In the absence of -- in the absence of any statutory
 4 -- Let me strike that.
 5 In the absence of the ordinance itself
 6 defining it, then you would rely upon any other
 7 statutory definition that might exist. In the absence
 8 of that, you'd go with the standard dictionary as to
 9 what legal support services -- what the word would
 10 mean. They're pretty vague and inclusive.
 11 I would frankly be concerned that, you know,
 12 would a private detective equate to somebody who would
 13 fit underneath the umbrella of legal support services,
 14 and I think I could make that argument. So you know,
 15 I might caution you to be more cautious rather than
 16 less, because once you approve that language, I think
 17 that is a pretty broad, sweeping term.
 18 COUNCILMEMBER ROCHE: I think . . .
 19 MR. HAEBERLIN: I just -- I checked back to
 20 look. You know, bail bondsman was allowed as a
 21 permitted use in CT, so whether that is or is not
 22 covered under legal support is not really a concern.
 23 I can't think of any other potentially negative item
 24 that would be inclusive under legal support services
 25 but of course you could define that if you wanted to.

1 MAYOR JENKINS: Brian?
 2 COUNCILMEMBER BATES: I am not in favor of
 3 residential habitation in the CT zone; however, I do
 4 think that there is a particular use that is in
 5 existence that is a caretaker or watchman that is
 6 specific to this particular area. So I have drafted a
 7 conditional use clause for the CT zone. It's a
 8 caretaker/watchman residence clause. It's got nine
 9 stipulations in it.
 10 I have shared it with Mr. Weed, I have
 11 shared it with Mr. Shanahan. Mr. Weed has indicated
 12 to me that it is legal, and I will continue with he
 13 does not recommend it but it is legal. Mr. Shanahan
 14 indicated that it was satisfactory.
 15 The clause reads: "The caretaker/watchman
 16 residence must meet the following conditions: 1,
 17 built originally as a residence; 2, used as a
 18 caretaker facility at the time this ordinance takes
 19 effect; 3, only one caretaker unit per lot shall be
 20 allowed; 4, the caretaker shall be employed with job
 21 duties that include care and protection of persons,
 22 plants, animals, equipment or other facilities on site
 23 or contiguous lots under single ownership; 5, the
 24 caretaker unit shall not be separately rented, let or
 25 leased to other than the caretaker whether

1 compensation be direct or indirect; 6, that adequate
 2 sewage disposal and water supply facilities exist or
 3 are readily available; 7, the space used for
 4 caretaking may not be expanded; 8, the space is
 5 limited to one occupant; 9, the space may not be used
 6 for any commercial use unless the space is converted
 7 from residential to business. Running a business of
 8 any sort out of the caretaker residence will void the
 9 use immediately."
 10 So I understand there will be some dissent
 11 and concern over that. I'm throwing it out there.
 12 COUNCILMEMBER FLEMING: I'm concerned with
 13 No. 9, and maybe I just don't understand the
 14 statement, I mean, because presently this is a mixed-
 15 use location where the business is indeed on the lower
 16 half and the caretaker is living above.
 17 COUNCILMEMBER BATES: That is correct. The
 18 caretaker residence is separate from the business.
 19 COUNCILMEMBER FLEMING: Okay. It says,
 20 "Running a business of any sort out of the caretaker
 21 residence will void the use immediately."
 22 COUNCILMEMBER BATES: The caretaker does not
 23 live on the first floor.
 24 COUNCILMEMBER FLEMING: I'm sorry?
 25 COUNCILMEMBER BATES: The caretaker does not

1 live on the first floor. If the caretaker were to run
 2 a pet-sitting business out of his or her residence on
 3 the second floor, that would nullify this conditional
 4 use.
 5 COUNCILMEMBER PACHUTA: All right. I'm
 6 going to go ahead and jump in with my problems in that
 7 this is a zoning issue. Right now we don't have mixed
 8 use in that house. What we do have is illegal
 9 habitation in that house that I didn't know about. I
 10 talked to the police department. They weren't aware
 11 of it.
 12 Someone's been living in a commercial C-2
 13 house illegally. I noticed in the argument that
 14 boarding houses were allowed in C-2. It does not meet
 15 the definition of boarding house. That was an '86
 16 ordinance. Boarding houses were not allowed in C-2.
 17 In the '71 ordinance, this property used to
 18 be O/I which did not allow boarding houses. And I
 19 believe the definition of a boarding house is that it
 20 had to require at least two people and no more than
 21 10.
 22 COUNCILMEMBER BATES: That's correct.
 23 COUNCILMEMBER PACHUTA: ^{What we have is just}
 24 a situation where people on Council feel bad for one
 25 person and we are adding in a clause into a zoning

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1 district to meet the needs of one person, which is not
2 the purpose of the zone classification that is for a
3 general area in the city.
4 We wouldn't feel this way when the police
5 caught the sex offender who was babysitting children.
6 The only reason they found him is because he was
7 living on commercial property owned by Mr. Stokes.
8 When they went to cite him for living on commercial
9 property, they found he was an unregistered sex
10 offender babysitting children. If he was the person
11 living on the property, we wouldn't be having this
12 argument.
13 I think recently, what? people were found --
14 or someone was found living in the back of Enigma --
15 MR. HAEBERLIN: In that --
16 COUNCILMEMBER PACHUTA: -- doing --
17 MR. HAEBERLIN: -- vicinity.
18 COUNCILMEMBER PACHUTA: -- doing laundry --
19 MR. HAEBERLIN: That is correct.
20 COUNCILMEMBER PACHUTA: -- on a stove. We
21 wouldn't be having this argument to allow that person
22 to continue living in a commercial district.
23 So all of this is because one particular
24 person, and we're going to change and add to a zoning
25 classification. The whole purpose of the CT District

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1 was to accommodate those office/warehouse uses that
2 didn't necessarily -- the as-builts did not fit in
3 with necessarily all of the C-2, and we have strayed
4 from that, and I am not going to make a zoning
5 decision to allow a residential habitation because of
6 one particular person.
7 And if this is -- I'm in favor of the Draft
8 4 of the CT District that we have now, and if we add
9 residential habitation, I'm going to have to vote no
10 on the CT.
11 COUNCILMEMBER BATES: Thank you.
12 COUNCILMEMBER ROCHE: What is the nature of
13 the business? The person that's doing the caretaking,
14 what is the nature of the business that they're
15 caretaking?
16 COUNCILMEMBER BATES: I believe the building
17 is the Vietnam Veterans Association.
18 COUNCILMEMBER PITTMAN: So what -- what does
19 he -- He's the groundskeeper? Mr. Shanahan, would you
20 mind coming up?
21 MR. SHANAHAN: The primary business is the
22 Georgia Vietnam Veterans Association. It's a
23 benevolent association put together to help Vietnam
24 veterans just like it says. Being one, I'm very
25 sensitive to that.

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1 Y'all got together and for years now have
2 supported each other in a number of ways. We raise
3 funds that provide help to each other, and that's the
4 purpose of the business.
5 The gentleman upstairs has been there for
6 quite some time. He's close to that organization and
7 he does watch. It's been a great help to have him up
8 there.
9 But be that as it may, going back to '62
10 when that was a doctor's office, the doctor lived
11 upstairs. And there's never been a period when that
12 didn't exist, that I know of. That's 48 years it's
13 been like that.
14 And it really doesn't -- it doesn't relate
15 to one person. It relates to a situation. We're not
16 trying to protect one individual by name.
17 He's a very good man with a very unusual
18 background. And like I say, coming back after the Tet
19 Offensive in '68, I got a real heart for these folks.
20 It wasn't a good scene.
21 COUNCILMEMBER PITTMAN: So what does he do
22 exactly there? What does he do?
23 MR. SHANAHAN: They solicit funds and they
24 go out and help the --
25 COUNCILMEMBER PITTMAN: I understand what

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1 the business does, but the gentleman upstairs who's
2 the groundskeeper, what does he do?
3 MR. SHANAHAN: He doesn't do groundskeeping.
4 He watches over their property and makes sure people
5 don't break into it, and he provides that sort of
6 surveillance service for us as ancillary.
7 COUNCILMEMBER PITTMAN: And he's lived there
8 for 48 years, you say?
9 MR. SHANAHAN: I'm sorry?
10 COUNCILMEMBER PITTMAN: How long has he
11 lived there?
12 MR. SHANAHAN: Oh, for years. I'm not sure
13 how many years. He's been there for a long time.
14 But there's been someone there continuously.
15 COUNCILMEMBER PITTMAN: But how long has he
16 lived there?
17 MR. SHANAHAN: I'm not sure. I would say
18 more than four years.
19 COUNCILMEMBER PITTMAN: More than four
20 years. And he doesn't have another option of living
21 somewhere else?
22 MR. SHANAHAN: I'm sure he could find a
23 place to live.
24 COUNCILMEMBER PITTMAN: I'm just asking.
25 MR. SHANAHAN: They want him there, and the

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1 head of that organization very much wants him there to
2 the point I'm not sure that the business would stay
3 there if he was removed. He is very comfortable
4 having him avoid pilferage in that building.
5 They work late at night over there. I mean
6 they solicit funds and they go out and help people and
7 so they're there late into the night and they work
8 through the weekends. So he's comfortable having
9 somebody there -- they call it a caretaker -- watching
10 over his property there, so, or his office.
11 But essentially it is a benevolent
12 organization and a good -- they do good for a lot of
13 people over there.
14 Any other questions?
15 COUNCILMEMBER PITTMAN: And you were
16 comfortable with these conditions?
17 MR. SHANAHAN: Yes, ma'am. And I appreciate
18 Councilman Bates working on that very much. Yes, I
19 think it would -- it would -- You got to realize that
20 if something happens to him or if he departs, that's
21 the end of it.
22 COUNCILMEMBER PITTMAN: I understand. Okay.
23 Thank you.
24 MR. SHANAHAN: Thank you.
25 COUNCILMEMBER PITTMAN: Murray, does that

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1 set us up for future problems of allowing people to
2 live in this particular zone that is not zoned for
3 residential?
4 ATTORNEY WEED: Well, I won't couch it in
5 terms of problems because the Council is going to
6 decide whether it's positive or negative, and that's a
7 policy decision.
8 If you're asking me if you let this happen
9 here if we would have to let it happen everywhere,
10 yes. And that's part of the zoning. Under the Equal
11 Protection Act, you're going to have to treat
12 everybody the same.
13 COUNCILMEMBER BATES: Even if one of the
14 criteria is that it must be used as a caretaker
15 facility at the time the ordinance takes effect?
16 ATTORNEY WEED: Well, if there's anybody
17 else who is in the same situation, you have to give it
18 to them, in my opinion.
19 It may turn out that there's only one entity
20 that's in this situation. I don't know that
21 factually.
22 COUNCILMEMBER FLEMING: The -- the other
23 situation in the CT, however, is that that piece of --
24 that building, that residence, that single-family
25 dwelling per se is sitting on the parcel that has the

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1 requirement of roll-up doors. So that's the other
2 situation here is that there is only one that meets
3 that requirement, that I know of; that there is a
4 single-family dwelling per se the way that we know of
5 a single-family dwelling on the same property as the
6 roll-up door building, and that's the requirement for
7 a CT zone.
8 ATTORNEY WEED: That's correct.
9 COUNCILMEMBER FLEMING: So setting us up for
10 something else, I would say that we wouldn't be,
11 because it doesn't apply to other areas of the city
12 that have a single-family dwelling with a roll-up door
13 also on the property.
14 ATTORNEY WEED: And once again, I don't know
15 if there is another fact situation that'll meet this
16 criteria.
17 What I'm saying, though, is if it meets this
18 criteria, you would be in a very difficult place to
19 deny.
20 COUNCILMEMBER BATES: And with regards to a
21 split zoning -- and Mr. Haeberlin, this will be a
22 question for you and Mr. Weed -- if this property were
23 to apply for a split zone, there is still not a zone
24 that the City offers that would allow for a business
25 and a residential habitation commingled; is that

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1 correct?
2 MR. HAEBERLIN: That is correct.
3 COUNCILMEMBER BATES: So as it sits right
4 now -- and I appreciate Councilwoman Pachuta's point
5 -- the City has been complicit in this happening and
6 allowing it to continue to happen for a number of
7 years. Right, wrong, indifferent, I don't -- I
8 personally don't feel that this is the right thing to
9 do without having a viable alternative for an
10 applicant to pursue.
11 COUNCILMEMBER PACHUTA: The solution is that
12 the individual has to find another apartment to live
13 in.
14 You know, we fought for six years to keep
15 Ms. Barbara Nations from living in a residential-built
16 house in a commercial district. We spent six years in
17 court fighting that. And you know, if it was the sex
18 offender living upstairs, I don't think anyone up here
19 would be proposing this caretaker/watchman residence,
20 and I just don't feel that Council should make city --
21 you know, city decisions based on an individual.
22 COUNCILMEMBER PITTMAN: Mr. Haeberlin, are
23 there -- you're familiar whether the Council's
24 familiar with any other similar situations where we
25 have people living --

1 MR. HAEBERLIN: Well, we have a lot of code
2 enforcement activity that involves people living in
3 commercial properties -- living, cooking, bathing,
4 et cetera, even places that don't even have restroom
5 facilities, so it is a continuous problem throughout
6 the city.

7 Is there some industrial properties that
8 perhaps have a caretaker function on them? Yes, I
9 think so. In fact, the former codes did allow that in
10 industrial. But I know of no situation in commercial
11 or office/institutional that has the situation.

12 You have to recall, and as Councilman
13 Pachuta -- I hope I got that right -- discussed
14 earlier, these properties started out as O/I. The
15 reason they started out as O/I is a reason: there was
16 a home on them. And just like we did with The
17 Translation Station, we did an adaptive reuse. We
18 took a home and we made it a simple office use.

19 Now, somewhere in the mix, this property has
20 gone from O/I to C-2, and C-2 is different in kind
21 than O/I.

22 But city-wide, yes, I would say M-1, there
23 are probably people that have a grandfathered or
24 vested use in M-1, and these are very, very old
25 properties. But C-2 and O/I, I would say that there

1 is no situation that I'm aware of where there's any
2 vesting that has occurred.

3 Kind of get us back to our whole discussion
4 about boarding or rooming house, Mr. Weed and I have
5 reviewed all the definitions so I have all the past
6 ones with me today. At no time did this meet the
7 criteria for a boarding or rooming house and so we're
8 clear on that.

9 We know that in the past, M-1 did allow
10 caretaker's residence as an ancillary function to a
11 business. And certainly, like I said, I believe we
12 have one or more locations in the city where that has
13 happened, and I'm sure at some point in time, even the
14 GM site had some sort of watch -- caretaker's
15 residence present on that property as well.

16 COUNCILMEMBER PITTMAN: *Do we know how long*
17 that business has been there?

18 MR. HAEBERLIN: The Vietnam?

19 COUNCILMEMBER PITTMAN: Yes.

20 MR. HAEBERLIN: I'm not aware of how long
21 it's been there.

22 COUNCILMEMBER PITTMAN: *[To Mr. Shanahan]*
23 About how long has the business been there?

24 MR. SHANAHAN: I'm not sure. It's been
25 there since long before I owned the property, so I

1 don't know when it came.

2 So you're asking me about the Georgia
3 Vietnam Veterans?

4 COUNCILMEMBER PITTMAN: Yes, sir.

5 MR. SHANAHAN: It's -- far as I know, it's
6 been there a lot more than 10 years.

7 COUNCILMEMBER PITTMAN: *I see. So how did*
8 the gentleman come? Was there problems on the
9 property? Is that why the gentleman came to live
10 there? Is that how that came about?

