



CITY OF FLOWERY BRANCH
Work Session
Thursday, December 15, 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: Council Member Tara Richards led the pledge of allegiance

PUBLIC COMMENTS:

Ms. Janet Upchurch of 5644 Nagshead Circle approached to thank Council Member Amanda Swafford for standing up for things that people believe in during her service to the City of Flowery Branch.

Mr. Craig Lutz of 8072 Sleepy Lagoon Way approached to thank Council Member Amanda Swafford for her service to the City of Flowery Branch. Mr. Lutz stated that he was glad that a person like Council Member Swafford was able to step in and finish the term that he had started.

Mr. Greg Lyons of 601 Tree Park Circle approached to express thanks to Council Member Swafford from the residents of Tree Park apartments for all of her efforts on their behalf.

PRESENTATION:

Council Member Fetterman presented a plaque to Council Member Swafford from the City of Flowery Branch acknowledging her service on the Council from September 2010 to December 2011.

Council Member Swafford stated that she has enjoyed her time on the Council and appreciated the support of the members of the community.

UNFINISHED BUSINESS:

❖ Hearing regarding business license for Flowery Branch Auction and Antiques
City Planner Riker stated that at the previous Council meeting, staff was directed to contact the business owner regarding the business license hearing being postponed to tonight. The business owner, Mr. Tom Schulte, is present at this meeting. The issue with this property is that back in the 90's, the use of the property changed. The code at the time would have required parking lot improvements. The City has been in contact with both the business and property owner regarding requested parking lot improvements for the last 18 months. About a year ago, the property owner indicated in a letter that he would make those improvements. The Council has been provided with a bullet point listing of actions taken on this case and a timeline of those activities. When auctions are held at this location, the attendees park randomly and even park in areas where parking should not be allowed.

The property owner did hire an engineer and submitted a plan that did show some effort to improve the parking area. The plan did not meet the current parking codes, nor did it meet the codes from the 90's, but the plan is a step in the right direction. The property owner then sent a letter to the City through his attorney indicating that he felt that he did not need to make any of the improvements. A second plan was provided which does show more parking, however, some of the parking spaces indicated on the drawing are not spaces that could be utilized due to ingress/egress issues. There are also no landscaping improvements shown on the plan. The drainage area proposed on the second plan is the public right of way on Atlanta Highway, which would most likely not be allowed. The engineer for the property owner indicated that there are two plans because the property owner was interested in looking at potential cost savings. The City engineer reviewed both plans and stated that there is a cost difference of about \$4000-\$6000 dollars between the two plans.

Mr. Tom Schulte, business owner of Flowery Branch Auction and Antiques, approached to address the Council in regards to this issue. Mr. Schulte indicated that there are 50 dealers at his business location and that there is an auction every Monday which has about 60-65 people in attendance. In addition, there is a show once a month which has about 1500 people in attendance. There have not been any complaints expressed to Mr. Schulte regarding the parking lot. In the current economy, improving the parking area would be a very large expense for the landlord. This would set back the business plan of Mr. Schulte for at least two years as the money spent on exterior improvements would not be able to be spent on interior improvements.

Council Member Anglin verified with City Planner Riker that no improvements have been made to the parking lot. The property owner had submitted a letter requesting a year to make the improvements, the City allowed him the year extension and no improvements were made. After some plans were received, the attorney for the property owner sent a letter stating that the improvements would not be made. The second plan was received last week.

Mayor Miller clarified for the audience that Mr. Schulte is not the property owner and the property owner is the person that has indicated that they are unwilling to do work to the parking area.

Council Member Richards asked what the difference is between the two parking plans provided. City Planner Riker stated that the only correspondence that has been received from the property owner, Mr. Bailey, has been through his attorney. The second plan provided is the plan that Mr. Bailey is intending to use. The drainage swale on the plan is indicated as running along the Georgia Department of Transportation (DOT) right of way, which would not be allowed. The engineer for the property owner indicated that the second plan presented includes items Mr. Bailey instructed him to include.

