



City of Fairburn
Mayor and Council Meeting
Minutes
August 22, 2022
7:00 pm

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

The Honorable Mayor Mario Avery

The Honorable James Whitmore
The Honorable Ulysses J. Smallwood
The Honorable Linda J. Davis

The Honorable Pat Pallend
Mayor Pro Tem Hattie Portis-Jones

The Honorable Alex Heath was absent.

Also present was Assistant City Administrator, Jamila Criss, City Administrator, Tony Phillips, Deputy City Clerk, Deannia Ray, Assistant Attorney, Serena Nowell and Attorney Valerie Ross.

- III. Pastor Dwight Boone with Crossroads Church 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 added item # 7, a discussion on Mayor & Council proposed salary increase to the agenda.

Councilman Whitmore made a motion to approve the agenda adding item # 7, to discuss Mayor & Council proposed salary increase, with the second provided by Councilman Smallwood. **The motion carried unanimously.**

VII. Approval of Minutes:

Councilwoman Davis made a motion to approve the August 2, 2022, Special Called Meeting minutes as submitted with the second provided by Councilman Whitmore. **The motion carried unanimously.**

Councilman Whitmore made a motion to approve the August 8, 2022, Regular Council Meeting minutes as submitted with the second provided by Councilwoman Davis. **The motion carried unanimously.**

VIII. Public Comments: None

IX. Public Hearing and Agenda Items:

1. **Public Hearing - Rezoning 2021103 DRB Group, LLC & Bartow Properties, LLC – Curry Bend Development Plan with Concurrent Use Permits 2021113 & 2021114 and Concurrent Variances 2021110 & 2021111**

Interim Planning and Zoning Director, Rebecca Keefer presented an application for consideration of rezoning in a series of special use permits as well as accompanying concurrent variance requests. This case had some considerable history. This property was annexed and rezoned originally in October 2006 from CUP, a Community Unit Plan which is the Ashbury Park development. The portion under review tonight was originally zoned AG and was rezoned to PD district, the Planned Development Districts, which has enabled in the zoning ordinance. It usually affords special considerations for innovative development, that's not considered as a part of the zoning ordinance. There is a requirement for a development plan to be adopted with that rezoning.

A development plan articulates different development standards that are not in the base PD district. The reason of that development plan is that all the development standards are not spelled out in the code, so you must have that accompanying development plan to be able to fully effect a PD and be able to develop in that manner. When the applicant approached the City last year to do a development on this site, it was revealed they could not find a development plan that was adopted during that original rezoning process back in 2006. They were not effectively able to move forward because there were no development standards to be able to apply to the development itself. Based on the particulars of this case there's the accompanying variances and use permits with it. They proceeded through the process in July 2021, the Planning and Zoning Commission recommended approval and then in August 2021, this body denied the request. Since then, the applicant appealed to Superior Court and a judgement was received and directive that the request be remanded back to City Council for consideration with all the accompanying requests. Mayor and Council approved a settlement agreement outlining all the conditions that we will eventually reference in the staff recommendation. That articulates things even above and beyond what's identified in the development plan as well.

The applicant seeks to rezone from PD to PD, approximately 70.17 acres. The request is to accommodate a mixed-use development. The question is to incorporate the development plan as a function to be able to grant them the right to develop as they are already approved. The plan will incorporate 114 single-family units and 126 townhome units. There will be commercial development on the corner of Bohannon, with a maximum of 24,000 square feet. A convalescent center and nursing home with a maximum of 2,500 square feet along with a home hospice and a personal care home and assisted living at 10,000 square feet. The two-use request will encompass the special use for a hospice facility and the second one for a personal care home assisted living facility that are not allowed by right in the Planned Development District, so these are additional requests that the applicant has made along with two variances to allow parking in the front yard setback for the personal care home use and then to reduce the side yard setback from 50 feet to 25 feet, for the personal care home use.

The two access points for residential are along Seneca Road and Bohannon Road. There are

several locations of environmentally sensitive land identified on the property and those regulatory requirements for buffers and things are provided for on the plans and have also proposed a series of amenities, pools, parks, and dog parks on the site plan as well. Staff has identified various things that must be verified through the permitting process. Some of those things are required, installation of curb and gutter, deceleration lanes require buffers and stated availability of water and sewer. The rezoning and use permit analysis will be reviewed and generated, and we are recommending approval based on the criteria outlined in the zoning ordinance.

