City Council of Peachtree City
Meeting Minutes
May 17, 2012
7:00 p.m.

The Mayor and City Council of the City of Peachtree City met in regular session on Thursday, May 17, 2012. Mayor Haddix called the meeting to order at 7:00 p.m. Other Council Members in attendance: George Dienhart, Vanessa Fleisch, Eric Imker, and Kim Learnard.

Announcements, Awards, Special Recognition
Haddix and Police Captain Stan Pye recognized the most recent graduates of the Community Emergency Response Team (CERT) program.

Public Comment
Tom Langley, Steve Thaxton, and Peggy Perkins each addressed Council concerning the City's payment of legal fees to the Georgia Interlocal Risk Management Agency (GIRMA) regarding a lawsuit filed against Haddix.

Langley said if the lawsuit had been filed against the City, then he would have no problem with the City paying the bills. If Haddix had been sued personally, he had a problem with his tax dollars paying the legal bill.

Thaxton said he understood Haddix had been sued personally for a slanderous comment, noting that the bill could have been avoided if Haddix had apologized. Neither the City nor its insurance company should pay the legal bills.

Perkins agreed with Langley and Thaxton, saying that it had been a personal lawsuit and it was Haddix's personal responsibility to pay the bill, not the City's.

Minutes
May 3, 2012, Regular Meeting Minutes
Fleisch moved to approve the May 3, 2012, regular meeting minutes as written. Learnard seconded. Motion carried unanimously.

Monthly Reports
Haddix noted there were additional documents on the dais – the April reports for the Fire Department and Library.

Learnard asked City Attorney Ted Meeker to clarify an item in the April report on legal fees listed as "Lawsuit-Mayor, $9,969.40." The fee was paid to GIRMA since the City's deductible for legal claims was $25,000. Learnard asked Meeker if the City had been a party to the lawsuit filed against Haddix by former Mayor Harold Logsdon. Meeker said the City was not. Learnard asked who would have defended the City if it had been named in the lawsuit. Meeker said either himself or counsel assigned by GIRMA. Learnard asked if the Mayor was sued. Meeker said he understood Don Haddix was sued per the pleading he had seen. Learnard asked Meeker if he had been the attorney who represented Haddix. Meeker said he was not. Learnard asked who Haddix's attorney was. Meeker said he believed it was John Mrosek. Learnard asked Meeker how the process worked with GIRMA, noting that the City paid premiums and the deductible was $25,000. Meeker explained GIRMA was a risk management agency founded by the Georgia Municipal Association (GMA) in the late 1980s. It was similar to insurance in the City paid a premium every year to GIRMA, and GIRMA provided liability coverage for various items as set forth in the declaration page just as home or car insurance policies. He confirmed the deductible was $25,000 for any claims that were brought against the City, including damages that were paid out and any legal expenses incurred by counsel assigned by GIRMA to represent the City.

Dienhart clarified the $10,000 would be paid by the City, not by GIRMA. Meeker said GIRMA had paid the money, then invoiced the City since it was under the deductible amount. Fleisch said she had copies of the invoice and checks, adding that procedurally that had been done. Meeker said there was a contractual obligation with GIRMA just as any other insurance carrier regarding the deductible. When a claim was paid, the carrier submitted the bill, and the City was obligated to pay the amount.

Fleisch referred to a $3,000 payment included in the total charge, saying she assumed that was the settlement. She asked if the settlement would now become public record as the taxpayers were paying the bill. Meeker said he did not know what the $3,000 was for, but he had seen the amount in the documents. In Meeker's opinion, the confidential settlement agreement should be considered an open record since it had been presented as a public official claim. He knew the City could not enter into a confidential agreement to settle a lawsuit. He knew of no exception under the Open Records Act that would exclude the settlement agreement from being made public.

Dienhart told Haddix that the City should not be responsible for the $10,000, and the honorable and good thing for Haddix to do would be to voluntarily repay the City. Haddix said the indemnification clause was not solely against the City, but also against the elected officials individually with certain exceptions. GIRMA determined that the legal exceptions had not been met, so he was covered. Dienhart asked Haddix how many times he had to ask GIRMA to cover his legal bills. Haddix asked Meeker. Meeker said that, when the claim was first presented and the lawsuit filed, there had been three separate submissions. Meeker had forwarded it to GIRMA as he would have done with any other claim. Dienhart asked how many times GIRMA had denied it. Meeker said first three times, then the claim was submitted a fourth time in February 2012, and that had been paid.

Learnard asked Meeker if he had submitted the fourth claim. Meeker said Haddix asked him to write a letter to go with the fourth submission of the claim, and Meeker had done so.

Dienhart said Council was not looking to blame Meeker, noting that Haddix had said at one time he had not made the statement in his capacity as mayor. He asked Haddix if he planned to repay the money. Haddix said he was not going to get into the legalities; they had been discussed and resolved. The case was closed. He was not going to repay the $10,000. Haddix cautioned Council that, under the premise presented, someone could sue them outside of their capacity as Council Members, whether they believed the action had been done in their capacity as members of City Council or not, and whether they felt obligated to pay the legal fees on their own. Dienhart said he believed in personal responsibility, and if he had defamed someone in any capacity, it would be his responsibility. It was not the responsibility of the mayor to call out former public officials for any perceived shortcomings. He did not see how this incident could have ended any other way than a lawsuit. Haddix said that was Dienhart's opinion, and he had nothing else to say.

Imker asked Meeker to verify if a majority of council, i.e. the governing body of Peachtree City, was required to authorize expenditures of City funds. Meeker confirmed this. Imker asked if Haddix handled and negotiated a settlement for the case in question. Meeker said he understood that to be the case. Imker asked, when a settlement in a lawsuit was reached, if the defendant was accepting responsibility for the settlement terms. Meeker said yes.

