City of Peachtree City
Minutes of Regular Meeting
March 4, 2004
7:00 p.m.

The City Council of Peachtree City met Thursday, March 4, 2004, 7:05 p.m., in the City Hall Council Chambers. Council Members attending were: Mayor Steve Brown, Stuart Kourajian, Steve Rapson, Judi Rutherford, and Murray Weed.

Announcements, Awards, Special Recognition

Mayor Brown proclaimed March as National Women's History Month and presented the proclamation to representatives of the Peachtree City Library staff. Brown read a proclamation for Girl Scout Week. The Starr's Mill High School Wrestling Team was recognized as the Area 4 – AAAAA duals champion and for an outstanding season. Stephen Ott was sworn in as Judge Pro Hac.

Minutes

Rutherford moved to approve the February 19, 2004, regular meeting minutes. Rapson seconded. The motion carried 4-0-1 (Weed).

Monthly Reports

Brown noted some upcoming events, including the Youth-Police Trivia Contest on March 30, the Council Retreat on April 16-17, and the first Community Action Day on May 1. Brown explained that civic organizations, churches, schools, and interested individuals would come together on Community Action Day to work on some projects for senior citizens and others who needed a helping hand.

Consent Agenda

1. **Consider Appointment to Ethics Board**

Brown explained that Ethics Board Member Steve Fraas had been appointed to the Development Authority. Marcia Brown had been named as his replacement. Rutherford moved to approve the Consent Agenda. Weed seconded. The motion carried unanimously.

Old Agenda Items

10-03-05 Consider Amendment to Alcohol Ordinance Relative to Distance Requirements from Church, School, Educational, or College Uses

Rutherford moved to table this item. She said the ordinance was not where it needed to be and asked that the item be placed on the Retreat agenda so Council could discuss what it wanted, and so staff could give input on the changes they were seeking. Kourajian seconded. The motion carried unanimously.

New Agenda Items

03-04-01 Report from City Probation Service

Public Information Officer/Deputy City Clerk Betsy Tyler asked that this item be tabled until the March 18 meeting due to the illness of the Maximus representative.

03-04-02 Discuss Traffic Calming Devices in Smokerise Subdivision
Brown noted there was an additional document on the dais – Traffic Calming for Smokerise Plantation Presented to the Mayor and Council, Thursday, March 4, 2004.

Christy Dunkelberger addressed Council as the representative for the Smokerise Plantation residents. Dunkelberger noted that the residents had been seeking traffic-calming devices for the road for five to seven years. Dunkelberger said the issue was two-fold –safety and quality of life for the subdivision's residents. She said the Smokerise Trace situation was exactly what was happening on Golfview a few years ago, prior to the installation of speed humps. Smokerise Trace, the main corridor in the subdivision, had become a cut through and was an easier way to get from GA 54 to GA 74. She continued that increased speed had accompanied the increase in motorists. The road was very hilly and winding and it was dangerous for residents to walk, ride bikes, and drive golf carts in the area. There were blind driveways, hidden curves, and mailboxes that sat directly on the street. Everything had affected the way the residents had lived their day-to-day lives. Dunkelberger noted there were four locations where the residents proposed placing the speed humps. She said the residents were asking Council to correct the unsafe situation by approving speed humps along Smokerise Trace.

Kourajian asked Dunkelberger if all the subdivision's residents were in favor of putting the traffic-calming devices in place. Dunkelberger said a vote was taken at the last homeowners association meeting, and 71% of the residents were in favor of the devices and 29% were against the devices.

Weed said the proposal was to have Smokerise residents pay two-thirds of the cost of installation and asked what the maintenance plan was. He asked if the residents assumed the City would be responsible for maintenance of the traffic-calming devices. Dunkelberger said yes.

Kourajian asked if there was any significance to the locations chosen for the speed humps. Dunkelberger said the locations were on strategic curves and angles. She said three of the locations were where cart paths were located.

Brown added that there also had to be certain site distances on the approaches to the devices as well as appropriate signage, which also helped determine the locations. Brown moved to install four raised traffic-calming devices on Smokerise Trace with the Smokerise Homeowners Association picking up the two-thirds requirement of the cost. Rutherford seconded.