The review criteria for the variances are found in 80-287, for the parking in the front yard and side yard for the personal care home and assisted living use. There are two parking spaces that encroach into the required 30-foot setback. The property is encumbered in that area by various environmental requirements, stream and wetlands and the development shifts to be able to accommodate and respect those requirements. The reduction in the side yard setback from 50 feet down to 25 feet is a result of the building being shifted away from those environmental features so that those can be adequately protected. Staff found that requirement has been met. In the case of the side yard setback being reduced, the applicant has also proposed to provide enhanced vegetative buffers, berms, and various landscape plantings. Staff recommends approval of all the requests outlined in the staff report and to restrict the use of the subject property as follows: See *Bartow Properties, LLC and DRB Georgia, LLC v. City of Fairburn, Georgia* and *Tarika Peeks, Director of Planning and Zoning* in her official capacity, Civil Action File No. 2021CV354860 – General Mutual Release Settlement Agreement, dated June 13, 2022, attached and incorporated hereto as Exhibit A to this staff report.

Mayor Avery asked the Zoning Attorney, Valerie Ross to discuss what makes this different than the standard planning and zoning recommendation.

Attorney, Valerie Ross stated this rezoning application is back before this body for purposes of a court remand, which was involved in litigation in Fulton County Superior Court before Judge Robert McBurney. The parties entered into a settlement agreement that allowed for the resolution of a case. As a result of that settlement agreement, Judge McBurney remanded this back to council and directed council to rezone the property to PD, which is also the existing zoning, but also to adopt the development plan that is before this council tonight. The purpose of that is simply to attach the development plan to the PD zoning which was not done in 2006. You are not looking at a different rezoning request on the property, the property owner has the legal right to develop the property as zoned. The issue in this litigation was this development plan and by virtue of the settlement agreement, the city which was a party to this litigation as well as the property owner were able to come to an agreement on specific zoning conditions which helped resolve the matter. The court has directed this council to rezone and approve the development plan tonight.

Spoke in Favor:

Alex Brock, with Smith, Gambrell, Russell, address is 1105 West Peachtree Street, Atlanta, GA 30309, spoke on behalf of the applicant, DRB Group for its rezoning request.

Lacey Curry, owner of the subject property was also in attendance. As city staff and city attorney noted, we are here before this body tonight on a remand of a or pursuant to a consent order from the court, asking this body to issue an approval of the rezoning concurrent use permits, concurrent variances, and development plan in accordance with that consent order. He reminded City Clerk and City Council that any speakers tonight including any in opposition should state their full

address including city and county so that everyone is aware of the speakers.

Spoke in Opposition:

Attorney, Newton Galloway, 406 North Hill Street, Griffin, GA, represented a number of neighborhood "opponents" who live along Line Creek. He said pursuant to discussions we've had today and by agreement of council and the parties, we request there be an amendment to the consent agreement at page three, section six dealing with amenities. That the amendment amenities be constructed by the developer will be concluded in construction of which we've concluded of the inclusion of phase one or approximately 80 lots and before the approval of a preliminary plat for phase two. He said that does not conflict with anything that is in the consent order. We've been able to reach an agreement with the developer governing the amenities which is a key component to making certain that what is on the site plan, it's built and is not ignored as lots are sold and as subsequent development occurs urged Council to stick with the Comprehensive Plan going forward.

The applicant had five minutes to deliver a rebuttal. Mr. Brock wanted to note that we are agreeable with Mr. Galloway's amended condition to construct the amenities during phase one. Both the city, the developer and the property owner have spent a good portion of the past year coming to the settlement agreement that is before you tonight. The conditions are laid out in that agreement and were thoroughly vetted by all parties and all parties agreed when they signed that settlement agreement. We ask that you move forward with an approval of the consent agreement and the rezoning as it's presented to you tonight.

Mayor Avery asked Attorney, Valerie Ross if he should read the motion as recommended by staff and then amend that motion to add the conditions to construct the amenities. Ms. Ross had some concerns about amending the motion as this was remanded from the Courts.

