



City of Marietta

205 Lawrence Street
Post Office Box 609
Marietta, Georgia 30061

Meeting Minutes CITY COUNCIL

R. Steve Tumlin, Mayor
Annette Paige Lewis, Ward 1
Griffin "Grif" L. Chalfant, Jr., Ward 2
Johnny Sinclair, Ward 3
G. A. (Andy) Morris, Ward 4
Rev. Anthony C. Coleman, Ward 5
James W. King, Ward 6
Philip M. Goldstein, Ward 7

Wednesday, November 13, 2013

7:00 PM

Council Chamber

Presiding: R. Steve Tumlin, Mayor

Present: Annette Lewis, Grif Chalfant, Johnny Sinclair, G. A. (Andy) Morris, Rev. Anthony Coleman, Jim King, and Philip M. Goldstein

Also Present:

William F. Bruton, Jr. City Manager

Douglas R. Haynie, City Attorney

Stephanie Guy, City Clerk

CALL TO ORDER:

Mayor R. Steve Tumlin called the meeting to order at 7:02 p.m.

INVOCATION:

Council member Sinclair called upon Pastor Joseph Comeaux from the Marietta Chapel, A.M.E. to give the invocation.

PLEDGE OF ALLEGIANCE:

Council member Sinclair asked everyone to remain standing for the pledge of allegiance.

PRESENTATIONS:

20131299

Park Street Elementary School Poster Contest Winners

Karmen Scarbro, BLW Water Department, presents awards to the Park Street Elementary School poster contest winners for their entries in the Public Power & Clean Water Poster Contest. The theme was "Why is Water and Electricity Important to me?"

Water Awards
 Grand Prize - Martin Guzman -5th Grade
 1st Place - Sergio Vasquez - 3rd Grade
 2nd Place - Riley Markey - 3rd Grade
 3rd Place - Victor Martinez - 5th Grade

Power Awards
 Grand Prize Winner - Emmanuel
 Castillo -5th Grade
 1st Place - Leonardo Hinojo - 5th Grade
 2nd Place - Ana Cruz -5th Grade
 3rd Place - Melanie Flores -3rd Grade

Presented

20131327 Rich Deckman- Planning, Design and Development Section Distinguished Professional of the Year Award

Recognition of Rich Deckman, Parks Bond Project Manager, received the Planning, Design and Development Section Distinguished Professional of the Year Award by the Georgia Recreation and Parks Association (GRPA) on Wednesday, November 6th at their annual conference.

Presented

PROCLAMATIONS:

20131328 Heroic Actions - Mr. Sam Stephens

Presentation of a Proclamation recognizing Parks and Recreation/Facilities employee Mr. Sam Stephens, for his outstanding act of bravery that saved the life of a two year-old toddler. On October 30, 2013 a mother and her two year-old son were at Laurel Park for the day. At one point, the toddler got away from the mother and plunged himself into the water. Mr. Stephens observed this from several yards away and immediately jumped from his lawn mower and dove into the water and saved the toddler. Metro Ambulance arrived on scene and checked the toddler out to make sure there were no injuries and released him at the scene. Mr. Stephens is to be commended for his heroic actions that saved this life of this young child.

Presented

Kennesaw State University and Southern Polytechnic State University Merger

Proclamation regarding Kennesaw State University and Southern Polytechnic State University.

Read

ANNOUNCEMENTS OF GENERAL COMMUNITY INFORMATION BY THE MAYOR, COUNCIL AND/OR CITY MANAGER:

SCHEDULED APPEARANCES:

20131283 Philip M. Goldstein, Manager of PMG 358 Roswell Street, LLC.

Present

UNSCHEDULED APPEARANCES:

Charles Livingston, who lives on Kiowa Drive, thanked those who voted for him during the November 5, 2013 election.

Robbie Huck, who lives on Summit Avenue, expressed concern regarding the passage of the Urban Redevelopment Bond during the November 5, 2013 election.

CONSENT AGENDA:

Consent agenda items are marked by an asterisk (*). Consent items are approved by majority of council. A public hearing will be held only for those items marked by an asterisk that require a public hearing (also noted on agenda).

Mayor Pro tem Andy Morris called upon Council member Johnny Sinclair, to preside over this portion of the meeting. Council member Sinclair briefly explained the consent agenda process.

- under Mayor's Appointment: Agenda item 20131284, Cobb County Community Relations Council, was removed from the agenda.*
- under Ordinances: Agenda item 20131102, Z2013 27 Real Estate Holdings, Inc. 810, 830, and 850 Cobb Parkway South, was added to the consent agenda for approval, with the inclusion of the elevations signed by the applicant.*
- under Judicial/Legislative: Agenda item 20131247, Revised Detailed Plan for Summit Village, was added to the consent agenda for approval, with the inclusion of the revised detailed plan signed by the applicant.*
- under Judicial/Legislative: Agenda item 20131251, Revised Detailed Plan for Montgomery Park, was added to the consent agenda for approval.*
- under Public Works: Agenda item 20131255, Quitclaim Deed Rejection, was removed from the consent agenda.*
- under Other Business: Since a Proclamation has been read by Mayor Tumlin, agenda item 20131318, Kennesaw State University and Southern Polytechnic State University Merger, was removed from the agenda.*
- under Other Business: Agenda item 20131309, Condemnation of Property 343 Allgood Road, remains on the consent agenda with Council member Morris voting against.*
- under Other Business: Agenda item 20131335, 272 Washington Avenue, remains on the consent agenda with an amendment to stipulation #3, which should read, "Compensation includes the costs and expenses related to the relocation of the HVAC system."*
- under Other Business: Agenda item 20131311, Issuance of General Obligation Debt Resolution, remains on consent with the inclusion of an additional Certification by the Cobb County Board of Election and Registration that there has been no recount regarding this matter.*

A motion was made by Council member King, seconded by Council member Lewis, to add an item authorizing the acquisition of property located at 257 &

269 Roswell Street from Charter Bank & Trust, Co. for the purpose of constructing the Alexander Street Improvements - Roswell to Washington Project in exchange for \$14,086.77 with a stipulation as follows:

1. If to facilitate the acquisition of parcel 3A as shown on the project plans the City requests a Quit Claim deed be executed for the southern half of the abandoned Anderson Street Right-of-way, the documentation shall be prepared by the City.

