City of Peachtree City
Minutes of Meeting
July 17, 2003
7:00 p.m.

The City Council of Peachtree City met Thursday, July 17, 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 Richard Ferry, a graduate student at Georgia State University, for his service as an intern in the Planning Department. Corporal Terry Blackburn was recognized as Employee of the Month for June. Mayor Brown read a proclamation that recognized the Korean War anniversary and the veterans who served. Members of the Veterans of Foreign Wars Post 9949, who served during the Korean War, received the proclamation. Bill Lechner was recognized for 20 years of service as a volunteer to the Peachtree City Youth Soccer Association.

Approval of Minutes

Tennant moved to approve the June 19, 2003, Regular Meeting Minutes with the changes submitted by Weed. Weed seconded. The motion carried unanimously.

Consent Agenda

1. **Consider Appointment to Planning Commission**
2. **Consider Project Management Agreement for GA 54 West Bridge/Gateway Feature**
3. **Consider Architectural Design for Contract for Library Expansion**

Brown noted there were additional documents on the dais for Consent Agenda Item #3. Brown continued that the Planning Commission selection committee recommended reappointing Dennis Payton and appointing Martin Mullin as alternate. Brown said the committee also recommended Council authorize Mullin to temporarily fill the post held by Robert Ames until Ames could resume his duties.

Tennant moved to remove Consent Agenda Item #2 for further discussion. Rapson seconded. The motion carried unanimously.

Weed moved to remove Consent Agenda Item #3 for discussion. Tennant seconded. The motion carried unanimously.

Tennant moved to approve Consent Agenda Item #1 as submitted. Rapson seconded. The motion carried unanimously.

2. **Consider Project Management Agreement for GA 54 West Bridge/Gateway Feature**

Tennant said there had been some minor public criticism because this item had been placed on the Consent Agenda. He clarified that items placed on the Consent Agenda were generally routine matters. He said Council was not trying to push something through without public input. He asked Financial Services Director Paul Salvatore to clarify the budgetary impact of the agreement.

Salvatore said the project was the construction of a cart path bridge near the Wynnmeade subdivision on the parcel of land purchased last year that would cross over Highway 54. He said the bridge would be a gateway feature at the entrance of the City from Coweta County. Grant funds were available from the Atlanta Regional Commission (ARC). The Department of Transportation contract under consideration would commence the project.

Tennant said Council was not interested in pumping money into a project with no value. The grant required that the City make a 20% match to receive $600,000. Weed added that the City put in $120,000 and the ARC would put in the rest.

Tennant moved to approve Consent Agenda #2 as related to the project management agreement for the multiuse bridge over Georgia Highway 54. Rapson seconded. The motion carried unanimously.

3. Consider Architectural Design for Contract for Library Expansion

Weed pointed out that one of the additional items on the dais was the standard AIA contract for the library expansion. He asked City Attorney Ted Meeker if he had reviewed the document. Meeker said he had reviewed the agreement and modified it and the changes had been made.

Tennant moved to approve Consent Agenda #3 as submitted. Weed seconded. The motion carried unanimously.

Old Agenda Items

04-03-CA1 Consider Appointments to Development Authority

Brown noted there were additional documents on the dais regarding the agenda item. McMenamin noted that the state legislature had changed the term limits on the development authorities. Meeker verified that was the case. McMenamin continued that the terms were now limited to four years, but the existing six-year terms on the City's Development Authority had been grandfathered. Meeker said yes and that there was no reason to alter the existing terms. Tennant clarified that the terms on the City's other commissions and authorities were three to four years and that state law now required development authority terms to be four years. Meeker said changing the terms was a housekeeping item more than anything else.

