

City Council of Peachtree City
Minutes of Regular Meeting
December 2, 2004
7:00 p.m.

The City Council of Peachtree City met Thursday, December 2, 2004, in the City Hall Council Chambers. Mayor Brown called the meeting to order at 7:00 p.m. Other Council Members present were: Stuart Kourajian, Judi Rutherford, and Murray Weed. Steve Rapson arrived late due to a previous commitment.

Announcements, Awards, Special Recognition

Mayor Brown recognized Sherry McHugh as the Fourth District Distinguished Recreation Professional of the year, Robin Tennant as the Fourth District Recreation Volunteer of the Year, and Nick Harris as the State Recreation Volunteer of the Year.

Minutes

Brown moved to hold the February 7, 2002, regular meeting minutes until the end of the agenda. Weed seconded. The motion carried 4-0 (Rapson absent).

Rutherford moved to approve the November 18, 2004, regular meeting minutes as amended. Weed seconded. The motion carried 4-0 (Rapson absent).

Monthly Reports

Brown announced that City Hall would close at noon on December 23 and remain closed on December 24 for the Christmas holiday. City Hall would also be closed on December 31 for New Year's Eve.

Brown noted that the top five accident locations for October were GA 54/Planterra Drive, GA 54/GA 74, GA 54/Huddleston Drive, GA 54/Commerce Drive, and GA 74/Paschall Drive.

Consent Agenda

- 1. Consider Appointments to Tourism Association**
- 2. Consider Budget Amendments**
- 3. Consider Approval of Quint Fire Apparatus Equipment Bids**
- 4. Consider Amendment to Section 42-116 Smokefree Air Act of 2004**

Relative to Employee Smoking Rooms

Brown noted there was an additional document on the dais for #3 – a memo to Mayor and Council from Fire Chief Stony Lohr dated November 29, 2004, with the subject "Quint Equipment Bid Award Recommendations." There was also an additional document for #4 – an e-mail from Kathie Cheney that was forwarded to Council by the City Manager.

Brown moved to remove Item #4 from the Consent Agenda. Weed seconded. The motion carried 4-0 (Rapson absent).

Rutherford moved to approve Consent Agenda #1,2, and 3 as presented. Kourajian seconded. The motion carried 4-0 (Rapson absent).

4. Consider Amendment to Section 42-116 Smokefree Air Act of 2004 Relative to Employee Smoking Rooms

Brown told Council that he talked with Kathie Cheney, who had expressed concern that the switches that controlled the ventilation for the negative air pressure could be turned off, which could lead to smoke getting into other rooms.

Brown moved to approve the ordinance as written with the addition of Section (C)(1) that the ventilation equipment must be running at all times. Weed seconded.

Rutherford offered a friendly amendment that the ventilation equipment should run at all times except for maintenance. Brown accepted the friendly amendment.

Kourajian read from Section (C)(2) and requested that the requirement for a self-closing, sealed door that was closed at all times except when entering and exiting be added. Brown accepted that into the motion.

Brown restated his motion to accept the document as written with the addition of (C)(1) that the ventilation equipment must be kept running at all times, with the exception of maintenance requirements, and that at the end of (C)(2) a requirement for a self-closing sealed door be added. Weed seconded. The motion carried 4-0 (Rapson absent).

Old Agenda Items

09-04-04 Consider Landscape and Tree Preservation Ordinance

Brown noted there were additional documents on the dais – a memo from himself to Council, the City Manager, and the City Planner dated December 2, 2004, with the subject “Vegetation Protection and Landscape Requirements, December 2, 2004, Regular Meeting;” an e-mail from the City Manager to Mayor and Council dated December 2, 2004, with the subject “Vegetation Protection and Landscape Requirements,” and an e-mail from the City Manager to the Mayor Council dated December 2, 2004, with a forwarded e-mail with the subject “Tree Removal.”

City Planner David Rast told Council that, following the previous meeting on this issue, staff had taken the comments and done additional research. Some modifications were made. Staff also simplified the reading of the ordinance by divided it into five sections – Division 1. General; Division 2. Protected and specimen trees; Division 3. Landscape plan procedures for retail, commercial and industrial properties; Division 4. Tree protection on public property; and Division 5. Tree preservation on residential property.

Rast continued that Division 5 simplified and clarified the tree removal process. Currently, homeowners were supposed to get a permit whenever they took down a tree on their property. In the last year, the City had issued hundreds of permits for the removal of thousands of trees. Upon receipt of the application, Code Enforcement looked at it and

inspected every property. Rast said he sometimes inspected the trees to be taken down if necessary. Staff very seldom denied a request to remove trees. If a tree did not need to come out from the City's perspective, then Rast would talk with the homeowners. Quite a bit of staff time was involved, and a \$25 fee was appropriate. Rast reiterated that the ordinance did not prohibit anyone from taking down a tree or cleaning out the understory, but codified something that had been a policy for years. Homeowners could remove up to 30 caliper inches of trees per year without paying the permit fee. Permits were needed for more than 30 caliper inches of trees. Permits were not needed for shrubbery.

