

Work Session Meeting of the Sandy Springs City Council was held on Tuesday, January 5, 2016, at 7:20 p.m., Mayor Rusty Paul presiding.

Councilmembers present: Council Member John Paulson, Council Member Ken Dishman, Council Member Graham McDonald, Council Member Gabriel Sterling, Council Member Tibby DeJulio, and Council Member Andy Bauman.

STAFF DISCUSSION ITEMS

Public Works

1. 16-021 North Roswell Road Beautification

Public Works Director Garrin Coleman gave a Roswell Road North of Abernathy Road Enhancements PowerPoint presentation.

Council Member John Paulson asked if the Cantera Vertical Wall Mix design is anywhere in the City.

Public Works Director Coleman responded no.

Council Member Gabriel Sterling stated he believes the maintenance on the stone face will be easier over time.

Public Works Director Coleman stated that is a good point. One thing that GDOT will want is for the City to assume the maintenance of the walls.

Council Member Paulson asked if GDOT has funds for the beautification of the North Ridge interchange.

Public Works Director Coleman responded no. The City spent \$500,000 on the Mast arm, detection upgrades, and decorative stamping on the retaining walls.

Council Member Graham McDonald asked about the Old Milton Parkway beautification.

Public Works Director Coleman stated the City's project will be less grandiose. The City will be doing a reinforced basin with smaller trees.

Council Member Paulson stated the colored stamping on the street in Roswell seems to be longer than 150 feet.

Public Works Director Coleman stated in some sections it was longer than 150 feet. He has heard that some drivers are confused if they should drive on the stamping or not.

Council Member Sterling asked if GDOT not allowing raised medians on roads with posted speed limits of 45 mph or greater is regulatory or State law.

Public Works Director Coleman responded he believes it is a regulatory policy.

Council Member Sterling asked what the costs are of the Hightower Trail at Roswell Road and Roswell Road at Dunwoody Place plantings.

Public Works Director Coleman stated staff does not have a good number. What was done at Abernathy and Roswell Road cost about \$10,000 to \$15,000 for demolition and another \$16,000 for the plantings. The total cost was around \$25,000 to \$30,000.

Council Member Sterling stated as much as he wants the mast arms to be painted, if the paint only lasts three years, would the City receive more of a benefit spending the money on the Dunwoody Place island and the Hightower Trail island.

Council Member Ken Dishman stated he is more in favor of painting the mast arms.

Council Member Sterling stated the T-0042 Roswell Road bridge project is on hold.

Public Works Director Coleman responded correct. The plantings were the first expenditure from the account with a couple subsequent maintenance expenditures out of the account. There is about \$745,000 left remaining in the account. Staff will work with the Finance Director in moving forward with these projects as a priority.

There was a consensus of Council to move forward with these projects.

Community Development

1. **16-022** Consideration of Amending Section 103-91 of the Sandy Springs Code of Ordinances (underground utilities)

Assistant City Manager Jim Tolbert stated the City Code currently states that when a road widening occurs and it requires the relocation of utilities, the utilities must be placed underground. City staff's interpretation of the road widening is that it includes additional streetscape as part of the road section. In looking at the City Springs Master Plan, staff believes clarity on underground utilities needs to be added to the ordinance. The ordinance can require that in any widening or work where utilities are to be relocated, they are required to be placed underground. There have been a few cases where the utility lines are six feet behind the work that is going on, but they are still relocated in front of the project. The ordinance does not require those utilities to go underground. Staff proposes the Code be amended to be clear about what type of project requires the utilities to be placed underground. The suggested change will also require if a project is under construction and there are utilities along the road frontage, those utilities must be placed underground. He referenced photographs of utilities that will be placed underground. The proposed ordinance will clarify the requirement on what is required and that if there are utilities along a street frontage, they be placed underground.

Council Member Gabriel Sterling stated the City is already enforcing this, but the City just wants to make sure there is legality behind it.

Assistant City Manager Tolbert responded yes.

There was a consensus of Council to move this item forward to the next Regular Meeting.

2. **16-023** 2016 Tree Fund Projects

Community Development Director Michelle Alexander gave a 2016 Tree Funds Projects PowerPoint presentation.

Council Member Andy Bauman stated he recalls there was discussion regarding the intent for tree planting, enhancement, and preservation of tree canopy. That enchantment would not be for shrubbery and landscaping. If there are opportunities for enhancement and preservation directly related to tree canopy he would prefer that.

Council Member Gabriel Sterling asked what species of trees are being considered for planting along Roswell Road.

Community Development Director Alexander stated staff has not gotten that far in the planning process. The trees may be smaller trident maples or something smaller.

Council Member Sterling stated he would like to follow up on public comment from earlier. If there is going to be a billboard that is about sixty feet high, is there any tree the City will plant that will get in the way of the billboard.

