

**MINUTES OF MEETING
CITY COUNCIL OF PEACHTREE CITY
JANUARY 19, 1995
7:00 P.M.**

The Mayor and Council of Peachtree City met in regular session on Thursday Night January 19, 1995 at 7:00 p.m. in the City Hall Council Chambers.

Mayor Lenox led those in attendance in the pledge of allegiance. Present were Mayor Robert Lenox, Councilmembers Annie McMenamin, Edward Bradford, Robert Brooks and Caroline Price.

No items were added to the agenda.

Announcements, Awards, Special Recognitions

Mayor Lenox announced that the annual City Council Retreat would be held at the Senior Citizen Center on March 10 and 11, 1995.

Mayor Lenox proclaimed the week of January 15 - 21 as "Kiwanis Week in Peachtree City. Members of the two Kiwanis Clubs in Peachtree City, The Golden K and The Peachtree City Kiwanis Club accepted the proclamations. Present to accept the proclamations were: from the Golden K; President, Sam Phillips, Frank Stilwell, Herman Pearson and Monroe Harrison, from the Peachtree City Kiwanis Club; President Annie McMenamin, Bob Konrad, Dot Reynolds, George Giddings and representing both clubs District Governor Bill Loftin.

Mayor Lenox presented a Certificate of Appreciation to Mr. Creighton Warren for his service to the Recreation Commission.

Mayor Lenox presented Certificates of Commendation to TDK and Panasonic for their outstanding participation in the Adopt-a-Mile Program. Receiving the certificate of commendation for TDK was Mr. Marion Crook and accepting for Panasonic was Mr. Ricky Marshall.

Department Reports

Mayor Lenox reported that Department Reports for the month of December were available for review at City Hall. Mayor Lenox stated that building permits for 1994 had exceeded those of 1993, but were consistent in the 500 range. Bradford noted that the population of Peachtree City was now 25,554.

Minutes

McMenamin made a motion that the minutes of the January 5, 1995 City Council meeting be approved as presented. Price seconded the motion. Motion carried unanimously.

New Agenda Items

1-95-10 Public Hearing-Rezoning 35.5 acres Walt Banks/Highway 54

Mayor Lenox stated that the item to consider a rezoning request for 35.5 acres of property at the corner of Walt Banks Road and Highway 54 would be conducted as a public hearing. Mayor Lenox read the rules for a public hearing and stated that each side of the issue would have ninety minutes to give their presentation at which time Council would debate the issue in accordance with Roberts Rules of Order and reach a decision.

Mayor Lenox gave a history of the previous rezoning requests for the property being proposed for rezoning for the benefit of the public.

Mayor Lenox stated that the original rezoning request had been for 35.5 acres of property which would include a twenty acre parcel of land owned by the Heard Family. Mayor Lenox stated that the developer, The Candlers, had recently stated that they would be willing to only rezone the 15.5 acres currently zoned LUC-7 to LUC-13. Mayor Lenox explained that the LUC-13 zoning would allow for a larger square foot anchor store. Mayor Lenox stated that the twenty acres of Heard property was currently zoned R-43 Residential. Mayor Lenox stated that the rezoning application had been advertised with the entire 35.5 acres and that Council could only hear the original request. Mayor Lenox asked to hear first from the applicant.

Mr. Carl Westmoreland, representing the property owner Palm Beach Development Corporation, came forward and asked to be allowed a three minute rebuttal after the opposition had made their presentation. Mayor Lenox stated that he would be allowed that time. Mr. Westmoreland stated that the current zoning was LUC-7 with conditions and stated that two of the conditions were causing a problem in marketing the property. Mr. Westmoreland stated the current zoning limited the size of a store, which would be the major tenant, to 32,000 square feet and that they were requesting an increase to just over 56,000 square feet. Mr. Westmoreland stated that another condition to the zoning was that there could not be a median cut on Highway 54 and that they were requesting one curb cut on Highway 54 across from the entrance into the new Publix Development. Mr. Westmoreland stated that the area of the property owned by Palm Beach Development closest to residential homes would remain OI Office Institutional. Mr. Westmoreland stated that the Developers were trying to be as flexible as possible toward meeting the concerns of the residents and that they would be willing to have only 15.5 acres rezoned and leave the Heard property R-43. Mr. Westmoreland stated that they would limit access to one entrance on Highway 54. Mr. Westmoreland stated that with the Publix Development there would be an increase of traffic on Walt Banks Road, even if there was no shopping center constructed at the corner of Walt Banks and Highway 54.