(The City Clerk was asked to add the disclosures previously made by Philip M. Goldstein, R. Steve Tumlin and Doug Haynie to this item as it relates to the Bank of North Georgia. See agenda item 20131345)

The motion carried by the following vote:

Vote: 6 - 0 - 0 Approved
Absent for the vote: Philip M. Goldstein

City Attorney Doug Haynie opened the public hearing for those items on the consent agenda requiring a public hearing. Seeing no one wishing to speak the public hearing was closed.

A motion was made by Council member King, seconded by Council member Coleman, to approve the consent agenda as modified. The motion carried by the following vote:

Vote: 7 - 0 - 0 Approved
with the following exceptions:
Council member King opposed to agenda items 20131150 and 20131152.
Council member Morris abstaining on agenda item 20131309.

MINUTES:

* **20131217 Regular Meeting - October 9, 2013**

Review and approval of the October 9, 2013 regular meeting minutes.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 Approved

MAYOR'S APPOINTMENTS:

20131284 Cobb County Community Relations Council

Appointment to the Cobb County Community Relations Council.

No Action Taken

CITY COUNCIL APPOINTMENTS:**ORDINANCES:****20131101 Z2013-26 Eduard Zhigaylo 2012 Airport Court****[Ord 7703](#)**

Z2013-26 [SPECIAL LAND USE PERMIT] EDUARD ZHIGAYLO requests a Special Land Use Permit for the storage of metal parts intended for recycling for property located in Land Lot 06590, District 17, Parcel 0020, 2nd Section, Marietta, Cobb County, Georgia and being known as 2012 Airport Court, currently zoned LI (Light Industrial). Ward 1.

Mayor Tumlin opened the public hearing. City Attorney Doug Haynie explained the rules of order and swore in those wishing to speak.

Development Director Brian Binzer presented information regarding the rezoning request and summarized the criteria for granting a special land use permit.

The applicant, Eduard Zhigaylo, requested a Special Land Use Permit for property located at 2012 Airport Court in order to use the property for the storage of metal parts intended for recycling. Mr. Zhigaylo mentioned that the metal roll-off containers filled with metal parts would be brought from other locations to the site, where the parts would be sorted and stored until they are taken from the property to be recycled off-site.

Discussion was held regarding the prior stipulation allowing a tow yard on the property. It was explained that this stipulation would be removed if the new stipulations are approved. The applicant agreed to the conditions of the zoning.

The public hearing was closed.

A motion was made by Council member Goldstein, seconded by Council member King, to approve the Special Land Use Permit for the storage of metal parts intended for recycling, with the following stipulations incorporated as a condition of zoning:

- 1. Any open container stored outside be covered.*
- 2. Prior stipulation be revoked or rescinded that was granted on November 10, 2010 under File #Z2010-11 as follows:
[Property shall be used for the storage of operable cars only. Wrecked cars would not be brought to this location because of the potential for toxic fluid leakage to reach the adjacent stream.]*

The following variance was incorporated as a condition of zoning:

- 1. Variance to allow vehicles delivering the containers to travel on a gravel surface. [Section 716.08 (A) & (B).]*

The motion carried by the following vote:

Vote: 7 – 0 – 0

Approved as Stipulated

- * **20131102** **Z2013-27 Real Estate Holdings, Inc. 810, 830, and 850 Cobb Parkway South**
- [Ord 7704](#) Z2013-27 [REZONING] REAL ESTATE HOLDINGS, INC. requests rezoning for property located in Land Lot 05730, District 17, Parcels 0020, 0030 and 0160, 2nd Section, Marietta, Cobb County, Georgia and being known as 810, 830, and 850 Cobb Parkway South from CRC (Community Retail Commercial) and OI (Office Institutional) to CRC (Community Retail Commercial). Ward 1.

Public Hearing held during the consent agenda.

The above-described properties are hereby rezoned into the corporate limits in the City of Marietta, Georgia from CRC (Community Retail Commercial) and OI (Office Institutional) to CRC (Community Retail Commercial).

The following variance was incorporated as a condition of zoning:

- 1. Variance to allow the use of aluminum and Centria Platinum ribbed metal panels on the façade facing a public roadway - as shown on the architectural renderings, submitted and signed by the owner and dated November 13, 2013. [Section 708.16 (G.3).*

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved as Amended

RESOLUTIONS:

CITY ATTORNEY'S REPORT:

- * **20131300** **Denial of Claim**
- Denial of the claim of Sherina Bowen.
- This Matter was Approved on the Consent Agenda.**
- Vote: 7 – 0 – 0** **Approved to Deny Claim**
-
- * **20131198** **Denial of Claim**
- Denial of the claim of Amanda Gann.
- This Matter was Approved on the Consent Agenda.**
- Vote: 7 – 0 – 0** **Approved to Deny Claim**

* **20131152** **National League of Cities (NLC)**

Motion approving travel and training for Mayor and Council members who wish to attend the National League of Cities (NLC) Congressional City Conference in Washington, DC, March 8-12, 2014.

