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

The City Council of Peachtree City met Thursday, April 17, 2003, 7:05 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 read a proclamation for Kids Day America/International. May was proclaimed as Older Americans Month. Russ Geboy from the Police Department was recognized as Supervisor of the Quarter.

Approval of Minutes

Weed moved to approve the minutes March 20, 2003, regular meeting minutes as written. Rapson seconded. Tennant asked Weed to amend the motion to include corrections. Weed and Rapson accepted the amendment. The motion carried unanimously.

Tennant moved to approve the minutes of the March 29, 2003, special called meeting as written. Weed seconded. The motion carried 4-0-1 (Rapson).

Consent Agenda

1. **Alcoholic Beverage License – Change in License Representative – Kwickie/Flash Foods #246**
2. **Alcoholic Beverage License – Change in Licensee and License Representative – Wyndham Peachtree Hotel and Conference Center**
3. **Consider Contract for Wrecker Service**
4. **Authorize Renumbering of LUC-19 Limited Use Commercial to LUC-18 Limited Use Commercial**

Brown asked to table Consent Agenda Item #2 until the next meeting due to the applicant's family emergency. Rapson asked to remove Item #4 from the Consent Agenda.

McMenamin moved to approve Consent Agenda Items #1 (Alcoholic Beverage License – Change in License Representative – Kwickie/Flash Foods #246) and #3 (Consider Contract for Wrecker Service). Tennant seconded. The motion carried unanimously.

Tennant moved to continue Consent Agenda Item #2 (Alcoholic Beverage License – Change in Licensee and License Representative – Wyndham Peachtree Hotel and Conference Center) until the May 1 meeting. Rapson seconded. The motion carried unanimously.

Rapson noted that he did not vote in favor of Item #4 (Authorize Renumbering of LUC-19 Limited Use Commercial to LUC-18 Limited Use Commercial) when it came to Council for approval in November and he would vote against it. Brown noted that Council was only voting to authorize the renumbering of the ordinance since it was incorrectly approved as LUC-19 Limited Use Commercial.

Tennant moved to approve Item #4 (Authorize Renumbering of LUC-19 Limited Use Commercial to LUC-18 Limited Use Commercial) on the Leach tract rezoning as recommended by staff. Weed seconded. The motion carried 4-1 (Rapson).

Old Agenda Items

03-03-CA2 Consider Amendments to Traffic Ordinance

City Engineer Troy Besseche reminded Council that a report on the traffic ordinance had been given at the Council Retreat in March. He noted that staff had concerns regarding the purpose statement specifically regarding the duration of the ordinance and what staff felt would be a "de facto" moratorium on construction once the Highway 54 widening began. Once the highway construction started, Besseche said staff felt that the Georgia Department of Transportation (DOT) would not permit any other traffic mitigation projects. Staff felt it was important to avoid potential conflicts with the DOT regarding future mitigation projects.

Besseche continued that another concern was the Livable Centers Initiative (LCI) program implementation. He said work was continuing on the overlay district for Highway 54 and a couple of projects were close to coming online. One had already been presented to the Planning Commission and staff was still working on the project's compliance with the current traffic ordinance. Besseche said staff wanted Council to know there was momentum toward LCI implementation that staff wanted to preserve.

Besseche said staff attempted to reword and clarify the duration of the ordinance and the closest date they had was October 2003, the contract let date for the widening. The date had been June 2003. The changes related to the intent of the ordinance and what DOT was doing. Staff also wanted to put something in the ordinance related to progress on projects. Besseche read the portion of the ordinance, which dealt with the duration of the project – "this article shall remain in effect until the DOT highway improvements are under contract and progress is being made toward completion of the widening." Besseche continued that after discussing the wording with the City Attorney Ted Meeker, they both felt there was a need to address whether or not DOT would permit mitigation projects. Besseche said he called the district office that morning and learned that DOT would address specific projects but that on-system mitigation projects would not be approved because of the imminence of the road project. As a result, the wording was changed to the following – "this article shall remain in effect until DOT highway improvements are under contract or upon GDOT's refusal to issue further mitigation project permits." Besseche said he and Meeker felt the wording addressed the issues.

