CITY COUNCIL OF PEACHTREE CITY
Minutes of Meeting
August 15, 1996
7:00 p. m.

The City Council of Peachtree City met in regular session on Thursday, August 15, 1996, at 7:00 p. m. in the City Hall Council Chambers.

Mayor Lenox led those in attendance in the pledge of allegiance. Present were: Councilmembers Annie McMenamin, Caroline Price, Jim Pace, and Bob Brooks.

ANNOUNCEMENTS, AWARDS, SPECIAL RECOGNITION

Paul Blame, President of the Peachtree City Running Club, donated $500 to the Peachtree City Police Department Bullet Proof Vest Fund.

ADDITIONAL AGENDA ITEMS

There were no additional agenda items.

MINUTES

McMenamin made a motion to approve the August 1, 1996 minutes as presented. Brooks seconded the motion. Motion carried unanimously.

OLD AGENDA ITEMS

05-96-07 Investigation of Alleged Violation of Ethics Ordinance

Lenox announced a report had been received from Attorney Phil Grant and copies had been provided to Council members. Lenox said it was necessary for Council to officially receive the report and make a decision under Council's own procedural rules whether to make it public immediately or to wait ten days and make it public on August 23. Lenox said he saw no reason not to make it public and made a motion to officially receive the report and approve making it public immediately. McMenamin seconded the motion. Motion carried unanimously.

Lenox stated that copies of the report would be available for the Press tonight and would be available at 8:00 a.m. on August 16 during City Hall's normal office hours for any citizen that would like to review the report.

Lenox asked Mr. Phil Grant to present Council with a summary of his findings.

Grant addressed Council and stated that he had reviewed the actions of Mr. Hyde, a member of the Planning Commission, based upon a complaint from several citizens of Peachtree City and based upon Mr. Hyde's actions while serving on the Land Use Update Task Force and the Planning Commission.

Grant stated the issues were as follows:

- Whether there was disclosure that Mr. Hyde owned property that was being discussed at the Land Use Update Task Force meetings of which Mr. Hyde was a part. Mr. Hyde was appointed to the committee which was made up of interested citizens, business and community leaders to review the city's Land Use Plan and he was also appointed as a member of the Planning Commission. Further, that part of the property being considered for changes to the Land Use Plan was a 31 3/4 acre tract owned by Mr. Hyde and his wife - about 11 acres owned by Mr. Hyde and 20 acres owned by his wife. Basically, the recommendation that came out of the task force was that that particular property zoning be changed from ER to R-43 which allowed one-acre residential lots.
- Another issue was whether he attempted to influence citizens to support his rezoning petitions. This fact came out after the Land Use Plan had been approved by City Council. Grant said he investigated this complaint, interviewed approximately twenty people, reviewed the minutes of the Task Force meetings and the Planning Commission meetings. Grant said he had actually listened to the tapes of those task force meetings to see what was and what was not said. Grant said further it seemed to him that it did not come out in those task force meetings that Mr. Hyde had an interest in the property. It was referred to by name only once as the Palmer Tract. Katherine Palmer is Mr. Hyde's wife. Never was it volunteered or disclosed that Mr. Hyde owned an interest in the property. He was not the primary proponent of the changes to this area. It was Carriage Lane, Peachtree Colony, and the surrounding areas that were being looked at as one plan to update the Land Use Plan. Grant stated Mr. Williams, Director of Developmental Services, put forth recommendations for the group to consider and that it wasn't that Mr. Hyde came in and said he thought this was what should be done; however, he did make comments and it was clear that Hyde supported the plan that was put forth and it would have benefited him. This was property that Hyde had sought to rezone previously in 1991 and 1992.
- The issue at that point was the lack of disclosure at the task force meetings, the fact that Hyde had commented favorably for the changes, and whether it was a violation of city's Code of Ethics. Grant said he had to determine whether that Code of Ethics applied to those meetings and found that it did not because it seemed that those meetings were intended to bring in people that had an interest in the property and to

