

**BOARD OF MAYOR AND COMMISSIONERS
REGULAR WORK SESSION**

July 22, 2009
5:30 p.m.

MINUTES

Members Present: Ed Rieker, Mayor
Sandra Varian, Mayor Pro tem
Michael Payne, Commissioner
Lyda Steadman, Commissioner
David Milliron, Commissioner (Arrived Late)

Staff Present: Clai Brown, City Manager
Juliette Sims, City Clerk

Item No. 1 Meeting called to order at 5:30 p.m. by Mayor Rieker.

Item No. 2 Adoption of Agenda

City Manager Brown asked that A Child Is Missing Alert Program Update be added to the agenda. Mayor Rieker asked that this item be added as No. 12.

City Manager Brown reminded the board about walking the lake with the Lake Board on July 27, 2009 to review the lake maintenance issues.

Mayor Rieker asked that board walk the lake at 6:30 p.m. and then proceed with the regular meeting at 7:30 p.m.

A motion to adopt the agenda as amended was made by Mayor Pro tem Varian, seconded by Commissioner Steadman, passed with all ayes (5-0).

Item No. 3 Board Update:

Planning and Zoning Board – Julie Feely

Ms. Feely stated that the Planning and Zoning Board has finished their fact finding regarding the LEED Ordinance and will have a Special Called Meeting sometime in two weeks to meet to develop a recommendation to

present to the Board of Mayor and Commissioners at their work session in August.

Ms. Feely noted that on August 10th there will be a Mill District Scope Meeting with Patrick Ejike and his staff. They will begin scoping the two public sessions they intend to have, one for the citizens and one with the Board of Mayor and Commissioners and other various boards. Ms. Feely noted to the board if they have any particular order they would like the sessions held, to please let them know.

Mayor Rieker asked if there will be public comment at both meetings.

Ms. Feely stated yes, the purpose of both sessions is to get public comment basically the same as was done with the Downtown Master Plan to see what they envision for the land use.

Ms. Feely noted that the board is getting organized to start their review of the Comprehensive Plan.

Ms. Feely stated that the board does have questions about the 90/10 zoning ordinance and the annexation to Sam's Crossing as to whether or not the BOMC needs any support from them.

Mayor Rieker noted that the board will be discussing the zoning ordinance and annexation tonight.

Downtown Development Authority – Jill Joyner-Bush

Ms. Bush stated that she and City Manager Brown met with Nayef Haddad and Sherri Mann about three weeks ago to discuss the Arts on the Main Project. Mr. Haddad is going to follow-up with Ms. Bush when he returns from his vacation at the end of this week.

Ms. Bush stated that the DDA spoke to a consultant about stimulus money and she informed them that since Avondale is doing so well we are not a candidate for stimulus money because the recession that we see in other communities is not hitting Avondale.

Item No. 4

Annexation Update

Commissioner Milliron gave an update on annexation. Commissioner Milliron noted that the annexation bills for Avondale and Decatur have to be twins and the Decatur bill has not been drawn up yet and Rep. Stephanie Stuckey Benfield is working with the state and Decatur to get them back on the same page. Commissioner Million noted that Rep. Stephanie Stuckey Benfield is trying to coordinate a meeting with a couple of the Dekalb Commissioners that are affected by the annexation areas. Commissioner Milliron stated that there is one piece of finance regarding the annexation that the board needs to put together.

Commissioner Steadman stated that she was waiting for the 2009 tax bills to come out and use 2009 data as opposed to just the 2008 to do the finance portion. Commissioner Steadman stated she will have that done by the next work session.

Commissioner Milliron noted that his goal in the months of August-November is to go by and literally meet with every single one of the businesses not only in Avondale but all the way down to Sam's Crossing and talk with them and get their feedback regarding annexation. Commissioner Milliron stated that at some point the board is going to want to send out communication to the residents and get residents basically to sign in support of annexation. Rep. Stephanie Stuckey Benfield thinks that is going to be extremely helpful to show the support of the residents. Commissioner Milliron noted that the goal for the businesses is to convince the existing businesses that this is good for them as well. Commissioner Milliron stated that this all leads to a presentation by the City to the Dekalb Delegation in either November or December which Rep. Benfield suggested.

Commissioner Payne asked if Decatur still intends to move forward.

Commissioner Milliron stated that Mayor Floyd told him that despite what people have read in the paper, if Avondale wants to move forward they will.

Commissioner Steadman stated as for the presentation to the Dekalb Delegation, she feels that should be done in November due to the holidays.

Commissioner Milliron stated he will work with Rep. Benfield to get a date on the Dekalb Delegation calendar.

