



City of Marietta

205 Lawrence Street
Post Office Box 609
Marietta, Georgia 30061

Meeting Agenda 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

CALL TO ORDER:

INVOCATION:

Council Member Johnny Sinclair, Ward 3

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

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.

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. Marietta Fire and 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.

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

An RFB for the financing of the Redevelopment Bond is being issued and bids will be brought back to council for a decision in December.

SCHEDULED APPEARANCES:

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

UNSCHEDULED APPEARANCES:**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).

MINUTES:

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

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

MAYOR'S APPOINTMENTS:**20131284 Cobb County Community Relations Council**

Appointment to the Cobb County Community Relations Council.

CITY COUNCIL APPOINTMENTS:**ORDINANCES:****20131101 Z2013-26 Eduard Zhigaylo 2012 Airport Court**

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.

Planning Commission recommends approval w/ stipulations and variance Vote: 4 – 0 – 0

Motion: Mr. Vanderslice made a motion, seconded by Mr. Poor, to recommend to city council that the Special Land Use Permit be approved with stipulations and a variance.

Stipulations/Variance:

- 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.]

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

PUBLIC HEARING (all parties are sworn in)

20131102 Z2013-27 Real Estate Holdings, Inc. 810, 830, and 850 Cobb Parkway South

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.

Council member Goldstein disclosed that attorney Kevin Moore has or does represent him and/or entities he owns or family members, from time to time.

Planning Commission recommends approval with a variance Vote: 5 – 0 – 0

Motion: Mr. Diffley made a motion, seconded by Mr. Waters, to recommend to city council, that this request be approved as written.

Stipulations: To allow the use of aluminum and Centria Platinum ribbed metal panels on the façade facing a public roadway. {Section 708.16 (G.3)}

PUBLIC HEARING (all parties are sworn in)

RESOLUTIONS:**CITY ATTORNEY'S REPORT:***** 20131300 Denial of Claim**

Denial of the claim of Sherina Bowen.

*** 20131198 Denial of Claim**

Denial of the claim of Amanda Gann.

CITY MANAGER'S REPORT:**MAYOR'S REPORT:****COMMITTEE REPORTS:****1. Economic/Community Development: Grif Chalfant, Chairperson**

- * **20131174 Franklin Gateway Redevelopment Area**
Motion to select Jones Lang LaSalle America's Inc. as the real estate consultant firm to work with the City of Marietta on the Franklin Gateway Redevelopment Area subject to a successfully negotiated contract. Authorize staff to begin negotiations on the contract with the Jones Lang LaSalle team to bring back to Mayor and Council for approval.

2. Finance/Investment: Annette Lewis, Chairperson

- * **20131150 GMA Annual Mayors' Day Conference**
Motion approving travel and training expenses for the Mayor and Council members who wish to attend the Georgia Municipal Association (GMA) Annual Mayors' Day Conference, January 24-26, 2014, in Atlanta, Georgia.

Council Member King Opposed

- * **20131151 GMA Newly Elected Officials Institute**
Motion approving travel and training expenses for the Mayor and Council members who are required to attend the GMA Newly Elected Officials Institute February 28th -March 1st and March 14-15th 2014.

- * **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.

Council Member King Opposed

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

- * **20131061 Sign Ordinance Revision**
Motion to authorize advertisement of amendments to the Zoning Ordinance, Section 714, Signs.

- * **20131136 Private Trespass Towing**
Approval of an Ordinance amending chapter 8-12-24 Private Trespass Towing of the Code of Ordinances of the City of Marietta, Georgia.

- 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.

20131247 Revised Detailed Plan for Summit Village

Motion to approve the revised Landscape Plan, as part of the Detailed Plan for Summit Village, 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. Reduce the required tree density from 25 units per acre to 17 units per acre, as required under current regulations and as shown on the plan that has been submitted.
2. Amend the letter of stipulations dated October 27, 2005 from Terrence Lewis, President of Portico Properties to Rusty Roth, Planning & Zoning Manager of the City of Marietta, so as to change paragraph (g). Paragraph (g) originally stated "A wooden privacy fence with brick or stone pillars will be erected along the 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. All other conditions of the previously approved detailed plan will remain in effect.

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.

4. Parks, Recreation and Tourism: Johnny Sinclair, Chairperson**5. Personnel/Insurance: G. A. (Andy) Morris, Chairperson***** 20130890 AMENDING City Code Section 4-4-11-010, 4-4-11-020 and 4-4-11-030**

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.

*** 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.

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

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.

* **20131237** **City Code Change**

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

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.

* **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.

* **20131186** **Barclay Circle Bike Lanes**

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

* **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 as per the terms of the attached Agreement.

*** 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 not 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.

*** 20131285 Arden Drive Traffic Calming**

Motion to install speed tables on Arden Drive.

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.'

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]

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.

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.

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.

*** 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.

*** 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.

* **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.

* **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

* **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.

20131301 Appeal of Assessment of Occupation Taxes

Appeal of assessment of occupation taxes by Clear Channel Outdoor.

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.

20131304 Appeal of Assessment of Occupation Taxes

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

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.

20131334 Conflict of Interest Affidavit

Motion approving the use of a Conflict of Interest Affidavit the RFQ Review Committee and Council would sign regarding their affiliation with chosen real estate advisor consultants.

*** 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.

20131317 2013 General Obligation Bonds

Motion to authorize the Bond Attorney and Financial Advisor to move forward with the issuance of the General Obligation Bonds by competitive purchase for the full \$68 million.

20131225 BLW Actions of the November 11, 2013

Review and approval of the November 11, 2013 actions and minutes of the Board of Lights and Water.

UNSCHEDULED APPEARANCES:**ADJOURNMENT:**