Council Member Swafford asked City Planner Riker what exactly the property owner was in violation of. City Planner Riker stated that the property is in violation of the zoning code. When the property changed use from manufacturing in 1999 to its current use, the parking lot would have been required to be improved. The code in 1999 indicated that "any building or use that is subsequently enlarged or converted to another use shall meet the off-street parking and loading requirements of this article". The City has been flexible and has asked the property owner to improve the parking area to meet the code that was in place in 1999, not the current code, which would be less stringent. Due to the size of the facility and the limitation of the size of the property, there is no way that the required number of parking spaces can be provided. Therefore, the City has asked the property owner to provide the maximum number of spaces in the area

available. Prior to Mr. Schulte buying the business, the City met with Mr. Schulte and informed him of the improvements that would need to be made. Since then, the City has been in contact with the property owner for the last 18 months regarding improvements that need to be made.

Council Member Swafford stated that there is nothing indicated on the timeline provided that indicates any action was taken in 1999. If there was a conflict with the code at the time, how was a business license obtained. City Planner Riker stated that he does not know and that the persons sitting on the Council in 1999 would be the ones that would need to answer that question.

Council Member Richards verified that the most recent plan provided indicated future landscaping to be installed; however the plan does not show sufficient landscaping to meet the code in 1999.

Council Member Fetterman stated that the situation on this property continues to be cited as being unsafe, but there have not been any accidents recorded in the area of this property that can be attributed to perceived unsafe conditions. Council Member Fetterman stated that he does want the City to look good, but that the building being discussed will not be there forever. The biggest concern is that there are 1500 people coming to Flowery Branch once a month and there are dealers on Saturdays, but there are still are restaurants that are closing down in the City. The City should not be forcing a business owner to do something that does not affect the safety of City of Flowery Branch residents. The business could ultimately end up being shut down, which would cause 1500 people to no longer come into the City. Council Member Fetterman further stated that he hoped the Council did not get on the bandwagon of beautifying the City on everything. Eventually this building will be torn down and replaced. Council Member Fetterman feels that issues that the City is having with the property should be discussed with the property owner, not Mr. Schulte, who is renting the property. If Mr. Schulte's business were to be closed, other businesses in the area would be affected.

City Manager Andrew stated that the City is charged with enforcing the code of the City. City Planner Riker indicated that he had expected more of a response from Mr. Schulte and Mr. Bailey as this situation has been ongoing for the last 18 months.

Council Member Fetterman stated that he feels the issue is with Mr. Bailey, not Mr. Schulte and Council Member Fetterman asked again what was unsafe about the property. City Planner Riker indicated that "unsafe" and "not meeting the code" could be the same thing in the sense that people are entering and exiting the parking area in places that are unsafe. City Planner Riker stated that just because there has not been an accident there does not mean that there is not the capacity to have an accident there. City Planner Riker stated if it is acceptable for this situation to continue there needs to be direction from the Council as to how other code enforcement cases should be handled. There was a situation across the road that required code enforcement action for an extended period of time and that business license was revoked by the Council.

Mr. Schulte indicated that he spoke with Mr. Bailey last week and he indicated that he is ready to do some work on the property. Mr. Schulte is requesting that both parties work together to come up with a plan that will work for both parties.

Council Member Fetterman stated that he felt that even if the first parking plan provided were to be implemented, there would still not be enough parking. Would the City then go down and start issuing tickets to people that are not parked in designated parking spaces. City Planner Riker

indicated that was why the City has adopted a zoning code that would provide for an adequate number of parking spaces. This problem was created years ago. The City has been trying to work with the property owner for 18 months and the property owner has failed to work with the City on this issue.

Council Member Swafford stated that she is concerned with the fact that this issue has been discussed publicly and members of the community have not come forward with any concerns. However, at the last meeting, about 250 citizens from Tree Park apartments came forward to ask for the City's help and the Council decided not to become involved as it was not the role of the City to become involved in private matters. This situation has no one coming forward, other than the Council and the City, yet the Council is willing to use their power to do something that is contrary to what the citizens want. There has been no sense of urgency from the public.

