



City of Fairburn
Mayor and Council Meeting
Minutes
June 13, 2022
7:00 pm

- I. The meeting was called to order at 7:00 pm by Honorable Mayor Mario Avery.
- II. Roll call by Brenda B. James, City Clerk, found the following members present:

The Honorable Mayor Mario Avery

The Honorable James Whitmore
The Honorable Alex Heath
The Honorable Linda J. Davis

The Honorable Pat Pallend
Mayor Pro Tem Hattie Portis-Jones (Zoom)
The Honorable Ulysses J. Smallwood

Also present was City Administrator, Tony Phillips, City Clerk, Brenda B. James, and Attorney, Valerie Ross.

- III. Pastor William O'Neal of Living Word Church Ministries led the invocation.
- IV. The Pledge of Allegiance was said in unison.
- V. Presentations and Proclamations: N/A
- VI. Adoption of the Agenda:

Mayor Avery asked to add an item to the agenda, #7 to include a Resolution to negotiate Local Option Sales Tax (LOST).

Councilman Whitmore made a motion to approve the agenda and add item #7 to the agenda, with the second provided by Councilman Heath. **The motion carried unanimously.**

- VII. Approval of Minutes:

May 23, 2022, Regular Meeting Minutes – Councilwoman Davis made a motion to approve the May 23, 2022, minutes as submitted with the second provided by Councilman Heath. **The motion carried unanimously.**

- VIII. Public Comments: Thirty (30) minutes shall be available for public comments. Each speaker shall be limited to three (3) minutes; however, a speaker may transfer his or her three (3) minutes to another speaker, but no speaker shall be permitted to speak for more than (6) minutes; further in the event, if more than ten (10) speakers desire to speak, each speaker shall be limited to two (2) minutes and no speaker may speak more than four (4) minutes. Issues raised at this time are generally referred to City Administration for review. Responses will be provided later.

Stephanie Pugh spoke on behalf of her mother, Diane Lee that resides at 8850 Gullatt Road and her uncle that also resides on Gullatt Road. She said she was against the Liberty Communities Rezoning.

D Thompson resides at 8735 Gullatt Road and said the rezoning for Liberty Communities would be the most conducive use of this property with quality homes and he wants to see them built in their community.

Lydia Glaze stated she has been a citizen of Fairburn for 33 years and is very excited about what she has seen online about refresh, rebrand and renew. There are some good things happening in our city and thanked Mayor and Council for everything they have done.

IX. Agenda Items/Public Hearings:

1. **Rezoning 20222030 Liberty Communities, LLC (Public Hearing)**

For Mayor and Council to consider the rezoning of 46.1 acres from AG (Agriculture) to R-4 (Single-Family Residential). Based on the proposed development's inconsistency with the 2040 Comprehensive Plan and Future Land Use Map, staff is recommending Denial.

Planning and Zoning Director, Tarika Peeks stated the applicant, Liberty Communities, is requesting to rezone 46.1 acres from AG (Agriculture) to R-4 (Single-Family Residential) to develop a 151-lot single-family residential subdivision with frontage on Johnson Road and Gullatt Road. The proposed minimum lot size is 6,200 square feet with an average lot size of 6,929 square feet. There are two proposed ingress and egress points to the subdivision on Gullatt Road. An amenity package includes a walking trail, passive recreational area, and playground with 12.6 acres designated for open space.

She said the Future Land Use Map has the subject property density category as *Rural Residential*, and the character area is appropriate for one acre or larger lots to preserve a rural feel.

There are two single-family residential subdivisions in the vicinity of the proposed development, Asbury Park and Creekwood Village. Lots in the Asbury Park subdivision are 3,800 square feet and Creekwood Village lots are ¼ acre (10,890 square feet), which are larger than the proposed development. Ms. Peeks said based on the proposed development's inconsistency with the 2040 Comprehensive Plan and Future Land Use Map, staff's recommendations along with the Planning & Zoning Commission is denial.

Spoke in Favor:

Greg Hecht – Attorney
Scott, Family Member of Tarene, LLC

Spoke in Opposition:

Joe Lowe
Darcy White
Lydia Glaze
John Phillips
Neal Nichols
Elizabeth Corcoran

Chelsey Jackson
Mike Reharti
Carrie Carl
Clay Currie

The applicant had five minutes to deliver a rebuttal. Marc R. Acampora, Traffic Engineer that performed the impact study for this project highlighted a few areas of concern. He stated the traffic study was based on actual counts and recognized a lot of growth coming to this area so they increased those volumes by 100% and then they added the traffic generated by this project. When they evaluated the intersections, they use a scale from A-F. The intersections are currently operating at a level of service A. After the 100% growth and the additional traffic generated by this project, the traffic generated by their project, the service level is an A to B. There's a lot of capacity out there so the roads are not jammed up. He discussed the truck issue and stated this residential subdivision does not generate truck traffic. This area is surrounded by industrial uses and maybe the City can look at ways of diverting truck traffic or enforce traffic issues and asked if anyone had any questions. No questions were asked.

