

Regular Meeting of the Sandy Springs City Council was held Tuesday, September 16, 2008, 6:00 p.m., Mayor Galambos presiding.

Invocation –Dr. Carol Strickland, Mt. Vernon Presbyterian Church gave the invocation.

Call to Order

Mayor Galambos called the meeting to order at 6:04 p.m.

Roll Call and General Announcements

City Clerk Rowland reminded everyone to silence their cell phones and pagers at this time. Additionally, those wishing to provide public comments, either during a public hearing or at the conclusion of the meeting under the public comment section, are required to complete a public comment card. They are located at the back counter and need to be turned in to the Clerk.

City Clerk Rowland called the roll.

Councilmembers Present: Councilmember Doug MacGinnitie, Councilmember Dianne Fries, Councilmember Rusty Paul, Councilmember Ashley Jenkins, Councilmember Tibby DeJulio, and Councilmember Karen Meinzen McEnery.

Pledge of Allegiance

Mayor Galambos led the Pledge of Allegiance.

Approval of Meeting Agenda

Motion and Vote: Councilmember Paul moved to amend the agenda by moving Agenda Item No. 08-237 up on the agenda to follow the Consent Agenda. Councilmember Jenkins seconded the motion. There was no Council discussion. The motion carried unanimously.

Motion and Vote: Councilmember Paul moved to approve the agenda as amended. Councilmember Fries seconded the motion. There was no Council discussion. The motion carried unanimously.

Consent Agenda

1. Meeting Minutes:
 - a. August 12, 2008 Regular Minutes
2. Approval of Change Orders to Control Specialists' Contracts for the FY 09 Intersection Improvement Program.
3. Approval of a Resolution authorizing the initiation of amendments to the City of Sandy Springs Zoning Ordinances as it relates to Development Regulations.
Resolution No. 2008-09-47

Motion and Vote: Councilmember DeJulio moved to approve the Consent Agenda. Councilmember Fries seconded the motion. There was no Council discussion. The motion carried unanimously.

Public Hearings

U08-011/CV08-018 - 335 Colewood Way, Applicant: The Epstein School, A use permit to expand the existing private school campus and increase enrollment, with concurrent variances.

City Clerk Rowland read "Conflict of Interest under Ethics Ordinance" into the record by City Attorney Willard, to Russell K. Paul stating that it is his opinion that there is a personal financial and personal interest in the Application and that Councilmember Paul should recuse himself from all deliberations and voting.

Senior Planner Ruffin stated that the applicant is requesting a use permit to expand the existing private school and to increase the enrollment at the school. The applicant is also requesting four (4) concurrent variances. Staff is recommending deferral of the petition subject to submittal of additional information as outlined in staff report.

The petition was heard at the August 21, 2008 Planning Commission hearing. The Commission also recommended deferral of the petition subject to submittal of additional information.

Pete Hendricks, Representative, 6085 Lake Forrest Drive, stated the property contains approximately 15.44 acres. The applicant has requested a 120 day deferral.

Mayor Galambos called for public comments in opposition of application.

Andy Porter, 6490 Burdett Drive, quoted the Comprehensive Land Use Plan and stated that if this use was going to be put in a residential area, the applicant must comply with the protected neighborhood section and the land use must be compatible. He questioned if the application met those requirements. Mr. Porter stated that to fulfill a requirement under a protected neighborhood section, the institutional use must serve the immediate neighborhood. There are only 42% of Epstein families that live in the city limits of Sandy Springs. The reason for the protected neighborhood section is to balance the burdens shared by the neighborhoods with the use that is intruding on the neighborhoods. It should be a fair and equitable type of arrangement.

There are no other neighborhood in Sandy Springs that will have a 850 student body, a building capacity of 10,250 square feet per acre, a 268 space lighted parking lot, two (2) deceleration lanes, four (4) curb cuts on locals roads, 450 seat Performing Arts Complex, an outdoor amphitheater, a full size athletic field, a parking lot and front setback and 19,000 square foot, two story pre school building, 140 feet from a local road.

A neighborhood should not have to hire lawyers, civil engineers, traffic engineers, soil engineers, hydrologist and arborist for a plan like this. They have spent the last eight (8) months and almost every dime their neighborhood has saved fighting a plan that is so ill conceived that the head of the Planning Commission said "if you bring this back before me like this, I won't even look at it". The plan is too much and simply overwhelms their neighborhood.

Mr. Hendricks stated that under the issue of compatibility of land use and zoning districts in the vicinity of the property for which the use permit is proposed it states that school uses implemented on provisions of the zoning ordinance are fully adjacent to residential land uses. This is throughout the whole city. The Lake Forrest Elementary School has residential all around it and there are half a dozen of schools that fall within that same description.

The comment on the protected neighborhoods it also states that "land use policy protected neighborhoods protect the character and integrity of existing neighborhoods while meeting the needs of communities". It does not say immediately adjacent to neighborhoods, it says communities.

The reason the applicant is requesting a deferral on this application is to come to a conclusion and be able to deliver to the surrounding area a plan and operation of a school campus that is not as overwhelming as expressed this evening. In fact, this plan operates with less volume of coming and going traffic that presently exist. Other than that is complete recognition of the need for a required busing program, that is what they would like to put together.

Robert Franco, 645 Widgeon Lane, President of Epstein School, stated that this area is compliable in many ways to what a public school serves. Within a five mile radius Epstein School serves 219 students that live in the City of Sandy

Springs, total 353 students who are within a five mile radius of the school. That is a compatible number with what is seen in middle schools. There are a number of benefits that the Epstein School brings to this community and one is that they are a school that attracts families that want to move into Sandy Springs. They are a blue ribbon school nationally recognized and 75% of their graduates attend Sandy Springs high schools. Families move into Sandy Springs to be close to the school and one of the things Sandy Springs has going for it is a number of private, religious faith based schools. Without these schools, this would be a different city. One of the challenges this body has is to ask itself how it addresses the question for many years which is regarding private schools and their place in the City of Sandy Springs to come to some agreement. Epstein hopes that through this deferral they will be open to new ideas just as they are open to. One of the things that everyone has to recognize is that simply saying no to something is not a viable alternative for a city that wants to grow and welcome people and see itself as a city of the future.

Rob Stein, 105 Gilford Way, stated that in the opposition's view of the Comprehensive Plan there is a map of the Comprehensive Plan that has 71 private school institutions throughout the City of Sandy Springs. Many of these schools and institutions are located either in or adjacent to a part of neighborhoods. If the opposition's reading of the Comprehensive Plan in picking at different words were the case then we should look at closing or looking toward our institutions, churches or schools throughout Sandy Springs, what it means for all of them. The protected neighborhood category which applies to every residential neighborhood in Sandy Springs with the exception of the Concliff is a category for exclusive single family neighborhoods. The category itself does not seem to recognize that there are 71 private institutions in Sandy Springs. The reading by the opposition would have that there could be no institutions in any neighborhood or anywhere. That is not the intent of the Comprehensive Plan. This institution serves this neighborhood and serves Sandy Springs.

