CITY OF FLOWERY BRANCH
Council Meeting Minutes
Work Session
Thursday February 3, 2011

CALL TO ORDER:

Mayor Miller called the meeting to order at 6:00 pm

IN ATTENDANCE:

Mayor Mike Miller and Council Members Amanda Swafford, Chris Fetterman, Kris Yardley, Joe Anglin and Tara Richards. Also in attendance were City Manager Bill Andrew, Interim City Clerk Lou Camiscioni, City Planner James Riker and City Attorney Ron Bennett.

PLEDGE OF ALLEGIANCE

PUBLIC COMMENTS:

Three citizens had requested time to approach the Council regarding Madison Creek Street Lights. Mr. Fred Richards 5546 Ashmore Court, Mr. Charles Goodwin 5529 Ashmore Court and Mr. Michael Caffey 5658 Ashmore Court.

The sentiment of all three citizens were the same; there was nothing to be negotiated, Upper Lighting seems to be a separate company owned by Georgia Power that is totally non-regulated and we are just at their mercy.

UNFINISHED BUSINESS:

MADISON CREEK STREET LIGHTS

City Planner Riker reported that on January 24, 2011 he and City Attorney Bennett met with Georgia Power on the Madison Creek street light issue. Georgia Power had a few representatives there from Upper Lighting and they explained in detail how their lighting service business division works. There is a portion of Georgia Power where they are to operate essentially as a private company and they can charge unregulated fees which would be different than what they would charge here. They (Georgia Power) indicated that the contract they entered into which they readily admitted was a legal contract is with the developer of Madison Creek in which they installed the street lights, paid for the cost of the lights and installation and as a result, the HOA is required to pay a monthly bill forever essentially.

Even though the lights do depreciate over a period of twenty years they pay thirty-six dollars per light per month forever. So the equipment and the installation are essentially on an amortization of that never stops.

Options were discussed and they did offer a fourteen percent reduction in Madison Creek's bill but not the entire bill, only a portion of the bill. There is a portion of the bill that cannot be

reduced as well. The reduction ended up being about three dollars per light per month, which means their bill would go down by the amount of the deduction per light per month.

City Planner Riker continued saying what Georgia Power charges as far as a governmental rate, which is a regulated rate, is fourteen and ten cents a month so there is a difference.

The Council asked us to find out if Georgia Power was willing to help the HOA of Madison Creek and their answer was simply no. However they did say there were options for the subdivision.

The subdivision can do three things in Georgia Powers mind. One is they could cancel their contract with Georgia Power for street lights and ask Georgia Power to remove all their street lights and it would be up to the discretion of the HOA to hire an electrical contractor and install new street lights and connect those street lights to a meter base that Georgia Power would set.

Though the City did not get any estimates for what this work would cost, Mr. Fred Richards from Madison Creek indicated that he had conversations with someone he knew and that this could be as much as twenty-thousand dollars to do that. This did not seem like a very reasonable option for Madison Creek.

City Planner Riker went on to say again, option three 3 that was pointed out to Council was a fourteen percent reduction in a portion of the street light bill. Total for Madison Creek with that option is about sixty-five dollars per month.

Option 2 seemed be more of the direction what the Council wanted. It would mean that Madison Creek HOA could pay Georgia Power nine hundred dollars and ask that the City take those lights into our maintenance program. The nine hundred dollar amount Georgia Power indicated was more for administrative purposes, and ultimately the City would be responsible for payment of those lights if the HOA failed to make payment. They would go into our system and they would be paid at the rate which we pay, which is fourteen dollars and ten cents.

City Planner Riker then said that there are probably two things based on the direction which we received at the last meeting. (1) Allow Madison Creek to transfer ownership of those street lights, take them into our system and at the same time enter into an agreement with Madison Creek where they would essentially reimburse the City for the cost of those lights, and then we have indicated that a contract like that would have to have a determined amount. It would require a deposit; there would be some small administrative fee to do that for accounting purposes. Or (2) consideration of a street light ordinance to address how the City pays for street lights on all public roads similar to how Gwinnett County does it.

