

**BOARD OF MAYOR AND COMMISSIONERS
REGULAR MEETING**

September 28, 2009
7:30 p.m.

MINUTES

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

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

Item No. 1 Meeting called to order at 7:30 p.m. by Mayor Rieker.

Item No. 2 Invocation (Tom Samford)

Item No. 3 Pledge to the Flag

Item No. 4 Adoption of Agenda

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

Item No. 5 Approval of Minutes

August 19, 2009 Regular Work Session
August 24, 2009 Public Hearing "Conditional Use Permit Application, InMovement, Inc.
August 24, 2009 Regular Meeting

A motion to engross and adopt the minutes as presented made by Mayor Pro tem Varian, seconded by Commissioner Steadman, passed with all ayes (5-0).

Item No. 6 Commissioner Updates – Subjects of General Interest and Concern

Commissioner Steadman stated that she had commented a couple of meetings ago about a couple of police officers who had helped a friend of her mother's who had gotten lost in Avondale and they helped her get home. Commissioner Steadman stated she wanted to find out who the officers were so they could thank them and it was Terry Burton and Paul Conroy.

Commissioner Milliron stated that with the recent rain a lot of residents he spoke to have not been able to obtain flood insurance in the City. Commissioner Milliron stated that he has forwarded some information to the City Manager that he feels this board and the City should look into which is the National Flood Insurance Program. Commissioner Milliron noted that a number of residents have sustained substantial damage and the reason the residents can't obtain flood insurance is simply because the City does not participate in a National Flood Insurance Program. Commissioner Milliron stated at some point he would like to see this a future work session agenda.

Mayor Rieker stated that he attended the Service Delivery Strategy meeting between the Mayors in DeKalb County on Wednesday. Mayor Rieker noted that property owners pay a little extra tax to the county and in exchange for that we are suppose to get services from the county. Mayor Rieker noted that the situation now is that the City is waiting on the county to send back a letter that we have been negotiating with other cities to see if we can get a bill separated into individual items like Parks and Police so we can take the things we need and let them have the rest and reduce our taxes. Mayor Rieker noted if we don't the letter then this will probably go on a work session agenda and the City will get with other cities to see what type of action needs to be taken.

Mayor Rieker asked City Manager Brown to reschedule the lake walk that got rained out. Mayor Rieker asked that it be scheduled for this week, sometime early evening.

Mayor Rieker thanked the Police Department and Public Works for everything they did during the storm.

Mayor Rieker stated that the City has two new commissioners that will start in January. Mayor Rieker noted that the City had two open positions and only two people qualified, Terry Giager and Gene Lee. Mayor Rieker noted that they will be attending work sessions, they can't vote but they can sit at the table so they can get up to speed by January.

Item No. 7

Monthly Report by the City Manager Concerning the Status of Matters in Progress and Upcoming Issues and Events

City Manager Brown thanked Chief Broden and Bryan Armstead for attending the meeting.

- City Manager Brown read thank you letters. A letter thanking our City Clerk for the great job she does on the City e-news. City Manager Brown noted that if residents/businesses do not subscribe to the city e-news he recommended that get in touch with Juliette to sign up. A letter thanking two of our sanitation employees for assisting a resident who fell while jogging. A letter thanking the police department for staying after the Child Safety Workshop sponsored by the Neighborhood Watch Program to answer questions.
- City Manager Brown noted that the City will be working with the Atlanta Regional Commission to do a comprehensive review to complete the zoning ordinance. City Manager Brown noted that the process started last week and is going to take about six months.

- City Manager Brown thanked the City staff for all their efforts during the storm. City Manager Brown noted that the City is looking at several areas in the City in regards to how to improve our infrastructure and the flow of the water. City Manager Brown noted that he and Public Works Director Bryan Armstead attended a meeting today with Dekalb County CEO Ellis regarding the flood disaster. City Manager Brown stated that if you are a homeowner, renter or business and had flood damage you should register with FEMA. Mayor Rieker asked City Manager Brown to put out a e-blast regarding how people can register if they have had flood damage.