Mr. Franco stated that the Epstein School has committed a significant amount of time and resources of asking and answering questions about the schools future as well as the future of their neighborhood. This is not a plan to simply grow their school; it is a genuine effort to seek partnership with all the neighbors and those who support them and those who do not. The Epstein School has been a good citizen of this city for many years and believes this plan is consistent with what this city wants in ways of private and public partnership. There are many reasons chosen to form a Sandy Springs city and one of them is having managed and been responsible for growth. As residents of Sandy Springs, we look to the future of our City, a future that is built on dreams of what is possible and not on what might have been, a future that is based on hope and not fear and a future in which people come together if they focus not only obstacles but on the opportunities.

Mayor Galambos closed the public hearing at this time.

Councilmember Jenkins stated that there is a meeting next week between several of the neighbors, City staff and Epstein School on the 29 different conditions and recommendations between Planning Commission and staff that will have to be worked into whatever plan comes back through the Planning Commission and City Council.

Councilmember Meinzen McEnerny stated that she would like for the parties to address the 29 conditions that have been recommended.

Motion and Vote: Councilmember DeJulio moved to defer consideration of U08-011/CV08-018 - 335 Colewood Way, *Applicant: The Epstein School*, A use permit to expand the existing private school campus and increase enrollment, with concurrent variances until January 20, 2009. Councilmember Fries seconded the motion. The motion carried 5-0 with Councilmember Paul abstaining.

Zoning

Rezoning

RZ08-012/U08-006/CV08-014 - 305 Carpenter Drive, Applicant: Keith Poinboeuf, To rezone the subject property from A-L conditional to A-L for the development of a 10-story, 170-unit senior apartment building, with a use permit to exceed the maximum district height and concurrent variances.

Ordinance No. 2008-09-43

Senior Planner Ruffin stated that the applicant is requesting to rezone the subject property from A-L conditional to A-L for the development of a 10-story, 170-unit senior apartment building. The applicant is also requesting a use permit to exceed the maximum district height by constructing the building at a height of 10 stories and is also requesting one concurrent variance.

Staff is recommending approval conditional of the rezoning use permit and concurrent variance request.

The petition was heard at the June 24, 2008 Design Review Board meeting. The Board recommended approval of the request subject to the site plan and to the applicant being required to resubmit the proposed architectural plans for final review.

The petition was heard at the August 21, 2008 Planning Commission hearing. The Commission recommended approval of the petition subject to staff conditions amended to require the applicant to submit a letter from a structural engineer confirming that the existing retaining wall can support the proposed building.

Keith Poimboeuf, One Orleans Place, stated that he has been working with the property owner for about one year and it was originally envisioned as a condominium residential project. The market was falling apart on that type of facility. He has been working in the area of doing some independent living and assisted living. They did a poll in Sandy Springs of all the facilities that were available and came to the conclusion that this is very viable and needs commodity in the neighborhood.

There will be a level and a half of parking underneath the street level and one level of parking above the street level in a common area and eight stories of building above that. It is not ten (10) stories above the parking as was talked in the Planning Commission hearing but, ten (10) stories above the curbs.

They have also addressed the structural engineers with the issues that they had at the planning staff meeting regarding the retaining wall that is there. It is not a structure that's an actual footprint of the columns to be drilled inside that retaining wall to support the building.

Terry Boomer, BH&D Engineers, stated that the retaining wall on site is strictly for earth embankment intended to support the proposed structure on the opposite side of the building. They will drill columns and footings to support the proposed structure within the envelope of the retaining wall.

Masoud Zahedi, 305 Carpenter Drive, stated that he is pleased to change his proposal and submit a new zoning application in order to address the concerns of the City of Sandy Springs Development Department, Sandy Springs Neighbor of Council, Design Review Board, Planning Commission, and Mayor and City Council regarding this project.

Councilmember Jenkins stated that when this application was first discussed her concern was for the 20% greenspace and questioned if he had worked that out in this design. Mr. Zahedi stated that he had.

Mayor Galambos called for public comments. There were no public comments.

Councilmember Fries requested clarification on the footings of the retaining wall.

Mr. Poimboeuf stated that nothing on site would be used to support building structure. All new footings and columns will be provided and constructed and engineered.

Councilmember Fries stated that another issue is the breakdown of these units. The applicant is proposing 80 at 850 square feet, 30 at 1,000 square feet and 60 at 1,200 square feet. She believes that having so many small units is a disservice to Sandy Springs because there are a large number of people that want bigger places.

Mr. Poimboeuf stated that they looked at other 850 square foot units and most of them had two bedrooms. What they have done is utilize this space and they are putting in one bedroom units that will also have a study so that it will essentially have two bedrooms, one to be used as a study.

Councilmember Fries feels that it will hurt the city because there are several facilities like this and Sandy Springs is losing people to other cities that have larger places.

Mr. Zahedi stated that they could combine two units if it was wanted because it is done all the time.

Councilmember Meinzen McEnerny questioned if during construction of these units the applicant decides to change the unit mix or size of unit would it have to come back before City Council.

Director of Community Development Leathers stated that modification of language that you would have no more than 80 units at 850 square feet and at least 30 units at 1,000 and at least 60 units at 1,200 square feet which would allow the applicant to do the larger units without having to come back through the process.

Motion: Councilmember DeJulio moved to approve RZ08-012/U08-006/CV08-014 - 305 Carpenter Drive, *Applicant: Keith Poimboeuf*, To rezone the subject property from A-L conditional to A-L for the development of a 10-story, 170-unit senior apartment building, with a use permit to exceed the maximum district height and concurrent variances with the following staff conditions:

1. To the owner's agreement to restrict the use of the subject property as follows:
 - a. 170 independent living, senior housing units at a density of 142.86 units per acre, whichever is less. Said housing shall have at least 80% of the occupied dwelling units occupied by at least one person who is 62 years of age or older which shall be verified by documentation submitted annually by the owner/developer pursuant to policies and procedures adopted by the Director of Community Development. Exceptions to this requirement shall be made for spouses if at least one (1) of the occupants is at least 62 years of age and for persons with disabilities.
 - b. The minimum heated floor area for the units shall be as follows:
 - a. No more than 80 units shall have a minimum heated floor area of 850 square feet
 - b. At least 30 units shall have a minimum heated floor area of 1,000 square feet
 - c. At least 60 units shall have a minimum heated floor area of 1,200 square feet
 - c. To a maximum building height ten (10) stories.
2. To the owner's agreement to abide by the following:
 - a. To the site plan received by the Department of Community Development dated May 6, 2008. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy.
3. To the owner's agreement to provide the following site development standards:
 - a. The owner/developer shall dedicate thirty (30) feet of right-of-way from the centerline of Carpenter Drive along the entire property frontage or ten and one-half (10.5) feet from back of curb, whichever is greater, to the City of Sandy Springs.