Rast explained that the permits also allowed the City to track who was taking down trees. He said there had been occasions where lots were timbered by a tree removal company that never returned to clean up. The homeowner then had to clean the property and take on that expense. The City would be able to ensure the company had an occupational tax license, and the company could be tracked since the company had to obtain the permit and pay the fee. The ordinance also addressed greenbelt issues and clearly defined what was appropriate. The ordinance also defined action that could be taken against those who disturbed the greenbelt.

Brown noted that the committee had been working on the ordinance for over two years. Some of the items had been included in the ordinance because of actions that happened regularly. Brown said some people had gone into the greenbelt and shredded trees, and that was something taken very seriously.

Brown continued that community retail areas were a big problem. The landscape plans had to be approved in order to receive a Certificate of Occupancy. Trees were planted in July and died in a year and a half. They wanted to ensure that adhering to the landscape plan was as important as adhering to the building code. There should be a guarantee that the landscaping would remain for a long time.

Weed told Rast that the ordinance was a tremendous work and that the City was headed in the right direction. Weed addressed Section 1130(a) and asked how caliper inches of trees were determined. Rast explained that caliper inches were the measurement of the diameter of the tree at breast height. The permit cost was associated with the time required for staff to go out to ensure trees were not in the greenbelt.

Weed said most people wanted to do good if it was convenient. If it were not convenient, then people bent the rules. He was not convinced a \$25 fee was in order for homeowners. The motivation was clear, but the City would have a hard time enforcing the ordinance unless neighbors turned in neighbors. Weed said he believed in letting people take their own risks. If they cut into the greenbelt, then they would be "hammered." The burden was on the homeowner to be responsible. Weed continued that he was not sure they had to assume everyone would cut down trees in the greenbelt.

Rast agreed and said the way permits had been handled had worked well without a fee or additional work. The ordinance could work the same way without the fee. The fee was

an attempt to recover the cost of staff time. Permits were steadily increasing and were time-consuming.

Rutherford questioned the use of a licensed tree removal company. She said she called the state and the state did not require licenses for tree removal. The state required arborists to be licensed, but not tree removal companies. Brown asked what was required. Administrative Services Director/City Clerk Jane Miller noted that the occupational tax was not a license, so nothing was required. Rutherford said she had a problem with that requirement in the ordinance, since the state did not require a license for tree removal.

City Attorney Ted Meeker noted that the main point was that the company should be bonded, insured, and had a current occupational tax record. Striking the word "licensed" from the ordinance would achieve that.

Brown noted Section 1109(j) and said that maximum parking was 125% above the minimum number of spaces required for the approved land use. Currently, there was no maximum standard for parking lots. He said a lot of cities were now requiring pervious surfaces for parking. Brown said he would like for the ordinance to require that up to 60% of the minimum parking lot size be impervious surface and that the balance, not to exceed 125%, be pervious surface. Weed and Kourajian both agreed that sounded reasonable. Rutherford noted that more types of pervious surface were available now.

Brown addressed Section 1110(d)(3), which covered garbage/dumpster enclosures. Brown said he wanted to restrict wooden slat enclosures. He wanted to stick with masonry or metal enclosures that would not rot, warp, or decay. Meeker said wooden enclosures were not permitted the way the section was worded, but suggested striking the word "preferable." The words "shall be" would be added before the list of building materials.

Brown moved to Section 1112. He said the worst time of year to plant trees was in July. He wanted to give developers an option to post a cash bond so trees could be planted in the proper season. Rast said that was the current policy. Meeker read the section that gave developers that option. Rast said a bond could be posted for the Certificate of Occupancy.

Brown suggested clarifying the language in Section 1114(b) as it related to Section 1114(a) and Section 1212(i). He said this was a housekeeping issue and that the sections could play against each other as currently stated. Sections 1114 and 1212 required that the plants be kept alive for two years. Brown wanted to add language that would require the plant life to be kept alive for the life of the project.

Meeker noted that in Section 1114 there was a two-year guarantee. He suggested adding the word "thereafter" to the next sentence to guarantee replacement. Adding "thereafter"

clearly defined replacement of dead plants. Rast said that there was nothing in the ordinances currently that required replacement of dead trees and plants

Weed commented that the City was unique in that it complied with its own ordinances. He said the way the City handled what the government did on publicly owned land should be policy, not ordinance, and recommended removing Section 1129 from the ordinance and writing a policy.

