

City Council of Peachtree City
Minutes of Meeting
December 6, 2001
7 p.m.

The City Council of Peachtree City met Thursday, December 6, 2001, in the City Hall Council Chambers. Mayor Lenox called the meeting to order at 7:00 p.m. Other Councilmembers present were: Carol Fritz, Annie McMenamin, Steve Rapson, and Dan Tennant.

Announcements, Awards, Special Recognition

Lenox recognized the participants in the Peachtree City Litter Committee, including Keep Fayette Beautiful, both Wendy's Old Fashioned Hamburgers Restaurants, both Subways, and the two McDonald's restaurants located in the City. Lenox also thanked the City's Public Works crews for the work they do in keeping the City clean. Lenox presented a 15-year service pin to Developmental Services Director Jim Williams. Cajen Rhodes was recognized as Employee of the Month for November. Lenox recognized Financial Services Director Paul Salvatore as being one of the first two people in the state to become a Certified Public Finance Officer. Councilmember Fritz was recognized for her service to the City as a councilmember. Mayor Pro-Tem Annie McMenamin proclaimed December 20, 2001, as Robert L. Lenox Day in Peachtree City.

Approval of Minutes

McMenamin moved to approve the November 15 meeting minutes as written. Rapson seconded. The motion carried unanimously.

Consent Agenda

1. Consider Alcohol Licensee Change – Kroger #388 – 564 Crosstown Dr.
2. Consider Alcohol License Representative Change – Shadow's Restaurant
3. Consider Alcohol License Representative Change – Harry's in a Hurry
4. Award Bid for Dredging of Westpark Pond
5. Award Bid for Medic Unit
6. Consider Appointments to WASA – Wade Williams
7. Consider Appointments to Recreation Commission – Earl Spell (re-appointment)
 Johnny Inman, Beth Andrews (Alternate)

Lenox moved to approve the consent agenda as presented. Tennant seconded. The motion carried unanimously.

Old Agenda Items

11-01-01 Public Hearing – Variance – Centex Homes

Mayor Lenox read the rules for public hearings. John Zadura of Centex Homes informed Council that his company wanted to withdraw the variance request. He added the company was working with the project engineers to come up with a more environmentally friendly solution. No one on Council had any objection and the request was withdrawn.

New Agenda Items

12-01-01 Public Hearing – Variance Request – 215 Christina Court

Property owner Rebecca Kern requested a variance for a deck she built on the rear of her home that extended 12.5 feet past the 40-foot buffer. Kern stated that everyone had a bad week the week

of September 11. She continued that she had hired someone to build her deck that week and it had been her responsibility to get the permits. However, she volunteered to work with her airline to help people stranded and affected by the 9/11 events and failed to obtain the necessary permits to build the deck. Kern said she went to the Building Department when she realized what happened and was told she needed a variance. Kern continued that the deck was built above the standards required by code and that it would be costly to dismantle. She added that the deck was attached to the flooring of the house and could damage the structure if removed. Kern said she had spoken with her neighbors and had letters of support from them. She also spoke with her neighbors to the rear of her home and signed an agreement with them to plant evergreen trees in the buffer to help hide the deck. She added that the area was heavily wooded and private most of the year. According to Kern, the neighbors didn't know the deck was there until she approached them.

Kim Clayton, a neighbor of Kern's, spoke in favor of the variance. She commented that the deck didn't appear to encroach on anyone's property and didn't cut off anyone's view. She added that it was an asset to the community and property values.

Developmental Services Director Jim Williams stated that in this type of situation where permits were not obtained, staff had no choice but to recommend the variance be denied. The entire deck encroached into the buffer. He added that, to her credit, Kern turned herself in when she realized what happened.

Lenox called the hearing to a close. He stated the three criteria used for variances. The first was whether or not the special circumstances contributing to the request were peculiar to the property involved. The second was whether or not the situation for which the request was made imposed an unnecessary hardship. The third was whether or not the request was due to an intentional action of the applicant to violate the requirements of the ordinances.

Lenox continued there was nothing intentional about the situation, but there was one circumstance that was peculiar. When the subdivision was platted, a 40-foot setback was required in lieu of the standard 20-foot setback, which made this row of houses unique. He added that it was not unique to this one house. His concern with the variance was that the owners of the 11 other houses would feel a precedent had been set if they wanted to do the same thing. He added that Council needed to decide if that was acceptable.