Family representative, Scott stated he failed to mention that prior to meeting with Liberty Communities, they were contracting 1,500 head of hogs to be moved and slaughtered at this location and researched a chicken farm, buying 50,000 head of chickens.

Greg Hecht stated that the subdivision is a much lighter use than that and doesn't feel Mr. Eden wants to farm, he's tired and wants to sell his property. Mr. Hecht appreciates the comprehensive plan but it doesn't trump constitutional rights. If Mayor and Council is planning to deny this rezone request, he asked if they would table this item and talk further with the community to see if there is something they can agree upon.

Councilman Whitmore asked staff to discuss the inconsistencies.

Planning and Zoning Director, Tarika Peeks stated the comp plan has a designated area as rural residential. In the residential character area, there are three density categories, rural residential, low residential and medium density residential. This property is identified as rural residential in the 2040 Comprehensive Plan and in the Future Land Use Map. This particular density requires one acre lots or larger.

Councilman Whitmore stated that Mayor, Council, staff and Michael Hightower's firm reviewed the Comprehensive Plan and the Future Land Use Map and looked at Fairburn as a whole. We spent a lot of taxpayer's money, had input of our citizens and Mayor and Council approved it. Also, he heard the applicant mention constitutionality and equal protection of the law and confirmed with the attorney that we have done everything we are required to do. Also, based on the inconsistencies with the 2040 Comprehensive Plan and Future Land Use Map as presented, he cannot support this request.

Councilwoman Davis clarified that Asbury Park and Creekwood Village were both annexed from Fulton County and were permitted to stay the way they were. Our 2040 Comprehensive Plan is a plan that we put in place and feels we need to have a holistic approach. She is also against this development.

Mayor Avery stated he was in total agreement with both council members and stated that one of

the residents mentioned this was going on every year or two. He asked for clarification on updating the plan when the developers come in. Ms. Peeks stated at the will of the Mayor and Council, the Comprehensive Plan can be amended at any time and stated in areas where the visions or goals change, you would need to update the comprehensive plan.

Mayor Pro Tem Portis-Jones stated we all have worked very hard on the Comprehensive Plan and stated this governing body has heard you. She thanked the residents for coming out to voice their concerns.

Councilman Whitmore made a motion to deny the rezoning of 46.1 acres from AG (Agriculture) to R-4 (Single-family Residential) and the second was provided by Councilwoman Davis. **The motion carried unanimously.**

2. Rezoning 2022031 Hernan Creek (Public Hearing)

For Mayor and Council to consider the rezoning of 26.35 acres from AG (Agriculture) to R-4 (Single-Family Residential). Based on the proposed development's conformity to the 2040 Comprehensive Plan and Future Land Use Map, staff's recommendation is **APPROVAL CONDITIONAL**.

Planning and Zoning Director, Tarika Peeks stated the applicant, Hernan Creek, is requesting to rezone 26.35 acres from AG (Agriculture) to R-4 (Single-Family Residential) to develop a 57-lot single-family residential subdivision with frontage on Herndon Road. The proposed lot size is ¼ acre (10,890 square feet). The proposed ingress and egress points to the subdivision are on Herndon Road. An amenity package includes a playground and picnic area and 3.38 acres designated for open space.

She further said the Future Land Use Map has the subject property density category as *Medium Density Residential*, and this character map is appropriate for one-fourth acre or smaller lots.

The Durham Lakes Golf and Country Club planned community is located to the east of the subject property. Specifically, the Fairways at Durham Lakes subdivision is adjacent to the subject property. By comparison, the lots in the Fairways at Durham Lakes are of similar, if not smaller, size (between .18 to .25 acre lots).

Spoke in Favor:

William Diehl

Spoke in Opposition:

N/A

Ms. Peeks read the following conditions:

A. To restrict the use of the subject property as follows:

1. Single-family Residential

- a. A maximum of 57 single-family residential lots with a density of 2.16 units per acre, whichever is less.

