City of Peachtree City
Minutes of Meeting
August 7, 2003
7:00 p.m.

The City Council of Peachtree City met Thursday, August 7, 2003, 7:00 p.m., in the City Hall Council Chambers. Council Members attending were: Mayor Steve Brown, Annie McMenamin, Steve Rapson, Dan Tennant, and Murray Weed.

Announcements, Awards, Special Recognition
Mayor Brown recognized City residents who participated in the Peachtree Road Race and were noted by race officials for their times. Brown recognized the volunteers for the Battle of the Bands held July 12. Police Chief Murray presented Mayor and Council with the Department's State reaccredidation. Brown presented Police Capt. Terry Ernst with a 10-year service pin. Tom Bowman was recognized for his work as the City's representative to the Board of Health. Brown read a Proclamation of Commemoration in memory of Chuck Vicha, the resident killed during a high-speed police pursuit through the City on July 27, 2002. Vicha's mother, Alice, and several family members accepted the proclamation.

Approval of Minutes
Weed moved to approve the July 3, 2003, regular meeting minutes with changes. Rapson seconded. The motion carried unanimously.

Rapson moved to approve the July 17, 2003, regular meeting minutes with changes. Weed seconded. The motion carried unanimously.

Weed moved to approve the March 29, 2003, special called meeting minutes as amended. Tennant seconded. The motion carried unanimously.

Monthly Reports
Brown told those attending that City offices would be closed on Labor Day, Monday, September 1. The Great Georgia Airshow was slated Saturday-Sunday, September 6-7. The Shakerag Arts & Crafts Festival was scheduled Saturday-Sunday, September 20-21. The annual Last Fling would be held Saturday, August 9, at Shakerag Knoll.

Brown noted that permit fees and traffic citations were down. Weed asked about the increase in Building Department citations. Code Enforcement Officer Tami Babb explained that there was a lot of construction and a lot of rain, so notices had gone out to builders.

Brown continued that drainage complaints had doubled and the complaints would continue with the amount of rainfall there had been. He noted that the number of complaints answered by Public Works had also doubled.

Consent Agenda

1. **Consider Appointment to Fayette County Board of Health**
2. **Consider Sign Permit for Great Georgia Airshow**
3. **Consider Bridge Repair Projects**

4. **Consider Removal of Building Inspector Position**
5. **Consider Budget Adjustments**
6. **Consider DOT LARP Contract**

McMenamin said the proposed appointee for the Board of Health had contributed to her campaign. Brown said the appointee had also contributed to his campaign. Meeker said there would be no conflict of interest.

Tennant moved to approve Consent Agenda items 1-6 as submitted. Weed seconded. The motion carried unanimously.

Old Agenda Items

07-03-10 Public Hearing and Consideration of Variance Request – Highway 74 South & TDK Boulevard

Brown noted that he had received a campaign contribution from Mike Hyde, the owner of the property. McMenamin said her daughter was employed by Webb, Lindsey & Wade, the attorney for the owner, and that she would abstain from the vote. Tennant noted that Rick Lindsey had contributed to his campaign. City Attorney Ted Meeker said he did not see a conflict of interest for Brown or Tennant.

Attorney Rick Lindsey addressed Council on behalf of his client, Hyde Investments, LLLP. Lindsey said he was here for a variance to the buffer ordinance as allowed by Section 707 of the Land Development Ordinance. Lindsey continued that the request was not about a truck stop or about clearing any tree save areas. He said it was a request to temporarily clear a portion of the buffer along TDK Boulevard. Lindsey said his client was requesting the temporary use of the buffer to install a sewer line. He continued that the slope on TDK Boulevard was an optical illusion. The road had to go up and over railroad tracks, but the land was actually very flat.