Imker then asked Meeker if he recalled Imker's letter of May 3, 2011, with the subject, "Logsdon Lawsuit Against Haddix?" and asked Meeker to read the text of that letter. Meeker clarified the communication had been via e-mail and then read Imker's statements in the referenced document:

> *I just heard about subject status. Unbelievable! I also heard that you and Logsdon's lawyer are negotiating a deal regarding some kind of public apology. Fine, I'm out of it. But I'd like to ask the following: does any of your paid time come from the citizens of Peachtree City? This seems to be a private civil matter between Logsdon and Haddix and has nothing to do with the city. There may have been city emails used but this is a screw-up by a private person defaming another not related to city business. I don't want to see our citizens paying one penny to defend or mitigate this issue. Your thoughts please. Eric Imker, Peachtree City, City Council Post 1.*

Imker asked Meeker to read his email response from later the same day. Meeker read the following:

> *I am not Logsdon's lawyer. When the matter was first presented in writing, I did bill some time to the City to analyze if there was any potential exposure from the city's perspective. In short, while a lawsuit could always be filed, I do not think that there is any city exposure for this matter. From that point forward, I have served as a point of contact only. Understand that I was a witness to all of the meetings that Mayor Logsdon conducted. If this proceeds to a lawsuit, I will most assuredly be a witness. To that end, I have been careful to avoid giving any legal advice to Don. I have told him, both verbally and in writing, that as a potential witness I could not represent him. Having said all of that, no time has been, or will be billed, to the city other than the initial research that was done to determine potential city liability. Ted*

Imker asked if, on April 25, 2011, Meeker billed the City $165 for research regarding the defamation claim by virtue of a telephone conversation with a Mr. Rick Lindsey (Logsdon's attorney). Meeker said he believed that to be correct. Imker then asked Meeker to identify who Mr. Lindsey was. Meeker said Lindsey was the former City Attorney and a local lawyer who represented Logsdon in the lawsuit. Meeker added that he believed the result of the conversation in question was what Meeker had referenced in the email regarding potential City exposure in the suit.

Imker asked if, on April 27, 2011, Meeker billed the City $176 for research regarding his review of a defamation retraction letter. Meeker said he believed that to be correct. Imker asked what the content of the letter had been, if it had been publicized, and the results of Meeker's review. Meeker said he did not believe that letter had been publicized but would have to research but the matter dealt with the subject under discussion.

Imker asked Meeker if, in his professional opinion at the time, he thought the City and the taxpayers had any further financial exposure in the lawsuit. Meeker confirmed that he did not think the City had any further financial exposure at that time. Imker asked what led Meeker to this belief. Meeker said his research on the topic, including defamation claims, had led to the belief. He continued that he had reviewed the case from the City's perspective under the annual Indemnification Resolution that the City adopted every year. He also looked at it from the standpoint that, typically, a "city" could not defame or make a defamatory statement about another person. Meeker said he considered that action outside of the scope of one's position and that had been the basis for his analysis.

Imker asked Meeker if, on May 31, 2011, he billed the $165 for a telephone conversation with GIRMA regarding the defamation lawsuit, which included reviewing pleadings regarding a City claim. Meeker said that sounded correct. Imker asked what claim that had been and the result of Meeker's conversation with GIRMA. Meeker said he believed that had been after the lawsuit had been filed and served, but he would have to verify the dates. He said he was forwarding the information on the lawsuit to GIRMA and having another conversation with them about whether GIRMA would provide a defense. Meeker said that, following a series of e-mails, he did not believe a defense was provided.

Imker asked how GIRMA was contacted about the matter. Meeker said he forwarded the information to them as he did for all claims made against the City. Imker asked if GIRMA initially denied the Mayor's claim and, by doing so, indicated the Mayor's action had been of a personal nature and not related to City business. Meeker confirmed that had been GIRMA's response. Imker asked if GIRMA reconfirmed that decision a second and then a third time. Meeker said yes.

Imker asked if Meeker billed the City $110 in February of this year for business related to this case. Meeker said he did and explained that he had been given documents by the Mayor, who requested that Meeker submit them to GIRMA.

Imker asked if the various billings for Meeker's time had been reflected in the lawsuit settlement. Meeker said they had not, to his knowledge. Imker continued by asking if Meeker had been paid out of the City's General Fund. Meeker said that was correct.

Imker then asked if Meeker put together what amounted to an appeal package to GIRMA on behalf of the Mayor in February of 2012. Meeker confirmed he put together the package that went to GIRMA. Imker asked if the appeal package was public information, and Meeker said yes. Imker said he had seen the letter and all attachments and would like the information shared with the public.

Imker then asked if it had been pointed out in the appeal package that Don Haddix essentially unilaterally negotiated an expenditure instead of the City's governing body. Meeker said he did not believe that had been pointed out in the letter. Imker asked if Meeker's documentation had, at any time, included the statement by the plaintiff, Logsdon, that he sued Don Haddix personally and not the City to ensure the taxpayers did not pay. Meeker said yes and no. The letter did not state that fact, but the attachments to the letter included the lawsuit and various correspondences with GIRMA representatives that noted Haddix had been sued individually.

Imker said he was surprised to see the nearly $10,000 bill related to this case in the agenda packet published the previous Friday. He asked Meeker if he considered it a lack of ethical judgment by the mayor in not bringing the latest decision by GIRMA to the attention of Council for discussion and approval of payment, instead having Council and the public find out about the matter via a single line near the bottom of a list 45 items on a single page in a large monthly report package. Meeker said, to be honest, he would have to review the City's Ethics Ordinance to see what applied. Imker said, in other words, it had been fortunate that Council found the line item in question or it would have gone unnoticed as part of the normal business of approving minutes or reviewing monthly packages.