Rapson noted that the City had established criteria for the traffic-calming devices, including public support, the neighborhood paying two-thirds of the cost, as well as the warrants. He said they only met the warrant for minimum traffic volume, but did not meet accident, speed, or traffic cut. Rapson said he perceived the situation as a safety problem, as well as quality of life issue. Rapson said he supported the request, but wanted it on the record that the area did not meet all the criteria.

Brown said, personally, he felt that some of the warrants were out of bounds. By the time there was 50% cut through traffic, there was a crisis situation. Rapson said the warrants were self-imposed and Council should look at re-evaluating the warrants. Kourajian agreed.

Rapson said citizen participation in this kind of vote was critical since he felt the Fire Department had an issue with response times. He believed that if the residents of the area were willing to assume that risk, then he could support it.

Dunkelberger said, as far as applying the data to the warrants, that the information was collected in 2000, and she was sure the numbers would be worse today.

Rapson and Rutherford both noted that they drove on Smokerise Trace and saw the cut-through traffic for themselves. Rapson said he cut through Golfview quite often and he slowed down for the speed humps and stopped for the stop signs. He noticed that people were now out walking on the roads and were not fearful of getting their mail.

Rapson asked about funding for the City's share of the project and said he assumed the money would come from PIP Contingency. Brown amended his motion to take the City's share of funds from PIP Contingency. City Engineer Troy Besseche said the Smokerise plan included a raised crosswalk, which was not installed on Golfview. Besseche said, with the crosswalk included, that the Smokerise traffic-calming devices would cost approximately $5,000 to $6,000 more than Golfview.

The motion carried unanimously.

03-04-03 Consider Addition of Fees to City Schedule (Recreation)

Brown said staff had asked to table this item because some related issues had come up. Weed asked Leisure Services Director Randy Gaddo if he would have enough time to get the information he needed by the March 18 meeting. Gaddo said it would take more than two weeks and that the information could possibly be ready for a meeting after March 18. The item was tabled until the April 1 meeting.

03-04-04 Consider Appeal of Planning Commission Decision on Conceptual Site Plan, Kedron Village Retail Center, Phases 2 and 3, GA 74 and Peachtree Parkway

Brown noted for the record that there were two additional documents on the dais – an e-mail to Mayor and Council from Gail Yates dated March 4, 2004, and a packet of materials from the Committee for the Responsible Development of the Kedron Shopping Center, Background Information and Preparation for the City Council Meeting on March 4, 2004. Brown said the appeal would start with City Planner David Rast, followed by City Attorney Ted Meeker, then the applicant.

Rast went over the site plan that had been appealed. He said the plan was the buildout of the Kedron Village Shopping Center and was referred to as Phases 2 and 3. The current plan was submitted to the City on September 22, 2003. The parcel had been zoned General Commercial (GC) for a number of years and was identified as GC on the Land Use Map. Phase 2 would consist of a single building of 124,717 square feet, with 531 parking spaces and 38 designated golf cart spaces. Phase 3 would consist of a 130,200 square-foot multi-tenant retail building. The plan showed a variety of tenants, none of which would be larger than 30,000 square feet, and 14,000 square feet of second-story office space. Phase 3 would have a total of 144,200 square feet and 569 parking spaces, with an additional 68 golf cart spaces.

Rast said there were four access points to the site. Three were existing sites, two of which were off of Peachtree Parkway, and the other off Georgian Park. The fourth access point would be the extension of the drive by the Vassey Medical Clinic, which had been on the plan for a number of years.

Rast said they worked with the applicants to break up the parking layout. By separating the buildings, three parking fields had been created. They looked at service access. Instead of creating a separate service court behind the proposed Target building, the building was moved closer to the existing Phase 1 development, which created a continuous elevation and utilized part of the existing service area. The service vehicles were limited to the existing entrance off Georgian Park, and the service drive would extend to Phase 3. Rast continued that the buildings backed up to natural areas, which would help alleviate noise from the commercial area.

