

MINUTES OF MEETING
CITY COUNCIL OF PEACHTREE CITY
October 4, 1990

The City Council of Peachtree City met in regular session on Thursday Night, October 4, 1990, at 7 PM in the City Hall Council Chambers.

Mayor Brown called the meeting to order and led those in attendance in the pledge of allegiance. Members present were: Mayor Frederick Brown, Jr. and Council Members Annie McMenamin, Robert Brooks and Rich Parlontieri. Councilman David Good was out of town.

No items were added to the agenda.

Announcements, Awards, Special Recognitions

Mayor Brown announced that a dedication ceremony and reception was scheduled for Sunday Afternoon, October 14, 1990 at 3 PM for the dedication of the plaza fountain. The public was invited.

Minutes of Meetings

Mayor Brown called for action on minutes of meetings held on September 6th and September 17th, 1990. McMenamin asked that correction be made in the September 6th meeting to indicate the closing time of the meeting as 11 PM rather than the stated 11 AM. Motion was made by Parlontieri that the minutes be approved with the correction. Motion seconded by McMenamin. Motion carried unanimously.

Old Agenda Item

6-90-4 Amendment to Fence Ordinance

City Manager Basinger called attention to the position paper submitted by City Planner, Jim Williams, recommending several changes to the fence ordinance. He asked Williams to present the amendments.

Williams explained that the basic fence ordinance had been on the books since the first of the year but that subsequent discussions had pointed out the need for further clarification of certain sections. He stated that the staff had worked as a quasi committee with certain members of the community interested in the ordinance. One area of concern was that of wire or chainlink fencing within the community and what the proper role of that type

fencing should be.

Another problem area that developed during the ordinance review was that of fence height with the cause of the problem being one of interpretation relative to the yards of a house.

Williams explained the various changes to the current ordinance by explaining the current regulations and then the change recommended. Those amendments were:

Paragraph 5-174.1 g should be revised to read:

Wire fencing may be attached to the interior of, or made a part of, any wooden, stone, brick, wrought-iron, or other such non-wire type fencing, where the other type fencing would not provide an adequate barrier to contain pets or animals. When so applied, said wire shall be vinyl coated or painted in a standard dark brown, dark green or black color. When used under these conditions, it shall not be considered a wire fence.

Paragraph 5-174.2 b should be revised to read:

Unless further restricted by this ordinance, no fence within a required side or rear setback area shall exceed six (6) feet in height, provided however, that due to variations in topography or if the fence contains decorative features such as newels, finials, or scallops it may exceed six (6) feet in height, but in no case shall it exceed seven (7) feet in height.

Paragraph 5-174.2 d should be revised to read:

No fence in excess of four (4) feet in height shall be installed within the required setback area that adjoins a street right of way.

A new paragraph 5-174.2 e should be included to read:

Except as provided in paragraph 5-174.1 g, no fence which is constructed of wire, including chain link fencing, shall be installed between the principal structure on a zoning lot and any adjoining street right of way line. On a zoning lot with multiple street frontages, this restriction shall apply on all street frontages. On a zoning lot with no principal building erected thereon, this restriction shall apply to the required front yard setback area.

Williams explained that while these recommended changes would allow wire fencing within setback areas if incorporated into another type of fence structure, they do not permit a standard

wire or chain link fence anywhere in that critically visible area between a street and the front of a house.

Also, the recommended changes would allow fencing in excess of four (4) feet in the area between the house and the setback line along an adjacent street. Williams explained that this was an important change in order to allow swimming pools on double and triple frontage lots.

Williams also recommended in a separate memorandum dated October 4, 1990 that additional modifications be made to the ordinance as follows:

Paragraph 5-174.2 e, 5-174.3 c and 5-174.4 c be amended to delete the last sentence in each of the three sections and substitute a sentence to read: On a zoning lot with no principal buildings erected thereon, this restriction shall apply to all required setback areas that adjoin a street right of way.

Mayor Brown called for comments from Council or the public .

Mr. Ike Isaacson objected to amendments that would allow wire-lined decorative fences in front yards. A letter he submitted stated that he felt the fence ordinance was already too liberal and damaging to the appearance of neighborhoods.

Parlontieri questioned the Planner if theoretically someone could have a chainlink fence with a split rail around it fifty feet from the house in the front yard in all zoning categories if this change was approved. Planner Williams agreed that the statement was correct.

Parlonteiri questioned the City Planner about other proposed amendments agreeing that some of them were appropriate, however, he stated that he had a problem with fences in front yards of any kind. He asked that each amendment be considered separately.

McMenamim stated that she agreed with Parlontieri on the front yard fencing.

Other comments were made from the public objecting to front yard fencing and Jim Savage, former Councilman who assisted in writing the fence ordinance and subsequent amendments, pointed out that front yard fencing had been permitted in the City for many, many years. He stated that the changes being considered did not restrict front yard fencing but did regulate them as to size, materials location etc. He felt that if Council wanted to take the position of restricting front yard fencing there would be a major rewrite of the ordinance required.

