



CITY OF FLOWERY BRANCH
PUBLIC HEARING
Meeting Minutes
Thursday, October 25, 2006
6:00 p.m.



CALL TO ORDER:

Mayor Hirling called the Public Hearing to order at 6:00 p.m.

IN ATTENDANCE:

Mayor Diane Hirling, Council Members Jim Herold, Pat Zalewski, Mary Jones Jan Smith and Allen Bryans. Also in attendance were City Manager Bill Andrew, Assistant City Clerk Lou Camiscioni, City Planner James Riker, City Attorney Richard Carothers and Attorney Ron Bennett.

**NOTE – Attorney Carothers left the meeting after the discussion on the Adult Entertainment Ordinance. **

PUBLIC HEARING:

Mayor Hirling reviewed the rules of a public hearing; she advised that the applicant and proponent get 10 minutes to speak and opponents get an additional 10 minutes to speak; further the speakers for each side will be timed in order to keep the meeting time reasonable. If the applicant wishes time can be saved for rebuttal at the end.

Mayor Hirling advised that there was a change to the agenda and that the first item, Discussion of the C.H.I.P. Grant, had no request for a public comment so it will be moved to the end of the meeting. Item number two was then the first item to be discussed.

[Consider an amendment to the Zoning Ordinance Zoning Text Amendment No. 348-5 and existing Adult Business Ordinance.](#)

Present for the discussion were:

Jerry Weitz – Planning Consultant
Attorney Richard Carothers and Attorney Ron Bennett
Chief Lanich – Flowery Branch Police Department

PUBLIC COMMENTS:

There were no public comments.

Planner Riker advised that the proposed Adult Business Ordinance, including two ordinances, will modernize the City's regulations relating to adult businesses. The Ordinances are intended to regulate the secondary effects of adult businesses.

Attorney Bennett began the presentation and summarized as follows:

Just as a matter of history the existing ordinance is number 119. It was passed by the city back in 1995. Over the past twelve years cases have obviously been tried against local governments, new rules have come out of those cases and the law has changed in the area of regulation of adult entertainment businesses.

Given the movement of the law over the past twelve years, Mr. Carothers, Mr. Riker, and Dr. Weitz and I have as James said, reviewed our existing ordinance and identified that it needed to be updated, and what we have been working in collaboration we believe is a draft of a new updated ordinance that will be defensible in federal court should it be challenged.

Before we get into the substance of the ordinance I just want to talk a little bit about the purpose of an adult entertainment ordinance.

First thing I would like to share with the Council and public is what an adult entertainment ordinance is not. The purpose of an adult entertainment is not to invite adult businesses into the City of Flowery Branch. But the reality is that the City of Flowery Branch is an increasing urbanized area. It's bisected by 985 and we've all seen the growth that has happened here recently and I know we expect that growth and population and business to continue over time. With that growth in population and businesses it's safe to assume, and expect, that there will be people coming into the area that would be interested in operating an adult entertainment business in Flowery Branch. So we do need to deal with regulation of the negative secondary effects of adult businesses. It's important to note too that this ordinance is not a prohibition on or against free speech. As many of you know the constitution protects things like nude dancing, the selling of adult books and video's and alike, those are expressions of free speech that are protected by the 1st Amendment of the Constitution.

Now I've told you a little bit about what the ordinance is not, I want to tell you what the ordinance is, what the purpose of it is. The law, as I eluted to a little earlier, allows local governments to regulate adult businesses based on the negative secondary effects of those establishments. To regulate the recognized secondary effects is the purpose of the draft ordinance that is before the Council and the public tonight.

I want to talk briefly about the recognized negative secondary effects. On the table over there in front of Planner Riker and City Manager Andrew are 4 notebooks that I have prepared and that I had brought earlier to the Council chambers left here in City Hall. In those notebooks are studies that have been conducted over the past 20 years or so. Obviously from looking over there at the table those are books that are too voluminous for me to go over in minute detail everything that's in there in the setting that we have here tonight, but the Council has been provided with those studies prior to tonight's meeting. I welcome the public to review them, they'll be here if you would like to come up and see the studies and what they have to say. The one thing I'm going to add to the studies tonight is an affidavit by a Dr. McGleary.

Continuing Attorney Bennett went on to state that a case recently went up to the 10th circuit court of appeals out in the mid-west and as part of that appeal, an affidavit was placed on record of a gentlemen named Dr. McGleary who confirmed and made findings similar to the studies that are there in the books. So I'm just going to add that and certainly between now and the time of 1st reading of the ordinance it will be available for the Council to review.

I would ask Assistant City Clerk Camiscioni if he would note in the minutes that these records are made part of the minutes, these studies are part of the record here tonight and if he would take possession of those and keep them in the custody of the City as an official City record.

In particular I want to call your attention tonight to a list of certain studies and I'm just going to read off the jurisdictions where these adult studies have been preformed. Amarillo, Texas; Austin, Texas; Carrollton, GA; Huston, Texas; Indianapolis, Indiana; Manatee County, Florida; Oklahoma City, Oklahoma; Minneapolis, Minnesota; St. Paul, Minnesota; Phoenix, Arizona; Ellis County, Florida; Roswell, Georgia; and Troup County, Georgia.

Again, this is not the setting to go over those minute details of what those studies found they are all there in the books but what I do want to point out to you is what they say, what they did. Those studies looked at adult entertainment involving things like dancing, book stores, massage parlor's, and alike; and what those studies along with the McGleary affidavit that I added tonight demonstrate is the same. What they demonstrated is that when these adult entertainment establishments located in these jurisdictions, they created certain circumstances that caused negative secondary effects. Those negative secondary effects included increase in crime, increase in pressure on the courts to manage the crime, increase in pressure on law enforcement officers to be an additional presence as to well as to testify in regarding the commission of these crimes; also have detrimental effects on the community and on the value of surrounding property. So that is in summary what the studies that are before you demonstrate.