Council Member Richards stated that she felt this situation was different as there is a zoning violation. The situation at Tree Park was not violating any City ordinance. The job of the Council is to set the ordinances for the City and it is the job of the City staff to carry out and enforce those ordinances. Ordinances cannot be randomly enforced. There needs to be consistency in how the ordinances are enforced.

Council Member Swafford stated that the code should have been enforced in 1999. The business owner has been blind-sided by this problem with the parking and it is not fair to him to suffer the consequences of action not being taken in 1999.

Council Member Richards stated that a compromise could be reached if the first plan submitted were to be used. There is no reason that the City should approve the second plan, which does not meet code and would not be approved by the Georgia DOT.

Mayor Miller verified with City Planner Riker that Mr. Schulte was informed of the work that needed to be done on the property prior to issuance of a business license. City Planner Riker indicated that Mr. Schulte was informed that the parking area would need to be improved, a sign would need to be removed (which has been completed) and some additional landscaping would need to be added.

Council Member Swafford wanted to know what specifics were given to Mr. Schulte regarding the deficiencies of the property. City Planner Riker stated that he met with Mr. Schulte prior to him buying the business and the information was forwarded to him in a letter when the business license was applied for. Council Member Fetterman requested that City Planner Riker produce a copy of the letter sent to Mr. Schulte. City Planner Riker found the copy of the letter dated April 20, 2010. The letter specifies the improvements needed to the property and was in response to the filing of a business license application by Mr. Schulte. Staff had previously met with Mr. Schulte regarding the contents of the letter. City Planner Riker read aloud some of the letter as follows:

A review of your business license has revealed that you may be in violation of several sections of the City's current and previous zoning codes as it relates to the operation of your new business. Specifically, the City has noted the following violations:

- Failure to maintain appropriate parking lot area
- Failure to maintain appropriate landscaping
- Unpermitted monument sign fronting Atlanta Highway

Given the nature of these violations, we recommend that you schedule an appointment with our staff to discuss the steps necessary to correct these matters. I should also mention that until these items are corrected, the City will be unable to issue you a permanent license. However, we will extend a temporary license for 120 days to correct the items listed above.

City Planner Riker further stated that another letter was issued August 20, 2010 that indicated on April 20th a temporary license was issued with a term of 120 days. The letter indicated that as of the date of the letter, no one has contacted the City regarding improvements to the property. The property owner, Mr. Bailey, then sent a letter to the City that was dated August 13. The letter read as follows:

This letter is to confirm that MPB properties is working to complete the improvements requested by the City. We would appreciate your cooperation in allowing us one year to complete these improvements and allow Tom Schulte, Flowery Branch Antiques, to obtain his business license. We will furnish you a site plan as soon as it is completed.

City Planner Riker stated that throughout the next year, emails were exchanged with the property owner. An email was sent in April of 2011 requesting an update on progress and reminding the property owner that the improvements must be completed by August 13, 2011.

Council Member Fetterman verified with City Planner Riker that the timeline provided states that the first letter provided regarding the requested site improvements was in April of 2010. Council Member Fetterman stated that the timeline indicated that in February of 2010 staff met with Tom Schulte regarding a change in ownership application for the business. Council Member Fetterman then questioned if City Planner Riker had the notes of that meeting. City Planner Riker stated that Code Enforcement Officer Bowers was also in the meeting in February of 2010. Council Member Fetterman verified that the business was started up on April 1, 2010, but that the letter was not sent to him until after the business was already begun. Council Member Fetterman stated that nowhere in the letter did it say that anything did not "meet code". City Planner Riker reiterated that a portion of the letter which read as follows:

A review of your business license has revealed that you may be in violation of several sections of the City's current and previous zoning codes...

Council Member Swafford questioned if a specific code violation was listed. City Planner Riker indicated that the letter of April 2010 did list the specific violations.

Council Member Anglin stated that the issues on this property are blatantly against the code and have been going on for a period of 18 months. Mr. Bailey has not shown up to any of the Council meetings. If correcting the code violations in this case are not enforced, how can they be enforced on anyone? The Council can either take action, or stick their head in the sand and ignore the issue. Council Member Anglin stated that he is fine with giving the property owner a "hard date" where a specific action must be shown. This situation has been going on a long time and something needs to be done.