Rutherford said removing the section seemed to protect the person who mowed down the greenbelt. She asked Weed if he wanted to protect that person. Rast said the section was intended to allow the City to set standards for when developers wanted to place street trees in the right-of-way in front of their project. The section dealt with the protection of trees in the greenbelt. Enforcement was dealt with in Sections 1132 and 1133. Rutherford said she understood what Weed wanted to do, but she did not want to remove the section if doing so would protect someone who disturbed public land. Weed agreed, but said he was confident Rast and the City Attorney could find a way to say that people who cut the public's trees would pay for them. Meeker said he had the same questions. Ultimately, a developer would want to plant something in the right-of-way. The ordinance set the standards. Weed suggested adding the language, "When the City of Peachtree City was not the entity planting trees, use the standards as follows" and list the standards. Kourajian said the right-of-ways were covered in Sections 1124 and 1126. Meeker said he was comfortable with the wording as it was. He said there should be something ascertainable in the event of the denial of a plan. Weed said Section 1124 was headed in the right direction. He explained that when an ordinance left something to the discretion of a City staff member there should be clear rules for the use of that discretion. Meeker suggested striking the first sentence and requiring the trees to be planted at a minimum of 12 feet. If a developer wanted to do less, they would have to seek approval. Weed said the first sentence needed to be rewritten anyway. He also wanted a caveat if a City entity did the work. Weed said the City would hold itself to the standards set by staff. Kourajian suggested adding 1114.5 and putting in the wording Weed suggested, and that section would cover everything that followed.

Kourajian referred to Section 1131 and asked if a homeowner could be required to clean up yard debris within a specified time period, just as contractors were. Rast verified that 1131 had been written specifically for tree removal contractors. He said they could modify the requirement in the residential section. Rast said it would be a good add since they had run into that situation. McMullen suggested adding a paragraph to Section 1130 setting time limits.

Kourajian noted that many trees had almost fallen over during the recent storm and asked if a permit would be needed to take down trees that needed to be taken down following a storm on such as the one on Friday night so they would not fall on a house. He asked if there was anything that covered an urgent need. Rast said that would be an act of God and something could be added to address those situations.

Kourajian referred to Sections 1106(d) and 1105(b) regarding utility line construction. He asked Rast to explain normal construction in 1106(d) when a permit was not needed and maintenance in 1105(b) when a permit was needed. Brown said that was an eminent domain question. Rast said 1105 was for the owner, developer, or whoever was responsible for the site plan approval process, and the only way to get either sanitary or storm sewer on the property was go through the root system of a 20-inch tree. Kourajian said his question was about 1106(d). Rast said they dealt with the Water and Sewerage Authority on this issue the last time they put in a big project. Utilities were allowed to clear-cut for construction. Brown said it covered those regulated by the Public Service Commission or the Environmental Protection Division.

Weed referred to Section 1118 and suggested adding an exception for governing authorities. Rutherford said she did not want the state to be covered under the section. Weed said Meeker suggested adding the word "City."

Rutherford moved to approve the Vegetation Protection and Landscape Requirements ordinance with the following exceptions: a residential tree removal permit would be required, but there would be no \$25 fee; in Section 1109(j), no more than 60% of the space above the minimum be impervious surface and that the balance be pervious, but the total number of spaces was not to exceed 125%; Section 1110(d), that the word "preferable" be struck in front of "building" and "shall be" added after material; Section 1114(a), add the word "Thereafter;" Section 1118, add the words "except for the City, or entities performing work for the City;" Section 1130(c), remove the word "licensed," and add requirements to be bonded, insured, and to have paid occupational tax; and Section 1130, that (e) become (f) and a new (e) be inserted that read "The owner shall be solely responsible for the removal of all cut logs, brush, and debris, or any fallen trees on the premises. Such removal shall occur within 30 days after the date the tree is cut or falls." Meeker added a change to the heading – Zoning Ordinance would change to Land Development Ordinance and to add "of the Peachtree City Land Development Ordinance" would be added after "Landscape Requirements" in the opening paragraph. Weed seconded. The motion carried 4-0 (Rapson absent).

10-04-05 Kedron Village Retail Expansion (Architectural Program Approval)

Brown noted that some citizens had been working on the project on this end and asked Mike Cohn, FCD-Development, LLC (Faison), if he would look at the drawings.

Rutherford said that, at the October 21 meeting, Cohn had been charged with changing the plans. The changes were clearly stated. The City had not been charged with doing anything. Cohn was at the meeting to present those changes. Rutherford said she appreciated the input, but the directions for this meeting had been for Cohn to go forward. Brown said it was due diligence for Council to go forward and look at the citizens' suggestions. Rutherford said Council had done due diligence. If Brown wanted to continue, he should bring it up in another format, such as the landscape plans, when appropriate to do so. She continued that Council was not doing the City a service by

saying it had a better plan. Council had voted on what Cohn needed to do, and that was what Council needed to look at.