Councilman Brooks used Morallion Hills Subdivision as an example for a question of Williams. He asked him what the average setback was and what would be the implications for a home on a straight road without any side streets as far as fencing in the front yard was concerned. Williams stated that any of the property owners could now build a fence up to four feet high across their property line and line it with certain wire but not chainlink. Williams explained that the setback was probably forty feet and at that point fencing could be higher and in many cases was. Williams stated that this had always been the case.

After further discussion Mayor Brown called on Council for action on the recommendations.

Motion was made by Parlontieri that Sections 5-174.1 g, 5-174.2 b, 5-174.2 d, 5-174.2 e, 5-174.3 c, 5-174.4 c be approved as amendments to the fence ordinance as recommended by the City staff. Motion seconded by McMenamim. Brooks commented that these amendments would correct the problem with pool fencing but would not liberalize front yard fencing. Motion carried unanimously.

Motion was made by Parlontieri that 5-174.2 e item be tabled for staff to rework the ordinance to delete fencing in front yard in all zoning categories except estate residential and to provide provisions for three sided lots. Motion was seconded by McMenamim. Motion carried with Mayor Brown voting nay.

Brooks commented for staff's information that he agreed with the other two councilmen regarding fencing in front yards. He felt they could be appropriate in estate residential but not in other subdivisions.

Mayor Brown disagreed with the stated opinions and felt that front yard fencing was appropriate with the height controlled. He stated that he voted against the motion because he did not think front yard fencing should be prohibited.

New Agenda Items

10-90-1 Rezoning of Harris Estate Property - Robinson Road

Mayor Brown called to order a public hearing to consider the rezoning of the Harris Estate property located on Robinson Road. He stated that the hearing was in reaction to a Court Order from the Fayette County Superior Court Judge Ben Miller and , because of the time limitation in the order, the City was unable to follow all the notification regulations in the zoning ordinance for rezoning of property.

Mayor Brown reported that attempts were made by the City to notify the public by such means of publishing an advertisement in the newspaper and by forwarding a press release to the newspaper. He explained that the Court Order had to be complied with by October 10th.

Attorney Scott Jacobson and his associate, Attorney David S. O'Quinn, represented the Harris family and Mr. William Samples, the proposed purchaser and developer of the property. Mr. Joacobson addressed the City Council.

Mr. Jacobson explained that the property consisted of a 66.6 acre tract of land bordered on the west by Robinson Road, on the east by Camp Creek, by property of George Mayes on the north and by property of Barbara Phillips and Hugh Huddleston on the south. He explained that the property had been owned by the Harris family since 1952 and had been on the market to sell since 1986. Mr. Samples now had the property under contract and the contract was contingent upon the property being rezoned R-43. He explained that it was Mr. Samples intention to develop an upscale, first class single family subdivison which would include a recreation area for the homeowners, if the property was zoned R-43. Jacobson pointed out a conceptual site plan provided by Mr. Samples, a copy of which had been furnished to Council prior to the hearing.

Mr. Jacobson stated that the matter was before Council as a result of a trial in the Fayette County Superior Court where it was determined that the Estate Residential (ER) zoning was unconstitutional, confiscatory and void. The Court ordered the City to zone the property in a constitutional manner prior to October 10, 1990. Mr. Jacobson pointed out that the Court had suggested that the R-43 zoning would be appropriate. Mr. Jacobson requested that Council take action to comply with the Court Order and take official action at this meeting to rezone the property to R-43.

Mr. Jacobson pointed out that the property could be developed with 48 lots if zoned R-43 as opposed to 17 lots under the ER zoning and this made the project financially viable. He felt this argument was a factor in the Court's decision. Mr. Jacobson pointed to other subdivisons along Robinson Road zoned for one acre single family lots stating that the proposed subdivison would be similar in nature. He felt there was a market for this type development in the City and that it would bring benefits to the City.

Mr. Jacobson felt the traffic issue had been addressed by limiting the curb cuts to one and the sewer issue by agreeing to enlarge lots near the Camp Creek basin to two acres.

City Attorney, Mitch Powell, presented the City's position. He agreed with comments of Attorney Jacobson regarding the ruling of the Judge. He stated that he had recommended that the Council go forward at this meeting and zone the property R-43 but that conditions be placed on the zoning that were sufficient to protect the surrounding property owners. Powell stated that if the applicant agreed with the conditions he could see no benefit in appealing the decision. Powell also pointed out that the Court Order made reference to damages but that, in his opinion, the Court would not order damages provided the Council goes forward in zoning the property to R-43 with reasonable conditions.

City Attorney Powell presented an ordinance drawn for the purpose of zoning the property to R-43 with seven conditions. He read the conditions for the benefit of the Council and the public. Attorney Powell recommended against placing wording in the zoning ordinance that forty eight (48) lots would be developed in the subdivision. The Ordinance also conditioned that the Ordinance would take effect upon receipt by the City by October 8, 1990, a letter from Mr. Samples and the owners of the property, or their legal counsel, stating acceptance of the conditions contained in the ordinance and agreeing that this ordinance constitutes a final resolution of this matter.