Rast said staff had worked with the applicant on golf cart/pedestrian access for several months. Walking from one store to another was encouraged. Several years ago, a temporary cart path had been installed that allowed users to get to the Kroger shopping area. The existing path that extended from the end of Regents Park extension to the dry cleaners was a temporary path and was never intended to be permanent. Rast said the path construction was not up to City standards, but the path allowed the users to get to and from the shopping center. Rast said the developer had agreed to move the at-grade cart crossing on Georgian Park to another area to help with the car/golf cart conflict at the Regents Park/Georgian Park intersection. At Regents Park/Georgian Park, Rast said the applicant had also agreed to install whatever traffic-calming device was necessary to ease the traffic flow into the shopping area and into the residential area. Rast continued that the applicant had also agreed to install a signal at the intersection of Georgian Park and GA 74.

Rast said they had also worked with the applicant on the internal features, architecture, and aesthetics of the building. The applicant had agreed to do something other than the standard buildings. Rast noted that the staff memo went over some of the history of the area.

Brown asked if any traffic mitigation along Peachtree Parkway had been discussed. Rast said they had not looked at that, but the increase in traffic on Peachtree Parkway was included in the traffic study. At staff level, they had started looking at potential improvements at those intersections. According to the information submitted in the traffic study, a signal was warranted today at Peachtree Parkway and the main entrance into the shopping center. Rast said that, according to the files, one of the conditions was that the developer would install the signal when it was warranted. Rast said staff had to work with the Phase 1 developer on that.

Brown asked Rast if he agreed there was a site distance problem currently for the residents who lived in the subdivisions near the shopping center. Rast said yes, and that some improvements had been made to Peachtree Parkway, but that was before the volume had increased to what it was today.

Rapson asked if a light at the shopping center entrance was warranted without the second phase. Rast said yes, and that all recent studies had shown that signals at the Kroger Center entrance on Peachtree Parkway and the GA 74/Georgian Park intersection were warranted without expansion of the retail center. Kourajian asked about the proposed traffic-calming devices on Georgian Park. He said if a light went in at Georgian Park/ GA 74, people would funnel onto Georgian Park. Rast said the study looked at the increase in traffic at that intersection and concluded that the intersection as designed could handle the increase in traffic.

City Attorney Ted Meeker addressed Council and noted that Council had two legal opinions from him. The October opinion addressed vested rights. In his memo for this meeting, Meeker stated the property owner had certain vested rights on the tract. The plan before Council exceeded those vested rights, which made the current GC requirements apply. With the one store being in excess of 32,000 square feet, the plan did not comply with the requirements. Meeker recommended that Council uphold the Planning Commission's decision. Meeker said the parties had agreed to a time limit of 20 minutes per side for the appeal.

Brown asked Meeker to explain his reasons for his opinion on vested rights. Meeker said the drawings for the 1995 plan that was approved contained the vested rights and defined the vested rights of the property owner. Meeker said, although the plan was for Phase 1, that Phase 2 was depicted on the drawings, which had two additional boxes and additional buildings plus parking and the access point that connected to Georgian Park. Meeker advised Council that Laurel Henderson, the attorney representing the City in the litigation, was also in attendance and that Council could go into executive session to ask any questions from a legal standpoint.

George Rosenzweig, attorney for Faison, the developer, addressed Council. Rosenzweig said the Phase 2 lot consisted of the freestanding Target store and its associated parking field. The Phase 2 lot would be owned by Target. Phase 3 would be separately owned. Phases 2 and 3, as well as Phase 1 and the outparcels, would share, under a reciprocal easement agreement, the internal drive. All of the property was zoned GC and was listed as commercial on the Land Use Map. He continued that Phase 3 met all the requirements of the existing GC ordinance, as well as the requirements for a conceptual site plan. Rosenzweig said Phase 3 was entitled to approval because it complied with all of the ordinances regardless of the other arguments. If the right to use Phase 3 was denied, the City was depriving the developer of his constitutional rights.

Rosenzweig continued that Phase 2 also met all of the objective requirements under the ordinances because Target would be the owner of the building, not a tenant. In 2000, a prior Council added a proviso that no single tenant could occupy more than 10,000 square feet. That person was relegated to the conditional use section, which provided mandatory conditions that must be accomplished to entitle the person to use more than 10,000 square feet.

