

City Council of Peachtree City
Meeting Minutes
October 1, 2015
7:00 p.m.

The Peachtree City Mayor and Council met in regular session on Thursday, October 1, 2015. Mayor Vanessa Fleisch called the meeting to order at 7:00 p.m. Others attending: Terry Ernst, Eric Imker, and Kim Learnard. Mike King was out of town.

Announcements, Awards, Special Recognition

Mayor Fleisch recognized Public Works Superintendent Scott Hicks for 30 years of service.

Minutes

September 17, 2015, Regular Meeting Minutes

Ernst moved to approve the September 17, 2015, regular meeting minutes as written. Learnard seconded. Motion carried unanimously.

Consent Agenda

- 1. Consider Appointments to the Planning Commission – *Frank Destadio, Jack Bernard, JT Rabun (alternate)***
- 2. Consider Surplus of Old Freddie the Fire Truck and Andy the Ambulance**
- 3. Consider Surplus of Vehicles and Other Items**
- 4. Consider Acceptance of Traffic Cone Donation**

Learnard moved to approve the Consent Agenda items 1 – 4. Ernst seconded. Motion carried unanimously.

New Agenda Items

- 10-15-01 Public Hearing: Consider Variance Request to Buffer Standards for Major Thoroughfares Ordinance (414, 422, 424 and 426 Robinson RD)**

Fleisch announced that she would recuse herself because Keller Williams Realty, her employer, had an agent listing the four lots. She asked for nominations for someone to run the public hearing due to the absence of Mayor Pro-tem Mike King.

Ernst nominated Learnard to chair the public hearing. Imker seconded. Motion carried unanimously (3-0).

Imker said that Council was not permitted to take action when only three Council Members were voting. He asked City Attorney Ted Meeker if the recusal by Fleisch was considered as a "no" vote. Meeker said Fleisch's presence counted as a quorum of Council, but her vote on this issue would be counted as an abstention. However, the vote of the remaining three members would have to be unanimous.

After the protocol for the public hearing was read, Learnard assured those in attendance that Council had received their e-mails and read them. She noted she did not respond to all the e-mails she received, but Council had heard the residents' concerns.

There was a brief discussion on setting time limits on the public hearing and on speakers. The consensus was for speakers to be reasonable with the time they took and to not repeat what others had said.

Learnard opened the public hearing, asking if the applicant wished to present first.

Gary Lawson spoke on behalf of the applicant, Karl Franzen, Zenco Development, Inc. Lawson said the applicant had purchased the lots in November 2014 on the basis of a fully approved plat that had been recorded at Fayette County and approved by the City without the 50-foot buffer that had been added in addition to the greenbelt buffer. If the buffer stayed in effect, the property would be worthless. Denial of the variance would deny the applicant his constitutional right to enjoy his property. It would not be concurrent with Georgia law to deny the applicant the use of his property. The plat had been approved, recorded, and signed by the appropriate parties, and now the City wanted the applicant to lose the money he had put into the property.

Trina Talley 418 Robinson Road, which was located directly behind the tract, addressed Council. She asked, if a variance was granted, was there any way Council could require the applicant to put something very nice along the front instead of just a buffer and yards.

Rock DeGolian, Homebuilders Association of Midwest Georgia, stated the organization's support of the variance request, saying the plat had been recorded. The Georgia Homebuilders Association also supported the variance request.

Scott Bradshaw noted a variance was a remedy to a problem. The applicant's issue was beyond the problem stage, and was now a situation. A variance was needed. He noted that the requirements for a variance had been met and the hardship had been established. Bradshaw continued that the applicant had to have \$300,000 to \$400,000 invested in the project at this point. It would be a hardship if he could not proceed. The hardship could not be the fault of an applicant, who was the builder in this case. Staff had admitted a mistake was made over one year ago. The applicant had been working cooperatively with the staff on this plan for nearly a year. Variances required special conditions, which in this case was the configuration of the property. Most variances that were granted were based on the configuration of a lot or tract of land. Without a variance, the project could not progress. The applicant was asking for 25 feet of the 50-foot buffer along a collector road with an 80-foot right-of-way, and 25 feet was not a lot of square footage for one-acre lots. Bradshaw continued there was a heavy growth of trees on the tract. The public would not be able to see the houses because of all the trees. Granting the variance would not create a public safety hazard. The Fire Department had approved the plan, and the applicant had agreed to put in extra items. It was not a problem for the neighbors, who would be better off with the improvements to the drainage system. It would not be a police problem because there would be four addresses with mailboxes, so the police would know how to get there. The only thing left to consider was aesthetics, and no one would be able to see the houses from Robinson Road. If Council did not approve the variance, it would be considered a regulatory taking, which could become very costly. The applicant had not shot himself in the foot, then came asking for help. City staff had shot the applicant in the foot. He asked Council to do the right and fair thing.

