City Council of Peachtree City
Minutes of Meeting
March 5, 1998
7:00 p.m.

The City Council of Peachtree City met in a regular session Thursday, March 5, 1998, at 7:00 p.m. in the City Hall Council Chambers.

Mayor Lenox led those attending in the pledge of allegiance. Other council members present were: Carol Fritz, Annie McMenamin, Robert Brooks, and Jim Pace.

ANNOUNCEMENTS, AWARDS, SPECIAL RECOGNITION

Mayor Lenox read a Proclamation for the Girl Scouts "Be Your Best" Day.

Mayor Lenox announced the City Council Retreat to be held April 3 & 4.

APPROVAL OF MINUTES

McMenamin made a motion to approve the minutes of February 19, 1998 as presented. Fritz seconded the motion. Motion carried unanimously.

NEW AGENDA ITEMS

03-98-1 Report from City Attorney concerning Edee Lawsuit

Mayor Lenox explained that on October 5, 1995, the City held a public hearing as part of the update of the Land Use Plan and during the presentation, the Director of Developmental Services, Jim Williams, informed Council that there were approximately 1,300 apartment units in the review process. 1,040 of those units were located in the Line Creek area in GC General Commercial zoning and Mr. Williams informed Council that the Land Use Plan did not reflect apartments in General Commercial zoning areas, but the zoning did allow apartments.

Lenox said Council was concerned about having over 1,000 units in a relatively small commercial area, and wanted some time and public input to consider the proper course to take, so they declared a 120 day moratorium on accepting new apartment applications, and included applications already in process from being considered by the Planning Commission. He said Council held a public hearing on November 16, 1995 and voted to restrict apartments from GC General Commercial Zoning, but, because several projects had been submitted prior to the moratorium and zoning change, Council decided to accept written requests to consider grandfather status for projects already submitted. The decisions were to be based on whether the property owner had gone so far in the development process that it would be unfair or possibly illegal to stop them from continuing.

He said over the next few months, Council held several public hearings regarding five different apartment projects in Peachtree City, two of which had already received approval from the Planning Commission. A great deal of resident comment was received with concerns expressed over the projects, especially those in the Line Creek area. The concerns included incompatibility with the Land Use Plan, the impact on traffic, the effects of apartments versus a single, large commercial development, the safety of living close to the railroad tracks, the preservation of Line Creek, and the need for more recreation in the City. He said ultimately, Council denied the request for grand-fathering two of the multi-family proposals, and negotiated a development agreement for 399 apartments that would be constructed. Through the negotiation, Council reduced the number of apartments from 1040 to 399 in the Line Creek area.
Lenox said another property in question for grandfather status was the AMLI Apartment project in Kedron Village, developed by Mr. Edee, which already had received conceptual approval from the Planning Commission. He said Council granted grandfather status because it was appropriate for the area, it fit with the step-down zoning criteria, and infrastructure was place, making it consistent with the appropriate ordinances and development policies. He said Council reinstated the moratorium on apartment development for an indefinite time period on March 7, 1996.

Lenox explained in addition to the AMLI Apartment site, Mr. Edee also owned a 17 acre site between Highway 74 and Senoia Road shaped roughly like a horseshoe and zoned to allow apartments at ten units per acre. He said the property inside the horseshoe, also owned by Mr. Edee, was approximately 4 acres in size and zoned AR Agricultural Reserve. On August 4, 1997, Mr. Edee submitted a concept plan to City staff for an apartment project on the site, and staff was unclear as to whether or not the moratorium applied to the property because it was already zoned for apartments and had been prior to the moratorium. Lenox explained at the August 7 meeting, Council clarified the moratorium on apartments to include condominiums, townhouses and duplexes, and prohibited city staff from any future review of apartment plans until Council lifted the moratorium. On December 5, 1997, Mr. Edee's firm, Peachtree City Multi-Family Partners, filed suit against the City of Peachtree City. Lenox asked the City Attorney, Jim Webb, to give the details of the lawsuit and provide his opinion on the City's position in the matter.