Weed said he had asked the Mayor to call Cohn, but they had had not been able to talk. Weed asked Cohn if he would allow Council the courtesy of a presentation of the citizens' plans.

Cohn said there were a number of issues. The Mayor had asked for a meeting the day prior to the meeting. Cohn said the judge had made it clear that there would be no more meetings unless they were public meetings. Brown noted that the judge's ruling applied to a quorum of Council. Cohn said the presentation was not appropriate on the night the vote was to be taken and noted this was still ongoing litigation. They had committed to specific points. Cohn said he knew Strickland's company, and it was reputable, but none of this was appropriate for the meeting. Cohn said they had been asked to do four specific things and to consider two other design options. Cohn continued that they had been blindsided by new materials, after spending a great deal of time on the changes. There were also parking field and site plan changes that were inappropriate.

Weed asked about the right side elevations. He said they had talked about two efis panels and two windows. Weed said there should be one more window. Brown said they had never agreed on a treatment, just that something was needed on the side. Cohn referred to the transcript of the October 21, 2004, meeting – the top of page 29 and continuing on pages 30-31, 33, and pointed out various comments from Council. Cohn said there was no intent for more than one show window on that side of the building. Brown said the comments included words such as maybe, possibly, and options available. Cohn noted it was Brown's suggestion for an arch, which was the only element added. Breaking up the elevation had been the focus of the discussion, and Target had added trellising that had not been part of the discussion. Cohn said they had done everything Council had asked and more. They had appeased neighborhoods. They had complied with the consent order, which gave no architectural control by Council or staff. Cohn said he needed to start protecting their legal rights. They had made gratuitous changes, things not required by the City's ordinance, to make everyone happy. Brown said this was a minor request that would not alter the construction. He noted that they had used broad language for something that Cohn said was extremely clear.

Weed said that he believed the developer still owed a window since they had talked about two windows on the right elevation. He agreed that there would not be another window on the front elevation. He referred to a comment from Rapson in the transcript that the right hand side would "mirror" the front. Cohn said the comment was to make certain that the element on the side was similar to the element on the front, not regarding a number or quantity. Weed talked to Rapson earlier in the day and they had agreed that there were to be two windows on the right hand side. Brown said it was clearly stated there should be a couple of awnings on the right elevation, but they should not be over efis. Rutherford read another portion of the transcript that left the design to Target as to whether they used a window with some efis, or an awning. Brown said it was not

abundantly clear what was to be done. It was not giving the developer carte blanche to bring back a single plan that was the only plan that would work.

Kourajian asked Cohn what he had expected to happen at the meeting. Cohn said he expected to present the items discussed at the last meeting and for Council to vote. He did not expect a workshop. Weed said that perhaps Council had set the wrong tone, but he still felt there should be another window and respectfully disagreed with Cohn. Cohn said the list was a narrative list of items the developer was to consider.

Cohn said there were a lot of things to consider and requested that this issue be set aside and addressed at the end. Rutherford said she would like for Cohn to walk Council through what had been done.

Cohn pointed out the changes to the front elevation, moving left to right from the adjacent shop buildings to Target's front entrance. They had committed to adding an architectural element of proportional size, similar to those in the middle of the building, and had added show windows to the right side. They had agreed to install show windows in the three architectural elevations. They had removed the heavy columns from the canopy over the entrance and suspended the canopy. On the right side of the front elevation, they had committed to adding a third architectural element to break up the façade and to install, in one of the three elements, show windows. For architectural balance, they installed the window closest to the entrance. A third architectural element was added towards the rear of the building.

Cohn continued that they had also agreed, with no commitment, to consider a break in the soffit to the left of the existing three architectural elements. The area was used for cart storage and protruded about 25 feet. Cohn noted that, in reality, it was better to break up the expanse by adding a trellis, which added texture rather than crowding the area. A trellis had also been added to the right elevation, on the right of the new third element, to break up the expanse to the rear of the building. A significant amount of cart storage had also been moved from the front to the side. Cohn noted that Target had referred to a trellis as a pergola. He said a person could walk under a trellis. Rutherford said a pergola was usually a roof item. Brown asked about some trees that been in the original drawings. Cohn said, while not shown on this plan, the trees were included in the landscape plan.

Brown asked about placing awnings on the three architectural elements closest to the entrance. Brown said they were looking at incorporating a shaded space for pedestrians. Cohn said he would discuss the awnings with Target. Brown said Council told Cohn they wanted a treatment for that section that was a window, not efis. Brown said the awnings were essentially a window treatment rather than a block of efis and asked that awnings be considered. Cohn said the record was clear and he could not say whether awnings worked or not. Subsequent to approval, Cohn said he would bring the matter up with Target.