What I would like to do at this time is I'm going to ask our Chief of Police, Chief Gerald Lanich, to come and address the Council based on his experience and expertise in law enforcement, what he sees is the problems that would arise in Flowery Branch in the event the City fails to regulate the negative secondary effects of adult entertainment establishments.

[Chief Gerald Lanich approached the Council and summarized by stating the following:](#)

Good afternoon Mayor, Council. I've had the opportunity over the last week and a half to research some of the surveys our attorney mentioned, and in this research and the towns he mentioned; I know those are kind of large cities when we all look at that, but I wanted to go over with you some of the things that was brought out in these surveys as being things that excelled within their city and in the areas of these types of businesses.

Three (3) things that topped upmost of all at which this seems a little far fetched to us but we got to remember we are a growing community.

One of the top things that came into effect with these types of businesses of course is prostitution. They are attracted to these locations because of the type of profession that is. Sexual related crimes and drug activity. Drug activity not meaning large amounts of drugs but street use type drugs. Thefts occur at the businesses of people that go in and out because of some of the type people that do visit those places. Assaults, disturbance type calls, civil and criminal type calls, and public intoxication, and public indecency. That was one that was brought out quite often is a situations studied.

In researching these large cities I was able to also talk to some local people. One of the representatives of the City Marshall's office in Gainesville spent sometime with me on the phone and talked to me about the problems that they had at a location in Gainesville and it was quite a surprise to me that the exact things that I researched through the other large cities was occurring just up the road from us, just a few miles away. The Marshall did emphasize to me that they had problems with situations where young people or juveniles would try to go into these locations, they had to monitor those and, he expressed to me that it was very time consuming and labors on the police department to monitor this type of establishment which did put a burden on them to do so.

I would like to express to you, I know we are in a small community and sometimes we don't realize things like this could happen in our community, but we have to look at the growth coming north and growth coming south and at some point in time we're not going to be the community we are now and we can all see, it probably is not that far away.

Attorney Bennett introduced City Planner Riker and Planning Consultant Dr. Weitz to give some insight in their thoughts based on their experience and expertise in land use, land planning about the problems that they see arising in Flowery Branch if the City doesn't regulate the negative secondary effects of these adult businesses.

[Planner Riker and Planning Consultant Dr. Weitz approached the Council and summarized by stating:](#)

As you know this is a very sensitive issue in my past employment in Pico Rivera, California. We had a circumstance where an adult business moved in, was operating, created quite a few calls for service because of some of the secondary effects that did include prostitution and drug activity. But given the sensitivity of this we as staff solicited the assistance of Jerry Weitz as you know he worked with us on our Comprehensive Plan and our Zoning Code Amendment. Jerry has been a practicing planner for 22 years; he is past president of the Georgia Planning Association. He's been in private practice and consulting for 7 or 8 years and he's got quite a bit of experience looking at these sorts of ordinances. I think at this time it might be appropriate for him to give you some more specifics on perhaps the incompatibility and land uses that these types of establishments can cause.

[Planning Consultant Dr. Jerry Weitz](#)

Consultant Weitz summarized the following:

My name is Jerry Weitz; I'm a consulting City Planner in Alpharetta and the cities attorneys have asked that I give a brief statement regarding the secondary effects, specifically with regard to compatibility of land uses which is my specialty.

Adult Entertainment establishments are not compatible with typical retail businesses and they certainly give rise to compatibility concerns. They can have a chilling effect on property investment, for example where adult businesses exist property owners typically do not invest in their properties and the occupants transition to lower value establishments such as check cashing stores, liquor stores, and pawn shops. Also there is a possibility of similar establishments congregating in the same location which is why separation requirements are often instituted by local governments, and also this is why their locations are so often relegated to industrial zones since they have to be permitted somewhere in the community. These are the negative secondary effects that justify the regulations proposed for Flowery Branch this evening, in my opinion.

[Attorney Bennett further went on to state:](#)

The Council can see from the evidence that's been presented tonight in our Public Hearing we have learned something. We've learned what the secondary effects would be from unregulated adult businesses in Flowery Branch and we've also learned the City has the authority to regulate these negative secondary effects and what I want to do just briefly in closing is to highlight some of the ways, the particular ordinance that you have in front of you regulates these secondary effects and what some of the highlights are; you have an application process that does involve background investigation similar to what you would have to go through to get a liquor license. Alcohol is not allowed to be served at an adult entertainment establishment; you can't simultaneously hold an alcoholic beverage license and an adult entertainment license. The zoning is limited; the location is limited to the M-1 zoning classification, that's manufacturing and Industrial. There are certain distance requirements in this ordinance; in particular adult entertainment can't be located within 1,000 feet of a residential use in R-1, R-2, and R-3. It's got to be a 1,000 feet from certain other uses like churches, schools, daycares, libraries, civic centers, hospitals, public parks, and alike. It also has to be located at least a 1,000 feet from any other adult entertainment establishment. The license itself is not transferable to any other person and the license itself is particular to a permitted location so it can't move around from person to person and it can't move from place to place. The hours of operation are restricted by this ordinance and also the interior construction of booths and room inside of the establishment are also regulated as well to prevent any illicit sexual activity that would be secondary to being in an enclosed area that is not subject to viewing.

That's the conclusion of the presentation I have tonight. Attorney Carothers is here tonight and he certainly has been an invaluable resource as we worked through this process and if he has anything that he would like to add or any questions that either of us can answer for you we would be glad to do that now, but that would conclude my portion of the presentation.

Planner Riker advised that he had one comment for clarification. He stated that you will notice under this tab there are two (2) ordinances. Ordinance 345-5 that's because adult business establishments are in the table of permitted land uses we have made three (3) amendments to the Zoning Code to make it consistent with the draft ordinance that Attorney Bennett has prepared which is draft ordinance #360.