This Matter was Approved on the Consent Agenda.

Vote: 6 – 1 – 0 **Approved**
Voting Against: Jim King

3. Judicial/Legislative: Philip M. Goldstein, Chairperson

* **20131061** **Sign Ordinance Revision**

Motion to authorize advertisement of the Comprehensive Development Code of the City of Marietta, Division 714, Signs.

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 **Approved for Advertisement**

* **20131136** **Private Trespass Towing**

[Ord 7702](#)

Approval of an Ordinance amending chapter 8-12-24 Private Trespass Towing of the Code of Ordinances of the City of Marietta, Georgia.

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 **Approved**

20131138 **2014 City Council Meeting Dates**

Approval of a Resolution establishing the City Council meeting dates and approval of the committee meeting calendar for 2014.

Discussion was held regarding the proposed resolution establishing the City Council meeting dates and approval of the committee meeting calendar for 2014. It was suggested to set the January meeting dates, with the remaining dates determined once the new council takes office.

Further discussion was held regarding the Monday, January 6 Agenda Work Session, which is the same day as the Swearing-in Ceremony.

northern boundary with Turner Road and along the eastern boundary with the Hutson property.”

As revised, paragraph (g) will now state: “A wooden privacy fence with brick or stone pillars will be erected along the northern boundary with Turner Road, and a wooden privacy fence will be erected along the eastern boundary with the Hutson property.”

3. A single row of evergreen trees - either Green Giant arborvitae or cryptomeria - will be planted between the wooden privacy fence and the detention pond along the eastern boundary with the Hutson property. These trees will be a minimum of eight (8) feet in height at time of planting, with the trees spaced to provide an acceptable screening buffer - every six (6) feet for Green Giant arborvitae and every eight (8) feet for cryptomeria. Either concrete or HDPE (high density polyurethane plastic) root barriers must be installed around the root balls of each tree planted near the detention pond. These root barriers must be a minimum of 30 inches deep, but depending upon the size, location and specie of tree to be planted, the Director of Public works may require the root barrier to be 36 inches to 42 inches deep. (Other methods or types of root barriers, i.e. biobarriers, may be considered at the discretion of the Director of Public Works.)

4. All other conditions of the previously approved detailed plan will remain in effect.

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved as Amended

* **20131251**

Revised Detailed Plan for Montgomery Park

Motion to approve the revised Landscape Plan, as part of the Detailed Plan for Montgomery Park, signed by the owner and dated November 13, 2013, in accordance with Section 708.20(J.4) of the Marietta City Code. The purpose of these revisions is to:

1. Redistribute the required trees within the development, allowing trees to be grouped, instead of being spaced evenly, but without reducing the required tree density.’
2. Allow relocation of some street trees to rear alleys
3. Allow street frontage trees within the street right of way, subject to the approval of the Public Works Director. In those instances where trees are planted closer than 5 feet from a public street or sidewalk, either concrete or HDPE (high density polyurethane plastic) root barriers must be installed. These root barriers must be a minimum of 30 inches deep, but depending upon the size, location and species of tree to be planted, the Director of Public Works may require the root barrier to be 36 inches to 42 inches deep. (Other methods or types of root barriers, i.e. bio-barriers, may be considered at the discretion of the Director of Public Works.

As part of this approval of the Revised Detailed Plan for Montgomery Park, the following stipulation has been attached:

*The homeowners association will be responsible for the maintenance of all trees located within the City's right of way.

All stipulations of the previously approved detailed plan will remain in effect.

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

5. Personnel/Insurance: G. A. (Andy) Morris, Chairperson

4. Parks, Recreation and Tourism: Johnny Sinclair, Chairperson

- * **20130890** **AMENDING City Code Section 4-4-11-010, 4-4-11-020 and 4-4-11-030**

[Ord 7701](#)

AMENDING City Code Section 4-4-11-010, Internet and Electronic Mail Acceptable Use Policy; 4-4-11-020, Use of Microcomputer Software; and 4-4-11-030 Information Security Policy of the Code of Ordinances of the City of Marietta, Georgia.

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

- * **20131153** **Planning Commission Appointment**

Appointment of R. W. (Bob) Kinney to the Planning Commission (Ward 6) for a three-year term, expiring December 14, 2016.

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

- * **20131189** **FY 2014 City/BLW Allocation Chart**

[Ord 7700](#)

Approval of an Ordinance amending the FY 2014 City/BLW position allocation chart and pay and classification plan in order to change the position of Urban Planner II to Office of Economic Development, Planning and Development Specialist.

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

* 20131237 **City Code Change**

[Ord 7699](#)

Approval of an Ordinance amending City Code Section 4-4-6 Recruitment and Selection.

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

6. Public Safety Committee: Anthony Coleman, Chairperson

7. Public Works Committee: Jim King, Chairperson

* 20131184 **Kennesaw Avenue Traffic Calming**

Motion to authorize the installation of two radar speed signs on Kennesaw Avenue.

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

* 20131185 **Traffic Calming**

Motion authorizing Public Works to proceed with Public Information Meetings for proposed Speed Tables along Reynolds Street, East Worthington Parkway and Cedar Trace.

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

* 20131186 **Barclay Circle Bike Lanes**

Motion to approve request by Life University to have Barclay Circle restriped to add bike lanes.

