



**CITY OF FLOWERY BRANCH**  
**Public Hearing**  
**Thursday, October 20, 2011 6:00 pm.**



**CALL TO ORDER:** Mayor Mike Miller called the meeting to order at 6:03 p.m.

**IN ATTENDANCE:** Mayor Mike Miller, Council Members: Amanda Swafford, Chris Fetterman, Joe Anglin and Tara Richards were all present. Also in attendance were City Manager Bill Andrew, City Planner James Riker and City Attorney Ron Bennett

**ABSENT:** None

**PLEDGE OF ALLEGIANCE:** Ken Russell, retired FBI Agent, led the pledge of allegiance

**PUBLIC HEARING:**

The public hearing on the agenda was for Ordinance 452 – Creation of street lighting “special assessment” districts. City Planner Riker presented to the Council two separate options for the street light districts. There are two ordinances included in the Council packets. Option A includes a city-wide district along with neighborhoods listed as Post Top 1, 2, and 3. Option B does not include a city-wide district, only Post Top 1, 2, and 3. Post Top 2 is the Madison Creek neighborhood which currently has a contract with the City where the neighborhood pays for its own street lights. Therefore, Madison Creek is already in a quasi-assessment district. The contract is worded so that if assessment districts are created, the contract would no longer be applicable.

Included with each option of Ordinance 452 is Resolution 11-013 which addresses potential fees based on the resolution. Under Option A, citizens in Post Top 1 and Post Top 3 would pay \$29.00 annually per parcel and citizens in Post Top 2 would pay \$39.00 annually per parcel. In addition, every taxable parcel in City would pay \$10.00 annually for general City street lights. Option B eliminates a city-wide district, and it only includes Post Top 1, 2 and 3. Post Top 1 and Post Top 3 parcels would still pay \$29.00 and Post Top 2 parcels would still pay \$39.00. However, citizens in those three districts would also have to pay a per parcel administrative charge of \$6.00. To include the street light charge on the tax bills, there would be a cost of \$1500 for the initial set up. Council Member Fetterman verified with City Planner Riker that the charges for the street lights are set by resolution, and they can be adjusted each year. There has been some discussion of possibly collecting the administrative charge over two years.

**PUBLIC COMMENTS:**

Mr. Ed Lezaj of 5612 Newberry Point approached and stated that he had contacted GMA (Georgia Municipal Association) and GMA indicated that if taxing districts were to be included on the tax bills, all of the parcels would have to be charged or it would be considered apportionment. In addition, Mr. Lezaj stated that GMA further indicated that an assessment has an ending date and that there is no end date for this assessment. Mr. Lezaj disagrees with the statement from City Planner Riker that Newberry Point has not been paying for their street lights. Mr. Lezaj feels that he has been paying for his street lights because he has been paying his city taxes. Mr. Lezaj also feels that the Council has not researched the street light issue enough. Mr. Lezaj also questioned why the citizens would be paying for the initial set up fee of \$1500.

City Attorney Bennett stated that of all of the proposals that the Council has considered, the most legally defensible proposal is option A which charges all of the taxable parcels in the City.

**ADJOURNMENT PUBLIC HEARING**

Mayor Mike Miller closed the Public Hearing session and opened the work session at 6:25.



**CITY OF FLOWERY BRANCH**  
**Work Session**  
**Immediately following Public Hearing**  
**Thursday, October 20, 2011**



**PUBLIC COMMENTS:**

Mr. Craig Lutz of 8072 Sleepy Lagoon Way approached in regards to Ordinance 460. Mr. Lutz stated that the qualifying date should be set where the most people can participate. He feels that the qualifying date is being set to specifically exclude a specific group of people. The Council should not be trying to keep people from running; the Council should be trying to allow the most people to run. Mr. Lutz feels that setting the qualifying date early would be taking away the rights of the citizens of Flowery Branch.

Mr. Ken Russell from Sterling on the Lake approached in regards to Ordinance 460. Mr. Russell stated that The City of Flowery Branch is currently growing quickly. Participation in the elections should be encouraged. If more input is received, better decisions can be made. Mr. Russell stated that there has been some conversation in the community about how unprofessional the Council has been in recent months. The Council needs to work together and stop bickering.