Lindsey continued that with a gravity sewer system the only place a line could be placed was right up next to the buffer along TDK Boulevard. The unique issue was presented to staff and City Planner David Rast had asked Hyde to prepare a landscape plan. Lindsey said the intent was to re-plant the buffer. He said the owner wanted the corner to be attractive. It was the corner piece of a 23-acre development at a major intersection in the City. Lindsey said the area needed to be cleared so the land could be trenched to put in the sewer line. Because of the topography and depth of the sewer line, the trench had to be 20 feet deep. Lindsey said, even using a trench box to try and bring in the amount that had to be cut, there would be a minimum of 25 feet on both sides of the trench, which brought them well into the buffer. Lindsey said the required buffer on a thoroughfare was 50 feet, which could be reduced to 30 feet if the plantings were increased. Putting the trench next to a 30-foot buffer would lay back 25 feet of the 30-foot buffer, which really was the entire buffer. Lindsey reiterated the owner only wanted to clear the buffer to get the sewer line in and then plant the buffer back.

Lindsey said staff had done its job and asked if there were alternative locations for the sewer line. He pointed out that the owner had the area engineered twice and the conclusion remained the same. Lindsey said, in a classroom setting, it might be possible to bore underneath, but the engineer said that was not a viable option. There would a 240-foot pipe and, on both sides of the pipe, a minimum 25-foot by 25-foot pit would have to be dug, again totally clearing the buffer. The engineer estimated a six-fold increase in price to bore.

Lindsey asked Council to consider granting a variance for temporary use of the buffer. He said the request met the criteria required by the ordinance. There was no intentional act and Hyde was asking for their consideration. The special circumstance was the sewer line could not go somewhere else. He added that according to the State it was mandatory to go on sewer if a project was located within 500 feet of a sewer line, so they could not put in septic. Lindsey pointed out that the City's Water and Sewerage Authority (WASA) also required a gravity system if it could be used over a pump station. Staff had asked if the owner would privately maintain the pump station on the public sewer system. Lindsey said eventually the public entity would be responsible and WASA did not want the headache.

Lindsey said the State, WASA, and the Department of Transportation (DOT) had forced Hyde into a difficult situation. DOT controlled the right-of-way and mandated where the sewer line had to go. Lindsey continued that DOT also planned to widen Highway 74 and they would want another 15 feet of right-of-way for a turn lane off TDK Boulevard and that would come up further into the buffer. He said they could save the buffer today to lose it to DOT in the future.

Lindsey said the buffer ordinance pushed the law and that was a consideration Council should think about. Whether it complied with constitutional requirements might be decided at a later date. The applicant was not trying to attack the ordinance, but wanted to use the buffer temporarily. They preferred to work with the City. If Council were to approve the variance, Lindsey suggested the owner be required to bring staff a landscape plan that had to be approved by Rast. Lindsey said he had always been an advocate to get Council and the City to properly plan and work toward a solution and this was one of those situations. He added this was the opportunity to take a difficult situation and walk away with something nice.

Rast said he had a couple of points of clarification. He said they had been working on the subdivision for a number of months and that the Planning Commission and staff had made it clear they wanted to preserve the buffer next to Highway 74 and TDK Boulevard. They felt this was an important entrance into the City and one of three major entrances into the subdivision and needed to be preserved and protected. Rast continued that Lindsey had indicated they were not doing anything against the ordinance, but they were doing everything against the ordinance by taking out all of the mature vegetation on the site and then replanting. Rast said he had never had an applicant ask to clear the buffer and re-plant it in the six years he had been with the City. Rast said Lindsey indicated they would not clear property off-site, but there was a parcel between Hyde's property and the Highway 74 right-of-way that was owned by the City. Rast said they had several meetings and the intent was to open the City-owned site so the Hyde property could be seen.

Rast pointed out that the property had been owned by Avery-Dennison for years and each of the parcels was zoned G-I (General Industrial) with specific setbacks that applied to everyone. There was also a caveat that no parking or building could be within the 50-foot setback of the property. The tract was considered a multiple-frontage lot, which meant the buffer applied to TDK Boulevard, Highway 74, and Widget Drive. The ordinance required a 60-foot buffer and tree save on Highway 74, which could be reduced to 40 feet. The buffer and tree save on TDK Boulevard was 50 feet and could be reduced to 30 feet. Two engineering studies were done with the sewer line running parallel to the highway. He did not know if the sewer line could be moved farther into the site. Rast said, in their estimation, the owner had not proven there was not another place to put the sewer line. Rast said he understood boring was difficult, but removing and replanting all the vegetation in the buffer was a dangerous precedent. Rast pointed out the intersection was very important and he did not believe the owner had done all that could be done based on the zoning's requirements.