11 MR. SHANAHAN: As long as he's been there,
12 there's never been any problems over there.

13 COUNCILMEMBER PITTMAN: *But I'm saying what*
14 was the purpose of moving him in.

15 MR. SHANAHAN: I don't know. I can't answer
16 that question.

17 Like I say, it's been continuous for 48
18 years.

19 COUNCILMEMBER PITTMAN: *But he hasn't lived*
20 there for 48 years.

21 MR. SHANAHAN: No, he hasn't, but it has
22 been used in that fashion --

23 COUNCILMEMBER PITTMAN: I understand.

24 MR. SHANAHAN: -- for that length of time.

25 Why he moved in there, I don't know. I mean

1 the man's capable. It's just simply a good place for
2 him to be. It's dual-use: to help with the property
3 and caretake.

4 COUNCILMEMBER PITTMAN: Thank you.

5 COUNCILMEMBER FLEMING: *The only other item*

6 -- and I know this is touching on Mr. Weed's and
7 Mr. Haerberlin's palate, but defensible -- or maybe not

8 defensible: "Other uses as may be determined by the
9 City Council would be similar and compatible with the

10 above-listed permitted uses." And the reason why that
11 was in our previous code was because the previous

12 council, the previous city attorney knew that
13 somewhere along the line these needed to be expanded.

14 So going back and inserting and inserting and
15 inserting, they used that term throughout our zoning

16 codes. And rooming -- rooming house or whatever the
17 term was then, you know, it could have been easily

18 that the city council decided that that was compatible
19 use for that particular piece of property in the C-2

20 district to have a business below and a caretaker or
21 resident above.

22 COUNCILMEMBER ALEXANDER: *And I think that*
23 language and the use of it has gotten the city in the

24 shape it's in now, that previous councils have used
25 that language and definitely in the history of this

1 city did not follow the Zoning Procedures Act
2 correctly and we ended up with a lot of stuff that was
3 never allowed in the code.

4 COUNCILMEMBER FLEMING: Well, and I will
5 agree with you on that. However, whatever we're doing
6 today is going to have a direct effect on the future,
7 and we will be blamed for whatever we have done wrong
8 also in the future. So we could go back and, you
9 know, put blame on the previous councils and previous
10 administration but we're going to be blamed on what we
11 do today.

12 COUNCILMEMBER PACHUTA: I did run searches
13 on all the past City minutes, and those go back to the
14 1940's, for this specific piece of property and I also
15 ran searches on boarding/rooming houses and other key
16 search terms, and there was nothing that popped up
17 relating to residential on this property. The only
18 thing that came up was going from O/I to C-2.

19 MR. HAEBERLIN: Some of the key items that
20 jurisdictions might look at is, for example, is the
21 dwelling unit, does it meet the criteria for a
22 dwelling unit, okay? Does it have its own toilet, its
23 own cooking facilities, bedroom, et cetera? Did this
24 dwelling unit ever receive a certificate of occupancy
25 from the City? If that was the case, there might be a

1 et cetera? And think the one thing we're really
2 missing from this mix is an evaluation by the fire
3 marshal and the building official, and I don't feel
4 comfortable. I personally don't feel comfortable.

5 COUNCILMEMBER ROCHE: I do. And I can't see
6 turning out a Vietnam veteran. I've been over there.
7 The flag that flies in front of my house comes from
8 there. I do not believe -- there is no evidence that
9 this person is a child molester, and frankly, I take
10 offense that we continue to keep bringing up the two
11 things in the same conversation.

12 I very much support this.

13 COUNCILMEMBER ALEXANDER: I don't know that
14 it's been established he is a Vietnam veteran.

15 COUNCILMEMBER BATES: Well, and quite
16 frankly, the use to me is irrelevant. It's -- in my
17 opinion, the City has allowed, whether appropriate or
18 not, this to continue. In my opinion, it is a valid
19 use for that particular property.

20 I appreciate the concerns regarding the
21 expansion of residential. I appreciate the concern
22 regarding the type of business. That is irrelevant to
23 me. This is a use that the City has allowed to
24 continue for since before we had zoning.

25 I just think this is the right thing to do,

1 more defensible argument. Is there separate metering
2 for that dwelling unit? Does it have its own
3 electrical meter? That again might be something the
4 jurisdiction would consider.

5 We have not been provided any proof that
6 indicates that there was ever any chain of events
7 where the City recognized this dwelling unit. In
8 fact, we probably should have the dwelling unit
9 inspected by the building official and the fire
10 marshall because we really don't know at this point in
11 time whether that can be done; whether, regardless of
12 the legislative action of the Council, does it meet
13 the technical codes? We still do not know that.

14 And I will tell you that mixed use, that
15 nebulous term that we're trying to get to someday with
16 new development, which is still a situation where
17 literally you don't live right beside the kitchen of
18 the restaurant. You live on a different floor of the
19 building. So we get -- we become very expansive when
20 we think about mixed use, but typically mixed use is
21 commercial and then office and then multi-family on a
22 third story.

23 In this case, clearly, you know, they go
24 through the building or however and access this unit.
25 How is the separation? How is the fire separation,

1 I appreciate everybody else's opinion and position,
2 and we all can be right and differ.

3 COUNCILMEMBER PITTMAN: So Mr. Weed, not
4 saying I'm one way or the other, but if this Council
5 chose to ask the gentleman to move, is there any way
6 to give him an extension of time to be able to make
7 the proper arrangements to find a new location or --

8 ATTORNEY WEED: Well, let me clarify. The
9 Council wouldn't be doing anything.

10 COUNCILMEMBER PITTMAN: Okay.

11 ATTORNEY WEED: By that, I mean to say the
12 Council is not going to ask this man to move.

13 COUNCILMEMBER PITTMAN: Right, but I'm --

14 ATTORNEY WEED: The Council's --

15 COUNCILMEMBER PITTMAN: -- saying based --

16 ATTORNEY WEED: -- not going to make --

17 COUNCILMEMBER PITTMAN: Right.

18 ATTORNEY WEED: What the Council would do is
19 they're going to -- The facts right now indicate that
20 this was never an appropriate legal use, which means
21 unless you make it legal, it is illegal.

22 You can make it legal. Whether you do or
23 don't is not up to me. It's a policy decision. But
24 right now it's an illegal use.

25 Bearing that in mind, the question would be,

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1 you know, enforcement is always discretionary, meaning
 2 the code enforcement unit, police department, you
 3 know, whatever time frame they get around to citing
 4 this person is the time frame that they get around to
 5 citing this person, which is why this use is
 6 apparently still there, because they didn't know it
 7 was there. I assume that. And if they had, they
 8 would have long since cited this person or the owner
 9 of the property or both. So that element of it, it's
 10 always discretionary.
 11 You could build into -- if you adopted this
 12 language, you could build into the code an effective
 13 date -- 30 days out, 60 days out -- and you'd build in
 14 an effective date 30 or 60 days out relevant to this
 15 one subsection. That would be legal in my opinion.
 16 So if you wanted to build that into the code, you
 17 could do that that way.
 18 COUNCILMEMBER PITTMAN: Thank you.
 19 COUNCILMEMBER BATES: I'm going to make a
 20 motion to add the caretaker/watchman residence as a
 21 conditional use per the nine stipulations that I've
 22 outlined.
 23 COUNCILMEMBER FLEMING: Second.
 24 MAYOR JENKINS: More discussion?
 25 - - -

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1 (No response)
 2 - - -
 3 MAYOR JENKINS: Call the roll, please.
 4 CLERK BRYANT: Councilmember Alexander?
 5 COUNCILMEMBER ALEXANDER: No.
 6 CLERK BRYANT: Councilmember Bates?
 7 COUNCILMEMBER BATES: Yes.
 8 CLERK BRYANT: Councilmember Fleming?
 9 COUNCILMEMBER FLEMING: Yes.
 10 CLERK BRYANT: Councilmember Pachuta?
 11 COUNCILMEMBER PACHUTA: No.
 12 CLERK BRYANT: Councilmember Pittman?
 13 COUNCILMEMBER PITTMAN: No.
 14 CLERK BRYANT: Councilmember Roche?
 15 COUNCILMEMBER ROCHE: Yes.
 16 ATTORNEY WEED: Mr. Mayor, it's a tie;
 17 therefore, the decision is yours, sir.
 18 MAYOR JENKINS: I thought about this when
 19 Brian brought this up. Some of it I like; some, I
 20 don't. I think we need to dig into this further, so I
 21 will abstain.
 22 COUNCILMEMBER ROCHE: Excuse me.
 23 So by abstaining, does that mean it does not
 24 get added to this?
 25 So if we pass this tonight, then this

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1 gentleman needs to find another place to live like
 2 tomorrow, soon as QOL turns up?
 3 ATTORNEY WEED: I'm sorry. I didn't
 4 actually hear the Mayor.
 5 Did you abstain?
 6 COUNCILMEMBER ROCHE: I said -- Yes, he
 7 abstained.
 8 ATTORNEY WEED: All right. Therefore, the
 9 motion essentially --
 10 MAYOR JENKINS: Did not pass.
 11 ATTORNEY WEED: -- doesn't pass.
 12 COUNCILMEMBER ROCHE: So this gentleman if
 13 we pass the CT will have to in fact -- Whether we pass
 14 it or not, basically this person needs to find another
 15 place to live very quickly because QOL will show up
 16 tomorrow.
 17 ATTORNEY WEED: Is it possible? Yes. You
 18 know, whether they do or not, I don't know. I don't
 19 do daily operations.
 20 COUNCILMEMBER FLEMING: Mr. Weed, previously
 21 -- and I'm addressing all of the uses that have been
 22 mentioned this evening to include the residential in
 23 the second floor of the building where the Georgia
 24 Vietnam Veterans Association is -- you have indicated
 25 that grandfathering is continuing to allow an activity

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1 after the law changes in order to avoid a taking of
 2 property or because a determination of fairness has
 3 been applied to continue prior activity while changing
 4 the law generally.
 5 I make a motion to allow grandfathering on
 6 all the uses that we've heard this evening to include
 7 the residential on the second floor.
 8 COUNCILMEMBER ROCHE: And I'll second that.
 9 ATTORNEY WEED: And just for the purposes of
 10 the court reporter and to make sure I understand,
 11 we're talking about the residential second-floor use.
 12 What are other uses that we heard tonight that you'd
 13 like to include?
 14 COUNCILMEMBER FLEMING: The acupuncture.
 15 ATTORNEY WEED: Okay.
 16 COUNCILMEMBER FLEMING: The wine
 17 distributors.
 18 ATTORNEY WEED: Do you want to include
 19 warehousing?
 20 COUNCILMEMBER FLEMING: Uh-huh. Warehousing
 21 I believe was already in there, is it not?
 22 Warehousing is not in here. Warehousing;
 23 yes, sir.
 24 ATTORNEY WEED: So right now, I've got
 25 acupuncture or acupuncture -- pardon me; puncture --

1 wine distributorship, warehousing, residential over
 2 commercial. Is there anything else, Councilman, you
 3 wanted to include?
 4 COUNCILMEMBER FLEMING: No, sir, just as
 5 long as the residential is on the second floor of a
 6 two-story single dwelling unit.
 7 ATTORNEY WEED: Thank you for clarifying.
 8 COUNCILMEMBER FLEMING: And this would be
 9 for how long?
 10 COUNCILMEMBER FLEMING: Grandfathered.
 11 COUNCILMEMBER PITTMAN: Until they move?
 12 COUNCILMEMBER FLEMING: Until -- now, the CT
 13 zone, bear in mind the CT that we created or that has
 14 been created is a stop-gap measure. It states in this
 15 zone that whatever their zoning is right now, it
 16 reverts back to that zone. So whatever uses they have
 17 available to them right now may not be allowed to them
 18 in the C-2 zone, but yet if their -- if they wish to
 19 upgrade and demolish, voluntarily demolish their
 20 building, then they have to revert back to their
 21 original zone. So I'm stating that there is no time
 22 limit.
 23 COUNCILMEMBER BATES: I'm a little unclear
 24 and I want to get some clarity. Is this a motion to
 25 add the grandfathering language into the CT ordinance

1 or as a standalone grandfathering? Because without
 2 the passing of the CT, there is no need for a
 3 grandfathering.
 4 COUNCILMEMBER FLEMING: I'd like to add the
 5 grandfathering into the zone for those.
 6 COUNCILMEMBER BATES: The CT?
 7 COUNCILMEMBER FLEMING: Into the CT zone for
 8 those specific items. Now, if you need me to amend
 9 the motion to identify the parcels, I'll be more than
 10 happy to.
 11 COUNCILMEMBER PACHUTA: Was there a second?
 12 Is it time for discussion?
 13 MAYOR JENKINS: (Nods head)
 14 COUNCILMEMBER PACHUTA: Okay. My
 15 understanding was the purpose of having individuals
 16 bring up current uses was to see not whether to
 17 grandfather them in but whether to include them and
 18 add them into permitted uses under CT --
 19 ATTORNEY WEED: That's correct.
 20 COUNCILMEMBER PACHUTA: -- which I think is
 21 the more -- the proper way to go about that so that we
 22 know what we're adding into CT rather than have it
 23 based under a grandfather clause. So that is my
 24 preference.
 25 COUNCILMEMBER BATES: That would also be my

1 preference, to add those uses in individually.
 2 COUNCILMEMBER FLEMING: The only reason why
 3 I'm asking for grandfathering on those particular
 4 items -- and we can also mention the specific parcels
 5 -- is that we don't necessarily want the CT district
 6 to be completely wine distributors or completely
 7 acupressure or residential above on the second story,
 8 et cetera. So that is the reason why I was using the
 9 grandfathering and not adding it in as a permitted
 10 use.
 11 ATTORNEY WEED: And as a legal point, I want
 12 to -- in response to your question, if a grandfathered
 13 use -- It's essentially the same thing as a legal
 14 nonconforming use. If that use is abandoned for a
 15 period of six months or more, that use goes away, so
 16 that's the -- that's part of the answer to your
 17 question. However, if it remains a continuous use
 18 without a six-month break, then that use could be
 19 there forever.
 20 COUNCILMEMBER BATES: Could a grandfathered
 21 use be expanded?
 22 ATTORNEY WEED: My opinion is no, it cannot.
 23 However, there are current cases -- Once again, it
 24 depends. Underneath some of the current case law, if
 25 you have Blackacre, you've got a three-acre site and

1 you have a legal nonconforming use on one of those
 2 acres, there are some cases indicating that you could
 3 expand that legal nonconforming use to all three acres
 4 of the same parcel. I think it's bad law but I think
 5 that's the current state of the law.
 6 COUNCILMEMBER BATES: Would the motion need
 7 to stipulate the individual parcels' addresses that
 8 are being grandfathered in?
 9 ATTORNEY WEED: You can do it that way.
 10 COUNCILMEMBER BATES: If you don't do it
 11 that way, what's the down side?
 12 ATTORNEY WEED: I don't know that there --
 13 well, I wouldn't say that there's a down side because
 14 I think --
 15 COUNCILMEMBER BATES: What are --
 16 ATTORNEY WEED: -- that's a qualifier --
 17 COUNCILMEMBER BATES: What are the --
 18 ATTORNEY WEED: -- that I wouldn't use.
 19 COUNCILMEMBER BATES: What are the pros and
 20 cons?
 21 COUNCILMEMBER FLEMING: Well, are we not
 22 then grandfathering the use and not where they're
 23 located? And that's what I didn't want done.
 24 ATTORNEY WEED: You'd be grandfathering the
 25 use throughout the entirety of all of the CT-qualified

1 areas.