Mr. Ed Asbridge of 7702 Copper Kettle Way approached in regards to Ordinance 460. Mr. Asbridge stated that there are four people running for office in the November election. Two of those people will not win the election. The losers could run again. Mr. Asbridge stated that he has not heard one good reason as to why qualifying should be done before the election on November 8<sup>th</sup>. Mr. Asbridge did some research and past elections in Flowery Branch have had at the most 90 days between qualifying and the election. Ordinance 460 would set the qualifying at 122 days prior to the election. This gives the appearance of it being personal. Mr. Asbridge feels that setting the qualifying date early could possibly be a violation of civil rights.

There was a statement received from Gary and Janet Upchurch, address unknown, in regards to the qualifying date. This statement is attached to the minutes as Exhibit A.

**UNFINISHED BUSINESS:**

- ❖ Discussion of second reading of Ordinance 452 - Creation of street lighting “special assessment” districts
- Discussion of first reading of Resolution 11-013 – Establish fees and charges associated with Ordinance 452

Council Member Fetterman stated that he was concerned about the assessment for street lights being unfair and not being applied equitably. Council Member Anglin stated that option A does include all of the citizens in the City and is the most equitable. Council Member Fetterman verified that option B would leave money to be paid by the City. City Attorney Bennett indicated that everyone is paying ad valorem taxes and the City will be paying for those street lights. Therefore, everyone would still be paying for the street lights, for some citizens it would not be a line item on their tax bill.

Council Member Anglin wanted to know if it would be possible to leave the arrangement with Madison Creek neighborhood as it is currently. City Planner Riker indicated that the purpose in creating the assessment districts is to provide a standardization that has been missing. Currently, the contract with Madison Creek must be tracked internally by City Staff. There is also no way to recover funds if the street lights are not paid for. City Attorney Bennett further added that Madison Creek could be left the way that they are currently but then there would not be any standardization. Mayor Miller did verify that the contract with Madison Creek indicates that if street light assessment districts were to be created, then Madison Creek may be included in a new district. City Attorney Bennett stated that the contract with Madison Creek may need to be reviewed and modified if it were to remain in effect.

Council Member Swafford asked how this would affect neighborhoods that would like to request to be a street light district since the charges would go on their ad valorem tax bills. City Planner Riker stated that this would open it up for other neighborhoods to request a contract similar to the one the City now has with Madison Creek. Council Member Fetterman wanted to know the amount that the City would need to find in the general fund if option B was to be approved and the City would still be paying for all of the city-wide street lights. The amount that the City would need to pay would be about \$21,000 for the remainder of the year. City Manager Andrew indicated that the City has historically been about \$100,000 in the black and would probably have the money available to pay for the city-wide street lights.

Council Member Swafford verified that the charges listed in the resolution for Post Tops 1, 2 and 3 are solely to pay for the energy used by the street lights in those neighborhoods. City Planner Riker verified for Council Member Swafford that Hall County and the City of Gainesville both have street lighting assessment districts. Gwinnett County has created districts based on road frontage and whether the power for the street lights is underground or not. City Planner Riker stated that the list of cities and counties that have street lighting districts was provided to the City by GMA. Council Member Swafford verified that the \$1500 cost for the initial set up of the fee on the tax bill would be spread out among all of the properties under option A. Council Member Swafford also verified that if the assessments charge were manually entered on the bills, the total amount listed on the tax bill as being due would not be reflected accurately in a breakdown on the bill.

- ❖ Discussion of second reading of Ordinances 455 - Ordinance 458 – Annexation and rezoning of wastewater treatment plant spray field (0 Thurmon Tanner Parkway and 4604 Atlanta Highway)

There was no discussion on this item.

- ❖ Discussion of second reading of Ordinance 459 – Amendment to Chapter 8 (Alcoholic Beverages) of the Code of the City of Flowery Branch

City Attorney Bennett indicated that the change requested by the Council is included and Section II now reads “This ordinance shall become effective on the date the results of the Sunday Sales referendum called for the November 8, 2011 election are certified.”

- ❖ Discussion of second reading of Ordinance 460 – Call for Special Election for Post 3 to be hold on March 6, 2012

Council Member Swafford asked how the qualifying dates were chosen when the ordinance

was drafted. Mayor Miller stated that he told City Attorney Bennett to put those particular dates on the Ordinance. Council Member Fetterman stated that the citizens that have spoken tonight had some good comments and that he hopes the members of the Council listened to those comments.

**NEW BUSINESS:** None

**DRAFT MINUTES:** City Clerk Burney presented the draft minutes from the October 6, 2011 City Council Meeting. City Clerk Burney stated that the changes forwarded by Council Member Swafford have been incorporated.

