

In The Matter Of:

City of Doraville

State of Georgia

City Council Meeting

September 17, 2012

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CITY COUNCIL MEETING

CITY OF DORAVILLE

STATE OF GEORGIA

Transcript of the meeting held at the

Doraville City Hall, 3725 Park Avenue,

Doraville, Georgia, Mayor Donna Pittman

presiding; before Theresa Bretch, Certified

Court Reporter; commencing at approximately

6:30 p.m. on Monday, September 17, 2012.

1 PROCEEDINGS
2 MAYOR PITTMAN: Meeting come to order.
3 Welcome to everyone and please rise for the
4 Pledge.

5 - - -
6 (Pledge of Allegiance)
7 - - -

8 MAYOR PITTMAN: Thank you. Tonight we have
9 a special guest, Representative Scott Holcomb, who's
10 going to come and say a few words to us, and I guess
11 if Council has any questions for you if you don't mind
12 taking those.

13 REP. SCOTT HOLCOMB: Where would you like
14 me?

15 MAYOR PITTMAN: Right up here would be
16 great. Thank you and welcome.

17 REP. HOLCOMB: You're welcome.

18 MAYOR PITTMAN: Thank you for taking a few
19 minutes out of your busy schedule.

20 REP. HOLCOMB: Thank you, Mayor Pittman.
21 It's a pleasure to be here with y'all tonight, and
22 mostly what I wanted to do was to introduce myself to
23 those of you that I haven't had the pleasure of
24 sitting down with and meeting.

25 As many of you or all of you know, we went

1 APPEARANCES:

2 Doraville City Council:

- 3 Mayor Donna Pittman
- 4 Councilmember Maria Alexander
- 5 Councilmember Trudy Jones Dean
- 6 Councilmember Pam Fleming
- 7 Councilmember Karen Pachuta
- 8 Councilmember Robert Patrick
- 9 Sandra Bryant, Acting City Clerk

- 10
- 11 Cecil G. McClendon, Jr., City Attorney
- 12 Leonid Felgin, Assistant City Attorney
- 13 Riley McLendon, LLC
- 14 315 Washington Avenue
- 15 Marietta, GA 30060
- 16 (770) 590-5900

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1 through redistricting last year down at the General
2 Assembly, so I previously represented District 82,
3 which was entirely on the east side of I-85 from
4 basically Northlake up into Tucker.

5 But the district was redrawn and so now it's
6 District 81 and it goes from Northlake again east of
7 85 but then pushes west. And so the new district that
8 I represent has Doraville, Chamblee, Brookhaven and
9 also a portion of Gwinnett County. So it's a very
10 different district, so I'm working very hard to learn
11 the new district which now includes many
12 municipalities, which is why I'm here tonight. I want
13 to learn the issues that you're facing and see if I
14 can be helpful down at the General Assembly should
15 they go back there after November.

16 MAYOR PITTMAN: Okay. Does anyone have any
17 comments or questions for Mr. Holcomb?

18 COUNCILMEMBER FLEMING: I have a question --
19 you may not be able to answer it -- on the voting that
20 we did in July, I believe.

21 REP. HOLCOMB: Uh-huh.

22 COUNCILMEMBER FLEMING: When the ballots
23 went out, my ballot had 79 instead of 81 --

24 REP. HOLCOMB: Are you sure that you're in
25 81?

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1 COUNCILMEMBER FLEMING: Yes, my card said
2 81.
3 REP. HOLCOMB: Okay.
4 COUNCILMEMBER FLEMING: And so I called
5 Dekalb County, and she said, "Well, you shouldn't have
6 voted, then."
7 And I said, "It shouldn't have been on the
8 ballot then." You know, hello?
9 REP. HOLCOMB: Yes.
10 COUNCILMEMBER FLEMING: And so I was
11 curious. I asked them, I asked Dekalb, I said, "Was
12 that redistricting to begin with this election or did
13 it begin or will it begin January 1, '13?"
14 REP. HOLCOMB: It was to begin for the
15 primary because the primary is representative of the
16 new districts going forward. So if there was an
17 error, it needs to be corrected and it needs to be
18 corrected right away.
19 COUNCILMEMBER FLEMING: Well, I reported it,
20 but the response I got back was I shouldn't have
21 voted.
22 REP. HOLCOMB: Right; which is of course
23 wrong.
24 COUNCILMEMBER FLEMING: Right.
25 REP. HOLCOMB: So I'll follow up on it and

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1 see if you don't mind maybe getting with me
2 afterwards, because if there are other people who are
3 similarly situated, then they're going to be
4 potentially disenfranchised.
5 COUNCILMEMBER FLEMING: Because Doraville is
6 now split into two districts.
7 REP. HOLCOMB: Right. And many of --
8 COUNCILMEMBER FLEMING: And so I'm not
9 sure --
10 REP. HOLCOMB: -- the precincts were split
11 as well.
12 COUNCILMEMBER FLEMING: I'm sorry?
13 REP. HOLCOMB: Many of the precincts were
14 split as well, unfortunately.
15 COUNCILMEMBER FLEMING: So that may be, you
16 know, a situation that definitely needs to resolved
17 before the next election, obviously.
18 REP. HOLCOMB: Yes, yes. And I heard one
19 other person had that experience as well, and you're
20 the second, so it needs to be corrected.
21 COUNCILMEMBER FLEMING: Okay. I'll get with
22 you.
23 REP. HOLCOMB: Okay.
24 COUNCILMEMBER FLEMING: Thank you.
25 REP. HOLCOMB: Anything else?

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1 ---
2 (No response)
3 ---
4 REP. HOLCOMB: Thank you.
5 MAYOR PITTMAN: Thank you very much.
6 Okay. Call the roll, please.
7 CLERK BRYANT: Councilmember Alexander?
8 COUNCILMEMBER ALEXANDER: Here.
9 CLERK BRYANT: Councilmember Dean?
10 COUNCILMEMBER DEAN: Here.
11 CLERK BRYANT: Councilmember Fleming?
12 COUNCILMEMBER FLEMING: Here.
13 CLERK BRYANT: Councilmember Pachuta?
14 COUNCILMEMBER PACHUTA: Here.
15 CLERK BRYANT: Councilmember Patrick?
16 COUNCILMEMBER PATRICK: Here.
17 MAYOR PITTMAN: Okay. Thank you.
18 I need approval of minutes for August 20th,
19 2012.
20 COUNCILMEMBER ALEXANDER: So moved.
21 MAYOR PITTMAN: Second?
22 COUNCILMEMBER PACHUTA: Second.
23 MAYOR PITTMAN: Discussion?
24 ---
25 (No response)

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1 ---
2 MAYOR PITTMAN: Call the roll, please.
3 CLERK BRYANT: Councilmember Alexander?
4 COUNCILMEMBER ALEXANDER: Yes.
5 CLERK BRYANT: Councilmember Dean?
6 COUNCILMEMBER DEAN: Yes.
7 CLERK BRYANT: Councilmember Fleming?
8 COUNCILMEMBER FLEMING: Yes.
9 CLERK BRYANT: Councilmember Pachuta?
10 COUNCILMEMBER PACHUTA: Yes.
11 CLERK BRYANT: Councilmember Patrick?
12 COUNCILMEMBER PATRICK: Yes.
13 MAYOR PITTMAN: Okay. And I just want to
14 make three quick announcements here.
15 Mr. Bryant had an accident this weekend and
16 will not be here, so that has been bumped to the next
17 agenda. Hopefully, he will be better by then.
18 And when we get to the items, I believe it's
19 been a request to remove the Text Amendment for
20 Wholesale/Retail; also there has been a request by a
21 Councilmember to move the ordinance language regarding
22 \$5,000. We will discuss that when we get to those
23 items, but I just want to make everyone aware of that.
24 The Movies Under the Stars was rained out,
25 so it has been rescheduled for October 20th. We're

1 going to tie that into our 5K, so we're just going to
 2 have a really nice day of fun events.
 3 Next is going to be Public Comments on the
 4 Agenda. Please step to the podium and line up if you
 5 wish to speak. State your name and limit your
 6 comments to three minutes, please.
 7 MS. LINDY ORR: Lindy Orr, 3596 Raymond
 8 Drive.
 9 You have an item that'll be coming up a
 10 little bit later from Tammy at the Library about
 11 looking at a part-time position.
 12 I just wanted to let you know from the
 13 conversations that I've had with her and from looking
 14 at how she has made this decision, this is one of the
 15 things that is a very easy thing for us to support.
 16 She's not asking for any more money to do this. She's
 17 looking within her own budget and figuring out where
 18 she can cut back in order to do this, which is what
 19 every department head should be doing if they're going
 20 to look at asking for additional staffing.
 21 She's not going to do it at the expense of
 22 the customers and the public who use the Library.
 23 She's going to do it from within with her supply
 24 budget and she's going to do it as a team. She's
 25 going to talk to every single employee that works

1 there to let them know that if this is what they want
 2 to do, and this is what they need to do in order to
 3 staff the Library appropriately, it's a sacrifice
 4 they're all going to have to make.
 5 So hopefully this is an example of a way
 6 that every department head will come to you as they
 7 realize they've got things they want to do, and not
 8 ask the City to give them any more money because we
 9 don't have it.
 10 But this is a well thought-out, a well-
 11 organized, and a request that's very reasonable
 12 because she's working with what she has.
 13 MAYOR PITTMAN: Thank you.
 14 MS. ORR: Thank you.
 15 MS. SUSAN CRAWFORD: I just wanted to
 16 piggyback on that. I think that the Library is a
 17 wonderful asset to our city. I think that what's
 18 going on there now is great. And as an English
 19 teacher and as the -- well, as an educator, I just
 20 think libraries are so important, and I think that if
 21 Tammy can make do with the money she's got and shuffle
 22 things around, let her.
 23 MR. STUART ANDERSON: Stuart Anderson.
 24 I also want to recommend lifting the hiring
 25 freeze for the Library part-time person. I think it's

1 important.
 2 And I'll be very interested in the Halpern
 3 Park renovation tonight. There was a mention last
 4 time I think about a picnic table, and I just wanted
 5 to mention that Pam Fleming bought that picnic table,
 6 and I helped deliver it. Thanks.
 7 MAYOR PITTMAN: Okay. Thank you.
 8 Sandra, if you could be sure that Mr. Bryant
 9 gets moved to the next Council meeting since he is ill
 10 tonight.
 11 Next is going to be the presentation and a
 12 first reading of an Ordinance to Revise Sexually
 13 Oriented Business Regulations. Mr. McLendon, I will
 14 let you take it from here.
 15 MR. McLENDON: And Mayor and Council, we
 16 have prepared an ordinance for this evening on the
 17 issue of our adult entertainment uses in the city.
 18 I'm going to ask Scott Bergthold, who is an
 19 attorney who assisted us in preparing these ordinances
 20 to go in and give you the presentation regarding the
 21 ordinance and the basis on which we have prepared this
 22 and the underlying fundamentals on which relied in
 23 preparing the ordinance.
 24 MAYOR PITTMAN: Thank you.
 25 Welcome.

1 ATTORNEY BERGTHOLD: Good evening, Mayor and
 2 Members of the Council.
 3 I think I would like to pull up on the
 4 screen the presentation I have so that the audience
 5 can see it. And I will try to speak loud enough.
 6 I've never been criticized for speaking too softly
 7 only too quickly.
 8 What I want to talk to you about tonight is
 9 very straightforward but important as part of the
 10 legislative predicate for regulations addressing
 11 sexually-oriented businesses and adult entertainment,
 12 and that's the foundation for regulations in this area
 13 of the law. Under the first amendment, cities have to
 14 rely on evidence that's reasonably believed to be
 15 relevant to the negative, secondary impacts of these
 16 types of land uses that they seek to prevent within
 17 their city, and so that's what this presentation is
 18 going to center on.
 19 The key case in this whole area of the law
 20 -- and I won't bore you with a bunch of legalese --
 21 MR. McLENDON: Scott, can you make sure
 22 you're real close to the microphone because I think
 23 it's a little hard to hear.
 24 COUNCILMEMBER DEAN: And the air condition
 25 is on.

1 ATTORNEY BERGTHOLD: Is that any better?
2 And I'll try to face more towards the screen and maybe
3 that'll help.

4 But the key case in this area of the law on
5 regulating adult businesses is a case that was decided
6 26 years ago out of Renton, Washington, a small
7 community outside of Seattle. It's called City of
8 Renton v. Playtime Theatres.

9 And the most important thing about this case
10 was the appellate court in San Francisco had said that
11 the Renton ordinance was invalid because the City of
12 Renton was a small community and it didn't -- it was
13 about 30,000 people and it didn't rely upon a study
14 that was tailored towards the needs of Renton.

15 Rather, they relied on a study that had been done in
16 Seattle, which was about 10 times the size of Renton.

17 And when it got to the U.S. Supreme Court,
18 the Supreme Court reversed and said that the First
19 Amendment doesn't require a city to conduct new
20 studies independent of what other municipalities have
21 already done on this issue as long as what they're
22 relying upon is reasonably believed to be relevant to
23 the problem that they're addressing.

24 And in fact, when the City of Renton adopted
25 this ordinance as a zoning ordinance, it required a

1 opinions that have been decided over the years.

2 Expert reports, of course, everything from
3 criminologists to land use planners.

4 And then number five, anecdotal data. The
5 courts have upheld cases where people came and
6 testified in meetings like this about the negative
7 impact of adult uses on the use and enjoyment of the
8 property maybe in a nearby residential area or maybe
9 because of noise or traffic and general commercial
10 blight that was occurring.

11 When we talk about those secondary impacts,
12 what does that term mean? Well, we're really talking
13 about five kinds of impacts. Those are the sources
14 where you study this information, and they're in your
15 record. But the types of impacts are:

16 Number one, negative impacts on surrounding
17 properties. That can include decreased property
18 values but it can also include things like noise that
19 isn't really reflected in a property value analysis
20 but is reflected in the use and enjoyment that
21 neighbors have a diminished capacity for.

22 Number two is personal and property crimes
23 and the public safety risks that always go along with
24 personal or property crimes. It may be a drug crime,
25 but obviously a drug crime carries the risk of

1 disbursement of adult businesses even though Seattle, the
2 city upon which they relied, had concentrated adult
3 businesses in one downtown district. So the court
4 gave a lot of leeway to local governments and a lot of
5 latitude in adopting regulations on this issue.

6 Now, when we talk about the term "secondary
7 effects," that's kind of legalese; it's a judicially
8 created term. But essentially what it is is the
9 negative impacts of adult businesses, and they're
10 basically divided into five categories in the
11 literature and in the case law.

12 The first one, the sources of these adult
13 impacts are documents that are in your record which
14 numbers over 2,700 pages of documentation that you
15 were provided months ago.

16 Our land use reports, those are very common
17 where large cities and smaller communities have done
18 planning studies on the negative impacts of adult
19 uses.

20 Crime impact reports, which focus on police
21 narratives and crime reports.

22 Judicial opinions, which is somewhat unique
23 in this area of the law. The Supreme Court has said
24 that a city like Doraville can rely on the negative
25 impacts that have been found in other judicial

1 violence that goes with it.

2 Number three, lewdness, public indecency,
3 sort of all the illicit sexual behavior we come to
4 expect with a sexually-oriented business.

5 Number four is illicit drug use and
6 trafficking. There's a case out of Warner Robins,
7 Georgia, that was decided several years ago where they
8 indicted and convicted 23 people for running cocaine
9 trafficking work through or criminal enterprise
10 through a strip club in Warner Robins.

11 Number five would be litter, the aesthetic
12 impacts, traffic noise and blight and those things
13 that we talked about previously.

14 So what this ordinance does is it surveys
15 all of that evidence, it lists all the evidence that
16 was provided several months ago in the legislative
17 record, and then what it does is it says: We're
18 relying upon this to find that this category of land
19 uses as a category are associated with a wide variety
20 of adverse secondary effects, and it lists many of
21 those.