Rosenzweig continued that there had been discussion on whether "tenant" meant "tenant," or also meant "owner." Rosenzweig said they believed the meaning was a matter of common sense, not common law. He noted that the word "tenant" was used 11 times in the tenant proviso, but the language was very precise. "Owner," "leasing," "landlord," and "rent" were also used. The tenant was talked about as a lessee in subparagraph 6 of the ordinance, which was an amendment made to specifically reference leasing for a big box user. Rosenzweig said only the parts of the ordinance that fit were applied. He said the reasonable rule of law was that an ordinance should be construed so all of it was effective. Rosenzweig referred to documents provided for Council and said the prior Council specifically said its intent was to "accommodate owners of large projects." The supposed purpose was also to address other vacant buildings. Rosenzweig noted that the only commercial uses addressed in the ordinance were retail. The other 15 to 16 commercial uses were not addressed.

Rosenzweig said it had been argued that "tenant" was synonymous with "owner." Rosenzweig said to go to the back end of what was approved, and the last thing Council had done was address the situation involving both tenants and owners. "Tenant" was used when it applied. "Owner" was used when owner applied and both terms were used when both applied. Rosenzweig asked if it was reasonable to distinguish between owners and tenants. He continued that the ordinance was approved at the same time the multi-family housing moratorium was first approved, which distinguished owners from tenants. A tenant, by a tenant's nature, was temporary and more inclined to move than an owner. Rosenzweig noted the ordinances that were ambiguous were construed against the government and in favor of the property owner. Rosenzweig said the ordinance should be enforced as written, but if it was ambiguous, the applicant was entitled to the benefit of the doubt.

Rosenzweig reiterated that Phase 3 stood alone and was entitled to approval. The applicant was the owner, not the tenant, for Phase 2, so the ordinance did not apply. Rosenzweig said he realized Council might not agree and provided notice that if the property owner were not able to use the property as entitled, the City would be depriving the owner of property rights.

Rosenzweig continued that the entire GC zoning ordinance was infected with the virus of the tenant proviso because the only use singled out for special treatment was retail. If the reason for the ordinance was to avoid crime, traffic, and vacant property, then the ordinance should apply to all uses, not just retail. The correlation between square footage and crime was also unconstitutional and there was no rational basis for that distinction. The City had a limited amount of GC zoning, and the property quickly resold or was leased again. Denying the conceptual site plan violated the applicant's constitutional rights.

Rosenzweig said the final reason that denial would violate the applicant's constitutional rights was vested rights. He noted the discussion about Mayor Lenox's letter and pointed out that Lenox's letter was authorized by Council in session to be written on behalf of the City. He said there were many circumstances when someone had to act on behalf of the City pursuant to authorization that was granted. The minutes specifically authorized Lenox to write the letter. He continued that there was the theoretical issue that rights were vested under ordinances, not by letters or plans. When a right became vested, the clock stopped, and it was like the ordinance was never adopted.

Rosenzweig said there might be some confusion with this case and "grandfathered" cases. This was not a "grandfathered" situation. Even if Council believed Lenox's letter addressed only a square footage limitation, the letter addressed what was in front of Council and did not address the applicant's right to proceed under the ordinance.

Rosenzweig summarized and said Phase 3 was approved as shown and Phase 2 should be approved because of the tenant proviso. His client's constitutional rights would be violated if the site plan were not approved.

Brown noted for the record that Rosenzweig's office hand delivered a lengthy document with sections labeled "A through F" prior to the meeting. Rosenzweig said the document had been delivered in November and he just wanted to ensure Council had seen it.

Rosenzweig gave up a minute of his remaining time (four minutes) to Phil Corley, who asked to address Council regarding the project. Corley said he was in favor of the plan and he felt the "silent majority" of the City was also. Corley said the City would reap the tax benefits rather than the neighboring communities. He noted that the opposition to a project was always more vocal.

Weed clarified that Council's questions were not part of the time limitations for either side. Brown said that was correct.

Brown noted that Council had been given additional documents – one from Chamberlin, Hrdlicka, White, Williams, and Martin addressed to Ted Meeker in relation to the Kedron

Village Shopping Center/Vested Rights, and a bound document from the Committee for Responsible Development of Kedron Shopping Center Presentation to the Peachtree City Council on 4 March 2004.

