



CITY OF FLOWERY BRANCH
Council Meeting Minutes
Work Session
Wednesday April 15, 2009
9:30 A.M.



CALL TO ORDER:

Mayor Hirling called the meeting to order at 9:30 am.

IN ATTENDANCE:

Mayor Diane Hirling and Council Members Pat Zalewski, Allen Bryans, Chris Fetterman, Craig Lutz, and Mary Jones. Also in attendance were City Manager Bill Andrew, City Clerk Melissa McCain, City Planner James Riker and City Attorney Ron Bennett.

PLEDGE OF ALLEGIANCE:

Mayor Hirling led the pledge of allegiance.

PUBLIC COMMENTS:

James Herold – 5615 Church Street, Flowery Branch, Ga. 30542

Mr. Herold approached the Council and advised that he was in support of approving the Ethics Ordinance as it offers the public a mechanism for filing a complaint against a council member if necessary.

UNFINISHED BUSINESS:

Discussion – 2nd Reading Ordinance – 318 A – Ethics Ordinance

Manager Andrew advised that this was the second reading and nothing had been changed.

Attorneys Bennett advised that a Resolution needed to be crafted and that an Emergency Special Called Meeting could take place just prior to the Public Hearing to be held on April 16, 2009. The Emergency meeting is justified in that the Resolution needs to be passed by May 1, 2009 in order to be eligible for recognition at the GMA Annual Convention June 2009 in Savannah Georgia.

There was a consensus to hold an Emergency Special Called Meeting to discuss a resolution pertaining to the Ethics Ordinance on April 16, 2009 at 5:50 pm.

Councilman Lutz requested that the following language be added to the ordinance; No member of the governing authority shall, along with another elected or appointed official, hold more than 10 % ownership in any partnership or corporation that conducts business for profit or not in the City of Flowery Branch limits.

Councilman Fetterman advised that Hall County has had some issues and this would prevent Flowery Branch from falling into those same problems.

Councilman Lutz advised that ethics is as much appearance as anything and the city needs to try to avoid the appearance of impropriety and this additional verbiage will assist in avoiding that appearance.

There was not a consensus to add the additional verbiage as proposed by Councilman Lutz.

[Discussion – 2nd Reading Ordinance 407 - Intergovernmental Agreement Between Flowery Branch and Hall County for Animal Control Services](#)

City Manager Andrew advised that this was also a second reading and that there were no changes since the last meeting.

There was no discussion.

NEW BUSINESS:

[Discussion – April 1st, 2009 - Council Meeting Minutes](#)

There was no discussion or changes.

[Discussion – April 9, 2009 Special Called Meeting Minutes](#)

There was no discussion or changes.

[Discussion - Contract - Interior Demolition 5509/5511 Main Street](#)

Planner Riker made the following summary:

In February 2009, the City's tenant at 5511 Main Street moved out leaving both 5509 and 5511 Main Street unoccupied. Following an inspection, the Building Department suggested that certain interior improvements be completed prior to re-leasing the spaces. Given the condition of past improvements and in order to obtain accurate bids for the suggested improvements, staff is recommending that some basic demolition be completed in each building. Specifically, that the interior demising walls, suspended ceilings and appropriate wall coverings be removed from each building. By removing these items, staff will be able to solicit more accurate bids for the interior improvements. The bid amounts for the demolition work are:

- Hamilton Custom Cabinet & Remodel: \$ 5,762.00
- Allstar Custom Homes: \$ 6,050.00
- Espinosa Construction: \$ 7,345.00
- RST Builders: \$ 8,050.00
- Jeff Henderson Builders: \$ 10,750.00

Further Planner Riker advised that an asbestos survey was completed for the potential demolition areas and the results were negative for the presence of ACM (Asbestos Containing Materials).

Chris Fetterman inquired on the amount of work and intensity and advised that he felt the City had a contract with John Morris and felt he had the ability to conduct the demolition and save the city some money.

Planner Riker advised that the job was not a one person job and that it would take one person a significantly longer time to do the demolition then to have a team come in and do the demolition.

Discussion - Contract – Well Access Road - East Main

Manager Andrew advised that the city was in receipt of two bids for this project and one had dropped out. Manager Andrew advised that the winning bid was from C & T Hauling Company, Inc. in the amount of \$18,826.00.

Further, Manager Andrew advised that Public Works Director Johnny Thomas suggested that the well road be named after Ms. Annie Duke as she was a member of the church that the city had bought the property from and that the Duke and Compton family has done much for the city.

Development Agreement Hortman and Dobbs – TAD Funding

Manager Andrew reviewed the agreement.

Attorney Bennett stated that approving this agreement would be approving the refund of the demolition costs in the amount of \$135, 000 for qualified expenses, and also the procedure by which Hortman and Dobbs will have to come before the council to seek reimbursement or advance for future costs. The process would be repeated for each phase with approval by the council for each request.