Imker noted that Meeker had stated he could not represent Don Haddix in the suit, and asked whether the Mayor been obligated to find the next least expensive representation or if could he have hired a team of lawyers costing thousands or tens of thousands of dollars. Meeker said Haddix had been free to select counsel of his choosing. Imker asked if the City had expected to give Haddix carte blanche in his choice of legal representation. Meeker said the City had not had input because Haddix had been hiring his own lawyer.

Imker asked if Meeker was aware of a confidentiality agreement for settlement of this case. Meeker said he had heard of a confidentiality agreement. Imker asked what the usual purpose of a confidentiality clause in a settlement agreement was. Meeker said to keep the terms of the settlement confidential. Imker asked if it was to protect parties from embarrassment. Meeker said there were many reasons for confidentiality, and that would be one.

Imker asked, if the taxpayers were being asked to pay all this money for Meeker's legal bills, other attorney legal bills, and the personally agreed-upon settlement payment of Haddix, then did Meeker think the citizens had a right to see the settlement agreement to see exactly what they bought. Meeker said he had previously answered the question, and his response was probably not popular with the Mayor, but he felt the Settlement Agreement was subject to open records disclosure.

Haddix stated he had received no requests to provide the agreement. Imker asked the Mayor to consider the agreement requested.

Imker then asked Meeker if, by bringing GIRMA into the matter and therefore bringing the settlement agreement into the public realm, was it reasonable to assume that the apparent confidentiality agreement of keeping the terms of the settlement secret had been breached by Haddix. Meeker said he would have to see the actual confidentiality clause to answer that question. Imker asked if it opened the door for Logsdon to again sue, for breach of agreement, thereby exposing Haddix and possibly the taxpayers to even more unplanned and additional unapproved expenses by Peachtree City. Meeker reiterated that he would have to see the actual agreement to know what the consequences would be.

Imker asked Meeker to summarize how the $9,946.40 amount paid to Haddix had been determined and disbursed. Meeker said that the information included invoices from Haddix's attorney, John Mrosek, and referred to $3,000 that had been paid, apparently to Rick Lindsey's office. The balance had been paid to Mrosek for his legal services to Haddix. Imker clarified that Rick Lindsey had acted as Logsdon's attorney, and Meeker said he believed that was what had been reflected in the documents,

Imker asked if Haddix had wanted GIRMA to pay for his legal expenses related to this case. Meeker said Haddix had asked him to send the letter, so he assumed yes. Imker asked if Haddix had indicated to Meeker, at any time or in any way, that the expenses associated with this case would in some way be a burden on him. Meeker said he felt the question was encroaching into attorney/client discussions and said he was not at liberty to respond unless Haddix wanted him to do so.

Imker said Meeker had indicated the City's $9,969.40 expenditure had included a $3,000 settlement. He asked if, in effect, the taxpayers were being asked to pay for Haddix's personal acceptance of the agreed settlement with the former mayor. Meeker said that, if the $3,000 referenced was the settlement figure, then the answer to Imker's question was yes.

Imker asked if Haddix had done the City a favor by negotiating a $3,000 penalty instead of a $30,000 penalty. Meeker said that, obviously, $3,000 was less than $30,000.

Dienhart asked, if the settlement had been $30,000, then would the payment have been made directly by GIRMA. Meeker noted that, of the $30,000, only part would have been paid by GIRMA, with the remainder paid by the City.

Imker said the point of his question was to demonstrate the lesser amount. He then asked if Haddix had been negotiating for himself or on behalf of the taxpayers when reaching that amount. Meeker said, at the time, Haddix had been negotiating for himself.

Imker asked if Haddix, in any discussions with Meeker, had indicated that he had any responsibility to accept the consequences of the actions he took that initiated the lawsuit. Meeker responded that Imker was asking for privileged attorney/client communications.

Imker said his mode of operation in sharing information was to try to share all the information and not just one side. In that light, he said he would like to share with Peachtree City's citizens City Administration Regulation CAR 3-10, e-mail Privacy section. The policy stated, "Personal e-mails sent from the City e-mail system are regarded as official City communications regardless of content and are subject to State Open Records and Records Retention laws."

Imker continued that the same regulation also stated, "No e-mail is private. City E-mail is a public record. Do not send anything by e-mail that you would not want printed in the newspaper." Imker said the policy further stated, "Messages should be professional"

Imker asked Meeker if Haddix's use of City e-mail that included accusations against a former mayor, in a written discussion with a City employee, showed in any way a lack of judgment or, in this instance, violated CAR 3-10 regarding the professional use of email. Meeker said he could not say it was professional and would not consider it professional to make a statement like that in e-mail. He personally did not make statements of that nature.

Imker asked if Meeker thought this whole issue could have been resolved quickly and completely, without all the thousands of dollars expended, if an apology had been issued early on, as the former mayor seemed to have indicated would settle the issue. Meeker said that, if both sides had come to terms on an apology, then it would have been over.

Haddix said he had put an apology in the newspaper. Fleisch commented that had been after the lawsuit was filed. Haddix said he put the apology in the paper before the lawsuit was filed. Fleisch did not recall that. Haddix said it did not matter and he had put it in the paper before the lawsuit had been filed. Learnard asked, if that were the case, why the City was paying $10,000. Haddix said she was asking that question of the wrong person.

Imker asked Meeker if Haddix's lack of character, judgment, or wisdom resulted in them discussing this issue that evening. Meeker said the term he had used was "professional," and said what had been written in the e-mail was why they were having the discussion that night.

Imker asked if Don Haddix's lawyer sued him the previous year in a different unrelated legal action. Meeker confirmed that Mrosek had sued the City and each of the Council Members individually. Imker asked if that meant Haddix was being represented in the libel case by an attorney who was suing him in another case. Meeker said he would have to research the timing of the lawsuits in question.

