

City Council of Peachtree City
Minutes of Meeting
December 5, 1996
7:00 p.m.

The City Council of Peachtree City met in a regular session Thursday, December 5, 1996, at 7:00 P. M. in the City Hall Council Chambers.

Mayor Lenox led those attending in the pledge of allegiance. Council members present were: Annie McMenamin, Caroline Price, Bob Brooks, and Jim Pace.

ANNOUNCEMENTS, AWARDS, SPECIAL RECOGNITION

Mayor Lenox presented a 10-Year Service Pin to Jim Williams, Director of Developmental Services.

Mayor read a Proclamation for the Kiwanis Club's Anniversary.

Mayor announced the City Administrative Offices and the Library would be closed from noon to 1:30 p.m. on December 13 to enable employees to attend the annual Christmas luncheon.

MINUTES

Price made a motion to approve the minutes of November 21, 1996 as presented. Pace seconded the motion. Motion carried unanimously.

OLD AGENDA ITEMS

11-96-07 Public Hearing - Consider Mike Hyde's Continued Service on the Planning Commission

Lenox turned the meeting over to Councilman Brooks for the Public Hearing to consider Mike Hyde's continued service on the Planning Commission. Councilman Brooks said City Council would be holding a public hearing to decide whether or not Mr. Mike Hyde should continue to serve on the Peachtree City Planning Commission. He said the City Ordinances stated that to remove an individual from the Planning Commission for cause, a public hearing should be held. He said the ordinance gave very little other guidance as to the definition of a public hearing and did not suggest a procedure. He said it did not address the removal of a volunteer for "no cause" at all, and whether in such a case any public hearing would be necessary. Brooks said the Council felt strongly that as the

— elected and sworn representatives of the City they had the right to select Planning Commission volunteers at the citizens' discretion and to dismiss volunteers at their discretion. He said Council also believed that it was very important to conduct affairs in a manner that would protect the rights and reputation of the members serving on the Planning Commission. Brooks said Council felt the intent of the ordinance was to dictate the opportunity to present both sides of an argument in public and to be heard. He said the Webster's Dictionary defined a hearing in the following three ways:

1. The opportunity to be heard, to present one's side of a case;
2. Judicial examination where there is possible violation of law or municipal regulation; or
3. Legislative.

Brooks said Council was clearly not acting in a legislative fashion that night and unlike several months ago when Mr. Hyde was found guilty of an ethics violation, this would not be a judicial hearing. He said the hearing that night would be as stated in the first definition - an opportunity for the Council, Mr. Hyde and/or his representatives to summarize their views on the issue and to be heard.

— Brooks said it was important to remember, the hearing was not an entity in and of itself but rather a summary of a continuing saga. He said there had been formal zoning public hearings; a more formal judicial hearing; meetings between City Council, neighborhoods and developers; numerous articles and letters in the newspaper; and staff/citizen workshops. He said before and during each event there had been significant citizen input regarding the issues and Mr. Hyde's service on the Planning Commission. He said because Mr. Hyde and his council also had sufficient opportunity to rebut each and every comment made by the citizens and to present Hyde's side of the debate, there was no need for redundant information or input. He said the majority of the dialogue was a matter of official public record and while he appreciated the citizen's willingness to comment that night, he felt it would not be necessary. He said Council's comments would be based on information from the public records created over the last ten to twenty-four months.

— Brooks said he would conduct the hearing in a somewhat unique but simple procedure that night. He said the issue to be considered that night: in City Council's judgement, can Mr. Hyde be an effective Planning Commission Member under current circumstances, and do those circumstances undermine the credibility and effectiveness of the entire Planning Commission? Brooks said Council members would have the opportunity to speak first and address the reasons why they felt Mr. Hyde should stay on or be removed from the Planning Commission. Mr. Hyde and/or his representatives would then have the opportunity to present their side and rebut opinions they disagreed with. Brooks said he would allow 20 minutes for Council and 20 minutes for Mr. Hyde.

After that time the Public Hearing would end and the Council would vote on Mr. Hyde's continued service.

