



**CITY OF FAIRBURN
City Council Meeting Minutes
City Hall
56 Malone Street
Fairburn, GA 30213
July 22, 2013
7:00 P.M.**

The Honorable Mayor Mario Avery

The Honorable Ron Alderman
The Honorable Elizabeth Hurst
The Honorable Jean Barkley Russell

The Honorable Alex Heath
The Honorable Marian Johnson
The Honorable Scott Vaughan

City Administrator:
City Clerk:
City Attorney:

Mr. Tom B. Barber
Mrs. Brenda B. James
Mr. Randy Turner

- I. MEETING CALLED TO ORDER: By Honorable Mario Avery.**
- II. ROLL CALL:** All Members of Council were present which constituted a quorum.
- III. PUBLIC COMMENTS:**
 1. Will Strawn, 27 Word Street, Fairburn, GA. 30213 spoke about the Strawn Brewing Company. He said since December, 2012 they have had tours from 2:00 pm until 6:00 pm. He said people have come from numerous parts of the country to include Georgia, Alabama, Minnesota, Ohio, Texas, South Carolina, Florida, North Carolina, Mississippi and Poland. He thanked the Mayor and Council for allowing them the opportunity to bring business to the City. He said they are directing people to the restaurants after the tours. He announced their one year anniversary is September 7, 2013 and they will be donating to the Fairburn Fall Festival this year. He said they have between 50 to 70 tourist and hope to have 100 to 200 tourists by next year.
 2. Nell Smith, 204 Fayetteville Road, Fairburn, GA. 30213 said two weeks ago during the July 8, 2013 City Council Meeting, the Chief of Police Chip McCarthy stated he purchased five new police vehicles in the amount of \$117,000.00 and forgot to bring this to Council. She said this was a budgeted item, however; this amount of money in her opinion sends out the wrong signal without the proper authorization.

She said they certainly do not want to be included in the news media pertaining to tax dollars. She said this amount of money has to come before Council according to another City Attorney. She asked how many people present knew what was going to take place. She said they have a City Manager, Mayor, City Clerk, Finance Director, and Elected Officials; and someone other than Mr. McCarthy did something in her opinion inappropriately. She said someone had to sign off on this item, and someone had to write the dealer a check. She said she would like to see a copy of these items. She asked the Council if they feel robbed of their authorization power. She said that is theft by taking. She said that is the only way to define this matter. She said she received a brief note from Mayor Avery regarding this matter and the note said he briefed Mr. McCarthy. Mayor Avery said normally he would respond, however; since he has already responded, no further communication will come from him.

IV. APPROVAL OF THE AGENDA:

Council Member Vaughan made a motion to approve the Agenda placing items 3, 4, 5, 6, 7 and 9 on Consent Agenda, and pull item 8 from the Agenda. Council Member Russell provided the second. **The motion carried.**

V. APPROVAL OF CONSENT ITEMS:

Council Member Hurst made a motion to approve Consent Items 3, 4, 5, 6, 7 and 9 with Council Member Heath providing the second. **The motion Carried.**

- 3.** Contract-Drinking Water Laboratory and Related Services for the period of 2013 to 2016 with an annual cost for the services in the amount of \$8,040.00 for a water system and the funds are available in the budget to cover these expenses.
- 4.** Intergovernmental Agreement-Fayette County Bohannon Road Bridge Replacement Project with no cost or payments associated with the agreement. Fayette County has agreed to fund a portion of the project through in-kind services and completion of the paving of the approaches to the bridge.
- 5.** Construction Agreement-Duncan Park Court Resurfacing (Sunbelt) in the amount of \$103,798.00.
- 6.** Intergovernmental Agreement with Fulton County for Animal Control Services in the amount of \$8,586.98 for one year effective July 1, 2013.

7. Fireworks Display Agreement for 2013 Christmas Tree Lighting in the amount of \$5,000.00.
9. Contract with Douglas County Sheriff's Department for Inmate Detention Services.

VI. APPROVAL OF THE COUNCIL MINUTES: July 8, 2013

Council Member Alderman made a motion to approve the Minutes of July 8, 2013 with 1 correction made by Council Member Hurst to remove the comma between Coach and James Berry on page 2; under public comments. Council Member Russell provided the second. **The motion carried.**

VII. PUBLIC HEARING:

1. Rezoning- Green Oil- 41 Dodd Street (R4/M-1 to M-1) with Concurrent Variance (Side Setback)

Mayor Avery opened the Public Hearing and asked to hear from those who were in favor of the Rezoning of Green Oil for 41 Dodd Street from (R4/M-1 to M-1) with Concurrent Variance (Side Setback).