So those are kind of two options, there was a lot of dialog that went on at the meeting; Mr. Caffey can certainly weigh in on some of that. I also know City Attorney Bennett in anticipation of what we are doing been thinking about what a contract might look like if the Council were interested in entering into that with Madison Creek. If we were to enter into a contract with Madison Creek it would significantly reduce their bill, as they would only be paying us a rate right around fourteen or fifteen dollars. Right now they are paying a rate of thirty two or thirty six dollars, depending whether it is a summer rate or a winter rate. This is what happened at the meeting, and certainly if it is the Council's desire we can have the attorney draft a contract. I would think that if we are going to do that, although certainly we have been meeting with the HOA and I'm sure they have direction from their group we would probably want some formal

request from the HOA by virtue of a vote or action that says they want the City to actually initiate this contract and enter into it. Not to say that I'm sure you (Mr. Richards, Mr. Goodwin and Mr. Caffey) speak for the whole HOA but a formal action by the entire HOA would be a good idea.

Mayor Miller asked if there were any questions.

Council Member Fetterman asked City Planner Riker if Georgia Power would still be responsible for fixing the lights, no matter what, if the City were to take them over.

Mr. Riker assured Council that Georgia Power would be responsible; just like the way it is now with the street lights we have. We have about thirty eight 150 watt high pressure sodium post top lights already in the City system. The same way they maintain those is the way the lights in Madison Creek would be maintained.

Council Fetterman asked Planner Riker that if someone was to hit a street light, if once again, that falls under Georgia Power.

Planner Riker replied that during the meeting with Georgia Power, the damage to street lights was brought up. Georgia Power said they would be responsible for replacing. Their system is normally to follow up with the police department to see if there was a police report done as to who may have caused the damage to the actual light pole and then they try to follow it through from there.

City Attorney Bennett reported that the City would be entitled in most respects to immunity from suit for any negligence in connection with their ownership of the street lights. As a legal matter, the odds of there being any liability for which immunity would not attach is insignificant.

Council Fetterman (speaking to the three representatives of Madison Creek), asked if there would be too much of a burden for a vote among the homeowners in the HOA.

A member of the HOA spoke up and said that the president of the HOA was here and a guy on the special committee here that wanted to do this and work it out already from the association. The treasurer is also present.

City Attorney Bennett replied there will be a contract that the HOA will have to sign (similar to what was done with Cinnamon Cove) and some sort of certificate to indicate that the signer had the authority and the way those by-laws of that home owners association require a vote. So there would have to be some indication that there was authority act.

Madison Creek representative asked if the authority should come from all the home owners or just the board.

City Attorney Bennett said that the City could review the HOA rules in determining the answer to that question; but there has to be some indication or certification that whoever signs has the authority to sign for the entity, the HOA.
Councilmember Fetterman further said as long as the document says the president of the board.

City Attorney Bennett continued it would depend on what the rules say, but generally, when you think about a real estate closing in an LLC signing there is usually an affidavit or a certificate

that says this person has the authority to sign. It would need to be some indication that the person signing the agreement has the authority to bind the HOA.

Councilmember Fetterman then said that he was sure the HOA had something like that in their by-laws.

The HOA members present asked if it would be the same as that on the state certificate as a corporation?

Planner Riker continued saying he thought it was only our (the City's) to raise it to say that we want to make sure that, and believe me, I fully expect that you represent and speak for your entire body but there have been cases where people do not have the real authority to bind their organization or agency without a certain vote. We want to make sure that if the City is entering into this agreement, we are entering into it with a party that can legally enter into it with us.

City Attorney Bennett said that if they (Madison Creek HOA members present) direct the City to prepare such an agreement, and as we are doing that we can talk to the officials of the HOA to make sure that they have a heads up as to what we will need to do in terms of establishing the authority of the signer of the contract.

Mayor Miller asked about the nine hundred dollars that they quoted to buy out the contract, their logic was fifty dollars per light and ya'll have forty lights there; City Planner then said they have eighteen lights. There is fifty dollars per light and whatever so that is how they came up with the nine hundred dollars, that was non-negotiable, that was set in stone and never change. The amortization schedule which I was under the impression it eventually ended but they (Georgia Power) called it a twenty year then they turned around in the same sentence and said but it never ends.

City Planner Riker then said he had talked to Georgia Power about what other options may exist meaning would it be possible to bring these lights into the City system and then at some point if we are into an agreement with Madison Creek, would we be able to ever transfer the lights back to the HOA and Georgia Power made it very clear to us that, they would not allow that to happen, that once they are into the City system with that rate they are in the City system. Georgia Power actually said they essentially have to allow it to even be transferred into our system. Once we are responsible, we will be the last party responsible for it.