Council Member Fetterman felt that since this is not a new business and the owner of the business is not the owner of the property, some allowances should be made for this situation. This business brings in jobs and people to the City. Is it worth closing down the business to

make the City look pretty? Some people call the area on Atlanta Highway where this business is located the "Gateway to Flowery Branch". The real Gateway is off of Interstate 985.

Council Member Swafford reminded that a major merchant, Toasted and Tapped, closed in the downtown area of Flowery Branch this past Saturday.

- ❖ 2nd reading of Ordinance 461 – Water Conservation Separate and Master Meter Ordinance and Ordinance 462 – Water Conservation Car Wash Ordinance

City Planner Riker indicated that these ordinances are required to be adopted by the Metropolitan North Georgia Water Planning District. One comment at the last meeting was the Council wanted to know if we could require people with master meters now to install individual meters on change of ownership. There is not a legal foothold for the City to require that.

DRAFT MINUTES: City Clerk Burney presented the draft minutes from the December 1, 2011 City Council Meeting. Council Member Swafford stated that she had a few changes. On page 2, Ms. Spencer is referred to as Mr. Spencer in error and needs to be corrected in the paragraph. The address is Wade Road, not Waidel Road. In Ms. Smith's letter for the record, there needs to be a space between "60" and "dollars". On page 5, there should not be an apostrophe in "it's" in the comments made by Council Member Fetterman. The corrections will be incorporated.

NEW BUSINESS:

- ❖ Resolution 11-015 – Allow for leasing of sewer capacity by commercial users for a 24 month period at 15% of the regular rate

City Manager Andrew stated that Avery Dennison on Thurmon Tanner Parkway needs to lease some sewer capacity for a project they are working on. The resolution is to change the code so that other commercial businesses would have the same leasing opportunity if they needed to. There was a spill a few years ago on the property which went into the groundwater and that portion of the plant was shut down. The EPA has ordered Avery Dennison to clean up the site. There was a study completed which shows that there is a volatile organic compound in the groundwater. There are 10 wells on the site which will be drawing out the groundwater and spray air through the water at a high rate, which is called "airstripping". This resolution would allow Avery Dennison to get sewer capacity at a discounted rate for the duration of the project, which is not expected to last more than 24 months. This resolution would allow other businesses the same pricing opportunity, but it is doubtful that it would be used by anyone else. Initially, the water will be tested every 2 weeks to verify the contaminants are gone. This would be for a total of 3 months. EPD feels that due to instability of the volatile organic compound; there is a very small chance of contamination. Bob Troxler, a consultant for the City on sewer matters, stated that he feels the study is very detailed and there is very little risk to the City water. Once the site is cleaned up, the adjacent properties would be more desirable and may sell quicker. Work on this project would begin in January 2012.

CITY MANAGER REPORT: None

CITY CLERK REPORT:

City Clerk Burney indicated that she had given a list to the Council members of the Council meeting dates for 2012, based on meetings being on the first and third Thursdays.

Council Member Richards stated that she may have some conflicts with military training that she has coming up, so there may be some issues with a quorum if any of the other members are unable to attend.

CITY PLANNER REPORT:

City Planner Riker stated that the agreement the City has been working on with Stonebridge LLC has been conceptually agreed to. The gallon per day reservation is lower than the amount the Council was hoping for. Once the documents have been signed, it will be brought back to the Council. The easements and permits from Norfolk Southern, GDOT and Hall County should be able to be obtained by January or February and this will allow the Cinnamon Cove line project to move forward.

CITY ATTORNEY REPORT: None

CITY COUNCIL REPORTS:

Council Member Swafford stated that she is looking forward to having a little more free time, but will be available if anyone needs her. The Christmas Parade turned out well and Council Member Swafford would like to encourage other Council members to get involved with City events also.

Council Member Fetterman stated that he has enjoyed working with Council Member Swafford and she will be missed.