Tennant asked Brown and Weed to explain how they made their selection. Brown said he made his decision as he would for any commission or authority. He said the decision was agonizing because all of the candidates were exceptional, and he did not like telling anyone they would not be appointed. Brown said he had looked for certain skills, human resources skills, specifically this time. Brown continued that they needed to put effort into human resource at the venues. Although that was not an economic development criterion, the skills were badly needed in the short term. One of the gentlemen came from the City's largest industry and had helped with the company's relocation in addition to having human resource skills. Brown was also looking for people with design skills and who thought outside of the box. He wanted people who had participated on task forces and committees prior to applying for a commission or authority opening. Brown pointed out that Todd Strickland had been active in several areas before, such as the Westside Annexation task force. Brown continued that the alternate, Bill Bexley, also had a tremendous amount of resources. He was getting ready to retire from the Georgia Department of Labor, where he worked on economic development data to locate companies and supply development authorities and the state's Department of Industry, Tourism, and Trade with records.

Weed agreed that all of the candidates had been wonderful. One person came from a large company and the other came from a small company. One had experience in human resources, while the other had experience in economic development. Weed said they felt that every piston in the engine was firing with the recommendations made to Council.

Tennant agreed it was tough to make a decision when there were so many great people. Tennant continued that in this case the recommendation was markedly different since the recommendation was to increase the size of the Authority by appointing two people. He said the good part was everyone was reaching out to compromise. Tennant felt it was a dangerous precedent to change the number of the body that had been in place for 30 years to accommodate an individual and questioned what would happen in the event of a tie vote with an even number of people on the board.

Brown said he had also been concerned about having an even number of members on the board, but an Authority member told him that if four members were against something then they probably should not do it anyway. Brown continued that the committee was seriously trying to make things work and that the law allowed seven to nine members to serve on a development authority. Brown said there were some items with the venues that required immediate attention. Some members were working on finances and others were working on human resources. He said additional people were needed to get economic development going again. He said it just seemed natural to expand the board at this point.

Weed said he was very excited about the way the interview process had been conducted and the recommendation had been unanimous. He commended the members of the Development Authority for their willingness to meet Council more than halfway.

McMenamin's concern was that economic development was the mission of all the board's members. The course of economic development had changed and shifted once the Fayette County Development Authority (FCDA) had become a strong force, and the state had said the FCDA would be the entity to go after, retrieve, and bring business back to the City. The FCDA worked in cooperation with the City's Development Authority and the Airport Authority and the chairmen of both boards served on the FCDA's board of directors. McMenamin said she had spoken to all of the Authority members and there was no justification to add another member. If a member had come forward and said another person was strongly needed, then it should be considered. McMenamin said the recommendation was not made in the spirit of compromise, and she was not interested in making things work by adding another position to the board. She continued that the Authority had worked well and was a cohesive group. McMenamin moved to appoint Michael Morgan to the Development Authority. Tennant seconded.

Weed pointed out that the mission of the Development Authority was traditional economic development, which was all that most development authorities did. Weed continued that the City had a unique Development Authority that had taken over some problem venues and made them a success, but that was not the traditional function of a Development Authority. Weed said he discussed the recommendation with Scott Bradshaw, vice-chairman of the DAPC and a member of the selection committee, and Bradshaw estimated about 80% of the authority's time was spent on the venues rather than economic development. Weed said what had been proposed would help accomplish the authority's two-pronged mission.

Brown said the Development Authority had some critical needs. He continued that what had been done at the Amphitheater was nothing short of fantastic and an incredible amount of headway had been made at the Tennis Center. The work was not over, and the expansion of the Authority's membership was needed. The selection committee had worked tirelessly to come up with a solution that would be a win-win situation for the venues in the spirit of harmony. Brown said the selection committee members each had their own grading system. He continued that they were trying to do something in the best interest of the City, to promote harmony between the two entities, to aid them in every way they could to solve problems with the venues and commence economic development.

Tennant recalled that when Rapson applied for the Council post left vacant due to a resignation that a grading system was used and the candidates were ranked. Rapson received the appointment because he had the highest score. He asked Weed and Brown if they agreed that was a fair way of doing it.

Brown said he did not agree that the same system should be used. He said all the candidates came from very different walks of life and it was very hard to have a subjective system in place where everything lined up perfectly to assess skills. Sometimes he looked for personality traits or someone who was an out-of-the-box thinker. Sometimes a person seemed like they would put more effort into the job.