2 COUNCILMEMBER BATES: Whether it was there
3 or not.

4 ATTORNEY WEED: Whether it was there or not.
5 That is correct.

6 Well, the way I understand the motion, it
7 would have to be on this list, and all these things on
8 this list are already there, so all of those uses
9 would be grandfathered. And there's two ways of doing

10 it, as you said, you pointed out: you can either
11 identify where they're actually at now and say that
12 this is grandfathered for that particular parcel or
13 you could do it throughout the entirety of the zone.

14 COUNCILMEMBER BATES: But if you -- and I
15 apologize, so bear with me while I get this clear in
16 my head. If you grandfather for the entirety of the
17 zone and it is on Property A presently but not on
18 Property B, could Property B then because the use was
19 grandfathered throughout the entirety of the zone add
20 that other use?

21 ATTORNEY WEED: I believe the answer to that
22 question would be yes the way you've couched it.

23 COUNCILMEMBER BATES: So if Property A had
24 the use and it was grandfathered for Property A,
25 Property B could not add that use to their property.

1 ATTORNEY WEED: That is my opinion.

2 COUNCILMEMBER BATES: I will request that
3 you specifically cite the parcels for those uses.

4 COUNCILMEMBER FLEMING: Mayor, I'd like to
5 request a five-minute break.

6 MR. HAEBERLIN: Could I have one point of
7 clarification?

8 MAYOR JENKINS: We got a --

9 MR. HAEBERLIN: I think this might help you.

10 MAYOR JENKINS: -- motion and a second on
11 the table.

12 COUNCILMEMBER FLEMING: I need a five-minute
13 break to be able to get the proper addresses for the
14 properties.

15 COUNCILMEMBER BATES: Mayor, Mr. Haeberlin
16 has a --

17 MR. HAEBERLIN: I think this might help you
18 guys. We're talking about acupuncture, okay. The
19 site where acupuncture is at right now is zoned C-2.
20 It's Ms. Stokes' [sic] property. Okay. If she elects
21 to make that a split zoning where that acupuncture is,
22 it's already an allowed use anyway so it's going to
23 stay there.

24 My understanding -- and you might want to
25 speak with her -- is that she was pursuing C-2 on the

1 front and CT on the back. So I'm not sure that

2 acupuncture would in fact help this particular
3 property the way it's being couched. I think that it
4 really only applies to one property.

5 COUNCILMEMBER ROCHE: The question is are
6 there current businesses that are in operation that if
7 the property owners elected to go to CT zoning that
8 would have to be shut down.

9 ATTORNEY WEED: And I think that is the
10 ultimate question. And the best way in my opinion to
11 answer that would be to get that list of uses from the
12 people who are concerned who might want to apply to
13 this and then you would just add them into the
14 ordinance. And that's the easiest, quickest, best way
15 of doing it in my opinion.

16 COUNCILMEMBER PACHUTA: And I've tried.

17 ATTORNEY WEED: Then you'd know, then they'd
18 be there.

19 COUNCILMEMBER ROCHE: Or couldn't you simply
20 say whatever business is operating right now at the
21 time?

22 ATTORNEY WEED: I would not advise you to do
23 that because that's always going to be he-said/she-
24 said. I'll be litigating that for years.

25 COUNCILMEMBER PACHUTA: And I indicated to

1 the business owners over the weekend that I wouldn't

2 blindly support grandfathering, that I needed to know
3 what businesses they wanted grandfathered in, and I

4 got two vague nonresponses and I believe Ms. Alexander
5 also got a vague nonresponse. Ms. Carden is the only
6 one I think that responded to me specifically.

7 MAYOR JENKINS: Ten-minute break.

8 - - -

9 (Recess)

10 - - -

11 MAYOR JENKINS: Meeting come to order.
12 Pam, you've got the floor.

13 COUNCILMEMBER FLEMING: Yes, sir. I would
14 like to -- I'm very sorry.

15 MAYOR JENKINS: Wait a minute.

16 COUNCILMEMBER FLEMING: I would like to
17 amend my motion so that there is more clarity. The
18 motion is to: Grandfathering is continuing to allow
19 an activity after the law changes in order to avoid
20 the taking of property or because a determination of
21 fairness has been applied to continue the prior
22 activity while changing the law generally, and the
23 addresses that are involved that I wish to be

24 grandfathered are 5859 New Peachtree Road and 5312
25 Buford Highway. Both of those parcels have wine

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1 distributors in them. Also 5879 New Peachtree Road, I
2 would like to grandfather the residential on the
3 second story of the single-family dwelling structure
4 that has commercial business on the first floor with
5 the understanding that the commercial business must
6 remain for the residential to remain.
7 COUNCILMEMBER ROCHE: And I'll second the
8 amendment.
9 MAYOR JENKINS: Is there any more discussion
10 at the table?
11 Do you want the motion read, Murray?
12 ATTORNEY WEED: Sir, I would turn to the
13 court reporter to read the motion back.
14 - - -
15 (Requested portion read back by the court reporter)
16 - - -
17 MAYOR JENKINS: Okay. Any more discussion
18 at the table?
19 COUNCILMEMBER PACHUTA: Again, my preference
20 is -- rather than grandfathering wine distribution is
21 for us to consider whether or not to add that into C-2
22 -- I mean to CT, into CT.
23 COUNCILMEMBER PITTMAN: And I don't have a
24 problem with the wine distribution. I'd just rather
25 add it in. But I'm still not supportive of the

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1 residential.
2 COUNCILMEMBER FLEMING: The reason why I'm
3 asking for that particular item to be grandfathered is
4 that in the CT ordinance it specifically states in the
5 beginning that no alcohol, I believe -- on page 5,
6 "Alcohol warehousing, sales or consumption is not
7 permitted within this district."
8 So we retract that statement from page 5 or
9 we grandfather in just those two parcels.
10 MAYOR JENKINS: Any more discussion?
11 The reason I abstained on the other one was
12 to give the chance to look at Brian's suggestions, but
13 it didn't seem like we looked at those at all.
14 Any more discussion?
15 - - -
16 (No response)
17 - - -
18 MAYOR JENKINS: Call the roll, please.
19 CLERK BRYANT: Councilmember Alexander?
20 COUNCILMEMBER ALEXANDER: No.
21 CLERK BRYANT: Councilmember Bates?
22 COUNCILMEMBER BATES: Yes.
23 CLERK BRYANT: Councilmember Fleming?
24 COUNCILMEMBER FLEMING: Yes.
25 CLERK BRYANT: Councilmember Pachuta?

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1 COUNCILMEMBER PACHUTA: No.
2 CLERK BRYANT: Councilmember Pittman?
3 COUNCILMEMBER PITTMAN: No.
4 CLERK BRYANT: Councilmember Roche?
5 COUNCILMEMBER ROCHE: Yes.
6 MAYOR JENKINS: No.
7 That was a tie, wasn't it?
8 ATTORNEY WEED: Yes, sir.
9 COUNCILMEMBER FLEMING: I'd like to go on
10 record at this time that I do not feel that the City
11 needs to be -- and I feel that the City is evicting,
12 though others may not feel, because these people,
13 their property owners have an opportunity to stay C-2
14 and these items that we've discussed would be indeed
15 grandfathered, but if they chose to go to C-2, we've
16 just evicted them.
17 COUNCILMEMBER BATES: I want to make a
18 motion that we grandfather in 5859 New Peachtree and
19 5312 Buford Highway for wine distribution.
20 COUNCILMEMBER PITTMAN: Second.
21 MAYOR JENKINS: For wine distribution?
22 COUNCILMEMBER BATES: For wine distribution.
23 MAYOR JENKINS: All right.
24 COUNCILMEMBER ALEXANDER: I want to confirm
25 that both of those businesses met the State law

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1 requirements regarding distance due to the proximity
2 to R-3 housing.
3 MR. HAEBERLIN: Well, obviously this is
4 covered as a separate regulatory code which is under
5 the Clerk's function. And I would be concerned as
6 well as to how the regulatory codes for wine
7 wholesaling and distribution are now handled if we're
8 making it a grandfathered use by right now, and so I
9 am concerned as well.
10 ATTORNEY WEED: It won't affect the alcohol
11 beverage regulatory code. If they don't meet the
12 distances, they don't open.
13 COUNCILMEMBER ALEXANDER: Because I guess --
14 ATTORNEY WEED: I just don't know if they
15 meet the distances or not.
16 COUNCILMEMBER ALEXANDER: I guess my concern
17 is with Doraville First Baptist Church in close
18 proximity and also Windscape Apartments in close
19 proximity to those two addresses.
20 COUNCILMEMBER ROCHE: Well, Baptists don't
21 drink anyway, right?
22 COUNCILMEMBER FLEMING: I appreciate your
23 question, Ms. Alexander, but if these businesses have
24 already been in business for seven years and they were
25 just reviewed by our zoning appropriateness as wine

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1 distributors, then one would think that they're
2 already approved.
3 MR. HAEBERLIN: Well, that's a separate
4 review. That's a Clerk's review, actually. The
5 regulatory codes are under the City Clerk's function.
6 Since Ms. Blackmon is not here, Ms. Blackmon has sent
7 a number of denial letters on renewals relative to
8 alcohol now that there is adequate staffing to assist
9 her with the distance locations and calculations, so
10 there's been a number of denials that's come forth. I
11 mean maybe the Council is not aware of those, but that
12 is part of the day-to-day operations.
13 COUNCILMEMBER PACHUTA: So even if we
14 grandfather in wine distribution, if they don't meet
15 the alcohol code --
16 ATTORNEY WEED: Yeah. We can't --
17 COUNCILMEMBER PACHUTA: -- that will --
18 ATTORNEY WEED: -- change State law.
19 COUNCILMEMBER PITTMAN: It wouldn't make a
20 difference.
21 MAYOR JENKINS: It wouldn't go anyway.
22 ATTORNEY WEED: They may be fine. At this
23 point, I don't know.
24 MAYOR JENKINS: Any more discussion?
25 - - -

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1 (No response)
2 - - -
3 CLERK BRYANT: Councilmember Alexander?
4 COUNCILMEMBER ALEXANDER: Yes.
5 CLERK BRYANT: Councilmember Bates?
6 COUNCILMEMBER BATES: Yes.
7 CLERK BRYANT: Councilmember Fleming?
8 COUNCILMEMBER FLEMING: Yes.
9 CLERK BRYANT: Councilmember Pachuta?
10 COUNCILMEMBER PACHUTA: Yes.
11 CLERK BRYANT: Councilmember Pittman?
12 COUNCILMEMBER PITTMAN: Yes.
13 CLERK BRYANT: Councilmember Roche?
14 COUNCILMEMBER ROCHE: Yes.
15 MAYOR JENKINS: Thank you. Anything else on
16 this?
17 ATTORNEY WEED: Well, sir, you have to pass
18 the ordinance still.
19 COUNCILMEMBER ROCHE: I believe we have one
20 last thing.
21 I would like to go ahead and add the
22 language under legal services.
23 COUNCILMEMBER PACHUTA: What page?
24 COUNCILMEMBER ALEXANDER: It is 10.
25 MR. HAEBERLIN: Page 10.

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1 COUNCILMEMBER ROCHE: Page 10?
2 I think it would be a good idea to go ahead
3 and specify court reporting and transcription
4 services.
5 COUNCILMEMBER ALEXANDER: So including?
6 COUNCILMEMBER ROCHE: Yeah. I'd like to
7 make a motion to add court reporting and transcription
8 services as an allowed use.
9 COUNCILMEMBER PITTMAN: Second.
10 COUNCILMEMBER ALEXANDER: So it would say
11 legal support services including court reporting and
12 transcription?
13 COUNCILMEMBER ROCHE: Or have it as a
14 separate item of court reporting and transcription
15 services. In fact, I think a separate item is
16 probably better.
17 Have I got the motion all mixed up now?
18 MAYOR JENKINS: Do I get a second on it?
19 COUNCILMEMBER PITTMAN: Yeah.
20 ATTORNEY WEED: So you want to leave legal
21 support services --
22 COUNCILMEMBER ROCHE: Right.
23 ATTORNEY WEED: -- and you also want an
24 additional use as court reporting and transcription.
25 COUNCILMEMBER ROCHE: I will withdraw the

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1 motion and start over again.
2 I'd like to make a motion that we add court
3 reporting and transcription services as a legal use
4 for CT district.
5 COUNCILMEMBER PITTMAN: And I'll second
6 that.
7 MAYOR JENKINS: Any more discussion?
8 - - -
9 (No response)
10 - - -
11 MAYOR JENKINS: Call the roll.
12 CLERK BRYANT: Councilmember Alexander?
13 COUNCILMEMBER ALEXANDER: Yes.
14 CLERK BRYANT: Councilmember Bates?
15 COUNCILMEMBER BATES: Yes.
16 CLERK BRYANT: Councilmember Fleming?
17 COUNCILMEMBER FLEMING: Yes.
18 CLERK BRYANT: Councilmember Pachuta?
19 COUNCILMEMBER PACHUTA: Yes.
20 CLERK BRYANT: Councilmember Pittman?
21 COUNCILMEMBER PITTMAN: Yes.
22 CLERK BRYANT: Councilmember Roche?
23 COUNCILMEMBER ROCHE: Yes.
24 Thank you.
25 MAYOR JENKINS: All right.