Council member Price said she felt it was appropriate to review Mike Hyde's appointment in light of recent happenings. She said Mr. Hyde applied for reappointment to the Planning Commission at the end of 1995 and his previous service and continued interest made him a viable candidate. He was reappointed for a second three-year term based on recommendations of the interviewing committee. She said at the time of the appointment, it was known that Mr. Hyde was both a residential and commercial landowner in the City and there was no reason to believe that his business dealings would create a conflict of interest in serving on the Planning Commission. She said Hyde had brought rezoning and development applications before the Planning Commission and City Council in the past and although the decisions were not to his advantage, he continued to work with the City in a positive manner. Price said she felt the Land Development process was not an easy process and when rezoning issues are added to the process it compounds the difficulty. She said Mr. Hyde had chosen to pursue a project as part of his business and was facing some problems that had not been resolved. Price said she respected Hyde's personal rights as a property owner and felt that he was entitled to follow through on his rights; however, she also felt that anyone serving the citizens of Peachtree City must make personal choices that reflect the greater good. Price said there had been times as a Planning Commission member and City Council member when her personal opinion did not coincide with the action or decision that she knew was right for the City. Price said it was her opinion that Mr. Hyde was faced with a difficult situation and that he chose to continue with a personal business project that differed from the stated development goals of the City of Peachtree City and the Planning Commission. She said she appreciated variation in point of view and she thought that diversity can lend strength to a Commission or Council, but she also believed that there must be an understanding of the basic goals or mission of a Commission that all members share. She felt the mission of the Planning Commission was to uphold the Land Use Plan and that she did not believe Mr. Hyde could be an effective member of the Planning Commission because she did not believe he subscribed to the Land Use Plan of the City.

Council member McMenamin stated her position had not changed since the original Public Hearing to consider the Ethics Violation. She said she supported Hyde's dismissal from the Planning Commission because she had lost confidence in his ability to serve in the best interest of the City because of his inability to uphold the Land Use Plan.

Council member Pace said the issue for him was not the Ethics Violation but an issue of credibility. Pace said he spoke with the City Attorney, Rick Lindsey, following the Ethics Violation Public Hearing, concerning the issue of credibility. Pace said with the way the matter had unfolded, he felt there was no longer any credibility and Hyde's continued service would be a detriment to the existing members of the Planning Commission.

Brooks said he initially felt Hyde had the right to sue the City, and although a number of citizens did not agree with that point, he felt it was the right of any individual of the City to be able to disagree with the City and to take the action they need to take in working out a problem. He said he felt if Hyde were a member of the Recreation Department or a member of the Commission on Children and Youth, he did not believe there would be an apparent conflict or concerns from the citizens. Unfortunately, he said, as the situation continued there had been a number of comments made that Mr. Hyde needed to develop his case in any way he could. Brooks said he found it difficult but to think in at least some degree there was a conflict of interest when the City's policy is one way over a Land Use Plan and there was a sharp disagreement over the policy with an active member of the Planning Commission. He believed not only did Hyde's particular issue need to be settled, but there were a number of other land issues that would come up that involved ER zoning, and it could become increasingly difficult to separate one's emotion from official policy. Brooks said he felt the situation had moved to a point where there was a credibility problem and the most important thing that needed to survive was the effectiveness of the Planning Commission to be able to do its job in such a way that the Planning Commission and the City Government was credible. He felt it was not possible with the present situation as it was. Brooks said the majority of the motives were suspect to a lot of citizens in general. He believed that there was a reputation for dishonesty in government and he felt City Council should strive very hard to uphold a honest reputation and due to that fact, he felt Mr. Hyde would be ineffective on the Planning Commission.

Mike Hyde's legal council, Mr. Rosenzweig, said Council's approach was violating a number of Constitutional and Legal Provisions. He said the idea that Council could look to Webster's Dictionary for the meaning of "hearing" clearly violated established court rulings in a situation where Council would be removing an appointed public official who was serving a specific term. He said there were enumerable rulings on the issue commanding a "hearing" to require certain specific things. Rosenzweig felt Council

was not giving Hyde a procedural due process. Rosenzweig said that Brooks statement concerning the ordinance being silent about whether he could be removed for no cause at all was . . . Brooks interrupted and said due process had been served and Council was going through the motion of removing Hyde from the Planning Commission for cause. He said while he believed it was not clear whether they needed to have cause to remove Hyde, Council felt they certainly did have cause.