Council Member Anglin stated that Council Member Swafford's preparation for the Council meetings has been second to none and he has enjoyed working with her.

Council Member Richards stated that she has appreciated all of the time that Council Member Swafford has spent on Council issues and she will be missed.

Mayor Miller stated that the Christmas Tree Auction brought in just under \$3000 dollars for the Shop with a Cop program. The auction was headed up by Patty with Calliope Sweets and she did a great job. The shopping was done by the officers this past Saturday. For the tree lighting, there was Covenant Connection Choir and the Falcons provided two cheerleaders and Freddie the Falcon. This past Saturday morning, the Flowery Branch High School Band was in the Children's Healthcare Parade in Atlanta, which was televised on WSB-TV. Also this past Saturday, the Mayor was the emcee for the First Annual Flowery Branch High School "Sounds of the Season", which was presented by the band and chorus. There were over 1000 people in attendance. The concert was at Riverside Military Academy to have enough room for all of the attendees. The first show was sold out, so a second show had been added. CD's are available for \$10.00 each. Mayor Miller also thanked Council Member Swafford for her service on the Council.

ADJOURNMENT WORK SESSION

Mayor Miller closed the Work Session and opened the voting session at 7:06 p.m.



**CITY OF FLOWERY BRANCH
Council Meeting
Voting Session
Immediately following Work Session
Thursday, December 15, 2011**



OPEN VOTING SESSION:

Mayor Mike Miller opened the Voting Session at 7:06 p.m.

CONSENT AGENDA:

Consider – Draft meeting minutes from December 1, 2011

Motion: Joe Anglin

Second: Chris Fetterman

Discussion: None

Unanimous

NEW BUSINESS:

- ❖ Consider – Hearing regarding business license for Flowerly Branch Auction and Antiques

Council Member Anglin made a motion to have some sort of a land plan approved and actually started by the specific date of April 5. To clarify, this would be for work to actually begin by April 5.

Council Member Anglin clarified his motion: motion to have a land plan submitted and work to actually begin by April 5 on the property of Flowerly Branch Auction and Antiques.

City Planner Riker verified that two different plans have been submitted to the City, but neither plan has been approved. The first plan needed some further work, but is workable. The second plan, which was submitted, last week, does not meet the code.

Council Member Richards requested City Planner Riker clarify what “approval of a plan” would entail in this case. City Planner Riker stated that the process would be that the City would evaluate the provided plan. The plan would then be sent to GDOT for their evaluation. The state will not allow a parking lot to be improved and have the water dumped onto a state highway. The plan would be shared with the Council for approval. There might need to be a variance on the property, which would require a public hearing. In this situation, an approved plan is more important than work beginning on the project because there are other agencies involved. City Planner Riker suggested the motion be for a date for the plan to be submitted.

Council Member Anglin verified that one plan has already been submitted by Mr. Bailey, but that it was pulled back by a letter from Mr. Bailey’s attorney. City Attorney Bennett stated that neither plan that has been provided has been submitted to GDOT. The first plan submitted was what the engineer thought would work and the second plan submitted was what Mr. Bailey wanted to do.

City Manager Andrew stated that if the Council wants to be a part of the approval of the plan, the process could drag on for quite some time. The staff is trying to follow an older code for the

benefit of Mr. Bailey. Council Member Anglin stated that he feels that the City has already been down this road with Mr. Bailey. City Attorney Bennett suggested that a date be established for an approved plan. This would allow both the City and Mr. Bailey to know where they stand. Mayor Miller verified with City Planner Riker that 60 days should be sufficient.

Council Member Anglin amended his motion: The owner of the property for Flowery Branch Auction and Antiques to submit a plan by which the City will approve for improvements on the property of Flowery Branch Auction and Antiques by March 1, 2012.

Motion: Joe Anglin

Second: Tara Richards

Discussion: City Attorney stated for clarity that the Council would be directing the property owner to have an approved plan by March 1, 2012. Council Member Anglin stated that was his intent, to have an approved plan by March 1, 2012.