Tennant asked if the basic system of awarding the position to the person with most points was a good idea. Brown said no. Weed said he disagreed with the Mayor and he would favor the system if it was universal with every board, but it had not been done that way before.

Tennant continued that City Manager Bernie McMullen and Bradshaw both had Morgan as their first choices, while Brown and Weed had Strickland as their first choice. Weed said McMullen was not an elected official. His voice was important, but until he stood for election he was not answerable to the people. Their votes were not as important as his and Brown's.

McMenamin pointed out that the ultimate decision on the appointment was up to Council. She felt it was important to note the voting structure so it would be clearly understood that the vote was not unanimous. She noted there were 10 applicants who were qualified enough to start another development authority with.

Bradshaw addressed Council. He noted they had been through the process before and it ended in a loggerjam. DAPC Chairman Tate Godfrey felt uncomfortable going through the process again and hoped Bradshaw would have a more objective view. Bradshaw sat in on the interviews and said it was a tremendous field of applicants. He continued that he felt it was in the best interest of Council not to be involved in a controversy again. When the opportunity for compromise came up, he supported the compromise. Bradshaw felt a third interview process would be a disaster. It was clear Brown and Weed would not give in and Bradshaw was not going to give in on his choice. Bradshaw said he admired and respected Strickland and if the City Manager had selected Strickland, then Bradshaw would not have opposed the appointment. Bradshaw felt the compromise would be more successful.

McMenamin said the recommendation to add two members was not a compromise to her. Tennant said they did not want to stonewall or be obstructionists, but the City did not have the money to recruit industrial development on its own. Tennant continued that was why he was glad to see two applicants from Cooper Lighting, neither of whom Tennant knew. He said they had to rely on the new candidate to help bring in development for the tax base and it was vital to get the right person. Tennant said Strickland was a great person, but Strickland supported annexation of the westside. Tennant said he was elected in 1999 with over 50% of the vote because he was against annexation and could not support Strickland for that reason alone. If the Council was deadlocked, they had no one to go to but the selection committee to try to break the deadlock.

Weed disagreed with Tennant's logic. He noted that Bill Bexley, the recommendation for alternate, had far more contacts than any of the other candidates and that was the reason he was recommended for the position. However, Weed said that was not all the committee had looked at, but also other skills that were outlined before. He understood Tennant did not agree with that analysis, but it was what it was. Weed called the question.

Brown noted that the discussion on annexation was not germane to the discussion. Tennant disagreed. Tennant continued that Council voted on annexation and Council appointed members to the Development Authority. He asked Brown if he would appoint someone to a commission or authority fundamentally opposed to his view. Brown said annexation was a Planning Commission issue and would never go before the Development Authority. Tennant strongly disagreed.

Todd Strickland addressed Council. He said annexation was an improbable question to ask, but he had answered honestly. He said the City wanted to be proactive in how areas were zoned in the City and Strickland said annexation should be considered. Strickland said he was not aligned with the Mayor or anyone else and that was an incorrect assumption to make. He said he spent a lot of time studying the Westside annexation and had looked at all the nuances. He felt there were a lot of possibilities and voted for it because he felt it would mean great things for the City. Quality of life was very important to him, but this had become an unfortunate political situation. He respectfully withdrew his application and noted there were other ways he could help the City. He said he appreciated Weed and Brown's support.

Weed said he also ran on an anti-annexation platform. He did not agree with Strickland on everything and did not agree with everyone on Council, but he would not vote against Strickland because they disagreed. Weed said he knew that Strickland was the best person for the job. Brown pointed out that former Mayor Bob Lenox had appointed Strickland to the Westside annexation task force. Brown said he fervently disagreed with Strickland's position, but still felt Strickland was the best guy for the job. Brown commended the selection committee because they tried their best to figure out what to do and still had absolute political segregation. Tennant said what Brown had tried to do was change the structure of the Authority to accommodate the person he wanted. Brown said Georgia State Law set the structure, and Tennant said it was the structure that had been set by the City that Brown wanted to change.

