

Don Bergwall - Chair,
Phillip Jackson - Vice-Chair,
Lacey Ragus, Rebecca Patterson,
Trey Bodenhamer, Todd Vande Zande,
Carolyn Greenall

**MEETING MINUTES
PLANNING COMMISSION
CITY OF KENNESAW
Council Chambers
August 2, 2023
6:30 P.M.**

1. Call to Order / Roll Call

- Chairman Bergwall calls the meeting to order at 6:30 p.m.
- Roll Call: Don Bergwall, Phillip Jackson, Lacey Ragus, Trey Bodenhamer, and Todd Vande Zande
- Absent: Rebecca Patterson & Carolyn Greenall
- Staff present: Darryl Simmons (Zoning Administrator) and Albert Trevino (Assistant Zoning Administrator and Planner)
- Speakers: Eric Federspiel (CF&G Enterprises)

2. Announcements

- A. This public meeting is being conducted via the use of real-time telephonic technology allowing the public simultaneous access to the public meeting. The meeting may be accessed using Facebook Live via the following link [www.Facebook.com/City of Kennesaw/](https://www.facebook.com/CityofKennesaw/), however, comments made on Facebook Live will not be visible by City staff. If you will like to provide public comment on a specific agenda item, you can email kennesawcouncil@kennesaw-ga.gov no later than 6:00 p.m. the night of the regular meeting. Your comment will be read aloud or grouped into categories for the record. All interested parties may attend the meeting in person with limited seating available at the City Hall Council Chambers and the Ben Robertson Community Center, if needed. Please note that the Planning Commission serves as an advisory board that makes recommendations to Mayor and Council unless otherwise noted.
- B. New business items on this agenda will be heard by the Mayor and Council on August 21, 2023.
- C. Pending zoning applications may be viewed on an interactive map via the Planning & Zoning webpage or using the following link: <https://arcg.is/1q1ubX0>.

3. Approval of the Meeting Minutes

- A. Meeting Minutes from 5-3-2023 (Regular Meeting)

- o Chairman Bergwall calls for a motion to approve meeting minutes from May 3rd as submitted.
- o Motion of approval by Commissioner Bodenhamer
- o Second by Commissioner Vande Zande
- o Chairman Bergwall proceeds with a roll call for approval.
- o **All in favor, 4-0. Meeting minutes are approved.**

B. Meeting Minutes from 6-14-2023 (Special Call)

- o Chairman Bergwall calls for a motion to approve meeting minutes from the Special Call meeting on June 14th as submitted.
- o Motion of approval by Commissioner Vande Zande
- o Second by Commissioner Ragus
- o Chairman Bergwall proceeds with a roll call for approval.
- o **All in favor, 4-0. Meeting minutes are approved.**

4. New Business

- A. Approval of ORDINANCE granting a rezoning modification request submitted by CF&G Enterprises, Inc. located at 0 Ellison Lakes Drive (PIN: 20017500170). The property is zoned as Planned Village Community (PVC) and lies in Land Lot 175, Tax Parcel 17 of the 20th District, 2nd Section, Cobb County Georgia and consists of 2.72 +/- acres. Case #RZ2023-03.
- o Chairman Bergwall introduces the first new business item.
 - o Mr. Darryl Simmons comes to the podium and states "This property was annexed into the city back in 2001 as a master planned and a mixed-use community. The first of its kind brought into the city and design regarding the Cobb Parkway corridor. It has a combination of front line commercial along Cobb Parkway and towards the inside of the property you have a combination of townhomes, multifamily units, a lake, connecting trails and playgrounds and a Daycare Center. The agenda item this evening is before you for consideration to amend a portion of the master plan in this case. In 2001, as part of all of the zoning conditions for PVC, the maximum number of residential units was capped at 898. In 2004, there was an amendment to the master plan, where it allowed for the decrease of multifamily and the increase of additional townhomes still under the cap of 898. At that time there was 537 multifamily units and 309 townhomes. The existing residential count in Ellison lakes is 845 residential units. The proposal before us this evening would be adding a proposed condominium unit building, which will have an additional 45 for sale condominium apartments. Even with the addition, it would still be under the maximum 898 units. The staff analysis which was provided gave you the background of the property, the master plan and how this proposal fits into the master plan. The proposal does not require or show any need for variances based on our current zoning district and the established zoning setbacks that was established for this master plan community. In the staff analysis, our staff put together a number of conditions based on our recommendation to approve the amendment to allow for these condominium units to be erected and I would like to read the 22 conditions. There will be online for anyone to review".