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1 ATTORNEY WEED: And one more thing. You
2 have to decide if you want to adopt this ordinance or
3 not.
4 MAYOR JENKINS: Okay. Do I have a motion?
5 COUNCILMEMBER BATES: Make the motion to
6 adopt the CT ordinance as amended.
7 MAYOR JENKINS: As amended, okay.
8 Second?
9 COUNCILMEMBER ROCHE: Second.
10 MAYOR JENKINS: Any more discussion?
11 COUNCILMEMBER FLEMING: Yes, sir. The CT
12 ordinance is indeed a Band-aid over an artery that's
13 been severed by our C-1/C-2 ordinances, and until such
14 time as we review the C-1/C-2, this is at least a
15 positive mechanism to help those with roll-up doors
16 but we have not addressed the balance of the city,
17 and my efforts previously were trying to encompass all
18 of Doraville, not just a few.
19 Though I am in agreement with the CT
20 ordinance at this time as amended, we really do need
21 to address the C-1/C-2 review.
22 MAYOR JENKINS: More discussion?
23 COUNCILMEMBER ROCHE: Yeah. I'd just like
24 to say there are a couple things I really don't like
25 about this ordinance, frankly. I echo what's been

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1 said earlier about, frankly, I think we passed the
2 C-1/C-2 too quickly. I think there are some things
3 that we want to do to plan for the future.
4 I don't think anyone wants to go backwards.
5 I think we all want a better city and better uses, et
6 cetera, et cetera. The problem is just passing a
7 zoning ordinance doesn't mean, you know, if you zone
8 it they will come. And unfortunately at the moment
9 we're having all kinds of trouble with the economy.
10 And we've also had all kinds of trouble
11 frankly with the way Doraville treats business people.
12 I know a lot of people, a lot of businesses have left
13 Doraville just in the last six months. Business-
14 friendly is not what Doraville's all about nowadays.
15 It's one thing to make a mistake. It's another thing
16 to make a mistake and not try to do anything to
17 correct it.
18 So I think we all want to see a new
19 Doraville, and I think -- in a few years when the
20 economy picks back up again, I think that's definitely
21 going to happen. And I think a lot of these uses are
22 going to become obsolete because, frankly, the
23 property is going to become way too valuable for an
24 automobile tinting place or an upholsterer. But we're
25 just not there yet, and the idea is to try not to put

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1 people out of business in the meantime.
2 If I went to work and someone showed up at
3 my work and did everything they could to make me lose
4 my job, I think I'd be kind of unhappy about that too,
5 so, but I want to ahead and support --
6 Oh. The other thing I don't like is that
7 there are a couple places here where the City seems to
8 be taking on the responsibility of verifying
9 certifications and stuff like that which is the
10 purview of the State law and I don't understand why
11 we're regulating something that's already regulated.
12 But having said that, I will definitely
13 support this.
14 MR. HAEBERLIN: Just so we can have it on
15 the record, Councilman Bates, was it your intention
16 that this exhibit which has been provided to you
17 tonight with the blue highlighted areas comprises the
18 exhibit, Exhibit A, as shown in the CT draft
19 ordinance?
20 COUNCILMEMBER BATES: It is.
21 MR. HAEBERLIN: Thank you.
22 MAYOR JENKINS: Any more discussion?
23 ---
24 (No response)
25 ---

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1 CLERK BRYANT: Councilmember Alexander?
2 COUNCILMEMBER ALEXANDER: Yes.
3 CLERK BRYANT: Councilmember Bates?
4 COUNCILMEMBER BATES: Yes.
5 CLERK BRYANT: Councilmember Fleming?
6 Councilmember Fleming?
7 COUNCILMEMBER FLEMING: Yes.
8 CLERK BRYANT: Councilmember Pachuta?
9 COUNCILMEMBER PACHUTA: Yes.
10 CLERK BRYANT: Councilmember Pittman?
11 COUNCILMEMBER PITTMAN: Yes.
12 CLERK BRYANT: Councilmember Roche?
13 COUNCILMEMBER ROCHE: Yes.
14 MAYOR JENKINS: Thank you.
15 Scott?
16 MR. HAEBERLIN: Okay. The next one is a
17 public hearing. This is Innerbrand Properties
18 rezoning/zoning modification/change of conditions.
19 These are currently two parcels: 5849 Peachtree Road,
20 18-322-02-004, 5.64 acres zoned M-1 conditional; and
21 0 General Motors Drive, 18-322-02-005, 5.7 +/- acres,
22 M-1 conditional again.
23 We will talk about these generally as one,
24 and of course Mr. Weed may counsel you later at the
25 public hearing.

1 At this time, we invite the applicant to
2 come forward and discuss both parcels and that will be
3 followed up by the staff.

4 MR. HOATH: Good evening. My name is
5 Michael Hoath. I reside at 755 East Morningside
6 Drive, city of Atlanta. Thank you all for your time.

7 At this point, the proposal that we have
8 presented to the Council for consideration, basically
9 we have agreed to go from our prior zoning of M-2,
10 heavy industrial, to zoning of light industrial, M-1.

11 And the standard M-1 ordinance that was
12 recently adopted by Council includes 63 permitted uses
13 and several conditional uses as well. Our proposal
14 after dialoging with many of the different Council
15 members is to have 54 allowable uses and 11 prohibited
16 or conditional uses.

17 The attachment that I have here that we can
18 hand out, this incorporates a lot of the different
19 requests and modifications in our dialogue with
20 different Council members that they requested and is
21 what we're presenting for final consideration and
22 approval.

23 We feel this is a fair and balanced approach
24 that allows us to maintain our current property's
25 viability but also anticipate the future redevelopment

1 of this whole area and sector.

2 At this point, what I'd probably like to do
3 is open it up and see if you have any questions,
4 clarifications.

5 COUNCILMEMBER ROCHE: How did you come to do
6 this today? I mean refresh our memory on what
7 happened and what the City's action was originally
8 that brought us to this.

9 MR. HOATH: Our property was rezoned from
10 M-2 to M-1 with several conditions. Well, you can see
11 the very right, the column to the far right shows what
12 the current zoning allows, which is only six allowable
13 uses, which is considerably more restrictive than the
14 standard M-1 ordinance. And so we're just -- we're
15 trying to work with the City and work with the
16 Council, make sure that we have put forth a proposal
17 that provides an appropriate balance of concerns about
18 the community and our private property rights as well
19 as kind of the overall concerns and vision for the are
20 that's consistent with the comprehensive development
21 plan.

22 MAYOR JENKINS: Any questions from the
23 table?

24 ---
25 (No response)

1 ---

2 MAYOR JENKINS: Scott, is this a public
3 hearing?

4 MR. HAEBERLIN: That is correct, sir, but
5 we'll let the applicant finish.

6 MR. HOATH: I'll reserve the rest of my time
7 for rebuttal if that's all right.

8 MR. HAEBERLIN: Just for the edification of
9 the Council, the exhibit that you handed out tonight,
10 was that the same exhibit that was handed out at the
11 May 20th Planning Commission meeting?

12 MR. HOATH: Yes.

13 MR. HAEBERLIN: Okay. I just want to make
14 sure we have the same documents.

15 All right. I won't spend a significant
16 amount of time on this; however, you are aware that
17 this is two parcels. Historically, apparently the
18 City allowed the construction of a building across lot
19 lines, and there has not been the convergence of these
20 parcels which is really necessary for zoning
21 conformity.

22 Now, the future development map shows this
23 as mixed-use redevelopment opportunity which would
24 generally mean commercial, office and residential
25 coming in in some fashion. This is not part of the

1 present LCI but it has been proposed to be part of
2 your new LCI which includes areas over here in
3 unincorporated Dekalb County that the City of Chamblee
4 is trying to annex.

5 You heard the zoning history. At one point,
6 this was M-2 which is consistent with this area down
7 here (indicating) and also to that of the GM site
8 which is no longer as well M-2.

9 The vestiges of heavy manufacturing in this
10 quadrant here (indicating) pretty much have
11 disappeared, because in zoning we use dividing lines.
12 One of them is 285 here, obviously the railroad,
13 another public right-of-way and PIB. So this quadrant
14 are noted as different than many of the other areas in
15 the city.

16 You see an evolving change. You have C-2 up
17 here (indicating), the GM plant which was C-1, and then
18 this remaining eleven acres which is M-1, which really
19 is not that much different than this location here
20 (indicating) which is M-1 as well -- about the same
21 acreage.

22 MAYOR JENKINS: Scott?

23 MR. HAEBERLIN: Yes, sir.

24 MAYOR JENKINS: Just turn it where Pam and
25 Bob can see it.

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1 MR. HAEBERLIN: Oh, I apologize (complying).
 2 And I'm using this proposed zoning map as a
 3 reference just so graphically you guys can see how
 4 much of this property is left that's M-1.
 5 So it is correct, the applicant is correct
 6 that the City's action was to restrict the uses within
 7 M-1. Initially the staff had put forth office/
 8 research uses only. The Council elected to expand
 9 those uses to included other light industrial uses.
 10 Now, at the Planning Commission, the
 11 applicant made the statement that the City had not
 12 followed its Comprehensive Plan when it down-zoned the
 13 property from M-2 to M-1. I do disagree with that.
 14 The original proposition of the staff was for office
 15 uses, and therefore we were attempting to comply with
 16 the provisions of the comprehensive plan.
 17 Now turn to page 6 of your report. Now,
 18 this property is part of the GM Site Recommended
 19 areas. In fact, this whole area is considered in the
 20 Comp Plan, including the 11 acres, as part of the GM
 21 site.
 22 What the Plan recommends is mixed-use
 23 commercial, office/professional, public/institutional,
 24 townhomes, and urban density condominiums. That is
 25 what your Comprehensive Plan says. It says nothing

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1 about industrial uses.
 2 And so we're left with the great difficulty
 3 of making a recommendation which would be contrary to
 4 the City's Comprehensive Planning documents which have
 5 been duly adopted; therefore, the staff's recommen-
 6 dation was denial, and that is based on the Comp Plan.
 7 I do want to note that the document that was
 8 provided to the Council includes uses that are not
 9 even allowed in M-1. For example, on the last page,
 10 number 65, the applicant wishes to alter M-1 by
 11 allowing general retail but excluding pawn shops,
 12 tattoo parlors, massage parlors and head shops. So
 13 what's interesting about this petition is it's
 14 attempting to modify something that should go through
 15 the Zoning Procedures Act relative to the M-1/M-2
 16 ordinance itself, and so there's some ambiguities
 17 present there.
 18 To me -- and I've talked with Mr. Weed about
 19 this -- this almost constitutes a use variance within
 20 M-1 and -2. So I think what we need to do is consider
 21 what actually is in M-1 and which of these uses if the
 22 Council so elects that they're going to expand on this
 23 property. And they should not be expanding uses that
 24 are not already allowed in M-1.
 25 COUNCILMEMBER PACHUTA: Which other ones are

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1 not currently in M-1?
 2 MR. HAEBERLIN: Well, they've made some --
 3 as you see in the red stripe, they've made some what
 4 they feel to be appropriate text changes.
 5 And on page 2 you see at the top it says
 6 distribution of merchandise excluding adult material.
 7 And then down on page 36 of page 2 again,
 8 they struck water and sewage plants and water storage
 9 facilities.
 10 And on page 3 under limousine service under
 11 39, they added "Operation and parking for charter bus
 12 service will be allowed as long as there are no
 13 regular loading and unloading of passengers at the
 14 facility."
 15 Page 4, number 52, they again have altered
 16 processing and compounding of non-explosive materials
 17 not including fog, construction debris, or other waste
 18 products of any kind. This will be included as a
 19 conditional use subject to the limitation that any
 20 such use does not present a significant odor control
 21 problem.
 22 And number 58, taxidermist, as long as such
 23 use does not present significant odor control
 24 problems.
 25 And then again on the last page, general

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1 retail, which is certainly not allowed in light
 2 industrial for a reason, the purpose of having zones
 3 under your modified Euclidean zoning that you have
 4 here is to have zones where particular items do occur
 5 and that there is consistency in that zone, and that's
 6 the reason why we established the zoning districts.
 7 So while these might be good ideas that
 8 certainly need to be proposed to the Council with
 9 perhaps an M-1/M-2 rewrite, they are including things
 10 here that are not permitted by right in M-1, and I
 11 think we need to consider that.
 12 COUNCILMEMBER ALEXANDER: And I'm sure some
 13 of these ideas probably came from discussions with
 14 Council not understanding the complete legalities as
 15 far as what Scott is saying, that if it's not
 16 currently in M-1, they can't add text --
 17 ATTORNEY WEED: That's --
 18 COUNCILMEMBER PACHUTA: -- to these uses.
 19 ATTORNEY WEED: -- my position.
 20 However, what you could do is you could
 21 simply create a new zone.
 22 COUNCILMEMBER FLEMING: He is already -- If
 23 I understand this request, Mr. Hoath's property, both
 24 parcels are zoned M-1C Conditional. So therefore
 25 we're adding conditions to his property, so therefore

1 we --
 2 ATTORNEY WEED: Correct.
 3 COUNCILMEMBER FLEMING: -- should be allowed
 4 to add conditions to his property.
 5 ATTORNEY WEED: The problem, though, is that
 6 you'd be adding -- This is my opinion: If you add
 7 conditions from other zones that are not allowed
 8 currently in the M-1 zone, it's the same thing. It's
 9 analogous to a use variance; that a person applies for
 10 a variance, they're in C-2 zone but they want to have
 11 a heavy industrial use. And rather than change the
 12 zoning to M-2 to allow the heavy industrial use, it's
 13 simply added by virtue of a use variance.
 14 The better way of doing it so you're not
 15 debilitating or breaking down the zoning districts
 16 that you've got, if you want to do this, would be just
 17 create a new zone that allows it.
 18 But if you do it by adding another -- if you
 19 try to do it by adding a condition, in my opinion,
 20 you're essentially breaking down your existing zones
 21 and the differentiation between zones. You're
 22 essentially ignoring the zoning scheme that you
 23 created.
 24 COUNCILMEMBER ALEXANDER: The majority of
 25 these are my comments that I made to Mr. Hoath, so I

1 ATTORNEY WEED: He may be incorrect.
 2 COUNCILMEMBER BATES: Let's separate --
 3 let's separate this out right now.
 4 There are two uses, general office and
 5 general retail, that are not in M-1. Let's pull that
 6 out of discussion for the moment.
 7 There are other uses that are in M-1 that
 8 there are conditions being placed at the request of
 9 the applicant to make the uses more restrictive.
 10 Can we --
 11 ATTORNEY WEED: If they are already allowed
 12 uses in M-1, I think I can defend that legally: to
 13 make them more restrictive than -- you know, than what
 14 they already generally allow as a permitted use in
 15 M-1.
 16 COUNCILMEMBER BATES: Okay. So the concern
 17 generally, then, is adding in uses that are not
 18 allowable under our existing M-1.
 19 ATTORNEY WEED: Correct.
 20 COUNCILMEMBER BATES: Okay.
 21 ATTORNEY WEED: And can you do that? My
 22 opinion is yes, you can. The best way of doing it is
 23 create a new zone that allows it.
 24 COUNCILMEMBER PACHUTA: Okay. But -- yeah.
 25 ATTORNEY WEED: But if you choose to do it

1 will take the brunt of your anger if there is such.
 2 ATTORNEY WEED: Councilman, I have no --
 3 COUNCILMEMBER ALEXANDER: But it's not --
 4 ATTORNEY WEED: -- anger. You can do
 5 whatever you want to.
 6 COUNCILMEMBER ALEXANDER: But the comments I
 7 made that were incorporated into his language are not
 8 changing the use. They're making the existing use in
 9 M-1 more restrictive, because, for example, the PSC
 10 regulates the limousine company that's there; we do
 11 not. I was concerned that I didn't want to allow a
 12 limousine or a bus company there, and then in turn it
 13 turned into a bus station where passengers board the
 14 bus, so thus he included the restrictive language that
 15 it is just a maintenance facility and a storage
 16 facility for the bus, not one for passengers to board.
 17 But you're saying that you can't include
 18 conditional language on a use that already is existing
 19 in M-1.
 20 ATTORNEY WEED: What I'm saying to you is
 21 assuming what Mr. Haeberlin has said is true, he's
 22 positive that some of the uses that are currently
 23 requested by the applicant do not already exist in M-1
 24 zoning.
 25 COUNCILMEMBER BATES: Okay. Let's --

1 by trying to put that framework on top of and do it by
 2 the mechanism of conditions, I think you weaken the
 3 entirety of your zoning ordinance.
 4 COUNCILMEMBER PACHUTA: Okay. But that's --
 5 COUNCILMEMBER FLEMING: So would we --
 6 COUNCILMEMBER PACHUTA: -- why I want to
 7 separate out, because we put conditions on other
 8 properties like the Galloway property, so --
 9 ATTORNEY WEED: To my knowledge, we've never
 10 taken a use from another zone and tried to apply it in
 11 a different zone.
 12 COUNCILMEMBER PACHUTA: Yeah. That's why I
 13 want to separate out, though. Forget the two that are
 14 from other zones, which is the general retail and
 15 general office. Forget about those.
 16 These others --
 17 COUNCILMEMBER BATES: Do you have a copy?
 18 ATTORNEY WEED: I do.
 19 COUNCILMEMBER PACHUTA: -- such as limousine
 20 services, it reads exactly the same except they've
 21 added "Operation and parking for charter bus services
 22 will be allowed as long as there is no regular
 23 loading/unloading of passengers at the facility."
 24 ATTORNEY WEED: I think that's an
 25 appropriate standard condition that would be --