Rapson said he was concerned with what the neighbors behind Kern thought, especially the Pinegate neighbors, since the buffer was a big issue when Blueberry Hill was built. He agreed with Lenox that if a variance were approved, the other homeowners would feel they could do the same thing.

Kern answered that most of the other homeowners had detached garages and big front porches that she didn't have. She added that the costs would also keep some homeowners from building decks since it cost her \$700 just to get the permits and survey to get started.

Rapson pointed out that the reason for the zoning ordinances was aesthetics, which was a big concern, and was one of the reasons the houses had the 40-foot buffer to begin with. He said her arguments were very compelling, but the zoning laws were very compelling also. Rapson asked

City Attorney Rick Lindsey if the variance could be tabled until Council had a chance to speak with the neighbors behind Blueberry Hill. Lindsey said it could be tabled, but the precedent he was concerned with was if the variance were permitted, that it only addressed the first of the three criteria. The homes all had the peculiar buffer circumstances. Other requests would also have to meet the remaining criteria.

Lenox stated that Kern had been proactive and said the weighted factor for him was that she obtained approval from the people behind her and had a contract for screening the buffer. If the others came along with similar requests, he would require the same thing. Lindsey said it might also address the peculiarity of the properties. It worked because the neighbors behind agreed to put up trees to mitigate the problem.

McMenamin told Kern that Council looked at the requests on a case-by-case basis, but kept it mind it could set a precedent when making the decision. She said the distraction in getting the permits was something she could understand. She felt Kern might not recover from the potential damage to her home from dismantling the deck. She had visited the property and didn't see any negative impact.

Tennant agreed with McMenamin. He said no complaints had been received and it was aesthetically pleasing. Tennant moved to approve the variance. McMenamin seconded.

Lenox and Rapson asked Lindsey if something needed to be put in the motion about the buffer and Lindsey recommended that they should. McMenamin said Kern's contract should be part of the motion. Lindsey said some type of agreement with neighbors to the rear of the subdivision should be included. Lindsey said she had answered the hardship criteria. Other neighbors wouldn't be able to use dismantling a deck as a hardship and had to meet the criteria of the variance. Lenox offered an amendment to the motion that the approval was conditioned upon Kern's obtaining the approval of the neighbors behind her, having entered into an agreement with those neighbors for screening that was acceptable to both parties, and that there were no other objections from the neighborhood. Tennant modified the motion to accept the remarks. McMenamin seconded the amendment. The motion carried unanimously.

12-01-02 Public Hearing – Easement Request – St. Andrew's Square

William Rye asked to withdraw his variance request for 105 St. Andrew's Square, Agenda Item 12-01-03, which followed his easement request on the agenda. Although Rye's request was out of order, no one on Council had any objection and the variance request was withdrawn.

Concerned about the appearance of any conflict of interest, Rapson stated that he lived in St. Andrew's Square, a few houses down from Rye. Lindsey said that was not a reason to abstain from voting since the request had no direct impact on Rapson or his property, but that it was on record that he lived in the same neighborhood.

Rye addressed the Council regarding his request for two easements, one for the fence and columns in the front of the property that encroach less than a foot into the city-owned right-of-way and one a brick retaining wall in the back of the property that encroached from 1.9 feet to 8.1 feet into a city-owned greenbelt. Rye told Council that he inherited some of the issues when he bought the

property and created some of the issues himself. Because he bought the property outright, a survey wasn't required when he purchased the home, Rye explained. The fence also encroached onto his neighbor's, the Ferrells, property, in addition to encroaching onto city property. He added he was working with the Ferrells to take care of that issue.

Rye continued that the berm in the back of the property ran across the back for privacy and was put in by the developer. He said he had tried to "max" out his backyard for use by his three daughters and wanted to create a Charleston or Savannah-style private backyard. The berm tapered into the backyard a good bit, Rye said. They pulled the property stakes as they cut into the berm to put in a brick retaining wall. He said several code enforcement officers visited his property on a daily basis during that time. The code enforcers told him not to encroach to the top of the berm. The wall was four to eight feet from the top of the berm. The wall had a double brick top cap. The wall encroached 6.4 feet in one area and 8.1 feet in another area. The playground includes brick pavers, rocks, and bridges. Rye said when discovered the encroachment was an issue he wanted to make sure it was legalized. He added he had spent around \$35,000 on his backyard. Jim Williams had expressed concern over the encroachment, Rye said. He had looked at trying to pull the playground forward and out of the city greenbelt. Rye stated he was willing to sign any papers needed to take liability responsibility for any child hurt on the City's property and to work with the City on whatever Council wanted to do.