Rast said staff recommended the variance not be approved because the applicant had not proven there was no other means to put sewer on the property.

Robert Brown told Council the buffer ordinance had served the City well, particularly in the industrial area, and was a major contributing factor to the City's look. He encouraged Council to deny the variance.

Lindsey reiterated that they were not challenging the buffer ordinance, but supported it. The owner wanted to re-plant the buffer, not use it for forever. He said they had spoken to an engineer and there was no other place to put the sewer line. Lindsey did not believe this would set a precedent. He said he did not know of another situation like this one where the sewer line had to go next to the buffer. They had to clear the buffer because the pipe was so deep. The owner wanted a buffer; they just had to put in a sewer line. No impervious area would go into the buffer. Lindsey said they would comply with the ordinance. The verb used was "establish." They would "establish" the buffer after the sewer line was put in.

Weed said that when Lindsey used the term "clear the buffer," he assumed that meant to "clear cut" the buffer, then re-plant with a certain caliper of trees to make the buffer as dense as it was. Lindsey said that was right. He explained that the land had to be laid back in a "V" shape to put in the trench box, and a minimum of 25 feet had to be cleared on either side. Weed asked if the owner had spoken to a certified arborist to determine how long the area would be empty of trees and foliage. Lindsey said no, but the intent was to re-plant quickly and not let the buffer erode away. Lindsey continued that no matter what was done, there would be a portion of the buffer devoid of any vegetation for a time.

Weed noted that Council had received a constitutional notification letter from Lindsey prior to the meeting addressing the issue. Weed said the letter put Council on notice of certain perceived constitutional defects in the ordinance. One of the perceived defects was that the buffer ordinance itself violated several State and federal constitutional provisions.

Weed said the ordinance went into effect on October 16, 1997, and was amended on August 20, 1998, and he asked Lindsey if he, and/or his firm, was/were the City Attorney during the time period. Lindsey said that was correct. Weed asked Lindsey if he were the architect of at least a portion of the ordinance and was it not the City Attorney's duty to clear and make ordinances as strong as possible. Lindsey agreed. Weed said, for the record, that the interests of his client, Hyde Investments, LLLP, and the interests of Lindsey's former client, the City, could at some point appear to become adverse. Weed said he did not believe the City should waive any conflict of interest Lindsey, his law firm, predecessor law firm, or any permutation of his law firm, would have. Weed said he felt that the conflict could be a problem. Lindsey accepted that and pointed out that Council waived all conflicts in order for him to continue working on the O'Keefe case. Lindsey said he was not saying he would represent Hyde, or either side, in the event of a lawsuit. As the attorney, Lindsey said he had to send the letter to advise Council of the constitutional challenges and questions. Weed agreed, but it was incumbent upon Council to inform Lindsey that if their interests diverged at any point then he felt there would be a conflict. Rapson clarified that since Lindsey wrote the buffer ordinance he could not argue the case. Weed said Lindsey also could not sue the City since he had been the City Attorney. Lindsey said that was not the issue before Council.

Brown said when he saw Lindsey's name on the letter he was alarmed since Lindsey had written the ordinance. Lindsey said he could not take credit for writing the ordinance. Former Development Services Director Jim Williams wrote the ordinance.

Weed said there seemed to be clear questions about the feasibility of the project and whether the line could go some other place. Weed said he was not sure the standards were met according to the variance ordinance. He proposed that the two sides agree on a third party engineer who could look at the situation and see if the line could go somewhere else. Lindsey asked who would pay for it since Hyde had already paid for two engineering studies. Weed said the City would consider paying half the cost since the study would be of mutual benefit. Rapson said he was not opposed to sharing the cost and that might be a reasonable approach. Rapson said he would like WASA to be involved as well.