1 COUNCILMEMBER PACHUTA: Restricting. Okay.
 2 ATTORNEY WEED: -- fine.
 3 COUNCILMEMBER PACHUTA: So I guess those two
 4 issues, then.
 5 Some of these are just making more
 6 restrictive some M-1 uses we already have.
 7 ATTORNEY WEED: Yeah. I would interpose --
 8 COUNCILMEMBER PACHUTA: Those would --
 9 ATTORNEY WEED: -- no legal --
 10 COUNCILMEMBER PACHUTA: -- be fine.
 11 ATTORNEY WEED: -- objection to that.
 12 COUNCILMEMBER PACHUTA: Okay.
 13 COUNCILMEMBER FLEMING: Okay.
 14 COUNCILMEMBER PACHUTA: But then --
 15 I'm sorry. I'm just trying to be clear.
 16 COUNCILMEMBER FLEMING: That's okay. Keep
 17 on.
 18 COUNCILMEMBER PACHUTA: So the problem is
 19 just those M-1 uses they've added, uses they've added
 20 that are not currently in M-1, and that's --
 21 ATTORNEY WEED: That is a --
 22 COUNCILMEMBER PACHUTA: -- the problem.
 23 ATTORNEY WEED: -- problem to me --
 24 COUNCILMEMBER PACHUTA: Okay.
 25 ATTORNEY WEED: -- legally in --

1 separating out unlike uses.
 2 Can you do it? Yes. The best way of doing
 3 it is you create a brand new zone and then you could
 4 pick and choose whatever uses from whatever source
 5 that you have and you put 'em all together on the
 6 property.
 7 COUNCILMEMBER PACHUTA: Scott, the only
 8 ones, if I'm correct, that are new uses not in the
 9 current M-1 would be these three at the end of the
 10 chart: the general office, the general retail and
 11 then the added conditional use.
 12 MR. HAEBERLIN: Correct. I think after
 13 your-all's discussion, if I'm understanding where
 14 you're going with this, I would generally agree that
 15 the other attempt was to be more restrictive. But
 16 that last page certainly presents a problem because
 17 let's say, for example, these gentlemen wanted to add
 18 residential into this zone. Could we just simply put
 19 a residential on the end and call this M-1 now? I
 20 don't think we can.
 21 ATTORNEY WEED: Or even M-1 Conditional.
 22 That's exactly the point.
 23 MR. HAEBERLIN: Yeah. It debilitates your
 24 overall zoning scheme by just picking and choosing
 25 from different districts.

1 COUNCILMEMBER PACHUTA: Okay.
 2 ATTORNEY WEED: -- my opinion.
 3 COUNCILMEMBER FLEMING: Okay. And Mr. Weed,
 4 your comment is to create -- the easiest way is to
 5 create another zone.
 6 In my opinion, though it's definitely not
 7 legal -- okay, I mean not a legal opinion -- is that
 8 we have already created another zone by putting on
 9 that map and him applying for M-1C. To me, that's
 10 already a new -- a whole new zone. That's --
 11 ATTORNEY WEED: I generally --
 12 COUNCILMEMBER FLEMING: -- the way I --
 13 ATTORNEY WEED: I generally agree with that,
 14 because in order to do that, you also have to
 15 following the Zoning Procedures Act to make that
 16 happen.
 17 But I think where the fine line is drawn is
 18 between the utilization of uses that don't currently
 19 exist in M-1 that are taken from some other ordinance
 20 or haven't even been considered yet and then putting
 21 them into the framework of M1 Conditional. I think if
 22 you do that, you debilitate the -- I think you
 23 debilitate the entire idea of your zoning ordinance,
 24 which, as Scott says, is based upon Euclidean zoning,
 25 which is putting like uses together in like areas and

1 ATTORNEY WEED: If you want to do that,
 2 that's great --
 3 COUNCILMEMBER PACHUTA: Okay.
 4 ATTORNEY WEED: -- but let's create a new
 5 zone and call it --
 6 COUNCILMEMBER PACHUTA: But these are the
 7 only three that are not in M-1.
 8 COUNCILMEMBER FLEMING: But Ms. Pachuta, on
 9 the third one, though, he's taking it out of the --
 10 out of the permitted, because we don't want explosive
 11 materials in there, and making it conditional.
 12 COUNCILMEMBER PACHUTA: Hold on. Where is
 13 that, Brian?
 14 COUNCILMEMBER FLEMING: Number 52.
 15 MR. HAEBERLIN: But recall with this case,
 16 all conditional uses -- and Councilman Alexander, you
 17 may help me with this one -- I believe in this case,
 18 all conditional uses were excluded under the zoning.
 19 I believe that to be the case. We had a discussion
 20 about the concept of a stadium that evening. I'm just
 21 trying to recall what occurred that night.
 22 So you do realize that under M-1
 23 conditional, generally speaking, or M-1 generally,
 24 there are a whole laundry list of conditional uses
 25 that the applicant has not addressed; and rightly so,

1 they should not, because if they're available to them,
2 they make application.

3 And so that's just something to consider as
4 you move items from permitted uses into conditional
5 uses: are you allowing the full venue of the
6 conditional uses on the site?

7 COUNCILMEMBER ALEXANDER: Can I get further
8 education on what is the definition of 52?

9 "Processing and compounding of non-explosive materials
10 not including fog, construction debris or other waste
11 products of any kind." So what exactly is the
12 processing and compounding?

13 MR. HAEBERLIN: Well, we got back to this
14 discussion because I know Mr. Weed was very concerned
15 about garbage and recycling in the city. And that's
16 -- that language was clarified by legal because of
17 situations that apparently occurred before I got here
18 with some of the -- Apex or other items like that.

19 COUNCILMEMBER ALEXANDER: So what type of
20 processing and compounding did that allow?

21 COUNCILMEMBER ROCHE: Grease traps.

22 COUNCILMEMBER ALEXANDER: No. Fog is
23 eliminated.

24 COUNCILMEMBER ROCHE: Of grease traps. Apex
25 was a grease trap thing. They were taking grease

1 traps and --

2 ATTORNEY WEED: Yeah, you're right. It's
3 fog. It's the same thing. It's the fancy term for
4 it.

5 MR. HAEBERLIN: Well, presumably there could
6 be things that are not construction or waste oriented
7 that are actually compounded. I mean I can't think of
8 any specific off the top of my head. But certainly it
9 doesn't always have to be waste. It could be new
10 materials that's ground up and compounded, and I think
11 that is the intent of why the language was added by
12 legal back when we did this ordinance.

13 COUNCILMEMBER BATES: And in this case,
14 they're saying instead of making it -- instead of it
15 being an allowed use, it's being essentially demoted
16 to a conditional use, which would mean if they really
17 wanted to do this, they would have to come to the
18 Council and get a conditional use permit.

19 MR. HAEBERLIN: And I recall from the
20 conditional zoning, though -- I don't have those in
21 front of me. I recall from the conditional zoning
22 that the conditional uses within M-1 were excluded on
23 this property by the actual case, and I think that was
24 because there was a discussion about the fact that, as
25 I recall, that stadium was a permitted use in M-1.

1 COUNCILMEMBER ROCHE: But that wasn't my
2 question.

3 My question was something that is currently
4 a permitted use in M-1, this applicant is saying they
5 don't want it as a permitted use, they will demote it
6 or whatever to make it a conditional use for M-1.

7 Is that not the case? That's what they're
8 doing here.

9 MR. HAEBERLIN: That's -- that's my under-
10 standing.

11 COUNCILMEMBER ROCHE: Thank you very much.

12 MR. HAEBERLIN: Uh-huh. I mean perhaps they
13 could rewrite the whole ordinance for us too as well.

14 COUNCILMEMBER FLEMING: In regards to your
15 comment referencing 2008-23, for this particular piece
16 of property, it stated rezoning from M-2 to M-1, light
17 manufacturing district, no variances from the code
18 recommended. Additionally, the following permitted
19 uses: A, engineering and architectural office; B,
20 intermediate impact facilities including the
21 following: college, junior colleges and universities;
22 all other intermediate facilities are excluded; C,
23 scientific and research laboratories.

24 And then it goes on and it says all other
25 uses which are not permitted herein shall be

1 prohibited. Finally, the conditional uses entire list
2 within M-1 shall be excluded from the site.

3 But this isn't a conditional. This is a
4 permitted, and he'd like to conditional it. I have no
5 problem with that.

6 COUNCILMEMBER BATES: I have a question for
7 Mr. Hoath.

8 MAYOR JENKINS: Come on up, sir.

9 MR. HOATH: (Complying)

10 COUNCILMEMBER BATES: Mr. Hoath, if I'm
11 reading your chart correctly, under the BP proposal it
12 says 54 allowable uses and 11 prohibited conditional
13 uses. Are you requesting all 11 conditional uses?

14 MR. HOATH: Yes.

15 COUNCILMEMBER BATES: Okay. Thank you.

16 MR. HOATH: Which is -- if I'm not mistaken,
17 it is adding one to the current list under the M-1
18 ordinance because we basically transferred the
19 processing and compounding from an allowable use to a
20 conditional use.

21 COUNCILMEMBER PACHUTA: But do we run into
22 the same problem with that changing the M-1 ordinance
23 by an applicant switching something from permitted to
24 conditional?

25 ATTORNEY WEED: I feel more confident in

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1 that than in some other -- than in applying some other
 2 not-in-M-1 --
 3 COUNCILMEMBER PACHUTA: From another, then.
 4 ATTORNEY WEED: -- use. Yeah.
 5 COUNCILMEMBER PACHUTA: Okay.
 6 COUNCILMEMBER BATES: I'm sorry, Mr. Hoath.
 7 I'm going to need you back. Sorry.
 8 I'm looking at the M-1 conditional uses and
 9 there are significantly more than 11. Do you have a
 10 list enumerated of the 11 requested or the 10 plus?
 11 because it's not on anything that I have.
 12 MR. HOATH: I do not have it in front of me.
 13 ---
 14 (Brief, inaudible discussion between
 15 Mr. Hoath and Attorney Rothman)
 16 ---
 17 MR. HOATH: No.
 18 COUNCILMEMBER BATES: Thank you.
 19 Mr. Haerberlin and Mr. Weed, would it -- And
 20 Mr. Hoath, this may affect you, what I'm about to ask
 21 our attorney and planner. Because there are 10 uses
 22 that are requested but not enumerated, would it be
 23 appropriate to postpone or table this until they could
 24 provide the requested uses so that we can make a
 25 thorough, one-time decision?

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1 ATTORNEY WEED: Well, I hate to do that to
 2 the applicant. I mean I -- I would definitely --
 3 Better to be specific, and that's for their benefit
 4 too, than for the . . .
 5 COUNCILMEMBER BATES: And I'll defer that to
 6 the applicants.
 7 MR. ROTHMAN: And my name is Steve Rothman,
 8 2849 Paces Ferry Road, an attorney representing
 9 Mr. Hoath.
 10 And we did not submit the 10 conditional
 11 uses. Back when he said that is the first time I
 12 heard it. And so we're okay. There's none listed
 13 because they weren't requested. That's not part of
 14 this application, so what we would ask you to move
 15 forward on is just the one conditional use that we've
 16 got listed on the grid. This chart that you've got
 17 that was passed out tonight is it. That's what we're
 18 looking for.
 19 COUNCILMEMBER BATES: Okay. So no
 20 additional conditional uses.
 21 MR. ROTHMAN: That's correct.
 22 COUNCILMEMBER BATES: Okay. Thank you.
 23 COUNCILMEMBER ROCHE: And just to be certain
 24 that we understand this, this conditional use would
 25 still -- if you wanted to do processing and

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1 compounding, et cetera, et cetera, we still have to
 2 come through a hearing and the whole nine yards --
 3 ATTORNEY WEED: Yes, sir.
 4 COUNCILMEMBER ROCHE: -- and then vote.
 5 So actually you're not asking for any
 6 conditional uses. You're basically taking a permitted
 7 use and saying we don't want it; we want a permitted
 8 use to be a conditional use.
 9 MR. HOATH: That's correct.
 10 COUNCILMEMBER ALEXANDER: There's one typo
 11 in line item 24, electronic manufacturing and assembly
 12 plants provided there is no outdoor storage. It
 13 currently says "in."
 14 MR. HAEBERLIN: Got it.
 15 COUNCILMEMBER FLEMING: By the way, there's
 16 55 conditional uses in M-1.
 17 MR. HAEBERLIN: Right. This was not a part
 18 of my original analysis. As the Council probably
 19 needs to be aware, this was handed to the Planning
 20 Commissioners in the context of the public hearing
 21 which occurred before the Planning Commission, so the
 22 staff did not have the prior opportunity to review
 23 this within the context of the report that was
 24 presented. Planning Commission did recommend denial
 25 of both these petitions.