B. To abide by the following:

1. The property shall be developed in conformity with the site plan prepared by Lowes Engineers and attached as Exhibit B. The site plan is conceptual only and must meet or exceed the requirements of the City's ordinance and zoning conditions prior to the approval of a Land Disturbance Permit. Any deviation from the site plan is subject to approval by the City's Department of Community Development.
2. Property maintenance shall be accomplished through a homeowner's association in which membership shall be mandatory. Property maintenance for the lots shall be accomplished by the individual property owners with the exception of common areas to be maintained by a homeowner's association. A 5% rental cap shall be included in the association by-laws. Such association by-laws shall be subject to approval by the City Administrator or designee and shall be recorded with covenants that shall be subject to approval by the City Administrator or designee.

C. To the following site development standards:

1. Development standards for each single-family lot shall be as follows:
 - a. Building setbacks as follows:
 - i. Front: 25 feet, 25' from each street right-of-way for corner lots
 - ii. Side: 10 feet
 - iii. Rear: 25 feet
 - b. Minimum lot square footage: 10,890 square feet (0.25 acres)
 - c. Minimum heated floor area: 1,400 square feet
 - d. Minimum lot widths: 50 feet
2. A minimum of 3.38 acres of the total area shall be reserved for open space; an amenity package shall include a playground and picnic area.
3. Facades of the homes shall be constructed with a combination of two or more of the following materials: fiber-cement siding, wood shake, clapboard, brick, and/or stone. The use of vinyl or EIFS (synthetic stucco) is strictly prohibited. At least 25% of the front façades shall consist of at least 25% brick or stone.
4. Two-car garages shall be provided for each single-family unit. Upgraded garage doors with architectural elements shall be utilized.
5. Sidewalks on all street frontages shall be a minimum of five-foot and shall be constructed to comply with the requirements of the Americans with Disabilities Act (ADA) standards and the City of Fairburn development standard. Five-foot sidewalks shall be provided along both sides of internal streets throughout the development and shall be designed to provide inter-connectivity to the amenities area and mail kiosk.
6. Pedestrian-scale street lighting shall be provided along both sides of internal streets throughout the development.

7. The perimeter landscape area abutting the public right-of-way on Herndon Road shall contain mature trees to create a natural landscaped buffer between the roadway and the rear of the houses (facing Herndon Road). Newly planted trees shall consist of one or a combination of the following trees: Leyland Cypress, Eastern Red Cedar, Southern Magnolia, Virginia Pine, Arborvitae, Savannah Holly, Nellie R. Stevens Holly.
8. All utilities shall be installed underground throughout the development area.
9. Acceleration and deceleration lanes shall be provided at the proposed driveway connection unless a traffic study demonstrates that the total traffic on the existing roadway is less than 2,000 vehicles per day including traffic projected as a result of the proposed development (count of existing traffic must have been made within one year of the development plan submittal date)
10. Turning lanes shall be required to meet projected traffic demand and/or safe operations, as determined by the City Engineer and/or traffic study. When provided, turning lanes shall meet the following criteria:
 - a. Provide not less than 150 feet of storage length for arterial roadways. Provide not less than 100 feet of storage length for collector roadways.
 - b. Provide taper lengths of not less than 100 feet.
 - c. Longer storage and taper lengths may be required when traffic projections indicate they are justified.
11. The Developer shall construct roadway improvements (pavement, signing, striping, curb and gutter, and drainage) along the existing road across the entire property frontage where required, at no cost to the city.
12. The Developer shall install a canopy or understory tree in the front yard of each single-family unit. The front and rear yards of the single-family family units shall be sodded.

Councilman Whitmore requested the applicant to add a cap of 5% to rental homes as a condition.

Councilwoman Davis stated she had concerns with developers building for investors and Atlanta is a targeted market for that. We do not want this in Fairburn because there is a difference between a homeowner and a renter. We are passionate about these renter limits and want a cap of 5%.

Councilman Smallwood agreed that 5% is our standard rental cap and wants to maintain quality of life in Fairburn.

Mayor Pro Tem Portis-Jones stated she was in total agreement with her colleagues on the rental cap and asked Ms. Peeks to explain the recommendation from Agriculture to R4 Single-family residential.

Ms. Peeks stated the comprehensive plan has this area designated as medium density residential. The density for that is ¼ acre or smaller. This property is adjacent to Durham Lakes which is also a medium density residential character area. She also stated on the first agenda item tonight, the comprehensive plan has this area designated as rural residential and

the density is one acre lot and larger, so that is the difference between the two rezoning requests. They are both zoned AG, but the comprehensive plan designates the density for all the land within the city.