Planning & Zoning Director Michael Warrix addressed Council, saying the request for a variance from Section 723.2 of the City's Land Development Ordinance. Prior to the subdivision of the 4.3-acre tract in October 2014, it was known as the Hayes tract. All four lots had frontage on Robinson Road, which was classified as a community collector roadway. City ordinances required that all residential lots fronting community collectors have a 50-foot City-owned greenbelt buffer. In error, staff had not taken the 50-foot greenbelt requirement into account when reviewing the applications and plats for the four lots. In August 2015, a building permit had been issued. Shortly after that, the greenbelt oversight was brought to staff's attention by a concerned resident of that area, and the building permit was subsequently rescinded.

Warrix continued that the applicant had asked for a 25-foot variance to the 50-foot greenbelt buffers and had proposed a 25-foot landscaped buffer. Warrix said, in staff's opinion, the request was not in harmony with purpose and intent of the City's Land Development Ordinance. It failed to meet the criteria for granting variances as outlined in the ordinances. Staff could not support the application and recommended denial.

Pamela Kemp gave a brief history of the property since 1953, when it was purchased by the Harris family. She noted the tract had been zoned Estate Residential (ER) when the City was incorporated in 1959. The four tracts owned by the Harris family were zoned Estate Residential (ER). In 1990, Orville Harris won a lawsuit against the City regarding the zoning of Tracts 2 and 3 as ER, and the determination was the zoning was unconstitutional, confiscatory, and void. Tract 1 (the tract for which this variance had been requested) was located across Robinson Road from Tracts 2 and 3. At the October 4, 1990, City Council meeting, Tracts 2 and 3 (66 acres) were rezoned to R-43. Tract 1 was not included in the rezoning, and Robinson Road was the boundary for the tracts. Hayes Development purchased Tracts 1, 2, and 3 in 1994. Tract 4 was considered wetlands and was donated to the City. Avalon Park was built on Tracts 2 and 3. Kemp pointed out that Tract 1 had never been rezoned and remained ER.

In May 2014, Toney Martin of Martin Dobson Homes applied for the first variance for the tract, which was to allow for a stormwater retention area on each lot as opposed to one central retention area. The variance was heard and approved in July 2014. Kemp pointed out that Martin had signed the application as the property owner, but Anne Hayes did not sell the property to Martin until August 1, 2014. Kemp alleged that this misrepresentation made the first variance null and void.

On September 17, 2014, Martin Dodson Homes asked Council for two additional variances, one for an additional curb cut and the other to allow more than two homes on a driveway. Kemp noted that Senior Planner David Rast reported that the zoning of the property was not clear. The variance requests were approved.

Kemp continued that there were 20 subdivisions along the length of Robinson Road, and 17 of them were behind 50-foot greenbelts. Kemp, an Avalon Park homeowner, said the greenbelt along her subdivision accounted for more than an acre of land. Kemp said a vote to approve the variance would open the door for the destruction of approximately a quarter mile of mature trees. The door would be opened to end of Robinson Road as a well-functioning collector road. Several properties along the northern end of Robinson Road were zoned ER and could face redevelopment as their owners passed on or sold their properties. With additional curbs allowed, the road could become another City street.

Kemp added that, through an open records request, she had obtained several e-mails that dated back to early 2013. According to Kemp, the e-mails showed a continuous effort by staff to problem solve and look for loopholes to get the project through. There was a systemic problem with a staff that looked to circumvent the rules rather than enforce them. She referred to an e-mail dated March 4, 2013, from Larry Seabolt of Integrated Science & Engineering (ISE) to Rast and City Engineer Dave Borkowski. She continued that Seabolt had provided a list of obstacles the project had and asked staff to help in finding which sections of the ordinances should be considered for variances. Kemp said staff had used their time to find loopholes, parse ordinances, and find work arounds for the applicant. She had found crucial facts with limited knowledge and had used only the internet.