Haddix said Mrosek's lawsuit against the City occurred after the Logsdon suit had been resolved. Meeker said he was trying to remember when the individual claims had been raised, and Haddix reiterated the Mrosek claims had been after the Logsdon lawsuit had been finalized.

Imker restated the matter by saying the Mayor used a lawyer to represent him in a libel case, then that lawyer either concurrently or immediately afterwards sued the Mayor. Imker asked Meeker what he thought about that chronology and whether it had been ethical. Meeker said he believed that the Georgia Bar Association had a rule prohibiting that type of action.

Fleisch expressed confusion, saying she had expressed consternation on several occasions that the Mayor was participating in conversations regarding the Mrosek lawsuit. She asked for a clarification of the timing. Meeker said he believed the timing allowed the discussion because, at that point, it had been a City matter as opposed to a personal claim. Fleisch asked to go on record that the potential conflict had been discussed numerous times and stated she was very uncomfortable with the issue.

Imker summarized his feelings on the matter, saying if the Mayor could submit a request for an appeal to reconsider the decision by GIRMA four times, then the taxpayers could submit a request for reconsideration as well. He asked Meeker, if he or the Council asked him to submit a letter appealing GIRMA's latest position, could he indicate the following:

- That Haddix, not the governing body of Peachtree City, unilaterally chose private legal representation?
- That Don Haddix, and not the governing body of Peachtree City, GIRMA, the City attorney, or any Council Member, personally accepted what appears to be a negotiated settlement to conclude this lawsuit?
- That Don Haddix had an opportunity to end this case without all the expense?

Meeker agreed to those statements could be included.

- That Haddix willfully and unilaterally decided to fight this case despite the consequences it had on the taxpayers of Peachtree City, knowing the governing body of Peachtree City would not have approved of spending taxpayer funds to fight a court case for this issue when an apology would have ended the case?

Meeker felt that portion was asking for a certain level of assumptions that might not be appropriate.

- That the plaintiff made statements to the effect saying he sued Don Haddix personally and in his capacity of mayor to ensure the taxpayers did not pay for a personal libel lawsuit?

Meeker said he believed that to have been reported, so that could be included.

- That Don Haddix unilaterally negotiated an expenditure instead of Peachtree City's governing body?

Meeker said that could be included.

Imker asked, if Haddix knew he was going to ask the taxpayers to ultimately pay the bill, and knew the governing body would not have approved, whether could this be considered an ethics violation. Meeker reiterated that he would have to review the Ethics Ordinance to answer that question.

Imker asked if the appeal letter to GIRMA could include information that there appeared to be a confidentiality agreement to keep the terms of the settlement secret, that the confidentiality may have been breached by Haddix, and that Haddix, not the taxpayers, was responsible for further potential expenditures related to this case should the former mayor sue again. Meeker said yes, depending on the terms of the confidentiality agreement.

Imker asked if the GIRMA letter could include the fact that the taxpayers of Peachtree City did not have a chance to accept or disapprove anything. Meeker said yes.

Imker continued all the decisions in this case had been unilaterally made by Don Haddix, not the City attorney, not GIRMA, not the taxpayers, and especially not by Imker himself, who was one of those taxpayers. Imker asked if any of those issues had been included in the appeal letter on behalf of Don Haddix. Meeker said he did not believe so. Imker said GIRMA had essentially been "spoon-fed" a skewed, one-sided appeal without any of the questions or statements Imker had posed. He thanked Meeker for his responses.

Imker continued that everything about this issue was wrong. There were times when one had to do the right thing, and this was clearly one of those times. Even though our administrative regulations indicated Haddix's email was official City communications, our regulations are often overridden by ordinances, and in this case a higher authority, that being GIRMA. Imker said, if the right thing could not or would not be done, then he thought they needed to follow up with a reconsideration request to GIRMA in an attempt to save the taxpayers what had become a total bill of $10,585.40 because of all the expenses, caused by Haddix, related to this case.

Dienhart clarified that Imker was suggesting the City spend future money on the matter, based on the City Attorney's time, to put together the documentation for another appeal letter. He continued that GIRMA would see Council did not support the claim and would ask Haddix for reimbursement. Dienhart asked Haddix to repay the $10,000 so Council would not have to pay Meeker for more legal expenses related to this matter.

Haddix said he was getting angry about the assumptions being made. He said he had apologized in the paper and to Harold Logsdon, who refused to accept the apology, which was prior to the lawsuit. The assumption was he was guilty. He asked Dienhart to read the ordinance on indemnification, noting that it said he was covered unless he committed slander or a malicious act. Dienhart said he was not judging Haddix either way; he was asking for $10,000 on behalf of the people of the City. Haddix said that was a double standard. Because the lawsuit was in his name only, somehow the lawsuit was extracted from the City when he was acting as mayor. GIRMA agreed with that fact.

Dienhart asked what part of his capacity as mayor involved calling the former mayor a name. Haddix said that, under that premise, he had received a few e-mails that gave him reason to file suit because of the names he had been called. He was sticking to the facts of what the ordinance said and what was in the packet. Haddix said he would send Meeker the resolution (settlement agreement), but Meeker had not requested it. If a request was made, he would provide it.

Fleisch asked Haddix to clarify that GIRMA said he was covered by the policy due to the indemnification. Haddix said the point was there was an indemnification clause with specific statements, which said he was covered unless he committed certain acts. On the appeal with GIRMA, they had reviewed everything. He could not speak for GIRMA, but GIRMA decided he was entitled to reimbursement. Haddix continued that all of Council had been cited individually in a lawsuit, asking if that meant each of them would be responsible for a percentage. Dienhart said that could not be discussed due to executive session rules, and he did not see the parallel between the cases. Haddix said it was in the paper that all the members had been cited, pointing out that Imker was directly cited as the cause of the lawsuit. Haddix said they should be careful of the path they were taking in these situations because the path could turn around and bite them.