get everyone's agendas and ideas out on the table. Mr. Hyde was one of the people that owned property and he put forth his ideas. For example, PCDC owned property and they had two representatives on the task force. There was also another developer that owned property who had a representative on the task force. Grant said he could not say that PCDC could have discussed property and the developer could have discussed property and yet Mr. Hyde, when his area came up, should have said he had to abstain completely and not be part of the discussion or vote. Grant said this did not mean it was good judgment, and he thought it was poor judgment not to have made it absolutely clear that Hyde owned the property that was being discussed as part of the process. However, Grant found that the Code of Ethics did not apply to those meetings of the task force. Grant said then that the recommendations from the task force were sent to the Planning Commission and the Commission had to vote, they actually considered Mr. Hyde's property twice. The first time it came up was on June 26 which was when Glenloch and the Aberdeen Village areas came up. The Planning Commission voted to recommend and adopt the changes that were suggested in the Land Use Update. The second time it came up was on September 11 when the entire update was presented as a whole to the Planning Commission once again to consider whether to adopt and recommend those changes to the City Council. The changes did include a change to property that Mr. Hyde had an interest in and he participated in the vote on both occasions at the Planning Commission meeting. Grant said he thought there was not any doubt that the Code of Ethics applied to the Planning Commission meetings and that he went through the Code item by item and examined the elements of the claim and that Section 2-9.9 of the City's Code of Ethics dealt with abstention and Grant found that it did appear that it applied and it appeared that Section 2-9.9 was violated by Mr. Hyde by voting as a member of the Planning Commission twice at the Planning Commission meetings.

- Also, in the third area there were some contentions by the citizens who submitted the letter that Mr. Hyde had attempted to influence other surrounding residents to vote his way on the rezoning application. Again, this was after the Land Use Update had been recommended and approved by the City Council. Mr. Hyde then applied to rezone his property based on the changes to the Land Use Plan. When the rezoning came up, he did abstain and it was denied by Council. However, the allegations were that he had tried to influence citizens by trying to buy some of their properties and had tried to buy them out of the area by giving them some benefits such as donating some property to them or giving them access to a homeowner's association that might be in the future in return for their support. Grant felt this was not covered by the Code of Ethics because he was a property owner and he had negotiated with surrounding land owners and it did not have anything to do with his role as a Planning Commissioner. Grant said Hyde did not offer his influence on the Planning Commission for support of his rezoning application; it was just a property owner trying to obtain support from other property owners for a rezoning. Grant said this was done all the time and the fact that he served on the Planning Commission did not mean it had anything to do with the Code of Ethics and felt this was not a violation.

- Grant said further to summarize at the Task Force level, he found that there may have been poor judgment and there probably was in not disclosing and making absolutely clear that Hyde owned an interest in the property. That fact should have been known to everyone. As far as voting on the Planning Commission on the Land Use Update, Grant said he found that it did appear to be a violation of Section 2-9.9 of the Code of Ethics and, finally, on dealing with other residents, Grant found it was not a violation.

Lenox said in view of Grant's findings and in accordance with Council's own rules and procedures, Council had two areas of the city's ordinances which needed to be considered. First, under the city's Ethics Code, Council was required to determine if there was probable cause under the Ethics Code to either censure, reprimand Mr. Hyde, or take whatever other action Council would deem appropriate. Lenox said this action, under Council's procedures, could not be taken in any time frame less than 15 days from tonight.

The second came under the Planning Commission Ordinance and Council would have to determine if Mr. Hyde's actions justified a public hearing to determine if Mr. Hyde should be removed from the Planning Commission for cause and because both these things are intertwined, Lenox suggested that Council hold both hearings at the same time on the same date and city staff would implement the required public notice. Lenox said Council regarded the whole action extremely seriously and it was actually quasi judicial in nature and said Council would try to make sure everything was in exact accordance with the city's pre-established procedures and also to be sure that Council took Mr. Hyde's rights into full account as well.

Lenox asked Council if everyone felt there was probable cause to warrant further action. Council agreed there was probable cause. Lenox also asked Council if they felt Mr. Hyde's actions justified a public hearing to determine if he should be removed from the Planning Commission for probable cause. Brooks said he thought it justified a hearing. Pace, Price, and McMenamin agreed it was justified.

Price said this had been a matter Council had brought before the public previously and having heard an abbreviated report this evening, felt a public hearing would be the most appropriate next step.

Lenox said his suggestion would be to schedule both items for the regular meeting on September 5 which would enable city staff to advertise and fulfill those requirements and if that was acceptable to everyone, Council would consider both questions together because he thought they were related.

Price said if that was in the form of a motion she would second it. Motion carried unanimously.

NEW AGENDA ITEMS

08-96-05 Discuss Georgia Utilities

Lenox said Council hoped to achieve, among other things, public comment, in addition to a request for Dan Lakly, state representative, and Rick Price, to consider the possibilities of introducing legislation in the next legislative session to give some party appropriate rate review and control over Georgia Utilities' rates in the event Council would not be able to successfully negotiate the purchase of the company. Lenox said, as an update on the general status of the negotiations, a meeting was held today that left both sides feeling somewhat more optimistic than last week and felt Council had moved a lot closer to a possible decision. Further, the time frame was still within the next ten days to two weeks to either arrive at an acceptable transaction for both parties or decide whether to proceed with condemnation.