22 And it talks about the negative impact of
23 alcohol consumption to take all of those secondary
24 effects and basically make it worse because people,
25 when they are impaired in their judgment because of

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1 alcohol consumption, tend to increase anti-social
2 behavior and, because their inhibitions are lower,
3 tend to do things that are riskier and more dangerous
4 than they would if they weren't inebriated. So that's
5 an additional finding.
6 In the record before you is a report from a
7 Ph.D., a criminologist, that was done for a
8 municipality in Kansas -- sorry -- actually Missouri a
9 couple years ago; and in Jackson County -- that's
10 where Kansas City is -- they adopted an ordinance that
11 was very similar to this, and the expert in that case
12 found that alcohol basically takes whatever crime
13 risks, ambient public-safety risks that are associated
14 with adult uses, and basically aggravates then in a
15 number of ways that are associated with criminological
16 literature, and that's what that first slide is about.
17 The second case is quite relevant to
18 Doraville because it's out of Fulton County, Georgia.
19 And it's a decision from the U.S. Court of Appeals for
20 the 11th Circuit just two years ago in a case called
21 Flanigan's Enterprises -- this is the Mardis Gras
22 strip club down the road in Sandy Springs -- and
23 basically the 11th Circuit said strip clubs in the
24 Fulton County study, the ones that serve alcohol,
25 especially played a prominent and unwelcome role, sex

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1 and drug crimes occurred in and around the clubs,
2 brought in the cheap motels near the clubs.
3 And so at the end, they basically said it
4 was reasonable for the County to rely on their data
5 when they pass an ordinance forbidding the sale,
6 consumption or possession of alcohol on the premises
7 of adult establishments, and that's one of the
8 regulations in this ordinance.
9 Another case that I argued a few years ago
10 for Knox County, Tennessee, which is where Knoxville
11 is -- University of Tennessee at Knoxville -- was a
12 similar prohibition on alcohol proscription. The
13 court said because of that combustible combination
14 between alcohol and adult entertainment, the only real
15 way to serve an interest in preventing those secondary
16 effects is to separate the two.
17 One of the cases -- There have been five
18 cases in the last five years decided by the U.S. Court
19 of Appeals for the 11th Circuit. The first of this
20 sort of quintuplet of cases was a case that I argued
21 called Daytona Grand v. City of Daytona Beach,
22 Florida, and then it was followed by a case out of
23 Hillsboro, Florida. Then it was followed by another
24 case out of Fulton County, and then in 2011, we had a
25 case down in Manatee County, Florida. And then

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1 finally in 2012, just last -- actually two months ago,
2 in July, there was a case out of Spalding County,
3 Georgia.
4 Every single one of those five cases in the
5 last five years that were decided by the 11th Circuit
6 upheld the proscription on alcohol consumption on the
7 premises of adult businesses. So it's very well
8 established in the case law here in the 11th Circuit.
9 So what I've done here is kind of sampled
10 some of the cases beginning with Renton. This is a
11 licensing ordinance, and so what it does is it
12 requires licensing type regulations for adult uses and
13 employees. The procedural aspects of the ordinance
14 are modeled on an ordinance that we did for the City
15 of Littleton, Colorado. It was upheld in the U.S.
16 Supreme Court 9 to 0 in 2004 as to the procedural
17 aspects of the ordinance.
18 There are other aspects of the ordinance
19 that regulate adult book stores and other types of
20 sexually-oriented enterprises and there are cases in
21 the record that uphold those types of regulations for
22 those types of businesses.
23 I've mentioned the Flanigan's case, the
24 Peek-A-Boo case, Daytona Grand, and that Warner Robins
25 case that I talked about earlier in the presentation

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1 about drug crimes on the premises of adult businesses
2 also upheld an alcohol proscription based on the
3 secondary effects associated with that.
4 There are three more cases that deal with
5 adult bookstores, one of them out of Floyd County,
6 Georgia, down in Rome, where the Federal Court here
7 upheld proscription in a licensing regulation with a
8 distance buffer separating adult uses including retail
9 adult book stores from residential land uses.
10 Some of the studies -- and I won't go
11 through all of them; as I said, it was well over 2700
12 pages that are contained in the record including
13 studies from Tucson, Arizona, the City of New York,
14 and some large cities, smaller cities like Garden
15 Grove, California, and as well as Oklahoma City.
16 And then the last several studies here
17 involve a series of not only studies but affidavits.
18 And the reason that that's relevant, these
19 investigator affidavits, is the courts have said you
20 don't have to have a Ph.D. hierarchical regression
21 analysis, you know, something super complicated. You
22 can rely on any evidence if it's reasonably believed
23 to be relevant. And in many cases, including those
24 cited here that we've been involved with, the courts
25 have found it very relevant to document illicit

1 behavior on the premises and then to enact regulations
2 that allow people to engage in erotic dancing, allow
3 the speech to continue, allow all the movies that are
4 shown to continue to be shown, but regulate the
5 conditions and the manner in which they are shown so
6 as to prevent the illegal behaviors, and this is what
7 the ordinance does.

8 And so with regard to the expert findings in
9 a number of studies done that are in your record,
10 basically they can be summarized in these four
11 findings:

12 The first one, the first finding is that the
13 finding in all these studies -- and they go back to
14 1977 and they're as recent as 2011 -- actually, one of
15 the studies in the record is from 2012 and it's a
16 study comparing regular bars in Texas versus alcoholic
17 establishments that have adult entertainment. And
18 they've found that the types of crimes and the fines
19 that were imposed were more serious and higher dollar
20 amounts of fines, more intense type of illicit
21 activity on the premises of the adult entertainment
22 establishment as compared to regular bars.

23 So they span 35 years basically in the time
24 frame, but the findings could be distilled to a couple
25 essential points: Number one, and that is the

1 criminological literature are only weakly correlated
2 to actual crime. And that's what the court found in
3 the Daytona Grand decision and that's what they found
4 in the Fulton County decision, because the adult uses
5 in their lawsuit against Fulton County argued, well,
6 we did our own study on calls for police service, and
7 that wasn't strong, and the court said, yeah, the
8 calls for police service don't really negate the
9 crimes that are documented in these narrative reports.
10 Just some important points but fairly technical on
11 that issue.

12 And then number four, all sub-classes of
13 sexually-oriented businesses including retail adult
14 book stores have identified secondary effects. Now,
15 they can be impacted by the way the establishment's
16 run and they can be impacted by some different
17 factors, but there is sort of a thread that runs so
18 true regarding negative secondary effects in adult
19 uses.

20 And so there have been over the last several
21 years a number of cases that reject the industry's
22 attacks on the legislative predicate for regulations
23 like those before you tonight.

24 One of them was the case of the City of Erie
25 v. Pap's A.M. that went to the Supreme Court, and then

1 findings about secondary effects are scientifically
2 robust. Even though they don't have to be scientific,
3 they are robust because they've been confirmed in a
4 wide variety of data sources in cities large and small
5 over several years.

6 Number two, Doraville has a substantial
7 government interest in regulating adult businesses to
8 prevent those identified negative secondary effects.

9 Number three, the industry studies -- and
10 there's often studies done by the industry that try to
11 negate the findings in what cities have found and
12 other judicial opinions have found over the years --
13 violate several methodological rules.

14 One of them is they use calls for police
15 service instead of actual crime reports. What does
16 that matter? And some people think, well, if there's
17 a lot of calls to the police to a particular
18 establishment, it must be high crime.

19 Oftentimes that's true, but a lot of times
20 what happens is there's a lot of calls to the police
21 because that neighborhood is particularly vigilant
22 about calling the police or maybe the population in
23 that neighborhood calls the police a lot more than in
24 another neighborhood.

25 More importantly, calls for service in the

1 some other cases like the Daytona Grand case that we
2 are involved. And I don't want to go through all of
3 these, but even some more recent ones -- the most
4 recent one is that number 10 down at the bottom which
5 is called Peek A Boo Lounge -- that's my favorite case
6 name of all the cases I've been involved with, by the
7 way. That's my personal favorite. But Peek A Boo
8 Lounge v. Manatee County, Florida. There were expert
9 studies done by the Plaintiff's in that case. We
10 argued that they did not preclude summary judgment --
11 in other words, upholding the ordinance without having
12 to have a trial -- that did not preclude summary
13 judgment in favor of Manatee County because of the
14 evidence that the County relied on, and the studies
15 didn't directly negate those. And the 11th Circuit
16 Court of Appeals last year agreed with us, and the
17 U.S. Supreme Court declined to take the case.

18 What I've done is obviously the Clerk has a
19 copy of the materials. I'm providing her an
20 additional copy just to make it part of the official
21 minutes and the record for this meeting, and I'll do
22 that when I step away from the podium real quickly.

23 But with that, I am concluded in my presen-
24 tation and I'm hoping to any questions you might have.

25 MAYOR PITTMAN: Okay. Thank you. We will

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1 bring it back up to the table.
 2 Ms. Alexander?
 3 COUNCILMEMBER ALEXANDER: No questions,
 4 Mayor.
 5 MAYOR PITTMAN: Ms. Pachuta? Mr. Patrick?
 6 Ms. Fleming?
 7 COUNCILMEMBER FLEMING: Regarding the
 8 ordinance or your presentation?
 9 ATTORNEY BERGTHOLD: Either one.
 10 COUNCILMEMBER FLEMING: Yes, I have just a
 11 couple --
 12 ATTORNEY BERGTHOLD: Okay.
 13 COUNCILMEMBER FLEMING: -- if you don't
 14 mind.
 15 ATTORNEY BERGTHOLD: And Mr. McLendon had
 16 indicated that you had met with him and you might have
 17 some.
 18 COUNCILMEMBER FLEMING: Thank you very much.
 19 Bear with me. Page 8 --
 20 ATTORNEY BERGTHOLD: Yes.
 21 COUNCILMEMBER FLEMING: -- where it
 22 indicates semi-nude or semi-nudity.
 23 ATTORNEY BERGTHOLD: Yes.
 24 COUNCILMEMBER FLEMING: I think we are
 25 focusing -- the majority of this section of

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1 description or definition is focusing on the female --
 2 ATTORNEY BERGTHOLD: Right.
 3 COUNCILMEMBER FLEMING: -- but didn't focus
 4 but one item on the male, so I was curious as to why
 5 or if --
 6 This is an ordinance that you have written
 7 for other cities; is that correct?
 8 ATTORNEY BERGTHOLD: Yes.
 9 COUNCILMEMBER FLEMING: So could you tell me
 10 why it's only --
 11 ATTORNEY BERGTHOLD: It's similar. It's
 12 tailored to Doraville, but it's similar to other
 13 ordinances like the one that was upheld in Johns
 14 Creek.
 15 Basically, the courts have recognized
 16 there's a difference between male toplessness and
 17 female toplessness, and you can't walk around topless
 18 as a female and you can as a male -- you know, without
 19 your shirt on, walking down the street; nobody's going
 20 to get arrested for that. That's basically the bottom
 21 line to that.
 22 But the ordinance prohibits actual nudity;
 23 it regulates semi-nudity, so that's why that -- it's
 24 pretty straightforward.
 25 COUNCILMEMBER FLEMING: I just have a

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1 couple.
 2 ATTORNEY BERGTHOLD: Sure. That's all
 3 right.
 4 COUNCILMEMBER FLEMING: Page 18.
 5 ATTORNEY BERGTHOLD: Okay.
 6 COUNCILMEMBER FLEMING: Just as a comment,
 7 item number 3 regarding the illumination of not less
 8 than five foot candles.
 9 ATTORNEY BERGTHOLD: Right.
 10 COUNCILMEMBER FLEMING: I would understand
 11 what's listed here but someone might take that
 12 literal.
 13 ATTORNEY BERGTHOLD: Right. No. What it is
 14 is there's a special kind of measurement. The
 15 measurement of illumination, the technical term is
 16 foot candles. That's like inches, you know, meters,
 17 whatever. And what they do is they have a little
 18 device, it's about this big, they lay it on the floor
 19 and they press a button and it measures the amount of
 20 illumination in foot candles at the floor level.
 21 And the purpose of this, this particular
 22 portion of the ordinance is dealing with an adult
 23 bookstore, basically, if you have peep show booths,
 24 making sure that it's a minimum amount of lighting to
 25 prevent the illicit sexual behavior that's been

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1 documented tons of times in those types of places.
 2 COUNCILMEMBER FLEMING: Okay. Now, on page
 3 21, you pointed out to me Section (d) --
 4 ATTORNEY BERGTHOLD: Right.
 5 COUNCILMEMBER FLEMING: -- and in your
 6 presentation, you also use the word "sale," and I
 7 don't see sale in this and I was curious as to
 8 whether, because if we put "sale" in this as "No
 9 person shall sell, possess, use or consume," then
 10 we've basically said, "We will not issue you an
 11 alcohol permit."
 12 ATTORNEY BERGTHOLD: Yeah, that's true. But
 13 basically alcohol licensing is typically what's done
 14 at the State level. The local government has a small
 15 role to play. But the upshot of this is there's no
 16 possession, use or consumption on the premises of a
 17 sexually-oriented business.
 18 So even if an entity, a corporate entity,
 19 obtained a liquor license, they wouldn't be able to
 20 use it to possess it. So if you can't possess it, you
 21 can't sell it on the premises.
 22 COUNCILMEMBER FLEMING: Okay. So leaving
 23 out the word "sell" --
 24 ATTORNEY BERGTHOLD: Yes.
 25 COUNCILMEMBER FLEMING: -- even though you

1 had it in your presentation, the word "sell" --
2 ATTORNEY BERGTHOLD: Right.
3 COUNCILMEMBER FLEMING: -- or "sale of" --
4 ATTORNEY BERGTHOLD: I don't think --
5 COUNCILMEMBER FLEMING: -- you're okay on
6 that.

7 ATTORNEY BERGTHOLD: I don't think it
8 jeopardizes us. I mean we could put it in there, but
9 it doesn't jeopardize us, because that was the
10 language of the Fulton County ordinance. This
11 language here is the language of the Manatee County
12 and the Hillsboro County ordinances, so. But it's
13 okay. If you can't possess it, you can't have it to
14 do a transaction with.

15 COUNCILMEMBER FLEMING: Okay. And the other
16 question that I had is on page 21 as well.

17 ATTORNEY BERGTHOLD: Yes.

18 COUNCILMEMBER FLEMING: It's Section 417,
19 and it's the last sentence, and I just want to comment
20 that it can be used as a defense in liability for the
21 manager or the proprietor that's running the
22 establishment at that time if one of their waitresses
23 or employees had sexual experiences with a patron at
24 that time.

25 ATTORNEY BERGTHOLD: Sure.

1 COUNCILMEMBER FLEMING: And I just want to
2 make a comment in this, in that underage sale, our
3 ordinance for alcohol -- I'm just using that as an
4 example now.

5 ATTORNEY BERGTHOLD: Right.

6 COUNCILMEMBER FLEMING: Underage sale by an
7 employee, that employee will be ticketed or cited but
8 also the owner or the manager on duty will also be
9 cited or the owner possibly. And so that person
10 that's responsible for the act, you know, of their
11 employee --

12 ATTORNEY BERGTHOLD: Right.

13 COUNCILMEMBER FLEMING: -- is held liable
14 also. So I was wondering why we're not going to hold
15 liable the manager of the establishment or owner of
16 the establishment.

17 ATTORNEY BERGTHOLD: That's actually a very
18 good question, and it requires somewhat of a labored
19 response, but I think it'll make sense to you. If it
20 doesn't, I'll circle back around.

21 This is because of a case called Lady J.
22 Lingerie v. City of Jacksonville, Florida, it was
23 decided by the 11th Circuit in 1999, where they had a
24 strict liability provision holding adult operators
25 strictly liable for the conduct of their employees.

1 and then the girl's going in the VIP room with a
2 patron for illicit sexual purposes, not only are they
3 violating the 600-foot minimum room size, the six-foot
4 rule and a number of other restrictions of the
5 ordinance, the operator is going to be liable because
6 he's reckless as to what goes on in there. In other
7 words, you can use circumstantial evidence to prove
8 the culpability of the operator. And that sort of --
9 that sort of is the sweet spot that satisfies the Lady
10 J. Lingerie case but at the same time gives teeth to
11 the ordinance so that people could be held liable.

12 COUNCILMEMBER FLEMING: Okay. And I believe
13 my final question and preference is on page 22, and
14 it's the distances.

15 ATTORNEY BERGTHOLD: Yes.

16 COUNCILMEMBER FLEMING: And number (1) is
17 500 feet between sexually-oriented businesses. My
18 preference would be 1,000 feet. I don't want to have
19 a concentrated area.

20 Also, in number (2), my preference rather
21 than 1,000 feet from a school or residential area
22 would be 1,500 feet.

23 ATTORNEY BERGTHOLD: Okay. Let me address
24 those in order.

25 The first one, the like-use segregation

1 requirement, which is where two adult uses have to be
2 separated from each other, basically -- actually, I'll
3 address them together because they really fall down to
4 the same answer, and that is the City's still in the
5 process of getting GIS equipment and trying to discern
6 how many sites are available in the industrial zones
7 in Doraville and in the zoning piece. So we've done a
8 substantial amount of work on the zoning piece, and
9 we're not there yet.

10 This ordinance really, on the location
11 piece, does not affect any existing businesses in the
12 city or any existing businesses that are doing an
13 adult business because they're grandfathered where
14 they are. So it really on deals with future business,
15 so that before the zoning ordinance gets updated --
16 which is a little bit longer process, obviously; you
17 go through a Planning Commission -- by the time that's
18 done, we anticipate having more accurate numbers on
19 the GIS issue and in tweaking that a little bit more.

20 So the 1,500 feet I will tell you right now
21 is likely not going to fly, and the reason that that
22 is the case is because the Supreme Court has said that
23 you can't ban adult businesses from a municipal juris-
24 diction but you can stringently regulate the time, the
25 place and the manner of their operation. The zoning

1 we'll be tweaking later, which is the greater distance
2 restriction.

3 So I say all that to say this doesn't have a
4 lot of practical implication right now on the status
5 quo. When we get back to tweaking the zoning
6 ordinance, we'll make sure that that -- we'll do a
7 quick text amendment, and they'll match up apples to
8 apples.

9 But what they will do, and I will promise
10 you this: They will be the greatest amount of buffer
11 to provide the greatest protection to the citizens of
12 Doraville from the negative secondary impacts that
13 we've been talking about, that, at the same time, will
14 satisfy the courts' analysis for a sufficient number
15 of sites. We will -- That's -- that's the balance
16 that we're seeking to obtain.

17 And Mr. Cooley and Mr. McLendon have been
18 working very hard on that issue, and obviously there
19 are some limitation on the computer system for GIS
20 right now. We're working through those, but we'll
21 have the best buffer we can get for the -- for the
22 constitutionality of it.

23 COUNCILMEMBER FLEMING: Thank you very much.
24 MAYOR PITTMAN: Ms. Dean?
25 COUNCILMEMBER DEAN: No, nothing.

1 piece or the location piece is obviously the place
2 portion of that type of regulation.

3 Here is the issue: How many sites are
4 enough? There's no magic answer; the courts apply
5 three different tests. They apply a supply-and-demand
6 analysis -- how many sites are there, how many
7 businesses are looking for adult sites -- they look at
8 population-ratio test, which is kind of unique to
9 Florida and the 11th Circuit, and then they apply a
10 third test that is a percentage of land mass that's
11 available to adult uses. If you put a 1,500 buffer
12 into these types of churches, elementary schools,
13 public park or any residence, there's probably not a
14 site in the city of Doraville that would satisfy that
15 buffer restriction. And the result of that would be,
16 you know, at least as to that provision, that would
17 probably get struck down, and then at least for a
18 temporary period you'd be scrambling because they
19 could go anywhere.

20 So what we're doing is -- and the reason
21 that that distance limitation isn't that great of a
22 concern at this point is because pre-existing
23 businesses are grandfathered, future businesses would
24 not only have to satisfy this buffer restriction but
25 also the one that's in the current zoning code that

1 MAYOR PITTMAN: Okay. Thank you very much.
2 ATTORNEY BERGTHOLD: Thank you, Mayor and
3 Council.

4 MAYOR PITTMAN: I appreciate it. Thank you
5 so much.

6 ATTORNEY BERGTHOLD: Appreciate it.

7 MAYOR PITTMAN: Cecil, thank you.

8 Okay. Next on the agenda, Mr. Strickland.

9 This is Brook Park Pipe Contract. We discussed this
10 last time. There was a citizen that had some concerns
11 that concerned the Council and myself, that did not
12 want to sign off on us doing the work on her property.
13 I have since made contact with her and spoke with her
14 and I will share some of the concerns that she has.

