

City Council of Peachtree City
Meeting Minutes
Thursday, October 3, 2019
6:30 p.m.

The Mayor and Council of Peachtree City met in regular session on Thursday, October 3, 2019. Mayor Vanessa Fleisch called the meeting to order at 6:30 p.m. Others attending: Terry Ernst, Mike King, Kevin Madden, and Phil Prebor.

Agenda Changes

City Manager Jon Rorie asked that item #5, Consider Elimination/Replacement of Position in Grounds Maintenance – Maintenance Worker (Right-of-Way)/Crew Leader, be removed from the Consent Agenda, saying it would be brought before Council at a future meeting.

Prebor moved to remove item #5 from the Consent Agenda. Madden seconded. Motion carried unanimously.

Minutes

King moved to approve the September 19, 2019, regular meeting minutes. Ernst seconded. Motion carried unanimously.

Consent Agenda

- 1. Consider Appointments to Convention& Visitors Bureau – Donna Soper**
- 2. Consider Appointment to Planning Commission – Scott Ritenour**
- 3. Consider Clinical Agreement with West Point Fire Department**
- 4. Consider Elimination/Replacement of Position in Public Works – Heavy Equipment Operator/Crew Leader**

Ernst moved to approve Consent Agenda items 1-4. King seconded. Motion carried unanimously.

New Agenda Items

- 10-19-01 Public Hearing – Consider Rezoning. General Industrial (GI) to Limited Use Industrial (LUI), 320 Dividend Drive**

Fleisch opened the public hearing.

Planning and Development Director Robin Cailloux said the property was at the corner of Dividend Drive and Kelly Green and identified it on a zoning map. It consisted of two parcels under the same ownership. The first parcel had been developed as a large industrial building of more than 99,000 square feet and was the old PhotoCircuits building, built in 1964. The rear parcel was undeveloped and adjacent to the City greenbelt and near the Planterra Golf Course.

The request was for a rezoning to Limited Use Industrial (LUI), Cailloux explained. The Future Land Use Map designated this property for industrial zoning; therefore, the request conformed with the Comprehensive Plan. The applicant was not required to submit a site-specific plan for development at this time, she noted, adding that when development occurred, it must comply with the standards listed in the code, which were similar to the General Industrial (GI) zoning district. They requested all the uses in the GI and Light Industrial (LI) districts, except a petroleum refinery and concrete ready-mix facility. The applicant had agreed to remove those from the list of permitted uses, but requested the right to have a small café/restaurant of no more than 4,000 gross square feet.

Staff examined all rezoning requests based on six criteria. The first asked if it satisfied the Future Land Use Map, and Cailloux said it did. Staff had identified two policies that applied to this request.

One said it should promote the location of industrial uses in the industrial park, which it did. If a Staff recommendation to create a 75-foot non-disturbed buffer between the western property line and the greenbelt and Planterra Ridge subdivision was approved, it would meet the criterion of having identifiable subdivisions surrounded by open spaces and landscape buffers. The expanded buffer would enhance the separation between the industrial property and the residential subdivision. This was based on the transitional yard buffer requirement, but was not technically required in the GI zoning district, according to Cailloux. It was an additional requirement Staff recommended, and the applicant was aware of it.

The next two criteria looked at possible negative impacts from or on surrounding properties. Since the use was not changing from industrial, Staff determined there would be no change in impacts.

The fourth criterion asked if the property had reasonable economic use as it was currently zoned (heavy industrial), and Staff was of the opinion that it did. Cailloux said the applicant had made Staff aware that when they purchased the property in 2006, it was under an older zoning code for industrial uses, which stated that all uses for the LI zoning district were allowed under GI zoning. Retail uses were allowed in the LI zoning district, and this included a restaurant. A 2008 change to the ordinance eliminated those permitted uses. All existing facilities that had those uses were grandfathered in, but that grandfathered status was removed if they improved the property by more than 50% of its current value or if that use was closed for more than a year. There was a bakery/café there at one point, but Cailloux said Staff's research showed there had been no occupational tax levied on that business for at least the past two years, so Staff was of the opinion that the grandfathered status had been lost. The applicant wanted to re-open the café, and there was a commercial kitchen on-site. The applicant only became aware of the ordinance change when they approached the City about their plans. Staff then guided the applicant through the rezoning process necessary to allow this use, Cailloux reported.

Staff also explored whether this change would cause an undue burden on public infrastructure, and Cailloux said they were of the opinion that it would not, since it was not a change in use. The final criterion asked if there were any changing conditions that affected the use of this property, and Staff was not aware of any.

Cailloux summarized by saying that Staff was of the opinion that the request met most of the conditions set in the ordinance. The permitted uses would be all of the LI and GI uses except petroleum refinery and ready-mix concrete plant. It would add the conditional use of a restaurant up to 4,000 square feet and retail showrooms. Because there was no site-specific plan, development would have to conform to all the GI standards, plus, if approved with Staff recommendations, a no-disturb 75-foot buffer. The LUI zoning code also prohibited development within 300 feet of a residential property. About 15 to 25 feet of this property was within that 300 feet, and once the 75-foot non-disturbed buffer was applied, that amount would increase.