Manager Andrew advised that it is anticipated in July a \$14,000 TAD increment will be available and in December the remaining \$121,000 TAD increment would be available.

Councilman Fetterman inquired on the amounts that Hortman and Dobbs could get from the TAD.

Attorney Bennett advised that the developer is limited to a maximum of 15% of the value of capital improvements to private property.

The Council reviewed the definition of qualified costs covered under the TAD reimbursement program.

Mayor Hirling inquired if the City would be receiving reimbursement for the cost to establish the TAD.

Manager Andrew advised that he felt it would have been a priority to have the city reimbursed if the City didn't have a developer looking to use the funds for economic development. The reimbursement would be up to the TAD committee and further the County was adamant about the funding going toward private developments and not to go into the city's general fund.

Councilman Fetterman inquired what the reimbursement would be to the city if the city wanted to recuperate its costs for creating the TAD.

Manager Andrew advised that it would be approximately 40,000 dollars.

Councilman Fetterman advised that the city could recuperate those costs and still grant 85,000 dollars to the Hortman Dobbs project which would assist the city with the short fall in the budget.

Manager Andrew advised that the reimbursement would be up to the TAD committee and further the County was adamant about the funding going toward private developments and not to fund the City. Overriding the County's decision could cause the County to pull out their increment. Councilman Fetterman inquired on what protection the city had for any money given out from the TAD if the development did not occur.

Attorney Bennett advised the protection is that the city has the opportunity to review the project for viability and most often the project will be started or about complete prior to monies being issued.

Planner Riker advised that payment would be dependent on a C/O being issued and at the discretion of the council.

Councilman Lutz reviewed section 9.1, terms of the agreement, which indicates the agreement has an expiration date of the completion of the project and expressed concerns that this expiration date made it a binding development agreement and future councils are locked into this agreement.

Attorney Bennett advised that there was still discretion in the approval process of the next two components.

Councilman Lutz further advised that he felt this document was not legal without an out clause.

Further, Councilman Lutz advised that the purpose of the TAD is to use tax increment financing which indicates there needs to be development because the development is technically what pays for the reimbursement. When the Country Craft building was removed, essentially that land is now worth less than it was before they demolished the building because they have removed all the improvements. Councilman Lutz inquired on how it is that the city would pay for a smaller tax digest.

Planner Riker advised that the developer is claiming that the property now is worth more and that he is paying higher taxes since the demolition of those buildings.

Councilman Lutz advised that he would like to have confirmation that the taxes have increased according to the tax assessment.

Councilman Lutz then reviewed section 7.1 and stated the city is in essence going to pay for demolition, soil erosion control and whether or not it's the case, Mrs. Upchurch has had several basement issues, some of those may or may not have been caused by the Hortman & Dobbs project, but it may go into court.

Councilman Lutz inquired if the indemnification clause was going to protect the city if Mrs. Upchurch chooses to sue the developer and the city for damages since the city is making payment and indicating this is what the city wanted.

Attorney Bennett advised that the city would be covered by the indemnity clause.

Councilman Lutz advised that an out clause had to be included in the agreement and also requested that the school board reference be removed since there is no agreement with the school board to receive funding.

Manager Andrew advised that the school board has indicated that they would like to discuss the TAD in the future and it is suggested that it remain in the agreement.

Councilman Fetterman advised that the city had till July to review this agreement prior to approving it and suggested that the city wait until all the minutes from the TAD committee meeting minutes have been reviewed and more information provided.

DEPARTMENT REPORTS

City Planner

Planner Riker advised that the wall form liners were up at the Walgreens and further advised that there would be some substantial landscaping installed at a later time.

Further, Planner Riker advised that the Waffle House has began work on the McEver Road restaurant.

City Manager Report

Manager Andrew reviewed the bids for the purchase of a track hoe and trailer for the water and sewer department. It was noted that the funds were budgeted for in the current year budget.

Manager Andrew advised that during the 2010 budget discussions one issue was brought up pertaining to the transfer of funds from the water and sewer fund for the TE grant funds that were dispensed. It was thought the amount to be transferred was \$166,000 and the auditor confirmed the amount as \$179,671. In light of this information there is an additional \$13,338 that is now in general fund. This amount will cover the costs of the employee's portion of the insurance that it was anticipated the employee would be paying in the amount of \$50.00 a month.

There was a consensus to use the excess monies to cover the cost of the employees insurance alleviating the need to charge the employees the anticipated \$50.00 a month.

Manager Andrew advised that the budget meetings scheduled for 22nd and 23rd were no longer needed and the latest draft will be issued and available May 6, 2009 with a vote for approval on May 20th, 2009.