Fleisch asked Meeker to explain the rules regarding bringing the appeal forward to GIRMA under the indemnification resolution. Meeker said there were two different things – the GIRMA policy that provided coverage for employees and officials in the City and the annual indemnification resolution adopted in January each year by Council that covered everyone for performing duties within the scope of their employment or official actions. Meeker said he did not see that the annual indemnification resolution covered the lawsuit given the nature of the allegation, which claimed intentional torte defamation. The actual coverage afforded buy GIRMA under its policy was a bit different. Typically, it was somewhat similar in terms of acts committed within the scope of one's duties or employment.

Fleisch asked whether the lawsuit would have come to Council if the indemnification resolution had come into play. Meeker said that it would have. If it had been submitted by the Mayor under the annual indemnification resolution, the lawsuit would have come to Council for payment or adjudication.

Imker said he had presented several arguments that needed to be taken to GIRMA. They had not had all the facts, and they should be asked for another determination. Dienhart agreed with Imker, noting the clock was running on Meeker's time, then asked Haddix to save the City the money. Haddix said that, when getting into attorney's privilege and insurance policies, there was a lot that would not be said on the dais, adding Meeker had elaborated on it pretty well. Haddix believed he was entitled, and he had been acting as mayor. Dienhart asked again what part of his duties as mayor caused Haddix to insult the former mayor. Haddix said Dienhart wanted to argue the case itself, and he was not going to do that.

Consent Agenda

1. **Consider Adoption of 2012 Annual Update to Comprehensive Plan**
2. **Consider Budget Amendments with corrections**

Haddix noted there were additional documents on the dais – the staff memo on agenda item 2 and the staff memo regarding a correction for the same item. Learnard moved to approve Consent Agenda items 1 and 2. Fleisch seconded. Motion carried unanimously.

New Agenda Items

05-12-09 Presentation on Lake Peachtree Sediment Removal

Public Services Director Mark Caspar gave a presentation on the upcoming sediment removal. He noted the lake was a source of drinking water and recreation, and the contract with Fayette County defined the lake as the area south of SR 54. The City was responsible for the lagoon located north of the highway. Lake Peachtree was owned by the City and operated by the Fayette County Water System. According to the agreement signed in 1985, the City and County were required in each successive eight-year period following the first dredging to jointly inspect and test the condition of the areas specified in the agreement to determine the amount of dredging that would be required per the standard that was also set in the agreement. The agreement also required the dredging be accomplished with six months of said eight-year period.

Caspar continued that the lake was last dredged in 2003-2004. Approximately 32,500 cubic yards of silt were removed over a three to four month period. Drake Field was closed during that time to complete the operation. The cost was approximately $1 million.

The 2012 sediment survey was completed recently by Fayette County, and approximately 65,000 cubic yards need to be removed. The survey did not include the tributaries outside of the main lake. The removal process via Drake Field included using the field to dewater the sediment, then hauling it directly onto SR 54 to take it away. The estimated completion was four to six months, and the best time to remove the silt was during the summer months.

Caspar said there were concerns about removing the silt via Drake Field, which included interference with the recurring events scheduled at the park. The list included the Adult Triathlon on August 18, Wellness Walk on September 8, Dragon Boat/International Festival on September 22, Promise Place Walk on September 28, and the Hometown Holiday on December 1. Postponing the dredging until after the events would cause the process to take longer due to the cooler weather. Caspar pointed out that the parking lot at Drake Field was repaved in 2010.

Another option was to remove the silt via McIntosh Trail in the pump house area, which would not disturb Drake Field. The cons included no area to dewater the sediment, the additional need for trucks with liners due to the greater potential for spillage, and the process was more expensive than hauling dewatered sediment.

Caspar discussed the option of adding to the island in the lake, saying the current sediment could add up to four acres to the island/peninsula. The pros included the process could be completed with silt curtains, limiting disturbance to Drake Field, and possibly connecting the island to the main land to make a park for fishing, picnics, and firework observation. The cons included a 2% reduction in the open water body and the assumption that the sediment was suitable for placement and could be consolidated into the island/peninsula.

Another option was to do nothing, which would not disturb the citizens or cost the County any money. The cons for doing nothing included additional sediment accumulation and the growth of vegetation that would limit the aesthetic and recreational uses in the silted areas.

Haddix was concerned that adding to the island/peninsula would shrink the size of the lake. Caspar said that some areas of the lake were only two feet deep. He added that the permitting process to do the dredging would also take a long time. If the permitting process started at the end of July, the dredging would not happen this summer. City Engineer Dave Borkowski said the shallow depth of the lake in some places could cause problems with the dragon boat event.

Imker asked which option would not interfere with the events. Caspar said sediment relocation would be best. Drake Field would be needed to put the barges in the lake, but not on a regular basis, and staff could also coordinate the use of Drake Field for events with the County. Imker said that, without any additional information, the relocation of sediment to form a peninsula seemed to be the best option. Dienhart added that it would provide additional room on July 4th for people watching the fireworks, which was the busiest day in that area.

Learnard disclosed her home was located on Lake Peachtree, adding she was not comfortable participating in the discussion until that fact was known. She said when the island was built, people wondered why the sediment was being taken out to increase drinking water storage then put back in on one big chunk. It depended on the purpose.

Caspar said Lake Peachtree was only used for water volume storage. The contract only allowed Lake Peachtree to drop below permanent pool in the event of a drought emergency. The Water System could only begin to withdraw 500,000 gallons per day if Lake Kedron had no more capacity to drain into Flat Creek then to Lake Peachtree. The lake was occasionally lowered to allow for dock maintenance.