Rosenzweig said the Ordinance was clear and would be construed against the City at the appropriate time to the extent there was any ambiguity.

Rosenzweig said the first provision for procedural due process in a removal situation was that written notice, including the reason for dismissal, must be given. He said Council had probably met that requirement because his client had received a letter that basically said some citizens did not like Hyde, and Council questioned a comment he made as a private citizen during a Planning Commission meeting. He felt Council had met the second provision for procedural due process by giving notice of the hearing. He said he was protesting the third provision because it required a hearing at which an opportunity to present evidence and to cross examine adversary witnesses be available. He said Hyde was not given the opportunity to do that. Rosenzweig said the main reason he had heard that night to remove Mike from the Commission was the Planning Commission was not operating effectively but he had never heard one Planning Commission member make those statements. He said Hyde was never given the opportunity to cross examine or confront any adversary witnesses. Rosenzweig said other requirements for a hearing were an impartial tribunal, fair proceedings, and a decision supported by good evidence.

Rosenzweig focused primarily on the good evidence requirement. He said there were many Georgia cases on the meaning of "for cause" and Council should consider the cases in deciding whether or not to remove Hyde from his specific term on the Planning Commission. He said the case of Lancaster vs. Hill said that "cause" must be related to and affecting the administration of the office. It must be something of a substantial nature, directly affecting the rights and interest of the public. Rosenzweig said he understood the complaint was that Hyde sued the City and citizens complained. He said a number of citizens called him and told him they were behind Hyde 100% on the matter but that he did not know how many citizens called the City to complain because they were not given the opportunity to confront anyone on the issue. He went on to explain that the case of Lancaster vs. Hill involved a Constable in Fulton County. He

explained the case as ruling that "although an officer may be rude and domineering in his methods of administering his office, it is not grounds for removal unless his rudeness extends to illegality of conduct or to oppression under color of office. Lack of civility in official acts would probably cause the electorate to decline an incumbent who is wanting in the temperamental qualities which the ethical standards of the community may prescribe but it is not sufficient, when disassociated from illegal conduct, for the officers removal from office by the court. Individual idiosyncracies and temperament of an officer capacitated the discharges of official duties is not the official incapacity recognized by the statute as a ground for removal."

Rosenzweig referred to another case, Wallace vs. State of Georgia, which ruled sufficient cause needed to be directly related to the office and needed to be of a substantial nature. He said the case of Council vs. Horton ruled that when an officer had a fixed term of office he could only be removed for definite and specified causes. He could not be removed without notice or without a hearing on the charge or charges against him. He must have an opportunity to defend himself. Rosenzweig said Swappard vs. Date County Board of Commissioners gave an example of "cause" to remove an officer. He said a tax assessor attempted to conduct Board of Tax Assessor business by a telephone poll rather than in an open meeting, he harassed a female tax assessor because he believed women should not be tax assessors and he wanted a man in the job, he harassed tax payers in an open meeting out of spite concerning an assessment of his property by a former employee, and he behaved in a harassing manner to a tax department employee during the Public Hearing. Rosenzweig said these examples directly related to the person's position but that in Hyde's case, the comment Hyde made that Council did not like, and incidently was misquoted on, was made as a private citizen after he stepped down from the Planning Commission's deliberations. Rosenzweig said he felt when it first came up Council should have said he had a right to go court and resolve his problem and they should have protected his rights but instead they held a workshop which turned into a public ambush. He said it would be an easy decision for Council to remove Hyde from the Planning Commission because Hyde's position was unpopular. He said the harder decision to make would be to protect Hyde's right of access to the courts. He said even though Council might not like what he is doing, he had been a good public servant and Council had not received complaints about Hyde before this issue arose. He said even though it may be a bitter pill for Council to swallow, Mike's suit against Peachtree City was not "cause" that directly related to his appointed position and he should be allowed to serve out his term or resign.

Pace asked why Hyde was so determined to uphold his volunteer position. Rosenzweig said Hyde was a man of principle and he did not think he should be forced out of his position because he had taken an unpopular stand. Hyde felt he had done a good job and Council was wrong not to stand behind him.

