



City of Smyrna

2800 King Street
Smyrna, Georgia 30080

Meeting Minutes - Final City Council

Monday, January 5, 2015

7:30 PM

Council Chambers

Roll Call

Present: 8 - Mayor Max Bacon, Mayor pro tem/Councilmember Melleny Pritchett, Councilmember Andrea Blustein, Councilmember Teri Anulewicz, Councilmember Charles Welch, Councilmember Susan Wilkinson, Councilmember Wade Lnenicka and Councilmember Ron Fennel

Also Present: 9 - Heather Corn, Terri Graham, Ken Suddreth, Toni Jo Howard, Scott Cochran, Russell Martin, Chelsea Jackson, Dan Campbell and Eric Randall

Call to Order

Mayor Max Bacon called the meeting to order at 7:30 PM

1. Invocation and Pledge:

Mayor Bacon called on Pastor Shell Osbon of Life Church Smyrna ASsembly of God located at 4100 Spring Road to give the invocation and lead in the Pledge of Allegiance.

2. Agenda Changes:

There were no agenda changes

3. Mayoral Report:

There was no Mayoral report

4. Land Issues/Zonings/Annexations:

A. [2014-371](#) Public Hearing - Rezoning Request Z14-024 - Rezoning from R-15 to RAD-Conditional for the construction of a 36 lot subdivision - 12.12 Acre Tract - Land Lots 264 and 265 - 208, 216 and 220 Concord Road - DBB Enterprises, LLC.

Sponsors: Fennel

Mayor Bacon asked Interim City Administrator, Toni Jo Howard to read aloud the background. DBB Enterprises, LLC is requesting a rezoning from R-15 to RAD-Conditional for the development of a 36 lot subdivision at a density of 2.97 units per acre at 208, 216 and 220 Concord Road. The Planning and Zoning Board heard the rezoning request at the November 10, 2014 meeting and recommended approval by a vote of 7-0. Staff also recommends approval.

Mayor Bacon called the public hearing and asked anyone who wished to speak come

forward and be sworn in by the City Attorney, Scott Cochran. The applicant and one resident came forward and were sworn in.

Councilmember Ron Fennel stated the application had gone through the traditional process and he asked Planner II, Rusty Martin, of Community Development to give the detailed background on this rezoning request. He reviewed the issue sheet, noted the Standard Conditions and read each of the Special Conditions.

Community Development recommends approval of the rezoning from R-15 to RAD-Conditional for the 36 single-family residences at a density of 2.97 units per acre with the following conditions:

Standard Conditions:

1. The composition of the homes in a residential subdivision shall include a mixture of elements including; but not limited to: brick, stone, shake, hardy plank and stucco. No elevation shall be comprised of 100% hardy plank siding. The residences whose lots abut external roadways shall not be permitted to utilize hardy plank for any elevation facing these roads.
2. The developer shall provide a vegetative buffer with a minimum width of 20 feet parallel to any right-of-way external to the development (Concord Road & Highview Drive).
3. There shall be protective covenants with a mandatory homeowners association on all lots. These protective covenants shall be supplied to the City prior to the issuance of a building permit.
4. The developer shall provide at least 200 square feet of common space per lot. This common space shall be developed with improvements for the residential subdivision such as: gazebos, fountains, recreational/playground equipment or walking trails. The common space shall be controlled and maintained by the Homeowners Association.
5. The detention/retention pond shall be placed and screened appropriately to be unobtrusive to homes inside and outside the development. The storm water detention plan shall be designed to create at least a 10% reduction in a 2-year to 100 -year storm event. The City Engineer shall approve all plans.
6. All utilities within the development shall be underground.
7. The developer shall be responsible for any traffic improvements (including additional right-of-way dedications) deemed necessary by either the City or the County during construction plan review. Sidewalks shall be provided by the developer inside the subdivision and outside the subdivision adjacent to any public right-of-way consistent with City's requirements for the extent of the development. A grass buffer with a minimum width of 2' shall be provided between the back of curb and sidewalk. The grass buffer may be waived if it is deemed unnecessary by the City Engineer.
8. A strip of brick pavers or stamped concrete shall be installed on the street at the subdivision entrance for a minimum distance of 20 feet.
9. The development of any streets (including private) shall conform to the City's standards for public right-of-ways.
10. No debris may be buried on any lot or common area.
11. The developer will install decorative streetlights within the development, subject to approval by the City Engineer. Utilization of low intensity, environmental type lighting, the illumination of which shall be confined within the perimeter of the subject property through the use of "full-cutoff lighting".
12. The developer will comply with the City's current tree ordinance (unless noted elsewhere). All required tree protection measures shall be adhered to by the developer during construction.
13. All landscape plans must be prepared, stamped, and signed by a Georgia Registered Landscape Architect for any common areas or entrances.
14. All yards and common areas are to be sodded, and landscaped. Irrigate as appropriate.
15. All single-family and/or duplex residential lots shall provide the following at the time of certificate of occupancy: either four 3" caliper trees or three 4" caliper trees,