Council Report

Councilman Bryans expressed concerns with kids skateboarding on Lights Ferry Road and requested the Police Department look into the matter.

Councilman Fetterman suggested the city check into Mountain Man BBQ as he felt he was still doing business.

ADJOURNMENT WORK SESSION:

Mayor Hirling adjourned the Work Session at 11:10 am.



CITY OF FLOWERY BRANCH
Council Meeting Agenda
Voting Session
Wednesday April 15, 2008
Immediately following Work Session



OPEN VOTING SESSION:

Mayor Hirling opened the Voting Session at 11:21 am.

CONSENT AGENDA:

- 04-01-09 - Council Meeting Minutes
- 04-09-09 – Special Called Meeting Minutes

There was a motion made to approve the Consent Agenda as presented.

MOTION: Pat Zalewski
SECOND: Mary Jones
AYES: Mary Jones, Craig Lutz, Pat Zalewski, Chris Fetterman and Allen Bryans.
NAYES: None
Motion carried

UNFINISHED BUSINESS:

Consider – 2nd Reading Ordinance 318 A – Ethics Ordinance

Attorney Bennett read Ordinance 318 A

There was a motion made to approve Ordinance 318A with the following additional verbiage;
No member of the governing authority shall along with another elected or appointed official hold more than 10 % ownership in any partnership or corporation that conducts business for profit or not within the city limits of Flowery Branch.

MOTION: Craig Lutz
SECOND: Chris Fetterman
AYES: Craig Lutz and Chris Fetterman
NAYES: Pat Zalewski, Allen Bryans and Mary Jones
Motion failed

There was a motion made to approve ordinance 318A as read.

MOTION: Pat Zalewski
SECOND: Mary Jones

There was a motion made to amend the motion and add to section 3 prohibitions, No member of the governing authority shall along with another elected official hold more than 10 % ownership in any partnership or corporation that conducts business for profit or not within the city limits of Flowery Branch.

MOTION: Craig Lutz
SECOND: Chris Fetterman
AYES: Craig Lutz and Chris Fetterman
NAYES: Pat Zalewski, Allen Bryans and Mary Jones
Amended motion failed

Original Motion Vote

Discussion:

Councilman Fetterman advised that he would vote for the Ethics Ordinance as he felt it was important to have an Ethics Ordinances and suggested that in the future the Council keep clarity in the ordnances and be stricter on the council activity within the city limits.

AYES: Pat Zalewski, Allen Bryans Chris Fetterman, Craig Lutz and Mary Jones.
NAYES: None
Motion carried

[Consider – 2nd Reading Ordinance 407 – Animal Control Ordinance](#)

Attorney Bennett read Ordinance 407

There was a motion made to approve Ordinance 407 as read.

MOTION: Pat Zalewski
SECOND: Mary Jones
AYES: Mary Jones, Craig Lutz, Pat Zalewski, Chris Fetterman and Allen Bryans.
NAYES: None
Motion carried

[Consider - Contract - Interior Demolition 5509/5511 Main Street](#)

There was a motion made to approve the contract with Hamilton Custom Cabinets for the interior demolition at 5509 and 5511 Main Street.

MOTION: Pat Zalewski
SECOND: Mary Jones

Discussion:

Councilman Fetterman stated that he felt there has been no value added by signing the John Morris contract a few weeks ago.

Further Councilman Fetterman advised that he felt the work could be completed by Mr. Morris.

Councilman Lutz advised that he felt the purchase of the building was a bad idea in the first place and that we currently don't have prospects for those buildings and doing this demolition will bind the city to having to rebuild the interior. Councilman Lutz further advised that he would just assume place the buildings up for sale then spend any more of the tax payer's dollars.

AYES: Allen Bryans, Mary Jones, Pat Zalewski

NAYES: Chris Fetterman and Craig Lutz.

Motion carried

Consider - Contract – Well Access Road - East Main

There was a motion made to approve the contract with C & T Hauling Company Inc. for the construction of the well road at the First Baptist Church of Flowery Branch site in the amount of \$18,826.00 and to name the road Annie Duke Lane.

MOTION: Mary Jones

SECOND: Allen Bryans

AYES: Chris Fetterman, Pat Zalewski, Craig Lutz, Mary Jones and Allen Bryans

NAYES: None

Motion carried

Consider - Development Agreement Hortman and Dobbs – TAD Funding

There was a motion made to postpone the consideration of the development agreement between the City of Flowery Branch and the Hortman & Dobbs Developer until the next scheduled voting session to give the council an opportunity to research a sunset clause, the tax increase values and to review the minutes of the last TAD Advisory Committee.

MOTION: Craig Lutz

SECOND: Chris Fetterman

Discussion:

Councilman Fetterman advised that he supports the project but that it is such a grand project that the city needs to ensure that everything the city is doing protects the tax payers of Flowery Branch.

Further Councilman Fetterman noted that the document was not written by the city and that signing this contract would bind future councils to this agreement.

Continuing, Councilman Fetterman stated that with financial times the way they are there is no clause that states if the project is not completed once payment is made the city is protected.

AYES: Craig Lutz and Chris Fetterman

NAYES: Allen Bryans, Mary Jones and Pat Zalewski

Motion failed.

There was a motion made to approve the development agreement between the City of Flowery Branch and the Hortman & Dobbs Developer.

MOTION: Mary Jones
SECOND: Allen Bryans

Discussion:

Councilman Lutz advised that there were many issues with the development agreement, section 9.1 and the fact that the expiration date is when the project is completed and that he felt that it was a violation of state law as it is binding future councils. Further the city is making a premature decision to move forward considering that the city has time to make this decision. Another point is the fact that they are requesting immediate reimbursement for the demolition – Exhibit F lists the increase in the improvements and demolition is not included in that list and he felt there was not an apparent increase in the value due to the demolition and that immediate payment was not required.

Councilman Lutz further stated that overall the project is important the default nature of what gets the city in and out of this agreement is still very much subject to question and the fact that it could end up in the court of law. There are a lot of remedies against the city which are very punitive towards the city.

Councilman Lutz urged the council to vote against this agreement until the agreement is reviewed and adjusted accordingly.

AYES: Mary Jones, Pat Zalewski and Allen Bryans
NAYES: Chris Fetterman and Craig Lutz
Motion carried

Consider – Purchase of Track Hoe and Trailer.

There was a motion made to approve the purchase of the Perimeter Takeuchi track hoe and trailer in the amount of \$37,410.00.

MOTION: Allen Bryans
SECOND: Mary Jones
AYES: Craig Lutz, Pat Zalewski, Allen Bryans, Mary Jones and Chris Fetterman.
NAYES: None
Motion carried

EXECUTIVE SESSION:

There was a motion made to go into Executive Session at 11:40 am.

MOTION: Mary Jones
SECOND: Allen Bryans
AYES: Craig Lutz, Pat Zalewski, Allen Bryans, Mary Jones and Chris Fetterman.
NAYES: None
Motion carried

RECONVENE OPEN SESSION:

There was a motion made to reconvene Open Session at 12:03 pm.

MOTION: Chris Fetterman
SECOND: Mary Jones
AYES: Craig Lutz, Pat Zalewski, Allen Bryans, Mary Jones and Chris Fetterman.
NAYES: None
Motion carried

Discussion – Banking Services for Capitol Purchase.

Manager Andrew reviewed four bids for tax anticipation notes (T.A.N.) for a capitol purchase.

Manager Andrew advised that Regions Bank and First Century Bank offered the closest and lowest interest rates but that Region required an origination fee whereas First Century just required a deposit in their bank of a minimum of \$200,000.

Manager Andrew advised that the Park Walk CD could be partially cashed out to cover the deposit amount of \$200,000 and could be replaced in the Brand Bank CD when the T.A.N. was paid off.

Attorney Bennett read Resolution 09-005

There was a motion made to approve Resolution 09-005 and the funding through First Century Bank for the T.A.N. including the cashing out and depositing of \$200,000 from the Brand Bank Park Walk CD into a First Century Bank CD as well as the approval and execution of the appropriate documents by the Mayor, City Manager, City Clerk and City Attorney for the capitol purchase.

MOTION: Mary Jones
SECOND: Pat Zalewski

Discussion:

Councilman Lutz made the following summary statement:

The TAN is based on the SPLOST funds the City will be receiving and it is specifically set up to acquire property. After the Executive Session today I do not feel that this capitol expense falls in line with what the voters were presented back on March 17, 2009. When the ballot said, from the City of Flowery Branch perspective that the City would be acquiring and constructing and equipping buildings and real estate. With that being said I am very concerned that entering into this agreement to take these capitol funds we could be in jeopardy of going against the intention of the actual SPLOST ballot vote and when you compare it to the comprehensive plan for Flowery Branch it is my feeling that a voter could feel like they were misled and put the City in legal issue. It would be my recommendation, until we have the ability to get some questions answered; we vote against this now and review it in the future.

Councilman Fetterman advised that he was not in support of the expenditure of these funds for this capitol purchase.

AYES: Pat Zalewski, Allen Bryans, Mary Jones

NAYES: Craig Lutz and Chris Fetterman

Motion carried

ADJOURNMENT:

There was a motion made to adjourn the meeting at 12:19 pm.

MOTION: Chris Fetterman

SECOND: Pat Zalewski

AYES: Mary Jones, Craig Lutz, Pat Zalewski, Chris Fetterman and Allen Bryans.

NAYES: None

Motion carried