Webb said Mr. Edee and his attorney had been professional and cooperative, and while they had filed suit, very little money had been spent on attorney fees, hiring of expert witness or other action that traditionally takes place during a lawsuit. Webb suspected Edee was hopeful the moratorium would be lifted at some point and he could then proceed with his development.

Webb said this was only the second time he could recall that he analyzed litigation in a public forum because there were good reasons for discussing such matters in Executive Session. He said there were some things pertaining to the litigation he was not willing to discuss in public that night but that Mr. Edee and his attorney had consented that they would not use his comments or materials against the City in their lawsuit, which would allow him to be candid in the discussion.

Webb explained the lawsuit filed by Multi-Family Partners alleged that the moratorium was invalid for the following reasons:

1. There was procedural defect. Notice of consideration of the moratorium was not properly published.

2. The Moratorium was unreasonable. It was not limited in length, or enacted in support of pending efforts to adopt a zoning plan change.

3. The Moratorium was confiscatory. It denied Multi Family Partners the right to develop their property and was therefore a taking of property rights without compensation.

4. The Moratorium violated Multi-Family Partners' right to develop the property as zoned. They alleged they have a vested right to develop the property in a matter consistent with existing zoning.

Webb explained that Edee was seeking monetary damages based on his inability to use his property as zoned and interest he had incurred. He also requested an award of expenses of litigation such as attorneys' fees and costs of court. Webb said Edee indicated he had already paid over $80,000 in interest on the loan for the property and that the interest was increasing daily.

Webb said Multi-Family Partners had petitioned the court for a summary judgment on the issue of whether or not the moratorium was valid. Webb explained that a summary judgement hearing was different than a trial in that Multi-Family Partners alleged they should win based on that law, even with assuming all the facts in the dispute were in favor of Peachtree City.

Webb said it was his opinion that Multi-Family Partners would probably prevail on their motion for summary judgement, and the court would declare the moratorium invalid. They would then have a court order stating the City must consider the conceptual site plan, grant the permit and allow the development of 172 apartments.

Webb said he believed Mr. Edee would then request a rezoning for the additional four acres he purchased to GR-10. Webb said because the property was almost completely surrounded by property zoned GR 10 it would be extremely difficult for the City to legally justify denying a rezoning. If the property was rezoned a total of 212 apartments would be permitted for the project.

Webb said it was his opinion that Mr. Edee would probably be successful in having the moratorium declared invalid and that he would eventually be successful in having the 4 acres rezoned to allow Multi-Family Development. Webb felt the City could spend between $50,000 and $150,000 in attempting to legally fight the issue. Webb felt the City could negotiate with Mr. Edee at this point to possibly avoid litigation and to create an overall better development with lower density. He recommended Council remove the moratorium as it applied Mr. Mr. Edee's entire 21 acres for the purpose of allowing Mr. Edee to negotiate with City staff in planning a development acceptable to the City. Webb said if staff could reach a compromise, the issue could then come back before Council for a final decision.

Pace asked Webb if the City could rezone the property to Office/Institutional or some other zoning that would not be considered a step down. Webb said Edee could still argue that he would be entitled to damages for deprivation of property. Webb asked if Edee would have to abide by the current buffer ordinance if developed as apartments. Webb said the buffer ordinance would apply but that Edee could also file suit about that issue as well. Pace asked Webb if the City could be reimbursed for attorney's fees. Webb said no and that in these type cases the plaintive normally was not awarded attorneys' fees either.

Pace asked if the City could condemn the property for some public use or attempt to purchase the property. Webb said it would be best to negotiate to determine the situation and if necessary Council could file formal condemnation action. He explained the property would be appraised as zoned with a moratorium on it. Pace asked if Webb thought Edee would accept what he paid for it in addition to expenses he had incurred. Webb did not know if Edee would accept the offer.