Kemp asked Council to consider requiring a closing document for all variance applications and to strengthen the City's ordinances. In addition, she asked Council to consider limiting the number of variances that could be granted for a single piece of property. Four variances on a single property should have sent a red flag, and Council should approach all variances with the mindset to deny.

Kevin Dwyer, a resident of Doubletrace Lane, said his property was on the downhill side of the tract. Robinson Road had been built on a ridge, and the topography fell off east and west of the road. There was an area of floodplain from Petrol Point to Huddleston Pond. All the water from Robinson Road ran down behind his house and to his neighbors to the north and south, Dwyer said. His concern was the flooding of their properties after this tract was developed. The plan submitted by the developer removed all the mature trees and vegetation, replacing them with eight two-inch caliper trees in 25-foot landscaped buffer. Stripping the land would increase the speed of the flow of water onto his property. Dwyer said he had landscaped his back yard twice in 23 years. The first time was right after moving in, and the second time was to help funnel the water away from his house. He would have to put a huge drain system in his backyard to handle the drainage from the proposed development. Dwyer was also concerned about the septic tanks, adding septic could not be put on back-filled property. The plans for septic and stormwater had been approved without staff stepping foot on the property to see the huge slope going down. Dwyer noted the survey for the drainage plan was off by 100 feet. There would be two retention ponds and two septic fields directly behind his backyard. He pointed out that one of the driveways had also moved 60 feet to the north, which moved it away from the area for which the variance had been granted.

Derek Wagner, also a resident of Doubletrace Lane, said he was against the variance. Wagner said the problems started with the first plat. He noted the zoning on the recorded plat as R-43, and the zoning clearly stated there was a 50-foot greenbelt, which was indicated as a building setback line. Had the surveyor done the job properly, it would have been clearly indicated. There was an area noted as open space and a landscape easement, which Wagner said was incorrect, adding it was a greenspace easement. The submitted plat was a misrepresentation of what was actually on the property. Wagner noted that he was a licensed surveyor in Georgia and said the first variance should never have been approved. There were violations of the Plat Act on the original survey and plat. A Certificate of Authorization was not on the plat, and the required information was not there to calculate the areas. By the time the 50 feet of greenbelt was removed, Wagner said well under an acre was left to build on. Lot 4 was the largest tract, and it had 0.8 buildable acres left after deducting the greenspace, while the smallest tract had 0.65 acres left. There were also additional building setbacks that had to be measured from the 50-foot greenbelt line, which left even less room to build. The development proposal should never have been considered. Two areas on the plat were considered to have Group C soil, which had a high possibility of septic failure, and alternatives should be sought. The entire property was never meant to be developed by the time the 50-foot greenbelt and the building setbacks were taken away.

Greg Ferrara, president of the Whitfield Farms homeowners association (HOA), said most people moved to Peachtree City because of the planned nature of the community, the established greenspaces, and how the City was laid out. One of their concerns was safety, saying there had been several situations in front of their neighborhood with school bus stops. There were three bus stops along Robinson Road – Whitfield Farms, Robinson Woods, and one closer to SR 54 at Williams Court. The sight lines at the property were limited. People passed buses, and they were concerned this would increase with the more limited sight lines. As the south side of the City had developed, the traffic on Robinson Road increased. The additional driveways would

aggravate that situation. He noted that when Whitfield Farms was built in the mid- to late-1980s, one home had been six feet over the building setback line, and the builder had to reinforce the foundation six feet in the other direction, then cut the home from its foundation and slide home six feet. He asked Council to be consistent with those standards.

