

City Council of Peachtree City
Minutes of Meeting
October 1, 1998
7:00 p.m.

The City Council of Peachtree City met in a regular session Thursday, October 1, 1998, at 7:00 p.m. in the City Hall Council Chambers.

Mayor Lenox led those attending in the pledge of allegiance. Other council members present were: Carol Fritz, Annie McMenamin, Bob Brooks and Jim Pace.

ANNOUNCEMENTS, AWARDS, SPECIAL RECOGNITION

Mayor Lenox read a proclamation for Public Safety Appreciation Week.

ADDITIONAL AGENDA ITEMS

There were no additional agenda items.

MINUTES

McMenamin made a motion to approve the minutes of September 17, 1998 with one correction. Brooks seconded the motion. Motion carried unanimously. McMenamin made a motion to approve the minutes of September 23, 1998 as presented. Pace seconded the motion. Motion passed unanimously.

OLD AGENDA ITEMS

There were no old agenda items.

NEW AGENDA ITEMS

10-98-1 Peachtree City Multi-Family Properties, LLC. - Law Suit Agreement

Rick Lindsey, City Attorney, explained the history of the law suit. The property in question included 17 acres which was originally zoned GR-10 to allow 10 units per acre. The City began updating its Land Use Plan in 1995 and later that year it became apparent that several sites in the City were being considered for development of apartment complexes as a result of a "loop hole" in the zoning ordinance. The "loop hole" allowed multi-family residential developments on property zoned for commercial use. On October 1, 1995, Council passed a 120-day moratorium to prevent any further development of apartment complexes until Council could review the Land Use Plan Update and address the problem with the zoning ordinance. In November of 1995 the Land Use Plan Update was adopted and the land use for the property in question remained multi-family. During that time, certain properties received grandfather status and on March 7, 1996, the moratorium was extended indefinitely. Peachtree City Multi-Family Properties, LLC. (MFP) purchased the 17 acres zoned GR-10 on April 8, 1996 and 4 additional acres adjoining that property on June 12, 1997. On August 4, 1997, MFP submitted a concept plan to develop apartments on their 17 acres. The City Council clarified its moratorium to include condominiums, townhouses and duplexes on August 4, 1997. The next day, the City sent

a letter to MFP to inform them that the conceptual plan could not proceed. MFP filed a law suit in November of 1997, and filed a motion for summary judgement. The purpose of a summary judgement was to ask the judge to decide certain facts in the case as a matter of law. The judge granted the summary judgement in favor of MFP, and the City filed an appeal which was still pending.

Lindsey said other municipalities were facing similar situations, but that there was not any case law on this issue in the State of GA. Lindsey said the parties had been discussing a settlement agreement and Council reviewed the proposed Development Agreement during executive session at its last meeting. He said the agreement would outline what type of development could go on the property, where buffers would be, and the number and type of units to be developed.

Lenox asked for comments or questions.

Sharon Waples said she was not opposed to new growth, but she was upset that developers could force apartments on the City after Council passed a moratorium at the request of its citizens. She said the developers did not live in Peachtree City, but they were allowed to bully and harass the City with law suits. She urged all those concerned to write to their state representatives to urge them to put a law on the books to protect local municipalities from those types of law suits. She asked why Council was considering the Development Agreement before the judgment was heard from the Court of Appeals.

Lindsey said the appeal would be considered on October 27, but that the City was in a better position to negotiate before that decision was made. He said if the City won the appeal they would have to go back before the same judge that made the first ruling. Lindsey said Jim Webb gave a report in March stating that the prospects of winning the law suit were slim, and if in the end, the City lost the law suit, it could be responsible for substantial monetary damage. Lindsey reminded Waples that there was no case law on record for this type situation.

Waples said she felt there was a good chance that legislation could be passed considering the events going on in Cherokee, Cobb, and Forsyth Counties.

Brooks said the City's appeal concerned the validity of the moratorium. He also said several different attorneys had given their opinion that the City could not win the case; therefore, he did not feel that it made sense to risk paying \$600,000 in monetary damages when this particular piece of property was the last undeveloped parcel zoned for multi-family use.