Lenox explained that this was not a variance request in the classic sense since the structure was not on Rye's property. The request was for an easement from the City to permit him to incorporate the City property into his and leave the structure in place.

Williams pointed out there were two separate areas where easements were needed to correct the problem. The first was in the front area of the house and was relatively minor and accidental when the columns were set for the fence. He recommended that an easement be granted for that.

The second situation in the rear yard was recent construction and no permit was pulled for the construction, Williams stated. Williams said there were two separate parts to that situation. One was the wall that ran most of the distance of the width of the property and encroached about two feet into the greenbelt. Because that wall was just over the line and was well constructed, staff suggested that easement could be granted. The six to eight-foot encroachment would be a serious problem and was a major encroachment into the City-owned greenbelt and could be a serious problem as far as setting a precedent.

Williams continued that during construction, construction traffic came off of Flat Creek Road and across the right-of-way and greenbelt. A number of people complained to Developmental Services and the Building Department. Many of the complaints regarded that and erosion control efforts. Staff recommended that the two minor easements be granted. In return, staff recommended that Rye be required to install landscaping to re-naturalize the greenbelt where it was damaged when the walls were built and from using the greenbelt as a driveway during construction. In addition, the landscaping plan should be professionally done and approved by the Planning Commission before any installation was done so the community could participate in re-naturalizing the area. Staff recommended the third easement not be granted.

— Rye added that his chimney also encroached into the setback line, another issue he inherited when he bought the property. The wall in the playground area tapered from one foot to two feet and was built to keep the dirt out of the playground. Rye added that he did ask for a permit to cross the greenbelt after finding out he needed one. Lenox told Rye the situation concerning the chimney was taken care of by granting an administrative variance that afternoon.

Lenox said he was disturbed by this request since greenbelts were the essence of the City and the City was extremely protective of them. He said the greenbelt should be restored and it was the community's property. He said he had no problem with the easement across the front. The error was made a long time ago.

Rapson asked why staff recommended no more than a two-foot encroachment. Williams said it was already there and would probably do more damage to rip it out than to leave it. The other encroachment was significant and could not be justified. Rapson asked if the wall were moved into the playground so it encroached no more than two feet and restoration of the greenbelt beyond the wall would be acceptable. Williams said it would be a consistent acceptable solution.

— Tennant asked Rye why the playground was an all or nothing situation. Rye said there were several walls in the backyard. If the back wall had to be pulled in, the wall would be against another wall and the playground wouldn't fit. Rye said he understood the City's position. Tennant asked if the City would be liable if there was an injury on the playground. Lindsey said possibly, and added he had another legal issue. He said there were two different types of easements – exclusive and non-exclusive. The wall made the area part of Rye's yard and if an easement were granted Council would have, in effect, given away City property. Lindsey advised against that, but said the City could sell the property to Rye at market value. He recommended that an easement not be granted, but that it would be a purchase and sell situation. Rye said his preference was for an easement, but if he had to he would purchase the property. He acknowledged it was a difficult subdivision to make thing work. Rye said his work on the property had doubled its value. It had been appraised at \$300,000 and now exceeded \$600,000.

Rapson agreed with Lindsey that an easement was not the proper thing to do. He agreed with Lenox on the greenbelt and said Rye wouldn't be able to convince a majority of Council that the playground should encroach into the greenbelt. He felt it was an undue hardship and didn't feel the encroachment was intentional. He felt the only solution would be to enter into a sale.

Lindsey recommended Council table the request. He said there were options that needed to be explored and staff would bring a recommendation to Council on December 20. He said it needed to be done without setting a precedent.

— Lenox restated what Lindsey suggested. Council was willing to contemplate selling Rye just enough land to accommodate the law, not more than two feet wide. A professional landscaping plan to restore the greenbelt was expected. Lenox told Rye it would be well worth spending \$300 to \$400 to have a professional designer come up with a plan. Lenox added that any expenses for the sale, including a survey, contracts, descriptions, would be paid by Rye. Rapson said they were asking Rye to work with City staff. Rapson said he had one other condition. Council had a letter from another neighbor regarding the berm and asked Rye to work with them on their issues.

— Rapson asked Rye to come back with a plan sanctioned by City staff to take the berm off his neighbors' property. McMenamin and Fritz both told Lindsey they needed assurances that it would not set a precedent.