Councilman Whitmore stated the agreement that both parties agreed to and signed off by the judge, if we add anything additional, does it need to go back to the judge as amended? Attorney Ross stated no but had concerns amending the motion.

Interim Planning & Zoning Director, Rebecca Keefer offered a potential alternative. She stated the settlement agreement has already been signed off on and is a closed matter and suggested the possibility of adding a second condition with the first condition referencing that settlement agreement. The second condition will site this added language of the phase one and phase two, so you are not having to reopen the settlement agreement.

Councilman Whitmore made a motion for Mayor and Council to approve a court remanded rezoning application and development plan with two concurrent use permits and two concurrent variances to allow a Planned Development with a second condition that is to construct amenities during phase one. The second was provided by Councilman Smallwood.

Councilwoman Davis spoke about the misstep in 2006, as it relates to this being annexed into our city and rezoned as PD without the Development Plan that has caused a lot of issues and concerns. One of the major concerns it has caused today is that it goes against our Comprehensive Plan and to you Attorney Galloway, we are very serious about our Comprehensive Plan and our Future Land Use Map. There's nothing we can do about that but we should not be judged in how we deal with developers and how important our Comprehensive Plan

is for us. We put a lot of energy into that, we have citizens participating and council members, so it is a serious document that we look at and we are guided by that Comprehensive Plan and Future Land Use Map. She wanted to be very clear about that and knows this situation has caused a lot of issues and concerns with our citizens. One thing she was proud of, is we denied it originally which gave them the opportunity to add some conditions and negotiate some things that were not in it prior to, so she considers this a win as it relates to our citizens in that community.

Councilman Whitmore stated we read all the emails that came in and looked at what could be done by law, in accordance with what we currently have in our books. We have an outstanding staff in Fairburn so Mr. Galloway, you cannot hold 2006 against this current mayor and council. He stated our citizens have put a great mandate on this body where they are looking for certain things. They want a white tablecloth sit-down restaurant and another supermarket. The naysayers have been talking about Fairburn not having enough rooftops and he disputes that. We have a lot of growth around Fairburn and are getting additional rooftops. It is imperative we always keep in mind what our citizens asked us to look for. This body, administration, and staff have worked tirelessly to achieve some of those goals and thanked the applicant for some additional concessions. One of the major concerns we had was with the townhouses and the single-family houses not having two car garages. We do not want a lot of rentals, and this was minimized based on the things we put in the conditions. This body is very proactive and will continue to ensure as communities are built and they will be maintained. There are some other considerations that are in the conditions and thanked the developer for communicating with us and our city attorneys for working together to find a solution as we have an opportunity to grow responsibly in the City of Fairburn because we are situated to succeed.

Mayor Pro Tem Portis-Jones stated when we had our retreat, we talked about our vision for economic development for the City and talked about the fact that we are landlocked. There is no more unincorporated Fulton County. Every piece of land on the south side and the north side is in the jurisdiction of some city, we still have land in Fairburn, and we must be very smart about how we develop that land. We discussed this considering our Comprehensive Plan and are guided by that in the discussions that we have regarding development. This speaks to the issue of the misstep of 2006 and the potential missteps out there that we don't know about. In one of the discussions, we had at the retreat is we need an inventory of all the vacant land that is available in the city. She called out to all land owners to reach out to the city to let us know about the land you own and have conversations to see if there were any missteps, this is our opportunity to correct that. She thanked the attorneys for showing the issues with zoning and Comprehensive Plan, we want to make sure this does not happen again. She also thanked the residents for raising their issues and concerns, we did hear you, but Fairburn is growing and have lots of development knocking on our door. It is our challenge with your assistance that we be smart about the developments and asked them to continue to engage and communicate with the city.

Mayor Avery thanked both attorneys, not too many times you come to a zoning issue like this and the two attorneys had a come to Jesus conversation and personally thanked them for that as well as for the level of professionalism within your negotiations.

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

2. Public Hearing – Proposed 2022 Millage Rate

Finance Director, Peterson David stated this public hearing is for the proposed 2022 millage rate. He stated our current millage rate is 8.1 mills and have not changed for over ten years. We also have a 1.46 millage for our bond rate, so for a total of 9.56.