Councilmember Heath made a motion to approve the rezoning with the conditions as read with the second provided by Councilman Whitmore. **The motion carried unanimously.**

3. Approval to use American Rescue Plan Act (ARPA) Funds

City Administrator, Tony Phillips stated this item is pursuant to the detailed discussion had by Mayor and Council at the retreat where we went through our Fairburn focus plan, Refresh, Rebrand, and Renew. Our ARPA plan allocations were a big part of that. This is the recommended methodology for GMA to cities receiving \$10 million or less, our allocation is \$6.2 million.

Councilwoman Davis asked what has been allocated for our citizens with the ARPA funds. Mr. Phillips stated there is \$550,000 in the plan to assist the residents of Fairburn that have utility bills in arrears and bring their account current.

Councilwoman Davis asked how much utility bills were in arrears. Mr. Phillips stated the rough approximate is \$850,000, we are offering payment plans and other options to help them come current. Councilwoman Davis said she would like to see all the arrears taken care of to help our citizens through this pandemic.

Councilman Smallwood asked what was the criteria for the small business grant program. Mr. Phillips stated we are developing this criteria now. There is a focus on our downtown development through our LCI Master Plan to developing those empty spaces. We've looked at many other allocations in other jurisdictions and one of the applications we've seen successful is the Façade Grants which allows businesses in the downtown corridor upgrade their façade and create a consistent look downtown which also helps generate new businesses downtown.

Councilman Heath asked about the lift station improvements. Utilities Director, John Martin stated there are new subdivisions coming in and with the amount of sewage, we must upgrade. We are looking at pipe sizes and security since we have had a couple of breaches. We are looking at a full complete makeover with security lighting and bigger pumps.

Mayor Avery discussed the importance of each item in the ARPA project plan and how staff worked to identify these issues. Preventative maintenance is a big issue with utilities. He is meeting with DDA to talk with owners about improvements downtown. He stated we need to address the sewer capacity issue; it is very expensive. He thanked staff for the collaboration effort in preparing the ARPA projects.

Councilman Whitmore asked Fire Chief, Cornelius Robinson if our fire hydrant pipes were upgraded to larger pipes in the downtown area before this list was compiled. Chief Robinson explained that the downtown area is where the smaller piping is, and they can tap into the 20" main that was installed for fire protection if needed. Councilman Whitmore asked Mr. Phillips to investigate this issue, it was his understanding while during the construction, upgrading the piping was being address and to hear it wasn't done is alarming since we are trying to build up our downtown area. Mr. Phillips stated he will get with Chief Robinson to discuss this in depth.

Councilwoman Davis made a motion to approve the use of ARPA funding in the amount of \$6,261,781.00 as revenue loss replacement and authorize the City Administrator to execute the proposed project plan and have the authority to adjust projects and funding allocations based on need and funding availability and the second was provided by Councilman Heath. **The motion carried unanimously.**

4. Award of Bid for Fire Hydrant Replacement Project to Shockley Plumbing, Inc.

Utilities Director, John Martin stated the City of Fairburn has fire hydrants that need to be upgraded to 8" pipelines and are 2-way instead of 3-way LDH (large diameter hose) connections. 18 fire hydrants were identified by the Fire Department and the new fire hydrants will increase water pressure for fire emergencies. He asked Mayor and Council approve the bid award to Shockley Plumbing, Inc. in the amount of \$403,200. Integrated Science & Engineering (ISE) assisted city staff during the competitive bidding process. The bid was closed on March 31, 2022, and on April 4, 2022, Shockley Plumbing, Inc. was awarded the bid award recommendation as the lowest bidder.

Councilman Heath made a motion to approve the bid award to Shockley Plumbing, Inc not to exceed \$403,200 for the fire hydrant replacement project. The second was provided by Councilwoman Davis. **The motion carried unanimously.**

Mayor Pro Tem Portis-Jones asked if this includes an evaluation of the piping under the hydrants and are they large enough to carry the highest water flow possible. Mr. Martin stated yes, that was included in the contract and to keep the water off for older fire hydrants that do not have an isolation valve, we have installed isolation valves which means if that fire hydrant gets broke, we can isolate and keep the water flow to citizens homes without interrupting the water flow.

5. Establish Human Resource Specialist Position in the Human Resources Department

Human Resource Director, TaLisha Champagne stated the City of Fairburn's Human Resources Department is transitioning in its service delivery, strategies, and programming to meet the needs of our employees. Due to the department not having a dedicated position to administer the benefits program and the wellness program, the initiatives have not been formalized. As we improve our retention strategies, employee engagement, and benefit initiatives, and streamlining our processes through technology, this position will effectively develop and manage the employee's wellness program, coordinate annual health fairs, and coordinate the citywide benefits open enrollment.