Chuck Sanford told Council he had lived on Doubletrace Lane for 32 years. He was speaking on behalf of his family and 30 other families that lived on Doubletrace Lane and Pinto Point. He presented Council with letters of opposition from those families. He asked Council to consider voiding the previously approved variances on the Zenco property, citing the invalid subdivision of the 4.3-acre tract in October 2014. Sanford read from several areas of the Code of Ordinances regarding plat submittals, saying plats were required to identify all buffers and greenbelts and the location of any areas to be reserved, donated, or dedicated for public use. He said those areas of the ordinances referred to the 50-foot greenbelt, which had not been included in the application, drawings, or surveys submitted. Zenco had also asked to remove all the trees from a 30-foot x 1,300-foot long stretch, which was the equivalent of 1.5 acres of the 4.3-acre tract. The area had mature tree canopy, understory trees, and native shrubs and plants. Zenco planned to replace them with eight two-inch caliper trees along the 1,300-foot stretch of Robinson Road. There was a big difference between a 50-foot undisturbed greenbelt and a 25-foot landscaped buffer, in addition to the trees. The applicant was also planning to clear cut another 1.9 acres of trees for extensive grading for the homes, detention ponds, and driveways. Zenco now planned to clear-cut 80% of the 4.3 acres. He said it was an unreasonable fantasy to think the future homeowners would maintain the detention ponds. If the four homes were built, another 100 homes would lose their protection from the undisturbed greenbelt buffer and would be left with only a 30-foot buffer that would only last a few years before homeowners cut the trees that touched their homes so they would have backyards. The extensive grading in the 1.9-acre area would kill tree roots in the building zone. The subdivision of the property should be voided. The problems/hardships with the tract were self-inflicted. The tract was too narrow to build on, and would be too narrow even if this variance was approved. The request was detrimental to the public's health, safety, and community welfare.

Martine Yancey said her concern was about run-off, noting it was not possible to create four one-acre lots with all the setbacks. The tract had been purchased from a real estate agent by one developer, then sold to another developer after some variances were granted. She questioned why no homes had been built on this tract when the others in Avalon Park were built. The tract included the 50-foot greenbelt, a cart path easement, as well as other problems that had been noted. The adjoining parcels on Robinson Road were listed as City greenbelt. The tract should be left undeveloped. Yancey said she at first felt the City should purchase the property due to the staff mistakes. Zenco could sell it to another developer or donate it to the City. The taxpayers were not responsible for the mistakes made by both sides. Zenco had grounds for a lawsuit. The builder did not do his due diligence and should have done the legwork. There had been too many mistakes made by staff in the last year, and management needed to look at the staffing in the department. She asked Council to stop taking a cookie-cutter approach to the land that was left in the City.

Learnard reminded the speakers they were here to discuss topics not people.

Kyle Scruggs said the Robinson Road tract was directly in front of his property in Avalon Park. He said it was obvious that not much could be done with the tract. The surrounding neighborhoods had problems with stormwater runoff, and there had also been problems with the handling of the situation. He noted that one of the speakers in favor of the variance had stated the

neighbors did not have a problem with the variance. Scruggs said, as a neighbor, they had a problem with it.

David Minor, an Avalon Court resident, recalled that when he had wanted to put a basketball court in his yard, he had wanted to know what land he owned. He got a plat from the City, and he found out where he could build. He verified that with the City. He spent \$17,000 and did his homework. The builder should have done his homework, too. It was not the City's fault. Everything was in the ordinances.

Steve Brown noted the variance criteria, saying there needed to be a hardship for a variance. The effects on the neighbors' properties were the hardship. It was a hardship on the citizens, because the City was not following the ordinances or supplying greenbelt. He asked Council to get out of the "variance business," saying they had given too many. Brown (a former mayor) said maybe three had been approved during his tenure. As a current member of the Fayette County Board of Commissioners, Brown could not recall any variances that had been approved in the last five years. Sometimes people bought a bad piece of property, and they wanted Council to bail them out. He told Council it was their job to defend the ordinances and the citizens of the City.

Lynn Lasher said that, despite some missteps by the City, the onus was on the owner and the surveyor, as well as the engineer. She referred to an e-mail the engineer had sent to the Senior Planner and City Engineer, which had included a five-item checklist the engineer was responsible for, and the first item on the list was the 50-foot greenbelt along Robinson Road.

Phil Boswell said Robinson Road was the longest thoroughfare in the City that did not cross a state highway. There were issues with the sellers, buyers, engineers, and City officials. He said the best thing to do was to table the request indefinitely until things were worked out between everyone involved or to vote no.

Lisa Blancher, who moved to the City in August 2014, said she had seen the variance signs in 2014 and had assumed they were for the house. They moved there because they liked the greenspace and cart paths. She urged Council to deny the variance.

Sharon Waples said property values would be affected either way Council voted. The City would have to pay someone. Her neighborhood had septic tanks, and she had seen septic failures. Council should limit variances unless there was an emergency situation. For most residents, their homes were the largest investments made in their lifetimes. Right now, they were talking about houses, not anyone's home. She asked Council to consider the citizens and to oppose the variance. Everyone made mistakes, and this mistake should be stopped before it went any further.