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

* 20131236 **Brown Avenue easement for fence**

Motion to approve a Revocable Easement Agreement to install a fence within the Brown Avenue right of way, with the addition of language that the owner shall indemnify the city and maintain the portion of right of way enclosed as part of his yard and per the terms of the attached Agreement.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 Approved

20131255 Quitclaim Deed Rejection

Motion to reject and deny the unsolicited unilateral and invalid quitclaim deed from PMG 358 Roswell Street, LLC, dated September 19, 2013, recorded September 27, 2013 and delivered to the City of Marietta on October 3, 2013. This rejection and non-acceptance is in furtherance of the letter from the City Attorney to PMG 358 Roswell Street, LLC dated October 4, 2013. In addition, this rejection and non-acceptance is consistent with the non-acceptance and non action taken by the Public Works Committee on April 25, 2012 regarding PMG 358 Roswell Street, LLC's request to accept a donation of the subject property. This motion is also consistent with the vote of the Mayor and Council for the City of Marietta on March 6, 2013 which denied PMG 358 Roswell Street, LLC's claim of ownership of the subject property. This motion is also consistent with the fact that the City of Marietta paid \$305,000.00 for the property per a motion made by Philip Goldstein on March 15, 2007 and based on the fact that photographs taken by the Public Works Department show that the paving for the public right-of-way was nearly completed in November, 2007. This motion is also consistent with the fact that the right-of-way was purchased with taxpayer funds, improved with taxpayer funds and has been continuously used by the public and the City of Marietta since November, 2007. This motion is also consistent with the testimony of Mr. Philip Goldstein that he was aware of the right-of-way deed to the City of Marietta prior to his purchase of the property on December 30, 2011 and he closed with actual knowledge of the recorded right-of-way deed to the city.

The City Attorney is hereby authorized and directed to record a document on the deed records of the Cobb Superior Court to carry out the intent of this motion.

Councilman Goldstein previously disclosed that he is the owner and manager of the entity known as PMG 358 Roswell Street, LLC.

A motion was made by Council member King, seconded by Council member Chalfant, that this matter be Approved. The motion carried by the following vote:

Vote: 5 - 0 - 0 Approved

Absent for the vote: Anthony Coleman and Philip M. Goldstein

*** 20131285 Arden Drive Traffic Calming**

Motion to install speed tables on Arden Drive.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 Approved

OTHER BUSINESS:**20131103 V2013-37 Marietta Chapel, A.M.E. 528 Rigby Street**

V2013-37 [VARIANCE] MARIETTA CHAPEL, A.M.E. request variances for property located in Land Lot 11620, District 16, Parcel 0760, 2nd Section, Marietta, Cobb County, Georgia and being known as 528 Rigby Street, currently zoned R-4 (Single Family Residential 4 units/acre). Ward 5.

1. Variance to allow an off-premises sign at the corner of Rigby Street and North Fairground Street;
2. Variance to eliminate the requirement that an off-premises sign be regulated as a principal use;
3. Variance to allow an off-premises sign be located within the front and major side yard setback;
4. Variance to locate an off-premises sign within 500 feet of a bona fide residence and church;
5. Variance to allow an off-premises sign in a R-4 zoning district;
6. Variance to locate an off-premises sign partially within the city right-of-way;
7. Variance to allow a free standing (detached) sign in a single family zoning district;
8. Variance to reduce the setback for a free standing sign from 5' to 0.'

Mayor Tumlin called forward those wishing to speak.

Development Director Brian Binzer presented information regarding the requested variances needed to install a new sign.

Pastor Joseph Comeaux, representing the Marietta Chapel, A.M.E., was present to answer questions regarding the size and location of the proposed sign. It was suggested that the sign be moved back slightly off the City right-of-way. Pastor Comeaux stated that the church would be willing to move the sign.

A motion was made by Council member Coleman, seconded by Council member Sinclair, to approve the requested variances for property located at 528 Rigby Street, with the exclusion of the variance allowing the sign partially within City right-of-way. The approved variances are as follows:

1. *Variance to allow an off-premises sign at the corner of Rigby Street and North Fairground Street;*
2. *Variance to eliminate the requirement that an off-premises sign be regulated as a principal use;*
3. *Variance to allow an off-premises sign be located within the front and major side yard setback;*
4. *Variance to locate an off-premises sign within 500 feet of a bona fide residence and church;*
5. *Variance to allow an off-premises sign in a R-4 zoning district;*
6. *Variance to allow a free standing (detached) sign in a single family zoning district;*
7. *Variance to reduce the setback for a free standing sign from 5' to 0.'*

The motion carried by the following vote:**Vote: 7 – 0 – 0****Approved as Amended****20131104****V2013-38 George & Dana, LLC 591 South Marietta Parkway**

V2013-38 [VARIANCE] GEORGE & DANA, LLC request variances for property located in Land Lot 03610, District 17, Parcel 0020, 2nd Section, Marietta, Cobb County, Georgia and being known as 591 South Marietta Parkway, currently zoned CRC (Community Retail Commercial). Ward 1.