15 She had a concern about the erosion that is
16 already prevalent, and disturbing that. She also
17 wanted to know exactly what was being done. She
18 wanted to have in detail what was going to be done on
19 her property. She also wanted to know about the
20 liability and liability insurance. She also was
21 concerned with certified people; if the people were
22 going to be on her property were certified. And she
23 was concerned with the effect on the stream, long-
24 term/short-term and people that live further down.

25 I spoke with her in length about this. I

1 did reach back out to her and left a message in order
2 to bring her or us go to her with the people that
3 would be doing the work along with you, to see if we
4 could address these issues, and then to get with Legal
5 to see if we could draft something that she would be
6 comfortable with.

7 I have not yet heard back from her. So I
8 guess the Council, if they want to have questions or
9 how they want to move forward or not move forward with
10 this.

11 MR. STRICKLAND: Yes, ma'am.

12 MAYOR PITTMAN: That's really where we're
13 at, so --

14 COUNCILMEMBER FLEMING: And when I spoke to
15 her earlier, prior to your discussion, Mayor, even
16 though she has many questions, she doesn't want us to
17 stall the project. She just wants us to be able to
18 address her issues. So she realizes the importance of
19 fixing the pipe all the way to the stream; it's just
20 her individual concerns that she has.

21 MAYOR PITTMAN: Okay.

22 MR. STEVEN STRICKLAND: Yes, Councilmember.

23 Myself and the contractor have actually met
24 with her on her property and I think addressed a lot
25 of those questions but I perhaps didn't address all of

1 them.

2 MAYOR PITTMAN: Well, you met with her, and
3 then I spoke with her after the fact, and it was clear
4 that she was not comfortable with either the answers
5 or did not get the answers that she wanted.

6 MR. STRICKLAND: Right.

7 MAYOR PITTMAN: So that was after the fact.
8 But I appreciate you making the effort on that. I
9 just think we need to circle back around with her and
10 meet with her and maybe be more specific on what she's
11 asking.

12 COUNCILMEMBER FLEMING: And the specifics
13 needs to be in writing, not just a verbal -- this is
14 what this contractor is going to be doing on her
15 property, so that she has an idea, is my preference,

16 MAYOR PITTMAN: And he's a copy of the e-
17 mail that she sent to you. (Reading) Long-term
18 effects to -- These are her concerns: Long-term
19 effects to the stream, dumping all the debris into the
20 stream, 180 degree water, what if someone decides this
21 is my part of the stream; a point of contact that
22 someone ends up -- Okay. And the certifications to
23 the work on State water and County is not needed to be
24 involved, also seems to be off the mark.

25 And the other thing, she has a concern with

1 this waiver which says: I blank give the City of
2 Doraville permission to enter onto my property at
3 blank so that they may perform stormwater system
4 repairs. The owner hereby agrees that in
5 consideration of the work performed, the City shall
6 have no liability for damages to owner's property with
7 exception of any negligence during the scope of work
8 performed. The property will be improved or restored
9 as reasonably as possible to preconstruction
10 conditions.

11 This is what she has a problem signing
12 because it's kind of saying, "Well, we'll do our best,
13 but if it doesn't work out" --

14 MR. STRICKLAND: Right.

15 COUNCILMEMBER DEAN: -- "too bad for you."

16 MR. STRICKLAND: And we've asked her what
17 type of language would you like? or changes or, you
18 know, just different -- different wording, you know:
19 change it, add, subtract. That's just been to no
20 avail.

21 COUNCILMEMBER DEAN: Well, we can be
22 proactive in that.

23 MR. McLENDON: And I will say, you know,
24 that language does have some standards in it. What
25 it's saying is basically we cannot be negligent, and,

1 you know, that would -- a lot of the previous list of
2 things that she was worried about, most of those would
3 be negligible. If you dumped your debris in the
4 stream. I mean they take great pains, and there are
5 significant regulations on how you have to do that.
6 So I think many of those things probably would fit in
7 there being covered under that agreement.

8 It's relatively typical to do that I'll-put-
9 you-back-to-the-status-quo prior to that. So that
10 language is not -- it's not a carte blanche for us to
11 go in and do anything we want to that property.

12 But again, I am open to trying to work
13 through it because, really, you know, what I'm
14 interested in is working though it. But that language
15 there is not a blank check to us to go in and destroy
16 property or act negligently or do something that would
17 cause damage.

18 COUNCILMEMBER FLEMING: I sent Legal and
19 Mayor and Mr. Strickland a copy of Gwinnett County's
20 use agreement to go onto their property, and it seemed
21 to be much more amicable toward the resident and the
22 city, and I just felt that that seemed to be a better
23 document to me.

24 And with all due respect to our residents, I
25 wouldn't want anybody coming onto my property without

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1 having a list of this-is-what's-going-to-be-done.
2 MR. McLENDON: And I have looked at that
3 one, and, frankly, I'm wide open to a more friendly
4 document and I would have no problem with us using the
5 Gwinnett form, even adopting that into the future, to
6 be honest with you. Just I think we've got to get the
7 communication.
8 COUNCILMEMBER PACHUTA: Did you indicate we
9 could go ahead and approve the project with y'all
10 working out whether we end at Ms. Caribbean's property
11 or continue -- I think you indicated we can do the
12 project and we might have to end at her property --
13 MR. STRICKLAND: We certainly have --
14 COUNCILMEMBER PACHUTA: -- if there's --
15 MR. STRICKLAND: -- that option.
16 COUNCILMEMBER PACHUTA: -- no agreement and
17 give you guys enough time to work out whether it's
18 going to end at her property or continue onto her
19 property.
20 I just don't want Steven to have to keep
21 coming back if -- if y'all can work something out.
22 And if you can't work something out within a
23 reasonable amount of time, then continue with the
24 project and just end at Ms. Caribbean's property.
25 MR. STRICKLAND: Right. And that's what we

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1 would have to do, because, you know, we don't have the
2 right to go onto somebody's property without their
3 permission.
4 COUNCILMEMBER DEAN: But I think we talked
5 about this last time, too, that it might not work as
6 effectively as it would if you carried the whole
7 project through.
8 MR. STRICKLAND: Well, it certainly would --
9 would not, but we -- we have that option.
10 MAYOR PITTMAN: Mr. Patrick? Ms. Alexander?
11 COUNCILMEMBER ALEXANDER: I did think that
12 we -- one of her concerns was the debris in the creek,
13 and we -- we had discussed leaving the head wall
14 alone.
15 MR. STRICKLAND: Yeah. Because the -- the
16 head wall, for all intents and purposes, is pretty
17 much gone. I'd say it's two thirds already gone, and
18 we were just going to kind of take what was remaining
19 there. But yeah, we can just completely leave it
20 alone.
21 MAYOR PITTMAN: Okay, Council, what would
22 you like to do? We can either move forward or we can
23 wait till we -- hopefully we'll hear from her in the
24 next couple days and set up a meeting to resolve that
25 issue.

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1 COUNCILMEMBER PACHUTA: I would personally
2 like to go ahead and approve the project -- you know,
3 that obviously it needs to be repaired under Brook
4 Park. The tennis courts are falling in; there's sink
5 holes that need to be repaired -- with staff and Legal
6 continuing to, you know, attempt to work it out with
7 Ms. Caribbean, and if it doesn't work out, then we'll
8 just do what we can for under the park. We'll do what
9 we can at least to fix the portions under the public
10 property. So I'll make that in the form of a motion.
11 MAYOR PITTMAN: Do I get a second?
12 COUNCILMEMBER ALEXANDER: Second.
13 MAYOR PITTMAN: Okay. Discussion?
14 COUNCILMEMBER FLEMING: I just have one
15 question. And where's the starting point of
16 construction, repair?
17 MR. STRICKLAND: The starting point. If you
18 go -- if you go just east of the, well --
19 COUNCILMEMBER FLEMING: Let me rephrase. Is
20 the starting point on her property?
21 MR. STRICKLAND: No, no, no. That would --
22 COUNCILMEMBER FLEMING: Okay. So --
23 MR. STRICKLAND: -- be the ending. Right.
24 COUNCILMEMBER FLEMING: -- we can start the
25 project and --

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1 MR. STRICKLAND: Right. The -- Right. We
2 will be working downstream.
3 COUNCILMEMBER FLEMING: Okay, great.
4 MR. STRICKLAND: So this pipe system flows
5 west and outfalls at her property.
6 COUNCILMEMBER FLEMING: Okay. That sounds
7 great.
8 COUNCILMEMBER DEAN: Are there any other
9 alternatives other than doing it this way in terms of
10 the repair?
11 MR. STRICKLAND: Yeah. What we were trying
12 to always avoid was open-cutting and replacing the
13 pipe. This is a cured-in-place pipe so that we're not
14 open-cutting.
15 We really don't have that option because we
16 would have to demo part of the tennis court and repair
17 it back, so pretty -- pretty limited. I mean you
18 could --
19 And if you -- you could push a new pipe
20 through whatever length sections you're going to put
21 through, you have to open-cut a ditch of that length
22 in front of it to slide that pipe.
23 This is the -- this is basically the
24 minimally invasive and to avoid open-cutting and
25 replacing that pipe. So very -- very few options to

1 rehab a pipe, especially in place.
 2 COUNCILMEMBER DEAN: And how many times have
 3 you reached out to her, to Ms. Caribbean, since --
 4 since the --
 5 MR. STRICKLAND: I've --
 6 COUNCILMEMBER DEAN: -- last meeting?
 7 MR. STRICKLAND: Three on-site meetings and
 8 I do believe three additional e-mails after that.
 9 COUNCILMEMBER DEAN: Since our last meeting?
 10 MR. STRICKLAND: Since the last meeting, one
 11 or two e-mails plus the Mayor's phone call.
 12 So we -- I mean we really have been trying
 13 to, you know, just tell exactly because -- and Cecil,
 14 the release of liability is pretty standard for metro
 15 Atlanta's. It's --
 16 COUNCILMEMBER DEAN: Well, I -- I --
 17 MR. STRICKLAND: -- what Dekalb County uses.
 18 COUNCILMEMBER DEAN: As I said earlier, I
 19 would not sign that if it were my property just
 20 because of that last sentence. And so I think that if
 21 we wanted to be proactive, that we could -- we could
 22 change that to make it more, as Ms. Fleming said,
 23 amicable and -- and just I think that this is a small
 24 adjustment that we could make to make everyone happy.
 25 MR. STRICKLAND: Right. But --

1 CLERK BRYANT: Councilmember Fleming?
 2 COUNCILMEMBER FLEMING: Yes.
 3 CLERK BRYANT: Councilmember Pachuta?
 4 COUNCILMEMBER PACHUTA: Yes.
 5 CLERK BRYANT: Councilmember Patrick?
 6 COUNCILMEMBER PATRICK: Yes.
 7 MAYOR PITTMAN: Thank you. Motion carries.
 8 MR. STRICKLAND: Thank you.
 9 MAYOR PITTMAN: I still want to continue to
 10 reach out to her and let's try to resolve the issues.
 11 MR. STRICKLAND: Yes, and we have been.
 12 MAYOR PITTMAN: Okay. Thank you very much.
 13 The next agenda item is, Major, the Tankless
 14 Water Heater.
 15 MAJOR ATKINSON: Yes, Mayor and Council.
 16 This is in reference to the water heaters at the
 17 Police Department. We have two very large water
 18 heaters at the Police Department that is costing us
 19 quite a bit of money, and we don't need it. We are
 20 trying to downgrade.
 21 Back years ago when the Police Department
 22 was built, there was word that we might be housing INS
 23 -- we'd be an INS holding facility. That never
 24 materialized, and now we have two very large water
 25 heaters that we don't need. I'm being told that they

1 COUNCILMEMBER DEAN: And also with the
 2 e-mail, because she forwarded me the e-mail that she
 3 sent to you, and if you would respond in writing to
 4 her and just -- just -- just kind of let her know that
 5 her concerns are at least being heard.
 6 MR. STRICKLAND: I did. I answered as many
 7 questions as I could, mainly with the -- the
 8 temperature of the water, you know, found that as a
 9 specific answer, just tried to answer everything.
 10 But changing the legal document, I don't
 11 know, you know, if it's just a blank check as to we
 12 can do anything. I think there's still restrictions.
 13 So without --
 14 COUNCILMEMBER DEAN: Do you mean the waiver?
 15 MR. STRICKLAND: The waiver -- without some
 16 feedback, because when I read the right to entry, it
 17 seemed to be more elaborate but fundamentally kind of
 18 said the same thing. They had just broken it out
 19 sentence by sentence and kind of expanded on it, but
 20 that's just not my -- my area.
 21 MAYOR PITTMAN: Call the roll, please.
 22 CLERK BRYANT: Councilmember Alexander?
 23 COUNCILMEMBER ALEXANDER: Yes.
 24 CLERK BRYANT: Councilmember Dean?
 25 COUNCILMEMBER DEAN: No.

1 probably hold over a thousand gallons each, and we
 2 might have someone take between 10 and 15 showers at
 3 the Police Department a week. We don't -- our
 4 prisoners, the people in jail do not take showers
 5 since we're a short-term facility. On very rare
 6 occasions do they take showers.
 7 So what we -- Captain Brinkley came back
 8 with three quotes, and they're before you, and we ask
 9 that we be able to replace the water heaters that we
 10 have now with two of the tankless water heaters using
 11 the quote from Greater Dekalb Plumbing. This is a
 12 budgeted item that was planned for, and we've been
 13 working with Ms. Ferguson, and she's okay with the --
 14 with this.
 15 MAYOR PITTMAN: Okay. Thank you.
 16 Questions from the Council? Ms. Alexander?
 17 COUNCILMEMBER ALEXANDER: I just had a
 18 question. On two of the quotes, they are quoting
 19 three units, and this one that you guys have selected
 20 is only quoting two.
 21 MAJOR ATKINSON: Right. According to
 22 Captain Brinkley, I asked him about that myself, and
 23 he said that he just told them what we have at the
 24 Police Department, and actually this Greater Dekalb
 25 Plumbing came back and said that we could actually get

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1 by with one, probably, but just to be safe, we went
2 ahead and had two -- he put two and the others put
3 three.
4 COUNCILMEMBER ALEXANDER: Okay.
5 MAJOR ATKINSON: That was the reason for
6 that.
7 MAYOR PITTMAN: Ms. Pachuta? Mr. Patrick?
8 COUNCILMEMBER PATRICK: Any idea what we
9 spend annually on heating those or heating that water?
10 MAJOR ATKINSON: No, sir. I asked them, and
11 they're don't --
12 COUNCILMEMBER PATRICK: Don't give you an
13 answer?
14 MAJOR ATKINSON: They're not clear about the
15 bill.
16 COUNCILMEMBER PATRICK: What ends up
17 happening with the savings that's anticipated, the
18 \$4,000 or so?
19 MS. LISA FERGUSON: We don't have anything
20 planned for that just yet.
21 MAYOR PITTMAN: Ms. Fleming?
22 COUNCILMEMBER FLEMING: Major Atkinson,
23 maybe you don't know because this is Mr. Brinkley's
24 area, Captain Brinkley's area, but was there an
25 official RFP that went out for this?

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1 MAJOR ATKINSON: No, ma'am, I don't think
2 was officially drawn up. I think he was just advised
3 to get quotes.
4 COUNCILMEMBER FLEMING: Okay. The only
5 reason I am concerned about it is that as Ms.
6 Alexander said, we've got two that are quoting three
7 and one that's quoting two but we're not even sure
8 whether the tanks themselves, since we didn't identify
9 what we needed, okay, though we may not have been able
10 to know. So I can't determine whether it's apples for
11 apples of what each three of them are quoting is the
12 thing. So that's the only comment I wanted to make as
13 well.
14 MAYOR PITTMAN: Okay. Ms. Dean?
15 COUNCILMEMBER DEAN: Could you send out an
16 RFP on these? I mean is there a rush? Is there some
17 time crunch here?
18 MAJOR ATKINSON: No. I don't know that
19 there's any kind of time crunch. We were just asked
20 to get three -- three quotes, and that's what we did.
21 COUNCILMEMBER DEAN: Okay. And -- and I'm
22 just asking this. Can this be paid for out of Asset
23 Forfeiture?
24 MAJOR ATKINSON: It's already in the budget,
25 ma'am.

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1 COUNCILMEMBER DEAN: Okay.
2 MAJOR ATKINSON: So --
3 COUNCILMEMBER DEAN: All right. Okay.
4 MAYOR PITTMAN: Okay. So at this time, does
5 Council want to make a motion to approve this?
6 COUNCILMEMBER PACHUTA: I'll make a motion
7 to go ahead and approve the tankless water heater with
8 Greater Dekalb Plumbing.
9 MAYOR PITTMAN: And do I get a second?
10 COUNCILMEMBER ALEXANDER: Second.
11 MAYOR PITTMAN: Discussion?
12 COUNCILMEMBER FLEMING: I believe our
13 ordinances read that if it's more than \$5,000 we're
14 supposed to go out for an RFP, so though I think it's
15 necessary that we change out to tankless water
16 heaters, my preference would be to go out for RFP.
17 COUNCILMEMBER PATRICK: Is that what the
18 code says?
19 MR. McLENDON: Our code, basically, if over
20 5,000, it generally says it would be bid, taking three
21 -- The issue is the . . . Three quotes is not unusual,
22 but at the same time, it does state over 5,000 is
23 generally a bid. One second.
24 Basically, all expenditures other than as
25 provided in Subsection (b) shall be incurred after

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1 seeking sealed bids or requests for proposals, and
2 Subsection (b) is basically due to an expedited or an
3 emergency situation, so the need for expediting is
4 what your current language says.
5 COUNCILMEMBER PACHUTA: I'll go ahead and
6 withdraw the motion, then.
7 MAYOR PITTMAN: Do you wish to withdraw the
8 second?
9 COUNCILMEMBER ALEXANDER: Yes.
10 MAJOR ATKINSON: Can we go out for RFP?
11 MAYOR PITTMAN: Yes, please.
12 COUNCILMEMBER FLEMING: Yes, please. Thank
13 you --
14 MAYOR PITTMAN: Thank you, Major.
15 COUNCILMEMBER FLEMING: -- very much.
16 MAJOR ATKINSON: All right.
17 MAYOR PITTMAN: Next on the agenda is
18 Ms. Henry, our Librarian, Create Part-time Position
19 and Lift Hiring Freeze.
20 And I just want to echo what a citizen said
21 earlier. Ms. Henry and her staff has done an
22 outstanding job and they are busy, busy, busy, busy up
23 there, and I can certainly understand the need for
24 having an additional person. I hope that the Council
25 will consider this greatly.