Weed continued that the selection committee was not a democracy. He said that he and the Mayor could have forced the issue and brought forward just one name. They did not do that out of the spirit of compromise. Strickland told Council if they could not come to a decision at this meeting that benefited the City that he loved, he would withdraw his name from consideration.

The vote failed 2 (McMenamin, Tennant)-2 (Brown, Weed)-1 (Rapson).

McMenamin moved in the spirit of compromise and because of the recommendation of the committee to appoint Bill Bexley to the Development Authority. Weed seconded. The motion carried 3-1 (Brown)-1 (Rapson).

General Discussion Following the Vote

Sean McMillen addressed Council and told them that someone needed to get Strickland into service for the City. McMenamin said she agreed with his comments, but there were 10 other applicants with the same commitment, same drive, and same desire to serve. She said they could not let their hearts rule. Over the years she had worked with the Development Authority and she trusted what they said.

Tennant said everyone agreed regarding Strickland's service to the community, but he felt that his background was more suited for the Planning Commission. Tennant said it was not a personal issue against Strickland, but he did not want to change the rules to accommodate the Mayor's choice. Tennant said he did not remember it ever being proposed to increase the size of any board, commission, or authority to accommodate a certain candidate.

Brown continued that the Authority's members had not been serving the terms required by law. Tennant said that had just been learned this week and that as soon as Council found out from the City Attorney that the terms did not comply with state law the terms were changed. Brown said all they had asked was to make another change in accordance with state law. McMenamin added it was also not the first time Council found out the City was in violation of state law and had made changes quickly.

Rapson pointed out that since Council had voted that he could talk, he would like to point out that they were talking about a man's character, then that was the type of person they needed on any commission or authority. There were other opportunities for him to serve. Rapson said in an effort for harmony that Council needed to move past this.

Weed said that Tennant's logic was fundamentally flawed when he said they wanted to appoint another member to the Authority in order to accommodate the Mayor's choice. Weed said the reverse could also be true, and that the compromise was made in order to put the Development Authority's choice on the board. Weed said he did not appreciate the insinuation and that both sides made a heartfelt and unanimous effort to reach a compromise. Tennant said he called all the members of the Development Authority and no one wanted to do it that way. Weed added, except the representative on the selection committee. Bradshaw said the selection committee supported and agreed on the compromise and that the person who was really hurt was Michael Morgan.

New Agenda Items

07-03-03 Consider City Slogan

Brown said there was an additional document on the dais regarding the agenda item. Weed recalled that the Mayor had come up with a City slogan and Council had opened it up to employees. He continued that Tennant suggested opening it up to the community at large. Weed said that was a tremendous idea and should be done.

Weed moved to come up with a process to solicit community input into a City slogan. Tennant seconded. The motion carried unanimously.

07-03-05 Public Hearing – Rezoning – Westpark Office Park (Reinstatement of LUC-3)

City Planner David Rast addressed Council and said staff had initiated the rezoning after finding out the LUC-3 zoning had been inadvertently deleted from the ordinance book. Rast explained that the property description had been wrong when the Phi Mu tract was rezoned to LUC-17 and, as a result, the LUC-3 zoning had been deleted once Council had signed the ordinance. Rast said they wanted to reinstate the LUC-3 zoning for Westpark with the conditions initially adopted in 1984. They also wanted to do the same for the LUC-17 zoning for the Phi Mu tract, which was adopted a few years ago. He said it was more of a housekeeping issue and all of the property owners had been notified. Rast added there had been no opposition.

No one spoke either in favor or in opposition to the rezoning.

Rapson clarified that this was just an error being corrected for codification. Rast said yes, that two separate requests were needed.

McMenamin moved to reinstate the LUC-3 zoning. Weed seconded. McMenamin amended the motion to authorize staff to codify the information. Weed seconded the amended motion. The motion carried unanimously.