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1 MR. HAEBERLIN: At this point if there's no
 2 further questions, we move to the public hearing.
 3 Mr. Weed, do you want to discuss with the
 4 applicant's counsel whether they have any objection to
 5 combining the public hearings into one?
 6 ATTORNEY WEED: Correct.
 7 This is a question for Mr. Rothman and your
 8 client, Mr. Rothman.
 9 Essentially you have two parcels. For the
 10 sake of efficiency, would you and your client agree
 11 that all comments, questions would be relevant to both
 12 parcels or do you want to have two separate public
 13 hearings and divide the parcels?
 14 MR. ROTHMAN: One public hearing is satis-
 15 factory to us.
 16 ATTORNEY WEED: Thank you, Mr. Rothman.
 17 MR. HAEBERLIN: With that being said, folks
 18 who would like to speak in favor of granting the
 19 rezoning/zoning modification/expansion of uses, those
 20 who would like to speak in favor, please raise your
 21 hand.
 22 I see one, two. More than two? Two, looks
 23 like. Roughly five minutes.
 24 Three? We got three now? Stuart and you
 25 two as well? Four? Roughly like two, two-and-a-half

1 minutes apiece.
 2 Come forward and state your name and your
 3 legal address as well.
 4 MAYOR JENKINS: Come on up, please.
 5 MR. ANDERSON: Stuart Anderson.
 6 I think you've got a pretty good start on
 7 what's going on right now discussing -- i.e.,
 8 discussing the 54 items, approving them, deciding on
 9 them. There's been some good discussion.
 10 This whole situation is somewhat parallel to
 11 the time consideration of CT/C-1/C-2/LCI discussion.
 12 When this gets passed or denied, there still will be a
 13 time component for when the LCI study is done. The GM
 14 consultant is going to have some input into this as
 15 well as certainly when the GM property is developed in
 16 itself. So this whole discussion is -- is -- should
 17 be relative to granting or preparing a situation where
 18 stable zoning is -- I wouldn't use the word
 19 "paramount;" that's not what I'm thinking -- but
 20 should be a situation so that people can grant leases,
 21 can plan their business plans over a time period.
 22 There will be two to five to seven years
 23 before the GM property is developed -- well, we don't
 24 know that -- so that what I'm trying to say is please
 25 consider the 54 considerations for these people so

1 they can do business, and also consider a condition,
 2 as it were, of some sort of a time situation so that
 3 once again they have stability in their business plan.
 4 I think that's a very important thing for them so it's
 5 not a taking, so it's giving them stability in their
 6 business capability. Common sense, fairness and
 7 timeliness.
 8 Compounding came up in M-1/M-2 in the first
 9 passage of it, and I'm just throwing this out, but the
 10 tank farm compounds. We have tanker trucks come in
 11 and tankers come in on railways because the pipelines
 12 won't handle alcohol. So we're compounding in the
 13 tank farm right now as we speak. We're putting
 14 alcohol in with gasoline. That's -- if that's an
 15 incompatible situation, that should be addressed as
 16 well in that M-1 context, because we're doing that
 17 right now in the tank farm. Just thought I'd mention
 18 that.
 19 But at any rate, please consider the 54
 20 requests -- some of them are good; some of them might
 21 not be good, but by giving them, Innerbrand
 22 businesses, a stable situation where they can do
 23 business. Thank you.
 24 COUNCILMEMBER BATES: And I'm sorry, folks.
 25 If we could please keep the conversations in the

1 audience -- it is distracting for us to hear the
 2 multiple people talking at the same time. Thank you.
 3 MAYOR JENKINS: It also distracts the court
 4 reporter. Thank you.
 5 Next?
 6 MR. STOKES: Deane Stokes. I'll be brief.
 7 I was going to say in favor of this because
 8 the more versatile and the more avenues of development
 9 that are granted, the quicker and the more
 10 expeditingly [sic] the property is going to be
 11 developed. It's just a positive way to something of
 12 that size. And you don't want to put restrictions;
 13 you don't want to put any more than necessary and
 14 allow the people just the leeway to go ahead and
 15 (inaudible) on the property.
 16 MAYOR JENKINS: Next?
 17 MR. SHANAHAN: T.M. Shanahan. I'm speaking
 18 in favor of the proposal. I think he is a good
 19 businessman who has made a good study of this. They
 20 have the best view of Doraville's future and their
 21 interest, so I would very much, like I said, get this
 22 zoning. Thank you.
 23 MR. HAEBERLIN: I think those were in favor.
 24 Those who would like to speak against,
 25 please raise your hand. I see three, about three-and-

1 a-half minutes a piece, three-and-a-third or something
 2 like that.
 3 Come forward.
 4 MS. FRAYSSE: Susan Fraysse.
 5 I've been following this since last year
 6 when the Council and the Planning Commission
 7 considered it and made the change.
 8 They took the step they took last year to
 9 protect the businesses that were there. And I thought
 10 we were being very generous because there were several
 11 businesses there -- And I said this at the Planning
 12 Commission on Thursday. There were three businesses
 13 -- and I don't remember; perhaps Mr. Hoath will recall
 14 -- two of those had let the license, the business
 15 license with the City, their relationship with the
 16 city that licensed their business to operate, drop or
 17 go away or expire. Only one was . . . And I don't
 18 remember which one. But to me, that indicates a
 19 little bit of a problem with some of the businesses
 20 that were there. I'd feel better about them if they
 21 had been licensed and maintained.
 22 But at that time, the concern was that we
 23 wanted to give the GM property the greatest, broadest
 24 possible benefit of a site that was not fringed by
 25 incompatible uses, and these -- if you look on the

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1 map, that is such a nice, big parcel. If we start
2 chipping away at the big space and allowing lots of
3 other, you know, kinds of uses that were previously in
4 the past, in the old days and in other areas of the
5 city still are allowed, I think we diminish the
6 potential for GM.

7 I would love for those new developers to be
8 able to come in and have a broad pallet of opportunity
9 along the lines that they envision that they can make
10 the GM property the best for the city.

11 My perspective is not about this year or
12 this economy. Admittedly, I've been here for 25
13 years, I'm going to be here hopefully for another 25
14 years, and I'm looking at that long-term, and that's
15 why I want to preserve and protect.

16 At the Planning Commission meeting, we
17 actually didn't know what all these 54 uses were, and
18 the attorney did read them all out. And he said, "Oh,
19 what's wrong with this?", I think little things like
20 pet grooming, this and that.

21 But the ones that caught my eye -- and you
22 all have them, I guess, up there; we didn't have them
23 in front of us -- laundries. I'm familiar with the
24 chemicals and the harm that can come from that sort of
25 the chemistry that's involved in laundries.

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1 Blacksmith shops, pest control and extermi-
2 nating services, print shops, photo studios with lab
3 processing, taxidermy shops, cleaning services, truck
4 terminals, and many types of warehouses. And I would
5 say -- and then the whole processing and compounding
6 which sounds like something to do with, you know,
7 waste or transfer or recycling or something.

8 I just hope that the Council will be very
9 cautious and selective, not just take this whole slate
10 of 54 uses and stick them back in there and make this
11 like the industrial area it was before we had this
12 vision for the GM property. Be very cautious about
13 adding things that are not going to be compatible with
14 the mixed-use-redevelopment-opportunity category that
15 we established in 2006 for our Comp Plan. That was
16 looking then 25 years ahead, and I'm still looking
17 ahead even though we have tough times now.

18 I can understand you might want to loosen
19 up, give more flexibility, support the businesses and
20 whatever where you think are needed, but I hope that
21 you would not approve any businesses that will create
22 any more environmental issues or incompatible issues
23 for that development. Thanks.

24 MS. HOFFMEISTER: Bonita Hoffmeister, 3948
25 Spanish Oak Drive.

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1 Honorable Mayor, City Councillors, a couple
2 of things caught my attention when we read some of
3 these items. Explosives and waste products, again I
4 just have to reiterate what Susan Fraysse said. We do
5 not want things that are going to be inconsistent and
6 not be conducive to the development of the neighbors'
7 property.

8 You know, there's taking here. You don't
9 want to take somebody's business, but, again, you do
10 not want to take the value of the property next door
11 to it. Thank you.

12 MS. CRAWFORD: Susan Crawford.

13 I'm just following up on what Bonita and
14 Susan Fraysse said. I agree with both of them. I
15 think that we need to be looking to the future, not
16 going backwards. I think there was a reason that we
17 made these changes.

18 And some of the -- I would urge you to study
19 very carefully these 54 things on the list and maybe
20 do a little Googling like I did before I came here and
21 find out about how "Ammonia Leak in Louisville" made
22 front-page news, because that's what they use in cold
23 storage plants.

24 "Frequently Asked Questions About
25 Drycleaning. Why is the EPA interested in

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1 drycleaning?"

2 You're welcome to these (presenting). These
3 are just two of the issues in two other places, the
4 sorts of businesses that I believe are on the list,
5 and I hope you will study each one of them very
6 carefully because there's probably a good reason for
7 having changed this.

8 And again, this is right up -- I used to
9 work up there, and this really is abutting the General
10 Motors property, and it is important. I mean people
11 are not going to want to put in restaurants and mixed-
12 use developments when there's ammonia leaking out or
13 when there's a dangerous business right there.

14 And we've been waiting a long time for
15 something good to come in. Let's not blow it.

16 MAYOR JENKINS: Thank you.

17 Anybody else?

18 - - -
19 (No response)
20 - - -

21 MAYOR JENKINS: Scott?

22 MR. HAEBERLIN: Turn this over to the
23 Council for consideration.

24 MAYOR JENKINS: Bring it back to the table.

25 COUNCILMEMBER FLEMING: Yes, sir. I have a

1 couple comments if you don't mind.
2 MAYOR JENKINS: Go ahead.
3 COUNCILMEMBER FLEMING: Back in November, I
4 believe, this was a City-initiated rezoning, and at
5 that time we did not have a notification policy in
6 effect, so the owners of Innerbrand, of those two
7 parcels, were not notified that the City was rezoning
8 their property. Since that time, there is a
9 notification policy, which I'm grateful for.
10 However, it's been made comment about the GM
11 property and what our Comp Plan and our LCI vision is
12 going to be, and it's supposed to be mixed-use
13 commercial, office/professional, public/institutional,
14 townhomes, and urban density condominiums.
15 And my concern is with that in mind, then
16 why didn't the City-initiated rezoning, instead of all
17 of GM be C-2 but the Innerbrand properties just go
18 from M-2 to M-1 -- why didn't we follow our own Comp
19 Plan, why didn't we follow our own LCI if it was a
20 City-initiated rezoning?
21 We could have rezoned it to C-1 or C-2 just
22 like the GM property, but we did not. We didn't. We
23 zoned it M-1 with five uses, prohibiting the owner to
24 do anything with his property.
25 In regards to M-1, the uses that we

1 presently have, we have M-1 and you have Winters
2 Chapel Hill Subdivision, Woodwin Road, and Tilly Mill
3 Courts, and it's in the center of M-1 and M-2, and all
4 of these uses that you don't want over here or that
5 shouldn't be over there, shouldn't be next -- a
6 hundred feet from my house or Donna's house or the
7 people on Woodwin Road, either. But they need to go
8 somewhere, because we have zones for them.
9 I'm very satisfied with the list that we
10 have and I'm supporting it. Or the list that's being
11 proposed, and I'm supporting it.
12 COUNCILMEMBER ROCHE: I guess it's my turn.
13 I think that -- frankly, I think we erred when we
14 rezoned this property in the first place. I don't
15 think we had all the information. And you know, I did
16 support rezoning it, but I think that -- again, I just
17 don't feel like it was the right thing to do, you
18 know, in hindsight.
19 I guess the idea that, you know, someone
20 could come and just rezone your property and you don't
21 even know about it, I mean that's the first issue.
22 The second issue -- I mean we all --
23 obviously, we all want something good to happen to the
24 GM property, and I don't think that if there is
25 something coming on the GM property that this property

1 is incompatible with -- and you know, people buy and
2 sell property all the time. I honestly don't think
3 there's going to be smokestacks coming out of
4 Mr. Hoath's property any time soon. I think it has to
5 do with just, you know, the rights of a property
6 owner. I think they have to be taken into
7 consideration.
8 The uses that are requested here are
9 basically the same uses that are in M-1. And you
10 know, we talked earlier about how bad it is to spot
11 zone, but we did spot zone. That's exactly what we
12 did here. We spot zoned or -- you could call it spot
13 zoning or you could call it creating a new zoning,
14 whatever you want to call it.
15 If there's a problem with M-1, then we need
16 to fix M-1. We shouldn't go property by property by
17 property and say, "These uses here and these uses
18 there and these uses someplace else." I mean the
19 Council has done that recently on some other things
20 with some of these conditions, and I just -- some of
21 the conditions are just kind of strange.
22 But as far as this particular situation, I
23 think that if we're going to -- Our goal and our
24 action was to rezone this to M-1, and I think that we
25 should have M-1. And again, if there's something

1 wrong with M-1, then we should fix the zoning
2 ordinance.
3 COUNCILMEMBER PITTMAN: I did not get the
4 opportunity to meet with you, and I apologize for
5 that, but I did do my homework and I've heard only
6 good things about you. You know, I feel comfortable
7 with what I see.
8 I can appreciate their concerns as well,
9 though, you know, about the chemicals, but I don't
10 think that you would allow something to go in that's
11 going to be harmful to the community or to anything
12 that might go in.
13 MAYOR JENKINS: Karen?
14 COUNCILMEMBER PACHUTA: I think for legal --
15 the legal reasons that Mr. Weed had stated earlier,
16 that we need to exclude the general office and general
17 retail that are not currently in M-1 before
18 considering any of the other uses.
19 COUNCILMEMBER PITTMAN: Your suggestion of a
20 zoning, a different zone, creating a different zone
21 for that?
22 ATTORNEY WEED: You could include those
23 things if you care to and just call it a different
24 name.
25 COUNCILMEMBER ROCHE: Or just don't.

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1 COUNCILMEMBER FLEMING: Or delete them.
 2 ATTORNEY WEED: Or delete them. Either one
 3 would be --
 4 COUNCILMEMBER FLEMING: I'm in favor --
 5 ATTORNEY WEED: -- legal in my opinion.
 6 COUNCILMEMBER FLEMING: -- of deleting those
 7 two.
 8 COUNCILMEMBER BATES: I'll make the motion
 9 to delete line items 64 and 65, the general office and
 10 general retail.
 11 MAYOR JENKINS: Second?
 12 COUNCILMEMBER ALEXANDER: From the list that
 13 was supplied on May the 20th.
 14 COUNCILMEMBER BATES: Yes.
 15 MAYOR JENKINS: Do I get a second?
 16 COUNCILMEMBER FLEMING: Second.
 17 MAYOR JENKINS: Any more discussion?
 18 - - -
 19 (No response)
 20 - - -
 21 MAYOR JENKINS: Call the roll.
 22 CLERK BRYANT: Councilmember Alexander?
 23 COUNCILMEMBER ALEXANDER: Yes.
 24 CLERK BRYANT: Councilmember Bates?
 25 COUNCILMEMBER BATES: Yes.

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1 CLERK BRYANT: Councilmember Fleming?
 2 COUNCILMEMBER FLEMING: Yes.
 3 CLERK BRYANT: Councilmember Pachuta?
 4 COUNCILMEMBER PACHUTA: Yes.
 5 CLERK BRYANT: Councilmember Pittman?
 6 COUNCILMEMBER PITTMAN: Yes.
 7 CLERK BRYANT: Councilmember Roche?
 8 COUNCILMEMBER ROCHE: Yes.
 9 COUNCILMEMBER FLEMING: Ms. Alexander, you
 10 want to make the motion on line 52?
 11 MAYOR JENKINS: Brian, you got anything
 12 else?
 13 COUNCILMEMBER BATES: No.
 14 COUNCILMEMBER ALEXANDER: How would we word
 15 that, Mr. Weed, on line 52? That we are moving
 16 processing and compounding of non-explosive materials
 17 not including fog, construction debris, or other waste
 18 products of any kind from permitted to a conditional
 19 use?
 20 ATTORNEY WEED: I think you -- just that.
 21 COUNCILMEMBER ALEXANDER: I make that in --
 22 ATTORNEY WEED: Put a cover around it --
 23 COUNCILMEMBER FLEMING: -- the form of a
 24 motion.
 25 ATTORNEY WEED: -- and you got a motion.