unless otherwise approved by the City's Arborist. The following species of trees may be used: Nuttall Oak, Swamp Chestnut Oak, Allee Elm, and Village Green Zelkova. Other species may be used if approved by the City.

16. A Level I Archaeological Study shall be provided for the development. The developer shall verify to the city that any historical or archaeological features (including civil war trench lines or evidence of encampments) identified in the study will be protected from development prior to the issuance of a permit for any disturbance activities.

Special Conditions:

17. The development shall maintain the following setbacks:

Front - 20'

Side - 5'

Street Side - 20'

Rear - 20'

18. The development shall be developed with a minimum lot size of 7,000 square feet.

19. The proposed homes shall have a minimum floor area of 2,000 sq. ft.

20. All new homes shall be accessed from the new proposed public roads for the subdivision.

21. The developer shall provide a 5' sidewalk and 2' grass buffer inside and outside of the subdivision. The developer shall provide sidewalks along both Highview Drive and Concord Road.

22. Driveway - 22' minimum length from building face to back edge of sidewalk. Each unit shall have a two-car garage with decorative garage doors.

23. The developer shall be responsible for any water or sewer improvements deemed necessary for the provision of services to the community.

24. No storm water management facility or portion thereof shall be located on any portion of the proposed lots. The storm water management facilities shall be solely located on the HOA's property.

25. The developer shall be responsible for the provision and dedication of a sanitary sewer easement for the connection to the city sanitary sewer system at time of final platting. The City Public Works Director and Parks Director shall review and approval all easements.

26. All trees within the limits of disturbance and not located within a tree protection area must be removed during the land clearing and grading phase of the development.

27. Approval of the subject property for the Residential Attached Detached (RAD) zoning district shall be conditioned upon the development of the property in substantial compliance with the submitted site plan dated 11/5/2014 created by London Patterson Engineering Support Services.

28. The applicant shall be bound to the elevations submitted and dated 9/15/2014. Approval of any change to the elevations must be obtained from the Director of Community Development.

Councilmember Fennel called the applicant forward to introduce himself and answer questions about the project. Mr. Douglas Benson is the developer and applicant and he gave some additional information about the project. The sidewalks that would be throughout the development would be carried all the way to Manson Road with a handicapped ramp for access and the sewer would tie in there as well.

Of particular concern to Councilmember Fennel was water management on site and traffic. Specifically there were two homeowners behind the retention ponds where water would be trafficked. The developer stated he had spoken to both homeowners in question at Mrs. Nix's home and he walked her property with her. At the time she asked him about removing some trees.

Councilmember Welch inquired about a natural swell in one the homeowner's yards. Mr. Benson went on to address part of the original question from Councilmember Fennel and stated that he would follow standard GDOT practices regarding traffic in the area.

Because he felt there was some misunderstanding by Mr. Benson, Councilmember Fennel rephrased the question by both himself and Councilmember Welch about the property on the other end of the development from Mrs. Nix's property. The concern was that the property owner there had been contacted and water run off addressed with them as Mr. Benson had with Mrs. Nix. The applicant assured Council that he would reach out again to that homeowner if they were someone different from the people that were at Mrs. Nix's home during the original meeting.

The public hearing was called and Mr. Haywood Savage, of 498 Willowbrook Drive SE in the Willowbrook Subdivision came to the podium to address the Mayor and Council.