Mr. Westmoreland stated that a study had been done by a Land Planning and Appraisal Company, which stated that a 32,000 square foot building would not work in today's market. Mr. Westmoreland asked that Council approve the rezoning to allow for a 56,000 square foot building for the anchor store and to allow for the curb cut on Highway 54.

Mayor Lenox asked to hear from anyone else in favor of the rezoning and Mr. Jim Williams, Director of Developmental Services, came forward and stated that the Land Use Plan called for the property to be used for community service purposes. Mr. Williams stated that the property had been zoned in anticipation of a hospital that was never constructed. Mr. Williams stated that the current zoning of LUC-7 would permit a small shopping center with 160,000 square feet of space. Williams stated that in today's market that would not be feasible to market with the Publix Development across the street. Mr. Williams stated that an anchor store with 32,000 square feet would be incompatible with the current market demands. Williams stated that it was not reasonable to leave the area trees and not reasonable to tell the owner they could not develop the property. Williams stated that the Planning Commission and staff recommended approval of the rezoning and felt it would be a good solution for the City.

Brooks asked Williams if the original tract of land owned by Palm Beach Development Corporation had included the Southern Trace Subdivision and Williams stated that it had. Brooks asked why Mr. Williams opinion had changed since the last rezoning hearing on the property and Williams stated that the market demand had changed since that time.

Mayor Lenox asked to hear from anyone else in favor of the rezoning.

Residents speaking on behalf of the rezoning were Mr. Joe Woods, Mr. James White on behalf of Mrs. Miriam Lallande, Mr. Ronald Scott, Mr. Alan Barnes, Ms. Dot Reynolds, Mr. Gary Rickards, and Mr. Patrick Guche. Reasons for being in favor of the rezoning were: more choices in shopping, residents living along Highway 54 do not feel it can continue as a residential area with the upcoming Publix Development, there were enough residents to frequent both the Kedron and Walt Banks Shopping Centers, centralized commercial areas, good location for a shopping center.

Mayor Lenox asked to hear from anyone opposed to the rezoning and those speaking in opposition were: Mr. Bill Webster, Mr. Ted Thomas, Mr. Jim Pilliard, Mr. Norm Moore, Mr. Chuck Layman, Mr. Stuart Bennett, on behalf of the Fayette County Schools and McIntosh High School, Mr. Howard Morgan, Mrs. Berry, Mr. Jamie Beleigh, Mr. Eric Furchess, Ms. Sandra Horney, Ms. Sharon Waples, Mr. Alvin Baird, Ms. Norma Jones, Mr. Stuart West, Ms. Phyllis Aguyo, Mr. Mike Lorber, Ms. Haroldine Foyer, Mr. Bob Bertlesbeck, Mr. Randy Hough, Mr. Gary Greenwell, Ms. Fran Plunkett, Mr. Bill Snow, Ms. Mary Ann Grove, Mr. Bob Sigerwarth, Mr. Doug Best, Mr.

— Jack Hanson, Mr. Mike Kelsh, Mr. Jim Dillard, Mr. Frank Fessenden, Ms. Kirsten Fochtman, Ms. Michelle Giddons, Ms. Linda Baldwin, Mr. Jim Savage, and Mr. Phil Carsen.

Reasons given for opposition were: the impact on traffic, there were already enough shopping centers, the rezoning went against the Land Use Plan, the shopping center would be too close to the high school, the attraction of crime to a retail development area, the village concept should be kept intact, the number of youthful drivers around the high school area, a chance of the shopping center becoming a high school hang-out, they did not want Highway 54 to be another Fayetteville or Riverdale, Walt Banks Road would become a major thoroughfare, the chance that the Kedron Shopping Center might not be built if the rezoning was approved.

Mr. Norm Moore, Southern Trace Subdivision, presented a petition to Council with 498 names of residents in opposition to the rezoning.

Mayor Lenox called the Public Hearing closed and called for Council debate.