Councilman Herold inquired if the correct Ordinance number was 348-5.

Planner Riker stated that the correct number was 348-5 and so that is for consistency with the adopted Zoning Code, Article 16 of the adopted Zoning Code does refer to adult businesses, so this amendment makes it consistent, will make it consistent with the proposed ordinance 360.

Mayor Hirling inquired if there were any questions from the Council.

Councilman Herold inquired if this process of investigating and putting together these ordinances was at the express direction of the Council, was that correct?

Planner Riker advised that it was.

Councilman Herold inquired if this process had taken nearly two (2) years.

Planner Riker advised that it has probably been about two years.

Councilman Herold advised that he just wanted to clarify that for the citizens that this is not something that the staff just decided to do on their own, that this was something that the City Council, more than two years ago, decided that was necessary for the future of our City and in finally, long last, it's about to bear fruit.

Mayor Hirling inquired if there were anymore questions regarding this particular public hearing.

Planner Riker advised that for the benefit of the audience that this item is scheduled for a first reading and both ordinances are scheduled for a first reading on November 21st and that this was also placed within the public advertisement notice that was required

Mayor Hirling advised that we'll move on to the next item on our agenda which is to consider the unsafe structure ordinance and the nuisance ordinance. We have one person that has signed up as an opponent, but I'm going to turn it over to Mr. Riker to discuss this first.

[Consider Unsafe Structure and Nuisance Ordinance.](#)

Planner Riker made the following summary:

Mayor as you know the City adopted as part of the optional building codes, the International Property Maintenance Code and as a result of that we have met with our municipal court judge and he really asked us to come back and simplify that ordinance and present it back to him when we're talking about nuisances and unsafe structures. The council several months ago indicated that there were numerous unsafe structures within the community and they'd like to have a tool to abate those structures. As a result staff did a comprehensive evaluation of the documents we have on file here at the City and accordingly we are proposing two ordinances for consideration.

The first ordinance provides some clarification on the adopted International Property Maintenance Code and the second ordinance addresses the abatement procedures that would go with a nuisance complaint.

Attorney Bennett was instrumental in preparing both these ordinances, we'll put it up on the screen, a flow chart that would show exactly how the abatement procedure will work for these ordinances. So tonight again it's just for your discussion and we can go into some further detail.

The International Property Maintenance Code, I should mention, does cover your general nuisances, weeds, trash, debris, and unsafe structures. So that's why you see these ordinances streamlined. One really covers both items and the other strictly laying out an abatement procedure.

We've got a flow chart here and I guess at this point it might be appropriate for Attorney Bennett to walk us through exactly what would happen if a notice of violation were issued under a nuisance complaint.

Attorney Bennett reviewed the flow chart and summarized by stating: This is a flow chart that really talks about start to finish for a particular violation of a code. For the benefit of the Council when we adopted the minimum State standards one of the things that the Council adopted was International Property Maintenance Code which was suggested by the State of Georgia and the DCA is an optional code, it contains items from simple property maintenance issues like weeds, trash, and debris, and then more serious issues like problems with the structure that makes it unsafe or uninhabitable.

What your first ordinance does, Ordinance # 356-1 is that it conforms this general document to the specific needs of the City of Flowery Branch. It essentially gives some specificity to some areas that were not made specific like the height of grass and that sort of thing that was not adopted when this was first adopted.

This code gives very detailed descriptions of when there is a violation so that the Building Official has clear direction as to when there is a violation. This first step is where the Building Official would look at this code and find that there is some sort of violation within the City. This book lays out a process. The Building Official would have to go and give notice of a violation and also describe what needs to happen to comply with the code. In other words if the grass is too high then there is a notice that says you've violated this particular section of the International Property Maintenance Code and you should comply by a certain timeframe.

The option of the property owner would be of course to comply and that ends it. Of course two other things would happen if the property owner disagreed with the Building Officials notice of violation or to comply. The property owner would appeal to the City Council. In that case the City Council would have the benefit of reversing what the Building Official determined or affirming or modifying what the Building Official determined and then at that point, you have the option of the property owner to comply or not to comply.

All of this is handled under the International Property Maintenance Code and that's 356-1. This bottom part of the screen here where you have a citation and penalty and abatement procedure that takes you all the way through the appellate courts in the State of Georgia and the same thing on this side too, are all governed by Ordinance # 372. What that ordinance does is it adopts process outlined by the State, this is in the State Code of how you would abating nuisances, it allows for citations and penalties, it also gives you a process of filing a complaint and going before a judge to get the issuance of a citation and penalty for non-compliance, and/or, these can be prosecuted simultaneously in order of abatement.

Continuing, Attorney Bennett advised that this is what Judge Law had asked us to put in place, is a procedure, we thought that was no reason to reinvent the wheel, the State of Georgia did a good job setting up the procedure within the State Code and this ordinance proposes that we just adopt that procedure to enforce these violations of the codes we already had on the books. Again, I'll be glad to answer any questions the Council might have.

Mayor Hirling inquired if there were any questions.

Councilwoman Smith advised that she had a question and summarized by stating the following:

It's regarding trees, section 302-10. It's referring to tree stumps and tree debris. I have a question because I don't know perhaps we need to clarify this a little bit more. We do have several sub-divisions that require natural woods that are actually barriers between certain sub-divisions and some sub-divisions that just have part of their lot as a natural wood. Would this, the tree section apply to the natural wooded area?

Planner Riker advised that, Yes, I think it would be our expectation that this section really is defined by hazardous trees and it's indicated here that a finding by registered forester or arborist would be required to identify that the tree is dead or diseased. I know of one case where a sub-division, I think it's Mulberry Village, a lady had contacted us and said that she believed that she had some dead trees in the natural buffer area and we indicated that we had to receive certification from an arborist to that effect and she actually hired an arborist and we went out and he provided us a very detailed summary of the trees that were there and sure enough they had contracted a disease and were dead and were perhaps in danger of falling and under that case she was allowed to remove those trees.