John Hedge, president of the Lake Kedron Homeowners Association, addressed Council. Hedge presented a document that he said the City Planner referred to as the document that existed as of October 13 and was presented to the Planning Commission, as well as referred to in his memo of October 10 as Exhibit H. Hedge said this document was date stamped September 22 and was the document referred to in the packets. The document considered by the Planning Commission and in Council's packets was not date stamped. Hedge continued that internal memos acknowledged the document was not date stamped and Hedge pointed that out for purposes of notice and critical issues relevant to the plan.

Hedge said they were attending the meeting because the Planning Commission unanimously rejected the site plan, or a version of it. The Kedron Homeowners Association represented five developments located immediately across Georgian Park from the proposed shopping center. The critical point was that Regents Park was the only way in and out for those developments. The area was surrounded by water and there was no other way to get in and out of the residential area. Approximately 1,700 people lived in the area, including approximately 350 senior citizens.

Hedge noted their concern had always been the extension of Regents Park as the main entrance. The City and the applicant forced the homeowners into the secondary concern over the size of the development, the established ordinances on the books, and the history of the property.

Hedge said a conceptual site plan for the entire 80-acre parcel was submitted in 1995, which clearly differentiated between Phases 1 and 2, but there was no plan for a third phase. Phase 1, 14.7 acres, was approved and was the only plan ever approved for the property. In 1999, Home Depot presented a plan for Phase 2 as one piece of property, but decided on another location. In 2000, a plan was submitted before the Big Box Ordinance was considered, which contained two large stores on one piece of property. The plan was inactive for months and eventually placed in the inactive file. In 2003, a plan known as SP12 was submitted for Phase 2. Hedge said the SP12 plan today had a significant number of changes compared to the original plan.

Hedge said one of the critical issues was that the SP12 plan was a new site plan, not the 1995 plan for Phase 2. Prior plans had two large buildings and two small buildings. The SP12 plan had nine buildings, with a second floor office component. The prior plans had 110,000-175,000 square feet, while the current plan had 269,000 square feet. Hedge said the plans were not the same, and that had been critical to the Planning Commission's decision. It was critical because Ordinance 743, the Big Box Ordinance, specifically stated that the "following ordinance would apply to all projects submitted for conceptual site plan review on or after August 28, 2000."

Hedge continued that there were no exceptions listed in the Big Box Ordinance. There were specific exceptions listing the property in the drafts of the ordinance, but those had been removed so there would be no ambiguity.

Hedge said there were issues involved with compliance relative to the individual tenant. The tenants were limited to 32,000 square feet and an individual tenant for the applicant's plan was allotted 125,000 square feet. The ordinance limited total square footage to 150,000 square feet and the plan under consideration had 269,000 square feet. Hedge said that was not a "little bit different."

Another issue was single versus multiple properties. The plan date stamped September 22 was one piece of property. The plan considered by the Planning Commission in October had a property division, although there had never been an application to subdivide the property, nor had a site plan been submitted that requested approval of Phase 2 and Phase 3. The Planning Commission asked the applicant if they would consider approval of Phase 3 only and the applicant said no.

Hedge read from the City Attorney's October 13 opinion, which said the plan "far exceeds the allowable square footage under the approved plan. Given the drastic change in plans as depicted on the proposed site plan, it is my opinion that such a drastic change would result in the developer having to comply with the City's current ordinances with respect to the plan currently under consideration."

Hedge also quoted from a letter written by the City Planner to the senior managing director at Faison, which read, "please keep in mind that any development on the subject parcel would require review and approval by the City staff and Planning Commission. Also, if there is a substantial increase in the total square footage of the building or substantial change to the approved conceptual site plan, we would most likely base our review of the new site plan in accordance with the revised GC zoning ordinances." Hedge noted the letter was written in March 2003, six months before Faison submitted their first plan.

Hedge said the applicant decided at the last minute to subdivide the property. He pointed out there were specific ordinances in the City Code that restricted the subdividing of lots for commercial and residential use. He read from Section 804 on Lot reduction and Section 407 on Platting. Hedge quoted from various members of the Planning Commission, the City Attorney, the City Planner, and Police Chief James Murray.