Lenox said relative to the pass-through of the 4% franchise tax; in essence, there was little that could be done about it and that he resented the fact that the media had made the city out to be the bad guys who were passing through a tax that was something new - this tax had been in effect since 1986 - some ten years. This tax had always been absorbed by Georgia Utilities and suddenly deciding to pass it through amounted to nothing more than a four percent (4%) rate increase Lenox stated further that Council had not been consulted about this at any time, there were no discussions between us and them; and that Georgia Utilities unilaterally announced it. Lenox asked Representative Lakly to comment on how things would look from a legislative standpoint and what the possible alternatives would be.

Lakly addressed Council and stated that he was the representative from the 105th District and resided at 306 Raintree Bend for the past 18 years. Lakly advised Council he was the proponent of the original legislation which created the Water and Sewer Authority in 1986. Lakly said it was unanimously decided by Council that the city would have a Water and Sewer Authority which was created through local legislation in the General Assembly. Lakly said, on the subject of the agreement dated 1986, he was part of a two-person sub-committee and that he and Mayor Brown represented the city through numerous meetings and had reached an agreement with Georgia Utilities.

Lakly stated the negotiators, Doug Mitchell, Steve Black, Fred Brown, and himself agreed that a 4% franchise fee was appropriate in view of what was being paid by Georgia Power, the phone company, and various other utilities. The discussion centered heavily on the fact that it would not be passed through to the users and his understanding of the documentation he had on file would indicate that it was an agreement that was to be reviewed annually. Lakly said he could not address why it was not reviewed annually. Further, why Georgia Utilities and PCDC at this late date decided to pass the tax through he could not answer, but that they were aware of the agreement as well as himself, the City Manager and other people he talked to that were in on the negotiations not the least of which were the controllers and the president of Georgia Utilities at that time. Lakly stated, insofar as legislation was concerned, he had called the Mayor last year and made the comment that he was watching for a bill - it was not unusual, underhanded or trickery - many things that could be accomplished as a minority party had to be done through an amendment. Lakly said he had located a bill that it could tie on to and had asked the Mayor's assistance and at that time the Councilmembers were polled, a letter was faxed to him, and the amendment was tied on, argued successfully from the floor of the House and it passed 100% as a minority member of the General Assembly. Lakly said he immediately sought the author of the bill it was tied to, which was the current senator, and was unable to gain a commitment. Lakly said this was for background for the public, other interested parties, the press, and Council that may not be aware of it. Lakly stated further that the Mayor had written to our Senator and requested his support of the amendment with the acquiescence of other City Council members. Lakly said when he discussed it, he was told to find his own bill. He later found that two lobbyist were at the heart of the problem and did not want this particular bill tied to the amendment because they felt it would cloud the bill. The bill dealt with the bonding of utilities so there was a lot of money involved and for some reason the lobbyists had a hold on the Senator. That bill was not discussed in the Senate. The Speaker of the House, who was in an adversarial role with Dan Lakly, agreed to put him on the conference committee. The other two conferees agreed to have Lakly on the conference committee because the way the amendment was drawn, it only affected Peachtree City, Georgia and the 26,000 residents/tax payers and users of Georgia Utilities and the Speaker of the House recognized that the bill would not have an impact on other people. The Senate side would not agree. Lakly said he would attend the committee and ask for support from Peachtree City citizens groups and others to testify relative to the monopolistic operation of Georgia Utilities. Lakly said he personally thought it would pass because it would only affect Peachtree City and that our new Senator-elect would have a different attitude about a proposed bill. By having the bill introduced on the first day of the session, it would mean that it would not have to go through an amendment. The bill would go through the two times read, it would be assigned to a committee, a committee hearing would be promptly set, and the committee would pass it on to the Senate and the Senate would have it on their calendar. Lakly said he could envision that it would pass within seven days; no differently from many other local bills that the city had asked him to introduce. Lakly said it had come to his attention there was some undue pressure put on certain elected officials that served in the General Assembly by certain individuals who are principals in Georgia Utilities and that he had sent a letter to the Lt. Governor reminding him that Lakly felt he had done a great disservice to the citizens of Peachtree City. Lakly said when you were dealing with water, sewerage, and other public utilities, there had to be a certain amount of control exercised by a governmental agency.