We indicated to her that the expectation, that there would be a visual screen from that natural area and she on her own decided to replant some smaller trees that will take time to grown up, but yes I believe the expectation there is if the tree can be confirmed by a registered forester or arborist that it is dead, than it could be removed.

Councilwoman Smith further advised that Planner Riker is referring to Section A, a category all by itself. There is section B tree stumps, and Section C debris. So I'm referring to trees that fall because of the storm but they are in their natural wooded area. Would they have to remove it?

Planner Riker advised that Yes, he believes that the same expectation would apply that if the tree is fallen than it should be removed even if it is in the natural buffer; it's no longer operating as a tree.

Councilwoman Smith advised that she had a problem with that and that she didn't agree. She advised that she felt you should be able to leave it as it is.

Planner Riker advised that he could understand her position.

Councilwoman Smith advised that she didn't know a process to go to, to have that clarified.

Planner Riker advised that he was not sure that there was a clarification needed. He felt that if, the way this is worded and certainly could be revised is that if a tree stump exists greater than 12 inches it gives clarification on that and if a tree falls, it needs to be removed.

Attorney Bennett made the following statement:

James what if we identified conservation easements within a sub-division, if it is some conserved green space perhaps crafted as an exception that any tree stumps perhaps tree debris

Planner Riker replied by stating that, Yes, certainly there could be an exception there made for that if the expectation is that it's a natural area and by natural causes the tree has fallen down and should remain there.

Mayor Hirling advised that if there were no further questions she would turn the floor over to the gentleman signed up for public comments.

PUBLIC COMMENTS:

Charles Craig Lutz, 8072 Sleepy Lagoon Way, Flowery Branch, GA 30542

Mr. Lutz made the following comments:

Thank you madam Mayor and distinguished Councilmen. If there is one thing I know about City ordinances is that it happens in a vacuum. In other words there's a reason, purpose, or motive behind the need for the ordinance. An ordinance is not written up and passed without the thought given to how it's going to be used and enforced. As I've walked around I've noticed several vacant buildings that could be declared as unsafe or do not meet the code. This ordinance puts into process or puts a process in place where you could have a court of law decide the future of that dwelling or business. When looking at the City's image things need to be put into prospective and balanced out. In this case many of these buildings are unsightly, is the City better off with the building or vacant lot. I randomly checked several of these buildings through the Hall County GIS and found that their improvements, while their property may not be usable anymore, the improvement contributed to over 75% of their tax assessed value. So where the City has been collecting tax dollars on the unusable building by enforcing this ordinance we are saying that for the image of the community we would rather forgo a large part of that tax to the City. If this is the case the ordinance which references Georgia Code 41-2-15 allows for the City to assist that owner with any demolition and repairs. Do we as a city envision a mechanism to help the owner even though it could result in future decreased revenue in the tax stream. Or do we see this as a way that we can gain leverage on the property owner so we can provide compensation for the property under 41-2-14.

So basically a question here is "What is the motive?" I believe I would be more interested in seeing how we intend on implying this rather than the actual code itself. That's it.

Mayor Hirling thanked Mr. Lutz for his comments and advised if there was nothing further the meeting would move onto the third public hearing.

Planner Riker advised that for the benefit of the audience those last two ordinances have been advertised and set for November 21st at 9:30 a.m. for a first reading, for anyone that is interested, that's the scheduled first reading for those items.

[Consider the annexation and rezoning of a 26.973 +/- acre property located at 6596 Capitola Farm Road and consider an amendment to the conditions of approval relating to ordinance 239 and 240 for the master plan community on 894 acres generally known as Sterling on the Lake.](#)

Planner Riker made the following summary and stated:

As you indicated staff has received an application from Newland Communities for a variety of approvals. The first part of the applicant's request is to modify the conceptual site plan in the Exhibit A, which was originally approved back in 2001 to permit a 4.17 acre piece of property near the intersection of Lake Sterling Blvd., and Spout Springs Road for commercial purposes.

A second application was filed by Newland Community to annex and rezone a 26.973 acre piece of property on Capitola Farm Road, the purpose which was to develop detached single family homes on that piece of property.

The application also includes a revision to the master site plan to identify the Hall County Library site that is being constructed there and a fourth part of what is being requested there is a clarification to eliminate obsolete conditions of approval that existed back in 2001 that are no longer necessary.

As a result staff has also taken this opportunity to include three previous amendments to this development and fold all of this into one comprehensive document so we don't have a variety of amendments floating around that someone would have to read through to understand how we got from a vacant piece of property to the Sterling on the Lake Development.

As I indicated we have provided a report for you. The key is although the spirit and intent of the Sterling on the Lake Development has not changed from a Planned Unit Development, the project has evolved since 2001; engineering has gone on and they have developed a large portion of it. It has become refined, they have identified some unique housing types that are going in there and as a result we felt this was a good time given where we are in the projects life expectancy to try to consolidate everything.

As you can see the legend, on the side of the conceptual master plan, identifies the totals that are shown here. (Exhibit) The developer is proposing to have approximately 298 acres of open space that includes lakes, landscaped areas, and conservation areas. The total build out of housing units within the City of Flowery Branch is 1,693. The applicant has also filed a companion application with Hall County government to rezone a 77 acre piece of property here that is located on south side of Bragg Road (point to the map being displayed: for those of you that know this area Bragg Road runs right through here, Ernest Bragg lives in this piece of property right there on the corner.) The total build out will identify 93.8% of the homes here would be single family dwellings.