Item No. 5

Zoning Ordinance – 90%/10%

Commissioner Steadman stated that the board said earlier in the year that they were 90% complete with the zoning ordinance but still had further work to do based on the annexation and corrections that need to be made. Commissioner Steadman stated that she would like to bring in a new consultant to finish this project, someone who has expertise particularly in this area. Commissioner Steadman noted that she does not feel that Bill Johnston had all the right skills for it because there were mistakes that had to be corrected over and over and she feels that we just need a different pair of eyes to review it. Commissioner Steadman stated that it would be good to have it all done by the end of the year.

Mayor Rieker stated realistically he did not believe it could be done by the end of the year.

Julie Feely noted that she has a lot of records of minor and major changes on the zoning ordinance as well as errors she has noted on the zoning map that she can provide. Ms. Feely noted that there were also some contradictions brought to Bryan Armstead, Director of Public Works that he can provide as well.

Mayor Rieker asked City Manager Brown to find a new consultant. It was the consensus of the board to move forward with the completion of the ordinance.

Commissioner Milliron stated he would like to see something put together of exactly what all needs to be done with the ordinance and for the City Manager to find a zoning resource and if it could be done by the end of the year that would be great.

Item No. 6

City Manager Threshold Limit

City Manager Brown noted that this is an ordinance to allow the City Manager to: (a) make purchases and contract up to twenty thousand dollars (\$20,000), currently it is five thousand dollars (\$5000); (b) to make purchases of goods and/or services not specifically enumerated in the annual budget at a cost of less than five thousand dollars (\$5000), currently it is one thousand dollars (\$1000); (c) to reallocate departmental budget appropriations among the various line item expenditures of any department as the City Manager deems necessary not to exceed ten thousand dollars (\$10,000), currently it is one thousand dollars (\$1000) and any transfer shall be reported to the Board of Mayor and Commissioners. City Manager Brown noted that the City was cited on the current audit that the City Manager should have larger threshold for the departmental budget appropriations among the various line item expenditures.

Commissioner Payne noted that these are more modern limits as the old ones have been in place for quite some time. Commissioner Payne commended Ken Turner, Director of Finance and City Manager Brown for doing a fine job on the City's finances.

Commissioner Milliron proposed a correction to the ordinance in Section 1 (a) the noted it should read "The City Manager, and the City Clerk upon authorization of the City Manager..."

City Manager Brown will have the City Attorney correct this.

Mayor Rieker asked that this item be placed on the April 27th agenda.

Item No. 7

Graffiti Ordinance

City Manager Brown stated that he has noticed over the last 4 or 5 months graffiti showing up in the City. City Manager Brown stated that the police have actually taken pictures to try to find out who it is. City Manager Brown noted that we do not have a graffiti ordinance and he wants to get one put in place especially if we move up East College so we can make the property owners take care of it within 15 days because if you don't take care of it, it grows like wildfire. City Manager Brown noted there have been graffiti problems on Parry Street and on the Scout Hut.

Mayor Rieker stated he has concerns on the penalty and fine which could include imprisonment for the owner. Mayor Rieker noted that it seems as though we are criminalizing the victim that is being tagged if they do not have it corrected in 15 days and he can't see doing that.

Commissioner Payne stated that he gets the Mayor's point and he agrees with that somewhat but unless you have failure to remediate in the ordinance you are going to have the graffiti. Commissioner Payne feels that the person who does the crime the fine should be up to \$2000 and the person who fails to remediate, the ordinance says fines up to \$1000 and the judge sets that. Commissioner Payne stated that the portion on imprisonment for the property owner should be removed.

City Manager Brown stated that he would have to go back and look at that.

Commissioner Steadman stated prison should not be an option for the victim but for the person who commits the crime. Commissioner Steadman asked what does the City have in the ordinance about property maintenance and the fine related to that and she feels that it is what it should be more in line with is those penalties because it is a property maintenance issue.

Commissioner Milliron spoke about the derelict buildings and absentee landlords but feels jail is harsh for the property owner.

Mayor Pro tem Varian feels it is ludicrous to put the owner in jail and there should be stiffer penalty for the perpetrator who did it and she feels this should somehow be tied to the zoning ordinance.

City Manager Brown will do some more research and get back with the board on the graffiti ordinance.

Item No.8

Consideration of an ordinance to amend the ordinance to establish due compensation applicable to any telegraphic or telephone company

City Manager Brown as a result of the 2008 legislation each telephone company that operates telephone lines within municipalities are required to register within the City and pay a franchise fee and currently our current franchise fee is 4% and in 2012 it is going to go to 3% across the board and the City has to pass an ordinance that we are going to adhere to the 3% effective December 31, 2012.