1. Variance to allow a general advertising/off-premises sign on South Fairground Street. [§714.04 (F.)]
2. Variance to eliminate the requirement that a general advertising/off-premises sign be regulated as a principal use. [§714.04 (F.1.)]
3. Variance to locate a general advertising/off-premises sign within 500 feet of a bonafide residence and public building. [§714.04 (F.2.)]
4. Variance to reduce the rear yard setback for a general advertising/off-premises sign from 35' to 4.3'. [§714.04 (F.8.) and §708.16 (H.)]
5. Variance to allow a general advertising/off-premises sign be located on a lot upon which a building is located if such lot or the building thereon has any sign located thereon. [§714.04 (F.9.)] and [§714.06 (A)(11.)]
6. Variance to allow an accessory structure closer to the right of way than the principal building. [§708.16(F)(1)]
7. Variance to allow a refuse area within the public view. [§712.09(G)(1)(b)(xiv)]
8. Variance to eliminate the 75' maximum front setback. [§712.09(G)(2)(b)(i)]
9. Variance to reduce the planted border width along South Fairground Street from 10' to 1'. [§712.08(G)(2)(a) Table G-1a]
10. Variance to allow the planting of the required street trees along South Fairground Street within the right of way. [§712.08(G)(2)(a) Table G-1a]

Mayor Tumlin called forward those wishing to speak.

Brian Binzer, Development Services Director, presented information regarding the requested variances needed to build a Zaxby's restaurant on the property.

The applicant, George Hussey, was present to answer questions regarding the maintenance of the trees located within the City's right-of-way and the existing billboard. Mr. Hussey stated that he would be willing to have the billboard removed at the end of the current lease.

There as general agreement to table this matter to allow the applicant to obtain a lease agreement that would require the billboard to be removed at the end of the term. In addition, language should be added to the request stating that the property owner would be responsible for the maintenance of all trees located within the City's right of way next to the property that is the subject of this zoning variance.

A motion was made by Council member King, seconded by Council member Goldstein, that this matter be tabled until a Special Called Meeting Thursday, November 21, 2013 (or sooner). The motion carried by the following vote:

Vote: 7 – 0 – 0 Tabled

20131107

V2013-40 QuikTrip Corporation, Inc. 692 and 696 Powder Springs Street, and part of 680 and 704 Powder Springs Street

V2013-40 [VARIANCE] QUIKTRIP CORPORATION request variances for property located in Land Lot 02140, District 17, Parcel 0680 and 0630, and part of parcels 0060 and 0670, 2nd Section, Marietta, Cobb County, Georgia and being known as 692 and 696 Powder Springs Street, and part of 680 and 704 Powder Springs Street, currently zoned CRC (Community Retail Commercial). Ward 3.

1. Variances to reduce the required number of parking spaces for 680 Powder Springs St (17 02140 0060) to 43;
2. Variance to allow an off-premises sign on Powder Springs Street;
3. Variance to eliminate the requirement that an off-premises sign be regulated as a principal use;
4. Variance to locate an off-premises sign within 500 feet of a church;
5. Variance to allow an off-premises within a 1,000 foot radius of a general advertising sign;
6. Variance to allow an off-premises sign be located on a lot upon which a building is located if such lot or the building thereon has any sign located thereon;
7. Variance to allow two detached signs along the same road frontage;
8. Variance to allow an off-premises sign be located within the side yard setback;
9. Variance to reduce the setback for a detached monument sign from 5' to 0.';
10. Variance to allow an off-premises sign located more than 100 feet from the right of way of Interstate 75 contain electronic messages;
11. Variance to locate a permanent structure closer to a general advertising sign than a distance that is equal to or greater than the height of the sign;
12. Variance to eliminate the 75' maximum front setback;
13. Variance to eliminate the planted border area along Powder Spring Street where the right of way angles sharply.

Mayor Tumlin called forward those wishing to speak.

Brian Binzer, Development Services Director, presented information regarding the requested variances needed to rebuild an existing QuikTrip gas station on the property.

Richard Calhoun, attorney for the applicant, mentioned that additional property would be acquired to expand the building, which would create an issue with an off-premise sign on Powder Springs Street.

Discussion was held regarding the requested variances related to parking and the existing off-premise digital sign that would be relocated. The applicant agreed that variance to allow an off-premises sign located more than 100 feet from the right of way of Interstate 75 contain electronic messages would be limited only to the existing portion of the sign.

A motion was made by Council member Goldstein, seconded by Council member Sinclair, to approve the following variances for property located at 692 and 696 Powder Springs Street:

- 1. Variances to reduce the required number of parking spaces for 680 Powder Springs St (17 02140 0060) to 43;*
- 2. Variance to allow an off-premises sign on Powder Springs Street;*
- 3. Variance to eliminate the requirement that an off-premises sign be regulated as a principal use;*
- 4. Variance to locate an off-premises sign within 500 feet of a church;*
- 5. Variance to allow an off-premises within a 1,000 foot radius of a general advertising sign;*
- 6. Variance to allow an off-premises sign be located on a lot upon which a building is located if such lot or the building thereon has any sign located thereon;*
- 7. Variance to allow two detached signs along the same road frontage;*
- 8. Variance to allow an off-premises sign be located within the side yard setback;*
- 9. Variance to reduce the setback for a detached monument sign from 5' to 0.';*
- 10. Variance to allow an off-premises sign located more than 100 feet from the right of way of Interstate 75 contain electronic messages and shall be limited only to the existing portion of the sign.*
- 11. Variance to locate a permanent structure closer to a general advertising sign than a distance that is equal to or greater than the height of the sign;*
- 12. Variance to eliminate the 75' maximum front setback;*
- 13. Variance to eliminate the planted border area along Powder Spring Street where the right of way angles sharply.*

The motion carried by the following vote:

Vote: 7 – 0 – 0

Approved as Amended

20131318

Kennesaw State University and Southern Polytechnic State University Merger

Discussion regarding the merger of Kennesaw State University and Southern Polytechnic State University as requested by Council Member Anthony Coleman.