As I indicated before the project has evolved, there have been three (3) amendments from its original approval. One of the amendments was a reclassification of the road extending from Lake Sterling Blvd., out to Capitola Farm Road. This was a result of an additional roadway modification that took Lake Crossing Dr., and ran all the way out to Black Jack Road. A second amendment was prepared to allow the development within Pod N and O. As many as you know there is a town home development in there with some common greens, they have got some real alley, single family homes and some front loaded single family homes.

The 3rd amendment and the most recent one is a gated component up here off of Capitola Farm Road commonly referred to as Pod Q. I think there were 82 single family homes that are being proposed in that area and it operates off of an alley system for those homes.

The commercial area that is being requested here is 4.174 acres. The original master plan only contemplated commercial in this corner as a result, they have asked to expand it into this area.

As part of the Planned Unit Development there is a site plan specific requirement that the site plan be submitted for this type of development. As a result Newland Communities has contracted with JEBCO Ventures to develop this 4.17 acre piece of property. They have provided a conceptual plan that shows a day care center, some general retail buildings, and a restaurant building. They do have adequate parking as shown on this plan. We would propose a couple of standard conditions that would relate to signage and architectural designs and those things, but to orient you again, this is Capitola Farm Road, Lake Sterling Blvd., this is the cemetery you pass by, it would be this general area in here for the commercial component.

One of the issues that have come up as a result of this review is, as I stated, the developer has a companion application filed with Hall County for rezoning 77 acres that is on the other side of Bragg Road. Bragg Rd. runs through here right now (shown on Exhibit). This is the 77 acre piece the applicant is asking Hall County to rezone. Upon further review of the information submitted, there are several lots that the applicant would like to develop that are within the City of Flowery Branch but would be accessible only if the rezoning were permitted by Hall County in this area and Bragg Rd., were abandoned. I think there is also a home owners group here tonight that would like to speak to this effect and I know a representative from Newland Communities is also here who would like to speak on this matter, but we've identified it and included a condition essentially saying that portion of the lots that are identified here, they're generally shown on your master site plan with an asterisk, that that should remain as open space until such time that Hall County government actually takes action on rezoning this property and abandoning Bragg Road. But again there are a couple of groups here that would like to bring up this point as well.

Your report concludes with some recommended conditions of approval. I forget how many pagers there are but they are very thorough and the intent of the recommended conditions of approval is to take those original conditions that were contemplated in 2001, eliminate those that are obsolete, refine the master site plan, and include clarification on what the applicant is requesting through the commercial rezoning and the issues we've identified. So they include a binding conceptual site plan, binding conditions from the previous amendments, limits on the total housing density, creation of typical lot layouts, typical roadway layouts. There is a condition that relates to stream and lake buffers; stormwater maintenance bond requirements are also addressed in the new conditions. There are several conditions that relate to design concerns on the commercial development as well as the residential development and then there are several conditions that relate to transportation improvements for this development.

So I do know there are again, two groups at least that would like to speak on this. I don't know if they have signed up.

Mayor Hirling inquired if the representative for Newland Communities, would like to speak first,

Patrick Clark with Newland Communities, my address is 4048 Charwood Trace, Marietta, GA 30062

Thank you for the opportunity to speak, I'll keep it very brief. We have met with the planning department and have looked over the 28 recommended conditions and feel very comfortable with all of those conditions. We would like to ask that on condition #1, that the council consider revising the language on condition #1 to reflect what I believe James had diluted to which that waiting until Hall County has acted on their zoning for the rest of the modifications.

Some of you may not recognize me, my counterpart who used to be here, Kevin O'Neil, who probably you've met has moved onto Charleston and I just wanted to say I'm very excited, I've been with Newland awhile, and I'm very excited to be part of Sterling; it's a fantastic community.

Mayor Hirling inquired if Mr. Clark was taking over Mr. O'Neil's position.

Mr. Clark advised that he was taking over Mr. O'Neil's position and requested a little forgiveness if he didn't understand everything going on just yet.

Mayor Hirling advised that public comments would begin and the first signature is Mr. Caldwell. If you would like to come to the podium please state your full name and your address.

Stewart Caldwell, 7475 Shady Glenn Drive, Flowery Branch, GA 30542

Thank you Mayor and Council Members. I am here tonight to represent some of the residents of Sterling on the Lake; I've got some of my neighbors if they would stand up. I've also got a petition that's signed by about 31 others excluding myself that I would like to present to you.

Basically what we were told with regard with some of this land, and I'll use some of the slides here in a minute, but essentially I looked at Sterling on the Lake for about 2 years. I have a 3 and a 4 year old and we needed a basement. I've lived in Duluth and we backed up to a national forest and when we came out to Sterling and they had just opened Pod H, you know we found a lot down at the cul-de-sac and it had a water fall and we loved it.

One of my concerns was the land between the creek and Bragg Road and what would happen to that land. On three separate occasions I went to the Newland Community Center that is at the front of the community and asked specifically about that land, and I said even if it was paved would they ever build between the creek and Bragg Road and I was told No, that that was designated as Green Space by the community and couldn't be built on.

And I asked like I said three times. I even went over this with my sales rep for David Weekly Homes, Betty Glass, my builder Emit Holly and Doug Howard the supervisor for David Weekly.

Lot premiums in the cul-de-sac run as much as \$20,000.00 and one of selling points were all the trees that were behind our houses.

Effects of the development, there are some environmental concerns. When they started clearing out one of the Pod J cul-de-sac's I was not aware that that was going to be there and I called Mr. Riker and he sent somebody out, I think his name was Bob and he said the creek was a mess, that the silt that had run into it destroyed it. That is was just terrible because he had been here for years and knew that it had definitely changed. Our concerns are erosion, run-off, and the drying up of the creek, if further development continues.

The esthetics, we've got a beautiful view now, that's what we paid for and we hope that City Council will uphold the promises made by Newland. Then the property values, the further development could definitely drastically reduce our property values.