Parlontieri questioned whether the developer would be providing cartpaths and City Planner, Jim Williams, stated that this had been discussed with the developer during this process and it would be dealt with at platting time.

Attorney Jacobson stated that as a general matter he felt the conditions were fair but that he had several suggestions regarding wording. Jacobson again asked that the number of lots be protected and that they not be forced by the conditions to reduce the number of lots.

There was discussion regarding the request for guaranteeing 48 lots in the development with Council and Attorney Powell not being agreeable to placing that agreement in the ordinance. The general consensus of opinion was that determining the number of lots was not part of zoning.

City Planner Williams pointed out that the conditions being established by the ordinance would not bring the lot number down below that level. He did point out that during platting there could be reasons for reducing the number of lots.

Ms. Barbara Phillips, adjoining property owner, asked that the developer address a letter she received from him in April. The letter agreed to installing a fence along the property line of her property and the southern boundary of the proposed development, Grayfield. Also, that lots bordering her property would be 1.5 acres in size. Mr. Jacobson replied that due to delays and legal expenses the conditions could not be agreed to at this time. Ms. Phillips pointed out that the letter agreed to those conditions provided she did not oppose the zoning at that time and she did not publicly oppose it. She wanted this information in the record.

Mr. Ted Thomas of 102 Camp Creek Trail addressed the Council and called attention to a letter from him to Council dated October 1, 1990. The letter indicated no objections to the zoning being approved as R-43 due to the Court Order provided Mr. Samples was willing to agree to the conditions offered during the April zoning hearing. Thomas pointed out that the Judge considered all the information regarding the zoning before rendering his decision and he felt those conditions were part of his consideration.

Mr. Thomas objected to the city not following the zoning notification procedures and did not feel the Judge or anyone else could rule against the City's zoning provisions. He felt it was one of interpretation regarding the deadline required by the Judge and would have liked to see the City complete the zoning hearing procedures. Mr. Thomas stated that if necessary the residents could possibly obtain an injunction to stop the development based on this being an illegal hearing. Mr. Thomas agreed that the conditions being imposed by the Ordinance addressed most of the conditions agreed to by Mr. Samples in April but he would like to have Mr. Samples address those it did not.

Another resident of Camp Creek Court, David Juliak, agreed with Mr. Thomas and stated that he felt it was unreasonable to expect a decision to be made in the time frame allowed by the Judge.

Mr. Doug Best, resident of Spear Road, addressed Council beginning with the statement that he was losing faith with the process. He stated that felt positive that he would be attending another meeting soon regarding zoning of property adjacent to his property because of this decision.

He addressed Council and the Harris family regarding basing zoning on profits. He explained that a number of people had purchased property in this area, including him and his neighbors, to have lots with some acreage with the belief in the land use plan. He

felt at the time these transactions were made there was no question about the use of the land but he felt compromises and changes were eroding that trust and confidence in the system.

Attorney Mitch Powell addressed several comments. One was that the Council did attempt to defend it's position and he spent two days in court arguing the case. The second was that in response to the notification statement, if the City did not respond to the Judge's order within the time given, the City could be found in contempt of Court. Also, there have been decisions by the Georgia Supreme Court where in instances like this the Judge can order shortened hearing times.

City Attorney Powell also asked for two changes to the conditions. These were:

Condition 2: Add wording:

However, any access or easement into or across, or upon said right of way shall be controlled by the owner of the property.

Add condition No. 7. to read:

These conditions shall not be construed to require any specific number of lots in the development of this property. The number of lots shall be determined solely by reasonable planning principles during the platting process pursuant to city ordinance.

These amendments were agreed to by Mr. Samples and Attorney Jacobson.

After further comments a motion was made by Parlontieri that the City accept the rezoning of the Harris Estate property to R-43 with the conditions read by the Attorney and those most recently agreed to by the applicant. Motion seconded by Brooks. Mr. Thomas asked clarification regarding enhanced septic tanks and asked if they would be used for all lots in the development. Mr. Jacobson stated that they could not agree to other conditions - they had agreed to the seven.

Motion to approve the rezoning to R-43 with conditions was approved unanimously.

10-90-2 Authorization of Bank Accounts

City Manager Basinger called attention to a memorandum from the City Clerk requesting authorization to establish two additional bank accounts. One account would be for the insurance pool monies and the other would be a draft account for processing claims. The accounts would be opened at Peachtree National Bank, the City

Depository.

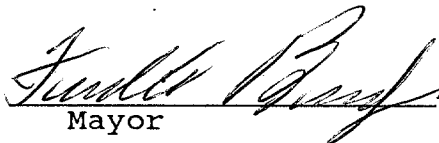
Motion was made by Parlontieri that the authorization be granted as requested. Motion was seconded by Brooks. Motion carried unanimously.

Motion was made by Mayor Brown that the meeting be recessed to be reconvened in executive session to discuss pending lawsuits. Motion was seconded by Parlontieri. Motion carried unanimously.

Executive Session

No action was taken in executive session and the meeting was adjourned at 8:30 PM.


Frances Meaders, City Clerk

 Attest
Mayor