Spoke in Favor: N/A

Spoke in Opposition: N/A

No Action Taken

3. Public Hearing – Proposed FY 2022 – 2023 Budget

Finance Director, Peterson David stated this public hearing is for the proposed Fiscal Year 2022-2023 budget.

Spoke in Favor: N/A

Spoke in Opposition: N/A

No Action Taken

4. Resolution Granting Special Counsel Authority to Enter Into a Joint Defense Agreement with the City of Atlanta and the City of Sandy Springs; To File Legal Actions on the City's Behalf as Necessary to Accomplish the Purpose of Securing a Distribution of L.O.S.T.; and for Other Purposes

Councilman Pallend made a motion to approve the Resolution granting Special Counsel authority to enter into a Joint Defense Agreement with the City of Atlanta and the City of Sandy Springs, to file legal actions on the City's behalf as necessary to accomplish the purpose of securing a distribution of L.O.S.T. and for other purposes, with the second provided by Councilwoman Davis. **The motion carried unanimously.**

5. Purchase of Fire Pumper/Tanker for the Fire Department

Fire Chief, Cornelius Robinson stated on the southwest area of the city, we have limited fire hydrants and water which at times makes fire protection a difficult task and over the years have had our main feed from the City of Atlanta suffer major water main breaks leaving us with limited water to provide fire protection throughout the city. He asked Mayor and Council to approve the purchase of this unit not to exceed \$249,000 with the first payment of \$130,000 in FY22 and \$119,00 in FY 23.

Councilman Whitmore made a motion to approve the purchase of a 2005 International Pumper Tanker not to exceed \$249,000 with the first payment of \$130,000 in FY 22 and \$119,000 in FY23. The second was provided by Councilwoman Davis.

Councilman Whitmore thanked Chief Robinson for bringing this item to Mayor and Council and know you have been looking at ways to alleviate any future delays in fighting fires. He made a

phone call to inquire about a couple of things and for the record, this International pumper tanker was used with a volunteer fire department, and it only has 14,000 miles on it, so we got very little use even though it is a 2005 vehicle. The truck will also be refurbished to have the right hoses and a 2022 upgrade that will provide years and years of service for us.

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

6. Downtown Façade Improvement Grant

Economic Development Director, Sylvia Abernathy stated on August 8th, during the work session Mayor and Council added consideration for applicants that could not afford the initial payment for the Façade Grant. Since that time, the Façade Grant has been updated with a special consideration so for those that have needs, it will be assessed, and a separate application will be taken and overseen by our procurement office. She asked for Attorney Serena Nowell's additional statements. Ms. Nowell stated because of the source of the funds for the grant program, we wanted to ensure that there were no restrictions on our ability to use those funds and not have a match. She reviewed the regulations related to the ARPA funds and we are not required to have a match. Ms. Abernathy asked the Mayor and Council to approve the Façade Grant with the additional consideration.

Councilman Smallwood made a motion to approve the funding to facilitate the implementation of the Downtown Façade Improvement Grant with the additional consideration with the second provided by Mayor Pro Tem Portis-Jones. **The motion carried unanimously.**

7. Mayor & Council Proposed Salary Increase Discussion

The City Administrator's office collaborated with Finance, Human Resources, and the City Attorney to provide an overview and options for a proposed salary increase for Mayor and Council.

Mayor Avery discussed the overview and options for the increase and stated it would not affect this year's fiscal budget and would go in effect in 2024. A salary increase for Mayor & Council must be accomplished by ordinance. The proposed salary increase must be advertised in the county's legal organ at least once a week for three consecutive weeks immediately preceding the week during which the action is taken and any proposed increase in compensation cannot take effect until after the next regular election following the date Council approves the increase and the officials so elected take office, in this case, January 2024.

After much discussion, Councilwoman Davis stated this body has not had an increase in 8 or 9 years and would like to see the proposed rate increase at 50%.

Councilman Smallwood would like to see the proposed rate increase at 75%.

Councilwoman Whitmore would like to see the proposed rate increase at 50%.

Mayor Pro Tem Portis-Jones made a counter proposal for the Mayor's salary at \$22,346 and Council salary at \$13,500. The 50% increase puts the Mayor's salary outside of our neighboring cities who are larger than we are. We have been given the comparison of cities for a reason and

took the population of each city and divided the salary for both mayor and council to get a per capita rate.