Tennant asked Larry Turner, WASA's general manager, to come forward. Turner told Council WASA's position was that they would not allow a pump station where gravity sewer was available. Brown asked what that meant. Turner said all of a property could be served by gravity and the piping goes downhill. Adding a pump station added a burden on the other users forever. Turner continued that the EPD would not approve a private pump station serving individual pieces of property, but might approve a pump station serving an apartment complex. WASA had approved the construction plans for the site based on gravity sewer. He said WASA was not in a position to dictate construction techniques, but in his professional opinion, boring would be very difficult and boring that distance was not an option. Turner said he had not seen the survey notes so he did not know if the line could be moved or not. Turner said he had no problem evaluating alternatives.

Rapson said it did not sound like all the alternate locations had been eliminated. Brown said that boring, which would leave the buffer intact, was not an option. Turner agreed.

Tennant asked City Attorney Ted Meeker if he had read the letter from Lindsey. Meeker said he had seen it, and had discussed the letter with Lindsey. Tennant asked if it was too early to render an opinion on the merit of the letter. Meeker said it was too early to render an opinion and it was not something this board would decide.

Tennant said that Jim Williams, by his own admission, bluffed a lot and got developers to go along with what he wanted. Tennant said he was not prepared to risk potential litigation on the buffer ordinance since it had been protected so far. Tennant continued that this was a unique situation and Lindsey made compelling arguments for the variance. He appreciated that the owner was willing to provide a landscape plan approved by Rast. Tennant said the client's spirit of compromise and the opinion of WASA and its general manager inclined Tennant to grant the variance.

Brown asked if the map before them showed the official plat. Rast said it was the conceptual site plan. Brown pointed out there was no access to the parcel from Highway 74 other than Widget Drive to TDK Boulevard. Brown said the landscaped plan had shown one curb cut on Highway 74 and two on TDK Boulevard. He asked the applicant if there were other curb cuts. Lindsey said he did not really know at this time and that was not the issue before Council.

City Manager Bernard McMullen said he agreed with Lindsey. Council should consider the variance in terms of where the sewer line needed to go. If they were going to examine the plan to see if the amount of buffer to be disturbed could be minimized, they must also consider the site might not be fully developed as originally planned if the sewer line could be moved out of the buffer. Part of the issue was what would happen if the sewer line had to go down through the center of the property.

Rapson said he did not think the question could be answered until the parties had gotten with the third party engineer, staff, and WASA. He appreciated the applicant's willingness to put in landscaping and do grading work. Rapson agreed it set a bad precedent to clear-cut the buffer for a sewer line. He favored tabling the variance request until the applicant could work with WASA and the engineer to see if moving the line was feasible.

Brown asked about TDK Boulevard. He noted TDK Boulevard was a collector road and what the distance was from the road to the point where impervious surfaces could be placed. Rast said there could not be any development within the first 50 feet from the right-of-way because of the zoning and the multiple frontages. The area could be landscaped and sewered in that area, but staff wanted the applicant to move the sewer at least 50 feet back from the right-of-way to save more trees.

Weed said he wanted the issue resolved. Brown said they needed someone to tell Council why the area could not be trenched without drastically affecting the buffer. Lindsey said it was because of the depth and that a person could see the problem if they walked the property.

Tennant asked Hyde how much he had spent on engineering so far. Hyde said he could not give an exact amount, but he had spent around $78,000 on the tract for engineering. Hyde continued that he had not wanted to bring the issue on the property into the public arena. It had taken eight months to get to this point. Hyde said they had proceeded slowly and not been acrimonious or antagonistic. He was throwing himself on Council's mercy. The cost had been $6,000-$7,000 a month to carry the property. Hyde added that he had a contract on a back parcel that he could not close on until he got sewer to the property. He said he wanted to cooperate with the City, but there was a limit.