- o Mr. Simmons proceeds to go through all 22 conditions of the rezoning modification and says "Staff recommends approval. We've determined that this additional housing type, if approved, would be the first residential condominium housing unit housing type in the City of Kennesaw. We currently do not have any condominium residential units in the city. The original intent of the Ellison Lakes Master plan is to encourage and promote a variety of housing units, housing styles, as well as a combination of appropriate commercial along Cobb Parkway. We feel that this amendment is appropriate and in keeping with the original intent of the master plan".
- o Vice-Chairman asks if this property is the same property visited by the Commissioners.
- o Mr. Simmons responds yes and staff looked at the location and determined townhomes would not be appropriate because of the number of townhomes that were capped. They later withdrew the application. The applicant owns the property as well as the childcare facility nearby and this concept would not affect the childcare center.
- o The applicant, Eric Federspiel, comes up to the podium to introduce himself. He says he has been in the real estate business for 25 years and lived in Atlanta for 52 years. He and his wife are excited about bringing the new concept to the city of Kennesaw. They have designed a couple different renderings for a four story building and waiting on the FAA approval for the height regulation which is 55 feet. He looks forward to the Planning Commission approval.
- o Chairman Bergwall asks for clarification on the condition #3 in relation to the homeowners association and asks if there is consideration to a condominiums owners association. He asks if the HOA will be responsible for the exterior and roof structures on the building and where the garages will be located on the buildings since it wasn't included on the site plan.
- o Mr. Federspiel states "This will be included under common area maintenance. The garages weren't added yet. We were going to add them on the back of the property to block the school so they wouldn't have to see as much into the playgrounds. The way we positioned the building was to face Ellison lakes and the front and rear of the building won't look at our school. We're going to plan it as an option to do half, so if we build 40 or 45 units or 50 units and we'll do 25 garages, single car garages as an option to those units that are for sale. If a 3 bedroom homeowner wants to buy a single car garage he/she can buy that or opt out of it".
- o Chairman Bergwall opens up the floor to public comment.
- o Mr. H. Verrill (3247 White Oak Circle) comes up to the podium to state that parking is very expensive and can take up a lot of space and to ask why you would need to increase the number of parking spaces.
- o Commissioner Bodenhamer explains the additional parking spaces are not only for residents but for guests as well.
- o Vice-Chairman asks if the developer would want a waiver for less parking.
- o Mr. Simmons states no and there are a variety of bedroom sizes and square footage so there won't be a need for a reduction.
- o Commissioner Bodenhamer asks if the parking garages would be included in the count for the max number of parking spaces required for the project.

- o Mr. Trevino states yes the surface parking and garages would be counted in the total parking count. There will be a percentage dedicated to private garages and a percentage dedicated to standard surfaces.
- o Chairman Bergwall asks if there are any other questions or comments from the Commission. After no response he closes the floor and calls for a motion to approve the rezoning modification with the 22 conditions listed by staff, but with the following zoning condition modifications: **Condition #3:** The creation of a mandatory homeowners association ("HOA") to be managed by Applicant or a 3rd party professional HOA management company until such time the HOA is "turned-over" to the homeowners which is typically at 100% buildout. Applicant shall fund any shortfall in the operating budget until such time as the HOA is "turned-over" to the homeowners. The homeowners association shall be solely responsible for the upkeep and maintenance of all common areas, mail kiosk, amenities, and amenity areas; including the entrance areas, boundary landscape buffers, detention pond(s), driveways and parking lot, the exterior façade of the building and roof of the building. **Condition #5:** The HOA covenants shall limit the number of rental units to not exceed ~~15%~~ 10% of the total number of units in the community or such percentage as approved by the City Council.
- o Motion of approval by Commissioner Bodenhamer
- o Second by Commissioner Vande Zande
- o Chairman Bergwall proceeds with a roll call for approval.
- o **All in favor, 4-0. Motion is approved.**

B. Approval of a RESOLUTION for an amendment to the current 2022 Future Land Use Map submitted by the City of Kennesaw. The proposed 2023 Future Land Use Map amendments include various parcels city-wide. Case #MISC2023-06