**CITY MANAGER REPORT:** None

**CITY CLERK REPORT:** None

**CITY PLANNER REPORT:** None

**CITY ATTORNEY REPORT:** None

**CITY COUNCIL REPORTS:**

Council Member Swafford stated that she is continuing to work with the various committees on the upcoming Christmas Parade. The parade will be on December 3<sup>rd</sup> and storytellers are still needed. The steering committee is meeting on November 1<sup>st</sup> at 7:00 p.m. and they are looking for final input on the Christmas Parade. The tree lighting has been moved to December 2<sup>nd</sup>.

Council Member Fetterman had no report.

Council Member Anglin had no report.

Council Member Richards stated that the South Hall Business Coalition was at the Falcons Complex this past week and that it was a good event and had great turnout.

Mayor Miller stated that there will be a JMA meeting on October 24 in Clermont. The dinner will be at 5:30 p.m. On November 3<sup>rd</sup> from 5:00 pm to 7:00 pm at Spout Springs Library is the hearing regarding the widening project for Spout Springs Road. City Planner Riker stated that the date of that hearing may change as the DOT may have a conflict with another meeting. Mayor Miller verified with City Manager Andrew that the logo for the City of Flowery Branch on the message sign for the City is lighted, but is not currently lit up. City Manager Andrew stated that he will have the Public Works Director correct that. The Mayor has taken on the Christmas tree lighting personally this year and it will be on December 2<sup>nd</sup> at the Depot. They are currently looking for church choir members to sing at the lighting. There will be a Christmas Tree Auction and Patti with Calliope Sweets has asked the City Council to sponsor a tree. The trees are being provided by Home Depot at a discount. The Mayor will be doing a Christmas tree with a golf theme for the auction. The proceeds from the auction will be donated to the City's Shop with a Cop program.

**ADJOURNMENT WORK SESSION**

Mayor Miller closed the Work Session and opened the voting session at 7:09 p.m.



**CITY OF FLOWERY BRANCH  
Council Meeting  
Voting Session  
Immediately following Work Session  
Thursday, October 20, 2011**



**OPEN VOTING SESSION:**

Mayor Mike Miller opened the Voting Session at 7:09 p.m.

**CONSENT AGENDA:**

Consider – Draft meeting minutes from October 6, 2011

**Motion: Joe Anglin**

**Second: Chris Fetterman**

Discussion: None

**Unanimous**

**UNFINISHED BUSINESS:**

- ❖ Consider – Second reading of Ordinance 452 – An ordinance to create street lighting special assessment districts within the City of Flowery Branch as indicated on Exhibit A-1 and Exhibit A-2 attached hereto; to provide for payment and collection of assessment fees; to provide for severability; to provide for codification; to provide for an effective date; to repeal conflicting ordinances and for all other lawful purposes.

**Council Member Richards made a motion to postpone the second reading to a date uncertain until some of the unknowns can be discussed further.**

**Motion: Tara Richards**

**Second: Joe Anglin**

Discussion: City Attorney Bennett verified that the motion was to lay down this item and the Council would have to vote to pick it up at a later date. Council Member Fetterman requested that this item be tabled to a date certain as he is concerned that it will be forgotten and not picked up again. City Attorney Riker notified the Council that the City tax bills have not been mailed out as the City was waiting on a decision in regards to this ordinance. The bills are normally sent at the end of October. Staff would need direction from the Council regarding what to do with the tax bills. Council Member Fetterman stated that he will be voting against the motion tabling this item to a date uncertain as he would like to have a date set to hear this item again. Council Member Swafford stated for the record that this item was originally brought up in February of this year and there has been quite a bit of work done on this item. Therefore, Council Member Swafford stated that she would be voting against this motion for the same reasons as Council Member Fetterman. Council Member Richards indicated that she was fine with setting a date to hear this item again and that she would amend her motion.

**Council Member Richards amended her motion to postpone the second reading to November 3<sup>rd</sup>, 2011.**

**Second: Joe Anglin**

Discussion: Council Member Swafford stated that she would prefer to have this item approved now as it has been discussed and reviewed exhaustively.

**City Clerk Burney did a roll call vote at the request of Mayor Miller.**

**Council Member Swafford: No**

**Council Member Fetterman: No**

**Council Member Anglin: Yes**  
**Council Member Richards: Yes**  
**As there was a tie, Mayor Miller cast a vote to break the tie – Yes**  
**Motion passes**

City Clerk Burney requested direction from the Council regarding sending out the City property tax bills. Council Member Anglin asked about sending the bills out in the middle of November. City Clerk Burney stated that the tax payments were due by the end of December. The members of the Council voting in favor of the motion agreed that staff should go ahead and send out the tax bills as there would be no guarantee that this item would be approved at the November 3<sup>rd</sup> Council meeting.