Spoke in Favor:

Ed Wyatt, 41 Dodd Street, Fairburn, GA. 30213 representative of Green Oil spoke in support of the rezoning. He said the purpose of this rezoning is to fix an error on the City's map. He said the structure was built in 1972-1973 and they have been zoned M-1 for forty years. He said he is opposed to any type of conditions. He also spoke on the trailer issue and said they would come back before Council to address the issue at a later date.

Mayor Avery asked to hear from those who were in opposition of the rezoning of Green Oil for 41 Dodd Street from (R4/M-1 to M-1) with Concurrent Variance (Side Setback).

Spoke Against:

Inga Kennedy, 110 Orchard Street, Fairburn, GA 30213 spoke in opposition of the M-1 Zoning. She said she opposes zoning for any planning cleanup tool. She said zoning is a permanent planning tool and it has long term implications. She said this is opposite of what the LCI Study stands for and it will not allow or suggest revitalization. She said the zoning would complicate an investor's view of the area. She said she hopes their vision is true in helping to revitalize the downtown community.

After hearing no further comments, Mayor Avery closed the Public Hearing.

Council Member Hurst made a motion to approve the Rezoning of Green Oil for 41 Dodd Street (R4/M-1 to M-1) with Concurrent Variance (Side Setback) with Council Member Vaughan providing the second.

Council Member Russell said she will offer a substitute motion for the rezoning. She said she has taken a considerable amount of time looking at the area and the fact that they want to work very diligently to revitalize this area. She said she has no problem with the company staying at the location as non-conforming.

Council Member Russell made a substitute motion to deny the requested rezoning of Green Oil for 41 Dodd Street from (R4/M-1 to M-1) with Concurrent Variance (Side Setback). She said the proposal is not consist or compatible with the City's plans, goals, and objective reflective to the City's Comprehensive Plan and the LCI Plan. Also there is potential negative impact the rezoning would have on the character of the surrounding zoning districts which is currently predominately R-4. The rezoning would also create an isolated district unrelated to the adjacent properties and nearby districts. Since the City has desired to revitalize the historic downtown and surrounding neighborhoods the M-1 zoning would negatively impact the astatic character of the existing and future uses of the property and the surrounding area. With the rezoning there is a possibility for the facility to increase in size and the possibility that this will negatively impact the value of adjacent property and it is essential in maintaining and preserving the integrity of the residential neighborhoods surrounding the site. **The motion failed due to the lack of a second.**

Council Member Johnson asked if Council Member Hurst's motion includes the two conditions. Council Member Hurst said yes. City Attorney, Randy Turner said the motion is to approve the rezoning recommended by staff which includes the conditions. Council Member Alderman said if there are conditions and there is a buffer how are they going to do a buffer. City Engineer, Troy Besseche said with the rezoning the line dividing the industrial property from the residential property will be along the property line. He said the condition is worded in such a way they would have to plant something in the 50ft buffer. He said the line would not be in the middle it would be on the back of the property. Council Member Alderman asked how that can be done with the concrete on the property. Mr. Besseche said they would have to remove the concrete. Council Member Alderman said he cannot vote on this item because Green Oil has been in Fairburn since 1968 which is the same amount of time he has been in Fairburn. He said the City has come to Green Oil and asked them to rezone the property and place the conditions on the business owner when it is not anything they did.

He asked why are we trying to punish someone when the City does not know what or when it happened. He said he think the City should leave the property as a legal non-conforming use. He said it is not right to do this. Council Member Vaughan asked if the 50ft buffer is a normal requirement in M-1 zoning. Mr. Besseche said the difference for a traditional buffer would be undisturbed with a 50ft stripe that is not in place at this time. Council Member Vaughan asked if this was a 50ft buffer at the time the building was built. Mr. Besseche said he does not know this information. Council Member Hurst said the City is putting an undue hardship on the owner to come back and make changes. Council Member Russell said when they go in to do their Comprehensive Planning for next year this can be a City initiated rezoning after they hear from the citizens, they would be able to cleanup so that future growth is clarified and the zoning would be left as a nonconforming use. Council Member Vaughan asked about the distance from the back of the building to the property line. Mr. Besseche said the main building of structure is 55-60ft.

Mr. Besseche said they would not be able to approve any development proposal at this location until this issue is resolved. City Administrator, Tom Barber said if they do not rezone, Green Oil will not be able to ever present a Conforming Site Plan to modify the site which means they would have to move the trailer. He said if it is left as is they would devalue the property. He said if someone bought the building they would have to put in a soft 50ft buffer and remove the trailer. He said it can be done without conditions, if they present a site plan and address the trailer. Council Member Alderman asked what if we removed the one condition and rezone them to M-1. Mr. Barber said you would then give Green Oil the option of removing the trailer and remedy the temporary issue. Council Member Alderman asked Mr. Wyatt if they would come back before Council with the second condition. He said yes.