City Attorney Wendell Willard stated he has dealt with the billboard companies on many occasions. Roswell Road is a State road, so State law applies. GDOT will control what is permitted as far as type of trees that can be placed in the area near a billboard. The City will not have much leniency as to trees in these areas. The billboard has an area called the "cone of view", which is about a 500 foot section that is regulated by State law. The height of the sign does not have any bearing on the law. There is a limitation about the cone of view and having trees planted in that area under State law.

Council Member Sterling stated at a later date he would like a broader explanation of what the law is. One of the first things he did when he was elected to office was vote in favor of a resolution to veto the State law that governs billboards.

Council Member John Paulson asked if this area was just rezoned for redevelopment.

Council Member Sterling responded no.

Council Member Graham McDonald stated from what he sees in the pictures, the addition of the trees will improve the appearance of the Johnson Ferry area.

Council Member Paulson stated there was a comment made during public comment about enhancing the criteria for areas where the trees are thinning.

Council Member Bauman stated the proposed list is a great list. On page six of fourteen, under the evaluation criteria, is where canopy has been lost. He sees worthy projects all over the City, but not many projects in the south where a lot of canopy has been lost. When the criteria is being applied to potential projects, the City needs to take this into consideration. There has been discussion for quite some time about using GIS technology to identify where the City is gaining and losing tree canopy. The City has limited resources for the funds and should be strategic on how to use the funds. Investing in technology with some of the funds at some point may be a good idea.

Council Member Sterling stated the City has the tree canopy study. What needs to be done is to use the permitting processes in finding each watershed and each sub-watershed and relate it to where the canopy is being lost. Scientific rationale should be used to determine where the tree canopy is being lost. There should also be discussions with Trees Atlanta. One way they have addressed the canopy issue is they go to the right-of-way areas in the neighborhoods that have lost tree canopy and plant trees in the right-of-ways, with the agreement of the neighbors. This idea will help bring trees to the neighborhoods and replace the canopy in the areas where it has been lost and where stormwater issues are. This technology is in place with the tree canopy survey and the new tool the City has worked with to find the hot spots of places to do tree plantings. The hot spot technology has been used for floodplains on the coast of Australia, but no one has used it for stormwater before. The City will have to work to get to a point to come up with a scoring system. This technology will allow the City to find out what will happen when properties are zoned with certain amounts of impervious surface and what it will do to the overall watershed and tree canopy. He agrees with Council Member Bauman in utilizing the tools the City has. He was working with staff member Josh Lontz on possible software ideas.

Council Member Bauman stated this is a good list. This is a complex topic, but not for this Work Session. The question is how to convert this talk into action. The projects should not be held up. The idea of a public/private partnership is a good idea. Staff has established evaluation criteria and they then go through it. He gave this list to a small group of citizens that are very interested in this topic and he received quick replies. Most of the replies were great. We know from experience that there is a passion for this issue. He hopes that citizen engagement can be brought to this process in a way that will result in a better outcome. He asked that two areas be looked at for consideration, one of them in response to his email from Carol Thompson at Heritage Sandy Springs. She stated that she is having issues with trees that need to be replaced on her property. Another issue is the area along I-285 by the new Heard's Ferry Elementary School where a tremendous amount of tree canopy has been lost. The school system has planted some trees for now. Perhaps there would be greater noise reduction if more trees are planted.

Council Member Sterling stated the City has the road conditions analyzed every three years. The City has tools in place to do something similar with the tree canopy and he wants to get to the point of doing that.

There was a consensus of Council for staff to work on the list and bring it back at a future City Council meeting.

3. **16-009** Resolution of the City Council of the City of Sandy Springs, Georgia, to Authorize Extension of a Temporary Moratorium on the Acceptance of Applications for the Rezoning of Property into the Zoning Classifications of A, AL, C-1, C-2, O-I and MIX

Assistant City Manager Jim Tolbert stated in July, 2015 Council passed a 180 day moratorium for the acceptance of any zoning applications in the classifications of A, AL, C-1, C-2, O-I and MIX. That moratorium expires on January 17th. He asked if Council wants to let the moratorium expire or consider extending it. The City's Planning Team will be at the Council Retreat to give an update on the proposed new zoning ordinance. In early March, staff would like to have a meeting with Council, the Zoning Advisory Committee, and the Planning Commission where the zoning consultant will be ready to present an outline of how he would like to move forward with the ordinance based on what is being heard in the Comprehensive Planning Meetings. Council did adopt the interim guidelines, should Council chose to let the moratorium expire. If Council takes no action, the moratorium will expire on January 17th. If Council wants to consider extending the moratorium at the next meeting, they can do that as well. He was asked the question about when staff would see rezoning applications. There are two in process currently, one of them is large and the other is small. Both applicants have held their preliminary application meetings and are scheduling their first citizen meetings. Those will come to Council in May of this year at the earliest. The larger application will more likely trigger a DRI in June or July, if there are no deferrals of the application by the Planning Commission. If the moratorium is not reapproved, the City is six months or more away from any application coming before Council for consideration.