Item No. 8

Citizens' Comments

Brian Zelis, 3042 Oakham Place spoke about how his family and neighbors have been beset by noise and nuisance coming from Arboguard since he moved here August 1st. Mr. Zelis stated that he has been working with City Manager Brown, Spence Rosenthal and Bryan Armstead to try to resolve these issues. Mr. Zelis noted that he had received a letter from City Manager Brown on September 19th regarding their noise complaint in which he stated our complaint had no merit and that the noise is “not so” loud as to be a nuisance or disturbing to his family and Arboguard’s activity is not industrial and the equipment that Arboguard uses is normal in standard and allowed in the Avondale Estates CBD. Mr. Zelis stated that in effect Mr. Brown sadly denied relief to his family afforded to them under the protections of the Avondale Estates Noise and Zoning Ordinances stating clearly that he is using his discretion to determine the extent of his families distress, his family disagrees. Mr. Zelis noted that he has responded to Mr. Brown’s letter but it is too long to read at this time. Mr. Zelis stated that he requests of this board to convene a special meeting or work session immediately to review the Arboguard problem, he asked the board to visit their homes to personally view and witness the extent of the problem, they asked that the board extend to them a designated board member that can act as their liaison to assure matters of order and correct the problem.

Carolyn Chandler, 2996 Majestic Circle thanked the City for the very nice 9/11 Ceremony.

Spence Rosenthal, Owner Arboguard, 111 N. Clarendon Avenue stated that he takes Mr. Zelis’ concerns very serious and he has tried to accommodate Mr. Zelis. Mr. Rosenthal reviewed his long history as a business owner in Avondale Estates. Mr. Rosenthal stated that he will do the best he can to keep the noise level down.

Mayor Rieker stated to Mr. Rosenthal that the City really values his business and his longevity and the things he has done for the City

Commissioner Steadman said the City is very proud to have a company like Arboguard in the City and she hopes everything can be worked out.

Chris Fisk, 3048 Oakham Place stated that he has been in Avondale 7 ½ years. Mr. Fisk noted that he lodged his first complaint about the noise at Arboguard about 7 ½ years ago and then another time to the City Clerk. Mr. Fisk stated that he has also been awakened by the dumpster pickup at the repair shop at 4:30 a.m. but was told it was a county pick-up. Mr. Fisk feels his home value has been impacted.

Roger Palys, 6 Lakeshore Plaza, thanked everyone for their work on the unopened Stratford Road quitclaim.

City Manager Brown noted that the dumpsters will now be picked up from 7:00 a.m. and on and if they do hear them before that to please give City Hall a call.

Mayor Pro tem Varian welcomed Mr. Zelis to Avondale. Mayor Pro tem Varian stated that she was sorry that the noise has been an annoyance to his family. Mayor Pro tem Varian stated that Arborguard has been a valuable business to Avondale. Mayor Pro tem Varian stated that the board cannot interfere with the daily operations of the City Manager they can advise but they have to rely on the findings of the City Manager and Bryan in this case.

Chris Fisk, 3048 Oakham Place stated that he does not care about how many awards Arborguard has won or how valuable his business is the bottom line is his business is a noise nuisance.

Mayor Pro tem Varian asked if Arborguard was in compliance with the ordinances.

City Manager Brown stated yes, Arborguard is in compliance.

Mayor Rieker stated that there is nothing else this board will address this evening on this issue however, it might come up at a future work session and he appreciated everyone's comments.

Tom Samford, 890 Stratford Road, stated that it is another beautiful day in Avondale Estates and if we smile a little bit more things might be a little bit better.

Item No. 9

Old Business

- a) 3rd and final reading of the Ordinance to Increase the City Manager's Threshold Limit

City Manager Brown read the third and final reading of the Ordinance to Increase the City Manager's Threshold Limit.