Commissioner Milliron asked if the City was grandfathered in and when does that run out.

City Manager Brown stated January 1, 2013.

Commissioner Steadman asked if this included cable.

City Manager Brown stated no.

Mayor Rieker asked that this be put on the April 27th agenda.

Item No. 9

Fine Schedule

City Manager Brown stated that the City took our fine schedule and got the City of Decatur, City of Lithonia, City of Clarkston and the City of Pine Lake base fines and took an average to compare against the base fines of the City of Avondale Estates. City Manager Brown noted that this methodology was used for every fine on the fine schedule in the City some fines went up and some fines went down. City Manager Brown noted that there have been several meetings with the Judge and Solicitor and they have given their approval for the changes.

Mayor Pro tem Varian asked when was the last time the fines had been changed.

Commissioner Steadman stated she believes it was in 2002.

Mayor Rieker stated that this is information only the Judge has already set the fine schedule.

Item No. 10

City Internet Community Forum

City Manager Brown noted that he has looked into the City having a community forum. The City Attorney has concerns that the City could risk litigation if it moves forward with opening a public forum and then attempting to exercise control over the contents of each individual's speech in each forum. City Manager Brown stated that in other words once a government creates a public forum the 1st Amendment places serious limitations on what the government can do in control and expression of that forum. City Manager Brown stated that is where we are and the discussion board is ready to go.

Mayor Pro tem Varian stated that what City Manager is saying is once the discussion board is up and running anybody can put anything they want on it.

City Manager Brown stated that is correct, even though he has developed a disclaimer where everyone would have to agree to all these rules and regulations the attorney says that is not going to matter. City Manager Brown stated that the attorney is really waving the flag on this one.

Commissioner Milliron stated that this falls in line with FYI communication he sent the board earlier in the year when this topic came up. Commissioner Milliron stated that he is still of the opinion that the City should continue to communicate heavily with the residents and that communication should be one way. Commissioner Milliron stated we have ample opportunity for the residents to communicate with the City and its officials. Commissioner Milliron noted that a resident has set up a public forum and reading on that and hearing comments at the recent Avondale Business Association they are sort of slow going at this point and there is not a lot of activity on that discussion board.

Mayor Pro tem Varian asked what board is that.

Commissioner Milliron stated lakeavondale.com

Commissioner Steadman stated she understands about controlling content but can we control who can sign on. In other words we would require residents to use their first and last name in order to use the forum and then there would be a check system that would go out to verify that they are a resident of the City. Commissioner Steadman stated that if this is done then she does not feel we would have to control content because what caused the problem last time is when people were able to go out and say whatever they wanted under an alias. Commissioner Steadman stated that if we could control the users then we will not have a problem. Commissioner Steadman also noted that a resident would have to be registered in the City resident database before being able to sign on.

Mayor Rieker asked what is the registration criteria.

City Manager Brown explained the criteria and noted that he will make the board a copy.

Mayor Rieker stated you go on-line and create an account with your first and last name and then how does the City validate.

City Manager Brown stated that the City would moderate it, an email will come up and say “you got a new user, please review” and then we either accept you or decline you.

Mayor Rieker stated that you really don’t know if the person signing up is that person or not.

Commissioner Payne stated that he has a concern that the City Attorney has a major concern about it and he questions whether it is an appropriate course for the City. Commissioner Payne stated that as Commissioner Milliron stated there are many ways for residents to communicate with the City.

City Manager Brown stated believe it or not the City gets a lot of feedback off our website from contact us. Juliette communicates a lot with residents back and forth from the contact us feature on the website. City Manager Brown stated that it is not an open discussion it is one on one.

Commissioner Payne stated he is all for that and he thinks the City is doing a much better job with getting communication out and we can continue to improve that. Commissioner Payne stated he thinks the City would have a problem with barring anyone from using the site.

Mayor Pro tem Varian stated that she thinks what Juliette is doing has a come a long way as far as communication from City Hall to our residents. Mayor Pro tem Varian thinks we are opening a can of worms that could lead down to word to a lot of issues and she is not inclined to go along with having a discussion board.

Commissioner Payne stated one lawsuit whether it is legitimate or not would cost the City.

Item No. 11

A Child is Missing Alert Program

City Manager Brown stated he; Chief Broden and Investigative Gills have been working for several months on the A Child Is Missing Alert Program. City Manager Brown stated that he will be giving information to the board on it soon. City Manager stated that they are ready to launch. City Manager Brown explained that the program is for missing children, Alzheimer patients, things of that nature and he explained how it works. City Manager Brown stated what he is doing now is testing the program with the technicians as soon as everything is done the City will get something out to the residents about the program. City Manger Brown noted that there will be training for the Neighbor Watch Program and others.