Council Member Tibby DeJulio asked if the moratorium is renewed, will it be at the next meeting.

Assistant City Manager Tolbert responded yes. There are no submittal opportunities for rezoning applications, because the applicant has to have a preapplication and community meeting prior to applying. The two applications in process have a deadline of February for the official application. If Council renews the moratorium at the next meeting, it will end any applications for 90 days.

Council Member DeJulio asked about the two applications that are currently in process.

Assistant City Manager Tolbert stated one is a small rezoning request to change the zoning to O-I. The other is a project on Perimeter Center West for about 1 million square feet of mixed use across from the MARTA station.

Council Member Andy Bauman stated at the last Council meeting when the interim development guidelines were adopted, he asked whether those could be used by Council for consideration in zoning cases. He asked if Council can use the guidelines.

Assistant City Manager Tolbert responded yes. The guidelines are to provide guidance to the development community to clarify the things that Council is looking for.

Council Member Bauman stated those guidelines can be used in the future consideration of zoning cases that come before Council.

City Attorney Wendell Willard stated Council may use the guidelines, but they are not binding like an ordinance. The City can encourage applicants to recognize and follow the guidelines.

Mayor Rusty Paul stated the guidelines give Council a basis for determining whether to approve projects or not. The guidelines are for developers, the public, Council and staff.

Assistant City Manager Tolbert stated the guidelines clarify Council's intent and understanding of the intent of the City Code.

Council Member John Paulson stated if the moratorium is allowed to lapse, it does not sound like there are dangerous things lurking around the corner. The purpose of the moratorium was to establish City zoning goals moving forward. He asked if it is necessary to extend the moratorium. He asked what the pros and cons are of extending the moratorium or not extending it. He does not see it imperative to extend the moratorium, but he may not have enough information.

Assistant City Manager Tolbert stated extending the moratorium gives an absolute stop, meaning that there will be no rezoning applications.

Mayor Paul asked if extending the existing six month moratorium would create a legal issue for the City. There have been some communications that a ninety day extension would be legally supportable.

City Attorney Willard stated there is nothing in the law that tells a governing body what is and is not a sufficient permissible time for a moratorium. The court recognizes that a ninety day moratorium is not unreasonable. The only issue that the City may run into is the right of a person that argues they are filing an application and the application is based upon the City's existing ordinances as of this date. The applicant's argument would be an ordinance cannot be changed where there is a permissive use under the current ordinance. Currently, there is case law being heard both ways to that concern. This issue is not quite the same as when there is a land disturbance permit. The court will look at what is a permissible constitutional right of a use of the person's property. The length of time it takes a party to go through a rezoning may be up to six months. If an application is filed today and vested today, he asked what it may mean when coming before Council. If Council denies the application, the issue still goes to court whether the ordinance is changed or not, should the applicant feel there is a restriction that has been applied to the use of their property that does not meet the constitutional standards. If Council does not continue with the moratorium, the City will have a good argument, because policies have already been put in place as far as the guidelines.

Council Member Bauman asked when does staff think the City's ordinance will be amended.

Assistant City Manager Tolbert stated the time frame will probably be another six to nine months.

Council Member Bauman stated if a ninety day extension is approved for the moratorium, the City will be in the same place in another ninety days.

City Attorney Willard stated an applicant can argue with the court that they are not able to use their property by getting a rezoning due to the moratorium. The court then may ask the City why they are not allowing an owner to do something with his property. City staff is working on creating a new ordinance, but in the meantime property owners will say they have a right to use their property.

Council Member Bauman stated the issue is extending the moratorium until the new ordinance is in place.

Council Member Sterling stated Council cannot do that.

Council Member DeJulio asked why that cannot be done.

City Attorney Willard stated there is nothing in the law that states limitations. He knows of one court case where ninety days was not an unreasonable time frame.

Council Member Bauman stated Council is not giving up their right to review rezoning cases.

Council Member Sterling stated the worst thing that can happen is the City receives a rezoning case in six months and Council can vote for or against the case.

City Attorney Willard stated when Council votes for or against a zoning case it is based on whether the applicant did or did not follow a directive of a policy that the City wants property owners and applicants to follow.

Council Member Sterling stated when the moratorium was previously passed, it was for the purpose of creating interim zoning guidelines and that was achieved in December.

Mayor Paul stated if Council wants the new City Code to apply to new rezoning applications, they would need to buy some time.

Council Member Sterling stated if Council approves a ninety day moratorium, the new code still would not apply.