Hedge reiterated that the area residents' biggest concern was safety – pedestrian safety, vehicle safety, golf cart safety, and future increases in traffic. He said there was no other single lane collector road that served as the major entryway for what would be the largest development in the City. Hedge read from Chief Murray's memo to the Planning Commission dated October 13, 2003, and said Murray recommended denial of the plan for safety reasons.

Hedge pointed out that alternatives had been suggested. The City Engineer, in conjunction with the Department of Transportation (DOT), had come with up a design that was much less intrusive, and was a right-in, right-out access off GA 74.

Hedge concluded that the existing ordinances must be enforced. He said the new site plan bore no relationship to historical site plans. The schemes to subdivide the property were inappropriate and governed by other ordinances. Hedge said they needed to rely on the City's legal counsel and Police Chief's expertise. The homeowners recommended that Council uphold the Planning Commission's unanimous decision to reject the site plan. Alternate entrances should be determined to maintain the residents' constitutional right to health, safety, and welfare. The only option was to bring forth a village-style center in compliance with the City's ordinances. Hedge read from Section 1.2, the definitions that governed the ordinances relative to construction, which said that tenant was the same as owner and was the same as occupant.

Rosenzweig had reserved time for rebuttal. He referred to an article in the March 3 edition of *The Citizen*, which he said confirmed that the residents did not care about the store, but about the access. He said the applicant had a vested right to the access. Rosenzweig pointed out that the definitions Hedge cited were not adopted pursuant to the Zoning Procedures law or the amendment procedures. He said the definitions were adopted after the zoning ordinance and did not apply. Rosenzweig continued there was a definition of owner that addressed all sorts of tenants, but not lessees.

Rosenzweig said Chief Murray's letter was well intended, but that it was absolutely clear law that general concerns about traffic and crime were not enough to turn down a project. Furthermore, Murray proposed bottling up traffic by taking away a rear access that had been planned and would be similar to the Wal-Mart/Home Depot situation where there was one way in and one way out. Rosenzweig said Georgian Park was always a collector road for the shopping center and had been engineered boulevard style. Rosenzweig said they would love to settle the issue by finding an alternate access. The problem with GA 74 access was a giant gulch that had to be bridged. The estimate to bridge the gulch was an additional $1.9 million.

Rosenzweig referred to a village-sized center and said the residents moved into the area. The road access issue had been in the deed records for many years and they knew about it. He asked Council to look at tenant and construe the word in a reasonable way, and give the applicant their rights on Phase 3. Rosenzweig said he did not find any instance of the Planning Commission saying they could not divide the parcel. He said they never asked the Commissioners to consider Phase 3 separately. He understood that one of the reasons the Planning Commission turned the plan down was because the parcel could not be subdivided, although Rosenzweig understood the City had changed its opinion in that regard.

Weed asked Rosenzweig what he wanted Council to decide. Rosenzweig said it would just be "thumbs up" or "thumbs down" on the site plan. Weed asked Rosenzweig his position on the ability of the applicant to take a single plan and break it up. Rosenzweig said Phases 2 and 3 had been planned for years and it was not uncommon to revise site plans. Weed asked Rosenzweig if he agreed that Attachment H was the conceptual site plan submitted and on which the appeal was based. Rosenzweig said, as far as he could tell, Attachment H looked like the plan that was voted on. Weed said the applicant knew what was submitted and he wanted to know if that was Attachment H. Rosenzweig approached the dais and said the confusion was due to the listing of Phases 2 and 3 in the legend.

Consensus was reached to allow Hedge to use the one minute remaining of his time. Hedge recalled that Planning Commissioner Wes Saunders commented at the October 13, 2003, meeting that the parcel had always been treated as one 33-acre site, and breaking the site into two parcels was a substantial change from the past. Hedge said the plan originally presented by the applicant said Phase 2 only and was later switched to a plan that showed two separate phases. Rosenzweig said there had been a recorded Real Estate Acquisition (REA) agreement for many years that showed Phases 2 and 3 in it. The agreement had been submitted for the trial. Rosenzweig said the applicant could tweak and tinker with the plan between the time it was presented to Planning Commission and to Council. The key was what was in front of Council.