1 MS. TAMMY HENRY: Thank you, Mayor.
2 Mayor, City Council, all I can say is, "Oh,
3 what a ride." In January 2011 when I started, it was
4 five full-times and two part-times. We only had 2,000
5 visitors per month.

6 September -- August 2012, we just have four
7 full-time people and we have 6,000 people that are
8 coming in the Library a month. And we need at bare
9 minimum a person to cover lunches.

10 I mean I know we don't have money to staff
11 anyone, but we need someone to cover lunches, and it's
12 just for me a pure safety issue. I just don't want
13 anyone to be in the Library by themselves during lunch
14 time, and that's the bottom line. I just don't -- I
15 don't want anyone to be there by themselves, and it
16 has happened and it makes me cringe and get weak to my
17 knees when someone is there since we're all females.

18 So I'm just asking if you will please allow
19 me to hire a 15-hour-a-week employee. I've talked to
20 Ms. Ferguson, the Finance Director, and we have
21 crunched numbers and we have taken money from repairs
22 and maintenance, we have taken money from the general
23 supplies and materials and we have taken money out of
24 the book budget to try to make it happen. And if
25 Ms. Ferguson's number crunching is correct

1 MS. HENRY: No. I'm going to have a toilet
2 tissue run and I'm going to ask patrons to bring a
3 roll of toilet tissue to the Library to use when they
4 come.

5 No. Seriously, I'm just looking at ways.
6 It's going to be tight, but I'm leaving a little
7 cushion just in case an emergency comes up, but --

8 COUNCILMEMBER PATRICK: You still have
9 wiggle room, basically.

10 MS. HENRY: I have a -- yes. I'm leaving a
11 little cushion, and that's why I'm only asking for 15
12 hours a week right now, which is just the bare minimum
13 of what we need to cover lunches to make it safe.

14 COUNCILMEMBER PATRICK: Okay. Thank you.

15 MAYOR PITTMAN: Ms. Pachuta? Ms. Alexander?
16 Okay. So do I get a motion to lift the
17 hiring freeze?

18 COUNCILMEMBER ALEXANDER: I make a motion to
19 lift the hiring freeze to hire a part-time library
20 technician to help out with the Library.

21 MAYOR PITTMAN: Get a second?

22 COUNCILMEMBER PACHUTA: Second.

23 MAYOR PITTMAN: Discussion?

24 ---

25 (No response)

1 and mine are correct, it's doable in the budget if you
2 would just approve it.

3 MAYOR PITTMAN: Okay. Thank you.

4 And take questions from the Council. Ms.
5 Dean, we'll start on your end.

6 COUNCILMEMBER DEAN: No. I applaud your
7 efforts and I think it's a great idea.

8 MS. HENRY: Thank you.

9 MAYOR PITTMAN: Ms. Fleming?

10 COUNCILMEMBER FLEMING: I also applaud your
11 efforts but I don't want you to get into a situation
12 that you're limiting yourself to 15 hours, and my
13 preference would be just to create a part-time
14 position -- that's my personal preference -- so that
15 you have some flexibility there for people that are
16 sick or in case you -- you know, instead of just that
17 three-hour window or something. So that's my
18 preference is that you don't limit your number of
19 hours for part-time.

20 MAYOR PITTMAN: Okay. Mr. Patrick?

21 COUNCILMEMBER PATRICK: By borrowing or
22 taking from those other allocations for this part-time
23 position, are you kind of hobbling yourself for the
24 rest of the year? I guess, can you get by without
25 \$2,000 for periodicals, maintenance?

1 ---

2 MAYOR PITTMAN: Call the roll, please.

3 CLERK BRYANT: Councilmember Alexander?

4 COUNCILMEMBER ALEXANDER: Yes.

5 CLERK BRYANT: Councilmember Dean?

6 COUNCILMEMBER DEAN: Yes.

7 CLERK BRYANT: Councilmember Fleming?

8 COUNCILMEMBER FLEMING: Yes.

9 CLERK BRYANT: Councilmember Pachuta?

10 COUNCILMEMBER PACHUTA: Yes.

11 CLERK BRYANT: Councilmember Patrick?

12 COUNCILMEMBER PATRICK: Yes.

13 MAYOR PITTMAN: Thank you.

14 MS. HENRY: And thank you all, and don't
15 forget about the book signing of Doraville at the
16 Library Saturday at 7:00. Thank you.

17 MAYOR PITTMAN: Thank you.

18 Next on the agenda is Parks & Recreation,
19 Rip. This is Halpern Park Renovation contract. This
20 has been on the agenda several times, so I believe you
21 have some updates for us.

22 MR. ROBERTSON: Actually, there is no
23 update. This is just a simple -- this is the
24 agreement for us to sign with the contractor, and look
25 again to moving forward with the project.

1 MAYOR PITTMAN: Okay.
 2 MR. ROBERTSON: This is the contract that
 3 was discussed and approved back at the August 20th
 4 meeting, or the agreement for the project. I just
 5 need approval for the actual contract.
 6 MAYOR PITTMAN: All right. We'll take
 7 questions from the Council. Ms. Alexander?
 8 COUNCILMEMBER ALEXANDER: Has Legal reviewed
 9 the agreement and approved?
 10 MR. McLENDON: We have reviewed the agree-
 11 ment, and I'm satisfied with the agreement.
 12 COUNCILMEMBER ALEXANDER: Thank you.
 13 MAYOR PITTMAN: Ms. Pachuta?
 14 COUNCILMEMBER PACHUTA: No, I'm fine.
 15 MAYOR PITTMAN: Mr. Patrick?
 16 COUNCILMEMBER PATRICK: When do you expect
 17 to begin and finish?
 18 MR. ROBERTSON: Once -- once we get this
 19 contract agreed or approved, we'll get it signed, get
 20 a letter to proceed out probably by the end of the
 21 week.
 22 MAYOR PITTMAN: Okay. Ms. Fleming?
 23 COUNCILMEMBER FLEMING: Just one comment. I
 24 believe on the scope of services, he indicated the
 25 picnic pad was going to be mulch if I'm not mistaken.

1 MR. ROBERTSON: I believe that is correct,
 2 yes.
 3 COUNCILMEMBER FLEMING: I thought it was
 4 going to be concrete.
 5 MR. ROBERTSON: No, ma'am. It was listed as
 6 mulch.
 7 COUNCILMEMBER FLEMING: Okay.
 8 MAYOR PITTMAN: Ms. Dean?
 9 COUNCILMEMBER DEAN: No further questions.
 10 MAYOR PITTMAN: Do I get a motion to approve
 11 the contract for Todd Smith Grading?
 12 COUNCILMEMBER ALEXANDER: I guess I just
 13 have a followup to Ms. Fleming's comment. Would the
 14 mulch be ADA-compliant?
 15 MR. ROBERTSON: Yes, ma'am.
 16 COUNCILMEMBER ALEXANDER: Okay.
 17 COUNCILMEMBER FLEMING: But we're not sure
 18 whether there's a walkway to get to the picnic pad;
 19 right?
 20 MR. ROBERTSON: The picnic pad will be off
 21 of the interior walkway.
 22 COUNCILMEMBER FLEMING: Okay.
 23 MAYOR PITTMAN: So what kind of mulch is it?
 24 MR. ROBERTSON: It's just -- it's engineered
 25 mulch. I mean you use it in playgrounds.

1 MAYOR PITTMAN: Okay. So do I get a motion
 2 to approve the contract?
 3 COUNCILMEMBER PATRICK: Motion to approve
 4 the contract.
 5 COUNCILMEMBER PACHUTA: Second.
 6 MAYOR PITTMAN: Discussion?
 7 COUNCILMEMBER DEAN: I just have to say that
 8 I -- I -- I voted no the first time because we were
 9 \$7,000 over budget, and that's -- I still think that
 10 we could have found someone or should have looked for
 11 someone to do this or something similar within budget,
 12 but nothing personal.
 13 MAYOR PITTMAN: Call the roll, please.
 14 CLERK BRYANT: Councilmember Alexander?
 15 COUNCILMEMBER ALEXANDER: Yes.
 16 CLERK BRYANT: Councilmember Dean?
 17 COUNCILMEMBER DEAN: No.
 18 CLERK BRYANT: Councilmember Fleming?
 19 COUNCILMEMBER FLEMING: Yes.
 20 CLERK BRYANT: Councilmember Pachuta?
 21 COUNCILMEMBER PACHUTA: Yes.
 22 CLERK BRYANT: Councilmember Patrick?
 23 COUNCILMEMBER PATRICK: Yes.
 24 MAYOR PITTMAN: Thank you.
 25 MAYOR PITTMAN: Okay. And Councilmember

1 Fleming, if at some point we find some additional
 2 funds, we can always go back and make that concrete.
 3 Thank you.
 4 MAYOR PITTMAN: Thank you, sir.
 5 All righty. Next is going to be Planning
 6 and Zoning, an administrative appeal, I believe.
 7 - - -
 8 (Brief recess)
 9 - - -
 10 MAYOR PITTMAN: Meeting come back to order.
 11 I just want to make an announcement there is
 12 a tornado watch for DeKalb County until 3:00 a.m., so
 13 everybody --
 14 UNIDENTIFIED SPEAKER: Is this a watch or
 15 warning?
 16 MAYOR PITTMAN: -- beware. This is watch.
 17 UNIDENTIFIED SPEAKER: Watch?
 18 MAYOR PITTMAN: I did say watch.
 19 UNIDENTIFIED SPEAKER: If we hear a loud
 20 train . . .
 21 MAYOR PITTMAN: Dive under your seats.
 22 MR. THOM ABBOTT: We don't have sirens like
 23 they do in Norcross.
 24 MAYOR PITTMAN: There was a suggestion by a
 25 Councilmember to do that, so.

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1 MR. ABBOTT: Do we have a safe room? No?
 2 COUNCILMEMBER PACHUTA: Um. Your office?
 3 AUDIENCE: No.
 4 MAYOR PITTMAN: All right. Well, we are
 5 going to move forward with an administrative appeal.
 6 Is the applicant here?
 7 I do not see anyone that looks like they fit
 8 that description.
 9 MR. JOE COOLEY: I'd be glad to go through
 10 it.
 11 MR. McLENDON: Why don't we announce for the
 12 Applicant, Joe? And that is?
 13 MR. COOLEY: The Applicant is Citinet Limo,
 14 LLC.
 15 MR. McLENDON: And Mr. Mostafa?
 16 MAYOR PITTMAN: And he knew he was supposed
 17 to be here tonight?
 18 MR. McLENDON: What I would like to do is if
 19 Mr. Mahamud has not come, then still, Joe, I would
 20 like you to -- we were prepared to have 10 minutes for
 21 Mr. Mahamud and then allow 10 minutes for us to
 22 discuss it. But if he has not come this evening, Joe,
 23 I'd like you to go ahead and with your presentation.
 24 MR. COOLEY: Certainly; in that this is a
 25 quasi-judicial hearing before the Council. And for

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1 the record, I've got a copy of the application and a
 2 copy of the O/I Zoning District 907 and M-1 Zoning
 3 Districts for the record.
 4 This was an appeal of a decision for an
 5 occupational tax placard in which the zoning did not
 6 meet the O/I District. The property is in Section
 7 23-907, O/I, and the request was for a limousine
 8 service. That is not an allowed use in the O/I zoning
 9 district.
 10 It is, however, an allowed use in the M-1
 11 zoning district, which is Section 23 -- I'm sorry, I
 12 don't have that in front of me.
 13 COUNCILMEMBER ALEXANDER: 23-911.
 14 MR. COOLEY: 911; thank you.
 15 Citinet Limo, Mr. Mahamud, submitted a
 16 letter requesting -- and this is a copy in your packet
 17 but I will read it just for the record:
 18 (As read) "Dear Mr. Cooley, I made a request
 19 for a Business License in July. It was denied by you
 20 because of zoning code.
 21 "I have submitted all the legal documents
 22 which were required by law. My business was
 23 incorporated in 2008 under Secretary of Georgia state
 24 as Atlanta Citinet Limo, LLC. Recently I have rented
 25 a office in the above address for my business

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1 answering center. We do not do wash or repair any
 2 vehicles at the location. We just use the suite as a
 3 calling center.
 4 "We chose the location because it's close to
 5 MARTA and the freeway.
 6 "Our employees don't have personal
 7 transportation. They have to use MARTA to commute to
 8 work. If we move the office to another location,
 9 definitely these employees will lose their job as well
 10 as it will be very inconvenient for our drivers to
 11 take the highway very quickly.
 12 "I appeal you to call a conference with the
 13 Board members and decisionmakers in the City of
 14 Doraville who allow me to keep my business in the
 15 current location.
 16 "Please reconsider this denial. I can
 17 supply more information if necessary or helpful; let
 18 me know what other pertinent information you may need.
 19 Thank you for your time and your help in this matter."
 20 Again, this is -- from my perspective, it
 21 was a straightforward decision in the fact that it is
 22 an allowed use M-1; it is not allowed in O/I. His
 23 application was for a limousine service, and so to me
 24 it was pretty straightforward, but he has appealed
 25 that decision.

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1 MAYOR PITTMAN: Okay. Council, do you have
 2 questions?
 3 COUNCILMEMBER DEAN: Are we even allowed --
 4 I mean if it's not an allowable use, if it's a
 5 prohibited use, I mean what's the appeal? I mean can
 6 we say, "Well, it's prohibited, but okay, go ahead."?
 7 MR. COOLEY: It's an appeal of
 8 administrative decision. He has a right to appeal --
 9 COUNCILMEMBER DEAN: Right.
 10 MR. COOLEY: -- by our code, which he has
 11 done. I've explained the situation to him, and he
 12 understands that, but he felt that there was a
 13 circumstance because of getting access to the
 14 interstate, whatever, that, as he said in the letter,
 15 he has requested a variance or, excuse me, appeal of
 16 the administrative decision. As I said, this is a
 17 quasi-judicial hearing, so it's based upon evidence
 18 that's presented to y'all.
 19 MR. McLENDON: Joe, what is the specific
 20 language of the Code that you were relying on?
 21 MR. COOLEY: Well, specifically in the O&I
 22 District, it does not state that it is an allowed use.
 23 Further, though, to reinforce that, in M-1 it is
 24 specifically stated as an allowed use. So it's clear
 25 that it was not something that was overlooked or that

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1 was intended to be there; it was basically located in
 2 another zoning district.
 3 MAYOR PITTMAN: Council?
 4 COUNCILMEMBER FLEMING: I have -- One
 5 second.
 6 COUNCILMEMBER PATRICK: Joe, if I may ask a
 7 quick question.
 8 MR. COOLEY: Certainly.
 9 COUNCILMEMBER PATRICK: He is aware that the
 10 area has M-1 zoning around it which is literally a
 11 stone's throw from that location he's requesting;
 12 correct?
 13 MR. COOLEY: Yes. I mean he's seen the
 14 Zoning Map, is aware of the Code.
 15 COUNCILMEMBER PATRICK: Okay.
 16 MAYOR PITTMAN: So do you know why he's so
 17 adamant on just that particular location?
 18 MR. COOLEY: No, I do not, other than he's -
 19 -
 20 COUNCILMEMBER FLEMING: Based on his --
 21 MR. COOLEY: -- got a lease.
 22 COUNCILMEMBER FLEMING: Based on his letter,
 23 though I do not have a copy -- did you say that we had
 24 a copy of his application in our packet?
 25 MR. COOLEY: No, ma'am. It wasn't available

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1 last week. When the packets came together --
 2 COUNCILMEMBER FLEMING: Okay.
 3 MR. COOLEY: -- we couldn't get access.
 4 COUNCILMEMBER FLEMING: And did he -- the
 5 application state a limousine dispatching --
 6 MR. COOLEY: No, ma'am.
 7 COUNCILMEMBER FLEMING: -- service?
 8 MR. COOLEY: It said a limo --
 9 Let me get that and I'll read it into the
 10 record. On page 5 of 7 of the application for
 11 occupational tax placard, it says, "Please give a
 12 detailed description of the type of business to be
 13 conducted." It's a car, limo service around metro
 14 Atlanta, Georgia.
 15 COUNCILMEMBER PACHUTA: And Cecil, just to
 16 confirm since this is a quasi-judicial hearing or an
 17 administrative appeal, we're just reviewing whether we
 18 agree that Mr. Cooley made the correct decision.
 19 MR. McLENDON: That is correct. What you
 20 would do is look to all the evidence that was put
 21 before you and make a decision whether Mr. Cooley's
 22 decision, his termination, was justified.
 23 And one thing in these hearings it's
 24 important to do is make sure that you put your basis
 25 in the record if you choose either way. You say,

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1 "Well, I believe it was" or "was not appropriate,"
 2 because -- and I think that's one important thing that
 3 would be good for everyone to sort of state the basis
 4 on which you're making that decision.
 5 COUNCILMEMBER DEAN: Well, one thing that it
 6 also says under 0-1 is the -- it not just doesn't
 7 allow it but it says that excluding taxi service and
 8 dispatch agencies, trucking, etc. So it not only
 9 doesn't have it in there but it says excluding, the
 10 uses are excluding these things, so that's pretty
 11 clear.
 12 MR. COOLEY: And specifically the dispatch
 13 office --
 14 COUNCILMEMBER DEAN: Right.
 15 MR. COOLEY: -- which is part of his appeal.
 16 COUNCILMEMBER DEAN: Right.
 17 COUNCILMEMBER FLEMING: Though I appreciate
 18 the comments and, Mr. Cooley, your opinion, and I
 19 value your opinion, but because the Applicant is not
 20 here for this appeal process, his letter states that
 21 he (as read) "rented the office in the above address
 22 for my business answering center." And though a call
 23 center is a "not permitted," it is a conditional use
 24 as a call center, and that's the way I'm reading this
 25 rather than a dispatching service of the limousines --

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1 you know, him having 15 limousines at that location.
 2 So based on his letter of intent to appeal,
 3 my recommendation at least for myself would be to
 4 postpone this until the next meeting, giving him an
 5 opportunity one more time to come before us and
 6 clarify because we could have given him a call center
 7 under a conditional use in O/L.
 8 MAYOR PITTMAN: Hold on one second.
 9 Ms. Bryant, do you have something that you
 10 wanted to add?
 11 CLERK BRYANT: There were cars at that
 12 location that were seen at that location. It wasn't
 13 just the office or dispatch office. There was cars at
 14 the location.
 15 COUNCILMEMBER DEAN: Well, and I would think
 16 if it were my company and I wanted something, I would
 17 show up for the public hearing.
 18 COUNCILMEMBER PACHUTA: Mr. Cooley, how was
 19 he notified of tonight's administrative --
 20 MR. COOLEY: By e-mail.
 21 COUNCILMEMBER PACHUTA: Okay.
 22 MR. COOLEY: And one thing I --
 23 MAYOR PITTMAN: Did he respond back to you?
 24 MR. COOLEY: Pardon?
 25 MAYOR PITTMAN: He responded back to you?