- o Chairman Bergwall introduces the next business item.
- o Mr. Albert Trevino comes up to the podium and states "Thank you Mr. Chairman and good evening Commissioners. I want to preface agenda item #2 with it is not a rezoning. Agenda item #2 is to amend the 2022 Comprehensive Plan's Future Land Use Map. I repeat this is not a rezoning. Going into details about the maps that we use, the Planning and Zoning Department primarily uses two types of maps. One map is a zoning map, which shows a property's current zoning designation. The zoning determines how a property owner can use their property in present day. The second map that we use is called a future land use map. This map is adopted concurrently with the City's Comprehensive Plan every 5-years with optional annual updates. It is designed for long term planning. It is a product of community engagement and public input. It marks every parcel in the City with a future land use category. This category tells us what the citizens want the City of Kennesaw to look like in the future. Staff uses the future land use map for guidance on staff recommendations for zoning applications. I just want to emphasize that this map bears no weight to the City's current zoning map. This agenda item will not change the zoning to any property. The zoning map and future land use map are completely separate maps that display different information. With that said, I want to go over the Future Land Use Map amendments. There are 6 parcels or areas that we'd like to recommend changes to. The first site we recommend a future land use map category change is located at 2985 Mack Dobbs Road. This site is

currently split with two categories: Planned Unit Development and Community Activity Center and it is currently under construction for a one-story 14,000 square foot medical office facility. This amendment is to change the entire site to a Community Activity Center category. This is a rendering of what is currently under construction. The second site is located at 6045 Pine Mountain Road. This is an amendment to change the site from a Residential Low/Medium to a Public Institutional (PI). PI is a common designation for schools, churches, hospitals cultural institutions and cemeteries. This site received a certificate of occupancy for a religious institution in April of this year. The third site is located at 2971 N Main Street. It is currently designated as Downtown Activity Center. Through recent public input during the Central Business District Phase 2 Expansion project that was done in May 2023, we want to take into consideration the community feedback that was received during those public hearings which was that this parcel should remain low density residential as is what can be seen up North Main Street. Our recommendation is to change this to a Residential Low/Medium category or RL. This picture shows the current state of the property being that it has a historic single-family home. The fourth site is located along Kennesaw Due West Road and it is commonly referred to as "The Columns" property. It has a current future land use designation as Industrial, however, through recent traffic engineer reports and traffic impact studies, lends this site to being uncondusive to conventional industrial development. The studies showed that it would be difficult for a semi-truck to safely and efficiently get onto and out of the site. Kennesaw Due West Road is a two-lane road used for commuter traffic. We are recommending this site be designated as Community Activity Center. Site five is located at 1973 Cobb Parkway. It is currently a natural wetland. This site is adjacent to a stream and stays wet all year round. We are recommending changing the future land use category from Community Activity Center to Park/Recreation/Conservation. This shows a picture of the site. This sixth site is located at 1650 Cobb Parkway on the corner of Cobb and Barrett Parkway. This property was recently annexed into the city limits in March 2023. Being that it was just annexed from Cobb County, it was not assigned a future land use category last year during the Comprehensive Plan Update. We are recommending that this parcel be assigned a Regional Activity Center, which matches the surrounding future land use categories and neighboring developments of Ridenour and Kennesaw Marketplace. This agenda item was advertised in the Marietta Daily Journal on July 14th. Each site was posted with at least one or multiple signs. The property owners for each of these sites were notified and the amendments were thoroughly discussed with each owner with no objections. Staff received many phone calls regarding the public notice signs and were able to inform the public that this was not a rezoning but merely a future land use map amendment update. We did not receive any e-mails for or against this proposal. Staff is recommending to approve the 2023 Future Land Use Map Amendments as presented".

- o Chairman Bergwall asks if this proposal was presented before as part of the downtown business area and was denied so what is different this time.
- o Mr. Trevino responds that according to the 2017 comp plan it was designated RL for low density residential but at the community engagement meeting, staff proposed that the downtown activity center be extended because the community

wanted to see more of downtown Kennesaw. All of the single family historic homes and other homes on North Main Street should remain as their current designation. As the downtown area grows and the community is changing we would like to change it for this parcel.