Brown referred to page 34 and noted that Rutherford had said Council had given Cohn the broad outlines asked for. Brown said that was what Council gave him, not concrete instructions. Cohn said there were 10-14 pages of transcript subsequent with a level of detail. The discussion focused on display windows with an efis treatment above them to match the remainder of the center.

Rutherford said the conversation was not constructive. Rutherford read from page 35, where Cohn commented about outlining the parameters so it was not an open book. They would all remember things differently. There were specific things that were written. Brown said Rutherford cut the conversation every time he tried to get specific and said it was up to their design people. Rutherford noted Weed said the same thing. Kourajian asked Brown what he did not like. Brown said he wanted a serious discussion about awnings. Weed said it came down to the window issue. If Cohn was not willing to do the window, then Council needed to take it from there.

Rapson arrived at the meeting and joined the discussion. Rapson said he read the transcript and the conditions did not begin until page 36. The awnings discussion started on pages 42-43. Council wanted something comparable to the front of the store on the right elevation. Rapson said he had two issues. He expected windows on either side of the efis and he wanted some kind of cap, or roof, over the cart area. Rapson said he would rather discuss the matter in executive session. Cohn said he did not recall awnings on the middle of the building.

Brown moved to reconvene in executive session to discuss pending litigation. Rapson seconded. The motion carried 4-1 (Rutherford).

Rutherford moved to adjourn from executive session. Weed seconded. The motion carried 3-0-2 (Brown, Rapson) (NEITHER ONE WAS BACK FROM THE BREAK).

Weed moved to reconvene the regular session. Rapson seconded. The motion carried unanimously.

Rapson moved to conditionally approve, with no prejudice as to any party's rights, the architectural plan as submitted, subject to Target's approval of two additional items: 1 – a second display window to match the adjacent display window on the right (south) elevation of the building, to be placed in the middle of the three architectural structures, as submitted; 2 –Awnings shall be placed on at least two of the three display windows located in the middle of the front (west) elevation, to the immediate left of the Target sign. The design and material of the awnings shall be of similar material and design as reflected in the non-Target elements of the plan at Target's election. Upon Target's approval of these conditions, the architectural plans shall be approved without requiring further action of the City Council. Cohn clarified that it should be an awning for one of the windows. Rapson amended the motion to "An awning shall be placed on at least two of the three display windows located in the middle of the front (west) elevation, to the Target sign. The design and material of the awning shall be of similar material and

design as other awnings within the project as reflected in the non-Target elements of the plan, at Target's election." Weed reiterated that if Target approved, Council would not need to meet on this matter again. Kourajian seconded.

Rutherford clarified that if Council approved the motion, then that would be the end. If Target did not approve the awnings, there would be no awnings, but there would be windows on the side. Weed and Rapson disagreed. Weed said the other side had agreed to the language. Cohn said he had agreed to seek approval from Target. If Target did not approve the requested changes, then he would be back. Rutherford said she wanted to make sure they understood. The motion carried unanimously.

New Agenda Items

**12-04-01 Public Hearing – Consider Variance for Lot 62, Wynnmeade
Subdivision**

Paul Trolinger of Southern Empire Homes addressed Council. Trolinger said a large portion of the lot was located in the 100-year floodplain. Trolinger brought in fill to bring the portion of the lot where the house would be located three feet above the flood elevation, as required. The site plan indicated the home would be located out of the minimum setbacks, but Trolinger said his company somehow overlooked the side boundary. He asked Council for a 3.1-foot variance to the side building setback.

Wayne Roberts told Council that he had given Trolinger's father a copy of the subdivision's covenants and had gone over the floodplain when he was chairman of the Homeowners Association architectural review committee. Roberts asked if dirt had been put into the floodplain and noted that would impact everyone else with property in the floodplain. Roberts said that Trolinger knew where the setbacks were, but to Roberts' knowledge, they did not get a survey placing the foundation before proceeding with construction. Roberts requested Council deny the variance.

City Planner David Rast briefly went over the history of the Wynnmeade subdivision. The Blount family had kept nine lots that were never built due to the floodplain. Marvin Isenberg, serving as the family's representative, asked the City to look at the lots and make recommendation on how to develop them. Rast said a letter was sent to Isenberg with the requirements, and the lots were sold to several builders.

Rast continued that Southern Empire had gone through the process and gotten their development permit, which required a foundation survey before any work started and the fact was stamped on the permit in red. Rast said the house was found framed, plumbed, with a roof, windows, and all the electrical work had been done. The foundation survey was then turned in, which showed the encroachment into the side setback. A lot of the work was done without requesting the required inspections by the City. Rast said the applicant was at fault since he had not followed the procedure, and the variance should not be granted. Rast added he was not sure how to remedy the situation due the house's stage of construction. He added that the adjacent lot would also be very difficult to develop due to the floodplain location. Rast had suggested Trolinger speak to the

adjacent lot owner to see if they would be willing to sell the lot, or purchase the difference so the home would not be in the setback. Rast said the ordinance required that, when a lot was on the floodplain, the lowest portion of the home (the basement or first floor) must be three feet above the 100-year flood elevation. A flood certification had been done and the ground level met that requirement. Rast said it did not appear that the home encroached into the floodplain.