❖ Consider – Resolution 11-013 – Establish fees and charges associated with Ordinance 452

**Council Member Richards made a motion to postpone the adoption of Resolution 11-013 to November 3, 2011.**

**Motion: Tara Richards**

**Second: Joe Anglin**

Discussion: None

**Unanimous**

❖ Consider – Second readings of Ordinance 455-Ordinance 458 – Annexation and rezoning of wastewater treatment plant spray field (0 Thurmon Tanner Parkway and 4604 Atlanta Highway)

**Council Member Fetterman made a motion to suspend the reading of the ordinances.**

**Motion: Chris Fetterman**

**Second: Joe Anglin**

Discussion: None

**Unanimous**

Ordinance 455 – Annexation of 4604 Atlanta Highway

**Motion: Chris Fetterman**

**Second: Amanda Swafford**

Discussion: None

**Unanimous**

Ordinance 456 – Rezoning of 4604 Atlanta Highway to M-2 (Heavy, Manufacturing & Industrial)

**Motion: Amanda Swafford**

**Second: Joe Anglin**

Discussion: None

**Unanimous**

Ordinance 457 – Annexation of 0 Thurmon Tanner Parkway

**Motion: Joe Anglin**

**Second: Tara Richards**

Discussion: None

**Unanimous**

Ordinance 458 – Rezoning of 0 Thurmon Tanner Parkway to M-2 (Heavy, Manufacturing & Industrial)

**Motion: Tara Richards**

**Second: Chris Fetterman**

Discussion: None

**Unanimous**

- ❖ Consider – Second reading of Ordinance 459 – An ordinance amending Chapter 8 (Alcoholic Beverages), Article III (Licensing and Registration), Division 6 (Premises) or the code of the City of Flowery Branch, Georgia to permit and regulate package sales by retailers of malt beverages, wine and distilled spirits on Sundays between the hours of 12:30 P.M. and 11:30 P.M.; to establish an effective date; to provide for severability; to repeal conflicting ordinances; and for all other lawful purposes.

This includes the change to the effective date requested at the previous meeting.

**Motion: Amanda Swafford**

**Second: Chris Fetterman**

Discussion: None

**Unanimous**

- ❖ Consider – First reading of Ordinance 460 – An ordinance to provide for a Special Election for the City of Flowery Branch, Georgia for 2012; to establish and set the date and time of the special election for the city of Flowery Branch, Georgia for 2012 for Council Member post 3, to provide a qualifying period for said position; to provide for the qualifying fees for said position; to provide for a qualifying procedure; to appoint election officials; to provide for the opening and closing of registration for said Special Election; to repeal conflicting ordinances; to provide for severability and for all other lawful purposes.

**Motion: Joe Anglin**

**Second: Tara Richards**

Discussion: Council Member Fetterman asked the Mayor how he came up with those qualifying dates. The Mayor indicated that he had looked at a calendar and put those dates on paper. Council Member Fetterman read from the City Charter regarding the powers of the Mayor.

Section 2.4 The mayor; powers and duties,

The mayor shall be the chief elected officer of the city and as such have the following powers and duties:

- (a) To preside at all meetings of the city council and be recognized as the official head and spokesperson of the city for service of process and ceremonial purposes;
- (b) To vote on matters before the city council only in case of a tie, or if his or her vote is necessary to constitute a sufficient number to transact business;
- (c) To sign, for and on behalf of the city, all contracts, ordinances, instruments, and other documents authorized by the city council and which are required to be in writing, unless otherwise directed or authorized by the city council; and
- (d) To fulfill other duties as authorized by the city council.

Council Member Fetterman stated that other special election ordinances have not had dates put in when they were received. Those dates were decided by the Council. Council Member

Fetterman further stated that the members of the Council are being petty and if that does not end, the Council will be a dysfunctional council. There is an email going around from one of the Council members, which the press already has, that says that Mary Jones and Damon Gibbs would not be interested in running for Council again if they were to lose. The email says that only Lutz's good buddies, Fetterman, Swafford and Yardley would be affected. The email also indicates that this person would enjoy having both Mary Jones and Damon Gibbs on the Council. The email also states that in choosing an early qualifying date, people are not being limited in running for the open seat it is only limiting people from running twice back to back for election. Council Member Fetterman indicated that he is contemplating filing a lawsuit against the City to put an injunction in place if ordinance 460 passes tonight as presented. Council Member Fetterman also stated that there are people on the Council that are specifically doing this because they are mad at other members of the Council. The members of the Council are currently looking like fools and this needs to end.