Council Member Alderman made a substitute motion to approve the rezoning with staff recommendations with one condition;

- The site plan, showing a permanent structure for a driver's office, be designed in accordance with all plan development standards in the code of ordinances and improvements meet the current standards for architecture, parking, fencing, screening, landscaping and lighting. The plan shall be submitted by August 30, 2013 and improvements completed within 120 days of approval or not later than February 28, 2014.

Council Member Heath provided the second.

Council Member Johnson said she was in agreement with Inga Kennedy and Council Member Russell and believes Green Oil should consider moving.

She said she knows they have been a part of the community a long time, however; it will not fit into the LCI Study and the Comprehensive Plan. Council Member Alderman said if someone else comes in and purchased the property they would not be able to use it as M-1 because they would be required to have a 50ft buffer. City Attorney Valerie Ross said a 50ft buffer is required under the zoning ordinance. She said the requirement would not go away unless they came to the City and requested a variance to reduce the requirement to something less than a 50ft buffer. Council Member Vaughan asked if they could be grandfathered. Attorney Ross said no, because this is a rezoning and when you rezone to a different or same zoning district you would bring with it the requirements. She said the Official Zoning Map is what makes it R-4 and that is what makes it official. Council Member Russell asked if it goes to M-1, would they have to upgrade the appearance of the building, fencing and other related items. Mr. Besseche said only if they condition it as a site plan approval. She asked would the trailer have to be replaced in order to meet the architectural standards. Attorney Ross suggested the current use be allowed. Council Member Vaughan said they may want something better. He said he dislike the limited use of the property. Council Member Alderman said if a 50ft buffer is required by the City he does not see how the owners will be able to do it with the concrete in place. Mr. Barber said it could be done; however, it would be very expensive. Council Member Vaughan asked how do they keep the current buffer requirement for any future property owner and not place the burden on the current owner. Attorney Ross said if the 50ft buffer is reduced it would have to go through the variance process and that variance does not go away. Council Member Hurst said she was very confused and asked if the concrete buffer is 50ft or 62ft. Mr. Besseche said it is within an area located on the back of the property that is within the 50ft buffer area and the horizontal dimension from the top of the concrete slope to the bottom of the slope is less than 50ft. He said the distance to the property line and the back of the building is greater than 50ft. Council Member Hurst said she was wondering if they could plant Leyland Cypress Trees or move the trailer up to make it 50ft because it is going to be expensive for them to remove the concrete. Council Member Heath asked at the time it was constructed was it inspected by the City and did the City know the zoning requirements at the time of inspection. He said now the City want to come back years later and penalize the owner. He said the inspector should have known what the zoning was at that time. Council Member Vaughan said his concern is for the potential future property owner. Council Member Alderman asked how they could keep the tenant there without the 50ft buffer and he asked about the non-conforming use. Mr. Barber said the trailer would have to be moved and he would never be able to modify the site without rezoning it. He said if it was M-1 years ago, then it is the City's error and it needs to be changed back to M-1. Attorney Turner said they can approve it without the conditions.

He said this started as a concern over the trailer which is not in compliance. He said the owner presented a site plan and because the property line runs within the middle of the property, the City could not approve the site plan. So if the City decides to rezone the track to M-1 they could continue as they are now, except for the structure; or the City would have to give the owner a variance. Council Member Vaughan said they should keep the 50ft buffer and take out the planted vegetation. Mr. Besseche said if condition one is removed there is a 50ft buffer required in another section of the ordinance between industrial properties and residential properties for new development. Mayor Avery said because of the complexity of this item, he asked Mr. Wyatt about the future action of this item. Mr. Wyatt said he did not understand the wording of condition one. Mr. Besseche said condition one would require that something be planted in the buffer. Mr. Wyatt said without condition one; they will come back at a later date regarding the trailer requirement. Council Member Vaughan asked if there was going to be a 50ft buffer for a new owner of the property. Attorney Turner said yes.

After much discussion, the motion to approve the rezoning with staff recommendations, with one condition; The site plan, showing a permanent structure for a driver's office, be designed in accordance with all plan development standards in the code of ordinances and improvements meet the current standards for architecture, parking, fencing, screening, landscaping and lighting. The plan shall be submitted by August 30, 2013 and improvements completed within 120 days of approval or not later than February 28, 2014. passed with Council Member Russell voting "No".