1 MR. COOLEY: No, I did not get anything back
2 from him.

3 The thing that -- I think there's two things
4 here too that goes to what Ms. Bryant was saying, is
5 number one, I think this was initiated by Qualify of
6 Life observing an infraction of the code.

7 But secondly if you'll note, and you don't
8 have that but again it's in his application, his copy
9 of his lease. His lease started in -- when was it? --
10 June of 2011, so it's been ongoing business without an
11 occupational tax certificate to boot, so, for what
12 it's worth.

13 COUNCILMEMBER PATRICK: If we were to vote
14 and deny this tonight, would that in any way affect
15 his ability to come back for a special use permit as a
16 strictly call center?

17 MR. COOLEY: No, not at all.

18 COUNCILMEMBER PACHUTA: I'll go ahead and
19 make a motion based on the fact that limousine
20 services are allowed in M-1 and his requested location
21 is O/I, that we deny his appeal and uphold the
22 decision of Mr. Cooley.

23 COUNCILMEMBER PATRICK: Second.

24 COUNCILMEMBER DEAN: Discussion?

25 - - -

1 (No response)

2 - - -

3 MAYOR PITTMAN: Call the roll, please.

4 CLERK BRYANT: Councilmember Alexander?

5 COUNCILMEMBER ALEXANDER: Yes.

6 CLERK BRYANT: Councilmember Dean?

7 COUNCILMEMBER DEAN: Yes.

8 CLERK BRYANT: Councilmember Fleming?

9 COUNCILMEMBER FLEMING: No.

10 CLERK BRYANT: Councilmember Pachuta?

11 COUNCILMEMBER PACHUTA: Yes.

12 CLERK BRYANT: Councilmember Patrick?

13 COUNCILMEMBER PATRICK: Yes.

14 MR. COOLEY: Thank you.

15 MAYOR PITTMAN: Thank you.

16 Next is Ms. Ferguson, First Read on
17 Ordinance to Revise the 2013 Budget.

18 MS. FERGUSON: When we did the budget back
19 in June, it was requested that we come back in
20 September and do a revision.

21 I've done a small revision, and you have
22 that in your packet. And we are trying to increase
23 the training budget for the Council. We're including
24 training for Planning & Zoning Commission members. We
25 are adjusting the group insurance budget for the

1 Library to cover additional coverage for one of their
2 employees. I also have incorporated the changes to
3 add the part-time employee that y'all approved
4 previously tonight, and then I also made some changes
5 to increase the city manager's budget so that we an
6 move forward with hiring of the city manager.

7 For the most part, we're just moving money
8 around. We did take \$9,600 from contingency to pay
9 for the training. So that's pretty much what we're
10 doing.

11 We also -- this is going to include the
12 budget for the Halpern Park project to do the grant
13 portion and the increase in the HOST funds that y'all
14 approved a couple meetings ago.

15 And finally, we're decreasing the amount of
16 HOST funds that we expect to receive, based on what
17 we've gotten so far. We got \$13,000 in August, and
18 they give us six equal payments. So based on us
19 getting \$13,000, we've reduced the budget from
20 \$150,000 to eighty-three, I believe.

21 So if anybody has any questions.

22 MAYOR PITTMAN: Bring it up to the table.

23 Ms. Alexander?

24 COUNCILMEMBER ALEXANDER: No.

25 Thank you so much, Ms. Ferguson. You're

1 doing a great job and we really appreciate it.

2 MAYOR PITTMAN: Absolutely.

3 Ms. Pachuta?

4 COUNCILMEMBER PACHUTA: If anything, I think
5 the City Council training might be a little high, but
6 we can evaluate. There's Mayor's Day in January and
7 then there's the Savannah.

8 MS. FERGUSON: My intent was to fund the
9 Mayor's Day for all of you and also provide funding
10 for you to go to the GMA Conference in June, and the
11 money is in education and training but it's intended
12 to pay for all of the related travel expenses and all
13 that and --

14 COUNCILMEMBER PACHUTA: Have you included
15 Robert will need to go to the new --

16 MS. FERGUSON: Yes.

17 COUNCILMEMBER PACHUTA: -- newly elected
18 official? Okay.

19 And then the Planning Commission. I know
20 that ARC's having an upcoming class. It's \$150.00.

21 MS. FERGUSON: I put in \$150.00 for four
22 Commission members. I think they only have three
23 right now. But that's the only information I had on
24 any training for them, so that's pretty much what I
25 put in there.

1 COUNCILMEMBER PACHUTA: All right. Thank
 2 you.
 3 MAYOR PITTMAN: Mr. Patrick?
 4 COUNCILMEMBER PATRICK: Just to make sure,
 5 approving this amendment, our reserve fund went from
 6 \$66,000 --
 7 MS. FERGUSON: To \$56,000.
 8 COUNCILMEMBER PATRICK: -- to \$56,000.
 9 Okay.
 10 MAYOR PITTMAN: Ms. Fleming?
 11 COUNCILMEMBER FLEMING: I'm not in favor of
 12 removal of \$10,000 from our contingency fund for the
 13 City Council education and training budget. I think
 14 that needs to be lowered.
 15 There are other training classes that can be
 16 taken both online and off site from the convention
 17 that are much cheaper than us going to a convention
 18 and paying the convention fees. So I think \$10,000 is
 19 too much.
 20 Also, the additional \$600.00 in the Planning
 21 budget for the education, there's presently \$10,000 in
 22 that line item right now that has not been utilized at
 23 this point --
 24 MS. FERGUSON: It's --
 25 COUNCILMEMBER FLEMING: -- and -- Go ahead.

1 Planning Commission, and it will be here. They will
 2 come to us and they won't charge us for it, and I
 3 think it would be a lot better of having the one on
 4 one discussions and I think we'll get a lot more out
 5 of it.
 6 But the ARC board basically is really trying
 7 to, from my understanding and what I've been told is
 8 trying to gear a lot of their services to something
 9 practical and has a demonstrative effect with local
 10 cities. And so this was something that Dan came up
 11 with, and, you know, I'm very appreciative of it. I
 12 think it'll save us some money and get better
 13 training.
 14 COUNCILMEMBER FLEMING: And Council can also
 15 be involved with those meetings as well, I would
 16 think.
 17 MR. COOLEY: Certainly. It'll be planning
 18 and -- basically for Planning Board members, but
 19 again, Dan offered and said, you know, if you-all have
 20 additional training that you want, they'd be happy to
 21 work with us to put people in, again, at no cost to
 22 the City. So you know, it's a great opportunity, I
 23 think, for the City to do some things and, you know,
 24 take advantage of it.
 25 So my recommendation is, you know, if the

1 MS. FERGUSON: It's my understanding that
 2 that \$10,000 is specifically for certifications for
 3 Mr. Cooley and Mr. Pierce.
 4 COUNCILMEMBER FLEMING: \$10,000 for certi-
 5 fications?
 6 MR. COOLEY: Certifications and continuing
 7 education requirements, mine are related to the AICP
 8 training. I've got to have 35 hours.
 9 Tony Pierce's, the building official's,
 10 relates to about his five different certifications
 11 that he has and needs. Originally I was hopeful to
 12 have money at the end of the year to be able to pay
 13 for planning, but I'm leery to pull that out until we
 14 have a final amount for the year.
 15 But that being said, I had an interesting
 16 talk with Dan Reuter at ARC last Thursday. Haven't
 17 had opportunity to really discuss it with you or with
 18 anyone. But Dan has offered to provide training
 19 services to Doraville, whether it be for the Planning
 20 Board or he's even offered services if we need
 21 somebody to facilitate meetings or workshops or give
 22 informational sessions regarding CID's, anything like
 23 that. He's offered to do that for the City of
 24 Doraville at no cost to the City.
 25 So I want to be discussing that with the

1 Council has things that they would like to focus on or
 2 something like that, let's please discuss it and then
 3 come up with ideas, and I will discuss it with Dan and
 4 we'll see what he comes up with.
 5 COUNCILMEMBER FLEMING: Okay.
 6 COUNCILMEMBER DEAN: Will that change the
 7 \$10,000 line item --
 8 MR. COOLEY: HOST?
 9 COUNCILMEMBER DEAN: -- that we were talking
 10 about? No, for the certifications.
 11 MR. COOLEY: No, ma'am.
 12 COUNCILMEMBER DEAN: Okay.
 13 COUNCILMEMBER FLEMING: Now, continuing on -
 14 - wait, Mr. Cooley. Because back in June 25th when we
 15 were in the process of doing the budget adoption, I
 16 made the comment then that you had removed from your
 17 budget the necessary InterGov component software that
 18 we are needing for the City.
 19 So my comment now is that the \$10,000 for
 20 Council would be much greater benefit to the software
 21 components to effectually run the City better for all
 22 those that would be using it.
 23 And we did discuss that, Ms. Ferguson, about
 24 coming in September, I'd like to see where we are to
 25 be able to add that to the Planning and Development

1 budget. So --
2 MR. COOLEY: Well, as you know, and I
3 believe I've mentioned to Council before, we have
4 discussed the InterGov programs before. Ours is way
5 outdated. It's modules, and we've had discussions
6 with the different department heads. They came and
7 made a presentation of it. Everybody was just kind of
8 wowed because it allows us to work together on the
9 computer as opposed to having to run around here
10 trying to find things, and it puts all the information
11 in one place. So it's a great record-keeping tool,
12 and it's something I personally feel that we really
13 need.

14 You know, I couldn't encourage Council
15 strongly enough to at least look towards that, you
16 know, when funds are available, because that's
17 something in my opinion that the City definitely needs
18 is much better record-keeping and inter-coordination
19 between Quality of Life, Maintenance, the Permit
20 Clerk, the City Clerk, Planning and Development and
21 the Building, all that gets combined in one module
22 now.

23 COUNCILMEMBER FLEMING: Thank you.
24 MAYOR PITTMAN: Thank you.
25 Ms. Dean?

1 COUNCILMEMBER DEAN: I -- I disagree with
2 Ms. Fleming. I think the \$10,000 for education is
3 vitally important particularly given the fact that
4 there is no prerequisite to become -- in becoming an
5 elected official. You're a nice person or you know a
6 lot of people. And we are here to legislate, and I
7 think that it's really, really, really important that
8 we know or have an idea of what we are doing. So I
9 think that education is hugely important.

10 I think that \$10,000 may be -- may be high,
11 but with the Planning & Zoning education, I think
12 that's equally important. It's also in our Charter
13 that we pay to have the Planning Commission educated,
14 and we could move some of that money to Planning and
15 Zoning to make sure that they are getting the
16 education that they need to make the important
17 decisions that they're making for the city.

18 And other than that, I'm good.

19 MAYOR PITTMAN: Okay. Anything additional?

20 - - -

21 (No response)

22 - - -

23 MAYOR PITTMAN: So do I get a motion to
24 approve --

25 MR. McLENDON: This is our first reading.

1 MS. FERGUSON: We're just doing our first
2 read.

3 MAYOR PITTMAN: Oh. First reading. Okay.
4 Sorry.

5 MS. FERGUSON: Can we get some clarity on
6 whether we want to keep the \$10,000 where it is,
7 whether we want to move it, whether we want to change
8 things? What's our pleasure?

9 COUNCILMEMBER PATRICK: Could you get us
10 some more detailed numbers on the price on Savannah
11 training and I guess some other training for the
12 Council? Maybe some --

13 THE REPORTER: Pardon me?

14 COUNCILMEMBER PATRICK: I had asked her if
15 she could give us some more details on how she arrived
16 at that \$10,000, find out specifically what those
17 courses are, travel expenses, and then when we come
18 back, perhaps we can whittle that number down --

19 MS. FERGUSON: Okay.

20 COUNCILMEMBER PATRICK: -- to a smaller
21 number.

22 MS. FERGUSON: I could do that.

23 COUNCILMEMBER FLEMING: Because there are
24 off site that don't require convention costs, such
25 as --

1 MS. FERGUSON: I would need to have some
2 details on what those are because I have no knowledge
3 of those.

4 COUNCILMEMBER FLEMING: Okay. I'll be glad
5 to.

6 MS. FERGUSON: Thank you.

7 MAYOR PITTMAN: Okay. Thank you very much.
8 I appreciate it.

9 All right. Next on the agenda is a public
10 hearing. First up is the Application for variance
11 from Section 23-910, Maximum Front Yard Setback, and
12 Section 14-12, Aggregate Area of Signs. This is
13 McDonald's. This is the property at 5969 Buford
14 Highway.

15 MR. COOLEY: Good evening again, Council.
16 As the Mayor said, this is a variance from maximum
17 yard setback, which is Section 23-910, and also a
18 variance request for an increase of the square
19 footage, the maximum square footage allowed, the
20 aggregate square footage, within the Zoning Code.
21 McDonald's is looking to come in at the corner of
22 McElroy and Buford Highway. It's the corner lot where
23 the bank used to be. Originally, the bank did not set
24 up front because of the way the configuration of the
25 lot was.

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1 But the variance request -- and again, the
2 Applicant's here and will make their presentation --
3 but was basically to allow a continuous circulation,
4 one-way circulation through the parking lot, through
5 the drive-through and then back out into the parking.
6 The advantage that I see from a planning
7 perspective of it in particular is that this allows
8 instead of having ingress/egress of either McElroy
9 or Buford Highway, the ingress and egress is back
10 through the shopping center through existing curb
11 cuts. The last thing I think we need is additional
12 curb cuts on Buford Highway, and also at that
13 proximity, that close to the intersection of Buford
14 Highway and McElroy.
15 The Planning Commission reviewed this. They
16 met on September 5th. The Applicant and their
17 representative was there and made a presentation to
18 the Council or Commission. Public comment on the
19 application was taken. The Planning Commission voted
20 unanimous 3-0 to recommend approval on the aggregate
21 sign area as per the plans requested, but they've also
22 asked that the -- and like I say, a representative
23 from McDonald's was there -- about doing something to
24 dress up the frontage along Buford Highway as far as
25 both hardscape and landscape to improve or trying to

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1 improve the character and the look along Buford
2 Highway. They responded that they would be glad to
3 take a look at it and also look at the cost involved
4 and come up with a couple of plans which the Planning
5 Commission requested that they do.
6 They also did a request, the request was for
7 the setback. Again, it was a 3-0 vote to allow the
8 setback on McElroy Road but conditioned again upon
9 doing something along Buford Road. That was the real
10 key issue in discussion with the Planning Commission.
11 I'll let the Applicant fill in, and I'll be
12 glad to answer any questions.
13 MAYOR PITTMAN: Okay. Ms. Zickert, I
14 believe you're here on behalf of the Applicant.
15 MS. ZICKERT: Thank you, Ms. Pittman.
16 MR. McLENDON: Since this is a public
17 hearing, just to say usually and generally we will do
18 10 minutes per side, and so --
19 MS. ZICKERT: I've done it a few times.
20 MR. McLENDON: I was making sure everybody
21 was -- Just wanted to make sure.
22 MS. ZICKERT: I'm Katherine Zickert, Z-i-c-
23 k-e-r-t, with Smith, Gambrell & Russell, and I am
24 representing McDonald's USA, and with me this evening
25 in case you have questions about the engineering of

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1 the site or not, I have brought -- What's your name?
2 Theresa. We kid each other all the time. And she is
3 with TY Lin who is our engineering firm, so she'll be
4 happy to answer those questions.
5 I want to begin by telling you that we have
6 in fact gone back to the drawing board and done
7 exactly what the Planning Commission asked us to do.
8 Theresa, if you can hand me this plan.
9 MS. THERESA CURRY: (Presenting)
10 MS. ZICKERT: Effectively, they were
11 concerned, and rightfully so, about the Buford Highway
12 frontage, because I know you-all have a priority in
13 trying to make it more attractive up and down that
14 corridor, which can be a bit of a challenge given
15 what's been there in the past. And we were asked to
16 look at additional landscaping in the form of
17 low-lying type landscaping to make it just more
18 attractive from a pedestrian and drive-by feel.
19 So what we did in addition to having already
20 derived a landscape plan for the site was to add a row
21 of low-lying shrubs across the entirety of the
22 frontage.
23 We were also asked to consider dressing up
24 the frontage with some kind of a streetscape
25 treatment, a hardscape, some kind of a hard element.

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1 And we have come up with are these little columns that
2 we can place strategically at the end of the row to
3 sort of create an entrance feel. So we are hopeful
4 that that's something that you will be happy with in
5 considering these variances, and we're delighted to be
6 able to do it.
7 MAYOR PITTMAN: Can we turn it around so
8 everybody can see?
9 MS. ZICKERT: Oh, sorry.
10 As I'm sure a number of you have noticed,
11 McDonald's is in the process of basically resigning
12 itself. It came up with a new brand which got rid of
13 the red mansard roof and the white building, and
14 systematically, all over the country, we are rolling
15 out this new model. Greatly improved, in my opinion,
16 in terms of architecture: stacked stone, brick, less
17 of an intrusive signage impact. A nice architectural
18 element over the front that still says McDonald's, but
19 it gets rid of that mansard roof which doesn't fit in
20 that many jurisdictions.
21 And that's exactly what we are planning to
22 do here. We would like to build a 3,838 square foot
23 store -- that's the standard product that we build --
24 and we think that in the end you'll be very pleased
25 with its final appearance and the attention that we've

1 given it in terms of trying to make it fit into this
2 site.

