



City of Marietta

205 Lawrence Street
Post Office Box 609
Marietta, Georgia 30061

Meeting Minutes CITY COUNCIL

R. Steve Tumlin, Mayor
Annette Paige Lewis, Ward 1
Griffin "Grif" L. Chalfant, Jr., Ward 2
Johnny Sinclair, Ward 3
Irvan A. "Van" Pearlberg, Ward 4
Rev. Anthony C. Coleman, Ward 5
James W. King, Ward 6
Philip M. Goldstein, Ward 7

Wednesday, December 14, 2011

7:00 PM

Council Chamber

Presiding: R. Steve Tumlin, Mayor

Present: Annette Lewis, Grif Chalfant, Johnny Sinclair, Van Pearlberg,
Rev. Anthony Coleman, Jim King, and Philip M. Goldstein

Also Present:

William F. Bruton, Jr. City Manager

Douglas R. Haynie, City Attorney

Stephanie Guy, City Clerk

CALL TO ORDER:

Mayor R. Steve Tumlin called the meeting to order at 7:12 p.m.

INVOCATION:

Council member Lewis introduced Major Mike Hathaway to give the invocation.

PLEDGE OF ALLEGIANCE:

Mayor Tumlin asked everyone to remain standing for the pledge of allegiance.

PRESENTATIONS:

20110762

Government Finance Officers Association Award

Sam Lady, Finance Director, and Beth Keller, Accounting Manager, City of Marietta Finance Department, receive the GFOA Award for the 24th consecutive year. The Certificate of Achievement for "Excellence in Financial Reporting" is given by the Government Finance Officers Association of the United States and Canada for its Comprehensive Annual Financial Report (CAFR). The GFOA

Press Release states "This Certificate is the highest form of recognition in the area of governmental accounting and financial reporting, and its attainment represents a significant accomplishment by a government and its management."

Presented

20111108 Donation to the Fire Museum

Presentation of a check by Betty Hunter, Loop Group President, to Scott Tucker, Assistant Chief, for the Marietta Fire Museum.

Presented

20111121 Statewide Award for Beautification - Keep Georgia Beautiful

Keep Georgia Beautiful awarded Marietta a statewide award for beautification for helping protect the local environment and beautifying the city's major corridors. "Local communities should be very proud of the efforts winning groups and individuals put forth to make their part of the world a better place," Keep Georgia Beautiful Foundation executive director Sarah Visser said. "We are proud to pull all of these local efforts together and highlight the great work and progress being made statewide."

Presented

PROCLAMATIONS:

ANNOUNCEMENTS OF GENERAL COMMUNITY INFORMATION BY THE MAYOR, COUNCIL AND/OR CITY MANAGER:

SCHEDULED APPEARANCES:

UNSCHEDULED APPEARANCES:

CONSENT AGENDA:

Consent agenda items are marked by an asterisk (*). Consent items are approved by majority of council. A public hearing will be held only for those items marked by an asterisk that require a public hearing (also noted on agenda).

Mayor Tumlin called upon Mayor Pro tem, Johnny Sinclair, to preside over this portion of the meeting. Mayor Pro tem Sinclair briefly explained the consent agenda process. The following amendments were made to the consent agenda:

-agenda item 20111080 was added to the consent agenda with the following names added: Ward 3 Carrie Walker, Ward 4 Ray Worden, Ward 7 Johnny Fulmer and City Council At Large Appointment Johnny Sinclair.

-agenda item 20111070 was amended to read, "...When the amount in the account for the subdivision reaches 110% of the current estimated pavement cost..."

- agenda item 20111069 was added to the consent agenda, with an amendment to the easement agreement.
- agenda item 20110982 was added to the consent agenda to be Tabled.
- agenda item 20111138 was added to the consent agenda.
- agenda item 20111071 was removed from the consent agenda.
- agenda item 20111091 was removed from the consent agenda.

A motion was made by Council member King, seconded by Council member Chalfant, to approve the consent agenda as modified. The motion carried by the following vote:

Vote: 7 - 0 - 0 Approved
 with the following exceptions:
 Council member Chalfant abstaining on agenda item 20111070.

MINUTES:

* **20111089 Regular Meeting - November 7, 2011**

Review and approval of the November 7, 2011 regular meeting minutes.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 Approved

* **20111090 Special Called Meeting - November 14, 2011**

Review and approval of the November 14, 2011 special meeting minutes.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 Approved

MAYOR'S APPOINTMENTS:

CITY COUNCIL APPOINTMENTS:

* **20111080 Appointments to the Marietta Historic Board of Review effective January 1, 2012.**

- Initial one year term:
- Annette Lewis Ward 1 - Bret Bittner
- Grif Chalfant Ward 2 - David Freedman
- Johnny Sinclair Ward 3 -
- Van Pearlberg Ward 4 -

Initial two year term:
 Anthony Coleman Ward 5 -
 Jim King Ward 6 - Rebecca Nash Paden
 Philip M. Goldstein Ward 7 -
 Mayor Tumlin - Johnny M. Walker
 City Council At Large Appointment -

Appointments to the Marietta Historic Board of Review effective January 1, 2012.