Newland claims to be environmentally friendly and I've got a statement here that I'll share with City Council basically saying that what they are doing is clear cutting, they used to have a phrase that said "live among the trees" well there are no trees. They're clear cutting as they're starting to build and this is a concern. You see hawks flying over you know all day now because so many trees have been cut down. The lake, they made promises about the lake, the engineering was done improperly and now we have a lake that's about 10 feet and it's down to 5 feet in some areas from my understanding. Where they are supposed to be managing this process and we're asking that they should manage it as they promised.

There was a retention pond that some trees were lost and it goes back and forth as to whose fault it is but at the end of the day Newland was managing this process, so we ask that you consider that.

And then original Pod J they had to abandon a cul-de-sac but they went ahead and cleared it anyway, and I have some pictures that I'll be happy to leave here just with the nature of this presentation I didn't feel it would be easy to actually show them and go through them all, but we understand that plans change, amendment to the town homes I've been to several meetings because I knew that this issue would come up one day and you know the town homes, we were told that prices of those town homes would be between \$250,000 and \$300,000. Well if you go into Newland's Community Center now they are telling people \$190,000. Drastically different that what was presented to City Council and numerous meetings that I was at.

At the end of the day if they knew that these plans were going to be coming making promises of not cutting trees and telling us that it would be green space in my opinion is illegal, I'm not a lawyer but I know that you're not supposed to sell land knowing even tonight I was in there and I asked about some lots that are still available in our Pod and I was told that they would probably never build back there, there is not enough room, she said I don't know if I would use never, but I was told that there was a water fall park and they definitely would not build back there. Well that's exactly where my house is, and the plans that you'll see on Pod J show that it's coming right down to the creek.

If you would James could you pull up the 1st slide. When James was first told about this, this was the conceptual master plan that he was given and so I guess I had a conversation, meeting

with James with regard to what was going to happen so I came in and visited with him and he showed me that this is what he would show. He then went to Hall County to get a plat of what their plans were and this is what he saw and when he saw this, this is Bragg Road, he said Newland, hay this really doesn't match up with what you've shown us.

Then they came back with this one, where they showed this as now being developed. So even when they came to talk with James about how their plans were going to work, you can see that they were kind of caught with you know, not fully exposing what their plans were.

What we're asking is you permanently designate these areas right here as green space, that's what we were promised, that is what we were sold, that is what we paid for as residence. We need someone to be on our behalf to uphold what we were promised, so we're coming to you as City Council to say please designate that as permanent green space. You know some people would say well let's wait, why wait, there is going to be cost for Newland to do survey's, you know we don't want them to make a mistake like they did at Pod J. Where they clear cut from here out a little bit and there is are no trees there. We don't want that to happen here, we don't want them to clear cut and say oh we made a mistake. If we postpone this decision it's just going to cause future hassles for the residence and what's happened and what's been told to us won't have changed, so there's really no reason to wait so we ask that you make a decision and make them uphold their promise.

Mayor Hirling inquired if he was referring to the green space along Bragg Road of along the 77 acres.

Mr. Caldwell responded by stating, No, just this was (Pointing to exhibit) designated as green space as was this, I live right here. And so when I bought I specifically asked if they paved this, would they ever build you know on that side and I was told absolutely not, that was not happening because that was property owned by the community and it was designated as green space and it couldn't be built on. If you go out to that land the topography is very steep so one of the concerns is if they start clear cutting all the run off is going to end up in this creek that runs right there. So there's going to be erosion and run off and environmental concerns as well.

Planner Riker replied by stating the following, Stream buffer now is 50 feet from the top of the bank and then another 25 feet of non-impervious surface when the council approved this project back in 2001 they set a stream buffer of 50 feet from the center line of the creek. So that's the old requirement and the majority of this.

Councilwoman Smith inquired if this came under the new or old requirements?

Planner Riker advised that this section the two sections (pointing to exhibit) that are identified there that we are talking about would fall under the new code which would be 50 feet undisturbed 25 feet non-impervious surface. The way the condition reads is that anything that is not approved for construction or platted has to fall under the new stream buffer provision. So the sections that we're referring to there would have to comply with today's stream buffer requirement.

Councilwoman Smith made the following statement; I'm confused as to why Sterling on the Lake is going to Hall County to permit part of this. Would this map be part of Sterling on the Lake? Or is it and we're going to have some in our City and part of Sterling on the Lake in the County?

Planner Riker made the following reply; that's their proposal. The property that they are seeking to annex into the City, the 26 acre piece is here in this area. They own this piece right there, they do not however own this piece. This is owned independently by a gentleman named Earnest Bragg and a request for annexation and rezoning here would create an unincorporated island there. But that is my understanding that that is their intention.

Councilwoman Smith inquired if they are doing this only because it would create an unincorporated island?

Planner Riker advised that that was his understanding.

Councilwoman Smith inquired if the building standards were different between the county and what we've required for the rest of the subdivision?

Planner Riker made the following statement:

That's part of our reason for meeting with the County, the County doesn't really do the type of reviews that we do and they've asked that once we are able to get through this amendment that we forward all those conditions to them so they can review them. They didn't guarantee that they would impose all of those conditions but they said they would certainly want to make sure the same quality existed. But until they actually take action I don't know. But it is our intent that we would forward all of our information and all of our conditions over to the County for their decision.

Councilwoman Smith inquired if there would be any guarantee at that time?

Mr. Riker advised that there would be no guarantee.

Councilwoman Smith advised that she was opposed to splitting and dividing up Sterling on the Lake part in the County and part in the City.

Councilman Herold state that he didn't know if we could do anything about it because it's the law. We can't annex property and create an island.