3 As Joe said, there is -- there was in fact a
4 bank on the property. We are not orienting in the
5 same way that the bank does. We're actually orienting
6 to McElroy so that our front is going to be facing it.

7 And as he also said, it's absolutely correct
8 that we made the judgement call that given that it's a
9 corner lot right at the intersection, that there was a
10 public safety issue in terms of having curb cuts. So
11 we are using the existing drive and the internal
12 shopping center to access our site.

13 But that in turn is what we believe requires
14 one of our variances, and that is to add our logos to
15 the directional signage. Now, please keep in mind
16 that directional signage will be on this property,
17 period, so all we are asking to do is that we be
18 allowed to add the logo to it. And the reason we are
19 is that we want to make sure people realize after they
20 make the turn onto that driveway from Buford Highway,
21 that they know that's our driveway, that there's no
22 confusion whatsoever and they can get into it. And
23 the same is true from off of McElroy. You'll see the
24 logo; you'll know that's us; you'll be able to turn
25 in.

1 that I've told you about, the new design of the
2 facility, and computer-generated images in my view
3 don't do this justice because it looks like cinder
4 block and it's not; it's brick. And it looks -- it
5 doesn't show the stacked stone treatment, and, you
6 know, it's not what ends up on the ground. So this is
7 a computer-generated rendering of what we are doing.

8 But if you drive around, you can see what
9 these things look like on the ground, and they've been
10 done in a number of locations in the immediate
11 vicinity.

12 This is one that better shows -- this is one
13 of our existing stores -- those elements that you
14 really can't see on the site plan, and this was
15 attached to your packet so you do have that before
16 you.

17 MAYOR PITTMAN: Is it one similar to the one
18 at Perimeter Mall?

19 MS. ZICKERT: The Perimeter Mall store was
20 actually zoned by us and developed almost 10 years ago
21 now, I think, and it is a completely different
22 prototype in and of itself. There are elements of
23 that in all of these new do's, but that prototype was
24 never adopted across the board; so the brick out of
25 that, the tone of the yellow -- I don't think that has

1 So that's the genesis of the first variance
2 that we requested.

3 The second one has to do with the setback,
4 and, quite frankly, this may come as a shock to you,
5 you have some inconsistencies in your Code. Go
6 figure. And there is one with regard to setbacks in
7 this particular area. And some of them read there's a
8 maximum, some of them read there's a minimum.

9 We looked at this at length before we filed
10 this application and determined what we needed to be
11 asking for was for a variance of the maximum setback,
12 which wasn't restricted in terms of how much you could
13 give or anything else. And the safe circulation
14 around this project generally requires that. We
15 pulled it up to McElroy as much as we could, which was
16 part of our ability to -- or reasoning in doing that,
17 but we have to be able to get around there. So that
18 is the genesis of the second request that we are
19 making of you this evening, and if you have any other
20 questions, I'll be delighted to try and answer them.

21 COUNCILMEMBER FLEMING: Could you tell us
22 about the other photograph?

23 MS. ZICKERT: The board?

24 COUNCILMEMBER FLEMING: The board.

25 MS. ZICKERT: This does reflect the design

1 stacked stone, now that I'm thinking about it. I
2 think that's almost all brick. So we have mixed and
3 matched here. But that's sort of a standalone store,
4 to answer your question.

5 MAYOR PITTMAN: Okay. Thank you.

6 Is it appropriate to see if the Planning
7 Commission had anything to add? I know Mr. Brown is
8 here tonight. At what point could I ask him if he has
9 anything to add or --

10 MR. McLENDON: I would think that we would
11 need to complete this part of the presentation and
12 move to the second part. If --

13 MAYOR PITTMAN: Which is the public hearing?

14 MR. McLENDON: -- following the public

15 hearing, you chose to --

16 MAYOR PITTMAN: Okay.

17 MR. McLENDON: -- delve into information, I
18 think that would be appropriate.

19 MAYOR PITTMAN: Okay. So does Council have
20 questions --

21 COUNCILMEMBER DEAN: No. I -- I --

22 MAYOR PITTMAN: -- of the Applicant?

23 COUNCILMEMBER DEAN: I sent an e-mail out,
24 in fact, about the setback, because our Code -- I
25 don't think that we have the authority to authorize

1 this because our Code says: In the case of a front,
2 side or rear yard, the variance may not exceed 50
3 percent of the minimum district requirement, and
4 that's -- I mean we're going in the opposite
5 direction.

6 MS. ZICKERT: And if I may respond to that -
7 -

8 COUNCILMEMBER DEAN: Uh-huh.

9 MS. ZICKERT: -- the reason I don't think
10 that applies, with due respect, is that it does say
11 the minimum, and what we're varying is the maximum.
12 So the only way -- That -- that whole section makes no
13 sense in light of other provisions in your Code, and
14 the only way that it makes sense is if you read it the
15 way that I'm reading it.

16 And that's what Mr. McLendon and Mr. Cooley
17 and I have been talking about since that issue was
18 raised with me when I got here. So I feel pretty
19 comfortable in my interpretation of that, but by all
20 means, you've got your City Attorney to ask that.

21 COUNCILMEMBER DEAN: Yeah. This language
22 seems pretty clear to me. I mean the thing is is that
23 if we want to change the Code, we can change the Code
24 and then revisit this, but right now, this -- this --

25 Am I missing something?

1 MR. McLENDON: What I would say is when I've
2 looked at this and this issue was put in front of me,
3 you know, what it does is it presents an
4 interpretation question.

5 COUNCILMEMBER DEAN: What's the
6 interpretation?

7 MR. McLENDON: The interpretation is when
8 you look at this language, I have to harmonize this
9 language with the rest of the Code as well.

10 COUNCILMEMBER DEAN: Like what? Where?
11 Because I have it here. I have it.

12 MR. McLENDON: Specifically the section I
13 was looking at is -- when we were looking at it was
14 the section -- basically the distance requirements;
15 that you had a minimum setback from the street or a --
16 What it basically did is it created a zone that was no
17 less than five feet from the street and no more than
18 25 feet.

19 COUNCILMEMBER DEAN: Well, here. Section
20 23-1402(a), Additional Authorization to Grant
21 Variances.

22 Okay. (As read) "(a) To issue development
23 permits as required; (b), to grant variances except
24 for density and use variances from the development
25 standards of this chapter whereby for reasons of

1 narrowness, shallowness, shape, topography conditions
2 or other conditions of the property, strict
3 application of the development standards which result
4 in practical difficulties to or undue hardship upon
5 the property owner.

6 "In granting a variance, the Mayor and
7 Council may attach thereto any conditions which may be
8 deemed advisable so that the purpose of this article
9 will be to serve public safety and welfare secured and
10 substantial justice done.

11 "The authority to grant variances shall be
12 limited to variances from the following requirements:

13 "1. In the case of a front, side or rear
14 yard, the variance may not exceed 50 percent of the
15 minimum district requirement."

16 MS. ZICKERT: It's that "minimum" that I'm
17 relying on because we're asking for a variance on the
18 maximum.

19 MR. McLENDON: And so the argument we're
20 hearing from counsel is that we only require it on the
21 minimum and we don't --

22 COUNCILMEMBER DEAN: And so the maximum can
23 be whatever we want.

24 MR. McLENDON: This is, unfortunately, our
25 language.

1 COUNCILMEMBER DEAN: But, see, I would think
2 that if we wanted a maximum, that that language --

3 MR. McLENDON: Let me --

4 COUNCILMEMBER DEAN: -- would actually --

5 MR. McLENDON: Let me tell you how I would -

6 -

7 COUNCILMEMBER DEAN: -- be here.

8 MR. McLENDON: -- I would interpret this
9 language, because what you have is you have a minimum
10 distance from the right-of-way, right, and then you
11 have the maximum distance from the right-of-way.

12 The way these codes are typically written is
13 you'll find they'll say the policy of it is to have
14 longer setbacks from the road. So typically, I
15 suspect our ordinance in the past said: Your minimum
16 setback from the roadway shall be X-amount. Right?

17 COUNCILMEMBER DEAN: Well, I think there's a
18 push to move things closer --

19 MR. McLENDON: Right, and --

20 COUNCILMEMBER DEAN: -- to move properties
21 closer.

22 MR. McLENDON: -- here's what happened. And
23 I believe what happened is this language was not
24 necessarily updated at that time.

25 COUNCILMEMBER DEAN: This isn't that old, is

1 it?
 2 MR. McLENDON: Within the last couple of
 3 years. It was not something I did, so that's a couple
 4 years.
 5 But that being said, as I look at it, as I
 6 look at it, I would be included to say your minimums
 7 would be on both ends of the spectrum, because I have
 8 to harmonize it, because, if not, what I'm doing is
 9 I'm allowing a variance into something that's already
 10 allowed by right, because it is allowed between 5 and
 11 25 feet, to go anywhere in that; correct?
 12 COUNCILMEMBER DEAN: And so this variance is
 13 they're asking, what, 75 feet?
 14 MS. ZICKERT: 70.
 15 MR. McLENDON: No, not this one. But when I
 16 would look at that language is when I say, the minimum
 17 to harmonize it, so I don't get an ordinance that
 18 doesn't make sense, basically, which is to say: Okay.
 19 You can have a variance that'll put you into an area
 20 that it's already allowed in.
 21 What I would say is that minimum is
 22 referring to you have certain restrictions on can you
 23 go closer to the road?; you have certain restrictions
 24 on, can you go further than this other part of the
 25 bracket? And I think that would be a reasonable way

1 to interpret it, that we don't end up with an
 2 inconsistency in our Code and certainly I think this
 3 is language that could be readdressed.
 4 COUNCILMEMBER DEAN: And my other question,
 5 in the directional signage, that's an LED sign?
 6 MS. ZICKERT: I don't know the answer to
 7 that.
 8 MS. CURRY: It will be internally lit and
 9 will be LED.
 10 COUNCILMEMBER DEAN: Okay. And didn't we --
 11 didn't we talk about no LED signs and --
 12 COUNCILMEMBER PATRICK: Is it a variable
 13 message LED or is --
 14 MS. ZICKERT: No.
 15 COUNCILMEMBER PATRICK: -- it an LED with an
 16 acrylic facade on it?
 17 MS. CURRY: Right, it's acrylic facade. LED
 18 only for energy management.
 19 MR. McLENDON: So it's illuminated.
 20 MS. ZICKERT: Correct.
 21 MAYOR PITTMAN: Okay. Ms. Fleming?
 22 COUNCILMEMBER FLEMING: Well, if we required
 23 the maximum of 25 feet --
 24 MR. McLENDON: We do need to continue the
 25 hearing to hear the other side --

1 COUNCILMEMBER FLEMING: Oh, sorry.
 2 MR. McLENDON: -- of the public hearing.
 3 MAYOR PITTMAN: You didn't want them to ask
 4 questions to her?
 5 MR. McLENDON: We can.
 6 COUNCILMEMBER FLEMING: I don't have any
 7 questions.
 8 MAYOR PITTMAN: If you think we should move
 9 forward with the public hearing, we'll just do that.
 10 MR. McLENDON: Next question.
 11 MAYOR PITTMAN: Ms. Fleming?
 12 COUNCILMEMBER FLEMING: I don't have any
 13 questions.
 14 MAYOR PITTMAN: Mr. Patrick?
 15 COUNCILMEMBER PATRICK: Okay. On your
 16 design here, it says you're asking for a proposed 70-
 17 foot building setback. In the application, though, I
 18 guess page two, fifth line from the bottom: McElroy
 19 Road from 25 foot to a maximum of 75 feet.
 20 MS. ZICKERT: It is 70.
 21 COUNCILMEMBER PATRICK: It is 70?
 22 MS. ZICKERT: That's a typo. The actual
 23 statement of intent says 70.
 24 COUNCILMEMBER PATRICK: And I will go ahead
 25 and admit that I am not a surveyor, but I did put a

1 scale to this measurement here, and it looks like the
 2 70-foot measurement is not accurate or at least by my
 3 estimation doesn't appear to be accurate.
 4 MS. ZICKERT: Our engineer is here. I think
 5 your confusion may be very similar to what mine was,
 6 because there's an angled property line and it makes
 7 it very odd --
 8 COUNCILMEMBER PATRICK: I see that.
 9 MS. ZICKERT: -- in terms of where you
 10 measure it.
 11 COUNCILMEMBER PATRICK: I see that. But
 12 from the end point that was indicated here, I guess by
 13 about where P-3 is --
 14 MS. ZICKERT: Theresa?
 15 MS. CURRY: Yes.
 16 COUNCILMEMBER PATRICK: I'll bring it to
 17 you. Okay. So if you look at this measurement right
 18 here --
 19 MS. CURRY: Correct.
 20 COUNCILMEMBER PATRICK: -- from there to
 21 there.
 22 MS. CURRY: From the corner of the building
 23 perpendicular to the property line is 70 feet.
 24 COUNCILMEMBER PATRICK: Okay. So if I put
 25 my twenty scale on here -- since you're on a better

1 angle than I am, could you put the twenty scale on
 2 there and measure? If we need to readjust downward,
 3 we can.
 4 COUNCILMEMBER FLEMING: They're putting the
 5 scale on the map.
 6 MS. CURRY: Right there at the corner of the
 7 arcade --
 8 COUNCILMEMBER PATRICK: Okay.
 9 MS. CURRY: -- down there at the --
 10 COUNCILMEMBER FLEMING: It's right there at
 11 the corner of the arcade.
 12 COUNCILMEMBER PATRICK: So if you'll just
 13 put that flat there along the line that you've already
 14 given us.
 15 I guess ultimately my question is is when
 16 you put this scale on the measurement that's provided,
 17 it, by my reading, doesn't look like it's a 20 scale;
 18 it looks like it might be a 21 scale. So --
 19 MS. CURRY: Right.
 20 COUNCILMEMBER PATRICK: -- I just want to
 21 make sure that what's been presented here is actually
 22 what's going to be built, and then this ends up tying
 23 in with a question I'll have later on down here.
 24 But is it in fact that you're asking for 70
 25 or 75?

1 thousands of these. Any additional safety concerns or
 2 prevention methods you could use? because I'm trying
 3 to figure out where the pedestrians parked along
 4 Buford Highway are going to be entering the building,
 5 and they're going to be walking across the drive-
 6 through lanes.
 7 MS. ZICKERT: There are elevated pavers --
 8 COUNCILMEMBER ALEXANDER: Oh, okay. Great.
 9 MS. ZICKERT: -- to facilitate that, and we
 10 are anticipating that that will occur here.
 11 COUNCILMEMBER ALEXANDER: Okay.
 12 MS. ZICKERT: Okay.
 13 COUNCILMEMBER ALEXANDER: And that's
 14 actually off of the McElroy side. So this sidewalk
 15 would extend there, and then you cross there.
 16 COUNCILMEMBER ALEXANDER: What about the
 17 cars parked across along Buford Highway?
 18 MS. ZICKERT: I wasn't aware that there were
 19 cars parking on Buford.
 20 COUNCILMEMBER ALEXANDER: Along Buford
 21 Highway. Along.
 22 MS. ZICKERT: On the side.
 23 COUNCILMEMBER ALEXANDER: Facing Buford
 24 Highway.
 25 MS. ZICKERT: Really?

1 MS. ZICKERT: We are asking for 70; correct.
 2 MS. CURRY: Yeah, and there is a little
 3 distortion to the print itself.
 4 COUNCILMEMBER PATRICK: Okay.
 5 MS. CURRY: It looks like it's 21 feet.
 6 COUNCILMEMBER PATRICK: Okay. Thank you.
 7 MAYOR PITTMAN: Ms. Pachuta? Ms. Alexander?
 8 COUNCILMEMBER ALEXANDER: I have a couple of
 9 additional questions. How is the truck going to make
 10 deliveries? Where is it going to be oriented?
 11 MS. ZICKERT: That, I do not know the answer
 12 to either.
 13 Theresa? Truck orientation. Where are
 14 deliveries made?
 15 MS. CURRY: The truck -- the truck will come
 16 in off of McElroy and pull up along the dining side of
 17 the restaurant and unload their deliveries into their
 18 storage door here and then will exit out onto -- out
 19 onto Buford Highway.
 20 COUNCILMEMBER ALEXANDER: So there's enough
 21 room, enough turning radius, for a pup to get in there
 22 and out.
 23 MS. CURRY: Yeah, absolutely.
 24 COUNCILMEMBER ALEXANDER: Okay. And then
 25 the other question I had, I know you guys have built

1 COUNCILMEMBER PATRICK: You've got your --
 2 MS. ZICKERT: Oh. These.
 3 COUNCILMEMBER ALEXANDER: Yes.
 4 MS. ZICKERT: Oh. Okay. I'm sorry. I
 5 thought you were talking about cars parking here and
 6 walking over.
 7 We are not showing a paver. If you would
 8 feel more comfortable with something like that, we'd
 9 be happy to add it.
 10 COUNCILMEMBER ALEXANDER: Okay. Because am
 11 I correct in the door that they will be entering will
 12 be at the McElroy end of the building; correct?
 13 MS. ZICKERT: That's exactly right.
 14 COUNCILMEMBER ALEXANDER: Okay.
 15 MS. ZICKERT: I think there are side doors
 16 too --
 17 COUNCILMEMBER ALEXANDER: Oh, okay.
 18 MS. ZICKERT: -- to be honest with you. I
 19 think there's -- there's probably one here and one
 20 here.
 21 COUNCILMEMBER ALEXANDER: Okay.
 22 COUNCILMEMBER PATRICK: Does your elevation
 23 over there for the drive-through show doors for entry?
 24 MS. ZICKERT: On the one side, yes. You're
 25 correct in the sense that the one in the front is

1 primary; there's a secondary one here. We do not have
 2 one here.
 3 COUNCILMEMBER ALEXANDER: Okay. Thank you.
 4 COUNCILMEMBER FLEMING: Could you hold that
 5 up one more time, though?
 6 MS. ZICKERT: Yes, ma'am.
 7 COUNCILMEMBER FLEMING: But it really does
 8 appear that there's more parking on the Buford Highway
 9 side, and I would think that you would have an
 10 entrance or some type of --
 11 MS. ZICKERT: The door is right there.
 12 COUNCILMEMBER FLEMING: Okay.
 13 MS. ZICKERT: So it's not like it's
 14 centered. I mean it's truly on the corner.
 15 COUNCILMEMBER FLEMING: Okay.
 16 MS. ZICKERT: But as I said, if you would
 17 feel more comfortable with the pavers so that there's
 18 a clear, elevated walkway, we'd be delighted to do
 19 that.
 20 Wouldn't we?
 21 MS. CURRY: Yes.
 22 MS. ZICKERT: Yes, we would.
 23 MAYOR PITTMAN: Did you have something else
 24 you want to say before I open the public hearing?
 25 COUNCILMEMBER PATRICK: I do have one more

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1 question.
 2 MS. CURRY: There's a sidewalk on Buford
 3 Highway which people could use; however, now they're
 4 walking through the shrubs we're planting.
 5 MS. ZICKERT: No, she's talking about people
 6 getting out of the cars.
 7 MS. CURRY: Right, yes.
 8 COUNCILMEMBER PATRICK: One more quick
 9 question.
 10 So our Comp Plan classifies this area as
 11 commercial -- commercial district, and it goes on to
 12 say that we have a lot of signs, a lot of sign clutter
 13 on Buford Highway to begin with and that we should be
 14 doing whatever we can to encourage pedestrian movement
 15 or make things as pedestrian-friendly as possible.
 16 So is there a way that the building can be
 17 oriented closer towards McElroy? Maybe you're not
 18 going for all of the 70 or 75 feet?
 19 MS. ZICKERT: We looked at that. We
 20 genuinely did. And the problem is that we have our
 21 handicap parking here which is also on purpose because
 22 closest to the front of the store. And there's just
 23 no -- You can't get a circulatory pattern.
 24 If we didn't have to ask you a variance, we
 25 would rather not ask you for one. Trust me on this.