— Price stated that the concerns of the residents were valid, but that changes in market demands needed to be addressed. Price stated that she felt the Land Use Plan should be studied before any rezoning was considered. Price stated that she understood with the recent zoning changes, some of the residents would not feel as comfortable living along Highway 54.

Brooks stated that he had kept an open mind during the presentations, and wanted to address two issues. Brooks stated that Mr. Lassiter, the owner of the property, had already developed part of the property and had not been denied use of his land. Brooks stated that the current zoning of LUC-7 was against the will of Council and that size restrictions had been placed on the zoning to keep the largest store at 32,000 square feet. Brooks stated that he felt that with the current traffic patterns, increasing the area allowed would only compound the traffic problems.

McMenamin stated that, while the Candler's were high quality developers, she was on Council three years ago when the property was defended in court and the judge stated that the Land Use Plan could be upheld. McMenamin stated that she could not support the rezoning.

— Bradford stated that he echoed the comments of the other Councilmembers and added that when the County Commission was looking into zoning the Publix site, Mayor Lenox had gone to the Commission meeting, with the full support of the Council, to urge the Commission to deny the zoning. Bradford stated that he had not seen anything new to change his mind about the zoning along Highway 54, and felt that the danger of school children crossing the roads was great and he could not support the rezoning.

Mayor Lenox stated that thirty years ago Peachtree City was formed with the village concept and that it was valid and had survived. Mayor Lenox stated that he felt Council had a contract to follow the Land Use Plan as it was currently written, even though at times the market conditions could warrant a revisiting of the Plan. Mayor Lenox stated that he felt Council should act first on the 35.5 acres including the Heard property which was originally presented to the City and then they could take action on the 15.5 acres which was already LUC-7 to change the zoning or leave the zoning as it was currently.

City Attorney Rick Lindsey asked Council to make clear for the record the reasons for denying the zoning.

Brooks stated that his solution would be to use his reasons for denying the rezoning that were stated in the 1991 minutes on the zoning request for the same property which were as follows:

Brooks felt that after listening to the applicant and then Mr. Williams and thinking about the Land Use Plan, he felt the Land Use Plan was a document that was working and one that, in this case, was correct. Brooks felt that there would be times when a land owner would not be able to obtain as much for his property as he wanted because of the Land Use Plan but that if he could get a reasonable amount it would be fair. He felt that the matter of what was fair for the community had to be considered also. He felt that once the City went against the Land Use Plan it could never be defended again. Brooks stated that he was impressed by the presentation and by the comments from the public. He felt there was no opposition from the Heard family when the land was zoned R-43 and he felt it should remain zoned that way.

Brooks made a motion to deny the rezoning request for 35.5 acres of property at the corner of Walt Banks Road and Highway 54, including the Heard Property currently zoned R-43. Bradford seconded the motion. Motion carried unanimously.

Brooks made a motion to refuse to lift the restrictions on the 15.5 acres currently zoned LUC-7. Price seconded the motion. Motion carried unanimously.

1-95-11 Public Hearing - Variance for Lot III-3 Smokerise

Mayor Lenox stated that the item to consider a variance for Lot III-3 Smokerise would be conducted as a public hearing and stated that each side of the issue would have twenty minutes to make their presentations. Mayor Lenox asked to hear first from the applicant.

Mr. Jon Montague, owner of Lot III-3 Smokerise, came forward and stated that he had given Council a letter revising the amount of a variance needed for his home in Smokerise. Mr. Montague stated that an alternate plan had been worked out and was included in his letter. Council took a few minutes to read the letter from Mr. Montague. Mr. Montague stated that every possible alternative had

been looked at to correct the mistake that was made when the foundation of his home was built encroaching into the setback. Mr. Montague stated that if the entire foundation had to be moved, it would be at an extreme cost and that he had invested his life savings into the home. Mr. Montague stated that the alternate plan was to move the garage to the back of the home to alleviate part of the encroachment. Mr. Montague stated that if the front of the home had to be taken off it would not look aesthetically pleasing and would take off required space in the home. Mr. Montague asked that Council grant the two ten foot variances on the Chimney Sweep side of the property to correct the honest mistake made by the builder, Mr. Jimmy Warren.