Councilman Pallend would like to see the proposed rate increase at 20%.

Mayor Avery agreed with Councilwoman Davis and Councilman Whitmore and recommended option 2 on the 50% proposed rate increase. He also stated we will go with the standard salary listed on the chart at 50% and it will be advertised three consecutive weeks in the legal organ and will come back to Council at a later date. Councilman Whitmore asked when the study would be completed for staff and Mr. Phillips stated September 12th.

No Action Taken

X. Finance Director Monthly Report

Finance Director, Peterson David stated he was presenting the financials for month ending July 31, 2022. The City of Fairburn's General Fund concludes its tenth month of 2022 operation with \$4.8 million in net cash flow and has generated \$19.7 million in revenue with \$14.9 million in expenditures. The City has collected 90% of its revenues and has expensed 68% of its budget for the General Fund.

Fairburn's Enterprise Fund concludes its tenth month of 2022 operation with roughly \$536 thousand in net cash flow and has generated \$16.5 million in revenue with \$16 million in expenditures. The City has collected 81% of revenues and has expensed 78% of its budget for the Enterprise Fund.

XI. City Administrator Monthly Report

City Administrator, Tony Phillips presented the City Administrator's July monthly report. He highlighted a few monthly administrative activities to include:

- Downtown Development Authority (DDA) and Development Authority (DA) training with new board members at University of Georgia, Carl Vinson Institute of Government in Dublin, GA, regarding role of DA/DDA as a developer, financial incentive tools, project management and development and more.
- Human Resources developed and City Council approved a COVID-19 policy inclusive of a pandemic leave benefit which provides up to five (5) days of paid leave for employees who meet the eligibility requirements.
- Benefits event "Getting to Know Your Benefits" was held on July 25, 2022, facilitated by our benefits broker and United Health Care account manager.
- Wellness Wednesday Fitness Initiative Completed – over 100 participants for season.
- Rebecca Keefer and Richard Edwards named Interim Director of Planning and Zoning and Interim Senior Planner, respectively.
- We are continuing our proactive recruitment and making significant progress for all open positions in the City to help elevate departmental service delivery.

Mr. Phillips discussed an emergency procurement for the replacement of the Police Department's roof and will move forward with the procurement and bring back to council at the next meeting.

XII. Council Comments – None

XIII. Executive Session:

Councilwoman Davis made a motion to go into executive session to discuss personnel and litigation issues with the second provided by Councilman Smallwood. **The motion carried unanimously.**

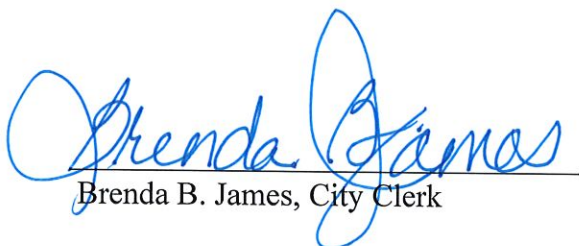
Councilman Pallend made a motion to go back into regular session and the second was provided by Councilwoman Davis. **The motion carried unanimously.**

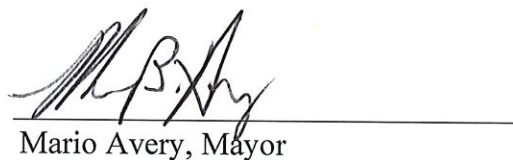
Councilman Smallwood made a motion as follows:

Based upon the information provided by the MEAG Power staff concerning the tender option decision pertaining to the Vogtle Units 3 and 4 Project and after consultation with our internal staff concerning the potential benefits and costs associated with the tender option, I hereby move that the City Council for the City of Fairburn notify MEAG Power that it does not support exercising the tender option by SPV M, does not support exercising the tender option by SPV J, and does not support exercising the tender option by SPV P. The second was provided by Councilman Whitmore. **The motion carried unanimously.**

XIV. Adjournment:

Councilwoman Davis made a motion to adjourn the meeting with Councilman Pallend providing the second. The meeting adjourned at 9:07 p.m. **The motion carried unanimously.**


Brenda B. James, City Clerk


Mario Avery, Mayor