Council Member Swafford stated that it might be better if the date were to be changed to March 15 as there will be an election to seat another Council member before that date. That might be the right thing to do to allow that person to have a vote. Council Member Anglin stated that he was fine with the date remaining March 1.

Council Member Fetterman verified with City Planner Riker that the plans that have been submitted have not been approved. The plans were conceptual and since a letter was received from Mr. Bailey's attorney after the first plan was submitted that Mr. Bailey was not doing that plan, the City did not review that plan any further. There have never been actual plans submitted, only concepts. Council Member Fetterman wanted to know what could be done if GDOT does not like the storm water plan. City Planner Riker stated that there are other options for detention on the property, underground detention could be done. City Planner Riker verified for Council Member Fetterman that there have been some discussions with GDOT and there is a storm pipe under Atlanta Highway which is clogged because of some activity on another of Mr. Bailey's properties. GDOT has indicated they want to work with Mr. Bailey.

Council Member Swafford stated that this is the wrong time to do this especially as one of the big downtown merchants has just left the City.

Mayor Miller asked Mr. Schulte if he recalled the meeting with City Planner Riker in February of 2010. Mr. Schulte indicated that he did recall a meeting, but he did not remember when it was. He did not recall meeting with City Planner Riker before he stated the business, but it is possible. Mr. Schulte indicated that he does not recall hearing about the parking lot issue until the meeting in April after the business had already been purchased. Mr. Schulte states that he was not aware of the extent of the improvements needed. Mr. Schulte further stated that he thought there had been another meeting in April. Mayor Miller questioned City Attorney Bennett if the City would be liable if there were to be an accident at that location. City Attorney Bennett stated that there could potentially be some liability to the City; it would depend on the circumstances.

Council Member Swafford stated that if that were the case, then maybe the City needed to look at all of the properties that are not in compliance right now, instead of picking on one business owner that no citizen has come forward to ask the City to address.

At the request of Mayor Miller, City Clerk Burney did the vote as a roll call vote.

Council Member Swafford: No

Council Member Fetterman: No

Council Member Anglin: Yes

Council Member Richards: Yes

As there was a tie, Mayor Miller voted to break the tie.

Mayor Miller: Yes

Motion passes with a 3-2 vote.

- ❖ Consider – Second reading of Ordinance 461 – An ordinance to amend Chapter 50 Utilities Sections 50-17 and 50-18 of the adopted Municipal Code relating to separate meter and master meter requirements; to provide for an effective date; to repeal conflicting ordinances and for all other lawful purposes.

Motion: Chris Fetterman

Second: Joe Anglin

Discussion: None

Unanimous

- ❖ Consider – Second reading of Ordinance 462 – An ordinance requiring new commercial conveyor car washes to install recycled water systems; to provide for codification; to provide for an effective date; to repeal conflicting ordinances and for all other lawful purposes.

Motion: Joe Anglin

Second: Tara Richards

Discussion: None

Unanimous

- ❖ Consider – Resolution 11-015 – Establishes the amount of use rates for water and sewer service, the amount of connection fees for water service and the amount of connection/capacity fees for sewer service; repealing conflicting resolutions; providing for severability; providing for an effective date; and for all other lawful purposes. In particular the amendment found on page 6 which creates a capacity fee category for non-residential temporary sewer users. It permits them to purchase capacity for the temporary use of sewer for up to 24 months at a rate equal to 15% of the non-residential sewer rate.

Motion: Amanda Swafford

Second: Chris Fetterman

Discussion: Council Member Fetterman verified with City Manager Andrew that 24 months is not the proposed time frame for the project, just the maximum amount of time that was requested to cover any problems that may be encountered. The amount being used is 10,000 to 15,000 gallons a day. City Attorney Bennett stated that the ordinance provides for a yearly permit and a refund mechanism.

Unanimous

Council Member Fetterman made a motion to adjourn the meeting at 7:29 p.m.

Motion: Chris Fetterman

Second: Joe Anglin

Discussion: None

Unanimous

Adjournment:


James "Mike" Miller - Mayor


Dated


Marja Butney - City Clerk