- o Mr. Trevino and Mr. Simmons have a discussion about what the difference between the zoning map, what a future land use map entails and what the comp plan states.
- o Chairman Bergwall opens the floor to public comment.
- o Mr. Gilbert Meredith (1973 Cobb Pkwy) comes to the podium to speak about his disapproval of the future land use map for said property. He reads a letter from the property owners stating the change is wrong and the property category should stay the same.
- o Chairman Bergwall comments that the area is designated as a wetland and in his experience it takes a lot of time, money, and energy to go through the state process of changing this. You have to get permission from the Corps of Engineers and the government to complete any type of maintenance.
- o Vice-Chairman Jackson ask if the property tax would change in the future based on the future land use map.
- o Mr. Simmons responds, "Anytime that a property is vacant and there's no improvements to it, it's taxed at a certain rate. As soon as the property is improved upon through construction, occupancy by a tenant or whatever the use is, that's when the Cobb County tax assessor assess the value of the property at that time. The reason why we recommended this future land use designation is correct because it takes a long time if you're even successful in making this a buildable lot. Currently, in our ordinance, we have not issued or we will not be issuing any building permits to construct anything in the floodplain, that's the citywide protocol. What we would require is if the property owner or the family goes to the Corps of Engineers, goes through the state of Georgia, goes through all of the mitigation and then presents the document to the City of Kennesaw. In the future saying we have now been successful in making this a buildable piece of property and the city would honor that. For our long term planning goal, we don't see this happening in the next 5-10 years. Just based on experience, it takes a very, very, very long time. It's 100% wet right now, so putting it in this designation does not take away any value from the property owner. It does not restrict the property owner or the family to any additional restrictions. It's strictly just saying this is what we know for the property as of right now".
- o Mr. Meredith comes back to the podium and states he doesn't want the Commission or city to be prejudice about the property and give someone a chance to change it around.
- o Ms. Denise Fred (2022 Ellison Way) comes up to the podium to state her subdivision has a detention pond that drains into the wetland property and to maintain this it is \$3,500 monthly. She and the other members of her community are concerned that if anyone touches the wetland area it could cause a backflow into her housing community.
- o Mr. Simmons states that we don't have a professional engineer to speak on this issues so as of right now it is hypothetical scenarios. Before any disturbance or future improvements upstream or downstream, the parties would have to provide to

the Corps of Engineers in the state of Georgia and the City of Kennesaw and everyone else how that storm capacity will not go up or be exceeded that could be detrimental to private property that's already existing. Until there is a study done, we cannot say for certain what can or can't become of the wetland area.

- o Mr. Meredith continues to give his argument of why the area should be left alone and how it isn't causing any issues currently for the adjacent properties. He states if the designation is changed now that it would be hard with future administrators to get it changed back.
- o Commissioner Vande Zande asks if there is any harm done by not changing the designation and does the city benefit from this change.
- o Mr. Simmons states "One of the things that each jurisdiction is responsible for is identifying environmentally sensitive areas, and that's a regional partnership with the state of Georgia. This is why you have regional areas and their studies of all the different drainage areas, wetland areas and discharge areas so the state knows what we have. It does not cause a hardship if it's left in CAC but one thing that I've explained to the gentleman on the phone is that the state of Georgia has a very, powerful and strong law regarding property rights. If the case is made that they've done all the work and follow the Planning Commission's recommendation coming back to the city, saying we've met all the requirements to designate this as a buildable lot, the city of Kennesaw would not be against or be in a position to deny someone the use of their property. That's basic property rights and there's no denying of rights. There's no hardship. But I just want to put it in the record that regardless of the future land use designation that it's on right now, if the property owner did their due diligence, they did their homework, the city would honor it, we would welcome commercial redevelopment on the property if it's done properly. But there is a goal and responsibility that we try to align our future land use map with what we see in the future short and long term plan. For right now it's a floodplain area with wetlands, and we need to identify that somewhere in our comprehensive plan as we're being city planners, that's what we're supposed to be doing".
- o Chairman Bergwall asks if there are any other questions or comments from the Commission or the community. After no response he closes the floor for questions and calls for a motion to amend the agenda to vote on the items as individuals.
- o Motion of approval by Commissioner Vande Zande
- o Second by Commissioner Bodenhamer
- o All in favor, 4-0. Motion passes.
 - Location #1: 2985 Mack Dobbs Rd
 - Chairman Bergwall calls to entertain a motion.
 - Commissioner Bodenhamer calls for a motion to approve.
 - Second by Commissioner Ragus.
 - **All in favor, 4-0. Motion is Approved.**
 - Location #2: 6045 Pine Mountain Rd
 - Chairman Bergwall calls to entertain a motion.
 - Commissioner Vande Zande calls for a motion to approve.
 - Second by Vice-Chairman Jackson.
 - **All in favor, 4-0. Motion is Approved.**
 - Location #3: 2971 North Main Street