Lakly said further that he knew there had been some violations found with the EPD and that he was in close contact with Mr. Harold Reheis and that he had grave concerns for the health, safety, and welfare of our residents because of overflows into Flat Creek. He said he also had reservations about the continued maintenance of the facility, the potential damage that it could do to the environment and as a citizen, tax payer, homeowner, and father of children that he would be very cautious as it related to the condition of the Georgia Utilities plant. Lakly said he had no problem introducing legislation in whichever manner Council desired, but that it would seem to him it would be best to place the Georgia Utilities fee structure under the purview of the Peachtree City Water and Sewer Authority because that was the reason it was created. Lakly said then the city could allow the Water and Sewer Authority to hold their public hearings, examine records, and determine what a fair rate would be.

McMenamin asked Lakly if he had researched the constitutionality of such a bill. Lakly replied he would check on it.

Eva Logan, a resident of Peachtree City, addressed Council and stated that as a customer of Georgia Utilities she felt she had the right to complain about this increase and had spoken with city officials and Mr. Wray Russell of PCDC. Logan said she had also spoken with Mukut Gupta in approximately 1991 or 1992 when the bills went from a flat $17.50 per month rate and questioned the astronomical fees which were being charged. Logan said she thought it came out to about .85 cents on the dollar she spent for water. Logan said she was disillusioned by the concept under which she and her husband bought here. Logan said she hated to see Peachtree City become known as the city that could not afford to flush and that the residents could not afford to water their gardens because of the astronomical sewerage fee. Logan asked Representative Lakly personally to pass the bill being discussed. Logan said further she felt there should be more competition and every drop of water she used did not go through the sewerage system. Logan said Mr. Wray Russell advised her she was in a low-density area and it would cost her more and she hated to think that future homeowners were going to come into Peachtree City and become disillusioned thinking they were buying into a concept and that they could afford it and find out later they could not afford it.

Mr. George Cadell, 104 Greensway, addressed Council and asked whether the city should continue their relationship with PCDC since practically everything they had asked for had been granted. Cadell said he thought it raised questions as to what the relationship should be between the current developers who may not have had the interest of the city in mind, but only how much money they could take out of the city.

Representative Lakly addressed Council again and said that as a member of the committee and the Council that agreed to the one-year 4% tax, he would recommend that rather than allow Georgia Utilities to increase their revenue base by 4%, he would recommend (because of the intent of the original agreement) to cease and desist from assessing the 4% and that, therefore, it would eliminate the rate increase to the users. Lakly said he never intended for it to be paid for by the users. Lakly said it was clear in the intent and the framing of the motion, that it was not to be passed on to the users. Lakly also said the water system did the collections for Georgia Utilities and they were having their bills collected for $1.00 per customer which came out to $90,000.00 a year. Lakly stated Georgia Utilities was servicing Peachtree City customers using the county water system to collect their bills for $1.00 per year and that no one would be able to have office space, staff, collections, etc. to collect your own bills and this should be looked at too.

Phyllis Aguayo of Stonington Drive addressed Council and asked Representative Lakly if the city were to cease charging the 4%, it was true the homeowners would no longer have to pay it, but in a round-about way, wouldn't the city still be receiving less because this would be less money that would come to the city. Aguayo said it seemed that Georgia Utilities and PCDC would come out ahead either way because they would still be getting their 4%, but the citizens would be losing it.

Lenox said that was correct and that it had been budgeted to do away with that tax, but strangely enough, one of the reasons the city was not asked about this before they chose pass it through was that if they had asked us, we would have said fine, we will terminate it immediately. However, now if we terminate it, we have less and they have the 4% tax.

Brooks asked City Attorney, Jim Webb, if we were able to force them to cease and desist, at what point in time could they come back and raise their rates. Webb replied that after reviewing the documentation about what was actually in the ordinance when it was passed, he felt it was certainly not clear that the promise to not pass it on to the citizens existed for more than one year and felt the city would not have any legal basis to say they could not pass it on and felt Mrs. Aguayo's analysis was exactly right. Webb said additionally that there was nothing he was aware of that would allow the city to stop them from raising rates to any extent they wanted to raise rates and that even if he could find something that would be of some assistance regarding the 4% tax, there was still nothing that could stop Georgia Utilities from raising rates anywhere from 10% to 100%. Webb said he was not aware of any controls that any of us had to any degree.