Councilwoman Smith then made the following statement:

Well I would think that if Mr. Bragg is going keep his part of the property that Sterling on the Lake could negotiate something to keep a strip so it wouldn't be an isolated island and allow it to be put into the City. It is solvable I think if they put some effort into it.

Planner Riker stated the following:

I can tell you there are certainly some evolving annexation laws that are out there that we are working through the County as I understand it as of today still has an active lawsuit against the City of Oakwood for such activity whether

Attorney Bennett made the following statement:

Unfortunately, because this is a doughnut hole for lack of a better descriptive term, there is no strip to be taken that could solve the unincorporated island, it would have to be an all or non scenario.

Mr. Caldwell I might add that the petition that you have, the photographs or any other documents you'd like the Council to consider if you would just present them to Assistant City Clerk Camiscioni he'll make them part of the record for you.

Mayor Hirling thanked Mr. Caldwell for his presentation, and advised that his comments and concerns will be taken into consideration.

Attorney Bennett advised that Assistant City Clerk Camiscioni will make note in the minutes that the City took into custody the photographs.

Mr. Caldwell made the following statement regarding the pictures:

I would like to get with you (James) later. I took the photos today; the petition was signed in the last 3 days, so the pictures need to be labeled since I didn't use them I would like the opportunity to at least label them so Council will know exactly what they are.

Mayor Hirling made the following comment:

OK, is there anybody that would like to speak we have 2 minutes left, Mr. Clark we will let you speak again, but we have 2 minutes left for opponents is there anybody who wishes to speak in the 2 minutes? If not we're going to let the applicant speak again.

Mr. Clark made the following statement:

Thank you and what I mentioned I respect Mr. Caldwell's concerns and I would like the opportunity to spend a little time to address some of those things, perhaps personally as I become ingrained in the Sterling on the Lake Community I'll be out there a good bit so I'll certainly interested in doing that to foster all good relations.

One, Councilman Smith we had attempted to acquire Mr. Bragg's property, he originally agreed then he retracted I don't know the reasons why but we are still in discussions with him to that which would not create an island.

It is our intent that once this is done and an agreement is reached with Mr. Bragg that we would annex it into the City so that it would be one complete if you will, jurisdictional component of the City of Flowery Branch.

I think more importantly is that without sounding arrogant that this will be folded seamlessly into Sterling on the Lake and it will be maintained and rigidly controlled with the design standards that Sterling on the Lake has, it will be partial to a home owners association and therefore fall under all of the design guidelines which frankly we control with great passion because it is part of controlling the vision on that so I would hope that that would elevate any fear of any kind of disconnect between the jurisdictional issues, there are sometimes some developmental issues but I don't think those would be seen from an infrastructure standpoint and we're certainly working in tandem with Hall County to make that a very easy deal. It would be our preference to have it all in the City of Flowery Branch so I wanted to address that.

A couple of other things, the open space that we have in our world, in the master plan community development world and Newland is the largest in the United States, 65 communities in 11 states, in business for 40 years. We're very sensitive about using the term open space or green space. Open Space in the master plan community is space that is yet to be determined in terms of what it is because over the life cycle of these projects which go in some case we have projects that go 35 years, we don't know in year 35 this is going to look like based on market conditions, environmental conditions, environmental regulations so while we may be generally fixed on the unit, house is on a community or homes in a community, there is in the PUD zoning a typically, a flexibility with I guess wiggling the land plan around a little bit as long as the zoning conditions are met in terms of minimum requirements of open space etc., so it is typical that we would do this and we would have an area of open space that we would move into or out of discriminately as the course of the project goes. Its, I can't speak to what Mr. Caldwell was told because obviously I wasn't there. I find it just inconsistent with out normal operations being a sensitive as we are as master plan developers which we're faced with this every single day, what are we, how are we manipulating the plan to make it complete the vision that came out with, there was nothing in print that we have that would say dedicated common area or dedicated green space so sometimes people say things that are wrong, I don't know, I wasn't there but I do want to say that as a general rule in our practice and very consistently I might add that open space is considered space that is at this point in time not set until we actually record a plat, design, engineer and record a plat which is why we are always sensitive about using that language.

One last thing in terms of the erosion control, I can stand here and tell Mr. Caldwell and everybody here that I will protect that stream because I'm very good at it and it's a passion of mine to make sure that these things happen. I can't talk to what happened before I wasn't there, accidents do happen but I will tell you that in this particular case we have a water fall park that is there, that's beautiful, doesn't have much water in it right now because of the drought, but it is stunning and it's an asset to the community it's a part of the overall vision and we're going to protect it as if we lived there ourselves.

That was pretty much it unless there is anything else, questions?

Mayor Hirling made the following statement:

Thank you Mr. Clark and welcome to the community. No further questions on that, I'll take a question.

Someone in the audience posed this question, later identified as:

Chris Hartneck, 7940 Bench Mark Drive, Flowery Branch, GA 30542

I think on this project up here that they added at the entrance there where they wanted to have I guess some store shops and parking that wasn't on the original plan, the corner was, but the entrance wasn't. You got a church over there that has a lot of traffic you're going to have a library there, they got people that need to come in, they're probably going to be widening Spout Springs Road and if you took a consensus with Sterling on the Lake I believe most of the people wouldn't want something in that location up there, you come out the main entrance, there's a lot of traffic coming in and out and it's going to be busy enough when the library is operating, there already is the Church traffic over there and you got a station on the corner, that corner spot I think they can live that but the entrance I don't think Sterling on the Lake residents would be happy with that.

Mayor Hirling requested that the gentleman state his name and address for the record.

Chris Hartneck
7940 Bench Mark Drive
Flowery Branch, GA 30542

Mayor Hirling thanked Mr. Hartneck for his comment and advised that the next item was up for discussion by Planner Riker.