Rapson asked City Engineer Troy Besseche to come forward and address the matter. Besseche said that staff's consensus was the application had not substantiated the claim. Documentation had been provided that limited the boring option. Besseche said staff would like to see more discussion regarding the location of the sewer line. Rapson suggested tabling the variance until there was more dialogue on the sewer location. Brown pointed out that another engineer would be needed to validate the finding anyway. Besseche said sewers were not his area of expertise, but he could read a topographical map. Besseche said they could probably work through things without hiring another engineer. If they could not reach an agreement, a third party engineer could be discussed at that time. Rapson asked how quickly this could be done and Besseche said probably in a week or so.

Lindsey said his client was agreeable to either solution. Lindsey continued that the request was not about a convenience center, but was about a sewer line. He wanted staff to be forthright and was now hearing they would have a dialogue. Lindsey said the dialogue could have been done in the last three weeks. Lindsey pointed out that he had to believe what an engineer told him. Lindsey suggested Council let him talk to Besseche and if they could not figure things out, then a third-party engineer would be hired. Weed said he wanted to hear an opinion from an engineer that did not belong to either party.

Lindsey suggested Council include the engineer and sharing the cost in their motion. If he and staff could not reach an agreement, then the third party engineer would be hired and the Mayor would be allowed to spend up to the authorized amount.

Tennant said he was willing to make the motion as Lindsey stated. Weed said he wanted to try to make the motion. Tennant withdrew his motion to allow Weed to make the motion.

Weed moved to table the matter until the nearest regular meeting of Council after the meeting with the applicant and relevant city staff had occurred. If after the meeting an agreement was not reached and a third party engineer's report had to be generated, then a third party engineer would be hired and agreed upon by the applicant and City staff and all costs generated shall be divided one-half between the two parties. Also, as part of the engineer's report, alternate locations of the sewer line, as well as alternate means of accomplishing the applicant's goals were addressed. Tennant seconded and amended to include authorizing the Mayor to spend up to the limit on the discretionary funding. Weed accepted the amendment.

Brown suggested laying out the TDK Boulevard widening on the plan as well. He said he would like to put it all together for a comprehensive picture.

Tennant clarified that the intent was to have a non-biased third party look at the plans and give a straight picture. Weed said the report would result in one more fact to consider and that Council still had to apply the three-point variance standard.

The motion carried 4-0-1 (McMenamin).

New Agenda Items

08-03-01 Alcohol Beverage License – NEW – La Hacienda

Weed said the paperwork appeared to be in order and moved to approve the alcohol beverage license for La Hacienda. Tennant amended the motion to include that Jose Jesus Dominguez be appointed as the Licensee and License Representative. McMenamin seconded. The motion carried unanimously.

08-03-02 Request for Exception to Golf Cart Ordinance (Motorized Scooter)

Jim Born addressed Council regarding his request to allow a motorized scooter to operate on the cart paths. Born told Council he owned a sit-down, electric-powered vehicle with a 24-volt battery and maximum speed of 13 miles per hour. The vehicle had signals, headlights, and brakes and carried only one person. He added mostly handicapped people used the vehicle. Born provided Council with some advertising information on the scooter. Born said the only thing he saw that kept him from using the vehicle on the path system was that the vehicle was referred to as a scooter. If it was prohibited, then all other three- and four-wheeled vehicles used by the handicapped should also be prohibited.

Council asked Police Chief Jim Murray for his thoughts on the matter. Murray cautioned against using the word "scooter." He said scooters were not allowed on the streets or cart paths and were used primarily by those under the age of 14. He wanted to make sure the door was not opened to scooters, because go-carts and other things would follow. He pointed out that none of the "vehicles" were street viable, but had to use the street to get to cart paths.

Rapson suggested it might just be a semantics problem. Murray said if the vehicle were classified as a scooter, then it would open up a lot of doors since it was not street viable, but that they still had to use the street to access the cart paths. Murray added the vehicle could be classified as a wheelchair/handicapped device. Murray continued that if the City's ordinance were not changed, then maybe the vehicle could be classified as a vehicle that elderly, unlicensed citizens could use on the cart paths.Brown asked Murray if the devices should be licensed based on the current law. Murray said the vehicles probably required a license, but would probably be allowed as a handicapped/wheelchair device on the paths for disabled people.