John Barrow, the applicant, clarified with Cailloux that the 75-foot buffer recommended by Staff would be 75 feet total, not in addition to the required buffer, and Cailloux told him that was correct. He said he had no additional comments.

Planterra Ridge resident David Joseph said noise from any potential development was a concern to him. Noise was already a problem for Planterra residents, especially in the evening. The lack of a plan concerned him, and he wondered if a future business could come in with something even more disruptive.

Morgan Hallmon of Smokerise Plantation said he opposed this rezoning because it seemed like an

example of "throwing everything against the wall to see what stuck." He went on to say he felt it could take the City back to 2007 and put a lot of the GI land at risk of being rezoned by the courts. Hallmon, basing his comments on a statement from the applicant, said the City did not follow its own procedures when making the textual changes to the ordinance and did not inform the property owners who were affected. This was a fundamental question that the Planning Commission did not consider when addressing this application, Hallmon remarked. By not addressing this threshold question, the Planning Commission conceded that the City failed to follow its own procedures in separating GI from LUI. Council should not make this concession. Hallmon told them the relevant portion of the ordinance was part 1, appendix A, article 13, adopted April 24, 2019.

Hallmon said the 2008 action related to permitted uses under the two industrial zones was taken in response to a 2007 lawsuit that the City lost. That verdict said a Lowe's home improvement store could be constructed on GI land, based on the fact that a similar business, Gil-Roy's, was already permitted in an industrial district. The City argued that Gil-Roy's was a non-conforming use that was grandfathered in. The court held that the City's zoning process for industrial land was arbitrary and capricious, and Lowe's should be allowed to build. The textual changes to the ordinance were in response to this lawsuit. Hallmon concluded that approval of this rezoning left existing GI land at risk of being decimated by further encroachment of non-conforming uses that the City would not be able to control.

No one else wished to speak either in support or opposition to the request, and Fleisch closed the public hearing.

City Attorney Ted Meeker said some of the comments were accurate. The GI and LI zonings formerly had language that permitted uses that supported industrial uses. Over the years, that came to mean restaurants, with the idea that they would provide people in the area with a place to eat. Council amended the text of the zoning ordinance in 2008 to restrict the uses permitted in GI and LI. Meeker said the City complied with the notification requirements by posting advertisements in the newspaper. They weren't rezoning property in 2008, just amending text in the zoning ordinance. As with all text amendments, they were required to place ads in the paper announcing public hearings with the Planning Commission and City Council prior to adoption. The City was not responsible for notifying every property owner in the GI district. Meeker said he did not know if Barrow actually said that, but it might be implied in his application that someone with the City failed to notify him, and there was no requirement to do so other than through the public notices.

Fleisch wanted to address the noise issue. Cailloux stated they had tried to keep industrial and residential uses separate, telling Council she was sure they were all aware of the history of Planterra Ridge and the Industrial Park. Reducing the impact on residents was why Staff requested the addition of the transitional buffer between the uses. There was no way to eliminate all noise, but when new uses came forward, they evaluated them to make sure there were no noxious gases or those types of impacts. They had the right to review, and refuse, if possible. Staff had done a site visit to the entire industrial zoning district to identify other properties with a similar situation, such as this one and the Mimi's property, where there were similar uses at one time that would have been grandfathered in. Cailloux said they believed this was the last facility in the GI district that would have been impacted by this change, and they did not anticipate any rezoning requests for a similar situation. That conclusion was based on a survey of current occupational taxes, as well as a physical survey of the entire district.

City Manager Jon Rorie confirmed with Cailloux that, prior to the text amendment, this property was zoned GI. The text amendment removed some of the allowed LI uses from GI, and this property was still zoned GI now. The question was what would be allowed in the GI by zoning it to an LUI. In this case, they would be allowing a bakery and a café. They would be excluding certain GI uses that were currently permitted. Cailloux said this was a point brought up by one of the Planning Commissioners; allowing these lighter industrial uses could potentially lower the impact on that area.

Prebor said he was familiar with the property. He said they talked about a 75-foot undisturbed buffer, but noted that there was water going through the property and asked about that setback requirement.

Cailloux responded that there was a 25-foot non-disturbed buffer along any stream, then asked City Engineer Dave Borkowski to give more information.

The stream on the property ran to Lake McIntosh, Borkowski said, and determining the required buffer on streams was complicated. It could be as small as 25 feet, to 100 plus 50 if it was a perennial stream. He pointed out that there was significant amount of greenbelt adjacent to the property, so an adequate buffer shouldn't be a problem.

Prebor said he believed the undisturbed greenbelt could be as wide as 150 feet.

King added that it was a permanent stream. He mentioned that the houses off Kelly Green were above the golf course hole and would look down on this property from their back yards. The trees east of the stream were probably 70 feet high, he estimated. He wondered if a wall would offset the noise.