Item No. 12

Public Comment

Marti Schallern, 48 Clarendon Avenue stated that she is wondering by not doing this community bulletin board is it a violation of the 1st Amendment.

Mayor Rieker stated no.

Marti Schallern, 48 Clarendon Avenue stated that she has some issues with the graffiti and she believes that the perpetrators of these crimes should be nailed and nailed hard. Ms. Schallern asked City Manager Brown if the City had a record of arrests for this.

City Manager Brown stated that the City has not caught anyone.

Marti Schallern, 48 Clarendon Avenue spoke about the loud music that is played in cars coming down Clarendon and could the City have a noise ordinance.

Commissioner Steadman stated that we do have a noise ordinance and we do enforce it.

City Manager Brown noted there have been several tickets written for loud music.

Marti Schallern, 48 Clarendon Avenue spoke the huge trucks going up and down Clarendon. City Manager Brown will have this monitored.

Jill Joyner-Bush, 917 Stratford Road stated she was a part of the other community forum that was taken down and she would not be for another public forum because it does not give a good impression. Ms. Bush noted that a lot of people just use it as a means to gripe. Ms. Bush stated that if it is going to be a closed private forum she might be a little more for it.

John Mizell of the Environmental Committee gave a LEED Ordinance update and distributed some brochures to the board.

Commissioner Payne asked if we were on course with the LEED Ordinance.

Mayor Rieker stated yes, Planning and Zoning and the Downtown Development Authority are reviewing the ordinance to provide a recommendation to the BOMC.

Linda Nardone, 101 Berkeley Road gave a suggestion on the graffiti, that a time limit be set for removal of the graffiti and if not done the City would remove and then bill the owner appropriately.

Commissioner Steadman stated that is a good idea but would be hard collecting the money for the bill it would be easier collecting a fine.

Commissioner Milliron noted that removal of the graffiti is in this draft ordinance that was presented tonight.

Parke Kallenberg, 1035 Lakeshore Drive stated the graffiti should be worded more pro-property owner. Mr. Kallenberg stated this should be done for all property in Avondale commercial and residential. As for the public forum, Mr. Kallenberg stated it needs to be a closed system that will not put the City at risk and there needs to be a verification and check on everyone. Mr. Kallenberg stated that he and Bonnie are more in more in favor of annexation.

Kenny Newman, 7 Lakeview Place asked was the graffiti just buildings because she heard something about keying a car. Ms. Newman stated that she is worried about all the time that would be spent keeping up with the graffiti.

Mayor Rieker stated just buildings.

Roger Holmes, 46 Dartmouth Avenue asked about how many times a year does the City Manager need to approach the board to spend \$20,000 that is a lot of money. Mr. Holmes asked who is doing what about the continuation of the Avondale tax district that cost him an extra \$110 for living here.

Commissioner Steadman stated the \$110 is for the special services.

Roger Holmes, 46 Dartmouth Avenue stated that \$110 is on top of the \$1500 he pays for the pleasure of living here what is being done about that.

Mayor Rieker stated that there are bunch of other municipalities that are in the same boat.

Roger Holmes, 46 Dartmouth Avenue stated how about we eliminate the cents on fines.

City Manager Brown stated that we did do that.

Julie Feely, 2 Dartmouth Avenue spoke about her concerns over an event being held at 8 Lakeshore Plaza on July 25th and the marketing for the event that has been done. Ms. Feely also spoke about a conditional use permit that the owner applied for and then later withdrew. Ms. Feely also spoke about the home occupation business at 8 Lakeshore Plaza.

Commissioner Milliron stated that it his understanding from the City ordinance that Ms. Feely references that there is a portion in section 1401 (Conditional Uses) that allows for approval by the Board of Mayor and Commissioners and section 805E (Home Occupations) refers you back to section 1401 which basically precipitates the conditional use permit. Commissioner noted that the board has the authority to review a conditional use permit. Commissioner Milliron spoke of another event where he received a email regarding an event held at this residence back in May in which he forwarded to the City Manager who was not aware of the event. Commissioner Milliron noted that he heard from residents that there was a party that occurred and there where two Avondale officers were handling traffic for that event.

City Manager Brown stated officers may have been called but they were not there to handle the event.

Commissioner Milliron said he does not know the details, all he knows there were two officers handling traffic. Commissioner spoke about the conditional use permit and details of the initial receiving of the application and the letter from the applicant of the withdrawal of his application and concerns from the residents.