City Attorney Willard stated if the moratorium is extended, the City would buy sufficient time during the next ninety days for things to be better formed as to what the code will look like. Council will be receiving information on January 26th at the retreat and also at the joint meeting in March.

Council Member Sterling stated that will be an internal review and discussion.

Mayor Paul stated Council will start providing final direction to staff and to the consultants about what the ordinance should look like. After the March meeting the ordinances will be drafted.

Council Member Sterling asked why the interim zoning guidelines were passed.

Assistant City Manager Tolbert stated because staff needed something to use to interpret the City's current code.

Mayor Paul stated if the moratorium is not extended, the guidelines will still be in place.

Council Member Graham McDonald asked what would be accomplished if the moratorium is extended for an additional ninety days. He asked if there is any thought that the interim guidelines will be potentially amended or updated as a result of the work product that will come out of the additional ninety days.

Assistant City Manager Tolbert stated he does not anticipate a change to the interim guidelines. Staff has provided the guidelines to the team and they will look at those to get a better understanding of Council's intent when developing the zoning code. He believes the guidelines may influence the zoning code more than the zoning code influences the guidelines. The one thing the moratorium would do is to give Council time to review the Comprehensive Plan and give feedback and direction to make sure that is going in a direction that Council is interested in. When the joint meeting on the zoning ordinance is held, an analysis of the code will be done along with conceptual ideas. Suggestions will be needed, particularly along Roswell Road and in the PCID area. At that point, if an application were submitted to the City, staff will have an idea whether or not it is consistent with both where the City is now and where we are going in order to help guide Council in making a decision. The moratorium is only for rezonings and not for a building permit. Property owners who are entitled to build on their property currently may do so after receiving a building permit.

Council Member Sterling stated the City is not adopting new policies or changing the zoning code. The public was told the moratorium was to be six months in order to pass the interim guidelines and that was achieved. Now Council is discussing three additional months to look at internal meetings to decide the direction. He does not understand how that interacts with the zoning applications as it exists.

Assistant City Manager Tolbert stated extending the moratorium gives Council the opportunity to make sure there is a better understanding of where the City is going with the zoning codes. As for the applications that come to the City for a change of zoning, the applicants should be doing what is based on the interim guidelines of what Council wants to achieve with the zoning ordinance.

Council Member Sterling stated it will not be a zoning ordinance. Other than changing policy, he is not sure what else can be done. This conversation is going in circles.

Assistant City Manager Tolbert stated extending the moratorium gives Council three more months to study and refine where we are, if Council chooses to extend it.

Council Member McDonald asked if from staff's perspective there will be a need to amend the interim guidelines.

Assistant City Manager Tolbert responded no, he does not believe so.

Council Member Paulson stated if Council allows the moratorium to expire, they can use the interim guidelines as a basis and that is why they were created. He is trying to understand what the City will gain by extending the moratorium for ninety days. It is concerning to him that the moratorium was for six months and there is the possibility of extending it again.

Mayor Paul stated there is the potential for fewer projects under the current ordinance as opposed to the ordinance that is being drafted now.

Council Member Sterling asked if that is a legal and legitimate reason to extend the moratorium. If the moratorium is extended, there will be fewer projects under the old zoning code.

City Attorney Willard stated it is presumed there will be no rezoning applications unless they come in and follow the interim guidelines.

Council Member Sterling asked if someone applies for a rezoning a day before the new zoning code is adopted, does the old zoning code apply.

City Attorney Willard responded yes.

Council Member Sterling asked what will be gained if the moratorium is extended.

City Attorney Willard stated under the current zoning, without a moratorium, the only thing that can be used is the policy guidelines. The ordinances override the guidelines.

Mayor Paul stated the guidelines provide a sense to the development community of what it is the Council is likely to prove or not approve. The applicant has to decide if they want to move forward with the application or not.

Council Member DeJulio stated it seems the City has nothing to lose by extending the moratorium.

Council Member Sterling stated the reality is the City will receive more rezoning applications at one time.

Mayor Paul stated he is not sure that can be assumed. The City will receive what the market dictates.

City Attorney Willard stated some jurisdictions have limited the amount of applications they will allow to be received during a cycle.

Council Member Sterling stated he believes the limit is seven.

Assistant City Manager Tolbert stated he is not sure if it is an ordinance or a policy, but staff only accepts seven applications in any given month.

Council Member Sterling asked if that includes a single family home asking to be rezoned to two homes.

Assistant City Manager Tolbert stated he believes it is any rezoning.

Council Member Bauman asked if that includes any City initiated rezonings.

Mayor Paul stated he does not think there is a lack of understanding, what is lacking is a consensus of Council.

There being no further discussion, the meeting adjourned at 8:23 p.m.

Date Approved: January 19, 2016



Russell K. Paul, Mayor



Michael D. Casey, City Clerk