McMenamin said that at times one can not equally compare what is "right" or "wrong" with what is "legal" or "illegal". She said she was opposed to the Development Agreement. She believed it was illegal and a violation of the City's zoning ordinance to consider the development and rezoning of MFP's additional four acres because it was not part of the original plan or law suit. She felt normal rezoning procedures should be followed, which required the Planning Commission to hold a Public Hearing and make a recommendation to City Council for its Public Hearing before a final decision is made. She said zoning laws were in place before the "Clean Air Act," but she felt municipalities should have some legislative support to comply with federal and state mandates to

— restrict growth, lower density and lower traffic. She said she had already contacted several state representatives with the hope that they would introduce legislation at the next session to give municipalities some legal ground to comply with federal and state mandates.

Bill Wheelock said he had been deeply involved in securing the moratorium on apartments, and he did not understand the reason for Judge English's ruling. He suggested Council hold another public hearing and properly re-establish the moratorium to preclude this from happening in the future. He also felt there was too much rental property in Peachtree City.

Bob Brown, Planterra Ridge, was upset that the City did not appear to be gaining anything by settling the law suit.

Pace asked if this was the only remaining property zoned for multi-family development. Lindsey said that it was. McMenamin did not think that was correct. Jim Williams, Director of Developmental Services, reminded Council of the 399 acre tract on the west side and of a site located at the corner of Crosstown Road and Peachtree Parkway, which had a conceptual site plan approved several years ago for senior citizen apartments. Williams said that he recently spoke with the owner who said he had no immediate plans to begin the development.

— McMenamin asked if Eric Edee owned any other property in Peachtree City. Mr. Dillard, Edee's attorney, said as far as he knew, Edee did not own additional property in Peachtree City, but that he was not aware of all of Edee's investments.

Pace asked if Council should consider Wheelock's suggestion to issue another moratorium. Lindsey advised it would be safer to declare a moratorium on any *rezoning* of property zoned AR, etc. to multi-family, provided that the moratorium contained a method of appeal to City Council for relief from the moratorium. Pace said he liked that idea. He said the City made a mistake when the Land Use Plan was updated. He said they looked into several different options to settle this issue such as rezoning the property to OI, condemning the property, and purchasing the property, but that none of those options were financially feasible. He said as a steward of the tax payer's money, he could not go forward with an action that could cost a half a million dollars.

Lenox said the United States Constitution protected people's property rights. He said if Council had the power many citizens wanted them to have, to take someone's property just because they did not like what the owner wanted to do with it, then they could take anyone's property for any reason. He said the City had a good record of fighting its court battles. He said the secret to protecting the Land Use Plan was to know when to fight and stand up for principals and know when to gracefully back down.

— McMenamin asked if the buffers referenced in number 7 of the agreement had been successfully negotiated. Lindsey said they had been and would be reflected on the final site plan.

Brooks made a motion to approve the Development Agreement. Pace seconded the motion. Motion carried with McMenamin voting Nay because she felt the additional four acres should not be part of the Development Agreement without a public hearing.

10-98-2 Consider Alcohol License - Holiday Inn Hotel & Suites - (fka Comfort Suites) 203 Newgate Road

Lenox explained that the Comfort Suites, located at 203 Newgate Road, had been purchased by Holiday Inn and Suites. They will be adding a restaurant to the facility and have submitted an application to serve malt beverage, wine and distilled spirits. Mit Shaw requested to be appointed as the Licensee and Ken Kula requested to be appointed as the License Representative.

Mr. Kula clarified that it was not a change in ownership, but a change in franchise. McMenemy made a motion to grant the license and appoint Mit Shaw as the Licensee and Ken Kula as the License Representative. Pace seconded the motion. Motion carried unanimously.

10-98-3 Consider Tree City USA Program

Basinger said it had been suggested that Council pursue having Peachtree City designated as a "Tree City USA" by the National Arbor Day Foundation. He explained there were four basic standards that must be met.

First, a tree board, commission, or department must be established. The board could be a group of concerned citizens charged by ordinance to develop and administer a community tree management program for the care of trees on public property. For cities with a population over 10,000, a City department with salaried employees is often feasible.

The second standard is a requirement that a Community Tree Ordinance be enacted. The ordinance should designate the tree board or department and give it the responsibility for writing and implementing an annual community forestry work plan. The ordinance should determine policies for public tree care, planting, maintenance, and removal.

The third standard is the establishment of a Community Forestry Program with an annual budget of at least \$2 Per Capita. An annual work plan for the previous and next year is required.

The fourth and final standard is for an annual proclamation observing Arbor Day.

Basinger said the Arbor Day Foundation forwarded an application should Council desire to pursue the program. He said it may be possible to take credit for current budgeting expenditures to meet the \$2 per capita, but that there should also be some funds specifically designated to purchase trees if Council decided to establish the program.

Lenox agreed and said he liked the program. McMenemy said she believed the City already met much of the criteria, but she was concerned with setting up another level of government. She suggested using the City's departments which were already in place. She suggested tabling the issue until staff could find out if the City already met the criteria. She thought the City's standards could be an example for the Arbor Day Foundation. She said the City already participated with "Beautiful Fayette" in recycling Christmas Trees, and that the Kiwanis Club would continue to

donate trees to the City. She also reminded everyone that the "Tree City USA" standards would only apply to public property not private property.

Basinger felt that they might need to modify the existing ordinance. Lenox felt an existing City department could function as the tree department. Brooks felt certain areas of the City could be targeted that might benefit from tree buffering such as Kelly Drive and the Industrial Park.

Pace felt establishing a tree board was a great idea. He would like to see the City take a proactive stance in replacing trees that died in the wetlands areas near Planterra Subdivision and Crosstown Road. He thanked Fritz for bringing the issue to Council for consideration.

Brooks made a motion to table the item indefinitely until staff could come back with a recommended ordinance, funding program, and board of salaried employees. Lenox seconded the motion. Motion carried unanimously.

Bob Brown, Planterra Ridge, said he was glad Council was considering the program, even though it would only affect public property. He felt it would give the perception that Peachtree City was a "City of Trees" and would encourage citizens to do the same on private property. He also felt it would support and increase awareness of the Kiwanis' efforts to sell and plant trees every year.

Pace said the buffer for Planterra Ridge was important to him and he instructed staff to plant "Bald Cypress" trees to replace the dead trees in the wetlands area. McMenamin asked if that would be disturbing the wetlands. Basinger said much of the area Pace was talking about was on private property, but he felt he could work with the owners of the golf course on the issue. He also said he would contact the Army Corp of Engineers to obtain permission to plant the trees. Brooks agreed with Paces' instructions, but wanted to include the right of way areas on Kelly Drive as well.

10-98-4 Consider Revision to the "Smoking Ordinance" to give Code Enforcement Officer authority to enforce sign requirement

Basinger said the City was experiencing some problems with businesses refusing to post Tobacco Smoke signage required by the Smoking Ordinance. The current smoking ordinance gives full enforcement authority to the police department, and while it is appropriate for them to enforce prohibition of smoking in "no smoking" locations, it is more appropriate for the Code Enforcement Officer to enforce the requirement to post the Tobacco Smoke signs at business locations. Therefore, an amendment to the smoking ordinance to authorize the Code Enforcement Officer to have enforcement power was proposed for consideration.

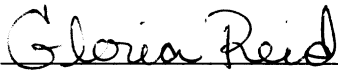
Pace asked if a more esthetically pleasing sign could be posted at professional offices. Lenox felt if someone wanted another type of sign they could submit their request to the sign committee. McMenamin felt that signs should remain consistent for enforcement purposes and that if another type of sign is approved for professional offices, they should all be the same. Brooks agreed and felt it was important to put the standards in writing. Basinger said he would come back with a recommendation to Council on the issue.

McMenamin made a motion to approve the amendment to the Smoking Ordinance. Pace seconded the motion. Motion carried unanimously.

Council/Staff Topics

Basinger requested volunteers from City Council members to serve on the Recreation Commission selection committee for two vacancies. McMenamin and Pace volunteered to serve.

Lenox made a motion to adjourn the meeting. Brooks seconded. Motion passed unanimously and the meeting adjourned at 9:20 p.m.



Gloria Reid, Executive Secretary

Attest: 

Mayor