Rapson noted that Council had been prudent in implementing the traffic improvements rapidly since it could not have been done today. Rapson said the changes were consistent with the intent of the ordinance, avoided conflict with the LCI program, and minimized the City's legal exposure. Rapson moved that the Mayor be authorized to sign the modifications reflected on the dais with the wording "are under contract or upon the GDOT's refusal to issue further mitigation project permits." Tennant clarified that Council was discussing Section 1201 of Article XII of the Land Development Ordinance. Tennant seconded.

McMenamin said she was also more comfortable with the new wording. The motion carried unanimously.

03-03-CA6 Consider Amendments to Ethics Ordinance
Ethics Committee member Rob Williams addressed Council. He said the committee had tried to clarify the language in the ordinance and had moved the procedures from the back of the ordinance to the front. The committee recommended Council approve all of the changes in total. Williams continued that the practical application of the ordinance was the biggest change.

Tennant thanked Williams for coming to the last meeting and again to this meeting. He also thanked Rapson for his compromise concerning Tennant's request for a redlined copy of the amended ordinance.

Rapson told Williams he did a good job of going over the changes to the ordinance at the Council Retreat and said he was most concerned about the City Attorney's opinion being binding and that was no longer in the ordinance. He noted the ordinance was written in very organized laymen's terms that anyone could understand.

McMenamin also thanked the committee and noted that she had met with Frances Meaders and Iola Snow. She said they explained to her why some of the changes had been made. McMenamin said she did not want to keep the ordinance from being approved, but said she would like the committee to clarify Section 62-90, Use of City Property.

Meeker asked McMenamin if she was referring to the current ordinance or the proposed ordinance. McMenamin said she was referring to the new ordinance. McMenamin explained that with the clarification, she felt there also needed to be some definition of non-profit organizations, as well as the use of City staff in doing non-profit organization work when it was a personally supported non-profit organization and had not been approved by Council.

Rapson said he did not believe that Council approved any non-profit organization. Brown said that would be up for discussion, especially if the work was being done because of someone's capacity with the City.

McMenamin said the governing body must decide those things. She compared it to a council member asking City staff to do the typesetting, use City material, and use of City computers for a council member's own non-profit organization. McMenamin said that was inappropriate and she might have to ask for a legal advisory. McMenamin said that would be personal usage of City staff.

Williams asked McMenamin the specific section she was referring to. McMenamin said she believed it fell under 62-90. Use of City Property. As an example, she said it would be as if she came in and asked City staff to do work for her for a non-profit organization that she personally supported.

Williams said the way the ordinance was set up now it was general enough to apply to all officials and employees regardless of what capacity they were using it. Williams added there could be difficulty in getting specific about things and there could be an exhaustive list. Williams said Council would want flexibility. He added that just about anything Council Members did would be in their official capacity. McMenamin agreed, but said that would be as the governing body, not individually.

Rapson said he was interpreting personal gain. He clarified that if he sent something out that said he was creating a Rapson charity and requesting a donation, that was personal gain. But if he wanted to write a letter on behalf of himself as a Council Member that should be as much official capacity as writing it as a City Council in his opinion. Both were official business.

Williams asked if there was procedure to follow to use a City facility. McMenamin the person would reserve the room. Williams asked if it would be any different if somebody wanted to use the facility for their charity uses it for that type of situation.

McMenamin said yes and noted she would have to get permission to use a City facility for a political meeting. Williams suggested the same exact procedure be used for the situation McMenamin described.

McMenamin asked if it was also considered a conflict for City employees who were put on the spot and asked to work on non-profit organization business. She recalled that somewhere in the ordinance City staff was required to tell the official that they would not be able to work on such business. McMenamin said she believed the wording was incompatible and said she would like the section to read "no official or employee shall engage in or render services for any private business or professional activity when such is adverse to or incompatible with the proper discharge of his official duties." She said she would like for Council to go ahead and approve the ordinance and she would ask for a legal advisory on the legality of staff working on non-profit organizations for personal use.

Williams said he did not see where that situation was referred to under Incompatible Employment. He asked McMenamin to clarify. McMenamin said the wording was a bit convoluted because there could be two interpretations. She continued that if a few words were left out the passage meant one thing and if other words were left in it was not really clear what they were trying to achieve. McMenamin said that was her main question asked for a legal advisory from the City Attorney on the issue.