He resides in the rear of his subdivision and which is adjacent to the new development. He stated he sent an email to Councilmember Fennel and he also brought pictures to share with Council to show the water flow in specific areas and on specific properties. In discussing the problems of water runoff, he recommended a wall with drainage to control water flow that will come from the new development.

Mr. Fennel stated he had not yet received the email Mr. Haywood had mentioned. There was a question of clarification from Councilmember Welch as to where specifically Mr. Haywood lived in regards to the new development.

Mr. Savage was asked by Mayor Bacon if his main concern was the water run-off from this development and he said yes he had great concerns.

Mayor Bacon replied that he too had concerns with the addition of 36 new homes, but he had faith in the City's Engineers that they would make the best decisions for the residents coming and those already living in the area.

In view of the discussion Councilmember Fennel asked City Engineer, Eric Randall to address watershed.

Mr. Randall spoke about the retention requirements and he stated that the two ponds being constructed met and exceeded the requirements. They would have over retainage with minimal release that does not adversely affect downstream. He felt there was more than sufficient capacity for this development. The requirement was 45,000 and they were providing 80,000 which would be more than enough to accommodate the water run-off. There had been ongoing conversations about the rain that we received of recent and the effects on the properties discussed. The rainfall we received the previous weekend was equivalent to a 50 year event.

Specifically, he was working closely with the Johnson's to resolve their ongoing water issues.

Mayor Bacon gave Mr. Randall the pictures from the public speaker and asked him to explain what he and Council were looking at in those pictures.

Mr. Randall commented that there used to be a pond in the pictures shown. The standing water seen collecting on the Johnsons property, was in the area of the pond. At some point the pond was either drained or it drained naturally and now it was holding the water for longer periods of time. Initially there was a structure in place to prevent this but when the houses were built that structure was removed and the water was directed to the retention ponds from the homes.

The Mayor stated it was hard to assure property owners that that they would not get excessive run-off but in the instance of a 50 year rainfall, flooding would occur.

A motion was made by Councilmember Ron Fennel to approve the rezoning request Z14-024, Rezoning from R-15 to RAD-Conditional for the construction of a 36 lot subdivision - 12.12 Acre Tract - Land Lots 264 and 265 - 208, 216 and 220 Concord Road - DBB Enterprises, LLC. to include all standard and special conditions as read aloud, seconded by Mayor pro tem/Councilmember Melleny Pritchett. The motion carried by the following vote:

Aye: 6 - Mayor pro tem/Councilmember Pritchett, Councilmember Blustein, Councilmember Anulewicz, Councilmember Welch, Councilmember Lnenicka and Councilmember Fennel

Nay: 1 - Councilmember Wilkinson

5. Privilege Licenses:

There were no privilege licenses

6. Formal business:

A. 2014-342 Consideration and approval to extend benefits to all benefit-eligible employees entering into a legally recognized marriage.

Sponsors: Lnenicka

Mayor Bacon asked Interim City Administrator Toni Jo Howard to read the background for this item. This item was for consideration to extend benefits to all benefit-eligible employees who enter into a legally recognized marriage (whether traditional or same-sex). With the growing legalization and recognition of marriage between same-sex couples, the city has begun discussion whether it should recognize and treat legally married same-sex partners the same as heterosexual couples for the purpose of application of city policies and benefits. Such issue could be addressed by adopting a policy addressing Benefit Eligibility. If council chooses to extend benefits to all benefit-eligible employees in a legally recognized marriage (traditional or same sex), staff recommends adopting the Benefit Eligibility policy. Councilmember Lnenicka called on Human Resources Director Kay Bolick to come forward to speak about this policy, but she was not in attendance. He also asked if the policy was available to put on the screen for the viewing public to see and the answer was no.

Councilmember Lnenicka read the proposed benefits policy.

He noted the policy was very straightforward by extending same sex married employees the same benefits currently offered to opposite sex married employees under this proposed policy change. As of today, 36 states recognize marriage licenses for same sex couples. There was a tremendous surge regarding this subject across the nation. The State of Georgia does not recognize same sex marriages.

Councilmember Lnenicka quoted several historical documents such as the Declaration of Independence, The Constitution and the Civil Rights Acts that speak to rights of all citizens.