1 Or if we could take it back to 50 so your concern is
 2 clearly answered, we would do that.
 3 And before we deny this thing, if you want
 4 me looking at all that stuff, then, you know, we'll be
 5 happy to do that. But as it stands now, I don't know
 6 of any way of pulling it closer.
 7 There is a sidewalk on Buford. We did
 8 connect it to here in an effort to bring pedestrians
 9 off Buford. None of that connection exists now. So
 10 we are trying to bring them in from the highway.
 11 COUNCILMEMBER PATRICK: Okay. Would you
 12 guys be able to extend the sidewalk along McElroy to
 13 the end of the property line?
 14 MS. CURRY: Yeah.
 15 MS. ZICKERT: Yes.
 16 MS. CURRY: Yeah, it's just another 50.
 17 MS. ZICKERT: Absolutely.
 18 MS. CURRY: I'll spend their money.
 19 COUNCILMEMBER PATRICK: Since you're being
 20 so nice, another question.
 21 MS. ZICKERT: Whatever you want. McDonald's
 22 for everyone.
 23 COUNCILMEMBER PATRICK: Is there a way that
 24 you guys could maybe lower the height of your sign
 25 from I think it was -- was it 45 feet for the ground

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1 sign? Is that what your --
 2 MS. ZICKERT: It's whatever your ordinance
 3 allows. We did not ask for a variance on that.
 4 COUNCILMEMBER PATRICK: You didn't ask for a
 5 variance on that one?
 6 MS. ZICKERT: Huh-uh.
 7 COUNCILMEMBER PATRICK: Is there a way you
 8 could --
 9 MS. ZICKERT: Because we really wanted a
 10 reader board out there, and I was not just told "no."
 11 COUNCILMEMBER PATRICK: Okay.
 12 MAYOR PITTMAN: Okay. At this time, we're
 13 going to open the public hearing. It's 10 minutes for
 14 and 10 minutes against. Okay. That's total 10
 15 minutes. So if one person speaks for 10 minutes,
 16 that's it.
 17 So I'm going to open the portion for. If
 18 you support this, please come forward and speak.
 19 MR. THOM ABBOTT: Thom Abbott from
 20 Northwoods. I have some questions first of all to the
 21 Applicant.
 22 First of all, is this a corporate store or a
 23 franchise?
 24 MS. DEMETRIA PETERSON: All of our stores
 25 are -- McDonald's corporate owns all of our stores,

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1 and this will be operated by an operator. So they
2 only operate stores.
3 MR. ABBOTT: Okay. All right. And I was
4 just curious as to obviously I know McDonald's
5 business plan well enough to know that you don't open
6 a McDonald's unless you think it's going to make money
7 because I've only seen one closed in my life.
8 How does this affect the current store on
9 Buford Highway that's in Doraville? I'm just
10 presuming a traffic study from north of 285 has given
11 you enough business model to get traffic to that store
12 versus coming all the way here. Okay.
13 And then lastly, I understand the need for
14 variances and everything. I've been through land-use
15 planning committees for many a time. I think it's
16 important that this is a quality business. I've never
17 see a bad McDonald's. Every experience I've ever had
18 working with a McDonald's, if they ever created an
19 issue in a community, they're on it like that to fix
20 it, and I think it would be a great addition to our
21 city.
22 MAYOR PITTMAN: Thank you, Mr. Abbott.
23 Anyone else wishing to speak for, please
24 come forward.
25 - - -

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1 (No response)
2 - - -
3 MAYOR PITTMAN: Okay. Anyone wishing to
4 speak against, please come forward.
5 MR. HART: First of all, one of the
6 questions at the Planning Commission was a question
7 that was supposed to have been answered by the -- by
8 the attorney, was a conflict-of-interest question,
9 was, number one, how many people on the City Council
10 because this is a Halpern property being leased to
11 McDonald's, that how many people on the City Council
12 have received campaign donations exceeding \$250.00
13 from Halpern Enterprises?
14 Second question that was at the Planning
15 Commission meeting, this was supposed to have been
16 addressed by Council, was the current Planner for the
17 City was employed with the firm of Zucker (ph) that
18 worked for Halpern Enterprises.
19 So those are the first things that needed an
20 answer from the Planning Commission.
21 The 2008 C-2/C-1 Zoning Ordinance was
22 looking for buildings that were made of better
23 materials built closer to the street with parking
24 either on the side or the back. That's the reason why
25 they had a minimum setback of five feet from the

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1 sidewalk and a maximum setback from the street of 25
2 feet. Your neighborhood houses have a maximum set- --
3 they have a minimum setback. There's no maximum how
4 far to build a house.
5 But the one zoning district that is
6 different is Buford Highway where the requirement is a
7 maximum -- not just a minimum but a maximum setback,
8 and this has yet to be done because they're using this
9 minimum rule that doesn't apply to this one district.
10 They want a 75-foot setback on the front of
11 the store off Buford Highway but they also want
12 another 75 foot on McElroy. The problem exists across
13 the street, Advance Auto Parts. This doesn't sit on
14 the properly correctly. And because the entrance to
15 the shopping center in both places are too close to
16 the corner that it causes traffic problems, that
17 there's a crest of a hill on this street where the
18 traffic light is located. Traffic moving up and down
19 Buford Highway are in peril because these entrances
20 are -- both intersections are too close to the
21 intersection.
22 We ask that the plans be reviewed by G-DOT
23 because they've changed the usage on this property,
24 the fact that we're clear with them.
25 You're very good, Cecil, about arguing the

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1 five and the 25 foot. Okay. It says in the rules no
2 wholesale, and that's -- you can't figure that out.
3 Okay. When it says five foot and 25 feet, gee, we
4 can't figure that out either. I mean what kind of
5 language? Does it have to be in Swahili before you
6 understand that?
7 MAYOR PITTMAN: Mr. Hart.
8 MR. HART: What?
9 MAYOR PITTMAN: Come on. Be nice, please.
10 MR. HART: It's my time, right?
11 MAYOR PITTMAN: Yes, but be nice.
12 MR. HART: Okay. The entrance they're using
13 for the entrance to this McDonald's is also entrance
14 to the shopping center and the bank, and there's
15 always people trying to turn into the bank.
16 They're all queued up on the street and left out in
17 the middle of Buford Highway with oncoming traffic.
18 This is not going to alleviate that problem.
19 So why are they putting a parking lot in front of
20 McDonald's that would clearly -- The rules for C-2 do
21 not allow it. They clearly don't want cars with their
22 rear end stuck out facing Buford Highway. There's
23 plenty of room in a 25-foot setback to put a driveway
24 for a drive-through. You do not have to have parking
25 in front of this store.

1 I think once again, this city, you pass an
 2 ordinance, the law is there; the problem in this city,
 3 you just don't seem to follow the law. Thank you.
 4 MAYOR PITTMAN: Anyone else wishing to speak
 5 against?
 6 MR. HART: We would like to have that
 7 addressed, the legal issue.
 8 MR. ANDERSON: I'm Stuart Anderson. I'm
 9 taking a little time from the for's since I'm just
 10 going to say welcome, and certainly we need to give
 11 them their variance. Thank you.
 12 MAYOR PITTMAN: Okay. Anyone wishing to
 13 speak against?
 14 ---
 15 (No response)
 16 ---
 17 MAYOR PITTMAN: Okay. At this time, we're
 18 going to close the public hearing portion; we're going
 19 to bring it back up to the Council.
 20 Any additional questions from the Council?
 21 Hold on.
 22 Mr. Brown, I believe you're here. Did you
 23 want to say anything on behalf of the Planning
 24 Commission?
 25 P.C COMMISSION MEMBER BARRY BROWN: I

1 certainly can if you want me to.
 2 MAYOR PITTMAN: If you would, please.
 3 COMMISSIONER BROWN: My name is Barry Brown.
 4 I live at 3611 Raymond Drive. I'm on the Planning
 5 Commission.
 6 One of the things that we looked at -- and
 7 we looked at the scale, too, by the way, and we
 8 noticed that the drawing is not quite plotted the way
 9 it was drawn up. But is a 20 scale; pretty sure of
 10 that.
 11 Also, we thought about the sign, if you make
 12 the sign shorter, you'll not be able to see it as far
 13 which will cause traffic problems on Buford Highway.
 14 There is a queuing problem if you move it up
 15 25 feet. I would recommend it stay where it is at 70
 16 feet.
 17 If you shorten the distance up, as people
 18 come in, they're going to make an immediate turn to
 19 get into the facility unless you move that back around
 20 to the other side, then you don't have your
 21 circulation.
 22 Those were the things that we looked at.
 23 Also we were interested in adding some
 24 landscaping and streetscaping improvements -- which I
 25 haven't seen those but I'm glad that you are able to

1 do so. That was not my suggestion, by the way; it was
 2 Carol Gilman's, but I think it's a good one.
 3 So those are the things that we were
 4 concerned about. We felt it was a reasonable request
 5 for a variance and, therefore, we voted to recommend
 6 approval.
 7 MAYOR PITTMAN: So it was unanimous?
 8 COMMISSIONER BROWN: Pardon?
 9 MAYOR PITTMAN: It was unanimous?
 10 COMMISSIONER BROWN: It was unanimous, yes.
 11 MAYOR PITTMAN: Okay. Mr. Brown, thank you
 12 very much.
 13 COMMISSIONER BROWN: Any questions?
 14 ---
 15 (No response)
 16 ---
 17 MAYOR PITTMAN: Okay. Thank you.
 18 Bring it back up to the Council. Any
 19 additional questions?
 20 ---
 21 (No response)
 22 ---
 23 MAYOR PITTMAN: Okay. Do we -- Cecil, now
 24 we can move forward with a motion?
 25 MR. McLENDON: You can. You can move

1 forward on this how you choose to, absolutely.
 2 MAYOR PITTMAN: Okay.
 3 COUNCILMEMBER ALEXANDER: ^{I make a motion to}
 4 grant the variances requested by McDonald's USA, the
 5 first item, increase setback from McElroy Road from 25
 6 feet to 70 feet and to allow logos on directional
 7 signage, with the following condition: That the
 8 landscape mockup that was presented at this evening's
 9 meeting is instituted and followed, and also to take
 10 them up on their offer to add an additional raised
 11 pedestrian walkway from the parking of the cars
 12 alongside Buford Highway to the entrance to the
 13 restaurant. And to extend the sidewalk along McElroy
 14 Road.
 15 MAYOR PITTMAN: Do I get a second?
 16 COUNCILMEMBER PACHUTA: Second.
 17 COUNCILMEMBER DEAN: I still have a concern
 18 about the setback.
 19 I understand that McDonald's is a fantastic
 20 business, but the only thing I have to go by right now
 21 at this early stage of my position on Council is what
 22 I read, and I don't feel comfortable because I don't
 23 see where it says it's okay to grant this variance. I
 24 don't think that it's within our authority to do so,
 25 so that's all I'm going to say.

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1 MAYOR PITTMAN: Cecil, did you have
2 something you wanted to say?
3 COUNCILMEMBER PATRICK: I thought they had
4 mentioned that they were going to put in some kind of
5 columns.
6 MS. ZICKERT: That's part of that landscape
7 plan --
8 MS. CURRY: Yeah.
9 COUNCILMEMBER PATRICK: Part of that
10 landscaping?
11 MS. ZICKERT: -- that's shown on there.
12 COUNCILMEMBER PATRICK: How would Council
13 feel if the directional signs were monument style as
14 opposed to pole style?
15 COUNCILMEMBER ALEXANDER: I don't have an
16 opinion either way on that.
17 MS. ZICKERT: We can do that.
18 COUNCILMEMBER PATRICK: You can do that?
19 Okay.
20 COUNCILMEMBER FLEMING: Are you talking
21 about the directional signs within the -- at the
22 entrance from off of McElroy and --
23 COUNCILMEMBER PATRICK: Wherever they want
24 to put a directional sign. Wherever they want to put
25 a directional sign.

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1 MS. ZICKERT: Yeah. We can do a base, a
2 stone base.
3 MS. CURRY: They'll kind of mimic the
4 columns.
5 COUNCILMEMBER PATRICK: Yes.
6 MS. ZICKERT: Yeah, pull it all together.
7 COUNCILMEMBER ALEXANDER: I amend the
8 conditions to my motion to include Councilmember
9 Patrick's suggestion.
10 MAYOR PITTMAN: Did you have something you
11 wanted to add?
12 MR. COOLEY: Yes, I did. The only thing I
13 would say about that is making sure that, number one,
14 we're talking about probably a little larger thing for
15 visual that is not in the corridor, the 15 foot/15
16 foot doesn't cause visual blockage and that it's back
17 far enough that it's not going to cause a safety issue
18 if somebody ran into it -- stone versus a sign that
19 would easily go over. So I think that could be met,
20 but I think that's important.
21 COUNCILMEMBER PATRICK: I've seen column
22 signs that have come down very easily.
23 MS. ZICKERT: I think I did it.
24 MAYOR PITTMAN: Do you want to amend your
25 second?

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1 COUNCILMEMBER ALEXANDER: Yes, I'll amend my
2 second.
3 MAYOR PITTMAN: Did you want to say
4 something? You just look like you want to say
5 something.
6 MR. McLENDON: Yeah. And I'm looking at the
7 language on this, to be honest with you.
8 One of the things we have had is several
9 suggestions on this, several suggestions to make
10 revisions to things.
11 Frankly, with this language on the distance
12 and the variances allowed, I'd like to have the
13 ability to look at that, to be honest with you. I'd
14 like to be able to think through that language, and
15 I've sort of got hit flat-footed with it today.
16 I think there have been a lot of positive
17 suggestions and a lot of positive feedback that could
18 be reflected on this.
19 What I would like to do before we approve
20 this is I'd like to be able to review this language
21 and make an opinion as to this in the context of the
22 entire Zoning Code. That would be my request.
23 COUNCILMEMBER DEAN: Thank you, Cecil.
24 MR. McLENDON: So --
25 MAYOR PITTMAN: Okay.

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1 MR. McLENDON: -- you know, I don't hear
2 anything in this that I disagree with, these
3 conditions, the plan, but I do think that we need time
4 to be able to look at this language and see how it
5 fits into the context of this application.
6 And Ms. Zickert is a fabulous attorney, and
7 I think in a conversation between us, we will be able
8 to --
9 MS. ZICKERT: Could we go have that now?
10 MR. McLENDON: -- fully --
11 MAYOR PITTMAN: I mean I --
12 COUNCILMEMBER PACHUTA: Can we take a 10-
13 minute break?
14 MR. McLENDON: If you wanted to recess this,
15 I would --
16 MAYOR PITTMAN: We actually have someone
17 that needs a break already and she's already told me,
18 so we will take -- We can say 10 minutes, but if you
19 can do it quicker, that would be great.
20 ---
21 (Brief recess)
22 ---
23 MAYOR PITTMAN: Meeting come back to order.
24 It is approaching 9 o'clock. We do need to
25 finish this item.

1 I want to know what the wishes of the
2 Council is, if you would like to continue the agenda
3 or to move it to the next agenda, and I believe at
4 least on the public hearing we have to have a date
5 certain on that one.

6 What are your wishes, Council?

7 COUNCILMEMBER ALEXANDER: Well, we already
8 have a motion.

9 MR. McLENDON: We have actually conferred on
10 this issue, and really I think what we would like to
11 do, and Ms. Zickert may weigh in, is there have been
12 many suggestions to the site plans and revisions to
13 the site plans. We would like to take the two-week
14 period to get these site plans revised, and it'll give
15 us time to sort of evaluate these other issues that
16 have sort of come up at the last minute. And I would
17 like to be able to have the opportunity to not just
18 review these sections but review it in the context of
19 our entire Zoning Code, look at these changes that
20 have taken place, so I can do a complete
21 interpretation of it to you next week.

22 MS. ZICKERT: And I am willing to accept
23 Cecil's desire to look at it as a whole and I will
24 work with him to make sure we get it resolved.