Council Member Yardley mentioned that he thought that during the last Council Meeting there was a discussion on six month termination on that.

Planner Riker replied suggesting that the City would always be responsible for the lights, and the City could have them turned off, with a six month notice.

Council Member Anglin asked if there was any kind of fee even if the lights are off.

City Planner Riker replied that Georgia Power did not indicate that, because then they would only be charging us for the energy of the light.

Council Member Swafford asked Mr. Riker if that necessarily meant that the City has ultimate control to decide whether to leave those lights on or turn them off upon a failure to pay or other breach of contract by the HOA.

City Planner Riker said yes. The City would have the ability to turn them off if they were in our system.

Council Member Swafford asked City Planner Riker to confirm that if something goes wrong and the arrangement does not with the HOA the City would be stuck with these lights forever.

City Planner Riker said yes, that is what Georgia Power explained to him. If we enter into this contract and HOA at some point decided not to send payment, then it would at the discretion of the City to actually have the lights turned off, or just continue paying for the lights. There would be no way of transferring them back to the HOA.

City Planner Riker said that he didn't think anything upset Georgia Power, he thinks they have the attitude that they feel they had a contract that they legally entered into with the developer of that subdivision and it is consistent with a lot of contracts they have; it's a market rate contract and that is how they do business and in so many ways the City doesn't have a role in that.

Council Member Anglin asked if there was anything that would prevent Georgia Power from increasing the government price substantially.

City Planner Riker replied no, that in fact Georgia Power just has recently increased it to nine percent. City Attorney Bennett stated the contract with the HOA would have some escalator added.

Council Member Anglin stated that the Council would make provision that the yearly payment would have to match whatever rates Georgia Power sets for the government.

Council Member Fetterman asked if the City has a way to prevent future developments, that when developers come in, to prevent this kind of issue going forward the City is going to have to do their due diligence on developments coming in to ensure that new home owner associations or neighborhoods are not going to have these monstrosity rates compared to everybody else coming in.

City Planner Riker responded that many of the new developments we've had, conditions clearly state it is the responsibility of the HOA to pay those lighting bills. So whether those lighting bills are high or not, it is solely between the developer and the lighting provider, which would be two private parties in that case. So far as I know this is the only subdivision we have that has public roads that has this type of rate because it is the only developer that didn't pay in advance for the lights and their installation.

Now there are other sub-divisions in the City that have a completely different structure because they are being provided power by Jackson EMC. Sterling on the Lake is one of them. Jackson said they really didn't have a governmental rate, their rate is just the same and Mulberry Village is under that same umbrella. We do not have the ways or means to regulate two private parties; we simply say it is the responsibility of the HOA to do it. The questions would then become what happens if there is no HOA, in that case it would be similar to Newberry Point where if there were desires to dedicate the roads to the City and the City would take them over Georgia

Power will only let that happen if they have been paid for the installation and cost of the light. This happens with the contract originally with the developer.

City Planner continued to say that Georgia Power made it clear that was the point and the difference between of the subdivision, Newberry Point and Portsmouth, the developer paid for those lights and their installation originally, the likely conclusion there is that the reason he or she did that, was because they had no HOA, no way to transfer costs of the lights and satisfy Georgia Power Requirements so they had to pay for the lights in advance. In this case the developer had an HOA simply put the liability on the HOA, and that is identified in the covenants'.

Council Member Richards confirmed with the City Planner that the City can require a new development to have an HOA, but can't require what the developer works out with Georgia Power.

Council Member Yardley asked the City Planner if it would be safe to say that option #2 consider the adoption of an ordinance would take care of a situation like that because during the permitting process a builder could not actually install or turn on those kinds of things without notifying our Planning and Zoning Department?

City Planner Riker said that option #2 would be a long term option that would certainly create a mechanism for the City to equally collect on the costs of street lights and there would be different ways to do it. Gwinnett County did say that they typically have that fee for defined development areas. The question to Gwinnett was asked what happens if one lives on a rural road and partially served by one street light on the edge of a farm but you have several hundred feet of road, do they get charged and they said no, typically not. City Planner Riker then summed it up by saying option 2 would create the mechanism for the City to analyze this, address it and equally assign costs to everyone who receives a service.