In his opinion this was an issue of equality and fairness amongst employees. He does note that there have been no employees that have come forward and asked the council to consider this policy.

Councilmember Anulewicz spoke about the church marriage vs, the marriage certificate issued by the state. She also read from an email she addressed to her fellow council members about her opinion on this subject and what supportive decisions she would make in regards to it. She remarked that back in October of last year there were only 30 states that recognized these marriages and as of today there were an additional 6 states. She feels it would be the fiduciary duty of this council to offer these benefits and make Smyrna competitive long-term. She said residents deserve to live in a city that was on the right side of history and reiterated her favoritism of this policy.

Mayor Pro Tem/Councilmember Pritchett spoke about her opposition to this policy based on the fact that The State of Georgia does not recognize same sex marriage, the Georgia Municipal Association does not recognize same sex marriage and the Cobb County Commission does not recognize same sex marriages.

She will not vote for this policy until the federal government makes the cities comply. She finished by stating that this City does not lose employees because of lack of benefits.

Councilmember Welch spoke about being old fashioned and his opposition to this policy. He feels this would be forcing the taxpayers to pay for something that was

currently against state law. He mentioned that this would cost the city very little money, but he was still against this policy.

Councilmember Wilkinson talked about her struggles with this, especially regarding the costs to the taxpayer, and she does feel lawsuits could occur from couples with a marriage license who are not receiving the benefits if not passed. Because it was about equal rights for all employees, she would support this policy.

Councilmember Fennel said this was not an issue Council would normally be discussing. He referred to the fact that Council was not a panel of judges, they were policy makers who were to be wise stewards of taxpayers funds. He recognized that it was challenging to be having this discussion and debate. His belief was that if the City offers benefits to married couples, and does not offer it to married couples of the same sex, that was discriminatory. This would be a policy that treats employees equally. He mentioned the current court case in North Georgia District Court and he feels it will be settled quickly. He concluded by stating that when two people commit in a bond of marriage, who are we to judge them?

Councilmember Blustein commented that each person has to vote their conscience regarding this issue. She has no emotional feeling toward it.

Mayor Bacon stated he would not be reciting the constitution or reciting the Bible. He did say that in the Pre-Council Meeting, City Attorney Scott Cochran gave Council good advice. That advice was for Council to take a breath because there was a pending lawsuit in the North Georgia District and currently the State of Georgia did not recognize same sex marriages. He went on to say that state law would be settled soon but for now this issue and the decisions made would put Council in a precarious position.

A motion was made by Councilmember Wade Lnenicka to approve item 2014-342, Consideration and approval to extend benefits to all benefit-eligible employees entering into a legally recognized marriage, seconded by Councilmember Teri Anulewicz. The motion carried by the following vote:

Aye: 5 - Councilmember Blustein, Councilmember Anulewicz, Councilmember Wilkinson, Councilmember Lnenicka and Councilmember Fennel

Nay: 2 - Mayor pro tem/Councilmember Pritchett and Councilmember Welch

B. 2015-01

Approve the Mayor's appointment of Dawn Wilkins to the Parks & Recreation Board, this board has a two (2) year term to expire December 2016

Sponsors: Bacon

A motion was made by Councilmember Ron Fennel to approve item 2015-01, Approve the Mayor's appointment of Dawn Wilkins to the Parks & Recreation Board, this board has a two (2) year term to expire December 31, 2016, seconded by Councilmember Charles Welch. The motion carried by the following vote:

Aye: 7 - Mayor pro tem/Councilmember Pritchett, Councilmember Blustein, Councilmember Anulewicz, Councilmember Welch, Councilmember Wilkinson, Councilmember Lnenicka and Councilmember Fennel

C. 2015-02

Approve the re-appointment of Joel Powell to the Planning and Zoning Board, the term will expire 12/31/2016

Sponsors: Bacon

A motion was made by Councilmember Ron Fennel to approve item 2015-02, the Mayor's re-appointment of Joel Powell to the Planning and Zoning Board, the term will expire December 31, 2016, seconded by Councilmember Teri Anulewicz. The

motion carried by the following vote:

Aye: 7 - Mayor pro tem/Councilmember Pritchett, Councilmember Blustein, Councilmember Anulewicz, Councilmember Welch, Councilmember Wilkinson, Councilmember Lnenicka and Councilmember Fennel

D. 2015-03

Approve the re-appointment of the (DDA) Downtown Development Authority Members as follows: Kevin Drawe, Jim Duelmer, Kimberly Gangemi, Jason Saliba, Doug Stoner, Eric Cash and Larry Freeman for a term to expire April 2015.