Council Member Swafford stated that she would like to second the comments of Council Member Fetterman. The main concern of Council Member Swafford is the citizen voters. The electorate should be determining who they want to have represent them on the Council. Qualifying has always been two months prior to the election date. This is an unfair advantage for certain segments of the population. This has thrown a wrench into the current election. Council Member Swafford indicated that there has been only one reason as to why the date is set as it is. The early qualifying date is limiting the number of people to run for the seat and the amount of time those people could use to decide to run. The early date for qualifying is doing an injustice to both the current and potential candidates. This action is similar to Sunday Sales being on the ballot. Some people tried to keep Sunday Sales off the ballot for personal reasons, which was not their decision to make. The same action is trying to be done here by setting the qualifying dates early.

Council Member Anglin stated that he is voting on the qualifying dates on principle and has nothing against any of the candidates. Government should be run like a business. In business, a person would not be allowed to "test the waters" and then come right back in and hold their position open. If qualifying is put after the election, it would lend itself to political favor. If the qualifying date is set before the election, Council Member Anglin does not believe that it would be lending itself to political favor. Setting the qualifying date earlier is not limiting anyone from running for the open seat. Everyone can run, but they may have to concede their post or potential office that they would receive. However, they do have the opportunity to run. Council Member Anglin further stated that people that run for elected office should not have a safety net under them to catch them.

Council Member Richards stated that an email was sent out requesting input and feedback from the public. The vast majority of responses received indicated that the Council would be creating a special condition for the majority of what used to be the Council [if the qualifying date were later]. The perception of the public is bad. The chances of anyone running for the post have not been limited. The public feels that they have already had the chance to vote for the candidates and that their voices have already been heard. If someone does not get elected the first time, they should not have the opportunity for a "second chance sweepstakes" to run again. The only reason the dates of qualifying are set far apart from the election, but that is only because of Presidential Super Tuesday, which is not a normal event. Council Member Richards is voting based on what the majority have led her to believe they would like her to vote.

Council Member Anglin indicated that he spoke to a lot of people regarding this and the majority of the people he spoke to agreed that the qualifying should be before this upcoming election.

Mayor Miller stated that of all the constituents that contacted him, they were overwhelmingly in support of the earlier qualifying dates. He hoped that the Council could agree to disagree. Guaranteeing an office for someone is allowing for a career politician, which the Mayor indicated that he does not believe in. Everyone can run for this office. The State of Georgia Election Code Section 21-2-133(a) discusses write-in candidates. The deadline to qualify for a write-in candidate would be November 11. This allows everyone that wishes to run for the open seat the opportunity to do so. Mayor Miller further stated that if Council Member Fetterman wanted to talk about the Council looking like fools, that he should look in the mirror first.

**City Clerk Burney did a roll call vote at the request of Mayor Miller**

**Council Member Swafford – No**

**Council Member Fetterman – No**

**Council Member Anglin – Yes**

**Council Member Richards – Yes**

**As there was a tie, Mayor Miller cast a vote to break the tie – Yes**

**Motion passes**

**NEW BUSINESS: None**

**There was a motion made by Council Member Fetterman at 7:37 p.m. to go into Executive Session for the purpose of pending/potential litigation.**

**Second: Tara Richards**

Discussion: None

**Unanimous**

**EXECUTIVE SESSION:**

- ~~Land Acquisition~~
- ~~Personnel Matters~~
- Pending/Potential Litigation

**There was a motion made by Council Member Fetterman to exit the Executive Session and resume the Voting Session at 7:59 p.m.**

**Second: Joe Anglin**

Discussion: None

**Unanimous**

**There was a motion made by Council Member Fetterman to exit the voting session at 7:59 p.m.**

**Second: Joe Anglin**

Discussion: None

**Unanimous**

**Adjournment:**

  
James "Mike" Miller - Mayor

11-3-11  
Dated

  
Marja Burney - City Clerk

Members of the City Council,

We think the  
qualifying date  
should be set so  
that the most  
people can qualify  
for the office.

Gray & Janet Lynchurch  
Oct. 20, 2011

EXHIBIT A