Council Member Yardley said that it would also be safe to say that if the City choose option #1 and we had a contractual agreement that stipulated all those things that contract was faithfully executed and they weren't in agreement with the agreements and the authority that that contractor failed, they would just be paying their own bill. So again if we choose option #1 we would be correcting a one of situation and helping out people who are currently probably paying probably about three times what the normal rate would be if they got under our plan and we would be correcting a one of situation and we could create an ordinance so that there would be any further barriers to anything else.

City Planner Riker replied yes, you certainly do that.

Council Member Fetterman continued by saying then that would just basically prevent making the developer pay for the street lights ahead then we don't run into this problem no more.

Council Member Yardley added that option #2 would have completed as well.

City Planner Riker came back and said he thought what the City would be doing by doing option #2 as well would be creating a City wide ordinance now, so just to be clear on that you would have people in Portsmouth subdivision who right now are not paying anything for street lights, they would then get a portion similar to Gwinnett County, there would be a little section on their property tax bill that says "For Street Lights."

City Manager Andrew stated that the residents who live in Portsmouth are paying through their property taxes for that light bill to be paid.

City Planner Riker confirmed that is true.

City Manager Andrew continued by saying it is a more equitable distribution on that costs because you are actually paying for the service you receive based on the amount of light you have in front of your yard. So people that do not have a light wouldn't be paying like they do now. Basically everyone is paying for the light whether you have one or not.

City Planner Riker stated that if you lived in Tide Water Cove which is private streets, you would not have this on your tax bill.

Council Member Swafford stated that so far we have been talking about doing a years worth of advance payment of all expenditures up front, the six month deposit and an administrative fee. Seeing that we go through with that and go through the contract method and a neighborhood comes on hard times and cannot come up with the full payment all at once and we want to amend the contract to adjust the contract terms, what would be the procedure to amend the contract?

City Attorney Bennett stated that in one of the sections that we would include in a contract is a section where we have mutually agreed upon terms, and one of the mutually agreed upon terms I would suggest we put in there, in fact I put it in all my contracts, is a modification section that says this is modified only in writing signed by the parties so basically it would just be another contract. It would be an addendum to the existing contract to change that and both sides would have to agree.

Council Member Richards asked the City Planner how much manpower would be involved figuring out of these subdivisions effected, how many linear feet or if we just wanted to get an estimation of how this breakdown was going to work and who would be charged what; what kind of manpower are we looking at?

City Planner Riker responded that part of the process would be to understand how many lights we have in our system, what those costs are that we incur and then how many customers we have and do a simple division. That's one kind of back of the envelope to think about it. If we wanted to be more precise in terms of how much to come up with a linear foot price, we did have an audit done by Georgia Power to show all the locations of every light in the City that we are currently paying for. Unfortunately Georgia Power surprisingly doesn't have the capability of GPS location so it was done hand, drawn in on a map. But we do have those capabilities so we would probably be able to take their data, put it onto some data points, show perhaps a ring or a cast of what the light is serving and then come up with some costs associated with those types of lights vs. other types of lights and try to figure out some prices.

Planner Riker continued by saying it could be sort of simple or it could be very technical. It just depends on how far we want to go. I would suggest that maybe we just take kind of a crack at it looking at lights, number of customers, maybe different types of lights because we only have a couple different types and just see what those dollar amounts come out by and then maybe it doesn't even come to a linear foot requirement. Maybe it's just, if you're in a certain type of development perhaps like Madison Creek, you're getting charged certain dollar amount. If

you're on Gainesville Street and enjoying a different type of Georgia Power light you something else. We can come back with some options.

Council Member Richards stated this is a compound solution to the problem. If we make a vote tonight we don't know about these other steps. I would almost want to hear your recommendation of these other steps before we vote on part of it; because part of it affects the whole solution.

City Planner Riker remarked if Council wanted to do option #2 it is going to take us some time to think about what that all would look like.

Council Member Yardley asked the City Planner that he didn't consider these two things separate. We would still need an ordinance because we have neighborhoods that are not currently paying for those street lights. Council Member Yardley is considering these as separate issues right now. I think that there should be an ordinance that effects future development and the current developments that are not paying for their street lights and then there is a separate issue where we trying to fix this one off situation.