Tennant noted Section 62-92. Compliance with Applicable Laws. He asked Williams to clarify the section. Tennant gave the example that if he received a speeding ticket he was engaged in an act prohibited by law. He asked if he would also be doing something unethical according to the ordinance.

Meeker said the state had a provision in Title 36 that applied to elected officials, as opposed to Title 40 (traffic violations), which applied to everyone. Rapson said that was the reason he tried to make sure the ordinance referenced state law. Weed added that this was a major point the committee had insisted on.

Tennant said he understood why officials would be included, but questioned why the ordinance also applied to employees. Meeker said Title 36 addressed conflicts of interest in zoning procedures, as well as another provision that set forth conflicts of interests in general that were applicable only to city officials and not residents. Rapson said the ordinance also reference Section 45-10-1 of the Official Code of Georgia, which was the basis of the conflict he had. Rapson said the ordinance made sure the City followed the state code in regards to ethics.

Tennant said the ordinance also addressed employees and questioned whether it should also apply to employees. Weed pointed out a public employee was held to a higher standard and said the law also applied to them. Tennant asked whether the word employee or position should be included to accommodate employees. Williams noted that each employee of the City had an official capacity, just as council members did. Williams said the term "office" was a term used by the committee and did not necessarily denote an elected office.

Tennant moved to approve the revisions to the ethics ordinance as submitted in the Council meeting book. Weed seconded. The motion carried unanimously.

Weed said he had the pleasure and honor of working with the ethics committee and thanked the committee for all their hard work.

03-03-CA11 Adopt Ordinance to Issue Refunding Bonds – (Refund Series 1993 A&B)

Finance Director Paul Salvatore reminded Council that staff was directed at the last meeting to move forward with refunding bonds. Salvatore pointed out that at that time the expected debt service savings was $353,000. The savings had increased to $402,000, or an annual average savings of $27,000 a year for 15 years. Staff recommended moving forward. Salvatore noted that there was a bond ordinance and a bond purchase agreement with the Bank of America among the bond documents on the dais. He added that the Bank of America's rate was 3.26%, which was the lowest rate. He said the refunding was done as a private placement with bank-qualified tax-exempt financing. Salvatore continued that the City Attorney had reviewed all of the documents. Salvatore asked Council to authorize the bond ordinance and authorize those necessary to sign the documents for closing. The closing date of May 28 allowed ample time for the City Attorney to do the necessary advertising and to get the bonds validated at Fayette County Superior Court.

Rapson said 3.26% was a great rate and commended Salvatore for his outstanding work. Rapson moved to approve the issuing of Refunding Bonds Series 1993 A&B and authorize the Mayor enter into the bond ordinance and the bond purchase agreement. Tennant seconded. The motion carried unanimously.

04-03-CA6 Consider Request by Southern Conservation Trust to Sublease Office Space

Weed said he was fully satisfied with the changes to the sublease and moved to approve the lease addendum, which was the document on the dais dated April 17, 2:55 p.m. Tennant seconded.

Jim Williams, president of the Southern Conservation Trust (SCT), addressed Council and said the process had become unbearably complicated and time consuming and the SCT was withdrawing its request.

Weed noted that earlier in the day Jerry Peterson of the SCT had spoken to the City Attorney and had verbally approved the agreement. Weed asked Williams to clarify that the SCT was no longer interested in the sublease. Williams answered that they were no longer interested in the process. Weed said his motion was moot since there was no one to contract with.

<u>**New Agenda Items**</u>

04-03-01 Alcoholic Beverage License – NEW – Page Two, Inc. dba Ashland Grille

Gina Smith addressed Council. McMenamin moved to approve Gina L. Smith as the licensee and license representative for Page Two, Inc., dba Ashland Grille. Tennant seconded. The motion carried 4-0-1 (Rapson).

04-03-02 Public Hearing – Variance – 219 Sandown Drive

Michael and Christy Cornett addressed Council regarding their request for a variance to permit the four-foot, four-inch encroachment of a gazebo and deck into the side setback.

McMenamin noted that the Cornetts' home was in her neighborhood and that a decision either way could affect her property values. McMenamin said she would abstain from the vote.

Rapson said he believed the encroachment was an unintentional act. The Cornetts bought a home that already had a deck and pool. They took out the pool and covered the area with the gazebo.

Weed said the Cornetts' request certainly met the standards for a variance; however, they still had not obtained a building permit.