Public Comment: None

A motion to adopt the Ordinance to Increase the City Manager's Threshold Limit was made by Mayor Pro tem Varian, seconded by Commissioner Steadman, passed with all ayes (5-0).

- b) 3rd and final reading of the Ordinance to Amend the Ordinance to Establish Due Compensation Applicable to any Telegraph or Telephone Company

City Manager Brown read the third and final reading of the Ordinance Amend the Ordinance to Establish Due Compensation Applicable to any Telegraph or Telephone Company

Mayor Rieker noted that this gets the City in compliance with new state laws that are coming out.

Public Comment: None

A motion to adopt the Ordinance to Amend the Ordinance to Establish Due Compensation Applicable to any Telegraph or Telephone Company was made by Commissioner Payne, seconded by Commissioner Steadman, passed with all ayes (5-0).

c) 2nd Reading of the Graffiti Ordinance

City Manager Brown read the second of three readings of the Graffiti Ordinance.

Item No. 10

New Business

a) Development Agreement Amendment

City Manager Brown stated that Century has come back with a second amendment to the development agreement. City Manager Brown noted that Century was due to pay \$37,500 to the City on October 15, 2009 and the remainder of the total sum of \$50,000, \$12,500 on December 31, 2009. City Manager Brown stated that they have requested to extend the payments basically to July 31, 2010 with different pay dates, the first payment on May 15, 2010 of \$37,500 and the balance on July 31, 2010. City Manager Brown's recommendation would be what he sent to the board and what was reviewed in the work session, basically have them pay the \$12,500 due by October 31, 2009, another payment March 15, 2010 and the remainder by July 31, 2010. City Manager Brown noted that there is some other wording in the agreement about the issuance of Land the Disturbance Permit that could excel the payment of \$50,000.

Mayor Pro tem Varian noted that the board discussed this quite extensively at the work session. Mayor Pro tem Varian stated how impressed she was with what City Manager Brown and Commissioner Payne said at the last meeting and she has decided to extend the development agreement.

Commissioner Steadman stated that she will abstain from the vote tonight because she is disappointed from where we were and where we have come to with this development and she suspects we will be seeing another amendment.

Commissioner Million noted as a point of order to Commissioner Steadman that she cannot abstain unless she has a conflict of interest. Commissioner Million stated if the City can get the Publix going it will be the biggest boom for this town. Commissioner Million stated that he has consistently stated that the \$50,000 that the board keeps trying reel back in from the developer he looks at it as a partnership

and we negotiated in good faith and the City has paid for legal fees to negotiate the development agreement. Commissioner Milliron stated that he has never been in favor of recouping the \$50,000 because if we get the Publix, the windfall for the City will be far greater than the \$50,000 and he is not in favor of the City Manager's proposed amendment. Commissioner Milliron stated he is fine with what the developer has proposed and that is to extend the deadline into 2010, he does not want to put any obstacles in place, he wants to support the development and encourage the Publix.

Commissioner Payne stated that he would like to here from Mr. Haddad.

Nayef Haddad of Century stated that he has not seen the revised amendment. Commissioner Milliron provided Mr. Haddad with a copy which Mr. Haddad reviewed

Mayor Rieker stated that instead of putting off a payment until next year Century would make a payment next month.

Nayef Haddad stated that the board has been extremely supportive to Century and he appreciates that. Mr. Haddad stated that they have been spending enormous amounts of time trying to secure funding for this project and hope to have financing secured soon. Mr. Haddad asked the board to work with them and whatever is decided he is very appreciative and the small payment is doable by next month.

Mayor Rieker stated to be clear there is a motion on the table for #1 to have \$12, 500 by the end of October 2009.

Commissioner Milliron asked the commission to accept a substitute motion to accept the original proposed amendment from the developer that is to pay the first \$37,500 May 15, 2010 with the balance of \$12,500 by July 31, 2010.