McMenamin reminded Council that the suit did not include the additional four acres and that they did not have to include it in a possible condemnation. Webb said that was something Council could use as leverage because they did not have to grant the rezoning. He said a court might grant the rezoning but that it would take two or three years to resolve the issue.

Pace asked Jim Williams, Director of Developmental Services, if there was any other property in the city that could developed as apartments. Williams said the only undeveloped parcel that would permit multi-family development was located on at corner of Crosstown Road and Peachtree Parkway. He said the City had already approved a concept plan a number of years ago which included multi family units designed for elderly occupants. Pace asked Webb to confirm that the moratorium would not be necessary once this issue was settled. Webb said that if Williams was correct in his statement, that there was no more land zoned for multi family apartments, then there would be no need for a moratorium on apartments.

Pace said on August 7, 1997, Council went to great lengths to state why they did not want apartments to be built and he had not changed his mind about it. He said he wanted have some control over what would be built there and he absolutely did not want apartments in that area. He felt is was an undisputable fact that Office Institutional zoning would provide a higher value for property than what Mr. Edee paid. He understood that the moratorium could not last indefinitely but felt that if the City were to rezone the property, it would resolve the issue. He said he would rather the City purchased the property than allow apartments to be developed.

Webb said Council had a right to condemn the property only if they could justify it with a public purpose. He said City could also come up with creative ways to negotiate the situation but that staff's instructions from Council was to not do anything.

Pace felt if Edee was sincere about recovering his financial losses the City could negotiate an agreement, but if Edee was insistent on forcing an apartment development on the City, then it would be difficult to come to a resolution. Pace asked if Office Institutional (OI) zoning made sense for the area since the property was located behind a funeral home and between two highways.

Lenox said he had already asked Edee if he was interested in OI zoning but that Edee felt his property had a greater value as zoned because the City already had an abundance of land zoned OI. He said if the City were to offer Edee an opportunity to recover what he had spent on the property they would need to consider $250,000 for the 17 acres, $170,000 for the additional 4 acres and approximately $80,000 in interest carrying cost to date which would come to a total of approximately $500,000.

McMenamin reminded Lenox that Council should not have to consider the four acres of land that Mr. Edee purchased at a much higher price compared to the 17 acres.

Webb said Council could condemn the 17 acres and forget about the 4 acres and it might put Edee in a difficult situation.

Brooks said he felt everyone on Council was uncomfortable about the situation, which was why they allowed Mr. Webb to give a public briefing on the issue. He felt it was a larger issue than just not wanting apartments because one of the original reasons for the moratorium was for the safety of the citizens, particularly concerning traffic along Highways 54 and 74. He said Atlanta was in violation of the clear air act, which caused a halt to most major road construction, and Council needed to do what they could to reduce traffic along those corridors to help improve the air quality the region.

Brooks felt there was a significant public need for some type of area for car pool parking and commuting area. He said he spoke with a former landscape architect from PCDC who confirmed that area was once considered for that type purpose. He said there were some disadvantages to the property but that was the reason why the property was sold at such a reduced rate. He felt the value of the land had not changed very much over the past 15 months because nothing had happened to significantly enhance or reduce value since it was purchased. He felt the City should take a very hard look at condemning the property but as a matter of courtesy they should consider condemning the additional four acres as well.

Brooks said that in the past, the Georgia Department of Transportation had asked for financial support from Peachtree City for the commuter rail project. He said Edee's property was extremely close to the railroad tracks as well as Senoia Road and Highway 74. He said transportation was a public need that should be addressed and incorporated into the City's overall plan. He said he would like staff to contact Mr. Edee and ask him if we was willing to negotiate and if not, he would like the staff to consider funding sources for the City to very quickly begin the condemnation process.

Williams said the Update to the Land Use Plan suggested the land be developed with an Office/Institutional use as opposed to the General Residential use. He said that Brooks was correct in his statement that the property had also been considered for a "Park and Ride" location.