This item was removed from the agenda, as a Proclamation was read earlier by Mayor Tumlin.

Removed

20131314

Marietta Redevelopment Corporation

Discussion, direction and motion related to request from Marietta Redevelopment Corporation related to the renewal of the Marietta Redevelopment Corporation loan with the Bank of North Georgia. This matter is requested by Mayor Tumlin and Mr. Chalfant.

Philip Goldstein previously disclosed that he owns stock individually as well as jointly in Synovis. Said company is the parent of Bank of North Ga. If all stock in Synovis (as of the 7-1-2013 investment statement) owned individually or jointly were sold, the amount attributable to him from his ownership portion would be approximately \$3,964.93 based on the stock price when checked on 10-8-2013. While it is under the reporting requirement, he elects to not participate on this issue at this time and abstain on any action relating to this issue.

Haynie, Litchfield, Crane & White, PC, from time to time, but not in this matter, has performed real estate closings for or with client for Bank of North Georgia.

Mayor Tumlin is a Board member of the MRC and is a member of the governing body that appoints the Board Members of the MRC. The Law Firm, Smith, Tumlin, McCurley & Patrick, PC, of which Tumlin is a non owner associate, from time to time, but not in this matter, has performed real estate closings for or with client for Bank of North Georgia.

In depth discussion was held regarding a request from the Marietta Redevelopment Corporation (MRC) to assist in responding to a proposal from the Bank of North Georgia (BNG). The BNG is requesting a commitment from the City of Marietta in order to renew the loan.

There are several methods by which the city could offer assistance to the MRC and any assistance would take the form of a Forbearance Agreement among the MRC, the city and BNG.

A motion was made by Council member Chalfant, seconded by Council member King, to submit the following proposal to the Marietta Redevelopment Corporation (MRC) and the Bank of North Georgia (BNG) for consideration:

In the event BNG agrees to renew the MRC loan, the City of Marietta (city) would make a loan to the MRC upon the following terms and conditions:

- 1. The city loan would make monthly payments to the MRC to cover the first four months of interest only payments due by MRC to BNG upon loan renewal.*
- 2. Commencing the fifth month, the MRC would make interest only payments to BNG using the current MRC restricted funds on deposit with BNG.*
- 3. Thereafter, for the last twenty months, the city would fund interest only payments to the MRC to carry the loan through forty-two months of interest only.*

4. Collateral for the city loan to the MRC would be a second mortgage on all MRC property and the loan would also include all previous amounts funded by the city to the MRC (\$2.1M).
5. BNG would agree to release any property sought to be purchased by the city at fair market value
6. BNG would agree to all of the above terms and conditions and renew the loan to MRC.
7. The above scenario would have to be approved by the MRC Board of Directors.
8. The city would have no direct liability to BNG for principal, interest or any other matters.
9. The source of city funds would be from the city reserve account.

The motion carried by the following vote:

Vote: 4 – 3 – 0

Approved

Voting Against: Annette Lewis, Anthony Coleman and Andy Morris

Absent for the vote: Philip M. Goldstein

(The motion passed with Mayor Tumlin voting to break the tie vote.)

* **20131309**

Condemnation of Property - 343 Allgood Road

Motion to authorize city staff and city attorney to commence condemnation procedures on property known as 343 Allgood Road, Marietta, Georgia and to authorize and direct the city staff and the city attorney to take any and all action required by H.B. 1313 in order to acquire fee simple title to the aforementioned property. This authorization shall include the giving of proper written notice, the posting of the property, the required legal advertisements in order to commence the condemnation process and any other action required or appropriate pursuant to the above law. The city attorney is hereby authorized to take any and all action necessary to acquire such property through eminent domain including the right to file any appeals in this matter to any court.

This Matter was Approved on the Consent Agenda.

Vote: 6 – 1 – 0

Approved

Voting Against: Andy Morris

* **20131316**

Property Acquisition - 343 Allgood Road

Motion to authorize the acquisition of property at 343 Allgood Road owned by THE FIRST GROUP TRADING, LLC, for the exchange of \$57,000.

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

* **20131286** **Property Acquisition - 349 Allgood Road**

Motion to authorize acquisition of property located at 349 Allgood Road owned by Engines For the World, LLC in exchange for \$54,000.

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0 Approved

* **20131335** **272 Washington Avenue**

Motion authorizing acquisition of the property at 272 Washington Avenue from James W. Friedewald, Christopher M. Bethel, & Justin M. Schneider for the purpose of constructing the Alexander Street Improvements - Roswell to Washington Project in exchange for \$145,962.45 with the following stipulations.

1. In view of the fact that the taking by the City precipitates the loss of parking spaces from twelve (12) to seven (7) places, the subject property becomes a non-conforming "grandfathered" use. A request is made to waive the application fees and assistance shall be given to the property owner in submitting the Board of Zoning Appeals application for a reduction in the required number of parking spaces.
2. The City will allow for the temporary use of 8 parking spaces during the period of time of construction in the City parking lot across Washington Avenue from the subject property. The property owner will be responsible for installing temporary signage indicating that said parking spaces are specifically reserved for the staff and/or clients of Edwards, Friedewald & Grayson
3. The City shall bear the costs and expenses related to the relocation of the HVAC system.

Motion authorizing acquisition of the property at 272 Washington Avenue from James W. Friedewald, Christopher M. Bethel, & Justin M. Schneider for the purpose of constructing the Alexander Street Improvements - Roswell to Washington Project in exchange for \$145,962.45 with the following stipulations.