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1 COUNCILMEMBER PACHUTA: Second.
 2 MAYOR JENKINS: Any more discussion?
 3 - - -
 4 (No response)
 5 - - -
 6 MAYOR JENKINS: Call the roll.
 7 CLERK BRYANT: Councilmember Alexander?
 8 COUNCILMEMBER ALEXANDER: Yes.
 9 CLERK BRYANT: Councilmember Bates?
 10 COUNCILMEMBER BATES: Yes.
 11 CLERK BRYANT: Councilmember Fleming?
 12 COUNCILMEMBER FLEMING: Yes.
 13 CLERK BRYANT: Councilmember Pachuta?
 14 COUNCILMEMBER PACHUTA: Yes.
 15 CLERK BRYANT: Councilmember Pittman?
 16 COUNCILMEMBER PITTMAN: Yes.
 17 CLERK BRYANT: Councilmember Roche?
 18 COUNCILMEMBER ROCHE: Yes.
 19 MAYOR JENKINS: All right.
 20 COUNCILMEMBER FLEMING: Hold up one moment.
 21 I'm counting 52 permitted under the BP proposal at the
 22 present time with one conditional because I just
 23 wanted to see how we were going to do the motion.
 24 COUNCILMEMBER ROCHE: Well, if we reverted
 25 this back to M-1, it wouldn't really matter what's on

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1 this list. It would be basically what was in the M-1
 2 list, wouldn't it, excluding conditional uses?
 3 COUNCILMEMBER FLEMING: No, sir. He's
 4 excluded some for himself.
 5 COUNCILMEMBER ROCHE: Well, I understand
 6 that. I mean other than what we've voted on.
 7 ATTORNEY WEED: If you're asking me can we
 8 do that, sure you can.
 9 COUNCILMEMBER PACHUTA: I just counted 52
 10 permitted and one conditional.
 11 MAYOR JENKINS: Anything else?
 12 MR. HAEBERLIN: Just for edification of the
 13 audience, Mr. Weed, the Council in making their zoning
 14 deliberation tonight could elect to place this
 15 property in a different zoning category than has been
 16 requested by the applicant.
 17 ATTORNEY WEED: Of course.
 18 MR. HAEBERLIN: Is that correct?
 19 ATTORNEY WEED: That is correct.
 20 MR. HAEBERLIN: Thank you.
 21 MAYOR JENKINS: More discussion?
 22 COUNCILMEMBER ALEXANDER: As part of the
 23 motion, do we need to include a requirement for the
 24 applicant to combine both parcels?
 25 MR. HAEBERLIN: I think you strongly could

1 but should, because really you've got a zoning
2 conformity situation as well. I think you should
3 address the gravel portion of the lot.

4 I know we have that time frame that's
5 kicking in for the city regarding gravel, but we need
6 to think in terms of this particular site has a
7 significant amount of gravel, and to me it looks like
8 a code violation. But again there's different
9 feelings on this code requiring pervious surfaces to
10 be converted to impervious surfaces.

11 COUNCILMEMBER ROCHE: But isn't that a
12 separate issue that's handled under a separate
13 ordinance?

14 COUNCILMEMBER ALEXANDER: I believe that's
15 residential only.

16 COUNCILMEMBER FLEMING: And it was gravel
17 driveways.

18 COUNCILMEMBER ALEXANDER: Yes.

19 COUNCILMEMBER FLEMING: It wasn't --

20 MR. HAEBERLIN: Okay. So under your
21 existing code that you have today under the parking
22 section, gravel is not permissible in M-1 or M-2. And
23 so if you're going to allow the person to maintain the
24 gravel, it would be considered a variance to that
25 section of the code; otherwise, we would go forward

1 with the necessary code enforcement action to correct
2 that situation.

3 COUNCILMEMBER ROCHE: But they're not
4 requesting that so that's not pertinent to what we're
5 talking about tonight.

6 COUNCILMEMBER ALEXANDER: Mr. Weed, can you
7 clarify that, please? I mean the gravel was existing
8 prior to the passing of the previous -- the new
9 parking regulations; correct?

10 ATTORNEY WEED: Well, there's -- I'm not
11 sure that I'm familiar with all the facts, but what I
12 can tell you is paving -- requiring paving over gravel
13 is what I call a plain vanilla police-powers
14 ordinance. Can you do it? Yes.

15 Do you have to? Unless it was done in the
16 context of the zoning ordinance, then you wouldn't be
17 -- the person wouldn't be grandfathered in anyway.

18 If the paving of the gravel is in the zoning
19 ordinance, you know, arguably that could be -- it
20 could be a grandfathered situation where they wouldn't
21 have to comply with it.

22 So I don't have the baseline facts to
23 properly advise you about that.

24 MR. HAEBERLIN: It is part of the zoning
25 ordinance.

1 ATTORNEY WEED: So the question would be,
2 the determination would then be when did that -- when
3 did that portion of the ordinance go into effect, and,
4 you know, whether there's a grandfathered situation
5 there or not with regard to compliance.

6 COUNCILMEMBER ROCHE: And does that have
7 anything to do with what we're talking about tonight?

8 ATTORNEY WEED: Well, you can always make it
9 have something to do with it.

10 COUNCILMEMBER ROCHE: It wasn't part of the
11 application, so --

12 ATTORNEY WEED: In other words, can you --
13 could you make paving the driveway a condition?

14 Absolutely. You have every legal right to do that,
15 paving the gravel, whatever gravel is there now.

16 You have the right to do that.

17 Do you have to? Certainly not.

18 Whether he's in violation of the code
19 currently or not, I don't have enough facts to make
20 that determination at this point.

21 COUNCILMEMBER FLEMING: Though I appreciate
22 the planner's recommendation to have the parking lot
23 paved, I feel fine with gravel parking over in that
24 area on the parcels.

25 MR. HOATH: And if I may, we're not asking

1 for any special consideration either for or against.
2 Whatever the current statutes are in that regard,
3 we'll comply.

4 COUNCILMEMBER BATES: I'm going to make a
5 motion to approve the zoning request for 5849
6 Peachtree Road and 0 General Motors Drive per the list
7 provided to us by the applicant with the amendments
8 made specific to one conditional use and the self-
9 proposed conditions on the uses as outlined by the
10 applicant, 52 total permitted uses.

11 I'll add to that motion a request to the
12 applicant to combine the two said parcels.

13 COUNCILMEMBER FLEMING: Second.

14 MAYOR JENKINS: Any more discussion?

15 - - -

16 (No response)

17 - - -

18 MAYOR JENKINS: Call the roll.

19 CLERK BRYANT: Councilmember Alexander?

20 COUNCILMEMBER ALEXANDER: Yes.

21 CLERK BRYANT: Councilmember Bates?

22 COUNCILMEMBER BATES: Yes.

23 CLERK BRYANT: Councilmember Fleming?

24 COUNCILMEMBER FLEMING: Yes.

25 CLERK BRYANT: Councilmember Pachuta?

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1 COUNCILMEMBER PACHUTA: Yes.
 2 CLERK BRYANT: Councilmember Pittman?
 3 COUNCILMEMBER PITTMAN: Yes.
 4 CLERK BRYANT: Councilmember Roche?
 5 COUNCILMEMBER ROCHE: Yes.
 6 ATTORNEY WEED: Mr. Mayor, the deputy
 7 clerk's informed me that it's 9 o'clock. I'll just
 8 remind the Council of that.
 9 COUNCILMEMBER BATES: But that doesn't apply
 10 to zoning.
 11 ATTORNEY WEED: It does now because it's a
 12 regular meeting.
 13 COUNCILMEMBER BATES: Make a motion to
 14 extend the meeting.
 15 COUNCILMEMBER FLEMING: Second.
 16 COUNCILMEMBER PACHUTA: We just have the
 17 map.
 18 MAYOR JENKINS: All right.
 19 COUNCILMEMBER PACHUTA: That's all that's
 20 left, right, is the map?
 21 COUNCILMEMBER ROCHE: I'll second the motion
 22 to extend the meeting to cover the next item on the
 23 agenda.
 24 CLERK BRYANT: Councilmember Alexander?
 25 COUNCILMEMBER ALEXANDER: Yes.

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1 MAYOR JENKINS: Call the roll.
 2 CLERK BRYANT: Councilmember Alexander?
 3 COUNCILMEMBER ALEXANDER: Yes.
 4 CLERK BRYANT: Councilmember Bates?
 5 COUNCILMEMBER BATES: Yes.
 6 CLERK BRYANT: Councilmember Fleming?
 7 COUNCILMEMBER FLEMING: Yes.
 8 CLERK BRYANT: Councilmember Pachuta?
 9 COUNCILMEMBER PACHUTA: Yes.
 10 CLERK BRYANT: Councilmember Pittman?
 11 COUNCILMEMBER PITTMAN: Yes.
 12 CLERK BRYANT: Councilmember Roche?
 13 COUNCILMEMBER ROCHE: Yes.
 14 MAYOR JENKINS: Okay, Scott.
 15 MR. HAEBERLIN: The last thing we have is
 16 the proposed zoning map which reflects the City
 17 Council map amendments since my tenure with the City.
 18 As shown on the map, a small "c" is used to
 19 indicate when conditions were approved by the Mayor
 20 and Council and there is a hearing date as well shown
 21 for reference to the minutes.
 22 Now, as a new planner coming into a
 23 situation where this had not been done for the
 24 previous four years, trust me, this is good
 25 recordkeeping. And hopefully at some point in time,

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1 we will have read every prior case that's occurred in
 2 the city and annotate it on this map as well, the
 3 hearing date on which it was approved. Of course
 4 that's going to be a long-term project.
 5 This really just reflects the map amendments
 6 since I've been here. As well, your zoning legend now
 7 includes the CT District as well. It is shown in red
 8 even though we don't currently have any CT; we've got
 9 the eligibility.
 10 And there were a lot of scrivener's errors
 11 regarding addresses and street names that had to be
 12 corrected.
 13 We did put some reference points on here so
 14 people can kind of figure out where they are in the
 15 city -- the school names, et cetera -- and those are
 16 just for references. They're graphical references.
 17 The insets here do show some of our
 18 locations where addressing is needed such as Asian
 19 Square, Avery Park, Flowers Gate.
 20 I will note that Chestnut Place even though
 21 commonly it's called Chestnut Place is actually
 22 platted as Chestnut Woods. So there has been some
 23 discussion about that but it doesn't affect the
 24 overall integrity of this map.
 25 The Planning Commission did recommend

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1 approval of the map, and there have been about four
 2 iterations of this map that have gone back and forth
 3 between myself and Keck & Woods.
 4 Again, hopefully in time I'll have an
 5 opportunity to read all the cases through the history
 6 of the city -- I've done a lot of them -- and annotate
 7 on the map as well the hearing date on those.
 8 Really this just reflects the actions since
 9 I've been here. So I do recommend approval of this
 10 item and we do need to have a public hearing.
 11 MAYOR JENKINS: Is this a public hearing?
 12 MR. HAEBERLIN: Yes, sir.
 13 Public hearing. Those who would like to
 14 speak in favor of adoption of the map, please raise
 15 your hand. I see two. We have three, something like
 16 that. Three minutes, something like that. And state
 17 your name and address.
 18 MAYOR JENKINS: Come on up.
 19 MR. ANDERSON: Good job. I appreciate it.
 20 Though in the future as items are brought up in
 21 meetings and they address different pieces of
 22 property, will then there be like a list of dates so
 23 it won't be just one date under a C-1 area so there'll
 24 be a list of dates so that all discussions and
 25 modifications of that zone will be then findable that

1 way?

2 MR. HAEBERLIN: I hadn't thought about it in
3 that context but I at least want to get the actual
4 hearing date on which it was zoned on there.

5 MR. ANDERSON: I was thinking -- I agree
6 with that a hundred percent, but I was thinking that
7 then previous and, as time goes forward, there would
8 be more discussions about these things, there'll be
9 modifications, et cetera, and then perhaps a series of
10 dates will be eventually, and a master -- a master map
11 kept by you and it will just be updated once a year or
12 something.

13 MR. HAEBERLIN: Well, right now we are
14 beholden to the folks that have ownership of the
15 particular documentation here. We did use the
16 consultant for assistance, and I'm sure in another six
17 months, 12 months, whatever, we'll need to update this
18 map again as well.

19 MR. ANDERSON: I can just see a little list
20 of dates, you know, to help out. Thank you.

21 MS. FRAYSSE: I am so happy with this map,
22 and it has been a dream of mine since I retired to
23 actually be able to look at a piece of paper or
24 something on the Web and know what was going on with
25 the city.

1 But just in closing, yes, that is, you know,
2 my desire as well to make it digitally available. I
3 do have the information from Keck & Wood. We will
4 need the law department to work with us regarding some
5 sort of disclaimer so if we do put it out there in
6 some sort of digitized format, we need some disclaimer
7 that says, "Please contact City Clerk's office for
8 official zoning verification," something to that
9 extent, because remember this map is going to change
10 with the next zoning action you take a month from now.

11 MAYOR JENKINS: Okay. Can I have a motion?

12 COUNCILMEMBER FLEMING: No. You need to
13 bring it back to the table.

14 MAYOR JENKINS: Yes, bring it back to the
15 table.

16 COUNCILMEMBER FLEMING: Thank you very much.

17 I believe that our official zoning map has
18 to be -- if I'm not mistaken, at least in September
19 17th, 2008, it was by ordinance. September 18th,
20 2008, it was item number 2008-16 for the official
21 zoning map.

22 ATTORNEY WEED: Right.

23 COUNCILMEMBER FLEMING: And I have --

24 ATTORNEY WEED: Give me a second.

25 COUNCILMEMBER FLEMING: I have the --

1 We've had so much time wasted saying, "Oh,
2 no. That's this. Oh, no. This is this." I mean
3 we've had two or three different maps presented by
4 different people and it left us -- we were unable to
5 render fair service to people because if you came in
6 and talked to one person, you got one version, and if
7 you talked to somebody else, you got another. So I
8 think this solves a lot of problems.

9 I don't know that I would want a whole
10 series of dates here, Stuart, but if you have one that
11 says when the last update was passed by the Council,
12 then you can go to that place in the minutes online
13 and you can see the reference to the time before.

14 What I like is this is where we are now and
15 this is the authority that we have. So I think the
16 detail is great. I would love to see it placed on the
17 Web so that everybody could see it. I think it's for
18 developers, it's for people who own property, people
19 who live here.

20 I think it's great. Thank you.

21 MAYOR JENKINS: Next?

22 MR. HAEBERLIN: Those who would like to
23 speak against adoption of the map in public hearing,
24 please raise your hand?

25 Jimmy's always a comedian.

1 ATTORNEY WEED: Yeah. The way I did it the
2 last time before the planner was here was I had you
3 adopt it by an ordinance.

4 Let me check the ordinance and see if that's
5 -- we have to adopt it. That was a Murray Weed-ism.
6 Let me see if it's actually required in the adoption
7 provisions for the map. It may not be.

8 But even if it is, nevertheless it won't
9 change anything in the sense of, frankly, the map in
10 existence now has technically already been adopted.
11 It's adopted every time you change a zone.