07-03-06 Public Hearing – Rezoning – Phi Mu Sorority Tract (Reinstatement of LUC-17)

Rast told Council that staff also recommended reinstatement of the LUC-17 zoning and that the zoning be limited to the Phi Mu tract only. He explained that the zoning was currently in place, but would now be limited just to the Phi Mu tract. He continued that LUC-17 had basically the same zoning restrictions as LUC-3, but six guest rooms had been added to the LUC-17 zoning. Rast added his department had just received the final site plan for the tract.

McMenamin recalled that Phi Mu decided to come to the City after a conversation with her and former Mayor Bob Lenox in the City Hall parking lot. She said Council was delighted to have them in the City.

No one spoke either in favor or in opposition of the request.

Tennant moved to reinstate the LUC-17 zoning to the Phi Mu tract and authorize staff to codify the information into the zoning ordinance. Weed seconded. The motion carried unanimously.

07-03-07 Public Hearing – Rezoning – Revision to LUR-7 Zoning in Cardiff Park

Attorney Robert Stein represented the applicant. Mark Willie, president of Olde Towne Builders, also attended. Stein said the request was to reduce the rear yard setback from 20 feet to 10 feet. Stein noted that last year Olde Towne Builders appeared before Council and had originally requested several variances in order to reduce the rear yard setback. Council requested Olde Towne look at a rezoning rather than so many variances in the subdivision. Olde Towne was bounded on three sides by greenbelts. When building started, Olde Towne mistakenly put decks on the homes and the mistakes continued as certificates of occupancy were issued, surveyed, and the properties were sold. Stein said the individual owners joined the applicant in requesting the revision to the zoning.

Tim Lydell, a Cardiff Park homeowner, addressed Council. Lydell spoke on behalf of all the residents. He said the homeowners had met several times to discuss the matter and supported the recommendation wholeheartedly. He said the revision would solve a number of issues and make the homes more salable. Lydell asked Council to support the issue. Lydell pointed out the builders still had control of the homeowners association and the homeowners had met on their own.

Rast said this was a good recommendation. He explained that limited use residential zoning allowed the City to set specific guidelines and setbacks within the zoning districts. He said the original developer based the concept on something he had seen in Europe. Rast said Cardiff Park was a great subdivision that was also a nice entrance into Planterra Ridge. Olde Towne later bought all the lots and also came up with a unique plan with front courtyards. With the park located in the center of the subdivision, several of the lots had depth problems. When the decks were built, they encroached into the setback. When it was discovered several variances would be needed, Council directed staff and the builder to come up with another plan. Rast said all the conditions of the LUR-7 zoning remained the same except for the rear building setback. Only decks would be allowed in the setback. Any homeowner who wanted to enclose the deck would have to request a variance from Council. Rast said staff recommended the revision to the zoning ordinance be granted. Three sides of the subdivision backed up to greenbelt and open space and the fourth side backed up to commercial property, which was separated by a masonry fence.

Brown asked where the masonry fence was located and Rast said he thought it was right on the property line. He asked Rast if the decks would be a problem with the neighboring commercial area. Rast answered the setback area between commercial and residential was always increased. He added that they would work with commercial developer to ensure there would be a significant buffer.

Rapson said it appeared the rezoning would change the buffer requirement for the entire subdivision. He said the rezoning should cover just the 12 affected lots and that the applicant should agree to notify the homeowners in writing of the conditions of the rezoning revision. Rast said that could be done, however, he did not have plans for the homes on the larger lots. Rapson continued that he saw no immediate need to lessen the buffers for the homes not affected or tied to the geographic area of the park. Rapson suggested modifying the revision to include lots 6-12 and 17-23. Rast said it would actually be lots 6-23 because there were issues on the other lots.

Weed noted that he attended law school with Robert Stein. Weed said he did not believe that posed a conflict, but he did know him. Meeker said he did not see a conflict of interest.

Phyllis Aquayo addressed Council and said she was concerned that the builder had a plan that had been approved and was now coming back for a change. She continued that had happened before and asked how it could be prevented from becoming a precedent.

Brown pointed out that he had recommended the rezoning. He said that the problem was that the decks had not been included on the site plans. Once the houses and decks had been built, there had been an encroachment problem. Brown said the types of homes in the subdivision were different from other subdivisions and changing the design of the houses could have had a negative impact on the subdivision. From the City's perspective, the City had to be more diligent and vigilant in finding the problems earlier rather than later.