City Planner Riker commented that there are two different ways to look at it. If you are thinking hay we want to help them in the short term but only because we want to do option 2 then they are related. If you want to think of them as we want to help them and then we want to do option 2, not because we want to help them, but just because option 2 is a good idea, ya they can be stand alone. I would suggest this is going to take us a little bit of time to come up with something, because obviously if we come up with option 2 there will be citizens who say, "well how did you come to that conclusion, how is it that I'm now paying fourteen dollars for street lighting I wasn't paying before." That will be an educational process and an informational process because Bill is right. They are paying for that now. It's just not itemized on their bill.

Mayor Miller stated if you go with option 2 and do an ordinance, say homeowners are paying two hundred dollars in property taxes right now, your saying you would just tack on another fourteen dollars, so it would in essence appear to be a tax increase or would you take the fourteen dollars out of their two hundred dollars? So they may be paying one hundred and eighty six dollars and fourteen.

City Planner Riker stated that this would be a separate item. Their amount that they pay is based on your mileage rate, not on certain number of assessments, so in come cases you would have people who would now have an extra amount added to their bill.

Council Member Yardley commented he thought that City Manager Andrew answered that question already. The fourteen dollars is only for people who are living in neighborhoods where we are currently paying their bill. The effect will be to everybody because we are taking that out of the General Fund so everybody's lights are subsidized.

NEW BUSINESS:

Discussion – January 20, 2011 Meeting Minutes.

Corrections were made known to the Interim City Clerk and are incorporated into the minutes everyone now has in their book. There were no questions.

Discussion - Resolution 11-002 Amend the FY2010 Budget.

City Manager Andrew review for the Council Resolution 11-002 which is required to amend the fiscal year 2010 budget.

At this time the recording device stopped working. Everything after this point was taken from partial notes.

DEPARTMENT REPORTS:

City Manager Report

In addition City Manager Andrew gave the Council a review on all the phases of a budget hitting on Fund Balance Reserve, Assets and Liabilities (roads inherited from Sterling on the Lake), Revenues and Expenses and how the Due To's – Due From's work.

Due to technical problems with the equipment, all discussion was lost from this point until the meeting closed.

Interim City Clerk Report

Calendar of Events

City Planner Report

Nothing to report.

City Attorney Report

Discussion for direction the on an alcohol catering license.
Point of reference with regard to Ocean's Paradise requesting a refund of $7,040.00 due to business being shut down. There was much discussion on this. The City's Ordinance 424 prohibits the Council from issuing any refunds to business owners who purchase Beer, Wine and Alcohol licenses (in any combination) and therefore the request for a refund was denied. It should also be noted that the owner, the individual who applied for and received the Business License and Alcohol licenses, was not present at this time.

Council Report

The Retreat is scheduled for March 11 & 12, 2011. Council Member Richards will not be able to attend. She will be in training with the military.

ADJOURNMENT WORK SESSION:

The Work Session was closed by Mayor Miller at 8:30 pm.

CITY OF FLOWERY BRANCH
Council Meeting Agenda
Voting Session
Thursday February 3, 2011
Immediately following Work Session

CALL TO ORDER and OPEN VOTING SESSION:

Mayor Miller called the Voting Session to order at 8:30 pm.

CONSENT AGENDA:

January 20, 2011 Meeting Minutes

There was a motion to approve the January 20, 2011 minutes.

MOTION: Kris Yardley
SECOND: Chris Fetterman
Unanimous

Madison Creek Street Lights

A motion was made to consider option 1. Option 2 was asked to be considered and be part of the contract that Staff will draw up for the next meeting; date set certain next meeting.

MOTION: Chris Fetterman
SECOND: Kris Yardley
Unanimous

UNFINISHED BUSINESS:

Resolution to Amend FY2010 Budget.

There was a motion to adopt Resolution 11-002 to amend FY2010 Budget.

MOTION: Chris Fetterman
SECOND: Kris Yardley
Unanimous

ADJOURNMENT:
There was a motion to adjourn the February 3rd, 2011 Voting Session at 8:38 pm.

MOTION: Tara Richards
SECOND: Chris Fetterman
Unanimous

2-17-2011

Mayor James Miller Date Interim City Clerk Lou Camiscioni