Commissioner Payne stated that the big issue is not when the payments are made but to attempt to partner with this developer to get this done.

Commissioner Payne stated that he is willing to accept the substitute motion to extend the payments until July 2010.

Mayor Rieker stated that he would be opposed to extending the payments until July 2010 based on what he heard at the work session and based on what Mr. Haddad has said that this is a small payment we are asking for and is doable by the end of next month.

Commissioner Steadman stated that to her it is not about the money it is the principal. Commissioner Steadman stated that her fear is not what will happen tomorrow but what will happen 20 years from now and because of that she has to vote against it.

Roger Palys of 6 Lakeshore Plaza stated that he agrees with the sentiments of Commissioner Steadman and Mayor Pro tem Varian that the development is not going well and there a lot of factors that no one could have predicted.

Tom Samford, 890 Stratford Road stated he feels the Publix should move forward.

A motion to approve the Development Agreement Amendment to extend the payments until July 2010 was made by Commissioner Milliron, seconded by Commissioner Payne, does not pass (3-2).

A motion to approve option #1 of the Development Agreement Amendment that was presented by the City Manager Brown was made by Commissioner Milliron, seconded by Commissioner Payne, passed (4-1).

b) Quitclaim Deed Unopened Stratford Stub

City Manager Brown stated that the property owners of 6 Lakeshore Plaza, Roger Palys and Karen Salisbury have submitted a quitclaim deed with a legal description and land survey to the Board of Mayor and Commissioners to transfer its interest if any of the portion of the unopened Stratford Road stub. City Manager Brown noted that the purpose of this quitclaim deed is to simply clear up title for the benefit of the property owner.

A motion to approve the Quitclaim Deed for 6 Lakeshore Plaza was made by Commissioner Million, seconded by Commissioner Payne, passed with all ayes (5-0).

c) Agreement for Stormwater Infrastructure Mapping

City Manager Brown stated that the selection committee reviewed all proposals of the RFP and has decided to go with the firm Corporate Environmental Risk Management (C.E.R.M.). City Manager Brown noted that it is \$26 per structure and they are estimating anywhere from 800 to 1400 structures.

A motion to approve the agreement with Corporate Environmental Risk Management (C.E.R.M.) for Stormwater Infrastructure Mapping was made by Commissioner Payne, seconded by Mayor Pro tem Varian, passed with all ayes (5-0).

- d) Reappointment to Historic Preservation Commission/Architectural Review Board

A motion to Reappointment Patrick O'Connor to the Historic Preservation Commission/Architectural Review Board was made by Mayor Pro tem Varian, seconded by Commissioner Steadman, passed with all ayes (5-0).

- e) Reappointments to Personnel Board

A motion to reappoint Tom Clegg, Gail Ronan and James Cates to the Personnel Board was made by Commissioner Payne, seconded by Mayor Pro tem Varian, passed with all ayes (5-0).

Item No. 11

Announcements (Mayor Pro tem Varian)

- a) City-Wide Annual Autumn Yard Sale will be held on Saturday, October 3, 2009 from 9:00am-4:00pm at the Avondale First Baptist Church Parking Lot.
- b) AutumnFest 2009 – Saturday, October 24th 10:00 a.m. to 6:00 p.m. and Sunday, October 25th from 12:00 noon to 5:00 p.m.
- c) The Halloween home decorating contest will be held on, Friday, October 30th. Halloween trick or treating hours are from 6:00 p.m. to 8:30 p.m. on Saturday, October 31st.

Item No. 12

Adjournment

There being no further business, a motion to adjourn at 8:45 p.m. was made by Mayor Pro tem Varian, seconded by Commissioner Steadman, passed with all ayes (5-0).

Approved this 16th day of November 2009

Sandra Varian, Mayor Pro tem

ATTEST:

Juliette Sims-Owens, City Clerk