McMenamin recalled that there had also been a blanket variance for McIntosh Corners when it was discovered the chimneys were in the setbacks. The situation had happened before. Aquayo did not return to the microphone and her comments were inaudible.

Brown added that Council had also discussed additional landscaping, but that did not come out in the proposal before Council. Rast explained that about a dozen of the homes shared an easement with a power company. Because of the transmission wires, they had to be careful of what was planted.

Weed noted that the decks had not been on the plans, but certificates of occupancy were issued. He asked if it was the City that issued those certificates. Rast said yes. Weed asked what could have been done to prevent the situation. Rast said that fortunately such incidents were few and far between. Sometimes things were missed, but changes had already taken place to prevent similar occurrences. Rast added that in cluster subdivisions the builders often built to the setback.

Rapson moved that Council accept staff's recommendation with the following two changes – that condition number four be added that the applicant must provide in writing to each existing and future homeowner the list of the conditions, which included condition number five that lot numbers 6 - 23 on the property, Exhibit B, were the actual lots that fell under this particular rezoning request. Tennant seconded.

The applicant was asked if he accepted conditions and he agreed. The motion carried unanimously.

07-03-08 Public Hearing and Consideration of Variance Request – 202 Doe Run

Rast told Council that staff had tried to handle this request through the administrative variance process. The home was in an older subdivision and Stanley Phillips, the applicant, was the second or third homeowner. Mr. Phillips wanted to remodel his kitchen and add two exterior doors and found out that his home encroached 12.9 feet into the required rear setback. Rast noted that Phillips was not present at the meeting and asked Council if they would rather continue the request until the next meeting. Meeker pointed out that continuing the item was at Council's discretion.

Weed asked who generated the application and Rast answered that it was Phillips. Weed said he was uncomfortable going forward without the applicant available to ask questions. Brown suggested Council could hear Planning Intern Richard Ferry's presentation. Weed then recommended that Council hear the presentation, which would be included in the minutes, then table the vote until the August 7 meeting. Tennant pointed out the variance had been on the agenda and anyone who wanted to attend and speak for or against it had the opportunity to do so. Council decided to hear Ferry's report then make a decision on whether to vote or not.

Ferry addressed Council and said that Mr. Phillips had asked for a permit to remodel his kitchen, and the permit was denied by the Building Department. Ferry explained that the Building Department was required to deny permits in cases of an existing encroachment. The subdivision was zoned R-15, which required a 30-foot setback. The encroachment into the setback was 12.8 feet. An administrative variance could not be granted since the encroachment exceeded the 25% requirement. Ferry pointed out that Phillips was not the original homeowner and had agreed that he would not extend any further into the setback. Staff recommended the variance be granted with the conditions that the existing building footprint remained the same and that there be no further encroachments into the required setbacks.

Rapson pointed out that the variance was just housekeeping. Weed noted that the ordinance did not mandate that the applicant attend the variance hearing.

No one spoke in favor or in opposition to the variance request.

Tennant moved that the variance request be approved according to staff recommendations in the position paper. Rapson seconded. The motion carried unanimously.

Brown asked how the next homeowner would know about the conditions. Rast said they would request the variance be recorded at the courthouse and go with the sale of the property.

Weed noted that many zoning ordinances required an applicant, or a representative, attend a public hearing. He said Council should think about that in the future. McMenamin agreed. Rapson asked if Phillips had seen the recommendation and Rast said yes.

07-03-09 Appeal of Planning Commission Decision Regarding Georgia Park Carwash

Brown pointed out there was an additional document on the dais regarding this agenda item. Tennant noted that he lived in close proximity to the proposed carwash and felt he could not render a fair and impartial decision.