25 MAYOR PITTMAN: Okay.

1 MAYOR PITTMAN: All righty. Call the roll,
2 please.

3 CLERK BRYANT: Councilmember Alexander?

4 COUNCILMEMBER ALEXANDER: Yes.

5 CLERK BRYANT: Councilmember Dean?

6 COUNCILMEMBER DEAN: Yes.

7 CLERK BRYANT: Councilmember Fleming?

8 COUNCILMEMBER FLEMING: Yes.

9 CLERK BRYANT: Councilmember Pachuta?

10 COUNCILMEMBER PACHUTA: Yes.

11 CLERK BRYANT: Councilmember Patrick?

12 COUNCILMEMBER PATRICK: Yes.

13 MAYOR PITTMAN: Thank you. And thank you.

14 MS. ZICKERT: We'll be back in two weeks.

15 MAYOR PITTMAN: All right. Thank you.

16 COUNCILMEMBER ALEXANDER: Thank you very
17 much, ladies.

18 MAYOR PITTMAN: Is it the wishes of the
19 Council to move the additional public hearings to the
20 next meeting?

21 COUNCILMEMBER ALEXANDER: Make a motion to
22 move the Text Amendment to Section 14-12 and the Text
23 Amendment regarding Definitions of Wholesale and
24 Retail to a date certain of October 1.

25 MAYOR PITTMAN: Do I get a second?

1 MR. McLENDON: Absolutely.

2 MAYOR PITTMAN: Thank you. So --

3 COUNCILMEMBER ALEXANDER: I withdraw my
4 motion.

5 I make a second motion to move the variance
6 hearings for McDonald's USA to a date certain of
7 October 1.

8 MAYOR PITTMAN: Okay. Second?

9 COUNCILMEMBER PACHUTA: Second.

10 MAYOR PITTMAN: Discussion?

11 COUNCILMEMBER FLEMING: There's no
12 discussion on moving it, obviously. I feel certain
13 that we should do that.

14 However, just making a comment on the
15 setbacks that are listed in our Zoning Code, we have
16 many inconsistencies in our Zoning Codes. One reason
17 why we're working on Smart Code.

18 That was one of the questions that Caleb
19 asked me on Friday: What did I think about the 25
20 maximum setback, and I said it was absolutely
21 ridiculous, and because the way that we have it listed
22 is five minimum, and if anybody wanted to -- if DOT
23 wanted to come in and widen a road, it would be in
24 their building if they were 25 feet. So it's a no-
25 brainer on this one as far as I'm concerned.

1 COUNCILMEMBER DEAN: Okay. Go ahead.

2 COUNCILMEMBER FLEMING: Second.

3 MAYOR PITTMAN: Discussion?

4 COUNCILMEMBER DEAN: Okay. There is some
5 confusion about this language, about this text
6 amendment.

7 When the Planning Commission -- when I found
8 out that the Planning -- that the recording of the
9 Planning Commission meeting did not happen, I called a
10 Planning Commissioner to see what had happened in the
11 meeting, because I usually watch the DVDs of the
12 meetings because I don't want to go and unfairly
13 influence the decisions of the Commission.

14 And I was told that this language was
15 actually -- they asked that this language regarding
16 wholesale and retail go back to Legal for
17 clarification.

18 And on the packet, it says that it was voted
19 unanimously, and maybe Mr. Brown can help clarify
20 that?

21 COMMISSIONER BROWN: Yes, that is correct.
22 We --

23 MAYOR PITTMAN: I thought we -- Is it
24 appropriate to discuss this at this time or are we
25 going to bump this to the next agenda?

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1 COUNCILMEMBER DEAN: Well, you're asking to
2 reschedule the hearing, and I don't think that we're
3 at that --
4 MAYOR PITTMAN: I'm just asking.
5 COUNCILMEMBER DEAN: -- place yet.
6 Okay.
7 MR. McLENDON: What we have is I think
8 we're putting forward basis to put this hearing
9 forward, and I have no problem if we want to push it
10 out. We had a advertised public hearing for tonight.
11 MR. COOLEY: That's correct.
12 MR. McLENDON: So I believe you have to take
13 your public hearing on this at the moment but you
14 can --
15 MR. COOLEY: The alternative, because this
16 is not that time-sensitive, is delay it out to even
17 beyond that and readvertise it, which I think would be
18 probably better because it's going to be readertised
19 and it goes beyond what --
20 COUNCILMEMBER DEAN: But this hasn't gone --
21 this hasn't been cleared through the Planning
22 Commission yet. That's my point, and that's what --
23 MR. COOLEY: Well, then, that's part of the
24 point of delaying it; if I may.
25 COUNCILMEMBER ALEXANDER: So I have a motion

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1 on the table. Are we now saying we do not want to
2 postpone it to a date certain; we want to table those
3 two items? Yes or no?
4 MR. McLENDON: I'm okay on either way you
5 want to go with it.
6 COUNCILMEMBER ALEXANDER: That was not what
7 I asked. I asked a yes-or-no question.
8 I'm tired of making motions and having to
9 withdraw them and do them over again. Let's cut to
10 the chase and move on.
11 COUNCILMEMBER DEAN: Well, before that, I
12 have a question too.
13 Is it appropriate to have a public hearing
14 when this matter has not been cleared through the
15 Planning Commission yet?
16 MR. McLENDON: Yes. You could have your
17 public hearing. If the Planning -- if it hasn't gone
18 before the Planning Commission --
19 COUNCILMEMBER DEAN: The Planning Commission
20 sent it back saying we have not -- they haven't voted
21 on this issue.
22 MR. McLENDON: Generally the Planning
23 Commission can't hold you --
24 COUNCILMEMBER DEAN: Okay.
25 MR. McLENDON: -- from taking action. So if

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1 it's hit the Planning Commission, you can usually take
2 your actions.
3 COUNCILMEMBER DEAN: Okay.
4 MR. McLENDON: Basically, their requests are
5 sort of would you? It's permissive.
6 Joe, I would defer to you on that. I have
7 no particular -- I have no particular thought.
8 MR. COOLEY: In order to be able to take it
9 without calling a special session for the Planning
10 Commission and revisit that, there was a
11 misunderstanding.
12 My understanding -- we didn't have the
13 minutes yet, which is not unusual; it takes a little
14 while to get those out -- was that they voted on it
15 with the condition that it be that portion -- There
16 was a question about business-to-business, if that is
17 covered within the definition of wholesale.
18 I worked with Lenny on this. I'm very
19 comfortable with Lenny's definition. It covers
20 wholesale and it covers business-to-business. Not
21 retail business-to-business but wholesale business-to-
22 business.
23 I said I would take that back to him and
24 bring that with a recommendation to the Council as
25 part of this, which I did. It is my misunderstanding;

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1 I apologize, but that was my understanding. We had
2 five that night, and it was amazing because I was like
3 all five fast, which was amazing.
4 So there was not a motion to table, and I
5 explained this to the Councilwoman earlier today in an
6 e-mail and tried to explain it, so this shouldn't be
7 anything new, and so that was what happened, and so be
8 it. That's my -- my position will be to extend it
9 out, readvertise it, give the opportunity to the
10 Planning Commission to do what they need to do on it
11 and be comfortable with it. I have no problem with
12 that whatsoever, so. But I think that would be better
13 than going just one meeting back.
14 MR. McLENDON: You know, if it's an issue, I
15 have no problem attending a Planning Commission
16 meeting to address their issues. If they do have
17 questions, I'll be available to answer any questions
18 they have.
19 MAYOR PITTMAN: Right now we have a motion
20 and a second. Any additional discussion?
21 COUNCILMEMBER ALEXANDER: And I'm asking
22 what to do with the motion. Do we table both of these
23 items for them to go back through the cycle? Trying
24 to save money on advertising.
25 MR. McLENDON: You could --

1 MAYOR PITTMAN: What did you say? I'm
 2 sorry, Cecil.
 3 MR. McLENDON: I would say, I mean if you're
 4 going to just ask me, any time we get a confusing time
 5 line on it, I don't think it's going to hurt a bit if
 6 we push it out and readvertise it.
 7 And Joe, I'd be more than happy top have
 8 your input.
 9 MR. COOLEY: Oh, I agree completely.
 10 There's two things here, though. You've got
 11 a motion regarding item (b) which is the Text
 12 Amendments for that, but there is also the vacant
 13 property signs.
 14 Vacant property sign is just a response back
 15 from the Planning Commission and staff to you-all. It
 16 is not a public hearing; it is a response back with
 17 the information that was developed. So I almost would
 18 suggest that it be done separately. My recommendation
 19 would be to carry over vacant properties to the next
 20 meeting, and that doesn't have to be a date certainly,
 21 actually, because it's not a public hearing.
 22 But I would also, for the text amendment to
 23 Item (b), I would suggest not carrying that over but
 24 taking it back to the Planning Commission and then
 25 readvertising.

1 COUNCILMEMBER ALEXANDER: Okay. The way I
 2 read this was Wall and Awning Signs. I didn't equate
 3 this to the vacant property language.
 4 MR. COOLEY: I'm sorry, that's -- Maybe I'm
 5 mistaken. I thought you were doing under New Business
 6 also.
 7 COUNCILMEMBER ALEXANDER: No.
 8 MR. COOLEY: Oh, excuse me. My mistake.
 9 COUNCILMEMBER ALEXANDER: I'm trying to get
 10 us out of the public hearing section.
 11 MR. COOLEY: I'm sorry.
 12 COUNCILMEMBER ALEXANDER: Okay? That's all
 13 I'm trying to do.
 14 MR. COOLEY: My recommendation would be just
 15 to readvertise it --
 16 COUNCILMEMBER ALEXANDER: Okay.
 17 MR. COOLEY: -- not to a time certain.
 18 COUNCILMEMBER ALEXANDER: Okay. So I
 19 withdraw my motion yet once again.
 20 We are going to table under Public Hearing,
 21 Section (b), Text Amendment to Delete Section 14-12
 22 and the Text Amendment regarding definitions of
 23 Wholesale and Retail. It will be readvertised for a
 24 public hearing after it goes through the Planning
 25 Commission yet once again.

1 MAYOR PITTMAN: Do I get a second?
 2 COUNCILMEMBER PACHUTA: Second.
 3 MAYOR PITTMAN: Discussion?
 4 ---
 5 (No response)
 6 ---
 7 MAYOR PITTMAN: Call the roll, please.
 8 CLERK BRYANT: Councilmember Alexander?
 9 COUNCILMEMBER ALEXANDER: Yes.
 10 CLERK BRYANT: Councilmember Dean?
 11 COUNCILMEMBER DEAN: Yes.
 12 CLERK BRYANT: Councilmember Fleming?
 13 COUNCILMEMBER FLEMING: Yes.
 14 CLERK BRYANT: Councilmember Pachuta?
 15 COUNCILMEMBER PACHUTA: Yes.
 16 CLERK BRYANT: Councilmember Patrick?
 17 COUNCILMEMBER PATRICK: Yes.
 18 COUNCILMEMBER ALEXANDER: It is now 9:04.
 19 Make a motion to extend the Council meeting to accept
 20 public comments and then adjourn thereafter.
 21 MAYOR PITTMAN: Do I get a second?
 22 COUNCILMEMBER PACHUTA: Second.
 23 MAYOR PITTMAN: Discussion?
 24 ---
 25 (No response)

1 ---
 2 MAYOR PITTMAN: Call the roll, please.
 3 CLERK BRYANT: Councilmember Alexander?
 4 COUNCILMEMBER ALEXANDER: Yes.
 5 CLERK BRYANT: Councilmember Dean?
 6 COUNCILMEMBER DEAN: Yes.
 7 CLERK BRYANT: Councilmember Fleming?
 8 COUNCILMEMBER FLEMING: Yes.
 9 CLERK BRYANT: Councilmember Pachuta?
 10 COUNCILMEMBER PACHUTA: Yes.
 11 CLERK BRYANT: Councilmember Patrick?
 12 COUNCILMEMBER PATRICK: Yes.
 13 MAYOR PITTMAN: All righty. Please come
 14 forward if you wish to make public comments; limit
 15 your comments to three minutes. Please line up at the
 16 podium if you want to make a comment. Please line up.
 17 MR, ABBOTT: Good evening, Council. I just
 18 wanted to mention one thing. I took one of my several
 19 walks a week down Buford Highway. I'll be sending an
 20 e-mail out tomorrow just for you to see and address as
 21 well as it needs to go to Code Enforcement.
 22 I'm absolutely flabbergasted by some of the
 23 things I found on Buford Highway including a homeless
 24 camp in the middle of Doraville that I'm sure the City
 25 and the Police Department's probably not even aware

1 of. It's right next to a business on a vacant lot,
2 there's furniture all over in there. I found
3 countless amounts of garbage. There's utility
4 trailers parked in front of businesses.

5 So it's just, going back to that CID thing
6 that we want to talk about doing: but if we'd just
7 enforce some of our codes, it would really help.
8 Weeds all over parking lots, etc.

9 So just in a positive light because maybe
10 you-all don't have time to do this. I do; I walk
11 literally through behind the back of buildings and
12 everything.

13 And I took a bunch of pictures and I'm going
14 to take the time and put them on a sheet of paper,
15 tell you where they're at and show you just so you
16 have some ideas of some of the things we need to
17 address with Code Enforcement. I think we could keep
18 Code Enforcement busy for months on Buford Highway,
19 but don't take them out of our neighborhood.

20 MAYOR PITTMAN: Thank you, Mr. Abbott.

21 MS. SUSAN CRAWFORD: Susan Crawford, and I
22 also have some pictures which I'll be glad to share at
23 some point, at any point.

24 I don't want to be a wet blanket, but the
25 mulch is not real wheelchair-friendly. I don't know

1 pipe out and you daylight the stream, which is about a
2 tenth of the price of what you're about to spend and
3 it allows a natural flood plain where the water builds
4 up and then slowly feeds back through the pipe again
5 and eliminates all that erosion downstream.

6 It's a more cost-effective thing. If you
7 look at parks like Winn Park next to Colony Square,
8 you'll see what I'm talking about. City of Atlanta
9 doesn't build asphalt highways around their city
10 parks, okay, and they have water features in the park;
11 they put little check dams in and they got fish in it.
12 There are stone seating areas around those areas.

13 So you can return Brook Park to a first-
14 class park again and actually spend less money at the
15 same time.

16 I think Lorraine Caribbean also wants to
17 address this erosion issue. So instead of just this
18 mindless stick-a-pipe-in-it, and then when the pipe
19 rusts out, stick a sleeve in it, why don't you go back
20 to the original concept that was called Brook Park and
21 do something that's better than we have now for less
22 money. Thank you.

23 MR. ANDERSON: Stuart Anderson.

24 There's been a bunch of discussion about
25 shuffling some money around and Council education. I

1 how that could be in compliance with the ADA laws. I
2 mean if it gets wet or something, would somebody
3 just --? We have so many people now losing limbs,
4 unfortunately, and it is a public park, isn't it?
5 Might be something to consider.

6 MR. HART: Actually, I like the mulch.

7 Brook Park came up again, and I think that
8 it's important to understand that it's called Brook
9 Park because there was a brook in the park. And it's
10 not Brook-in-the-Pipe Park; it's Brook Park, and it's
11 got little springs and everything. And we've got this
12 huge flooding problem and erosion problem because of
13 this huge watershed that comes off of Chamblee Tucker
14 Road and, you know, goes down through this park and
15 then now you're going to line it with a plastic pipe
16 so it comes out the other end like a shotgun. And the
17 ground table water [sic] because of rusted-out pipe
18 had access to the stream at that point. That ground
19 table water's just going to sit on the top like a big
20 mosquito pond, okay, because now because it now,
21 because you put a sleeve in it, can't access the pipe.

22 So now they have to dig it up again and put
23 a French drain in it so it would get in the pipe.
24 We're turning this thing into another English Oak
25 Park, because what's wrong with just you just take the

1 think that a lot of the education for the Council
2 could be -- I think perhaps Ms. Fleming commented on
3 it to Ms. Dean, that a lot of this can be done online,
4 etc.

5 But the basis of my comment is perhaps Lisa
6 can keep an eye on getting the GIS done for the
7 Planning Department. I think that's a real priority,
8 and, as we're shuffling moneys back and forth, to keep
9 that in mind.

10 The other thing -- and I'm going to complain
11 now -- for some years, I've been complaining about
12 this electrical outlet down here (indicating), and
13 before it burns this house down, get it fixed.

14 MAYOR PITTMAN: Thank you, Mr. Anderson.
15 Motion to adjourn?

16 COUNCILMEMBER ALEXANDER: So moved.

17 MAYOR PITTMAN: Second?

18 COUNCILMEMBER PATRICK: Second.

19 MAYOR PITTMAN: Discussion?

20 - - -

21 (No response)

22 - - -

23 MAYOR PITTMAN: Call the roll, please.

24 CLERK BRYANT: Councilmember Alexander?

25 COUNCILMEMBER ALEXANDER: Yes.

1 CLERK BRYANT: Councilmember Dean?
2 COUNCILMEMBER DEAN: Yes.
3 CLERK BRYANT: Councilmember Fleming?
4 COUNCILMEMBER FLEMING: Yes.
5 CLERK BRYANT: Councilmember Pachuta?
6 COUNCILMEMBER PACHUTA: Yes.
7 CLERK BRYANT: Councilmember Patrick?
8 COUNCILMEMBER PATRICK: Yes.
9 MAYOR PITTMAN: Meeting adjourned.

10 ---

11 (Meeting adjourned at approximately 9:10 p.m.)

12 ---

1 C E R T I F I C A T E

2 STATE OF GEORGIA]

3 COUNTY OF DEKALB]

4 I hereby certify that the foregoing transcript
5 was taken down, as stated in the caption, and the
6 proceedings were reduced to typewriting under my
7 direction and control.

8 I further certify that the transcript is a true
9 and correct record of the evidence given at the said
10 proceedings.

11 I further certify that I am neither a relative
12 or employee or attorney or counsel to any of the
13 parties, nor financially or otherwise interested in
14 this matter.

15 This the 26th day of September, 2012.

16
17
18 _____
19 Theresa Bretch, CCR
20 Permit No. B-755

21 [SEAL]
22
23
24
25

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