Cornett said they were trying to be honest. He said he should be kicked, but he had just started working on the deck and did not even think about getting a permit. Christy Cornett said her husband had just tried to please her. She pointed out the pool was underneath the deck. The pool was in horrible condition and had not been installed correctly to begin with so they removed it. She said it had not been their intention to do anything they should not have and they would never do anything again without a permit.

City Engineer Troy Besseche addressed Council and told them the Cornetts had inherited the situation from the previous homeowner and then had unwittingly made the situation worse. He pointed out the Cornetts were willingly working with staff to correct the situation. Besseche said staff recommended the variance for four feet, four inches be granted. Brown asked Besseche what staff considered as the extenuating circumstances. Besseche noted that the disclosure signed by the previous homeowner did not reveal any of the problems and the Cornetts inherited the situation unknowingly. Meeker agreed that the situation was not self-induced.

Rapson said in the past Council had grandfathered existing problems. He continued that the Cornetts had not worsened the problem and had moved the gazebo three feet closer to the house. Rapson said a variance would clear up the issue if the house were sold again.

Weed said he was always very concerned about granting variances because that set precedent. He noted that this situation clearly met the standards required by the ordinance and felt that granting the variance would not set a dangerous precedent.

Rapson moved to approve the recommended variance of four feet, four inches as requested with the understanding the applicants would secure the appropriate building permits and inspections for the existing deck and gazebo, pay the applicable permit fees, and add four Leyland cypresses minimum six feet in height in front of the existing fence. Weed seconded. Tennant noted that staff was happy with the Cornetts' attitude and willingness to be forthright and Council appreciated it. The motion carried 4-0-1 (McMenamin).

04-03-08 Consider Change in Employee Sick Leave Policy

Deputy City Clerk Betsy Tyler addressed Council. She said the change in the sick leave policy had been discussed at the Council Retreat. Tyler continued that the maximum amount of sick leave that could be accrued was currently 12 weeks. After that, employees just lost the hours they did not take. The change would add another category of sick leave – catastrophic. Once the maximum sick leave cap had been met, employees could accrue additional hours in case of catastrophic illness. There would be no payment for catastrophic sick leave if an employee left the City.

Brown asked about the retroactive date. He noted the records went back for six years and staff suggested the retroactive date be six years. McMenamin said she always felt the sick leave policy was unfair and punished good employees.

Rapson agreed. He pointed out that the catastrophic sick leave would also cover that gap until long-term disability insurance started. He said the City was basically firming up a policy that had been in effect.

Tennant asked if there would be any effect on funding. Salvatore said no additional funding was required. Payment was made only upon death or retirement and the City would pay only for 480 or 720 hours. Salvatore continued that it took over five years without being sick to accrue 480 hours. The cost to the City would be the man-hours others had to pick up due to an employee's illness. Tennant asked if an employee would get a check for unused sick time upon retirement. Tyler said there was no payment for unused catastrophic sick leave, just regular sick leave.

Rapson said there would still be a two-week gap. The proposed plan covered 24 weeks and long-term disability started at 26 weeks. Salvatore said it was hoped there would be other time on the books, such as comp or vacation, to cover the two-week period. Halterman pointed out that employees would have to use all of their accrued leave before they could get into the catastrophic leave.

Rapson moved to approve the employee sick leave policy as outlined. McMenamin seconded. The motion carried unanimously.

04-03-09 Consider Freeze on Tax Assessment for Homeowners Age 70-plus

Brown said there was not enough information available on this matter and moved to table the agenda item. McMenamin seconded. Rapson noted the legislative session was over for this year. The motion carried unanimously.

04-03-10 Consider Lexington Circle Development Agreement - Assignment of Obligations

Meeker said McMetro II, LLC, had acquired the remaining property in the Lexington Circle development. Both parties had agreed to the assignment of rights and obligations under the terms of the Lexington Circle development agreement. Meeker said for the agreement to be valid Council must approve the change so McMetro II would be obligated just as Bob Adams Homes had been. Meeker said there was no personal liability in either case, but there was corporate liability in both.

Brown noted that McMetro would have to go before the architectural review board and the Planning Commission before anything happened. Besseche added the new developer would also work only on commercial lots and staff had worked with the company on the last three projects and felt comfortable with them. Rapson said it was important that McMetro assumed the same responsibilities and restrictions that Bob Adams had agreed to.