2. Rezoning- Coventry- Senoia Road at Harris (C-2R-CT to RM-8)

Mayor Avery opened the Public Hearing and asked to hear from those who were in favor of the Rezoning for Coventry - Senoia Road at Harris (C-2R-CT to RM-8).

Spoke in Favor:

Mr. Dennis Drewyer, 15 Woodridge Place, Newman, GA. 30265 spoke on behalf of Coventry Rezoning. He said he is a Registered Landscape Architect and Land Planner; and he has been practicing in the State of Georgia since 1971. He said he is representing the property owners and investors with Coventry. He said their property consist of over a hundred acres of mixed use planning and development, which only a portion is of this tonight. He said he wanted everyone to know what they are bringing to the City of Fairburn. He said this will be the newest live, work, dine and a play village for the benefit of the Fairburn residents; and the surrounding residences containing retail shops. He said there will be anchor stores which will consist of 400,000 square feet less than the big box users. He said they will have a fast food and a sit down dining area.

He said they are planning to have a medical office and a DOT Park and Ride, which would be a real plus for the community. He said they are also looking at a fitness or sports center along with a much needed grocery store. He said there will be interior roadways that will allow citizens to walk to these facilities. He said they have commissioned a recent market study for retirement housing, which would consist of independent living and assistant living complimented by the affordable housing located in this area. He said they are seeking Class-A Multi-Housing which will consist of less than eight units per acre and they are asking to add green space. He said they will have stormwater management and there will be green space for multi-family homes; and have some very nice cluster homes to bring the surrounding homes back up to full value.

Mayor Avery asked to hear from those who are in opposition of the rezoning.

Spoke against:

No one came forward.

After hearing no further comments, Mayor Avery closed the Public Hearing.

Council Member Heath made a motion to approve the Rezoning-Coventry - Senoia Road at Harris Road from (C-2R-CT to RM-8) with Council Member Vaughan providing the second.

Council Member Russell said the applicant needs to have a community meeting with the citizens in the area. She said she is concerned about the multi-family homes. She said if it was senior living she would not have a problem with it; however, since it is multi-family she is concerned without hearing from the citizens who are challenged with the houses that are currently in that area. She asked if he could give a comparison of the housing and the square footage that currently exist in the area and what size are the houses which are being currently projected to be the larger quality houses. She said she would like to know if they meet the zoning requirements for the current setbacks.

Council Member Russell made a substitute motion to table the item until the developer can come back to Council after he has had the opportunity to conduct a community meeting that encompasses from Milan Road to Cobblestone and also research the amount of apartments that are in the area. She said the rate, occupancy and crime stats for that area should be investigated and they should also investigate how successful it is to have standard multi-family apartments adjacent to senior living facilities; and whether that has been a challenge at all.

Attorney Turner said it would not be appropriate to table a rezoning item. He said it can be continued at a later date.

Council Member Russell amended her substitute motion to continue the Rezoning-Coventry- Senoia Road at Harris Road from (C-2R-CT to RM-8) until the developer has the time to answer the questions and have a community meeting and be brought back to Council at the next City Council Meeting scheduled for August 12, 2013. Council Member Alderman provided the second.

Council Member Vaughan asked if the conditions will create a hardship on the applicant. Mr. Drewyer said yes, it would pose a financial burden and they would be extremely impacted by the motion. He said he know the answers to those questions tonight and asked if he could discuss them. He said they have done due diligence with regards to the apartments and with the neighbors. He said their project should not be judged on the poor quality developments or crime elements in other communities; or the quality in construction of homes in this bad market. He said they stand alone and have a constitutional right to develop this in a quality manner. He said he understands the quality of management is involved in the quality of development. He said the comments are well taken and well thought out. He said these are Class-A Apartments and they are investing a lot of money in this project. He asked Council to consider them as a good addition to the City. Mayor Avery asked about the buffer height. Mr. Drewyer said the buffer would be 25ft where none is required. He said they would build a berm in low areas and keep the elevation in high areas. Mayor Avery asked if there was a nearby project in Atlanta or in the surrounding area that would represent what this project would be. Mr. Richard Luster said he is one of the major investors. He said the last project he was involved in is called South Point located in McDonough Georgia. He said it is about 750,000 square feet and they have finished it with 550,000 square feet and the tenants are Babies "R" Us, Toys "R" Us, Kohl's and Academy Sports. He asked Mr. Besseche to check with Rodney Heard, who is the Development Director with the City of McDonough. Mayor Avery asked about development of Highway 74 as it relates to a quality grocery store and restaurant. Mr. Luster said there will be a quality restaurant and a quality grocery store. He said there were two permits in 2012. He said they can improve the life of the neighborhood. Council Member Vaughan asked who the property manager would be. Mr. Luster said they are interviewing three new developers and they have their own managers. Council Member Vaughan said he will not be supporting the substitute motion because he believes the developers should be in the City. Council Member Hurst asked about the DOT Park and Ride. Mr. Drewyer said they completed one in Newnan Georgia. He said Mr. Besseche will be able to put something together for the Park and Ride. He said the first meeting with DOT is August 1, 2013.