- b. Prior to issuance of an LDP, the owner/developer shall attempt to provide interparcel access with the adjacent properties. Should the owner/developer not come to an agreement on interparcel access at this time with the adjacent property owners, the owner/developer shall provide documentation of such. In addition, if an interparcel access agreement is not obtained; permanent easements shall be recorded allowing for future interparcel access along the entirety of the northern and eastern boundaries of the property, prior to the issuance of an LDP.
- c. All units shall be designed, constructed and operated in accord with the Fair Housing Amendments Act. On an annual basis, the controlling entity shall verify compliance with all provisions of the Fair Housing Act related to occupancy in a manner deemed acceptable pursuant to policies and procedures adopted by the Director of Community Development.
- d. The senior housing development may have at least one (1) unit designated as guest quarters for visitors of residents, but the total number of guest units may not exceed 1% of the total number of units within the development. Guest units shall have a maximum heated floor area of 500 square feet.
- e. The property shall be deed restricted to senior housing except as provided for by Fair Housing laws. Each senior housing development shall post on its premises a notice of its status as a senior housing development in a manner readily visible to and accessible to the residents. Such notices shall be subject to the approval of the Department of Community Development.
- f. The property shall comply with all applicable local, state, and federal regulations and copies of any applicable permits shall be provided to the Department of Community Development prior to the issuance of a certificate of occupancy.
- g. The project is encouraged to incorporate Easy Living and applicable accessibility standards (as administered and copyrighted by a coalition of Georgia citizens including but not limited to AARP of Georgia, Atlanta Regional Commission, Concrete Change, Georgia Department of Community Affairs, Governor's Council on Developmental Disabilities, Home Builders Association of Georgia, Shepherd Center and the Statewide Independent Living Council of Georgia).
- h. Home occupations shall be permitted in accordance with Section 4.12, Home Occupation, of the Zoning Ordinance.
- i. Any proposed change in the use of a senior housing project that does comply with the Fair Housing Amendments Act shall conform to all current zoning and density requirements. Any such conversion shall be considered a zoning modification and be required to be brought into conformance with city standards.
- j. The project is encouraged to incorporate features to enhance the quality of the senior housing development including, but not limited to, laundry rooms on each floor, lounges on each floor with automated external defibrillators (AEDs), balconies on each floor for fresh air, theater-style media centers, library, dining halls, wall-mounted emergency pull cords in each unit's bathroom, aerobics and fitness centers.

Second and Vote: Councilmember Jenkins seconded the motion. There was no Council discussion. The motion carried unanimously.

RZ08-015/CV08-017 - 5335 Roswell Road (SR 9), Applicant: Steve Grubenhoff, To rezone the subject property from A-O conditional and C-1 conditional to C-1 to maintain the existing structures, with concurrent variances.

Senior Planner Ruffin stated that the applicant is requesting to rezone the subject property from A-O conditional and C-1 conditional to C-1 to maintain the existing Waffle House restaurant and 4,400 square foot office building.

The applicant is also requesting three (3) concurrent variances. The applicant's intent is to allow additional uses under the C-1 zoning classification within the existing office building. Copies of a revised set of conditions were provided to City Council with regard to the uses that are permitted within this district and according to the Comprehensive Plan, limiting their retail uses that are permitted in the building.

Staff is recommending approval conditional according to those set of conditions.

The petition was heard at the June 24, 2008 Design Review Board meeting. The Board recommended approval.

The petition was heard at the August 21, 2008 Planning Commission hearing. The Commission recommended approval subject to staff conditions.

Steve Grubenhoff, Representative of Avondale Greenhill, LLC, 5335 Roswell Road, stated that this property is a Waffle House restaurant and office building. This process was started because there is a zoning line going right down the middle of the office building to the right and half of the property was zoned A-O, an old Fulton County designation and to the left it is zoned C-1. The applicants purpose to request a rezoning is to allow the existing buildings and parcel to have just one zoning classification and remove the inactive A-O zoning classification. The applicant would like to lease out the existing building to either an office or retail use depending on what the market would bring.

This site has adequate parking for most retail uses. Negotiations were made to staff on a number of uses under C-1 that would not be applicable. Through all the hearings of this application there were no concerns or questions raised.

He received the revised list from staff before the meeting tonight and removing retail stores or shops as a permitted use on this is a concern to him. The applicant request that this use be reconsidered for this application and to allow C-1 zoning on this property.

Mayor Galambos called for public comments.

Mark Sampl, 130 Steward Drive, Sandy Springs Council of Neighborhoods, spoke in opposition to a portion of the application. His concern with this application has to do with the kind of uses in Glenridge Oaks. On behalf of the Sandy Springs Council of Neighborhoods he attended most of the CLUP meeting and at that time they agreed that Glenridge Oak would only have two uses which were office and residential and not include any retail and the existing retail would only remain until it was redeveloped. The Sandy Springs Council of Neighborhoods do not want retail nodes at Glenridge especially for uses with excessive ingress and egress such as drug stores, art galleries, catering, carry-out, delicatessens, gas stations and laundry mats. They do not want retail use at this location.

Alan Powell, 5645 Colton Drive, High Point Civic Association, Co President, stated that over the past two years a lot of time has been spent on the CLUP in trying to designate areas where particular uses were wanted at the Glenridge node and worked very hard to get that into the plan. This was one of the Associations concerns.

Patty Berkovitz, 800 Crest Valley Drive, stated that as a former member of the CLUP, one of the things they were trying very hard to do is to prevent something that looks like strip shopping. Retail was not included in the description of the Glenridge node. It specifically precludes that type of commercial endeavor that is normally found in retail strip malls.

Mr. Grubenhoff stated that the applicant is not redeveloping this property at this time. He understands all of these concerns if this property is eventually redeveloped. The applicant is only trying to find a use for the existing building and existing footprint without doing any type of redevelopment.

Mayor Galambos questioned staff what limitations are in the plan.

Senior Planner Ruffin stated that the Comprehensive Plan under Node 2B, under the guidelines and policies says retail uses are not permitted in the node. In the Zoning Ordinance there are different diffractions between what retail use is and service use is. The items staff listed are service uses and are not included in the retail category. The difference between service and retail is that retail is the sale of merchandise. Service is providing a service.

Councilmember Fries questioned what the overlay says about businesses. Senior Planner Ruffin stated that the only thing prohibited is pawn shops and automobile type uses. This is in the village district and would not have all the other restrictions that the main street district has.

Councilmember Jenkins questioned the reason the staff report has some uses highlighted and some uses marked out. Ms. Ruffin stated that the original set of conditions included the art galleries, catering, delicatessens and retail stores or shops, are the items that staff is saying that need to come out and do not qualify as service uses. For the repair shops, the City Attorney felt that staff needed to include that it could not involve any sale of merchandise.