12 COUNCILMEMBER FLEMING: Yes, sir.

13 ATTORNEY WEED: What I would do is you would
14 simply adopt the ordinance as well.

15 COUNCILMEMBER FLEMING: However, in this
16 section, which I agree with, when it goes to MuniCode,
17 Exhibit A was attached, which was the official zoning
18 map to the ordinance --

19 ATTORNEY WEED: Yes, ma'am. That's --

20 COUNCILMEMBER FLEMING: -- when it went to
21 MuniCode.

22 ATTORNEY WEED: That's how I did it the last
23 time. That's correct.

24 COUNCILMEMBER FLEMING: And so I would like
25 to make a recommendation that we adopt -- continue to

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1 adopt our procedure like we did before and adopt it by
2 an ordinance with the map attached to the ordinance.
3 ATTORNEY WEED: The relevant sections are
4 3-01 and 3-02. Just give me one second here.
5 It is my opinion that the relevant sections
6 of 3-01, 3-02 and 3-03, adopting by ordinance is not
7 required. If you elect to do so, you may do that;
8 however, it's not required under the current code.
9 COUNCILMEMBER FLEMING: Councilwoman
10 Fleming, is your concerns relative to us having some
11 sort of historical exhibit to accompany tonight's
12 action in addition to having an official zoning map?
13 Now, I kind of understand where you're
14 going. I think you're worried about not two years
15 from now but 50 years from now.
16 COUNCILMEMBER FLEMING: Well, previously
17 when I went back to the zoning map and there was no
18 actual paperwork document for us to work off of --
19 MR. HAEBERLIN: I understand.
20 COUNCILMEMBER FLEMING: -- I went back to
21 our notes and the actual zoning ordinance that we did
22 for that particular section and then also noticed that
23 an Exhibit A, being the zoning map, was attached to
24 this specific ordinance that went to MuniCode.
25 And so I really would feel more comfortable

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1 that way, but it's entirely based on the balance of
2 the Council.
3 MR. HAEBERLIN: I mean I --
4 COUNCILMEMBER FLEMING: I was just trying to
5 follow suit --
6 MR. HAEBERLIN: Yeah.
7 COUNCILMEMBER FLEMING: -- with what we had
8 done previously.
9 MR. HAEBERLIN: I mean I kind of understand.
10 This is -- you know, this is for the planner 50 years
11 from now, you know. If I was to go back and look at
12 the minutes of tonight's meeting, would there be a
13 folded-up exhibit -- I'm just going to use the word
14 loosely, "exhibit" -- that maybe the Clerk attests
15 this was the exhibit seen that night. I can kind of
16 understand that philosophy because we've not had that
17 in the past.
18 And so if there's a way to make that happen
19 legally, I'm fine with that. I mean I've got multiple
20 copies of this exact item.
21 COUNCILMEMBER FLEMING: Well, you had
22 mentioned, I believe, and it was a very good note, at
23 the Planning Commission, that when we had the minutes,
24 as soon as we adopted it you were going to attach the
25 map to the minutes. Well -- And that's good too. But

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1 having it as an ordinance as well I mean wouldn't
2 necessarily hurt anything, so can we have it in
3 ordinance form? But that's --
4 MR. HAEBERLIN: Well, municipalities do it
5 different. For example, where I was previously, after
6 five years we did an ordinance every time we zoned a
7 piece of land. At the end of the year at close-out,
8 let's say we did 30 petitions a month. We did 30
9 times 12 months, 360. We did an ordinance for each
10 particular property.
11 I know Mr. Weed's not in favor of that.
12 He's getting really dry-looking in the face there from
13 that. But that's the way they did that, and I don't
14 know that it's necessarily wrong.
15 I think you're wanting to go to the
16 historical documentation of what happens 25 years from
17 now. And I do tend to agree that I would feel safer
18 if there were something attached to tonight's hearing,
19 one of those copies.
20 COUNCILMEMBER PACHUTA: Couldn't we make
21 that as part of the motion?
22 ATTORNEY WEED: Well, what's required by
23 law, I mean we've complied with 3-01, 3-02 and 3-03,
24 and that ordinance was adopted 2008-15. That's the
25 ordinance number. So everything's in compliance with

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1 the law.
2 If you want to go above and beyond that for
3 whatever reason, you can. So that's entirely up to
4 the Council.
5 I don't recommend you change the ordinance
6 because once again I'll never advise you to make it
7 harder on yourselves than you have to.
8 COUNCILMEMBER PACHUTA: Can we just -- I was
9 just going to make a motion that we adopt the new map
10 and attach that map as an exhibit to the official
11 transcript minutes of the meeting.
12 ATTORNEY WEED: We had this conversation
13 before the meeting --
14 MR. HAEBERLIN: Correct.
15 ATTORNEY WEED: -- and there's two ways of
16 doing it. One, you could have more than one official
17 zoning map. You could have two official zoning maps,
18 one that might be housed in the Clerk's office, the
19 other that might be physically attached to the
20 minutes.
21 Back in the day -- and I explained this to
22 Scott before the meeting -- the former law used to be
23 for counties that you had to physically attach the map
24 into literally the minute book; but the next iteration
25 was you could refer in the minutes to a location where

1 the actual map could be found.

2 And then there was the Meriwether County
3 case of around 2001, and that case liberalized the
4 entire process. So now if there's just testimony from
5 the government that this is the map and we know that
6 this is the map, then there's a -- then the court will
7 rule in favor of the local government that indeed that
8 is the map.

9 So we've gone from, you know, a strict
10 constructionist viewpoint of put the thing in the box,
11 to if it's close and somebody has got a document and
12 they call it the map and they're willing to swear that
13 that's the map, that's good enough.

14 So you can do it however you want to, but
15 right now, 3-01, 3-02 and 3-03 does not require you
16 adopt a separate ordinance in addition to simply
17 adopting the map.

18 And I did all of that in fact. I'm the one
19 who wrote -- before we had a planner, out of an
20 abundance of caution -- that's the difference between
21 a lawyer adopting a map and a planner adopting a map
22 -- I'm the one who did it by ordinance because we
23 hadn't adopted a map in a long time. So that's why I
24 did it that way.

25 COUNCILMEMBER FLEMING: Okay. And --

1 that. If you wanted to add more to it, you can.

2 It's up to you.

3 COUNCILMEMBER FLEMING: And the map gets to
4 MuniCode how? If we send them all these ordinances,
5 it's not attached to the ordinance is what I'm saying.

6 ATTORNEY WEED: Correct. And the previous
7 map, by my best recollection, was not physically
8 attached to the ordinance either. It was referred to.
9 And in the minutes, we have the minutes reflect that
10 the map in the room was the map that would be
11 considered to be Exhibit A.

12 So as far as the actual map, the previous
13 map going to MuniCode, that's never occurred and
14 wasn't required. The actual map is located in the
15 City Clerk's office under lock and key, which is
16 appropriate.

17 COUNCILMEMBER FLEMING: Well, I don't mean
18 the physical -- physicality of the five by seven feet
19 or whatever it is, but surely there was an Exhibit A
20 that went to MuniCode for our behalf.

21 ATTORNEY WEED: Well, we'd have to actually
22 go look up the actual ordinance which I don't have
23 handy. We could do that.

24 COUNCILMEMBER FLEMING: Okay.

25 ATTORNEY WEED: But once again, if you want

1 ATTORNEY WEED: It's not required.

2 COUNCILMEMBER FLEMING: Okay. And then on
3 number 16 is when we actually adopted the map and
4 Exhibit A was attached to 2008-16.

5 Now, I'm under the impression that these
6 things went to MuniCode and that map was attached and
7 went to MuniCode with it. And with that being said,
8 then I would like to -- my preference would be -- and
9 I understand Ms. Pachuta's concern, but I would like
10 to see us on Section 1 of the -- because it is under
11 Section 1, Mr. Weed. It's page 3 of 5. It says, "See
12 Exhibit A" somewhere in there. It says, it's hereby
13 amended to read as follows, and then supersedes such-
14 and-such date. This Exhibit A supersedes such-and-
15 such. The Exhibit A is now the official as of this
16 date.

17 Do you understand? Because we need to
18 supersede the map that's already at MuniCode is what
19 I'm trying to get at.

20 ATTORNEY WEED: Well, the ZP already does
21 that. You adopt the map tonight and you've run the
22 appropriate ad, the State law will supersede. The
23 cases are very clear. If you comply with the State
24 law and you adopt that map tonight, it's adopted,
25 period. The statute says that, the case law says

1 to do that, you can. Is it required? No, ma'am, it's
2 not.

3 COUNCILMEMBER FLEMING: Okay.

4 MR. HAEBERLIN: Can they keep an unsigned
5 version of this map as an exhibit -- I'm using that
6 briefly -- with tonight's minutes and not make it --
7 They'll sign some official maps.

8 ATTORNEY WEED: I'd feel very uncomfortable
9 with that.

10 My best advice to you as the government is
11 that you have one official map, and that one official
12 map is designated where you're going to keep it and
13 that's where it's kept. That's my best advice.

14 You don't have to do that. You could have
15 multiple original maps and you could designate them,
16 you know, original 1 through original 500.

17 COUNCILMEMBER FLEMING: And Mr. Weed,
18 because I would find it very difficult for
19 Mr. Haerberlin to have to traipse up and down the hill
20 every time he needs to see a copy of the original
21 that's in Ms. Blackmon's office. So I think that
22 would be, you know, 1 through 5, because you need
23 something down there, Ms. Biggers needs something, and
24 we need one here at City Hall. So my preference would
25 be to have "copy" or adopted such-and-such date, this

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1 is copy 1, copy 2, copy 3, copy 4.
2 ATTORNEY WEED: Well, you can do that
3 anyway. You don't have to -- You can have as many
4 copies as you want to. They would simply not be
5 official.
6 The official zoning map literally has a gold
7 seal, it's signed by the Mayor, it's attested by the
8 Clerk in it's approved form as by the city attorney,
9 and there is only one of those.
10 MR. HAEBERLIN: Okay.
11 COUNCILMEMBER FLEMING: Mayor, I have
12 exhausted my conversation and I'll let the rest of the
13 Council comment on whether they want to do it by
14 ordinance or not.
15 COUNCILMEMBER ALEXANDER: I just wanted to
16 -- because this is something I run into. So the
17 official map will reside in Rhonda's office.
18 MR. HAEBERLIN: That's my understanding.
19 COUNCILMEMBER ALEXANDER: And you're going
20 to have a copy in your office.
21 ATTORNEY WEED: I hope.
22 COUNCILMEMBER ALEXANDER: And it's going to
23 be your responsibility, you as a sole individual, that
24 when you make any kind of mark on your map referencing
25 zoning, that that same, duplicative information is

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1 transferred to the official map that is in City Hall.
2 MR. HAEBERLIN: Well, I mean I think I kind
3 of have that responsibility already. I mean --
4 COUNCILMEMBER ALEXANDER: Okay. But now --
5 MR. HAEBERLIN: -- that doesn't --
6 COUNCILMEMBER ALEXANDER: -- we're talking
7 about --
8 MR. HAEBERLIN: -- concern me.
9 COUNCILMEMBER ALEXANDER: -- two different
10 buildings. We're not talking about --
11 MR. HAEBERLIN: I understand.
12 COUNCILMEMBER ALEXANDER: -- going across
13 the hall.
14 MR. HAEBERLIN: I understand. I mean I
15 think that technically I do have that responsibility
16 anyway. I mean that's why I'm doing updates. And
17 hopefully we'll not -- it won't be 20 months next
18 time; it'll be six months.
19 COUNCILMEMBER ALEXANDER: I just want to
20 make sure we don't have differing information on the
21 two different maps even though only one will
22 technically be the official.
23 MR. HAEBERLIN: As I tell people generally,
24 if somebody comes in and they say, "I want to see the
25 official zoning map of the city," I send them to the

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1 clerk's office, you know.
2 Now, if they ask me what is a parcel zoned
3 -- and of course I have access to certain records the
4 public doesn't have and some they do have -- but you
5 know, I can tell them the zoning, but I don't certify
6 zoning unless I refer to the official zoning map.
7 I mean I kind of see where you're going with
8 this. I understand. We're just going to need to do
9 more periodic updates. The only problem with 20
10 months is, believe it or not, using the consultant,
11 this was over \$2,000, so I want to be very careful
12 with expenditures. I mean they're very important, but
13 that is a pretty high expenditure, and it's a colored
14 map as well. Even if they're reproduced perhaps under
15 an Open Records request, it's \$25.00, so they can get
16 expensive.
17 COUNCILMEMBER ALEXANDER: And I'm assuming
18 that language that would be included for it to be put
19 on the Web would be this is for reference only?
20 ATTORNEY WEED: Correct. I mean there'll be
21 a disclaimer that says, you know, this cannot be used
22 as evidence under Title 24 of the evidence code; you
23 know, this is not an official zoning map; any
24 reproduction, you know, is at your own risk,
25 et cetera, et cetera.

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1 COUNCILMEMBER PACHUTA: Okay. I make a
2 motion that we -- I'm not sure how you wanted it
3 worded, but we adopt this map as the official zoning
4 map.
5 MAYOR JENKINS: Second?
6 ATTORNEY WEED: If I can throw -- you know.
7 COUNCILMEMBER PACHUTA: Yeah.
8 ATTORNEY WEED: We would adopt -- I would
9 call it Exhibit A, that the Council is making a motion
10 to adopt Exhibit A which is the official zoning map of
11 the city of Doraville, Georgia, which is currently
12 located at the time of adoption in the Council
13 chambers and immediately upon adoption if it is
14 adopted, it will be signed, sealed and transferred to
15 the City Clerk's office for under lock and key.
16 COUNCILMEMBER ALEXANDER: Do we need to
17 specify the date that's on the bottom?
18 ATTORNEY WEED: It would -- I assume it's
19 today's date.
20 MR. HAEBERLIN: It's May 2010. There's
21 nothing attesting a particular date on there. I guess
22 the Clerk can certify that when she seals.
23 ATTORNEY WEED: Okay. That's fine.
24 MR. HAEBERLIN: Okay.
25 COUNCILMEMBER ALEXANDER: Adding the date

1 May 2010.
 2 MAYOR JENKINS: Second?
 3 COUNCILMEMBER PITTMAN: Second.
 4 MAYOR JENKINS: Any more discussion?
 5 COUNCILMEMBER PITTMAN: Second.
 6 ---
 7 (No response)
 8 ---
 9 MAYOR JENKINS: Call the roll, please.
 10 CLERK BRYANT: Councilmember Alexander?
 11 COUNCILMEMBER ALEXANDER: Yes.
 12 CLERK BRYANT: Councilmember Bates?
 13 COUNCILMEMBER BATES: Yes.
 14 CLERK BRYANT: Councilmember Fleming?
 15 COUNCILMEMBER FLEMING: No.
 16 CLERK BRYANT: Councilmember Pachuta?
 17 COUNCILMEMBER PACHUTA: Yes.
 18 CLERK BRYANT: Councilmember Pittman?
 19 COUNCILMEMBER PITTMAN: Yes.
 20 CLERK BRYANT: Councilmember Roche?
 21 COUNCILMEMBER ROCHE: Yes.
 22 MAYOR JENKINS: Okay.
 23 COUNCILMEMBER ALEXANDER: Motion to adjourn.
 24 COUNCILMEMBER PACHUTA: Second.
 25 MAYOR JENKINS: Second?

1 Call the roll.
 2 CLERK BRYANT: Councilmember Alexander?
 3 COUNCILMEMBER ALEXANDER: Yes.
 4 CLERK BRYANT: Councilmember Bates?
 5 COUNCILMEMBER BATES: Yes.
 6 CLERK BRYANT: Councilmember Fleming?
 7 COUNCILMEMBER FLEMING: Yes.
 8 CLERK BRYANT: Councilmember Pachuta?
 9 COUNCILMEMBER PACHUTA: Yes.
 10 CLERK BRYANT: Councilmember Pittman?
 11 COUNCILMEMBER PITTMAN: Yes.
 12 CLERK BRYANT: Councilmember Roche?
 13 COUNCILMEMBER ROCHE: Yes.
 14 ---
 15 (Meeting adjourned at approximately 9:30 p.m.)
 16 -o0o-
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 25

1 C E R T I F I C A T E
 2 STATE OF GEORGIA]
 3 COUNTY OF DEKALB]
 4 I hereby certify that the foregoing transcript
 5 was taken down, as stated in the caption, and the
 6 proceedings were reduced to typewriting under my
 7 direction and control.
 8 I further certify that the transcript is a true
 9 and correct record of the evidence given at the said
 10 proceedings.
 11 I further certify that I am neither a relative
 12 or employee or attorney or counsel to any of the
 13 parties, nor financially or otherwise interested in
 14 this matter.
 15 This the 28th day of May, 2010.
 16
 17 _____
 18 Theresa Bretch, CCR
 19 Permit No. B-755
 20
 21 [SEAL]
 22
 23
 24
 25

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