Rutherford asked how the fill was kept out of the floodplain. Rast said silt fencing had been used.

Kourajian referred to Fact #8 of the staff position paper. He noted that the fact indicated the foundation also encroached into the front setback. Rast said there were two foundation surveys. The original survey had the front setback shown as 35 feet rather than 30 feet, which was the zoning requirement. The survey had been redone so the front porch no longer encroached into the front setback and the second survey was accurate.

Weed noted that the requirement for the survey was in the building ordinance and asked how the requirements were communicated to the construction community. Building Official Tom Carty explained that each copy of the application was stamped, in red ink, with the wording. Weed clarified that builders were notified of all the requirements when they applied for a permit, including a foundation survey. Carty said yes.

Rapson pointed out that Attachment E showed the home was in the center of the lot, but the house had been moved to the extreme right. Otherwise, there would have been no need for a variance. Rast said a boundary survey had to be submitted showing the home location. The boundary survey was not a foundation survey. The boundary survey also included information on erosion control. Rapson noted that if the home had been placed according to the boundary survey then there would have been no problem with the setbacks, even if the house had moved as much as 15 feet. Rast said that was correct.

Brown said it was no secret that the lots would be incredibly hard to build. Agreements were put through and the City had stamped the applications in red ink with the wording "Foundation Survey Required Prior to Any Subsequent Construction." The directions were not followed and now the house had been built to an extent that it was hard to repair. The City was not at fault. Brown said he was against the variance.

Rutherford asked how the project got so far. She asked if the inspectors should go by difficult projects more often. Rutherford said she was amazed that much work had gotten done. Carty said the City did about 10,000 inspections a year. Sometimes the inspectors were called about possible problems. The inspectors did not just drive around and look at projects. The builders were responsible for the routine building surveys. Rutherford agreed, but said she was just surprised construction had gone so far.

Rapson said there was a lot of room on the lot to put the house and still be in compliance. Lot 63 was all in the floodplain. Rapson agreed with Rutherford, but said there was room

to put the house in the front of the lot and still be in compliance. The City had done due diligence. Rapson said there had been three similar situations since he had been on Council, and all the variance requests had been denied.

Weed moved to deny the variance request in that it did not meet the three standards – there were no special circumstances pertaining to the property, based upon the actions of the applicant that no hardship had been imposed, and there had not been an intention to violate the ordinance. Weed said it was a case of misfeasance rather than malfeasance. Rutherford seconded. The motion carried unanimously.

12-04-02 Citizen Request for Council Support for the Creation and Funding of a State Licensing Board for Residential and General Contractors

Brown noted there was an additional document on the dais – a letter dated November 15, 2004, to the City Council regarding 115 Peninsula from Thomas and Lynn Fedor.

Rapson noted that the Fedors had recently moved into his neighborhood. He asked the City Attorney if he had a conflict of interest. Meeker asked Rapson if he would profit from any decision made or if he was related to the Fedors. Rapson said no.

Lynn Fedor addressed Council. She said her family was currently living in a different neighborhood because their home in the Peninsula subdivision was not suitable for its intended purpose. Fedor said it was a grave issue. The Fedors entered into a construction agreement in 2001 with a contractor for a house in the Peninsula. They closed on their house in early January 2003 after receiving the occupancy permit, and they found serious issues within a few days. There was an ongoing structural integrity issue with the home.

Fedor said they notified the contractor immediately in May and July of 2003 about some alarming settlement in the home. The letters were sent through their attorney and were sent registered mail and signed for by the builder. Fedor said the City had been told the issue was taken care of and she pointed out that it had not.

Fedor continued that they had several independent surveys and engineering reports done and no less than nine violations of the building code were found. Five of the violations were on the foundation and four were on the roof. They also discovered that the structural warranty, which was a contractual item they had paid for, was not supplied. As a result, there was no insurance to cover the structural issues. She continued that their homeowners' insurance had also been dropped due to additional risk to the insurer, which created a safety issue that led the family to move out. The City had partially condemned the home earlier this year.

Fedor said there were obviously legal issues since the code was violated. It was a serious problem that the builder violated the building code and was not held responsible. She noted that a three and one-half inch foundation was required, and samples had shown their foundation was two and five-eighths inches. Fedor said she was asking how the City could help to make the builder responsible for what he had done. Fedor said that

they had asked Pathways what the warranties were before entering into the contract. Pathways told the Fedors that the builder had to be financially sound, carry liability coverage, and provide a structural warranty. She said they found that the damages exceeded the builder's insurance; he had no bond, and had threatened that if they won any above the coverage, then the builder would go bankrupt.