No other speakers came forward, and Learnard closed the public hearing.

Imker reported that Council had received an e-mail that day from the applicant's attorney ratifying the applicant's constitutional right to sue the City. He said he was ready to stand behind the City's 35,000 residents and stand up to a lawsuit. There were no other comments.

Imker moved to deny the variance request to the buffer standards for which the public hearing had just been held. Ernst seconded. Motion carried 3-0-1 (Fleisch).

10-15-02 Consider Amendment to SAFEbuilt Professional Services Agreement

Warrix reported that he had been looking at areas where efficiency and customer service could be improved in the department. The City had outsourced building services to SAFEbuilt since 2012, and it had been very cost effective and worked well. The amendment to SAFEbuilt's agreement would require them to provide a full-time permit specialist to work at the front desk, and the City staff member currently performing those duties would be reassigned to work with Planning, Engineering, and Stormwater. SAFEbuilt's proposal included an increase to 75% of the fees collected rather than 70%. The additional 5% was approximately \$33,000, which was the cost of the full-time permit specialist. There would be no contribution from the City for the position. SAFEbuilt would absorb all the overhead costs associated with the position.

Learnard moved to amend the SAFEbuilt professional services agreement as explained. Ernst seconded. Motion carried unanimously.

10-15-03 Consider Adoption of Right-of-Way Occupancy Ordinance

Interim City Manager Jon Rorie said City Engineer Dave Borkowski would give an overview of the 18-page ordinance. In addition, Rorie asked Council to continue the agenda item until November 5 to allow more time for Council review, staff review, and vendor review before voting.

Borkowski noted the City's existing ordinances did not adequately deal with companies that wanted to install telecommunications facilities within the City's rights-of-way. The current ordinances basically dealt with tree preservation and requiring utilities to be buried, but did not address how the City's rights-of-way were used, which resulted in a lack of control for the City. The proposed ordinance did not prohibit companies from using the rights-of-way, which was a key point since state law did not allow that. The proposed ordinance would establish the following chief controls:

- The companies would have to register with the City and pay a one-time fee unless it was specifically exempted by state or federal law.
- New installations in the rights-of-way would have to be permitted. Specific detailed drawings and surveys would be required, as well as bonds and information on the excavation.
- A permit fee would be required. The fee would be established in line with the Georgia Department of Transportation (GDOT) Administrative Code.
- Procedures/rules for franchising within the City limits would be established. Local franchises would not be required to have a local franchise, but they would have to show proof of state franchise compliance.

Imker moved to continue agenda item 10-15-03 to November 5. Ernst seconded. Motion carried unanimously.

10-15-04 Consider Authorization for Title Issue – Abandonment of Line Creek Drive

Meeker said a title issue had arisen with respect to the abandonment of Line Creek Drive. The title to a portion of the right-of-way had not been conveyed back to the City from GDOT after the road was widened. In order to complete the abandonment, this issue had to be resolved. Staff had spoken to Trinity Development about adding this to the overall cost of the right-of-way.

Ernst clarified there would be no cost to the City. Meeker said that, when it was all done, there would be no cost to the City.

Ernst moved to approve agenda item 10-15-04 Consider Authorization for Title Issue – Abandonment of Line Creek Drive. Learnard seconded. Motion carried unanimously.

Council/Staff Topics

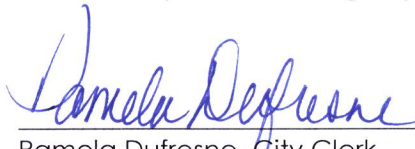
Fleisch announced that the City's team came in second in the Dragonboat Races held September 26 thanks to Police Chief Janet Moon. The team won by one minute, six seconds. She thanked the members of the Police and Fire Departments who manned the boat.

Executive Session

Learnard moved to convene in executive session at 8:44 p.m. to discuss pending or threatened litigation and personnel. Ernst seconded. Motion carried unanimously.

Learnard moved to reconvene in regular session at 9:38 p.m. Ernst seconded. Motion carried unanimously.

There being no further business, Learnard moved to adjourn. Ernst seconded. Motion carried unanimously. The meeting adjourned at 9:39 p.m.


Pamela Dufresne, City Clerk


Vanessa Fleisch, Mayor