- 1. In view of the fact that the taking by the City precipitates the loss of parking spaces from twelve (12) to seven (7) places, the subject property becomes a non-conforming "grandfathered" use. The application fees shall be waived and assistance shall be given the property owner in submitting the Board of Zoning Appeals application for a reduction in the required number of parking spaces.*
- 2. The City will allow for the temporary use of 8 parking spaces during the period of time of construction in the City parking lot across Washington Avenue from the subject property. The property owner will be responsible for installing temporary signage indicating that said parking spaces are specifically reserved for the staff and/or clients of Edwards, Friedewald & Grayson*
- 3. Compensation includes the costs and expenses related to the relocation of the HVAC system.*

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

* 20131336

Property Acquisition - 260 Washington Avenue

Motion to authorize the acquisition of property owned by Beth Ann Hanna on behalf of the City of Marietta by means of eminent domain. A description of the interest to be acquired is attached hereto and incorporated herein by reference, including the legal description of the property and a survey of such property. The city attorney is hereby authorized and directed to take any and all action necessary to acquire such property by virtue of eminent domain, including the right to file any appeals in such case. The Order Authorizing Condemnation attached is incorporated herein by reference.

This Matter was Approved on the Consent Agenda.

Vote: 7 – 0 – 0

Approved

20131301

Appeal of Assessment of Occupation Taxes

Appeal of assessment of occupation taxes by Clear Channel Outdoor.

The hearings were consolidated below.

20131303

Appeal of Assessment of Occupation Taxes

Appeal of assessment of occupation taxes by The Lamar Company, LLC d/b/a/ Lamar Advertising of Atlanta.

The hearings were consolidated below.

20131304

Appeal of Assessment of Occupation Taxes

Appeal of assessment of occupation taxes by CBS Outdoor, LLC., a Delaware Limited Liability Company.

The hearings were consolidated below.

Mayor Tumlin opened the hearings and called forward those wishing to speak.

Prior to the proceedings, discussion was held regarding the appropriateness of consolidating the appeal hearings. City Attorney Doug Haynie commented that each attorney and one representative from each company would have to state for the record no objection to the consolidation.

Scott Peters, representing Clear Channel Outdoor and CBS Outdoor, agreed to consolidation. Darrel Hall, Tax director at Clear Channel Outdoor and Mary Thompson with CBS Outdoor, agreed to consolidation. Matthew Klase, representing The Lamar Company, LLC d/b/a Lamar Advertising of Atlanta, and Tim Adrian with Lamar Advertising, also agreed to consolidation.

Mr. Haynie explained that his colleague Daniel White will assist him during the proceedings. After hearing and deliberating on the evidence, Council would make one of three motions for each case; either to Reverse, Confirm or Modify the decision of the Business License Manager.

Daniel White explained the appeals process regarding the decision of the Business License Manager. Mr. White mentioned that Business License Manager Scott Everingham and Stephanie Hannah, from the Business License Department, were present to answer questions if needed.

Mr. White further explained the duties of Council during the hearing procedure and referred to City Code Section 8-4-500 (C3) Administration of chapter—License inspectors—Appeals, which states: “The city council may, in conformity with this chapter, reverse or affirm, wholly or partly, or may modify the opinion, requirement, decision or determination appealed from, and to that end shall have all the powers of the business license manager.”

Mr. Peters made a presentation to council explaining the reason for the appeal of assessment of occupation taxes, as stated in the written notice of appeal. (The appeal notices for Clear Channel Outdoor dated October 11, 2013, for CBS Outdoor dated October 9, 2013 and for Lamar Advertising dated October 10, 2013 are all on file in the City Clerk’s Office. All certified copies and affidavits submitted during the hearing are also on file in the City Clerk’s Office.)

Daniel White, counsel for the City, spoke on behalf of the Business License Department regarding its decision to assess the aforementioned occupation taxes to each billboard company. (The power point presentation made by Mr. White is on file in the City Clerk’s Office.)

Discussion was held regarding the documents and evidence presented to council and relied upon by the Business License Department in reaching its decision. Council asked questions about seeing additional documents referred to during Mr. Peter’s presentation.

Discussion was also held regarding the need and appropriateness of an executive session for further deliberation. It was the opinion of the City Attorney that further deliberation may take place in executive session; however, Mayor Tumlin disagreed.

Mayor Tumlin closed the hearings.

A motion was made in open session by Council member Coleman, seconded by Council member Sinclair, to enter an Executive Session to discuss legal matters.

The motion carried by the following vote:

Vote: 5 - 0 - 0 **Approved**
Absent for the vote: Annette Lewis and Grif Chalfant

The Executive Session was held.

A motion was made in open session by Council member King, seconded by Council member Goldstein, to exit the Executive Session. The motion carried by the following vote:

Vote: 5 - 0 - 0 **Approved**
Absent for the vote: Annette Lewis and Grif Chalfant

Regarding agenda item 20131301, Appeal of assessment of occupation taxes by Clear Channel Outdoor.

A motion was made by Council member King, seconded by Council member Goldstein, to Reverse the decision of the Business License Manager.

A substitute motion was made by Council member Sinclair, seconded by Council member Coleman, to Uphold the decision of the Business License Manager. The motion carried by the following vote:

Vote: 3 – 2 – 0 *Upheld*
Voting Against: Jim King and Philip M. Goldstein
Absent for the vote: Annette Lewis and Grif Chalfant
(On November 25, 2013, Council member Philip M. Goldstein filed a letter of Dissent & Protest regarding agenda item 20131301 that has been included as part of the official minutes.)