McMenamin noted that her daughter was an attorney for the law firm representing the developer. Meeker said that he and McMenamin had discussed the matter and he did not see it as *per se* legal conflict, but there was the appearance question. She asked Council if they had any problem with her discussing and voting on the issue. Rapson pointed out that it was not Rick Lindsey before Council, but the law firm, and her daughter was an employee of the law firm. Rapson said the ethics ordinance said a Council Member could not vote if there was a family relationship and agreed the perception was there. McMenamin said she would abstain.

Weed said he lived in the same subdivision as Tennant and actually lived closer to the property than Tennant. Weed said he did not agree there was a conflict worthy of abstention, but if Tennant felt he must abstain, then Weed said he should abstain as well.

Meeker said state law covered what happened if there were not the requisite number of members to vote on an issue. A petition could be filed for a special master hearing, which would lift the conflict and the members could vote. He said he had only used the procedure twice before and they had notified the Georgia Municipal Association before it was filed. Meeker continued that he and Lindsey would select someone to serve as a special master. The special master held a public hearing and issued a non-binding recommendation to Council. The matter would come back to Council with the conflict lifted, and they could then hold another public hearing and decide on the issue.

Meeker said according to the Charter, Council had to have three votes. Meeker said there must be three votes and only two people could vote.

Rapson asked if Weed and Tennant could reconsider their abstentions since they were more personal. Weed said he was willing vote on the issue, but if Tennant felt he had to abstain because of where he lived and he lived in closer proximity, then he must also abstain. Tennant said that the proposed development could affect his property values and he had personal feelings about the situation. Meeker said he did not question a Council Member if they said they had a conflict of interest.

Weed noted there was no standard as to what was a competent abstention and that conflict was in the eye of the beholder. Meeker agreed. Weed said there was nothing that could be done, but to follow the proper procedure according to Title 36.

McMenamin said that since Lindsey was no longer the City Attorney she felt she no longer had a conflict of interest; however, the City Attorney pointed out the perception was still there.

A resident questioned the legal procedure since Council and the City Attorney were referring to the issue as a rezoning. He pointed out that this was not a rezoning. Meeker apologized, but said the procedure fell under conflicts of interest in rezonings. Meeker said he would have to look at Title 36 and see if the procedure applied to appeals.

Tennant pointed out that the City had an ordinance in place that required three affirmative votes to approve anything. Rapson said it was actually in the Charter. Tennant said he felt he had a conflict of interest, but he did not expect Weed to feel the same way. Weed said that if Tennant had a conflict, then he would have to say he did also. Weed said they had not discussed the matter previously, but Tennant had a right to his position and so did he.

Meeker said he did not want a battle over who had the greater conflict. In the end, if a Council Member felt there was a conflict, then there was a conflict. This Council could not address it, but there was a way for the appeal to be addressed.

Rapson pointed out that according to the charter the matter automatically fell into the denial column. Rapson continued that the applicant could decide if they wanted to go to Court or try to propose something else. He suggested asking the applicant if he would do exactly as he said he was willing to do and work with City staff and homeowners' representatives to address the issues.

Weed said anyone who thought or felt they had a conflict had the right to ask the attorney and he exercised his right. He said Rapson had implied they could not discuss the issue because they abstained, but the Council Members could discuss the matter.

Lindsey pointed out there was still a problem since Council could not vote to table the appeal. He said his client could accept the denial and that started the clock ticking on whether or not to take the matter to court. In the meantime, he said the builder would talk to folks and bring forward a new conceptual site plan.

Rapson said if a Council Member abstained, then they should not ask for a legal opinion on the matter before Council. The only members who could ask for one were himself and Brown. Weed said a Council Member could ask the attorney at anytime whether there was a conflict or if they should abstain from a vote. Weed said asking about the merits of the issue was improper.

Those attending the meeting said they wanted a vote and wanted to talk. Brown said he did not have a problem with letting people make comments. Lindsey said taking comments might not be improper, but it was inappropriate to allow people to comment on something that was not before Council. He continued that the residents did not know what had been done since the Planning Commission meeting. Lindsey said there might be a happy middle ground. He explained there was nothing that barred the applicant from going back to the Planning Commission with a revised plan. He pointed out he had not been able to present what his side was willing to do. Allowing comment was inappropriate and stirred up a hornet's nest.