Mr. Marion Higgs of Chadwick Drive addressed Council and stated he felt the city had been had by Georgia Utilities and that the sooner something could be done to get the city to take Georgia Utilities over, the better off the city would be. Higgs asked if Georgia Utilities had made known to the negotiators what the total capacity of their facility was.

Lenox said yes, they had and would venture to say the city knew more about their facility than they did and that a lot of money had been spent on experts who had studied everything about the system so the city would know exactly what it was getting. Lenox said there was a pretty big spread in the valuation because their experts say one thing and our experts say another. Lenox told Higgs he thought the city knew what they had, but could not say Georgia Utilities had been entirely and easily forthcoming with all the information the city would like to have had but that unless they were wasting a lot of their time and ours, it would be pointless to hide anything significant because in the end we would have it all before the papers were signed. Higgs asked Council if they had any thoughts about what the time frame would be.

Lenox said the crux of the risk and what had led them to try everything they could to negotiate a reasonable transaction, was the risk of condemnation. Lenox said if the city condemned the system, the city could be literally forced to pay a price for the system that it could not afford. Lenox said further that it was a very risky process and once the city entered that process we would be unable to stop it. Lenox stated that if it went to condemnation, the city would initiate a petition to condemn the system and the Fayette County Superior Court would appoint a special master who would, within about four to six weeks, hear both sides of the case. The city would present what it felt to be a fair value the city should pay for the system and Georgia Utilities would present what they felt was the fair value they should receive. At the end of that time period the special master would make a ruling and name a dollar amount. Once the special master named an amount, the city would pay that amount to Georgia Utilities, take their assets, and begin to operate the company. Either one could appeal the special master's ruling and that appeal process would most likely cost the city another half million dollars in legal fees and would ultimately result in a jury trial in the Fayette County Superior Court. Both sides would re-present their case to the jury and the jury would make the decision in the end.

08-96-06 Consider Appointments - Commission on Children and Youth

Basinger advised Council that the selection committee, comprised of Councilmembers Caroline Price, Jim Pace, and himself interviewed eight applicants for the Commission on Children and Youth and recommended that Ms. Lynn Grant and Ms. Christine Edgar be reappointed to serve terms ending August 31, 1999, that Mr. Nicholas Harris, Ms. Delia West and Ms. Molly Allen be appointed to serve unexpired terms ending August 31, 1998, that Mr. Joe Wassell be appointed to serve a term ending August 31, 1999. In regard to the recommendation of the student member, the city had just learned she had recently resigned from the Commission and the Commission would be interviewing and selecting a new student member. Additionally, it was recommended that Ms. Lois Landy and Ms. Claire Kirschenbaum be appointed as alternates for any vacancies which may occur on the Commission prior to March 31, 1997.

Price commented the city was very fortunate once again to have a number of people with a variety of talents, enthusiasm, and dedication in their desire to serve on the Commission and made a motion for the appointments as listed. McMenamin seconded the motion. Motion carried unanimously.

08-96-07 Consider Bids - Hip Pocket Cartpath

Basinger said two bids had been received for the construction of the cartpath along the Hip Pocket Road neighborhood. Newnan Paving bid $179,000 and Brandenburg Construction Company of Sharpsburg bid $228,475. Basinger said staff recommended the bid be awarded to the low bidder, Newnan Paving in the amount of $179,000.

McMenamin commented this cartpath had long been awaited and made a motion to award the construction contract for the Hip Pocket Road cartpath to Newnan Paving in the amount of $179,000.00. Pace seconded the motion. Motion carried unanimously.

08-96-08 Consider Additional Surplus Items

Basinger said that in March Council had authorized a number of items to be surplused for a sale which was scheduled for September 14 and the city would like to add a few items to the list which was before Council including a list of bicycles. Basinger said further the Communication Department would shortly be moving to the County's Consolidated Communication Center and would like to surplus the consoles and related equipment; however, the city would be offering it to other agencies and companies that might have a need for such equipment as a sealed bid item at a later date when advertisements can be placed and interested agencies could be notified.

Price made a motion to surplus the additional items listed in the August 8 memo to Council and allow the Communication Department's consoles and other related equipment to be surplused at this time, but that they be offered for a sealed bid auction at a later date. Pace seconded the motion. Motion carried unanimously.

Lenox made a motion to take a brief recess and reconvene in Executive Session for an update on a law suit. Price seconded the motion. Motion carried unanimously.

EXECUTIVE SESSION

No action was taken in Executive Session.

Gloria Strobel

Gloria Strobel, Executive Secretary

Attest: Robert L. Lenon

Mayor