Mr. Barber said there are two businesses that would benefit from the Park and Ride and they are Chick-Fil-A and Cracker Barrel. Mr. Barber said this is a community amenity and a very positive project for the whole region. Council Member Hurst asked about the lots and said there are 110 lots plus or minus. She asked if there will be 110 homes or will the lots be subdivided. Mr. Drewyer said there will be lesser homes because they are taking the lots for the multi-family community with the buffer and green spaces. He said the houses are only 25ft wide and their builders are looking to expand the lot and they are negotiating. He said they are trying to get the best builders and step above the best price range. He said there may be 25-30 homes in the lots and he believes quality and size will be better. Council Member Heath said he has been in the banking business and mortgage industry for over 17 years and he knows time is of the essence as it relates to contracts waiting to be signed. He said they need to act on this tonight and allow the development to come into the City. Council Member Alderman said the Fire and Police protection would be needed in this area. Mr. Barber said yes, this would add to Fire and Police service calls. He said the positive side is this will generate water/sewer revenue, property taxes, and hotel motel tax. He said it is no question there is a cost. He said they know there is a need for more sewer capacity. Mr. Drewyer said none of the roads will be publicly dedicated roads within the apartments. He said there will be no long term maintenance. He said he is not sure if the City has decided on Coventry Boulevard which is the parallel road that connects to Highway 74. He said he does not know if it will be private or public; the City would make that decision. He said this project will be a positive impact on the community and will bring needed revenue to the City. Council Member Russell withdrew her motion and said if she had known what was shared tonight she would have had a different perspective. Mr. Drewyer said the questions by Council Member Russell were insightful and very professional and he appreciates them. Council Member Alderman asked currently how many commercial properties are under contract. Mr. Drewyer said they have 107 acres for the whole development, which includes 17 acres that are multifamily and 90 commercial; and adding additional land to that. He said there is a time frame on commercials and we currently have commitments for Starbucks and Verizon. He said they expect to break ground by October, 2013.

After much discussion, the original motion passed to approve the Rezoning of Coventry - Senoia Road at Harris Road (C-2R-CT to RM-8).

VIII. MAYOR AND COUNCIL COMMENTS:

Council Member Vaughan announced the Southside Theater Guild is hosting a play titled "All Shook Up".

He said he, his daughter and Council Member Johnson will be singing and dancing in the play. He said there is only one weekend left for the play and invited everyone to come see the event. He also thanked the Eric Berry Foundation, who hosted their Annual Football Camp last Saturday and Annual Back to School Carnival at Creekside High School on Sunday. They served over 400 children. He said Eric Berry never forgets where he came from and the City cannot forget Fairburn's Favorite Son.

Council Member Johnson also invited everyone to come out and see the play "All Shook Up" at the Southside Theater Guild. She said Council Member Vaughan and his daughter are participants along with several other cast members including herself and her husband Roger Johnson.

Council Member Russell said she will be a little more challenging with economic development. She said she was very pleased with the Highway 74 Project and she looks forward to getting the Comprehensive Plan started so they can see what the vision is for the City.

Council Member Hurst had no comments.

Council Member Heath thanked everyone for coming to the meeting and spoke about the deliberations made during the Public Hearing regarding the Highway 74 corridor. He said he has lived in Fairburn all his life and cannot believe he would see the day when this type of project would come to the City. He said he did not think he would ever see anything from the Highway74 corridor that would resemble a nice sit down restaurant and a retail shopping area. He thanked the City Administrator, Tom Barber and everyone who is a part of the project for doing an excellent job.

Council Member Alderman had no comments.

Mayor Avery thanked Ellen Samuels and D'Avante' Parks for doing an outstanding job with the Jazz Concert last Saturday. He said there is one concert left on August 17, 2013 and encouraged everyone to attend. He also said he attended the event held by the Eric Berry Foundation and was amazed at the number of kids who participated in the event. He said this event was televised on Channel 5 News and he wanted to thank everyone associated with the event for a job well done.

IX. ADJOURN COUNCIL MEETING:

Council Member Vaughan made a motion to adjourn and go back into Council Workshop with Council Member Johnson providing the second. **The motion carried.**

Brenda B. James City Clerk

Mario Avery, Mayor