Ms. Feely stated that she is not asking for an explanation of how all this transpired and she will go back and educate or self on relationship of 1401 and 805 of the ordinance. Ms. Feely stated that she is more concerned, regardless of what happens this weekend, is that the City has to make a decision and be consistent when enforcing the ordinance with everyone.

Commissioner Milliron stated that he wanted to give her background because it was advertised and it was removed and she certainly has the right to know why it was removed at Mr. Brown's request.

Mayor Rieker stated that we have to be a little careful as always and he appreciates what Ms. Feely is saying. Mayor Rieker noted that he has a home based occupation but clients don't come to his home but he thinks in this case there has been an evolution of things that he is hearing about this particular event which seems to have morphed from what Ms. Feely is describing that she found on the website to the last thing he received which was an invitation from the Avondale Arts Alliance which is very common in this City for the Avondale Arts Alliance to have fundraisers at peoples houses. Mayor Rieker noted that if you look deeper into our community you will see that the City has all types of fundraisers going on for all sorts of not for profits at peoples homes. Mayor Rieker noted that we need to be careful with this issue.

Ms. Feely noted that if Mr. Brown can demonstrate that it is a fundraiser then that is one thing but she does not know if Mr. Brown can demonstrate that it is a fundraiser. Ms. Feely noted that it is a pre-party for the National Black Arts Festival per the information he has published, it is not a private function per the way he has advertised it through viral marketing, and it is not in anyway advertised as a fundraiser.

Commissioner Steadman stated that she appreciated Ms. Feely research and the information she brought to the table. Commissioner Steadman stated that before she heard any of this she was very concerned that this was even in our ordinance that we could selectively give a conditional use permit to allow the public to go to someone's house because that puts us in a situation of picking and choosing which could get us in a lot of trouble and she has an issue with that and she would like to take that out of the ordinance. Commissioner Steadman stated that it seems to her that is very different from our Arts Festival and Garden Tour because these are community events and the main function is held at a central public area and the homes are spread out throughout the community and they are hosted by so the most traffic you would have is 5-6 cars at a particular house at a particular time. Commissioner Steadman stated that the City sponsors these events financially and gets a financial report back and this event appears to be very much so an individual business event and the board needs to address this and how it should be handled going forward. Commissioner Steadman stated we do not want our residential area to become a mixed use area that is what the business district is for.

Ms. Feely noted that the Avondale Arts Alliance has a 501C3 and perhaps Mr. Brown's company has a 501C3 associated it with it and did not mention it, she does not know.

Mayor Rieker stated unfortunately Mr. Brown is not here tonight.

Ms. Feely noted that she told Mr. Brown that she would be here tonight and she would see him at City Hall.

Mayor Rieker asked City Manager Brown if he had any more insight into this.

City Manager Brown stated that procedure has been followed and when he found out about the second event he called Mr. Brown to meet with him in his office along with Bryan Armstead, Director of Public Works. City Manager Brown stated that at that meeting they informed Mr. Brown of the steps he needed to follow and that is when the board received the conditional use application because based off his interpretation of the ordinance the board can approve just what Mr. Brown wanted to do. City Manager Brown noted that when another piece of information came out of the event he called Mr. Brown to meet with him again at which time he explained to Mr. Brown that his conditional use application would not be approved before the event he just found out about it and that is when Mr. Brown went back and withdrew his application. City Manager Brown noted that he has all the paperwork in which Mr. Brown noted that “any public advertisement or personal or partner websites have been taken down.” City Manager Brown noted that he was not aware of the Twitter advertising. City Manager Brown noted that Mr. Brown is just having a party and that is the way it was presented to him.

Ms. Feely stated that for her it is about thinking about the number of businesses that are home based in the residential area and what is reasonable and what is not reasonable. Ms. Feely asked that when revising the ordinance the City should be sure to update Table 9 or the text of the ordinance regarding this.

Linda Nardone, 101 Berkeley Road thanked Ms. Feely for all her hard work on reviewing this issue. Ms. Nardone asked the board in reviewing the ordinance that they also look at the fact that more and more homes are being used for filming and events and it is the same homes being used. Ms. Nardone feels that if they are having them more than once a year that is when it is a problem for the residents.

Item No. 9

Adjournment

There being no further business, a motion to adjourn at 7:20 p.m. was made by Mayor Pro tem Varian, seconded by Commissioner Payne, passed with all ayes (5-0).

Approved this 24th day of August, 2009

Ed Rieker, Mayor

ATTEST:

Juliette Sims-Owens, City Clerk