Ms. Linda Krebs, representing the mortgage lender, stated that there would be an economic loss just by moving the garage and asked that Council approve the variance.

Ms. Tiffany Montague came forward and asked that Council approve the variance for her family's home by only looking at the facts and not other issues of a personal nature that the opponents to the variance might have.

Ms. Barbara Gibbons, Lloyd Road Resident, came forward and stated that she had not measured the dimensions, but that the lot before the Montague's had begun construction had been very unattractive. Ms. Gibbons stated that the home was in alignment with other homes on the street and was a nice addition to the area.

Mr. Bill Dickenson, 209 Smokerise Trace, came forward and stated that he had not supported the original variance, but with the garage being moved to the rear of the home, he could support the variance and that Council had a letter stating that fact. Mr. Dickenson stated that he did not want the variance to set a precedent for other homes to be constructed in the area.

Mayor Lenox asked to hear from anyone in opposition to the variance.

Mr. Jim Williams, Director of Developmental Services, came forward and stated that staff was opposed to the variance, that the builder had made an error by not getting a foundation survey before the framing began. Williams stated that he suggested that the Mr. and Mrs. Montague get with an architect to solve the problem. Williams stated that granting the variance would be setting a precedent.

Mr. Larry McIntosh, President of the Smokerise Homeowners Association, asked Council if they could give an assurance that granting the variance for the Montague's would not set a precedent. Mr. McIntosh stated that the Montagues had a one acre lot and that the Architectural Review Committee for Smokerise could have granted a waiver and that they chose not to because the neighbors were not in favor of the variance and the fact that the committee felt it would set a precedent. Mr. McIntosh stated that eleven residents were opposed to the variance.

Brooks asked Mr. McIntosh if the vote was taken before the Montagues latest proposal and Mr. McIntosh stated that it was, but felt that with the new proposal there would be two encroachments to deal with.

Mayor Lenox called the public hearing closed and called for Council debate.

McMenamin stated that the issue of the variance was a difficult one, that Council could not give an assurance that the variance would not set a precedent. McMenamin stated that she felt the fault was that of the builder, not an unusual circumstance and that she could not support the variance.

Brooks discussed a previous variance that was granted in the Interlochen Subdivision. Price clarified that one variance in Interlochen was denied and that a portion of a corner of the home had to be taken off and that another variance was granted due to the fact that the home sat on the curve of a street and was an unusual circumstance. Price stated that foundation surveys were now required to assure that this type of encroachment did not happen, but that the Montagues home was started prior to Council's adoption of the foundation survey ordinance. Price stated that she was not sure whether the builder and the homeowner had explored all alternatives available to them.

Mayor Lenox stated that it was an unfortunate circumstance, that it was not the fault of the Montagues, but that of the builder, and that he would support the variance.

Bradford stated that he felt that the variance would set a precedent and that he could not support the variance.

Brooks stated that he was very frustrated that a builder could construct a foundation 20% into the setback, say he was sorry and not accept any responsibility for the error. Brooks stated that the rules were to protect neighbors and that if three neighbors could support the variance, he would also, but expressed his frustration with the negligence of the builder.

McMenamin stated that the neighbors were asking for guarantees that the variance would not set a precedent and that Council could not give them a guarantee.

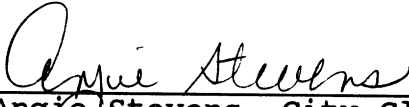
Brooks stated that there were other homes in violation in Stoneybrook and that they could not go after all builders that were negligent.

Price made a motion to approve a 10 foot and a 10.64 foot variance on the Chimney Sweep Circle side of the lot for the Montague's home at Lot III-3 Smokerise. Mayor Lenox seconded the motion. Motion carried with Price, Lenox and Brooks voting aye and Bradford and McMenamin voting nay.

— There being no further business to come before Council, Mayor Lenox made a motion that the meeting be recessed to be reconvened in executive session to discuss a legal matter. Bradford seconded the motion. Motion carried unanimously.

Executive Session

No action was taken in executive session and Brooks made a motion that the meeting be adjourned at 11:45 p.m. Bradford seconded the motion. Motion carried unanimously.



Angie Stevens, City Clerk

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Mayor

Attest: