



**CITY OF FLOWERY BRANCH**  
**Public Hearing Meeting Minutes**  
Wednesday May 6, 2009  
9:30 am



**CALL TO ORDER:**

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

**IN ATTENDANCE:**

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

**PUBLIC COMMENTS:**

There were no public comments

**NEW BUSINESS:**

- FY 2010 BUDGET

Manager Andrew made the following summary review:

The City Staff are pleased to present the Mayor and Council with the first public draft of the FY 2010 City of Flowery Branch Budget. In the face of rising operating expenditures associated with a growing community, we are keeping costs to their lowest and working within our resources to present a balanced budget. I look forward to using the next two weeks to fine-tune this document so we may work together to bring our City into a new fiscal year.

The following is our schedule for adopting this budget.

- April 27 – Public Advertisement in *The Times* announcing the availability and schedule for adoption of the budget.
- May 6 – 9:30 AM – Public Hearing and formal review of the draft budget with the Mayor and Council (the budget was on our web site as of May 4)
- May 20 – 9:30 AM – Formal adoption of the FY 2010 budget.

## **HIGHLIGHTS OF THE FY 2010 BUDGET**

### **GENERAL FUND – TE GRANT – SPLOST – SOLID WASTE**

1. Outside of our Water and Sewer Enterprise Funds, there is an increase of 15.1% in the FY 2010 budget of \$4,027,824 as compared to the FY 2009 budget of \$3,498,691. There are several factors causing this increase.
  - a. With a full year of Hotel Room Taxes coming in this year, we are looking for an increase of 14.8% in that fund.
  - b. SPLOST payments are increasing 180%, rising from \$125,000 in FY 2009 to \$349,387 in FY 2010.
  - c. The General Fund is increasing from \$2,780,875 to \$3,078,604 mainly due to higher health, property and liability insurance costs. While there is a 10.7% increase in the General Fund, it should be noted that \$124,800 in Property Taxes will be used in the TAD and so will not be adding to the operations of the City.
2. In terms of cost cutting in the FY 2010 budget, the City will be implementing several temporary measures to adjust to the economic downturn and resulting drop in revenues. These cuts represent a meaningful effort on behalf of the employees to absorb the City's lack of revenue and yet still provide a high level of service to the public:
  - a. A one-day per month Furlough with a total savings (including all employees) of \$74,327. No departments will be closed during the furlough periods as the dates for the furlough will be staggered throughout the departments.
  - b. The City is also discontinuing its match to the Mass Mutual 457 Retirement Program, saving \$13,834.
  - c. Lastly, no raises or cost of living adjustments are budgeted for FY 2010.
3. Our downturn in revenues from a lack of new construction continues to be an issue with Building Permits which are projected to be \$30,500 or 60% less than FY 2009.
4. We are additionally projecting for a 20% decrease in Court Fines from \$500,000 to \$401,500 in net revenue to the City.

### **FUND BALANCE RESERVE ACCOUNT**

The FY 2008 Audit shows our Fund Balance falling \$163,621, from \$1,149,837 to \$986,216. In the FY 2009 budget we had budgeted \$294,523 from the Fund Balance, however these funds have not been spent. We are not budgeting Fund Balance for FY 2010, so we will remain at \$986,216. This is well within our goal of a 3-month General Fund operating reserve of \$769,651.

### **WATER AND SEWER FUNDS**

1. Water and Sewer Operating Revenue is projected to be down 6.1%, which appears to be due to the decrease in water use from the drought.
2. In FY 2009, the budget called for \$151,560 transfer of Water & Sewer Capital into Water & Sewer Operating Revenue, this year a transfer will not be necessary.

## CONCERNS MOVING FORWARD

1. A highlight of the Planning Department budget is the \$10,000 we are budgeting to match \$20,000 in MPO Grant Funds for a Capital Improvement Plan for the City streets. This Transportation CIP will lay out road intersection improvements, needs for better traffic flow and a paving schedule. It is projected that considerably more than the \$30,000 we have budgeted in Public Works Road Maintenance fund will be needed to upgrade and maintain roads as traffic increases and existing paving continues to age.
2. Our Water & Sewer Operating Rates were designed to bring in 2.5% over budgeted revenue and 12.5% over budgeted expenses for emergency repairs for a transfer into Water & Sewer Capital. In 2009, this goal translated into \$244,876 of which we will only have about \$120,000 to put into Capital Revenue for FY 2010. For FY 2010, we only see \$31,873 being transferred from Water & Sewer Operating to Capital to be spent in FY 2011. We would have hoped to transfer in \$236,262, thus we are short about \$200,000 for funding our Water & Sewer Capital Improvement Plan. This Capital revenue trend does not bode well for future Capital Improvements and will likely be exacerbated by the lack of sewer and water taps.

## ADJOURNMENT

After a few question and answers Mayor Hirling adjourned the meeting at 9:52 am.

  
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Mayor Diane Hirling

5-27-09  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
City Clerk Melissa McCain



CITY OF FLOWERY BRANCH  
Council Meeting Minutes  
Work Session  
Wednesday May 6, 2009  
9:30 A.M.



CALL TO ORDER:

Mayor Hirling called the meeting to order at 9:53 am.

IN ATTENDANCE:

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

PLEDGE OF ALLEGIANCE:

Mayor Hirling led the pledge of allegiance.

PUBLIC COMMENTS:

None

UNFINISHED BUSINESS:

None

NEW BUSINESS:

*Discussion – Rural Assistant Grant Application Ratification*

Lt. David Spillers approached the council and reviewed the grant application. Lt. Spillers noted that the grant was in the amount of \$304,768 and that there was not a match requirement required.

Further. Lt. Spillers advised that these funds would be for two fiscal years and could cover costs associated with crime scene investigations such as payroll, vehicles, equipment etc.

Manager Andrew noted that the application has been submitted do to a restrictive deadline but that if the council did not approve the application is could be withdrawn.

*Discussion – Target Stores Grant Application*

Lt. Spillers reviewed the Target grant and advised that this grant, if awarded, was also a non-matching grant in the amount of \$2,000.00. This grant would be utilized to subsidize the cost and care costs of the City’s K9 unit.

Discussion – April 15<sup>th</sup>, 2009 - Council Meeting Minutes

Clerk McCain advised there were no changes and there was no discussion.

Discussion – April 16, 2009 Public Hearing Meeting Minutes

Clerk McCain advised there were no changes and there was no discussion.

Discussion – Contract with Elachee Nature Science Center for Watershed Protection Education

Planner Riker reviewed the contract and summarized by stating that in the past the City has used the same student count as Hall County that attend the Elachee Nature Center program and it has been decided that those students can't be counted by two entities. Each municipality will be required to pay for their own education program and separate student count.

Further, Planner Riker advised that the \$2,000 fee is a minimal cost to remain in compliance with the unfunded mandate set by the State of Georgia.

It was noted that if the mandate was not followed it could hinder the application of future applications with the EPD.

Councilman Lutz suggested researching the ability of the boy scouts or like group to conduct the training at a lesser cost to the City.

Planner Riker advised that we could move forward with the Elachee contract and discuss the program with the Boy Scout troops to see if it would be plausible.

Discussion – Resolution 09-003 – Conditional Use Permit 5904 Church Street

Planner Riker made a brief summary of the request and noted it had also been presented at a public hearing.

Discussion – 2010 Fiscal Year Budget

City Manager advised that he had nothing to add from the earlier public hearing.

Councilman Lutz suggested that the City look into funding the Flowery Branch Development Authority who in turn could spur commercial development, if permitting of commercial is profitable to the City.

Discussion – Contract Award - Wastewater Line Recording/ Close Circuit Televising Services

Manager Andrew reviewed the bids as follows:

Bid 1	TV & Testing Rerounding 235 Carriage Trail Macon, Ga. 31210	
	Areas 1 and 2	\$25,800.00
	Begin	Within 10 Days
	Completion	Prior to July 1, 2009

Bid 2 All Pipeline TV  
670 Hall Road  
Hampton Ga. 30228

Area 1	\$27,103.70
Area 2	<u>\$21,121.10</u>
Total	\$48,224.80
Begin	Within 7 days
Completion	Twenty (20) working days

Bid 3 Duncan Pipeline  
100 Old Dawson Village Road  
Dawsonville, Ga. 30534

Area 1	\$15,636.75
Area 2	<u>\$12,185.25</u>
Total	\$27,822.00

Bid 4 Specialty Testing  
PO Box 907535  
Gainesville, Ga. 30501

Incomplete Submittal – Estimated time to start or complete is missing

Bid 5 Georgia Rural Water Association  
PO Box 383  
Barnesville, Ga 30204

Incomplete Submittal – Price per foot – no estimate on total cost - no estimated time to start or complete.

Water/Wastewater Director Jimmy Dean advised that he felt the best choice was Duncan Pipeline as Duncan Pipeline business was located closer and equipment could be accessed faster if a problem occurred. Further, Duncan Pipeline uses a gator vehicle whereas the first bidder has a truck. With some of the areas being tight, a gator would have the better advantage to getting to the remote locations.

Discussion – Board of Ethics Appointments

Manager Andrew reviewed section 9 (a) (3) and advised a pool of individuals was needed for future use if an ethics issue came up.

Councilman Fetterman inquired if immediate family members could be appointed.

Attorney Bennett advised that one could not appoint an immediate relative.

It was requested that all nominations be submitted to the clerk by noon on Friday the 8<sup>th</sup>, 2009.

Discussion – Ratify Land Acquisition

Manager Andrew advised that during prior Executive Sessions the City had the ability to purchase the buildings at 5512-5514 Main Street.

Further Manager Andrew advised that the purchase was made through a TAN loan with First Community Bank.

Councilman Fetterman inquired if the buildings were purchased without a current appraisal and further stated the City may have paid more than the fair market value. Councilman Fetterman inquired if this was a true statement.

Manager Andrew stated that an appraisal was not obtained prior to the purchase.

### DEPARTMENT REPORTS

#### City Planner

Planner Riker advised that there was a public hearing scheduled for May 14, 2009 at 6:00 pm for annexation and rezoning of a few parcels of land.

#### City Manager Report

None

#### City Clerk Report

Just prior to the May 14, 2009 public hearing the boy scouts will be present to accept a certificate of appreciation for all the events the boy scouts host and are involved in.

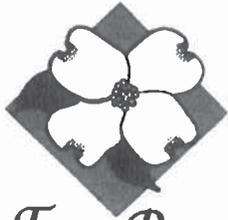
#### Council Report

Mayor Hirling advised she would not be present at the May 20, 2009 meeting and that Councilman Allen Bryans would be presiding at the next meeting.

### ADJOURNMENT WORK SESSION:

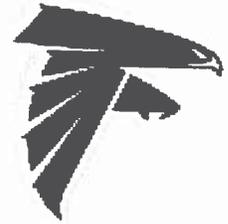
Mayor Hirling adjourned the Work Session at 10:42 am.

*A short break ensued.*



*Flowery Branch*

**CITY OF FLOWERY BRANCH  
Council Meeting Agenda  
Voting Session  
Wednesday May 6, 2008  
Immediately following Work Session**



**OPEN VOTING SESSION:**

Mayor Hirling opened the Voting Session at 10:52 am.

**CONSENT AGENDA:**

- Consider – April 15th, 2009 - Council Meeting Minutes
- Consider - April 16<sup>th</sup>, 2009 Public Hearing Meeting Minutes
- Consider – Contract with Elachee Nature Science Center for watershed protection education.
- Consider – Rural Assistant Grant Application ratification. (Consent Agenda)
- Consider – Target Stores Grant Application

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

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

**UNFINISHED BUSINESS:**

Consider - Resolution 09-003 – Conditional Use Permit 5904 Church Street

There was no motion made.

Planner Riker requested direction for the applicant and none was offered.

Attorney Bennett suggested the possibility of tabling this discussion until a date specific so that the issues could be discussed and addressed by the applicant.

No action was made by the council.

Resolution 09-003 will remain on the agenda as unfinished business carrying over to the next council meeting on 5/20/2009”.

Discussion – Ratify Land Acquisition

There was a motion made to ratify the purchase of the buildings at 5512-5514 Main Street.

MOTION: Pat Zalewski

SECOND: Mary Jones

Discussion:

Councilman Craig Lutz made the following summary statement.

As we get set to vote on the acquisition of property, I want to start by indicating that there is nothing that can be done to stop this. As the expression goes, the bullet has left the gun. Due to the nature of executive session and the need to discuss these types of issues behind closed doors, this is the first opportunity I have had to publicly debate the procurement of these new properties.

Let me begin by talking about the only positive I can see from this real estate deal, this has a short term budget benefit. By purchasing these buildings with SPLOST dollars, we have removed the burden of paying the lease from our General Fund. During these times of increased downward revenue pressure the short term relief is a small blessing. However, the city now assumes the maintenance costs on two very old buildings, the loss of tax revenue on a commercial building, the increased cost of utilities above our pro rata share, and increased insurance costs for the city. So while we receive a short term budget assistance from the SPLOST, this purchase will cost the taxpayers of the city in the long term.

Now let's move on to the more grim nature of the purchase and my feelings on why this could be an illegal action by the City. In a legal opinion published in October 2007, the Assistant State Attorney General noted that "the Georgia Supreme Court has had occasion to construe the statutory provision set", which says "that proceeds received from the tax authorized" by O.C.G.A. 48-8-111 "shall be used exclusively for the purpose or purposes specified in the resolution or ordinance call for the imposition of the" SPLOST tax. And "in each case, the court strictly construed the statutory language with regard to the permissible uses of SPLOST funds." (Official Opinion 2007-5)

I would like to think that when I went to the polls to vote for SPLOST on March 17<sup>th</sup> that I was an informed voter. I have been to a lot of the Chamber of Commerce meetings where officials have laid out plans for SPLOST, I have read the ballot and associated materials and I asked questions. One of the primary reasons I ran for office was so that I would have a better understanding of what was going on in my local government. To my recent surprise plans have been laid out to purchase these buildings that had not been totally transparent to the citizens of this community not to mention the entire council; but the lack of transparency is not illegal, the issue that I have is in the text of the ballot where it says "as some of the funds allocated to the City of Flowery Branch will be used to acquire, construct and equip administration buildings and real estate." The primary key word here is the conjunction "and". We did not use "or", we did not use "and/or", we used the word "and".

In the case of Dicky vs. Story the Georgia Supreme Court looked at Floyd County moving a recreational facility from a flood plain to another area that was not proposed in SPLOST and that court held that the County was bound by the SPLOST budget and account reports to complete all projects listed there in unless circumstances arise that indicate that projects that initially seemed feasible is no longer so. In this regard the governing authority has discretion to make adjustments in the plans of these projects but may not abandon a project all together. Certainly by spending 80% of the allocated SPLOST funds on the acquisition of buildings rather than the construction of the administration offices like the City Hall, and as it has been published in our Comprehensive Plan, would constitute an abandonment of the intent of the SPLOST dollars for constructing and equipping the administration buildings.

Further the legality was questioned during an Executive Session, who had standing to challenge the use of SPLOST dollars in court, while the Georgia Supreme Court has not to my knowledge directly ruled on the question, it had heard a case from a citizen in Johnston vs. Thompson. The facts of this case were cited as Joseph Z. Thompson, a Cobb County tax payer, brought a contention against the Cobb County School Board, its members and superintendent seeking a mandamus and injunctive relief regarding the proceeds from the SPLOST for educational purposes. In the Johnston case the court cited §O.C.G.A.48-8-121(a) (1) – which requires that SPLOST shall be used exclusively for the purpose or purposes as specified in the resolution or ordinance that called for the imposition of the tax. See also O.C.G.A. §48-8-111 (a) (1). Due to the lack of specifically advised purposes for the SPLOST dollars in question, the public would have to rely on the documents at hand which would be our Comprehensive Plan Nowhere in our plan does it contemplate that 5512/5514 Main Street will become City administration buildings. The plan states quite the opposite, on page 16 of the 2025 comprehensive plan for Flowery Branch it says that through the visioning process it was recommended that Flowery Branch plan to construct new administration buildings and that the government will eventually need to move out of the existing building thereby freeing up retail space here on Main Street. By occupying more space on Main Street, with city owned buildings, we are going directly against our own Comprehensive Plan.

Finally there is a legal question that should be raised by the city using tax anticipation notes for the purchase of these buildings. §O.C.G.A. 48-8-111 (a)(4) states if general obligation debt is to be issued in conjunction with the imposition of the tax the principle amount of the debt to be issued, the purpose of which the debt is to be issued, the local government issuing the debt and interest rate or rates or the maximum interest rate or rates which such debt is to bare and the amount of the principle to be paid during the life of the debt, is suppose to be on the ballot. The question becomes, is a tax anticipation note a general obligation. If it is a general obligation, and I can certainly see how it could be, then the city would be in violation in the statutory language of the SPLOST. This council has acted recklessly in advancing this project without giving our legal council the opportunity to perform research on the question we have asked during executive session. For these reasons I will be voting against these purchases.

Councilman Chris Fetterman made the following summary statement:

The purchase of these two buildings is yet another example of how a majority of this council is out of control and out of touch. They govern as though this is a game and all the citizens of Flowery Branch are their personal pawns in a game of chess. I would like to also point out that purchase of these two buildings goes against the adopted Flowery Branch 2025 Comprehensive Plan which puts the City's property at the end of Main Street on Gainesville Street.

So I guess all time, energy and tax payers' money that paid for this plan was worthless, because it is, as I was told, just an outline. Well, I guess we could have saved the taxpayers' money and drawn the 2025 Comprehensive Plan with a box of crayons and on construction paper. Although it will be, also interesting to see how the three council members who vote on this, who voted to approve the 2025 Comprehensive Plan, vote on this. This will be council members Jones, Zalewski, and Bryans.

I have said this again and again that we as elected officials, have a fiduciary duty to be good stewards of tax payer money but this time the majority of the council is not just squandering the money of the tax payers of Flowery Branch but they are using the money from SPLOST and they are squandering the money of all the tax payers of Hall County. I look forward to the day that Councilman Jones, Zalewski and Bryans are voted off this council and we can sell 5514 and 5515 and move forward with the adopted Flowery Branch Comprehensive Plan.

**CALL FOR THE VOTE:**

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

Discussion – Contract Award - Wastewater Line Recording/ Close Circuit Televising Services

There was a motion made to award the bid for sewer inspection TV video services to Duncan Pipeline in the amount of \$27,822.00.

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

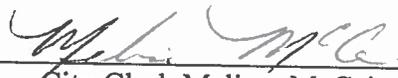
EXECUTIVE SESSION:

Not required

ADJOURNMENT:

There was a motion made to adjourn the meeting at 11:11 am.

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

 5-27-09   
Mayor Diane Hirling Date City Clerk Melissa McCain