Weed asked Hedge what the Homeowners Association's interpretation of what Council was deciding was. Hedge said Council should either uphold the Planning Commission's unanimous decision or overturn it. Weed asked Hedge if it was his opinion that the conceptual site plan submitted, which Weed said was Attachment H, could be subdivided. Hedge said they did not agree that the plan as presented showed an approved subdivision of the property. Weed asked Hedge if his position was that the site plan either stood or fell as one unit. Hedge said yes.

Weed asked Meeker his position on what Council was to decide. Meeker said Council should either affirm or reverse the decision of the Planning Commission. Meeker said if Council reversed the Planning Commission's decision, then, in his opinion, Council approved the site plan. Weed asked Meeker if the site plan could stand, or fall, as one unit, or if the plan could be divided. Meeker continued that throughout the process the parcel had been submitted and considered as one plan. Meeker said, that as far as the City records went, Phase 1 was the Kroger center approved in 1995 and there was nothing about Phases 2 and 3 until Faison's submittal. Meeker verified that the plan was Attachment H.

Rutherford moved to affirm the Planning Commission's decision. Kourajian seconded.

Rutherford said the plan was substantially, significantly, and markedly more than the 1995 plan and should come under the new ordinance.

Brown noted that no other citizen had been more involved in the development of the Big Box Ordinance than he had been. He said there had been numerous discussions with City staff related to the ordinance and in all of those discussions they used the words owner, occupant, and someone in a lease arrangement. He said they had gone through several scenarios to see where the decisions would lie. Brown said there was a letter in the documents from former Mayor Robert L. Lenox, dated November 7, 2000, to Pat Heaberg of Pathway Communities. Brown said he had written a note on a copy of the letter and sent it to the Homeowners Association commenting on how the situation would fare in the courts. Brown specified that when he made the comment, it had followed the City's building moratorium that had been overturned by Superior Court Judge Paschal English. The U.S. Supreme Court later proved that decision wrong with its decision in the Tahoe case. Superior Court Judge Johnnie Caldwell's decision regarding an issue in Tyrone essentially eliminated zoning in the state, but the Georgia Supreme Court overturned that decision. Brown said he did not have much confidence in the decisions some of the judges made and that was the rationale for his comment on the letter.

Rapson said he had no problem with Target. He took issue with the vesting rights and said he did not believe buildings could be penciled in to get vesting rights. Rapson continued that he believed former Mayor Lenox's letter was worthless. Lenox could not waive an existing ordinance and neither could any sitting Council Member. He said the residents had a constitutional right to quality of life. He reminded the applicant that those residents would be his neighbors and customers, and they should be heard. Rapson said he would vote to uphold the Planning Commission's decision.

Kourajian said, based on his understanding, there was definitely a significant difference in the plans. He supported the Planning Commission's denial of the site plan.

The motion carried unanimously.

03-04-05 ESCi Presentation

Financial Services Director Paul Salvatore introduced John Best and Todd LaDuc of Emergency Services Consulting, Inc. (ESCi).

Best noted that a 200-page report had been prepared and that they had selected specific recommendations to present to Council at the meeting (A copy of the PowerPoint presentation is included in the meeting file). Best continued that his company had done 300 studies and said everyone involved with the City had been very professional, very helpful, and very courteous. He told Council they should be proud. Best briefly discussed the methodology used and went over the report's significant recommendations concerning dispatch protocol, the purchase of a QUINT, planning, Insurance Services Office (ISO) grading, new stations, staffing, reciprocal automatic mutual aid, and emergency medical services.