Meeker told Council the biggest problem was that the vehicle was called a scooter and either all scooters were allowed or they were not allowed at all.

Rapson pointed out that the vehicle was actually called a Rascal Scooter and was actually an electric wheelchair. The ordinance said an electric wheelchair was fine. McMenamin said they had to clarify what vehicles could be used.

Brown asked what happened to e-bikes. Murray said those no longer existed. Rapson said their use was approved and they were used about as much as they thought they would be used. Brown pointed out the company went out of business, but the e-bikes were approved as a use.

Tennant suggested amending the ordinance to make sure the vehicle could go no more than 13 miles per hour. Murray said the problem would be that the kids would be on their scooters going eight miles per hour. Tennant added that the amendment could include a driver's license. Murray said the problem was that mixed use on a cart path made the cart path very dangerous.

McMenamin said she thought possibly a handicapped sticker should be required, but she said it was frustrating to see healthy people park in handicapped parking spaces. The scooter was definitely used for handicapped, or disabled people. Some people might use the vehicle who were not handicapped, but could not walk longer distances or considered themselves "sort of" handicapped. McMenamin said she was not in favor of changing the ordinance. She said with all the confusion with the golf carts, that if the vehicle looked like a wheelchair or a motorized wheelchair, it would be something else. Murray said it was a self-propelled motor vehicle. They had to careful with the definition since they had had major problems with scooters.

Murray continued there were many transportation products on the market now that made it easier for people. Weed asked Murray if California, which had golf cart path cities had any definitions regarding such vehicles. Murray said the vehicle would be defined as a self-propelled motor vehicle. Murray added that was a broad definition and that golf carts also fell under that definition. He said the police did not stop people in their wheelchairs and ask for a license, but young people without licenses did not usually drive wheelchairs around. Murray said they had to be very careful with the definition.

Tennant suggested "electric and conventional wheelchairs with two or more wheels" as long as they were operated under the condition the person had a driver's license. Rapson said he looked at Section 78-91, which said "electric bicycles are defined as those single person bicycles powered by an electric motor which will not propel the bicycle at a speed in excess of 20 miles per hour on a flat surface carrying 150 pounds."Rapson continued that Council could make the definition of a scooter very narrow, like the e-bike definition. Tennant said they had to be careful and not be inclusive of all scooters kids use to run around. Murray said they would want to take some time to research the matter and come up with appropriate legislation.

Weed said he did not mind having a workshop on this matter. Tennant suggested having staff come up with a proposed ordinance change to accommodate what Council was looking for. Born suggested requiring those who used the vehicle to be licensed and to set a maximum speed. Weed pointed out that one bad apple spoiled the barrel. Now the courts were requiring driver's licenses for all cart users because of one person. When a law was written it had to apply to everybody. Born said he understood the problem with kids using scooters on the path. Brown asked Born if the State required the vehicles to be registered and tagged. Born said no, the vehicles could not be used on the street.

Rapson said staff should evaluate the matter to see if the ordinance should be amended. Weed said he needed a clearer definition of a scooter. McMullen said he had looked in the dictionary for a definition and what was described was exactly the vehicle they were looking at. He asked for clarification regarding what Council wanted staff to consider.

Rapson suggested Chief Murray and other staff members get together to discuss the matter. Tennant suggested including Born in the discussions. Meeker clarified that the position would be to recommend an amendment, recommend no amendment, or somewhere in between. Brown said the matter would be continued until August 21.

08-03-03 Public Hearing – Short Term Work Program of Solid Waste Management Plan

Besseche noted that Council approved the 10-year Solid Waste Management Plan in 1999. It was a County plan and the City had not been as involved as some other communities. In order to comply with the State's Solid Waste Management Act, the Short Term Work Program (STWP) must be updated at the midway point.

Besseche continued that a slight change had been recommended in the implementation plan. A location change for the recycling facility by 2008 was added to the waste reduction plan. Besseche explained that the current site was inadequate for the yard waste that had accumulated. Brown asked if a new site was included in the FY 2008 PIP (Public Improvement Program) and Besseche said it was not because there was not a decision regarding a site or whether the City would continue the service.