Learnard asked if the dredging would be done by barge. Caspar said he was not sure. If the Drake Field option was chosen, it would be a barge operation. The sediment relocation option used a type of barge similar to a vacuum that sucked the sediment up, using a series of pipes to get the sediment across the water to a land location. Learnard asked if any of the methods called for dropping the level of the lake to do the work. Caspar said not to his knowledge. Learnard asked how the fireworks had been handled in 2003. Caspar said he did not have that answer.

Haddix asked if there had been any feedback on the options from the County. Caspar said the wet removal was the County's least favorite option. The County had a plan for the Drake Field process. The peninsula would be a new process so there would be a learning curve. The cost of the Drake Field and sediment relocation options were relatively equal.

Haddix reiterated his concern was shrinking the size of the lake. Learnard agreed, adding she would like to hear from the residents before making any decisions. Caspar said that was why he was giving Council the information at this time. He would need to come back for a decision in a month or so, which would give the citizens time to provide input. He would post the presentation on the website for citizen feedback.

Imker asked Caspar to put more information in the presentation in terms everyone would understand, noting that the lake was 68 acres, and one acre would be lost. Haddix also recalled the reaction of residents when they realized the island was not going away. Caspar said he would edit the slides to show more information about the pros and cons.

Borkowski added that the water volume in the lake was inconsequential to the Fayette County Water System in providing drinking water as the lake's storage volume was so small compared to the other reservoirs in the County. It boiled down to how much surface area would be lost.

Learnard noted that the volume of silt had more than doubled since 2003, asking where it had come from. There were many complaints from citizens during the widening of SR 74. Borkowski said he did not know without a sediment analysis, but he suspected it was due to stream bank erosion, since there had not been a significant amount of construction in those basins during recent years.

Learnard said she would have hoped the sediment issues due to construction drainage would have abated. Caspar said as the stormwater infrastructure renovations got underway they would be looking at stream bank restoration to see if it would help with the silting problems. Some of the new requirements helped to specifically slow down stream bank erosion.

Haddix asked if dredging the bottom would accelerate, decelerate, or have no impact on stream bank erosion. Caspar said it was rain-event dependent.

05-12-10 Consider Revision of Personnel Policy – Compensatory Time & Leave Policies

Human Resources Administrator Ellece Brown addressed Council, noting there were four parts to the recommended changes to the City's leave policy. The recommendations included the elimination of compensatory (comp) time for exempt employees and a re-emphasis that comp time earned by non-exempt employees must not exceed a maximum cap of 48 hours or it must be paid out (effective July 1, 2012). The current practice was that exempt employees accrued comp time for all hours worked over 40 per week up to a cap of 80 hours. For non-exempt employees, the comp time was also accrued over 40 hours, and that was in compliance with the Fair Labor Standards Act (FLSA). The non-exempt employees would continue to accrue up to 48 hours, and there would be an emphasis placed on holding that cap. Once employees met the cap, overtime hours would have to be paid.

Currently, employees were allowed to accrue up to 480 hours of regular sick leave and 480 hours of catastrophic sick leave. If the recommendation was approved, the cap for regular sick leave for new employees hired on or after July 1, 2012, would be reduced from 480 hours to 240 hours (360 hours for firefighters) with no accrual of catastrophic sick leave.

Brown said the third part dealt with the accrual of safety and perfect attendance hours. Effective July 1, 2012, the proposal recommended the elimination of accrual of safety hours and perfect attendance hours and the addition of one floating holiday and the renaming of the "birthday" holiday as another floating holiday. In the end, employees would have nine regular holidays and two floating holidays for a total of 11 paid holidays.

The last part dealt with the accrual of annual leave. Currently, the time was accrued based on years of service, from 40 hours to 160 hours after 10 years, and employees received the time on their anniversary date. If approved, employees would begin to accrue annual leave on a bi-weekly basis beginning October 1, 2012, and new employees would be allowed to use annual leave after six months of employment rather than one year.

Brown said the savings would be $29,000 annually, plus an estimated $117,000 in soft savings.

Haddix opened the floor for comment.

Fire Captain Ron Mundy took exception to the proposal before Council, explaining his reasons for doing so. He was concerned about the elimination of perfect attendance and safety pay. Due to the economy, the employees had not gotten a merit or cost-of-living allowance raise for a number of years, which he understood. One of the perks in lieu of the inability to provide merit increases was to provide a safety incentive, which related to savings for the City's taxpayers, and a perfect attendance policy. The fire and police departments had to maintain minimal staffing at all times. When a firefighter or police officer was too sick to work, someone had to be called. If the person called in had met their hourly requirement for the week, then they paid time and a half. He questioned how there would be a savings by eliminating the possibility of striving for perfect attendance. The safety incentive was not much, but was something to strive for. Safety was a priority in the Fire Department, and the safety hours provided another incentive to take a moment to ensure tasks were completed in a safe manner.

Mundy continued he would be grandfathered in on the proposed changes to the sick leave policy. Limiting the number of sick hours to 360 without any catastrophic leave at all meant there would about six weeks of leave. Per a 2005 – 2009 study conducted on firefighters injured in the line of duty by the National Fire Protection Association, 10% of the injuries suffered by approximately 43,000 firefighters each year were moderate or severe. Mundy referenced a

Fayette County firefighter injured at a house fire just outside the City in October 2011, noting the firefighter was burned over 18% of his body and had been out of work for seven months. He would need at least two more operations for skin grafts. He asked what would happen to the employee with a severe injury that would need a long time to recuperate, then possibly rehabilitation. He asked Council to strive to make the City the best because that was what the employees did.

Police Corporal Joseph Sewall requested that no retaliation be taken because he was speaking out and asking question on the recommended policy changes. He said there was a reason employees stayed with the City for years, and a reason why people who grew up here worked for the City. He noted that, per the staff memo, 20 cities were contacted regarding their leave policies. He asked what the median income and average employee turnaround was for those cities, as well as their population and number of personnel. Sewall noted that firefighters worked 24-hour shifts, while police officers worked eight-, 10-, or 12-hour shifts. Taking the different shifts into account, the 48-hour cap on comp time allowed for different periods of time off depending on what shift was assigned. Nothing in the memo referenced the 20 cities' policies on comp time. He said the sick leave cap for current employees would remain the same, while it would change for new employees. If the accrual rate was the same as other cities, he asked why the cap should change.

Sewall referred to the accrual of safety and perfect attendance hours. For police officers and probably fire, four hours of safety were accrued per quarter for 16 hours annually. Perfect attendance hours could also accumulate to 16 per year. Together that was 32 hours, just shy of one week. He pointed out the hours were used to help compensate for time off when officers attended training. Using his own shift as an example, Sewall said patrol officers worked two to five days per week, depending on the rotation. If he was scheduled to attend two days of training, he would only receive pay for 16 hours, compared to the 20-24 hours he would miss. The perfect attendance and safety hours were used to compensate for the time lost when training. Taking away the comp time could result in an employee not getting an 80-hour paycheck. Shifts could not be rotated to cover the loss of time.

Sewall continued that the recommendations were based on the City Hall employee eight-hour day, asking if the cap would be adjusted based on the shifts worked by Public Safety employees. According to the staff memo, the City's leave policy was in line with other cities. In another paragraph, the memo said 50% of the cities offered either more annual leave or more holidays. He asked which was correct. Currently, employees were awarded their entire annual leave on their anniversary date. If approved, leave would be accrued every two weeks beginning October 1. He asked how long employees with an anniversary date prior to October would have to wait to begin accruing leave time. He asked why all leave could not be awarded and expired at the same time.

Sewall said the topic of leave was personal to him since he was still an active member of the National Guard. Because of that, he was awarded 18 days of military leave annually by state law. The hours were awarded based on the federal fiscal year from October 1 through September 30. He was called up during the last fiscal year to assist in training units going to Afghanistan. He used up nearly all of his military days to avoid going without a paycheck. Since that training in November, he also had to attend several drills that were held on weekends he was scheduled to work. Due to how the rotation worked, he had to use much of the leave he had banked with the City. Losing that leave would cause him and other employees also members of reserve components great financial strain. The employees of the City contributed to the quality of life that attracted residents to the City. Since his employment, Sewall said he had not gotten a pay raise, cost of living raise, or other type of incentive. The employees had taken everything in stride because it was best for the City. New officers were hired at close to the same rate paid to officers who had been with the City for years. He asked when the last pay study had been conducted. Employees had not complained about the lack of raises, the increased insurance premiums and reduction in coverage, and the charge for take-home cars. There were other benefits that made up for these costs. Cutting those benefits also cut the incentive to stay with the City and to attract desirable new employees. Sewall encouraged Council to look at the research and ask tough questions. He understood the City was in a tough financial state, but taking away the current leave policy could potentially affect the quality of life for many City employees and citizens.

Haddix closed public comment.

Haddix assured Sewall there would be no retribution. He appreciated it when employees felt they could talk to him about issues, and said it helped him and the City. He asked City Manager Jim Pennington or Brown if they could answer any of the questions that had been asked.

Brown said many points were made by both employees. The memo tried to explain that employees could currently accrue up to two days of safety time and two days of perfect attendance or four days. The recommendation was to replace that time with one floating holiday, which would be a loss for employees. The majority of cities surveyed were other Class B cities. There was more information in the memo from the May 3 meeting, and staff had tried to summarize the information in the memo for this meeting.

As far as the information given by Mundy regarding employees injured on the job, Brown said Worker's Comp was provided for those injuries. Employees also had the option to purchase a short-term disability program, but it was not provided by the City. The City did provide for long-term disability, but there was a six-month waiting period for that coverage that short-term would typically pick up. Brown said she did not know why some of the leave categories were made available, but she had assumed the 480-hour sick leave cap was to carry an individual to the time of long-term disability since short-term disability was not available. Brown said she had contacted the insurance broker, and the estimate for the short-term disability program was approximately $50,000 for the City to provide this coverage for all the employees.

Learnard asked how the floating holidays would work for the Police Department. Brown said, to her knowledge, the holidays were an eight-hour day provided to an employee. The holiday would be added as of July 1 since they would lose half of their safety and perfect attendance hours for the remainder of the year. Beginning on January 1, 2013, employees would have 11 paid holidays.

Brown said staff could not put everything in the memo about how the policy would be administered. Brown said the reason October 1 was selected as the date for accrual of annual leave was to allow the Finance Department time to work through the process. She continued that a person with a 10-year anniversary date on July 1 would receive 160 hours of vacation at that point. Beginning July 1, the employee would begin to accrue time for the next year. As of October 1, staff would look at the time accrued between July 1 and October 1, add the 160 hours from July 1, and make the employee whole.

Haddix asked how the eight-hour holiday would be addressed when it came to the 12- and 24-hour shifts worked by Fire and Police. He asked Mundy to explain. Mundy said the City currently provided firefighters with a holiday rate of 10.83 hours rather than the eight hours recommended, meaning firefighters would lose three hours per holiday. Shift personnel worked 24-hour shifts. For a firefighter to take a shift off from work, three holidays would now be needed. Haddix asked Pennington or Brown to elaborate. Brown said Mundy was correct. Dienhart clarified that it currently took multiple days to be off for a shift. Brown said yes, but the other side was that if a firefight took a week of vacation, they would not take off for five shifts. Mundy said that was correct, adding they would take 48 hours of leave. He continued when a firefighter was scheduled to work on December 24, they would work 16 hours on December 24, and eight hours on December 25, while everyone else was off.

Mundy addressed short-term disability and Worker's Comp, saying when an employee used accrued sick leave, they received 100% of their leave and their pay. Short-term disability and Worker's Comp, the pay was reduced by 40% to 45%.

Dienhart said Council needed to ensure any employee injured in service of the City did not go without pay while healing. Having the City provide the short-term disability was a must for him. Pennington said he had worked in nine cities, and he had never known an employee to be out without some kind of remuneration during that time period. Dienhart asked if anyone had ever seen an employee out on leave and not being paid. Mundy said there was currently a volunteer time request being circulated for a police officer so he could maintain his home. Pennington said that was correct, and it was standard practice to allow other employees to contribute banked time to help another employee. Dienhart asked if the employee was hurt in service to the City. Mundy said, in this case, he was not.

Mundy referred to the catastrophic sick bank, saying it came into existence when late City Clerk Jane Miller had been stricken with cancer. After a long career with the City, it was realized that those time banks could be exhausted quickly. The City enabled employees, once they had reached the max cap for sick leave, to dump the additional time into a bank that could be used under the criteria for catastrophic leave. Mundy added, to his understanding, that time was not paid out at separation or retirement, but was a safety net for employees who had a severe injury or medical illness requiring an extended amount of time. Mundy said he had used both short-term disability and Worker's Comp during his career, and it was tough for a family to live on 60% of a salary.

Pennington said what was proposed was standard practice. Staff had looked at how leave and sick time were accounted for, and the City was not incompatible with most communities he was aware of. Compensatory time was the most serious issue. Following the FLSA, non-exempt employees were entitled to time and a half for any time worked over 40 hours a week, and there were different standards for fire and police employees. Under FLSA, cities could either allow employees to accumulate comp time or get paid. Most cities were dropping comp time because the comp time was now a liability. In the past, the City did not have much overtime built into the budget, so comp time off was permitted. The City was obligated to pay comp time at some point in time. Pennington said his preference was to pay employees for overtime in the pay period during which it was earned. In the past, employees could use comp time, which was fine, but if a cap needed to be placed on it to make sure it was taken. Staff needed to ensure the comp time did not continue to accumulate and stay on the books. Comp time for exempt employees was not a principle that should be followed. Exempt employees were expected to be on the job as long as it took to get the job done. If an exempt employee needed time for a doctor's appointment or other reason, there was not a problem. The directors and supervisors were responsible for maintaining the appropriate professional attitude in moving forward with that. For non-exempt employees, the cap of 48 hours was chosen because it was a good number for the City's accounting system to handle.

Haddix asked if non-traditional shifts had been considered. Pennington said the shifts were not addressed in the memo; it was one of the issues that had to be addressed on a separate basis. There was a difference in how hours were calculated and it was accounted for in the FLSA. Staff wanted to make sure nothing was lost.

Brown pointed out that the City's exempt employees currently completed out time sheets, which could be a violation of FLSA, which was another reason for making the change on exempt employees. The City did not have a large number of exempt employees. Learnard said the changes were completely rational and logical, but she wanted to know the effect of the changes on the non-traditional shifts and the military days.

Pennington noted that military days were permitted, as well as mandated. Meeker said the leave policy currently had 144 hours military leave time. Brown said an employee was allowed 18 days annually based on the federal government's fiscal year, which ran from October 1 through September 30, the same as the City's. Those days had to be granted regardless of whether the employee worked an 8-, 12-, or 24-hour shift. Sewall said the 18 days were based on whatever type of shift was worked. He was paid for 18 12-hour days, and for a firefighter, it was 18 24-hour days. Learnard asked how the proposed changes would affect that. Sewall said the overall changes would not affect military leave, as it was mandated by state and federal law.

Dienhart asked for more information on paying for short-term disability. Brown said she could get quotes, noting that open enrollment for insurance was in August/September and the plan year began November 1. Pennington said he and Brown had discussed the fiscal impact of bridging the gap, and they had wanted to explore it.

Learnard asked what the term "soft dollars" meant. Brown said that was time employees were away from their jobs. By limiting the amount of leave time, it was time employees would be working. The dollar savings accounted for the firefighters because there were 19 on each shift, so there was an actual hard dollar savings when a firefighter was away and someone was brought in to work the shift.

Brown continued that the change to the method of accruing leave time was due to the trend of accruing annual leave on a payroll basis. New employees had to wait one year before receiving any type of annual leave (40 hours at the end of the year), but they would accrue 20 hours by the end of the probationary six months, which helped them have time to deal with things that happened such as doctor appointments or cars breaking down

Haddix asked if an employee on a 16-hour shift wanted to take a day off, would it be one holiday or two. Brown said it would be two. Haddix said he was struggling with that when their normal shift was 16 hours. Dienhart said that was a pre-existing issue. Brown said the change in the leave policy did not change how pay was received.

Learnard moved to approve the changes to compensatory time and City leave policies per the Council packet. Imker seconded. Motion carried unanimously.

Haddix asked anyone who had a concern to contact him and tell him what was wrong. He would then speak with Pennington and Brown to see if something had been missed. Dienhart said he would closely watch the implementation of the short-term leave policy. Employees should not be left unable to pay for necessities.

Council/Staff Topics

Hot Topics

Pennington noted that the grand re-opening of The Gathering Place had been held the day prior to the meeting, adding it was a very exciting place. Pennington said he hoped to have something on the next meeting agenda regarding the renovations of the Recreation Administration building.

Learnard moved to convene in executive session at 9:06 p.m. for personnel and pending or threatened litigation. Fleisch seconded. Motion carried unanimously.

Learnard moved to reconvene in regular session at 10:00 p.m. Fleisch seconded. Motion carried unanimously.

There being no further business to discuss, Learnard moved to adjourn the meeting. Fleisch seconded. Motion carried unanimously. The meeting adjourned at 10:12 p.m.

Pamela Dufresne

Pamela Dufresne, Deputy City Clerk

Don Haddix

Don Haddix, Mayor