Madden asked Cailloux if the purpose of the rezoning request was to re-open the bakery and café. She said that was the initial conversation with the applicant. It was also to regain some of the rights the applicant thought he had when he purchased the property. Madden asked when the bakery closed, and Cailloux said they had records back to 2013, and that was when Barrow said it closed.

Barrow said the bakery opened in 2010, which was two years after the text change. David Rast, the City Planning and Zoning Administrator at that time, permitted it as an accessory use, which was allowed under GI, because he said it would serve the people in the existing building and others in the area. He said Cailloux did not agree with this, and he could understand that, so that was why he was before Council. Barrow again stated that the bakery was approved after the ordinance wording was changed. He said it was news to him when he discovered the change. They had had a variety of uses in that facility, including an adult day care. He pointed out that they were trying to "down zone," not add industrial uses. They had no intention of doing anything heavy there. He did not want to build a wall. They wanted to do something better than what GI would allow, and were looking at a trade school and a place to eat.

Madden wanted to know what could cancel the grandfather clause, and Cailloux said the ordinance stated that if a facility was not used for that purpose for 12 months, the grandfathered status was revoked.

Madden told Barrow he was concerned that he didn't have plans for the parcel which would be most offensive to the residents of Planterra Ridge. He did understand that if they left it as GI, they could build a concrete plant or a petroleum refinery, for instance. He listed some of the possible

LUI uses, such as dry cleaners, auto repair, or outside storage.

Prebor noted that those LUI uses would not be as offensive as what would be allowed under GI. He mentioned a business of buying and crushing salvaged cars as an example. Cailloux said that would not be permitted. He went on to say there were a lot of industries that could make noise, but it sounded like Barrow was trying to improve the area with a trade school or a warehouse. The existing facility was mostly warehouse, but also included a thrift shop.

There was also a church, Barrow said, adding there was nothing they did on the property that made noise. He told the Planterra resident that if they heard noise, it wasn't coming from his site.

Ernst confirmed with Barrow that nothing on the property would be open at night. He told the resident of Planterra that he understood the noise concerns, especially at night, but said he did not believe Barrow's property was causing increased noise nor did he believe Barrow's intended uses would increase noise.

Madden explained that his concern was that LUI would open Pandora's box, but with it zoned as it was now, Pandora's box was already open.

King moved to approve New Agenda item 10-19-01, consideration of rezoning. General Industrial (GI) to Limited Use Industrial (LUI) for 320 Dividend Drive. Ernst seconded. Motion carried unanimously.

Council/Staff Topics

King recalled an incident about a year ago related to the appointment of boards. Currently, the Mayor appointed one or two Council members to interview citizens who applied to be on those boards. In the case of a tie, which happened last year, the City Manager served as the tie breaker for the recommendation. He said everyone on the dais looked a little uncomfortable with this, and he found it unusual, since the City's procedures usually ran smoothly. He proposed that they take the City Manager out of the voting process and have the president or chair of the authority or commission cast the tie breaking vote.

King also remarked that there could be as many as 10, 12, or 14 applicants for one position, which, with a 20-minute interview for each applicant, made for a time-consuming process for the City Manager and Council members. He suggested that each of the five Council members pare down the list of applicants to a reasonable number to be interviewed.

Prebor liked the idea of the Council members getting to say who should be interviewed, if necessary. He stated he did not want to see it done like the last time, where the decision was changed. This way, they would all get an opportunity to rank the candidates.

King said this was not an agenda item, but he hoped they could vote on it at a subsequent meeting.

Ernst added that he would like to see all Council members review all applications. whether there were two or 20. King remarked that he had no problem with that. Ernst stated that he did not think they should discriminate between boards depending on the number of applications. The process should apply to all or none.

King felt that any citizen willing to give of their time to serve on one of these boards deserved an interview. They were looking at those occasions when they could not interview everyone. For the

most part, most positions had between two and five applicants, which could be easily accommodated.

Prebor moved to convene in executive session to discuss pending or threatened litigation at 7:04 p.m. Ernst seconded. Motion carried unanimously.

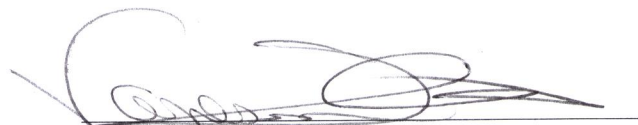
Ernst moved to reconvene in regular session at 8:33 p.m. King seconded. Motion carried unanimously.

King moved to deny the claims of Melissa Sluder and Persephone Sussman as such claims were presented. Ernst seconded. Motion carried unanimously.

There being no further business, Madden moved to adjourn the meeting. King seconded. Motion carried unanimously. The meeting adjourned at 8:34 p.m.



Martha Barksdale, Recording Secretary



Vanessa Fleisch, Mayor

After approval of the October 3 minutes on October 17, it was discovered that the motion made after Executive Session had been inadvertently omitted from the minutes. Once discovered, the motion (printed in red above) was added to the minutes, and the October 3 minutes were added to the November 7 agenda for re-approval.


Pam Dufresne
Deputy City Clerk
11/8/19