Brown asked Meeker if he could allow the residents to give their views. Meeker said it was at Council's discretion, but Council could not take any action. From a procedural standpoint, their views were recorded before the Planning Commission.

Tennant said if the appeal had gone through and been upheld, then the same thing would have happened. He told the residents they were really walking out as winners.

Kelly Summers asked what recourse the residents had to protect themselves. Meeker said there were a number of ways – limiting the uses allowed in a zoning district, establishing land development regulations, and regulating businesses. Meeker said the zoning ordinances were the most important way since the ordinances stated what uses were allowed in zoning districts.

McMenamin said residents should also be aware of the surroundings when they bought property. She said this was a problem the City had over and over again. She continued that this was a planned community and the plan was marked on the map. Summers asked if there was any flexibility so they could be heard. McMenamin said Council could not be too flexible. Council could not tell property owners they wanted to rezone their parcel for public use.

Brown said the plan could change at a moment's notice. He told Summers the best way to protect the homeowners' interests was to elect people who wanted what they did.

Rapson said he wanted to be proactive and direct staff to get with the Planning Commission and look at the area. He said to cease and desist in accepting applications in the area until it could be looked at.

Brown said Council had leeway and did not have to allow the most profitable use. He agreed the City needed to get proactive in the area and work on an overlay zone. He reiterated the Council did not have to guarantee the most profitable use.

Rapson pointed out that the Planning Commission unanimously denied the conceptual site plan because it did not meet the merits. The mitigations were incomplete. The developer disagreed and appealed to Council. Rapson said Council must preserve the quality of life of the residents and did so with every decision made. There had been 27 accidents near the location over the last few years, with one fatality. Rapson continued that the carwash would attract traffic, would never be closed, and would be unattended. He said the parcel must look good, have good landscaping and buffering, and adequate noise abatement. He suggested moving the carwash further down Newgate Road as an alternative. Rapson again suggested the developer talk with staff and representatives from the residential areas. He requested staff not take any applications until the City worked on a master plan for the area.

Rast said he lived in a subdivision in the area and drove by the site four times a day. He added that staff had recently received site plans for phases 2 and 3 of Kedron Village and that Pathway Communities had contracts for other properties. Rast continued that the Planning Commission had not adhered to staff's recommendations and that the applicant had spent a great deal of time on the plan. Rast added that none of the residents would have known what was going on the site if staff had not notified them. Rapson said that if plans were in the process, then they were obviously grandfathered. He said he was only talking about new applications that came in after this meeting.

Rast pointed out that Pathway had established a series of outparcels along Georgian Park and there was also the Georgian Park commercial subdivision on Newgate Road, which was a separate subdivision located behind the carwash property and separated by a 100-150-foot greenbelt.

Rapson directed staff to do what was necessary to stem the flow of development in the area. Weed said he would support running the ads for a moratorium, and he said to run the ads. The Council Members were in agreement.

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

Brown noted that the applicant had asked to continue this variance request until the August 7 meeting. Rapson moved to continue the variance request for Highway 74 and TDK Boulevard as requested by the applicant. Weed seconded. The motion carried unanimously.

<u>Council/Staff Topics</u>

McMullen told Council a copy of the 2004 draft budget had been placed on the dais for each of them. He thanked Salvatore and the directors and chiefs for their efforts and noted that a section had been added that was a department overview that provided information on details and responsibilities of each department. Brown commended Salvatore for coming in on his vacation to work on the budget.

Rapson moved to reconvene in executive session for three legal matters and a personnel matter. Weed seconded. The motion carried unanimously.

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

Weed moved to authorize the City Attorney to acknowledge service on a lawsuit regarding the Georgian Park carwash appeal. Rapson seconded. The motion carried unanimously.

There being no further business to discuss, Rapson moved to adjourn the meeting. Tennant seconded. The motion carried unanimously. The meeting adjourned at 10:46 p.m.

Jane Miller, City Clerk

Stephen D. Brown, Mayor

Pamela Dufresne, Recording Secretary