- Dispatch Protocol – Standard Operating Procedure A-100, "Equipment Response"
    - Consider "adapted" responses

- "Working" incidents comprise a relatively small portion of total responses
- Consider reducing non-medical responses of Advanced Life Saving Ambulances
- Dispatch by unit rather than station

- Purchase of New Quint (pumper/ladder truck)
  - Would probably receive full Insurance Services Office (ISO) credit as an engine and half credit as a reserve ladder truck
  - Assumes unit is outfitted per ISO
  - May realize .25 credit points
  - Backup for Tower 8
  - Most consider attributes compared to pumper/Quint cost difference

- Customer Oriented Strategic Plan – Fire Department Planning tends to:
  - Be focused on the annual budget process and the annual update of the Public Improvement Program (PIP) fund
  - Not involve all stakeholders

- Insurance Services Office Grading
  - Used to determine fire insurance rates
  - Communities graded Class One to Ten
  - Most insurance companies group classes 1-4
  - ISO grading does not consider life safety

- ISO – Properties/Savings
  - Single family dwellings
    - State Farm (30%) does not use
    - Savings doubtful
  - Specifically Rated Commercial Properties
    - >3500GPM individually graded
      May or may not realize savings, case by case
    - <3500GPM sprinklered little or no savings
    - <3500GPM non-sprinklered may realize 5-10% savings
  - Special large commercial properties
    - Highly protected risks
    - Sprinklers/alarms/stringent loss controls and maintenance
    - Little impact on rate structure
    - HPRs do no usually locate in Class 7 or higher

- New Station Proposals
  - All incidents are well distributed in the City
  - 96% of all incidents are within four travel miles of a City fire station
  - Four minutes travel time relates to approximately 2.3 miles (35 mph)
  - ISO calls for 1.5 miles

- Staffing Recommendations
  - Assumptions to accompany recommendations
    - Enhance volunteer FF/EMT/-I/PM recruitment and retention program so the volunteer resource may make a greater commitment to immediate responses
    - Configure pumpers with required equipment and supplies to operate and be dispatched as ALS engines
    - MOU with Fayette County Department of Fire & Emergency Services implementing reciprocal automatic mutual aid
    - Modify dispatch protocols to require the closest (city/county) emergency service is dispatched to all incidents and dispatch by unit rather than station
  - Staffing Recommendation "B"
    - Implement assumptions
    - Staff each career rotating shift with 12 personnel to operate:

3 ALS engines	6 personnel
1 Ladder/ALS engine	2 personnel
2 ALS transport ambulances	4 personnel
1 command officer	Duty Officer Program

"Cross-Staff" Specialty Units
Dispatch FCF & ESD "Manpower Squad" on structure fires and other appropriate incidents

  - Staffing Recommendation "A"
    - Implement assumptions
    - Staff each career rotating shift with 15 personnel to operate:

4 ALS engines	8 personnel
2 ALS transport ambulances	4 personnel
1 ladder truck	2 personnel
1 Command Officer	

"Cross Staff" specialty units
Meets "moderate risk" specifications
Improves ISO

- Reciprocal Automatic Mutual Aid
  - Number of incidents in Fayette County where City units were closer for FY 2002:

Structure fires	1
Other fires	12
EMS	125
Other	69

  - Number of incidents in City where Fayette County may respond (12 months)

Structure fires	8
EMS responses	25

- Emergency Medical Services

- Continuing education and performance measures
- Significant exposure management program
- Medical Director stipend
- Public education, outreach and defibrillation
- Revenues/Tax inequities
- Unit hour utilization
- ALS engines

Brown told the consultants he appreciated their thorough job and said they had received a lot of information. He decided to form a committee, break the report down into components, and go from there. Committee members included Rutherford, Tony Landers from the Atlanta Regional Commission, and various City staff members, including members of the Fire Department.

Weed asked if they would be able to access the consultants later if needed. Best said they had fulfilled their contract, but they would work with the City if needed.

Council/Staff Topics

There were no Council/Staff topics. Meeker said there was pending and threatened litigation to discuss in executive session.

Rutherford moved to reconvene in executive session for pending and threatened litigation after a short break. Kourajian seconded. The motion carried unanimously.

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

Weed moved to deny the claim from Regions Bank dated February 24, 2004, as presented. Kourajian seconded. The motion carried 4-0-1 (Rapson).

There being no further business to discuss, Rutherford moved to adjourn the meeting. Kourajian seconded. The motion carried unanimously. The meeting adjourned at 10:19 p.m.

Betsy Tyler, Deputy City Clerk

Stephen D. Brown, Mayor

Pamela Dufresne

Pamela Dufresne, Recording Secretary