Sponsors: City Council

A motion was made by Councilmember Wade Lnenicka to approve item 2015-03, Approve the re-appointment of the (DDA) Downtown Development Authority Members as follows: Kevin Drawe, Jim Duelmer, Kimberly Gangemi, Jason Saliba, Doug Stoner, Eric Cash and Larry Freeman for a term to expire April 2015, seconded by Councilmember Teri Anulewicz. The motion carried by the following vote:

Aye: 7 - Mayor pro tem/Councilmember Pritchett, Councilmember Blustein, Councilmember Anulewicz, Councilmember Welch, Councilmember Wilkinson, Councilmember Lnenicka and Councilmember Fennel

E. 2015-04

Approve the re-appointment of the Ward 4 Planning and Zoning Board Member Michael Seagraves for a term of 2 years to expire December 2016

Sponsors: Welch

A motion was made by Councilmember Charles Welch to approve item 2015-04, Approve the re-appointment of the Ward 4 Planning and Zoning Board Member Michael Seagraves for a term of 2 years to expire December 31, 2016, seconded by Councilmember Teri Anulewicz. The motion carried by the following vote:

Aye: 7 - Mayor pro tem/Councilmember Pritchett, Councilmember Blustein, Councilmember Anulewicz, Councilmember Welch, Councilmember Wilkinson, Councilmember Lnenicka and Councilmember Fennel

F. 2015-05

Approve the Ward 1 appointment of Derrick Norton to the Keep Smyrna Beautiful Board for a two (2) year term to expire 12/31/2016

Sponsors: Pritchett

A motion was made by Mayor pro tem/Councilmember Melleny Pritchett to approve 2015-05 the Ward 1 appointment of Derrick Norton to the Keep Smyrna Beautiful Board for a two (2) year term to expire December 31, 2016, seconded by Councilmember Ron Fennel. The motion carried by the following vote:

Aye: 7 - Mayor pro tem/Councilmember Pritchett, Councilmember Blustein, Councilmember Anulewicz, Councilmember Welch, Councilmember Wilkinson, Councilmember Lnenicka and Councilmember Fennel

G. CON2015-01

Approval for the City of Smyrna to continue as a member of the Cobb County CDBG Program and authorize the Mayor to sign the 2015 Subrecipient Agreement documents.

Sponsors: Anulewicz

A motion was made by Councilmember Teri Anulewicz to approve item CON2015-01, Approval for the City of Smyrna to continue as a member of the Cobb County CDBG Program and authorize the Mayor to sign the 2015 Sub-recipient Agreement documents, seconded by Councilmember Ron Fennel. The motion carried by the following vote:

Aye: 7 - Mayor pro tem/Councilmember Pritchett, Councilmember Blustein, Councilmember Anulewicz, Councilmember Welch, Councilmember Wilkinson, Councilmember Lnenicka and Councilmember Fennel

7. Commercial Building Permits:

There were no commercial building permits

8. Consent Agenda:

A motion was made by Mayor pro tem/Councilmember Melleny Pritchett to approve the consent agenda, seconded by Councilmember Ron Fennel. The motion carried by the following vote:

Aye: 7 - Mayor pro tem/Councilmember Pritchett, Councilmember Blustein, Councilmember Anulewicz, Councilmember Welch, Councilmember Wilkinson, Councilmember Lnenicka and Councilmember Fennel

A. [2015-06](#) Approval of the December 15, 2014 Mayor and Council Meeting Minutes

Sponsors: City Council

These minutes were approved.

B. [2015-07](#) Award RFP 15-016 Rose Garden Park Parking Lot Resurfacing for \$20,928.05 (alternate bid) to the lowest bidder Baldwin Paving Company and authorize the Mayor to execute any related documents.

Sponsors: Anulewicz

This Bid/RFP was approved.

C. [2015-08](#) Award RFP 15-021 Smyrna ATMS to the lowest bidder World Fiber Technologies for \$1,602,010.89 and authorize the Mayor to execute any related documents.