An element in the disposal plan was the feasibility of a franchise agreement to allow a single waste hauler to serve the entire City. Besseche said that would cut down on duplication of services. He added that such an agreement would also cut down on the impact on streets and gave staff more control over reporting requirements and getting information from haulers. Staff would pursue that in 2005 or 2006.

Besseche continued that, in negotiating the possible franchise, the City might consider a volume-based rate structure to help meet the State's 25% volume reduction requirement. He explained that staff did not believe they were getting accurate numbers from the haulers as far as recycling was concerned. He also believed the haulers were under-reporting in the industrial sector. Besseche said staff felt the City was getting closer to the 25%, but the rate was about 12% County-wide. Besseche reiterated this was a County-wide plan and that the plan would come back to Council for final adoption before the end of the year. The resolution Council would consider at this meeting was to allow staff to forward the plan to the Atlanta Regional Commission (ARC) and Department of Community Affairs (DCA) for review.

Brown asked Besseche if he had considered a recycling program in the industrial area. Besseche said the problem now was getting rid of the materials because there was a glut in some areas, particularly plastics and glass. Brown said some companies were very interested in recycling and the Japanese companies, in particular, did a very good job. Besseche said there had been a solid waste advisory committee at one time, but it had dissolved. Besseche said they could pursue it again.

Weed moved to approve the resolution authorizing the transmittal of the Short Term Work Program of the Solid Waste Management Plan to the Atlanta Regional Commission and the Department of Community Affairs for review. Tennant seconded. The motion carried unanimously.

08-03-04 Consider Assistant City Manager Position

McMullen noted that in the final stages of negotiation for his position, there had been a discussion regarding the establishment of an assistant city manager position. He had had time to evaluate the position during the past two months and felt the position would be a benefit to the City. McMullen said there were a lot of day-to-day operations. McMullen referred to the organizational chart included in Council's meeting packet and said the assistant city manager would supervise Administrative Services, Financial Services, Leisure Services, and Public Services. The Fire Department, Police Department, and the Developmental Services Division would report directly to McMullen.

Tennant suggested Council wait on this matter until the FY 2004 budget was approved. McMullen pointed out that the position was included in the budget and would not make a difference as far as budget approval.

Jack Finn addressed Council. He said he had been a resident for 21 years and the City had an astute city manager for a good part of that time. He said the position of assistant city manager was a farce. Council had a man who handled everything himself with the City's growth. Finn felt McMullen was capable, and he hoped the City Manager could handle the job on his own. If he could not, then he should not have been hired.

Rapson moved to approve the position of assistant city manager as specified. Weed seconded.

McMenamin agreed with Finn. She said it had nothing to do with the individual, but with the budget constraints. She continued the City was at a position of maintenance, not growth, and she did not see extra work for the City Manager. She appreciated

McMullen's earlier comments that he was willing to not have an assistant because of the budgetary constraints.

Tennant also expressed concern about the budget. He said given the budget workshop held prior to this meeting, he found it difficult to justify another position. He continued that he wanted to support McMullen, but he felt hypocritical to support the position in light of the fact they were trying to cut the budget to the bone.

Rapson said the position was critical. Public safety and development were McMullen's strong areas and he needed an assistant strong in the other areas. He said that Council had discussed this matter and it was critical to move forward. If McMullen wanted to wait another year or two, Rapson said he might consider waiting before adding the position.

McMenamin agreed there had been a lot of discussion, but she pointed out there was never a unanimous decision on the position.

Tennant said that they had agreed there might be a need for the position, but he was not in favor of creating the position at this time because of the budget.

Rapson said the proposed position was in the proposed FY 2004 budget. McMullen said that was correct. Rapson said they were balancing the budget with the numbers for the position included in it. Tennant said the budget was not balanced, and McMenamin added that more cuts had also been suggested for the FY 2004 budget. Tennant said it was his understanding the position was not set in concrete.

The motion carried 3-2 (McMenamin, Tennant).