McMenamin said she fully supported Mr. Brooks' statement and felt the City could show proof of a public need and purpose for the property. She also recommended the City should ask Mr. Edee if he would like to sell the property; however, she was still concerned about the additional four acres of land that Mr. Edee purchased for $172,000 because he purchased the land to accommodate his development of apartments <u>after</u> the moratorium was in place and after it was already made known that the topography of the 17 acres could not accommodate apartments. She felt the City should get some fair appraisals on property and proceed from there.

Edee addressed Council and said he had received four offers on the property over the past 12 months and he valued the property at approximately two million dollars. He said he was very surprised and upset that Council would consider condemnation as an answer to a zoning issue and he would vigorously fight the issue for as long as it took.

Brooks made a motion for City staff to discuss with Mr. Edee the possibility of purchasing his property, to review the issues of condemning the property, to contact an attorney that specializes in condemnation procedures for advice and to determine a funding source for the purchase or condemnation of the property.

McMenamin seconded the motion.

Pace again voice his concerns that he did not want apartments in that area. Brooks restated his position that it was not only an apartment issue but also a health, safety, and welfare issue. He also responded to Mr. Edee's comments that if he had someone interested in purchasing his property they should be made aware that apartments were not a project the City government wanted in that location and that Mr. Edee also knew that prior to purchasing the property.

Motion carried with Lenox voting Nay.

03-98-2 **Report from Director of Developmental Services concerning Amli Apartment's Landscape Plan**

Williams gave an oral report concerning the status of the Amli Apartments' Landscape Plan. He said there was a very narrow plateau at the top of a slope between the rear of the apartments that trees could be planted to screen the apartments. He said they would also plant vegetation on the slope. He said the best plan for the area was a long term solution with fast growing and slow growing pine trees planted so that over a period of time there would be a more natural screen. He said there was a sewerage line in the area that also needed to be taken into consideration. The driveway would also be removed and regraded to eliminate the silt pond.

03-98-3 Radar Permit Update

Basinger explained that Chief Murray had requested the Department of Transportation to approve several changes to the city's radar permit. One of the key changes was to reduce the speed limit from 55 to 45 MPH on Highway 74 from the intersection of Kelly Drive south to the Water and Sewerage Authority Flat Creek Plant entrance. He said Murray requested this due to a number of accidents in that area. Murray also requested the following few minor changes to the permit.

Old state Route 74 (Senoia Road) from State Route 74 to the north city limits, a distance of 1.02 miles to be zoned 45 MPH;

Robinson Road from State Route 54 to Redwine Road, a distance of 4.8 miles, to be zoned 40 MPH;

Changes to the school hour times at several schools because of earlier dismissal times;

and, the addition of numerous new residential streets that have been added in the City since the last renewal. All the streets that have been added meet the state requirements and are zoned for 30 MPH.

Pace made a motion to revise the speed ordinance as requested by Murray. Fritz seconded the motion. Motion carried unanimously.

03-98-4 Consider Ordinance - Bank Tax

Basinger explained that staff realized recently that in 1984, City Council adopted a resolution enacting the state law to collect a tax from depository financial institutions at a rate of 0.25 percent of gross receipts. He said there had been no problems with collections over the years; however, recently it took extensive researching of city records for staff to find the resolution. In order to preclude this problem in the future, Basinger recommended the tax be included in the Code of Ordinances by adding a new Section 13-28.

McMenamin made a motion to adopt the proposed ordinance and add section 13-28 to the Peachtree City Code of Ordinances. Brooks seconded the motion. Motion carried unanimously.

Lenox made a motion to adjourn the meeting to Executive Session to discuss a legal matter. McMenamin seconded the motion.

Executive Session

No action was taken in executive session. Lenox made a motion to adjourn the meeting. McMenamin seconded the motion. The meeting adjourned at 9:20 p.m.

Nancy Faulkner

Nancy Faulkner, City Clerk

Attest: Robert L. Lenox

Mayor