Fedor said that this was a touchy issue. They had put their entire life savings into the home, which affected her family. She told Council they wanted assistance to get a state regulation passed to make builders responsible. State licensing was a big issue. Had the builder been licensed, these issues would have been taken care of before the builder moved on to the next project. Fedor said they wanted to hold their builder accountable for a full resolution of the issues. She asked the City to put a stop work order on the builder until he corrected their problems. She requested that Council enact local legislation to protect residents. She noted there was an 18-foot swale under their home that had been a trash pit. It was illegal to build a home on a trash pit.

Rapson asked Fedor to define structural integrity, not give opinions, but facts based on reports. Fedor said they had also submitted the information to the City. She referred to Dr. Edward Hape of Lawrenceville, who had done several studies on the home. Fedor said structural integrity meant a home was square. She said their house was moving and had cracks and leaks throughout. As the debris under the home decomposed and the dirt settled, the home would continue to move. The first estimate to make the necessary repairs had been \$58,000. The cost was about \$1,000 per pier under the home. The estimate was now up to \$100,000-\$150,000, and the engineer did not believe the repairs would hold. Fedor said their home was originally appraised at \$1.4 million and the last appraisal was \$650,000.

Weed asked Fedor if it would have helped if a soil compaction test had been done prior to the permitting. Fedor said yes. She continued that, in the contract specs, 12-foot X 12-foot X 12-foot piers were supposed to be under the house and there was not one under the home. The contractor stated under deposition that the soil had been compacted. About two weeks after the deposition, the builder said they had not planned to compact the soil and they told the foundation people to take the subwalls down to virgin soil. Rapson said they could not discuss an ongoing lawsuit.

Rapson asked staff what they knew. Weed said they did not need to go there since the Fedors were asking Council to support talking to the state delegation to pursue the licensing of general contractors. Weed said he wanted to do that and had researched the subject. He continued that the International Property Maintenance Code did not require soil compaction on residential lots. He said the City could require soil compaction tests. The cost was \$4,000-\$6,000 per project, which was a small price to have the standard in place locally. Weed said the state would also make the testing a requirement eventually. The cost was for the study only. Rapson asked if a soil compaction study needed to be done on all properties. McMullen said he was a mechanical engineer, not soils, but the immediate answer, not the final answer, was if a structure was to be built on top of fill,

then compaction testing was appropriate. It would probably not be required for virgin soil.

Rapson said Council had been notified of a situation with a contractor. His concern was that the contractor was still building in the City. He wanted the Code Enforcement officers to check any current projects to see if the builder was in compliance. Rapson said the City had been put on notice that there was an issue with a particular contractor, and, staff should go out and check.

Meeker said there were disputes with builders on a daily basis. It was incumbent on the City to not just look at one builder in particular. They had inspections that should be done on a daily basis. Singling one out over the others was not appropriate. Staff should continue to do the job they were doing. Rapson disagreed. He said these were not small issues. They should focus on whomever the issue focused on. Meeker agreed the problem should not be ignored, but Meeker said there should be an ongoing analysis of everyone who was building in the City. Weed said the City had a full-time solicitor and code enforcement unit. Weed said the Fedors could pursue civil action through the court system. Weed said ordinance violations might have occurred and the person responsible might be the contractor. It was appropriate for the Fedors to report the problems to Code Enforcement. Weed said the Fedors should do that directly. Rapson said he would ask the City Manager to have Code Enforcement speak to the Fedors the next day.

Kourajian said this would be precedent setting and asked if a stop work order would be issued to someone any time. Rapson said all they had to do was talk to Code Enforcement, but the Fedors had chosen to come to Council. Kourajian asked if they should be done any time any one had an issue. Rapson said he disagreed with the City Attorney on this matter. Rapson explained that Code Enforcement should investigate and issue a stop work order if warranted. Kourajian said it might be a good idea, but he was not sure every complaint should come to Council. Rapson said the process was via Code Enforcement. Meeker said his point was that, whether the complaint came to Council, the City Manager, or code enforcement, it was incumbent upon staff to look into the matter.

Rapson agreed and noted that if a building had to be condemned, the staff should ask who built it and possibly look at other sites. Fedor said she had heard from 25 people who had been hurt by the same individual and had either the same or different issues. None of those issues had been resolved and many were still pending.

Bob Barnard, a representative of the state building association and the Midwest Georgia Builders Association, told Council that the General Assembly had passed House Bill 1003 during the last session. The bill required licensing for builders and general contractors, as well as bonds and education. The bill had been a collaboration between general contractors and homebuilders. The bill also mandated worker's compensation, general liability, and continuing education. Barnard said there were three levels of licenses – residential one (strictly building houses), light commercial/residential (small

commercial complexes, apartment buildings up to four stories/upper-end residential), and general contractor (hospitals, libraries, etc.). The Governor signed the bill to be effective July 1, but it was not funded. The board had not been put in position yet to set up the rules and regulations. The Governor had assured them the program would be funded during the next session.