Sponsors: Welch

This Bid/RFP was approved.

D. [2015-09](#) Award RFP 15-022 Bridge Rehabilitations to the lowest bidder Ace Construction for \$383,826.00 and authorize the Mayor to execute any related documents.

Sponsors: Welch

This Bid/RFP was approved.

E. 2015-10 Approval to allow road closures for the Spooktacular Chase for Vision Rehabilitation Services of Georgia, Inc. on October 17, 2015 from 7:00 AM to 12:00 PM

Sponsors: Anulewicz

This Event was approved.

F. 2015-11 Approval of 11K Run Event for Zone5 in multi-jurisdictions November 14, 2015 to begin at 8 AM in Smyrna at the roundabout for approximately 500 runners to end at 11:00 AM in Cobb County

Sponsors: City Council

This Event was approved.

9. Committee Reports:

Mayor Pro tem/Councilmember Pritchett has no committee report and yielded. Councilmember Blustein had no committee report and yielded. Councilmember Anulewicz had no committee report and yielded. Councilmember Welch had no committee report and yielded. Councilmember Wilkinson had no committee report and yielded. Councilmember Lnenicka discussed his meeting with Oakridge Estates held prior to the New Year and answered questions regarding upcoming happenings in Smyrna. He congratulated Ward 6 resident Ann Harris, for her position as Superior Court Judge. He spoke of her talent as a district attorney and looked forward to having her in her new position. He reported that "back by popular request" was the second Veteran's Hospital Rally at Emory Adventist Hospital in Smyrna. It was scheduled for Saturday, January 10th, 2015 at 12 noon. He invited the public to attend. Councilmember Fennel reminded attendees that the Fire Department had a warning for all residents in regards to space heaters. With the subfreezing temperatures this week, he asked that residents get their heaters checked at the Fire Department and that they always be used in the proper area and away from flammable items. Also in preparation for Emergency Management Preparation this spring, an active shooter drill was held at Belmont Elementary. He wished Police Chief Lee a speedy recovery from some minor surgery. Congratulations were given to Ann Harris and Susan Thayer for their elections. He extended appreciation for their public service. He concluded by mentioning the City Administrator search which Mayor Bacon followed up on with more detail. Mayor Bacon explained the City Administrator search was open for application for 30 days and approximately 70 applications had been accepted. The position was being reposted for an additional 30 days due to the holidays.

10. Show Cause Hearings:

A. 2015-12 Appeal of the denial of application for a taxi permit for Wilmer F. Caballero Lazo

Sponsors: Blustein

Mayor Bacon called for the applicant to come forward to speak. The applicant was not present.

A motion was made by Councilmember Ron Fennel to uphold the denial of item 2015-12, an appeal of the denial of application for a taxi permit for Wilmer F.

Caballero Lazo, seconded by Councilmember Charles Welch. The motion carried by the following vote:

Aye: 5 - Mayor pro tem/Councilmember Pritchett, Councilmember Blustein, Councilmember Anulewicz, Councilmember Welch and Councilmember Fennel

Nay: 2 - Councilmember Wilkinson and Councilmember Lnenicka

11. Citizen Input:

Resident Alex Backery remarked that he had stood up during the Formal Business portion of the agenda because he wanted to comment on the same sex marriage benefit policy. He said the word "fair" was spoken a lot at this meeting but he felt it was not fair to not allow citizens to speak. In his opinion this policy is a forced law because the State of Georgia has not voted on this issue yet. He noted there was no referendum or town hall meeting for citizens. Even though there are 36 states that have approved same sex marriage there were 16 that still have not. He stated he was appalled at the vote and the Council's decision.

Timothy R., resident at 1115 Pinehurst Drive, compliments council on same sex vote. He spoke about three states, Michigan, Ohio and Tennessee case headed to Supreme Court, but as a Christian, he does not agree in same sex marriage. Mayor Bacon reiterated that Council had a public comment hearing in October and several, including Mr. Backery had spoken. It was tabled to this meeting in order for Councilmembers to obtain additional residential feedback on this policy.

12. Adjournment:

Mayor Max Bacon adjourned the meeting at 9:13 PM.