Regarding agenda item 20131303 Appeal of assessment of occupation taxes by The Lamar Company, LLC d/b/a/ Lamar Advertising of Atlanta:

A motion was made by Council member Sinclair, seconded by Council member Coleman, to Uphold the decision of the Business License Manager. The motion carried by the following vote:

Vote: 3 – 2 – 0 *Upheld*
Voting Against: Jim King and Philip M. Goldstein
Absent for the vote: Annette Lewis and Grif Chalfant
(On November 25, 2013, Council member Philip M. Goldstein filed a letter of Dissent & Protest regarding agenda item 20131303 that has been included as part of the official minutes.)

Regarding agenda item 20131304 Appeal of assessment of occupation taxes by CBS Outdoor, LLC., a Delaware Limited Liability Company:

A motion was made by Council member Sinclair, seconded by Council member Coleman, to Uphold the decision of the Business License Manager.

The motion carried by the following vote:

Vote: 3 – 2 – 0

Upheld

Voting Against: Jim King and Philip M. Goldstein

Absent for the vote: Annette Lewis and Grif Chalfant

(On November 25, 2013, Council member Philip M. Goldstein filed a letter of Dissent & Protest regarding agenda item 20131304 that has been included as part of the official minutes.)

* 20131329

Certified Election Results

Motion to approve the certified election results of the November 5, 2013, City of Marietta General Election related to the Mayor and City Council, as presented by the Cobb County Board of Elections and Registration.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0

Approved

20131334

Conflict of Interest Affidavit

Motion to approve the use of a Conflict of Interest Affidavit related to the Franklin Gateway Area Bond issuance.

City Attorney Doug Haynie presented a draft copy of the conflict of interest affidavit that was previously requested related to the selection of the real estate advisor consultants.

Discussion was held and there was general agreement to remove any reference to family members and clarify that the words "my corporation" would mean a corporation in which the individual is the owner or a majority owner.

A motion was made by Council member King, seconded by Council member Coleman, to refer this matter back to the Judicial Legislative Committee for further discussion. The motion carried by the following vote:

Vote: 6 – 1 – 0

Referred to the Judicial/Legislative Committee

Voting Against: Andy Morris

* 20131311

Issuance of General Obligation Debt Resolution

Resolution of the City Council of the City of Marietta declaring the results of an election determining the issuance of General Obligation Debt by the City of Marietta and for other related purposes.

Motion to approve with the addition of a Certification by the Cobb Board of Election and Registration that there has been no recount regarding this matter.

- 20131301** Appeal of assessment of occupation taxes by Clear Channel Outdoor.
- 20131303** Appeal of assessment of occupation taxes by The Lamar Company, LLC d/b/a/ Lamar Advertising of Atlanta.
- 20131304** Appeal of assessment of occupation taxes by CBS Outdoor, LLC., a Delaware Limited Liability Company.

I dissent from the actions taken by Council and pursuant to the rules and procedures of Council (1-4-040 P Dissents & Protest), I hereby file this dissent with the City Clerk to be a part of the official minutes of the Council.

Based on the evidence, testimony or State law, the following appear to be the facts or applicable law:

- 1) The evidence revealed that the billboards are taxed as Personal Property by the Cobb County Tax Assessor's Office.
- 2) The billboards are leased to clients of the billboard companies, based on sworn testimony at the hearing.
- 3) That business license or occupation tax is paid on the revenue from the billboards based on the location of the office of the billboard companies, which are located outside of the City limits of Marietta.
- 4) That the handout by the City that was presented indicates that the Client of the billboard company is a "Renter/Lessee" to the right of the diagram of the billboard on page 2 and apparently the Business License Department concurs that a lease of the billboard is what is occurring between the billboard company and the client of the billboard company.
- 5) The billboard company leases the real property that the billboard is on from the property owner. (Testimony and also above referenced diagram submitted from the City staff.) (Note: While not necessarily in these cases, in some instances billboard companies may actually own the real property.)
- 6) O.C.G.A. § 48-13-5. Definitions states in part as follows:
 - (3) "Location or office" shall include any structure or vehicle where a business, profession, or occupation is conducted, but shall not include a temporary or construction work site which serves a single customer or project or a vehicle used for sales or delivery by a business or practitioner of a profession or occupation which has a location or office. **The renter's or lessee's location which is the site of personal property which is rented or leased from another does not constitute a location or office for the personal property's owner, lessor, or the agent of the owner or lessor.** The site of real property which is rented or leased to another does not constitute a location or office for the real property's owner, lessor, or the agent of the owner or lessor unless the

real property's owner, lessor, or the agent of the owner or lessor, in addition to showing the property to prospective lessees or tenants and performing maintenance or repair of the property, otherwise conducts the business of renting or leasing the real property at such site or otherwise conducts any other business, profession, or occupation at such site. **(Emphasis added.)**

Based upon the portion of the definition in O.C.G.A. § 48-13-5. (3) that states **“[t]he renter's or lessee's location which is the site of personal property which is rented or leased from another does not constitute a location or office for the personal property's owner, lessor, or the agent of the owner or lessor,”** I disagree with and dissent from the Motion(s) of Council to Uphold the decision of the Business License Manager. Based upon the presentation, testimony and evidence, the facts do not support that a Business License Occupation Tax is allowed to be charged in the City of Marietta for the billboards based upon the information provided for these cases and therefore no tax should be owed or due to the City of Marietta.

Philip M. Goldstein

Marietta City Councilman, Ward 7

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CC:

Matthew Klase - Matt@WebbLLC.com

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