08-03-05 Consider Budget Adjustment to Add New Position

Financial Services Director Paul Salvatore noted that the new assistant city manager position was included in the FY 2004 budget; however, an amendment was also needed for the remaining months in the FY 2003 budget. Salvatore continued that the amendment was also needed for the payout to the former city manager's severance package.

Rapson said the amendment was just housekeeping to move money around between different departments. He moved to approve the budget adjustment as presented to Council. Tennant seconded. The motion carried unanimously.

<u>Council/Staff Topics</u>

Discussion of Objective Selection Process for Commission/Authority Appointments by Council

Tennant said that, for the most part, the system worked well and did not need to change unless it could be improved. In the circumstance of contentious or controversial appointments, Tennant suggested assigning a number system to the criteria and appointing the person with the highest score. He said there had to be some way to take the subjectivity out.

Brown said he did not think the subjectivity could be taken out of the process. Even with a numbers system, the person voting was subjective when determining what numbers to give a person. Tennant pointed out that in the event of a tie vote, the numbers could help determine the appointee if a ranking system were used. Brown continued that, except for the Development Authority, there would not be a tie vote. Tennant said there could always be a tie because a Council Member could abstain from a vote for any number of reasons.

Weed said he was not against trying to create a more objective system or criteria, but the system should be universal. He said he was willing to serve on a committee to explore the possibility. Weed continued that the system was not broken and essentially only one appointment, on different occasions, had been the issue. He asked if that was enough reason to create another layer of bureaucracy.

Tennant said he would like to see an objective analysis in the event of a tie vote in order to secure the best possible candidate.

Rapson said he saw nothing wrong with the selection process. The only votes that counted for an appointment to an authority or commission were the Council votes. He was not in favor delegating elected powers to the City Manager or the chairman of the authority or commission when selecting candidates. The only authority Council had over authorities was the appointment of officials and funding. Each member had only one vote, even if they decided to rank applicants in the event of a tie.

Weed agreed and said the votes of the members of the selection committee who had not stood for election should not count as much as the Council votes.

Tennant said the process Council had used was flawed. He continued that, historically, Council had asked for input from the commissions and authorities and the City Manager.

McMenamin said, in the past, that the two Council Members had a vote and the City Manager had a vote. The commission or authority chairman was a member of the selection committee to discuss what the commission or authority needed, but did not have a vote in the process. The chairman had no part in the vote. She added that when the other members of the committee voted the commission/authority chairman had to leave the room. As time went on, the rules got softer and were not strictly enforced.

Rapson said it was important to know what the City Manager and the commissions and authorities thought. The two Council Members representing the City should listen to what people think. At the end of the day, the three members of the committee agreed on a recommendation before walking out of the room. Rapson pointed out there were three Council Members who could decide if a recommendation was right or wrong. The majority of elected officials made the final decision. Rapson clarified Tennant's position that if there was a 2-2 vote on a candidate, then maybe that was not the best person and Council needed to go to Plan B. McMenamin said she did not see a flaw in the process.

Tennant said there might not be a better way. He wanted to know if there was a grid system, a ranking system, or a way to determine who would win in the event of a tie. There had to be a way to make the appointments without heated discussion or bad feelings. Rapson said the problem was that more weight had to be given to one of the Council Members who were elected by the citizens. There was no way to do that without giving more weight to someone's vote.

Brown said he only knew of two disputed positions in eight years he had lived in the City, and both were with the Development Authority. Tennant asked how many times a handicapped vehicle on the cart path came before them. If there was a problem with the way things were done, they needed to fix it. Because it did not happen often was not a good reason to ignore a problem. Brown said if it happened often it would be indicative of a problem.

Weed moved to reconvene in executive session for a potential legal matter and a real estate matter. Tennant seconded. The motion carried unanimously.

Weed moved to reconvene in regular session. Tennant seconded. The motion carried unanimously

There being no further business to discuss, Weed moved to adjourn the meeting. Tennant seconded. The motion carried unanimously. The meeting adjourned at 10:25 p.m.

Jane Miller, City Clerk

Stephen D. Brown, Mayor

Pamela Dufresne, Recording Secretary