- Chairman Bergwall calls to entertain a motion.
- Commissioner Bodenhamer calls for a motion to approve.
- Second by Commissioner Ragus.
- **All in favor, 4-0. Motion is Approved.**
- Location #4: 2985 Mack Dobbs Rd
 - Chairman Bergwall calls to entertain a motion.
 - Vice-Chairman Jackson calls for a motion to approve.
 - Second by Commissioner Ragus.
 - **All in favor, 4-0. Motion is Approved.**
- Location #5: 1973 Cobb Pkwy
 - Chairman Bergwall calls to entertain a motion.
 - Commissioner Vande Zande calls for a motion to deny.
 - Second by Commissioner Bodenhamer.
 - Commissioner Ragus and Vice-Chairman Jackson voted against the denial.
 - Chairman Bergwall voted as tie breaker in favor of denial.
 - **3-2 in favor of denial. Motion is Denied**
- Location #6: 1650 Cobb Pkwy
 - Chairman Bergwall calls to entertain a motion.
 - Commissioner Bodenhamer calls for a motion to approve.
 - Second by Commissioner Vande Zande.
 - **All in favor, 4-0. Motion is Approved.**

C. Approval of an ORDINANCE to amend the Unified Development Code, Appendix A, Chapters 2, 3, 8 and 9. Case #MISC2023-07

- o Chairman Bergwall introduces the last business item.
- o Mr. Simmons states “This is more of a cleanup of our codes. Every year we go through, with our city attorney, to look at items that need to be amended either because of legislation or something dealing with state code or court rulings that would influence the Unified Development Code. This ordinance primarily deals with the rules dealing with filing an appeal of either decisions from staff or rendering from the Mayor and Council. We want to have accurate references to the OCG title code and making sure that it's all very clear and cohesive. When you look at all the chapters, we've crossed out and made amendments. Any party that doesn't agree or person agreed by the decision of the Merit Council may appeal such decision to the Superior Court of Cobb County. In the manner provided by the law under chapter 3, title 5 of the OOC GA code, and so we're making a change. It was a previous reference that has been amended on the OCGA. The city attorney provided the correct reference for the appeal process, and we went ahead and made those changes in all of the chapters 2, 3, 8 and 9.
- o The list of the exact changes being made are: AN ORDINANCE TO AMEND THE CODE OF ORDINANCES OF THE CITY OF KENNESAW, GEORGIA, SECTION 2.03.06, “DENIAL OF SITE PLAN PERMIT APPLICATIONS”; SECTION 3.01.07, “VARIANCE PROCEDURE”; SECTION 3.01.08, “VIOLATIONS, ENFORCEMENTS AND PENALTIES”; SECTION 3.02.09, “ADMINISTRATIVE APPEAL AND JUDICIAL

REVIEW"; SECTION 8.02.06, "APPEALS"; SECTION 8.04.06, "APPEALS"; SECTION 9.02.04, "REQUIREMENTS FOR MAKING VARIANCE APPLICATIONS. A link to the full ordinance can be found on page 104 of the agenda packet here: <https://kennesawga.portal.civicclerk.com/event/171/files>

- o Chairman Bergwall calls for a motion to approve the text amendment as presented.
- o Motion of approval by Vice-Chairman Jackson.
- o Second by Commissioner Vande Zande
- o Chairman Bergwall proceeds with a roll call for approval.
- o All in favor, 4-0. Meeting minutes are approved.

5. Staff Comment

- A. Upcoming Training: "Practices for Successful Meetings," offered by the City Clerk's Office
 - o Mr. Trevino informs the Commission of an upcoming training opportunity on August 18, 2023 that is being presented by the University of Georgia Carl Vinson Institute. They will be going over how to run effective and efficient meetings through tools such as Roberts Rule of Order and agenda settings. There will be two sessions, one at 9:30 a.m. and the other at 2:00 p.m.
- B. "Historic Downtown Walking Tour," offered by the Historic Preservation Commission on Friday, September 22nd @ 2PM and 6PM and Saturday, September 23rd @ 10AM and 2PM presented by Andrew J. Bramlett. This event is free. Register online. Each tour is approximately half-a-mile, lasts 45minutes and can accommodate up to 20 people.
 - o Mr. Trevino talks about the walking tour being hosted by Andrew Bramlett walking through the Historic District. He highly encourages any citizens and Commissioners to participate in this opportunity.

6. Adjourn

- o Time: 8:27pm