Councilwoman Davis made a motion to approve the Human Resources Specialist position for the current FY2022 budget year and the second was provided by Councilman Smallwood. **The motion carried unanimously.**

6. IHWAP Agreement Between the City of Fairburn and Georgia Department of Human Services

Utilities Director, John Martin stated the Georgia Low Income Home Energy Assistance Program (LIHEAP), is a Federally funded program that helps low-income households with their home energy bills. The Low-Income Household Water Assistance Program (LIHWAP) is a program

stemming from federal funding allocated by congress to provide emergency temporary relief to water and wastewater customers impacted by COVID. The program is locally managed by the Georgia Division of Family and Children Services (GA DFCS). The Home Water Supplier Agreement will ensure eligibility of benefits to public water utility customers in the City of Fairburn.

Councilman Heath made a motion to approve the (LIHWAP) Low Income Home Energy Assistance Program Agreement between the City of Fairburn and the Georgia Department of Human Services and authorize the Mayor to sign the agreement. The second was provided by Councilwoman Davis.

Mayor Pro Tem Portis-Jones asked how long this program would be in existence and who would be processing the applications. Mr. Martin stated once the agreement is signed and all information is submitted to the Department of Human Services, the program will start in July and will start again in October of each year. The Georgia Division of Family and Children Services will process the applications. Mayor Pro Tem Portis-Jones stated there is a similar program to help residents with water assistance through HUD and asked Mr. Phillips and staff to research the project to broaden the support of our residents.

Mayor Avery stated the motion has been made and properly seconded. **The motion carried unanimously.**

7. **Approval of Resolution to Appoint Special Counsel for Local Option Sales Tax (LOST) Negotiation**

Mayor Avery stated all the Mayors in Fulton County except for the City of Atlanta agreed to hire Andrew Welch as legal counsel to represent the cities in the local option sales tax negotiations. This is the same individual that represented all the cities ten years ago, who did a phenomenal job. Without hesitation, all Mayors agreed to use him again and because we will not have another council meeting, it is imperative that we get this approved tonight.

Councilwoman Davis made a motion to approve the Resolution and appoint special counsel, Andrew Welch to handle LOST negotiations. The second was provided by Councilman Heath. **The motion carried unanimously.**

X. Council Comments – None

XI. City Administrator's Report

City Administrator, Mr. Tony Phillips stated Duncan Park pool and splashpad is as popular as it's ever been and are facing some capacity challenges. The pool fills up within two hours each day after it opens. The max capacity is 150 people. This is a good problem but not if you're the one standing in line waiting to get in. We have a few operational issues and Ms. Payne, Park & Recreation Director is working on this. We are looking at posting capacity notifications on the website and social media. We will no longer sell tickets in advance. We are looking at creating swim sessions on the weekend from 11 am to 2 pm and from 3 pm to 6 pm. By doing two sessions, you purchase a three-hour ticket, we allow the pool to clear out and the next group of citizens can come in. We are trying to accommodate as many swimmers as we can.

Assistant City Administrator, Jamila Criss gave an update on the stage and courtyard. She stated the stage lettering for the Frankie Mae Arnold stage and the weathered plaque have been completed. Staff is working with the vendor to finalize pricing for the dedication plaque and lettering for the GMC dedication building. We are also getting pricing for the Duncan Park plaques. These items were not budgeted so we are identifying funding with our Finance Director.

Mayor Avery reminded everyone that the Fire Department has a push scheduled for this Friday, June 16th which is a traditional event. On July 1st, we will have a pep rally in the courtyard for Creekside High School.

Mr. Phillips stated the third Friday on Main Street starts at 6 pm and invited everyone to come. This will be the Juneteenth concert. On Saturday, June 18th, we will have a yard sale in the GMC parking lot.

Mayor Avery reminded everyone on Monday, June 20th, the city will be closed for the Juneteenth holiday.

Councilwoman Davis gave kudos to Chapin Payne for what she has done with our Parks and Recreation.


XII. Executive Session:

Councilman Whitmore made a motion to go into Executive Session for litigation and the second was provided by Councilwoman Davis at 9:40 p.m. **The motion carried unanimously.**

After Executive Session, Councilwoman Davis made a motion to approve the settlement of Bartow Properties, LLC & DRB Group Georgia, LLC vs. City of Fairburn and Tarika Peeks, Civil Action File No. 2021CV354860. The second was provided by Councilman Whitmore. **The motion carried unanimously.**

XIII. Adjournment

Councilwoman Davis made a motion to adjourn with Councilman Heath providing the second. The meeting adjourned at 9:55 pm. **The motion carried unanimously.**


Brenda B. James, City Clerk


Mario Avery, Mayor