Pace said he did not question his tenacity to fight but questioned his willingness to fight. He thought Hyde seemed more inclined to fight than to not fight. Pace said he supported Hyde's past service and did not elect to remove him from the Planning Commission concerning the Ethics Violation charge because he felt the Ethics Violation was a technicality. Pace felt, however, there had been a combination of things since the Ethics charge and it had reached the point where the credibility factor was not there. He said Hyde filed the law suit in April, and this month was December. He said no one on Council ever felt they should deny Hyde's right to file suit because that was a constitutional right, but it was now apparent that his right to file suit was infringing upon the citizens' right to have people on the Planning Commission they could trust and rely upon. Pace felt it was a matter of whose rights were more important, the rights of the many or the rights of the one. In this particular case, Pace said he did not see any way Hyde would be damaged by stepping down from that position and he did not understand why Hyde tenaciously wanted to hold on to a volunteer position. Pace felt Hyde had done a good job but had reached a point where his service was causing a credibility problem for the Planning Commission and for City Council. Pace was not very sympathetic to a threat of another law suit and felt Hyde could only file suit a limited number of times.

Rosenzweig said it was easy to give into the majority but that was not what the Hearing should be about. Pace said in America, the majority wins elections and gets their way. He said that was the way things happen and he felt Council had been very cautious to uphold Hyde's rights. He did not feel any Council member wanted to see Hyde injured or harmed in any way by the Hearing and that was why they elected to hold the hearing in this manner. He said Council felt there had been enough exposure to the public comments and they would prefer not to have to do this.

Brooks believed there was "cause" to remove Hyde from the Planning Commission and that "cause" was Hyde's failure to support the established Land Use Plan. His personal feeling was that Hyde was opposed to established Land Use Plan policy of the City and his opposition was undermining what most citizens wanted. Brooks said there had been

numerous newspaper articles, letters to City Hall, and many comments made in public meetings that Hyde had the opportunity to address. He said the meetings were all taped if Hyde would like to listen to them and the letters were also a matter of public record. Brooks said Council would be making a decision after a year and a half of events.

Rosenzweig pointed out that there had not been one single incident of Hyde not enforcing the Land Use Plan and Hyde always enforced the law while serving on the Planning Commission.

Brooks said comments made as a private citizen or commentary in meetings could all, to a certain extent, create a scenario where a situation could outgrow any individual or specific event. He felt this was a situation or scenario that had grown bigger than itself and unfortunately Council felt, based on citizen comments, that the Planning Commission did have a credibility problem. Brooks called the hearing to a close and called for a motion.

McMenamin made a motion to remove Mike Hyde from the Planning Commission. Price seconded the motion. Motion carried with Lenox abstaining.

NEW AGENDA ITEMS

12-96-01 Public Hearing - Consider Annexation and Zoning of Avalon Park

Lenox read the rules for conducting a public hearing and opened the hearing to consider annexation and zoning of Avalon Park and asked first to hear from the applicant and those in favor of the annexation/zoning.

Jerry Peterson addressed Council on behalf of the applicant, Peachtree City Development Corp. Peterson said while the original application requested R-43 zoning PCDC would not be opposed to zoning the property Estate Residential. He did voice concerns that if the density was decreased PCDC would not be able to meet all of the conditions staff recommended for the R-43 zoning, such as providing a tot lot and additional cart paths.

Jim Williams, Director of Developmental Services, addressed Council and recommended approval. He said the annexation made sense because Camp Creek separated it from the rest of the County. He also recommended that the access be

through Avalon and not through Camp Creek Estates. Williams felt that the ER zoning as opposed to R-43 zoning would reduce the density from 20 lots to 10 lots and he did not feel it would be a problem to allow those 10 lots to access the carpath system through the existing carpath in Avalon Phase I. Williams also did not feel a tot lot would be necessary for only 10 lots. Williams did however, suggest that the zoning be restricted in some way that it can never be rezoned to a higher density. Peterson agreed that PCDC would not request a rezoning and would develop the property as ER. Mayor Lenox suggested that PCDC ensure that the Deed Restrictions and Covenants for the development would include provisions that any future property owner shall not petition for a re-zoning. Peterson agreed.