Lenox moved to continue the hearing until the December 20 meeting pending a report from the City Attorney. Fritz seconded. The motion carried unanimously.

12-01-04 Consider Recommendation for City Flag

— Jan Zink, vice chair of the Recreation Commission, presented the Commission's suggestion for a City flag. Zink continued that Council had asked the Recreation Commission to design a flag and City logo in November 2000. None of the process had been taken lightly, Zink said. She added that a lot of love and hard work went into the design. Marilyn Haas designed the proposed flag, which included the current tree logo. Zink said the tree was included because it represented the City's heritage. The five globes on the tree represented the City's five villages. The path on the design represented the City going into the future. Zink said there had been a lot of input from citizens as well. City businesses were already asking about the flags, she continued. As soon as a decision was made, the flag was ready to go out for bids. The estimated cost for an indoor 3-foot by 5-foot embroidered flag was \$200—\$250. The estimates for good quality outdoor flags was \$50—\$70 each depending on the number ordered. Zink said that due to current budget constraints the Recreation Commission recommended that only the flag be considered at this time. She added that the cost for changing the logo on letterhead, vehicles, uniforms, and other areas would be significant. The Recreation Commission would also like to have a workshop with Council before December 20 to discuss the proposed design.

Lenox agreed that it would be expensive to duplicate the logo at this time. Both Lenox and Tennant commented that the flag and the logo did not have to be the exact same design.

Fritz told Zink that she had mixed emotions about the design and preferred to have a workshop to discuss it. Tennant commented that he thought the design looked great.

A workshop was scheduled for Monday, December 17, at 5:30 p.m., with the Recreation Commission to discuss the City flag design.

12-01-05 Consider Adjustment to AT&T Franchise Agreement

Administrative Services Director Jane Miller reported to Council that AT&T had notified the City regarding a Federal Communications Commission (FCC) opinion which allowed cable companies to charge customers, and to itemize on customer bills, franchise fees on non-subscriber revenues such as home shopping commissions and advertising revenues. Miller continued that AT&T would be increasing the franchise fee charged to subscribers in the City from 4% to 4.23%. Miller said it would be noted on the bill that the fees increased because the City opted to include the revenue in the franchise fees. She said it would increase the City's revenues from the franchise fees by \$9,600 per year, but that staff recommended against the proposed fee increase.

— Several councilmembers indicated that this would just be a hidden tax increase for citizens and they could not support it. Rapson moved to not pass along the franchise fee increase. Tennant seconded. The motion carried unanimously.

12-01-06 Certify Election Results

Miller reported that 18,268 voters were eligible to vote in the run-off election held Tuesday, November 27, and 5,131 ballots were cast, including absentee ballots. In the mayoral election, Steve Brown received 3,171 votes and Gary Rower received 1,946. In the election for Post 4, Carol Fritz (incumbent) received 1,918 votes and Murray Weed received 3,128.

McMenamin moved to certify the results of the November 27 General Run-Off Election. Fritz seconded. The motion carried unanimously.

Council/Staff Topics

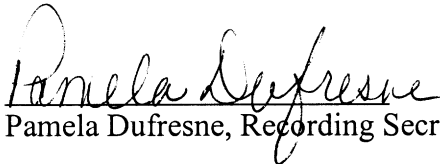
Basinger told Council that the annual Employees Christmas Luncheon was scheduled for Friday, December 7, noon-1:30 p.m., at First Baptist Church.

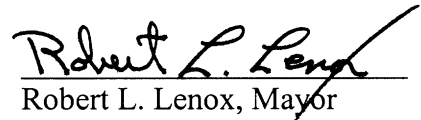
Basinger reminded Council that a workshop on the Tennis Center Expansion would be held Friday, December 7, 2 p.m., in Council chambers.

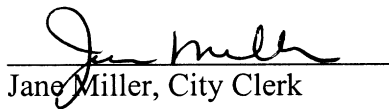
Lenox moved to go into executive session for one personnel item and one legal item after a short break. McMenamin seconded. The motion carried unanimously.

McMenamin moved to adjourn the executive session. Fritz seconded. The motion carried unanimously.

There being no further business to discuss, McMenamin moved to adjourn the meeting. Fritz seconded. The motion carried unanimously. The meeting adjourned at 9:30 p.m.


Pamela Dufresne, Recording Secretary


Robert L. Lenox, Mayor


Jane Miller, City Clerk