Councilmember Jenkins stated that when Council went through the Comprehensive Plan there was an area in her district where Council specifically prohibited retail. If these uses can still come in on C-1, she too is confused. Councilmember Fries stated that if that is the case it should say, retail and no service businesses.

Councilmember Meinzen McEnery stated that she served on three revisions to this very plan. The group recommended excluding retail and that meant anything that could go into a shopping center including services. She does not argue that the Comprehensive Plan in handout allow for commercial in office densities and specifically exclude retail. She argues to the intent of the Comprehensive Land Use Plan and it was meant in the two use nodes to include residential and office. She is in support of making the entire site C-1 and allowing the Waffle House. That is a good suggestion. However, she does want to limit the uses to office only.

Mayor Galambos questioned if retail could be excluded in C-1 zoning.

City Attorney Willard stated that Council could attach limitations to how the property can be used. His concern would be that Council do something contrary to what is in the City Ordinance and it would be best to have the approval by the property owner and accept the position of City Council.

Councilmember DeJulio questioned if this area is part of what was designated as mixed use which went from Glenridge Drive all the way to Beachland with the hope of someone coming in and taking that big parcel and putting in a mix used development which would be residential, commercial and retail.

Senior Planner Ruffin stated that it is a designed live-work-neighborhood. However, the node to be has the policy attached to it regarding the retail.

Mayor Galambos questioned if the Waffle House would be excluded if this is C-1.

Councilmember Meinzen McEnery stated that it would not because the second part of the condition is that the whole tract is put into C-1 and allows only in the office building the office uses and related accessory uses to office. Specifically, in item 2, the existing Waffle House is allowed to operate as a restaurant.

Councilmember MacGinnitie stated that he has a problem with the process that is happening with this application in that the applicant has not seen some of the language until tonight as well as, not being something the Planning Commission did not consider. The applicant may not have even started this process had he known what the outcome would have been in working with staff months ago.

Mayor Galambos questioned if the applicant had any prospective tenants for the office building.

Mr. Grubenhoff stated that they are not negotiating with anyone specifically at this time but have searches for women's boutiques, wedding store and different type medical uses.

Councilmember Meinzen McEnerny stated in adding to Councilmember MacGinnitie's comment is that staff between the time of the Planning Commission and now recognize that the retail uses were not allowed in this area and that is why staff took them out. She questioned the applicant if he would like to withdraw application or have a deferral or denial of his application.

Councilmember Fries requested that staff explain the difference between withdrawal and deferral of application.

Director of Community Development Leathers explained that if this application was deferred staff could meet with the applicant and talk about the type of uses and bring back before City Council. The City Council could allow the application to be withdrawn and the applicant could continue with the existing zoning as it is and if later the applicant decides to do something, he could file. If the applicant received denial on application by City Council, the applicant would not be able to refile anything on this property for one year.

Motion and Vote: Councilmember Fries moved to defer consideration of RZ08-015/CV08-017 - 5335 Roswell Road (SR 9), *Applicant: Steve Grubenhoff*, To rezone the subject property from A-O conditional and C-1 conditional to C-1 to maintain the existing structures, with concurrent variances for 30 days. Councilmember DeJulio seconded the motion. There was no Council discussion. The motion carried 5-1 with Councilmember Meinzen McEnerny voting in opposition.

RZ08-017 - 1040 Balmoral Road, Applicant: James R. Bardin, To rezone the subject property from R-2 to R-3 for the development of two single family residential lots.
Ordinance No. 2008-09-44

Senior Planner Ruffin stated that the applicant is requesting to rezone the subject property from R-2 to R-3 to subdivide and create two single family lots. Staff is recommending approval conditional of the request.

The petition was heard at the August 21, 2008 Planning Commission hearing. The Commission recommended approval subject to staff conditions.

Kay Quigley, Representative, 4999 Peachtree Dunwoody Road, stated that the subject property is at corner of Peachtree Dunwoody Road and at entrance of Derby Hill. The applicant is doing this in hopes to broaden his base for potential buyers and hopes to sell this property at some point in time. This zoning is consistent with the rest of the neighborhood and is also consistent with the future Land Use Plan of Sandy Springs.

To date, the applicant has not received any opposition.

Mayor Galambos called for public comments. There were no public comments.

Motion: Councilmember Fries moved to approve RZ08-017 - 1040 Balmoral Road, *Applicant: James R. Bardin*, To rezone the subject property from R-2 to R-3 for the development of two single family residential lots with the following staff conditions:

1. To the owner's agreement to restrict the use of the subject property as follows:
 - a. Two (2) single family residential lots at a density of 1.75 units per acre.
2. To the owner's agreement to abide by the following:
 - a. To the site plan received by the Department of Community Development dated June 2, 2008. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior

to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all condition shall be in place prior to the issuance of a Certificate of Occupancy.

3. To the owner's agreement to provide the following site development standards:

- a. The owner/developer shall dedicate thirty (30) feet of right-of-way from the centerline of Peachtree-Dunwoody Road along the entire property frontage or ten and one-half (10.5) feet from back of curb, whichever is greater, to the City of Sandy Springs.
- b. The owner/developer shall dedicate twenty-five (25) feet of right-of-way from centerline of Balmoral Road along the entire property frontage or ten and one-half (10.5) feet from back of curb, whichever is greater, to the City of Sandy Springs.
- c. No vehicular access shall be permitted from Peachtree-Dunwoody Road. All access points shall be located on Balmoral Road.

Second and Vote: Councilmember Meinzen McEnerny seconded the motion. There was no Council discussion. The motion carried unanimously.

**RZ08-018/CV08-020 - 5229 Roswell Road (SR 9), Applicant: Friedman Realty Advisors, LLC, To rezone the subject property from O-I conditional to O-I for the development of 2-story, 7,500 square foot office building, with concurrent variances.
Ordinance No. 2008-09-45**

Senior Planner Ruffin stated that the applicant is requesting to rezone the subject property from O-I conditional to O-I for the development of a two (2) story, 7,500 square foot office building. The applicant is also requesting one (1) concurrent variance. Staff is recommending approval conditional of the rezoning request and the concurrent variance.

The petition was heard at the June 24, 2008 Design Review Board meeting. The Board recommended approval subject to the parking spaces on the east property line being developed with pervious pavers.

The petition was heard at the August 21, 2008 Planning Commission hearing. The Commission recommended approval subject to staff conditions.

Pete Hendricks, Representative, 6085 Lake Forrest Drive, stated that this property contains approximately 1.17 acre tract at the southeast corner of Roswell Road and Beachland Drive and is presently zoned in the O-I conditional classification. The request is to zone to O-I for a 7,500 square foot building for live/work/neighborhood which allows densities up to 10,000 square feet to the acre.

The original site plan was submitted on June 5, 2008 that showed access along Beachland Drive which seems to be an issue. The applicant has engaged with Tom and Janet Wells whom live at the very end of Beachland Drive as to the application and what was being proposed. The substance natural of the proposal is an office medical building for a couple of colleagues that operate out of Northside. This would be their office practice and they would like the immediacy of this location to where it is they populate. The applicant ultimately ended up yielding to the sentiment of the neighborhood on August 7, 2008 where the applicant filed and modified the site plan which has no access on Beachland Drive. The applicant stands behind that commitment and respectfully request City Council approval of the application that under condition 2.a. change the reference on the site plan from June 5, 2008 to June 7, 2008 and also delete conditions 3.f. and 3.g. Condition 3.f. states that the applicant has to have a right-in/right-out off of Roswell Road. Condition 3.g. states that there be no access off of Beachland Drive. The City's Traffic Engineer, Mark Moore came out and did an on-site evaluation of the property. Mr. Moore stated that he had a strong preference to close up Roswell Road and have the only point of access on Beachland Drive. Mr. Hendricks explained that he felt that the applicant ultimately needed to stand by the community and agree to no access on Beachland Drive. Mr. Moore acknowledged that he could not take away the applicant's existing full turning movement curb cut. One of the staff conditions has a requirement that the applicant has got to move forward and explore the ability to interparcel access with the tract that is contiguous to the south. Mr. Moore went out and inspected the property and found that there is a very marked topical

applicable change as you go through the southern boundary of this property to the northern boundary from the south. If the applicant did have interparcel access they would absolutely have to be a mutual grading on those two properties in order to make the interparcel access work. The applicant will proceed to try and get the other parcel access and if unable to get it, the applicant will provide an easement on his property showing where that interparcel access would come to.

The Design Review Board and Planning Commission recommended approval of this application and the applicant respectfully requests City Council approval changing condition 2.a. from June 5, 2008 to June 7, 2008 and delete conditions 3.f and 3g.

Mayor Galambos called for public comment.

Brad Keshleay, 235 Beachland Drive, stated that he supports the applicant and expressed his concern with staff's condition regarding the curb cut onto Beachland Drive.

Jan Rabinositz, 55 Osner Drive, stated that she also supports that applicant with the exception of the curb cut on Beachland Drive. It is an encroachment on the residential street and the neighbors do not want it as well as the change that it would require in the placement of the buildings in order for there to be a driveway onto Beachland Drive. This lot has a lot of old trees and it would destroy them.

Mark Sampl, 130 Stewart Drive, Sandy Springs Council of Neighborhoods, Chairman of Transportation Committee, stated that they are also in support of the application and of the applicant closing the curb in keeping open the Roswell Road curb cut and not cutting in to Beachland Drive which is a protected neighborhood.

Alan Powell, 5645 Colton Drive, High Point Civic Association, Co President, stated that he too supports the applicant with the conditions highlighted in staff's report. There has been some confusion about whether or not this was a protected neighborhood or not. In Chapter One, titled, Vision Character Areas and Land Use of the CLUP this area is highlighted as a protected neighborhood. The concern everyone is focused on here is trying to figure out how to minimize the curb cuts and get a better flow. He encouraged the interparcel access which he believes is a great solution here. He requested that City Council take that into consideration in support and if not, he would recommend denial of the application.

Councilmember DeJulio questioned if the applicant had stated that he would put an easement in to agree to interparcel access if the adjoining property becomes developed and it does become plausible to do that.

Mr. Hendricks stated in confirmation of the severity of the topology that exists on this piece of property, drops off so markedly that they have a series of steps here to take you from this property down next door with a feeling of discomfort of even trying to walk down that slope. The applicant will try and engage with the property owner contiguous to the south to achieve interparcel access. If the applicant is not able to do that, a modification revision will be put on the site plan and will have reference in the easement to show the access easement the applicant is providing on his property. At such time this will be available.

Councilmember MacGinnitie requested explanation on the comment made from the public regarding if the curb cut was put on Beachland the building would have to be moved and additional trees would be lost.

Mr. Powell stated that he sees those as two separate issues and does not think that the curb cut being on Beachland had anything in their planning to do with the exact location of the building. He did take a look at the tree loss based on if they were on a driveway and he saw that there was no tree loss either way.

Mayor Galambos stated that she would like to hear from the City's Traffic Engineer.

Transportation Planner Moore stated that the final comment in the staff's recommendations was developed in conjunction with Community Development and went through several iterations over the process. Initially, if this were to come in today with their current zoning and a new building be built for a commercial use that met the current zoning and

did not have to come in for a land disturbance application. Given the City's current development regulations that hopefully will be adopted later this evening, and the States Regulations on spacing of driveway curb cuts and signalized intersections, under all three of those circumstances the curb cut that exists right now on Roswell Road would either be closed or limited to a right-in/right-out curb cut. That is what would have been required by the regulations and put into place. Mr. Moore stated that he did meet with Mr. Hendricks and both understand there is quite a bit of neighborhood concern about this. From Public Works prospective, it is pretty much a safety issue based on the spacing of the curb cut relative to the intersection of Mt. Paran and the intersection of Beachland Drive would be a signalized intersection. Staff's comment was based on the Transportation criteria and safety. The initial Community Development's position obviously was sort of in the neighborhood's support. Staff sat down and went through the details on this when it was realized that staff's comments were somewhat in conflict. Looking at the various citations in the Comprehensive Plan there seemed to be some conflict on differing goals as relative to this site. Staff talked through it and believes that this is not a perfect solution by any means but from a staff level feels this is the best compromise based on safety and neighborhood protection. The land use, effectively, is a low volume use and looks at approximately 20 trips in the peak hour. It lets people come out at the signalized intersection where they do have protective movement and where it is safer. The comments are worded such that not only would it comply with the States Development Regulations but at such time if the applicant could get interparcel access or this becomes part of a larger assemblage, staff envisions that not only the curb cut as exists is too close to the signalization intersection but it would be closed and the access to Beachland would be closed and they would use a combined interparcel access later. Under the current conditions unless there is going to be a redevelopment to the south he does not see a short term interparcel access as very practical so staff is trying to come up with what is the best, safest condition for this parcel to redevelop by itself right now and end up with a more preferable solution in the future.

Mayor Galambos questioned if he had a record of the accidents at this location. Mr. Moore stated that he did not.

Councilmember Fries questioned how far back the driveway from the Roswell Road frontage is. Mr. Moore stated that it is a little more than 100 feet.

Councilmember Jenkins stated she would like for Mr. Moore to address the concerns of coming out of Beachland.

Transportation Planner Moore stated that he could understand the concern if it were an un-signalized intersection, the problem with the sight distance to the south. The problem is this is a signalized intersection. A person waits, gets the green light and this stops all other conflicting movements and then you get to go. If people were running that light with any sort of regularity then it would become an enforcement issue. He would encourage Chief Bertrand to get some units out there because that would be unsafe for the residents of Beachland as it stands now. The site distance would actually improve under any condition with this redevelopment. The visibility at Beachland would improve with the Overlay Streetscape. It will actually improve the sight distance on the shoulder looking at the south and the northbound traffic which was a concern. Basically, they blanket statement without fail, an access at a signalized intersection both incoming and out going is much safer and in the condition states the City would limit the outbound traffic and basically limit the curb cut on Beachland to sort in and out traffic so that people would not even mistakenly turn right and realize that they are at a dead-end and have to turn around to come back.

Councilmember DeJulio stated that for safety purposes he would think the south bound light should turn green first and let the people in the north bound stop for awhile before entering. It would be much safer if the City allowed the curb cut to stay on Roswell Road.

Councilmember Fries stated that her concern is with the car heading northbound on Roswell Road that decides to turn into Beachland to go into this because they missed that opportunity to make a right at Roswell Road. She questioned if there would be enough room for the person coming out of Beachland to see the car turning right coming in. Mr. Moore stated that it would be fine given the low volume generated on the neighborhood and from this. This generates about as much expected volume of probably three houses during the day.

Councilmember Meinzen McEnerny stated that she has three citations from the Comprehensive Land Use Plan. She questioned how the Community Development Department reconcile inconsistencies with the Comprehensive Plan relative to access with the traffic planners recommendations that are seemly inconsistent.

Senior Planner Ruffin stated that this is the first case the department has had to deal with, with conflicting language in the Comprehensive Plan. This would be an opportunity for Council to give additional policy in that area.

Councilmember Meinzen McEnerny stated that she would like to discuss this sometime in the future.

Motion: Councilmember DeJulio moved to approve RZ08-018/CV08-020 - 5229 Roswell Road (SR 9), *Applicant: Friedman Realty Advisors, LLC*, To rezone the subject property from O-I conditional to O-I for the development of 2-story, 7,500 square foot office building, with concurrent variances with the following amended staff conditions:

1. To the owner's agreement to restrict the use of the subject property as follows:
 - a. Office and associated accessory uses at a density of 6,399.32 gross square feet per acre or 7,500 gross square feet, whichever is less.
 - b. To a maximum building height two (2) stories.
2. To the owner's agreement to abide by the following:
 - a. To the site plan received by the Department of Community Development dated August 7, 2008. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy.
3. To the owner's agreement to provide the following site development standards:
 - a. The owner/developer shall dedicate fifty-five (55) feet of right-of-way from centerline of Roswell Road (SR 9) along the entire property frontage or ten and one-half (10.5) feet from back of curb, whichever is greater, to the City of Sandy Springs.
 - b. The owner/developer shall dedicate twenty-five (25) feet of right-of-way from centerline of Beachland Drive along the entire property frontage or ten and one-half (10.5) feet from back of curb, whichever is greater, to the City of Sandy Springs.
 - c. Prior to issuance of an LDP, the owner/developer shall attempt to provide interparcel access with the adjacent property to the south. Should the owner/developer not come to an agreement on interparcel access at this time with the adjacent property owners, the owner/developer shall provide documentation of such. In addition, if an interparcel access agreement is not obtained; permanent easements shall be recorded allowing for future interparcel access along the entirety of the southern boundaries of the property, prior to the issuance of an LDP.
 - d. To reduce the required fifty (50) foot buffer to twenty-five (25) feet adjacent to residentially zoned property along the east property line (CV08-020). The owner/developer shall install a six (6) foot tall, privacy fence interior to the buffer to provide additional screening. Said fence type and design shall be subject to the approval of the Design Review Board.
 - e. The parking spaces along the east property line adjacent to the zoning buffer referenced in condition 3.e. shall be developed with pervious material subject to the approval of the Sandy Springs Arborist.

Second and Vote: Councilmember Meinzen McEnerny seconded the motion. There was no Council discussion. The motion carried unanimously.

Use Permit

U08-012/CV08-019 – 315 Johnson Ferry Road, Applicant: T-Mobile, A use permit to expand the existing ground lease area and to extend the height of an existing cellular tower/antenna, with concurrent variances.
Ordinance No. 2008-09-46

Senior Planner Ruffin stated that the applicant is requesting a use permit to expand the existing ground lease area and to extend the height of an existing cellular tower/antenna from 100 feet to 118 feet. The applicant is requesting two (2) concurrent variances. Staff is recommending approval conditional of the use permit and the associated concurrent variances.

The petition was heard at the June 24, 2008 Design Review Board meeting. The Board recommended approval of the request subject to the deletion of variance #1, the entire landscape strip to allow the existing landscaping instead of the required landscaping.

The petition was heard at the August 21, 2008 Planning Commission hearing. The Commission recommended approval subject to staff conditions.

Sarran Marshall, 1580 Boas Road, Mittrix, Inc., Representative, stated that this use permit is for an extension of the existing telecommunication facility which will allow for reasonable collocation of antennas on the existing structure. After a closer evaluation of the facility, T-Mobile's RF engineers found that the only effective solution to the coverage objective would require the extension of the structure.

The topography of the property is generally sloped upward from the street to the north side of the property with change in elevation of approximately 10-15 feet.

T-Mobile proposes to extend the existing facility by approximately 18 feet for an over all structure height of 118 feet which will consist of a 15-foot pole extension with T-Mobile's antennas mounted at a height of 110 feet in order to maintain the natural appearance of the Pine Tree facility.

A six (6) foot fence is required for T-Mobile's lease area in order to screen and protect the equipment. The facility will be surrounded by natural and proposed vegetative landscaping that will in essence screen the site from view.

The applicant requests City Council approval.

Mayor Galambos called for public comment. There were no public comments.

Councilmember Paul questioned if this was strictly for T-Mobile use or do they lease to other carriers.

Mr. Marshall stated that the tower currently has two other carriers, AT&T and Metro PCS. T-Mobile is renting space on this tower and will be the third carrier.

Councilmember Meinzen McEnerny questioned if the six foot fence was a requirement or to improve the look of the area. Mr. Marshall stated that it is a requirement and that most of the existing landscaping will remain.

Councilmember Meinzen McEnerny questioned if the condition on this was written correctly.

Senior Planner Ruffin stated that condition 3.b. allows the applicant to delete the required six (6) foot fence. This condition would need to be deleted.

Motion: Councilmember Fries moved to approve U08-012/CV08-019 – 315 Johnson Ferry Road, *Applicant: T-Mobile*, A use permit to expand the existing ground lease area and to extend the height of an existing cellular tower/antenna, with concurrent variances with the following amended staff conditions:

1. To the owner's agreement to restrict the use of the subject property as follows:
 - a. One pine tree type monopole communications tower and associated accessory structures.
 - b. The communications tower shall not exceed 118 feet in height, including any required tower lighting, lightning rods, or other tower extensions.
2. To the owner's agreement to abide by the following:
 - a. To the site plan received by the Department of Community Development dated June 24, 2008. Said site plan is conceptual only and must meet or exceed the requirements of the Zoning Ordinance and these conditions prior to the approval of a Land Disturbance Permit. Unless otherwise noted herein, compliance with all conditions shall be in place prior to the issuance of a Certificate of Occupancy.
 - b. Federal Communications Commission regulations as pertinent to communications towers in residential areas.
3. To the owner's agreement to provide the following site development standards:
 - a. To allow for an alternate landscape plan as shown on the site plan received by the Department of Community Development dated June 24, 2008 in lieu of the required 10 foot landscape strip surrounding the existing facility and to allow the existing mature trees to remain and infill landscaping to be installed as proposed to screen the site (CV08-019).

Second and Vote: Councilmember Meinzen McEnery seconded the motion. There was no Council discussion. The motion carried unanimously.

New Business:

**Consideration of approval of an Ordinance to Revise the Boundaries of the Fulton Perimeter Community Improvement District.
Ordinance No. 2008-09-47**

Senior Planner Ruffin stated that the Planning Commission heard this item at the August 19, 2008 hearing. The Commission recommended approval as presented by staff with the amendments discussed at the previous meeting.

Motion and Vote: Councilmember Jenkins moved to approve an Ordinance to Revise the Boundaries of the Fulton Perimeter Community Improvement District. Councilmember Meinzen McEnery seconded the motion. There was no Council discussion. The motion carried unanimously.

**Consideration of approval of an Ordinance adopting the City of Sandy Springs Development Regulations.
Ordinance No. 2008-09-48**

Assistant Director of Land Development Dettwiler stated that this item is for the approval of Development Regulations which is a compilation of current policies and regulations governing development in the City. These regulations are made up of aspects of the subdivision regulations, zoning ordinance, driveway manual, and sidewalk policy. It also takes into account addressing and utility crossings.

Councilmember Fries stated that she would like to address Section 11.12.4. – Mailboxes shall not be constructed in any location that may block or in any way impair or obstruct visibility. She would like to delete this language and have it

say: "All monument-type or brick, stone, or masonry veneered mailboxes must be constructed with a hollow core. Concrete block construction is prohibited".

Motion and Second: Councilmember Jenkins moved to approve an Ordinance adopting the City of Sandy Springs Development Regulations. Councilmember Meinzen McEnerny seconded the motion.

Motion to amend and vote: Councilmember Fries moved to amend section 11.12.4 to read "All monument-type or brick, stone, or masonry veneered mailboxes must be constructed with a hollow core. Concrete block construction is prohibited. Councilmember Paul seconded the motion. The motion carried unanimously.

Councilmember Meinzen McEnerny stated that she would like to have public comment on this item.

Gary Unell, 5 Highland Valley Court, stated that he received this late yesterday at the Homebuilders Association. He would like to address Section 11.4.3, Residential Driveway Standards, h) In-fill or single lot development – all driveways shall be located outside of building setbacks and zoning buffers, unless a property's shape, topography or other physical conditions existing at the time of the adoption of this Ordinance completely and totally prevents access to the property.

Mr. Unell stated that there are many situations where there are tear downs in the City of Sandy Springs on nice size lots, ¾ acre lots that currently have turn a rounds which is part of your driveway in the side yard setback. He assumes and needs clarification that the city is trying to get away from that. One, if you are tearing down a house and there is already a side turn around going into the house, he questioned why this would be eliminated. If you do eliminate it, you will end up with a tremendous number of courtyard type homes or front entrance homes because you can not put side entrance on it because of the width of the lot. It has been that way since he has been building for 30 plus years. You can put the turn around into the side yard. He would like clarification on this and questioned if it was different if it was already in existence.

Mayor Galambos questioned if this is put in the subdivisions or for in-fill.

Director of Community Development Leathers stated that when the original discussions were held with the Homeowner Builders, staff included the provision for just the exterior of the subdivision. At that time, she does not think they anticipated the nature of the issues that have subsequently come from some of the builders. As a result, it was included for only single lots that are being reconstructed.

Mayor Galambos stated that Council thought it was for subdivisions. Councilmember Meinzen McEnerny stated that she knew it was for in-fill.

Joe Padilla, 110 Susobell Place, Greater Atlanta Homebuilders Association, stated that the association has met with staff on this issue and as Ms. Leathers indicated they had originally had a discussion regarding the lots that were assemblages or subdivisions and had agreed that any exterior lots would be acceptable to have elimination of driveways from that side setback. On examining it further they realized as they looked at in-fill lots the impact was beyond anyone's expectation. The reality is this will make in-fill impossible in Sandy Springs. A builder would not be able to do anything with the side low garage. With the price of homes there is not anything that would built sub \$600,000 and when you get to that price point, a three car, four car side low garage is what the market demands and there is no way to do it. Most of the lots in Sandy Springs have a driveway that goes up the side of the lot already in the 15 foot setback. To pass this language would essentially put all of those in non conformance and you would be in a situation where the builder when building the home would have to take the lot into the front yard, damage more trees, take out more landscaping in order to keep that side setback untouched. He does not know of any neighboring jurisdictions that have a restriction where a driveway can not be in the side setback. If this is passed, it is going to make Sandy Springs significantly less competitive with Atlanta, Dunwoody, Vinings and Roswell that allow it. From a planning standpoint it is unprecedented. Greater Atlanta Homebuilders Association request that Section 11.4.3 (h) be taken out and allow them to work with staff to come up with solutions or strike the language entirely from the Development Regulations because it would be devastating for this market.

Randy Arndt, 6240 Aberdeen Drive, stated that he is a builder in Sandy Springs and he focus exclusively on in-fill lots. He has several examples of lots that he currently owns that are in various stages that they are planning to redeveloped that already have existing side entry garages. By forcing the movement of that driveway from where it currently is would impact additional trees, large canopy trees that exist in the front yard in order to do front loaded garage. Additionally, they would have to shift the house closer to trees because 30 feet is normally needed for a turn in for a side yard garage. If the home is built on the 15 foot line it would potentially be more impact to trees rather than just having the driveway there.

Bobby Webb, 206 Stewart Drive, Executive Committee, North Fulton Chapter of Greater Atlanta Builders Association, presented a drawing of a structure of a house and explained what would happen with the house using the current regulations and with the new section of the regulations if approved. He stated that under the current rules the house could be built. Now, the house has been pushed and the footprint has changed. The driveway coming in off of this road comes inside the setback. Under the current rules, you could go five (5) feet from the property line with the driveway turn around. If this is changed, the driveway would have to be pushed 10 feet over inside the setback, virtually having no turn around for a side entry garage. One option is that he could reduce the footprint of the home. If he reduces the footprint of the home, economically it's done. There is no way to recapture the cost of this lot or the cost of the tear down or even if it is a vacant lot. The in-fill business really would be over. A front entry garage is not desirable in this price range of the homes in Sandy Springs, more on the smaller end. Another option, an L shaped home, nothing wrong with a little courtyard in front. The purpose of the driveway ordinance is to try and save some of the trees, try to save some of the buffer between the properties but if allowed to bring the footprint of the home all the way to the setback, the critical root zone of the tree is going to be impacted and having a driveway going over it, the tree would have to come out. It is not really serving a purpose of what the City is trying to achieve here. We need to figure out what the goals are and how to achieve them.

Thomas Alexander, 275 Forrest Lake Drive, stated that he is a builder in Sandy Springs. He does tear down type development. They typically buy an older ranch and the driveway is on the side and has been for years. There is mature landscaping and trees in front of the house and the grade is already set with mature landscaping. They try to keep the integrity and look of the neighborhood when they build the new houses without coming in and totally regarding the whole property. If they had to keep the driveway out of the setback and build a motor core they will have to re-grade the whole front of the house and it would not be in keeping of the other homes on the street.

Councilmember Meinzen McEnerny stated that she has a copy of a letter that was sent to City Council from Mr. Padilla. Mr. Padilla mentioned early that he would prefer that this section be deleted tonight so that you could work with the organization to come up with a potential compromise. She requested that Mr. Padilla discuss in general terms his idea of potential compromise.

Mr. Padilla stated that the Association understands where the Council is trying to come from. There are a lot of different issues that are coming into play when you either have shifting that driveway into the front yard can create some problems. He does not want to propose a solution right now without having a talk with city staff or his builders. The lots in Sandy Springs are so unique and so different. He believes that there are solutions. If the Development Regulations are adopted as is, it would be detrimental. Greater Atlanta Homebuilders Association is willing to work with staff on finding other options.

Motion to amend and vote: Councilmember Fries moved to remove Section 11.4.3(h). Councilmember Paul seconded the motion. There was no Council discussion. The motion carried unanimously.

Vote on Main Motion: The motion carried unanimously.

Consideration of approval of an Ordinance to amend Chapter 54, Article V, Sec. 54-117 of the City of Sandy Springs Code of Ordinances to add a new subparagraph to provide for the establishment of a limit on occupation taxes assessed by the city.
Ordinance No. 2008-09-49

City Attorney Willard stated that Council discussed at the last work session the proposed amendment which will put a dollar limit as to the maximum amount of a business license tax that any one business will pay annually in the City of Sandy Springs to be \$400,000.

At the suggestion of City Council there the following language has been included in the ordinance, in paragraph (c) "The maximum amount of occupation taxes to be paid in any calendar year (the "maximum amount") shall be adjusted annually in an amount not to exceed three percent (3%) of the prior year's maximum amount." This adjustment will become effective as of January 1, 2009.

Councilmember MacGinnitie stated that he is opposed to billing in a cost of living increase on these kinds of taxes.

Councilmember DeJulio stated that he was under the impression that nobody is paying this amount.

City Manager McDonough stated that there is one other business that is close.

Assistant City Manager Rapson stated that Cisco is at \$398,144 and once you go beyond that you get to Mirant and would be calculated roughly just shy over \$12,000,000 based on their gross receipts.

Councilmember Jenkins stated she would like for Mr. Rapson to explain what other cities do.

Assistant City Manager Rapson stated that he has compared four cities, and Fulton County in the past had a cap of \$100,000 on gross receipts. Fulton County is eliminating that cap and decided to outsource the entire function with the creation of Sandy Springs. They would be more in compliance with Sandy Springs moving forward. The City of Atlanta has a \$100,000,000 cap. There are businesses in the City of Atlanta that actually pay over \$400,000 and were not forth coming with giving out that information.

Councilmember MacGinnitie questioned what Mirant would have paid under the \$100,000,000 cap. Mr. Rapson stated that Mirant would have paid the city \$360,000.

Councilmember Paul stated that he is not opposed to having this come back to Council for a revisit and vote in the future. He does not object to Councilmember MacGinnitie statement.

Councilmember DeJulio stated that Mirant is the only company this affects. The City is saying to these two companies they have a cap.

Councilmember Paul stated that everyone has a cap but at this time they are not necessarily hitting it.

Councilmember DeJulio stated that if this company had an increase in gross receipts they would not pay more. "We are damned if we do and damned if we don't here".

Councilmember Jenkins stated that this only benefits the one company and she has a concern with it.

City Attorney stated that at this time the City has two companies that may be affected by this but other companies in the future could be affected by this.

Councilmember Paul stated that this it is a cap for all companies currently based on the current gross receipts. Apparently, only one company is affected at this time.

Councilmember Meinzen McEnerny stated that the whole idea that was brought before Council resulting from this is the fact that the City did not have a cap. It is to promote business in the Sandy Springs community. She believes that this motion is in the best interest of the community and encourages companies to stay in Sandy Springs.

Motion and Vote: Councilmember MacGinnitie moved to approve an Ordinance to amend Chapter 54, Article V, Sec. 54-117 of the City of Sandy Springs Code of Ordinances to add a new subparagraph to provide for the establishment of a limit on occupation taxes assessed by the city with an amendment to remove the following language: "The maximum amount of occupation taxes to be paid in any calendar year (the "maximum amount") shall be adjusted annually in an amount not to exceed three percent (3%) of the prior year's maximum amount." Councilmember Meinzen McEnerny seconded the motion. There was no Council discussion. The motion carried 4-2 with Councilmember Jenkins and Councilmember DeJulio voting in opposition.

Public Comment

Patty Berkovitz, 800 Crest Valley Drive, stated that this issue has been troubling her for sometime and affects many zonings that come before City Council. When Council directs a neighborhood to negotiate with an applicant, it is incumbent on Council as a body to support the compromises involved as long as they are reasonable and legal. When subsequent applications are brought before Council requesting to throw out the negotiated solutions that were agreed to as a condition of the previous zoning you run the risk of underlining the process by removing any incentives for them to negotiate at all. Without the protection of that process, stalemates and ill will will be the only result.

Ms. Berkovitz stated that she sits through a lot of these meetings and is having a problem with watching her district, district 6 representative disrespected. The rolling of the eyes and groans and everything else when she speaks annoys and offends her as it does many other people who are in district 6. She wants her district councilmember to be treated with respect and courtesy.

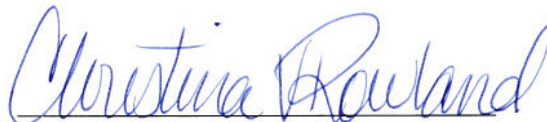
Adjournment

Motion and Vote: Councilmember Meinzen McEnerny moved to adjourn the meeting. Councilmember Fries seconded the motion. There was no Council discussion. The motion carried unanimously and the meeting adjourned at 8:15 p.m.

Date approved: October 7, 2008



Eva Galambos, Mayor



Christina V. Rowland, City Clerk