Ted Thomas and Elias Hogan also spoke in favor of the annexation and zoning of ER/Estate Residential. They felt it made sense to annex the property and develop it to Peachtree City standards. They also agreed that ER/Estate Residential zoning would be appropriate.

Price made a motion to annex the 41.06 acre tract South of Avalon Park Subdivision, West of Camp Creek and North of Camp Creek Estates Subdivision and that the following conditions and stipulations would be as follows:

- The property is zoned ER/Estate Residential and will be developed as such. The developer will ensure that the Deed Restrictions and Covenants for the development will include provisions that any future property owner shall not petition for a re-zoning.
- There will be a maximum of ten lots.
- Access to the Development will be through Avalon Park Subdivision, Phase I.
- No additional carpath will be required. The Development will access the carpath system through the existing carpath in Avalon Phase I.
- No recreational tot lot will be required.
- The Glenloch Impact Fee \$1,083 per unit will apply and PCDC will be allowed to use their impact fee credit. (PCDC has a credit for recreational land and PCDC will be allowed to use the \$500 per lot credit toward the impact fee.)

Pace seconded the motion. Motion carried unanimously.

12-96-02 Consider Appointments - Water and Sewerage Authority

Basinger advised Council that the selection committee, comprised of Mayor Lenox, Bob Brooks and himself interviewed three applicants for the Water and Sewerage Authority. They recommended that

Mr. Jim Cole be appointed to serve a term ending December 31, 2001, and that Mr. Ray Helton be appointed as an alternate to fill any vacancy which may occur prior to July 1, 1997.

McMenamin made a motion that Mr. Jim Cole be appointed to the Water and Sewerage Authority to serve a term ending December 31, 2001, that Mr. Ray Helton be appointed as an alternate to fill any vacancy which may occur prior to July 1, 1997. Lenox seconded the motion. Motion carried unanimously.

12-96-03 Consider Appointments - Airport Authority

Basinger advised Council that the selection committee, comprised of Council members Annie McMenamin, Caroline Price and himself interviewed nine applicants for the Airport Authority. They recommended that Mr. David Good be reappointed to serve a term ending December 31, 2001, and that Mr. Michael Brady be appointed as an alternate to fill any vacancy which may occur prior to July 1, 1997.

McMenamin made a motion that Mr. David Good be reappointed to the Airport Authority to serve a term ending December 31, 2001, that Mr. Michael Brady be appointed as an alternate to fill any vacancy which may occur prior to July 1, 1997. Lenox seconded the motion. Motion carried unanimously.

12-96-04 Consider Appointments - Recreation Commission

Basinger advised Council that the selection committee, comprised of Mayor Lenox, Jim Pace and himself interviewed three applicants for the Recreation Commission. They recommended that Ms. Jan Shannon-Zink and Mr. John Connolly be appointed to serve terms ending December 31, 1999, and that Ms. Amy McFarland be appointed as an alternate to fill any vacancy which may occur prior to July 1, 1997.

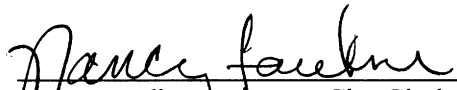
Pace made a motion that Ms. Jan Shannon-Zink and Mr. John Connolly be appointed to serve terms ending December 31, 1999, and that Ms. Amy McFarland be appointed as an alternate to fill any vacancy which may occur prior to July 1, 1997. McMenamin seconded the motion. Motion carried unanimously.

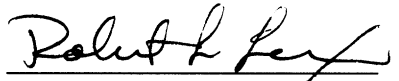
Lenox made a motion to take a brief recess and reconvene in Executive Session to discuss a real estate and legal matter. McMenamin seconded the motion. Motion carried unanimously.

EXECUTIVE SESSION

Brooks made a motion to authorize partial payment of \$250,000 to Kilpatrick and Cody for legal services related to the acquisition of the GA Utilities Corporation. Price seconded the motion. Motion carried unanimously.

Price made a motion to adjourn the meeting. Brooks seconded the meeting. Meeting adjourned at 9:00 p.m.


Nancy Faulkner, Deputy City Clerk

Attest: 
Mayor