Rapson moved to approve the Lexington Circle development agreement and the assignment of obligations stipulating the development agreement and the zoning conditions to preserve and protect the rights the City had with Mr. Adams. Weed seconded. The motion carried unanimously.

04-03-11 Consider Lake Peachtree Silt Removal Project – Inlet Dredging Contract

Besseche addressed Council and said that former City Attorney Rick Lindsey and County Attorney Bill McNally had met several times, but never settled whether the County was responsible for dredging the lake's inlets under the water withdrawal agreement. At their last meeting around a year ago, they agreed to disagree and, to keep the project moving, to bid that element of the work out as an alternate to the base bid. Besseche said the agreement covered the five inlets, or 2,200 cubic yards of sediment to be removed. The County bid out the dredging project, but the lowest bid was not selected. MassAna Construction had been selected to do the dredging without the City and County coming to terms on who was responsible for paying for the inlets. Besseche proposed Council contract with MassAna to dredge the inlets for $36,336 and seek reimbursement from the County. Staff recommended Council enter into the contract and authorize the City Attorney to seek reimbursement from the County for the costs.

Brown read two excerpts from the original Lake Peachtree water withdrawal agreement between the City and County dated 1985, which was to last for 50 years. He said the agreement supported the City's request for reimbursement.

"County also acknowledges that certain areas of the Lake are prone to buildups of silt deposits, and County therefore specifically covenants, agrees and warrants that it will reasonably maintain those areas of the Lake (stream and drainage inlets and appurtenant areas as show on Exhibit "A" attached hereto and make a part hereof), in such a manner that excess silt deposits shall be removed and streams and drainage inlets shall be kept clear and open.

If at any time County shall fail to so maintain said dam, spillway, stream and drainage inlets, and immediate land area abutting the water line of said Lake, Peachtree City may, but shall not be obligated to, perform such maintenance, and in such event County shall reimburse Peachtree City for all reasonable costs and expenses incurred by the City in performing such maintenance."

Weed asked Meeker if he had complied with any notice requirements in the agreement. Meeker answered that he had not given the County notice because he did not read in the contract that notice was required. Meeker continued that the City was walking a delicate line trying to get the contract placed with a contractor prior to taking the next step. Weed said he just wanted to be careful and make sure everything was done as required. Meeker agreed and said he would re-read the original contract before the dredging agreement was signed and he would do that the next day.

Tennant moved, regarding the Lake Peachtree silt removal project/inlet dredging contract, to fund the project in the amount of $36,336 from the PIP contingency and authorize the Mayor to sign the contract with MassAna and to direct the City Attorney to seek reimbursement from the County. Rapson seconded. Meeker asked Tennant to amend his motion to seek reimbursement from the County under the terms of the original agreement. Tennant and Rapson accepted the amendment. The motion carried unanimously.

04-03-12 Consider Preferred Provider Contract for Refuse Collection

Salvatore told Council that staff solicited proposals so the City could designate a preferred provider. He explained the City did this in an effort to facilitate competition between the various providers and get a good price for the City's residents. The contract was for a one-year term with an option to renew for three additional years. The City

Attorney had reviewed the contract and staff recommended the preferred provider designation be awarded to Environmental Partners, Inc. (EPI), at the rate of $10.75 per month for weekly curbside service. The contract would be effective as of May 1. Salvatore introduced Jim Bennett and Shane Harris of EPI and said they would answer any questions.

Tennant moved that the City enter into a contract for preferred provider status for refuse collection services with EPI effective May 1, 2003. McMenamin seconded. The motion carried unanimously.

Council/Staff Topics

Halterman announced that the City's annual spring clean-up was scheduled for Saturday-Sunday, May 3-4, at the Recycling Center. Fayette County would hold a government auction on Saturday, April 19, at the County's Public Works facility on McDonough Road in Fayetteville.

Rapson asked that when there were numerous items on the dais if they could be designated as one of four items (1 of 4).

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

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

There being no further business to discuss, Tennant moved to adjourn the meeting. Rapson seconded. The motion carried unanimously. The meeting adjourned at 9:05 p.m.

Betsy Tyler, Deputy City Clerk

Stephen D. Brown, Mayor

Pamela Dufresne, Recording Secretary