Fedor asked Barnard if builders were required to have insurance. Barnard said they were not required yet since the licensing was not in place. Currently, insurance was an option. Different levels of insurance would be required. Fedor asked what would happen if the building were worth \$1.5 million, but the builder only had \$300,000 in insurance. Barnard said the homeowner was responsible for asking questions. The state licensing requirement would put all the builders on the same level and the consumer would know that they met certain standards.

Weed moved to authorize the drafting of a resolution to adopt and send to the Governor's office in support of full funding for House Bill 1003. Rapson seconded. Brown offered a friendly amendment to include that a consumer advocate should be a member of the licensing board. Barnard said there was a 14-member board composed of 10 builders, two building officials, and two consumers. The bill mandated the board selection, and the Governor would make the appointments. Weed rejected the friendly amendment. The motion carried unanimously.

Weed instructed staff, Building Official Tom Carty and City Attorney Ted Meeker, to draft an ordinance to require soil compaction testing. He said Council might decide that was too much, but Council should look at an ordinance. Brown said he would also like something that required homebuilders to carry structural warranties. Meeker said that would not be a good idea from a liability standpoint. If the City required the warranty and one home slipped through the cracks, then the City would have liability. The City would be going above and beyond the inspection process currently in place. Brown asked Meeker if he would support the City requiring builders be bonded or carry liability insurance. Meeker said that would duplicate the efforts of state law. If the state law fell through, then the City could include something in the local ordinances.

Fedor asked if the City could do anything to keep the builder from continuing to build houses and make money until there had been some resolution. Weed said the court system would make the determination. Council could only refer the Fedors to Code Enforcement and the court system. Fedor asked why nothing was being done to Pathways since they required a warranty that had not been supplied. Brown said that was a contractual obligation on behalf of the builder and a legal concern.

Rutherford moved to extend the meeting past the 11 p.m. deadline. Rapson seconded. The motion carried 4-1 (Kourajian).

12-04-03 Consider Amendment to Cart Path Standards to Width of Nine Feet

Rutherford asked why the amendment did not set the standard at ten feet. She noted that many of the grants available required a standard of 10 feet. Rast said the width depended on the level of traffic. Eight feet was the minimum and 10 feet was optimum. Rast pointed out that the City's asphalt roller was nine feet wide.

Rutherford moved to change the standard to 10 feet. Brown seconded.

Assistant City Manager Colin Halterman noted that more trees would have to be cut down in some areas if the paths were 10 feet wide. Rutherford said they would have to take the trees out anyway. Rast said the ordinance included the path width and a two-foot shoulder on either side that was a clear zone. Rutherford suggested 10-foot paths and one and one-half foot shoulders. She said that would cover the same area. Kourajian said a two-foot graded shoulder was recommended on either side by the American Association of State Highway Transportation Officials (AASHTO). Rutherford they preferred a minimum of 10 feet of path and recommended two feet of shoulder.

Brown said there needed to be more direction on shoulders. Halterman noted that some areas of the cart path had 16-foot easements. The members also agreed to a 20-foot easement for cart paths.

The motion carried unanimously.

February 7, 2002 Regular Meeting Minutes

Weed moved to approve the February 7, 2002, regular meeting minutes as written. Rapson seconded. The motion carried 3-0-2 (Kourajian, Rutherford).

Council/Staff Topics

McMullen noted that City offices would be closed from noon-1:30 p.m. on Friday, December 10, for the Employee Christmas luncheon.

McMullen said there were no agenda items for the December 16 meeting. Brown moved to cancel the December 16 regular meeting. Weed seconded. The motion carried unanimously.

Rapson announced that the Tourism Association had made offers of employment to all of the Amphitheater and Tennis Center employees, and all had accepted except for the Tennis Center manager and one part-time pro.

Rutherford moved to reconvene in executive session to discuss pending litigation, personnel, and real estate. Rapson seconded. The motion carried unanimously.

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

Weed moved to authorize the Mayor to sign the agreement for the land swap. Kourajian seconded. The motion carried unanimously.

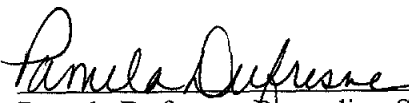
There being no further business to discuss, Brown moved to adjourn the meeting. Kourajian seconded. The motion carried unanimously. The meeting adjourned at 11:18 p.m.



Jane Miller, City Clerk



Stephen D. Brown, Mayor



Pamela Dufresne, Recording Secretary