Planner Riker made the following statement:

I might make one other comment that, as you know we have twelve or how ever many there are recommended conditions of approval some of those conditions are still in final refinement stage, a few of them relate to Hall County transportation comments, I might add that we are working diligently to get these refined, they will obviously be in a final form for the meeting on November 21st but just not that will likely be some minor tightening of those conditions specifically the ones that relate to transportation, we have a meeting setup up next week with Hall County transportation department to get that dialog for further refinement but I guess it should also be noted that this item the two applications, the annexation and rezoning is scheduled for November 21st as a first reading and the rezoning amendment that relates to the commercial property, the refinement of the master site plan and the obsolete conditions of approval is also scheduled for November 21st at 9:30 a.m. as a first reading. Thank you.

Councilwoman Smith asked the following questions:

I have 2 questions James. One is that commercial part on Spout Springs would the parking have, would Sterling on the Lake residents have direct access into there or are they going to have to go onto Spout Springs Road to get into it.

Planner Riker replied by stating:

They do have the proposal does show two access points that will be available from Lake Sterling Blvd., here and here, there will be modifications of the medians that exist into this area here, a traffic study that was provided for the whole site indicates that a signal warrant analysis needs to be conducted for perhaps a future placement of a signal at that location there. As you know there is a proposed widening project on Spout Springs Road, it's thought that Spout Springs Road extending from where we are to where the Kroger is over in Braselton will be a commercial corridor.

Councilwoman Smith posed the second question as follows:

The other question is the part that would be developed in the County and maybe later annexed in. Does this PUD have a designated number of homes it can have in it?

Planner Riker advised that it does.

Councilwoman Smith then stated:

And so if they go through the County and build that way, are they exceeding what we would normally allow under our PUD?

Planner Riker made the following reply:

No, they would still be under those numbers in the City as well as the original DRI that was contemplated. That's the section that you were referring to, the one that was being requested in front of the County. I don't have the specific date the County is going to be hearing this, I thought it was December 3rd, for their planning commission but people are interested about that application, they will have to double check that date. I don't remember about when that item

Mayor Hirling advised with the closing of the previous item that the next discussion would be item number 4 which is the discussion of the C.H.I.P. Grant.

City Manager Andrew made the following summary:

Just for the benefit of the audience we're just having a public hearing here on a housing grant we have so you're certainly welcome to stay if you would like. I would ask that if you are here if you could please sign in, this is a required public hearing from the Federal Government and we just have to get a count of how many people were here, if you would sign in it would be appreciated just for the purposes of the requirements of the grant.

I'm just going to give a very short overview of what the grant is going to accomplish here in the City. We will be having a public meeting, a town hall meeting to sort of target who we think would be users of the grant, realtors in the area, families that we feel may be are in public housing, apartments, and who might be interested in buying a home or having a home rehabilitated. So we will have a meeting along those lines either later on this year or early next year to make sort of a formal announcement about this grant.

What we have is basically \$189,000.00 from the Federal Government that's been given to us from HUD to the Department of Community Affairs to the City and we're able to use those funds for down payment assistance and also for assisting individuals with rehabilitating their home. Now when we say down payment assistance what we mean is that you can receive up to \$7,500.00 for a down payment or a closing cost if you are within the 80% medium income for the area. Which means for a family of four (4) if you had an income of \$47,500.00 you would be eligible for \$2,500.00 if your income was up to \$38,610.00 you would be eligible for up to \$5,000.00. If you had an income range less than \$29,700.00 you could be eligible for \$7,500.00 in assistance for down payment or closing costs on a home. That home could be in the value of I think around \$170,000.00 so we do have several homes in this area in that price point.

The way those funds work for down payment assistance is you are given these funds as a loan that's forgivable over a five (5) year period so as long as you own the home for five (5) years or longer, you would actually keep those funds, they would just be part of you owning that home.

If you sold the home within the five (5) years you would have to prorate back by 20% the amount that you had used. So if you sold the home after 2 years you would still own back 80% of the funds, oh I'm sorry, 60% of the funds.

In terms of homeowner rehabilitation, we have funds available for rehabilitating existing homes in the City. The homes do have to be owner occupied, not eligible for rentals and we have funds that would be a zero interest loan up to \$14,999.00. Now these funds cannot be used for carpeting or painting. A homeowner can use their own funds for carpeting and painting and for more cosmetic improvements but these funds are only eligible for bringing a home up to code. If there are issues with code violations in the home, electrical, HVAC, roof, issues like that, windows, then the funding can certainly be used for that with matching funds coming from the homeowner.

And again they follow the same income limits. A homeowner making, a family of four with \$47,500.00 would be eligible for up to \$14,999.00.

The way we'll be handling these funds is we have contracted with Home Development Resources, Inc., they have a non-profit here in Gainesville. I happen to be president of the non-profit. HDRI has been working with Hall County and Oakwood for a number of years on their C.H.I.P. Grants and have had a lot of success and what they do is they provide a free service; there is no cost to the homeowner either in buying a property or having a home rehabbed to use HDRI for these services.

They also provide home buyer education and credit counseling free of charge. So this is just something I think to be looking out for in the community, its funds that we'll be using hopefully when we identify homes that do have problems we can turn them to these funds to get the homes upgraded and approved and it will be I think a real improvement for the community as a whole and again, it is a free service provided to the citizens of the city, so I just wanted to make that announcement and certainly entertain any questions that anyone has about this. But this is the required public hearing that we have for the Grant. Later on we will have more of an informational session where we can kind of talk with some folks who would be perhaps in the funding and also we really want to get maybe some of the banks and real-estate community knowing about the funds.

Any questions?

Mayor Hirling stated that there is nothing further to discuss.

ADJOURNMENT:

Mayor Hirling closed the October 25th, 2007 Public Hearing at 7:17 p.m.

Diane Hirling – Mayor

Date

Asst. City Clerk Lou Camiscioni