*Initial one year term:
 Annette Lewis Ward 1 - Bret Bittner
 Grif Chalfant Ward 2 - David Freedman
 Johnny Sinclair Ward 3 - Carrie Walker
 Van Pearlberg Ward 4 - Ray Worden*

*Initial two year term:
 Anthony Coleman Ward 5 -
 Jim King Ward 6 - Rebecca Nash Paden
 Philip M. Goldstein Ward 7 - Johnny Fulmer
 Mayor Tumlin - Johnny M. Walker
 City Council At Large Appointment - Johnny Sinclair*

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

*** 20111106 Historic Preservation Commission Appointment**

Reappointment of Terry Lee to the Historic Preservation Commission (Ward 5) for a three year term beginning immediately and expiring December 13, 2014.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

*** 20111131 Planning Commission Appointment**

Appointment of Stephen Diffley to the Marietta Planning Commission (Ward 7) for a term of three years expiring on January 14, 2015.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

ORDINANCES:

20110892 Z2011-15 RaceTrac Petroleum, Inc. 1400 Powder Springs Road

Z2011-15 [REZONING] RACETRAC PETROLEUM, INC. request rezoning for property located in Land Lot 02600, District 19, Parcel 0030, 2nd Section, Marietta, Cobb County, Georgia and being known as 1400 Powder Springs Street from R-2 (Single Family Residential - 2 units/acre) to CRC (Community Retail Commercial). Ward 2.

Motion to allow the applicant to withdraw the rezoning request without

The motion was made by Council member Chalfant, seconded by Council member Goldstein, that this matter be Approved. The motion carried by the following vote:

Vote: 7 - 0 - 0 Approved as Amended

RESOLUTIONS:

CITY ATTORNEY'S REPORT:

- * **20111122 Denial of a claim**
- Denial of a claim of Jonathan Mark Blankenship.
- This Matter was Approved on the Consent Agenda.**
- Vote: 7 - 0 - 0 Approved to Deny Claim**
- * **20111130 Denial of a claim**
- Denial of a claim of Donna Thompson.
- This Matter was Approved on the Consent Agenda.**
- Vote: 7 - 0 - 0 Approved to Deny Claim**

CITY MANAGER'S REPORT:

MAYOR'S REPORT:

COMMITTEE REPORTS:

- 1. Economic/Community Development: Grif Chalfant, Chairperson**
- 2. Finance/Investment: Annette Lewis, Chairperson**

- * **20111085 FY12 Supplemental Funding for the Cemetery Budget**

[Ord 7567](#)

Approval of an Ordinance amending the Fiscal Year 2012 budget to appropriate Cemetery Fund reserves to cover the cost of repairs of monuments and walls at the city cemetery.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

3. Judicial/Legislative: Philip M. Goldstein, Chairperson

* **20110986 Precinct Polling Place Amendment**

Motion to authorize advertisement of a permanent polling place change for Ward 4 from the Grace Community Church to World Changers Church International, 601 Tower Road, Marietta, GA 30060 to coincide with the change adopted by the Cobb County Board of Election and Registration.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

* **20111030 Sunday Alcohol Sales**

Motion to appoint the Cobb County Board of Elections and Registration as the election superintendent for the City of Marietta for the March 6, 2012 Special Election regarding the Sunday Alcohol Sales Referendum.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

* **20111031 Sunday Alcohol Sales**

Motion to approve a contract between the City of Marietta and the Cobb County Board of Elections and Registration whereby the Cobb County Board of Elections and Registration would act as the election superintendent for the March 6, 2012 Special Election for the City of Marietta regarding the Sunday Alcohol Sales Referendum.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0 Approved

* **20111032 School Bond Issue**

Motion to appoint the Cobb County Board of Elections and Registration as the election superintendent for the City of Marietta for the March 6, 2012 vote regarding a Special Election to determine the issuance or non-issuance of a \$7,145,000.00 General Obligation Bond for the City of Marietta related to a Multi-Use Auditorium, instructional space and associated facilities at Marietta High School.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 Approved

* **20111033 School Bond Issue**

Motion to approve a contract between the City of Marietta and the Cobb County Board of Elections and Registration whereby the Cobb County Board of Elections and Registration would act as the election superintendent for the March 6, 2012 Special Election for the City of Marietta related to a Multi-Use Auditorium, instructional space and associated facilities at Marietta High School.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 Approved

* **20111078 ARC LCI Study Grants**

Approval of a Resolution of Council for the submission of the following two ARC/LCI Study Grants:

-A Master Plan for SPSU and Life University and visibility along Cobb Parkway

-Study for Transportation Design Standards and Gateway Master Plans to help develop a guide for common design standards.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 Approved

20111084 Vehicle Immobilization Ordinance

[Ord 7568](#)

Approval of Vehicle Immobilization Ordinance for the city limits of Marietta.

Philip M. Goldstein disclosed that Benny and Sue Robinson (Robinson's Coins) lease parking spaces from him at 48 Atlanta Street, Marietta. Further and I own property at 19-21 Atlanta Street, Marietta, as well as many other properties in Downtown Marietta and in the City of Marietta. Other family members and entities also own property in the City of Marietta.

Council Member Goldstein disclosed that he has an agreement with Gary Eubanks on property located at or near Denmead Street, Marietta, GA.

Mayor Tumlin disclosed that he has had a business relationship with Eubanks, but does not any longer.

Council Member Goldstein disclosed that Gary Leake is a tenant of PMG Whitlock Ave, LLC at 19 Atlanta Street, Marietta, GA, and he is the owner of and manager of said LLC.

In depth discussion was held regarding booting for parking violations. Items discussed include signage, fees and required licenses. Language was reviewed from the ordinance presented under agenda item 20111084 and 20111114.

A motion was made by Council member Chalfant, seconded by Council member Pearlberg, to move forward with the ordinance presented under agenda item 20111114, as amended.

The City Attorney was asked to summarize the important points of the proposed ordinance, which states that a permit and operating license would be required for anyone who boots, the fee for booting would be set at \$75 and anyone who boots 5 times or less would be known as a casual booter and exempt from getting a permit.

Mayor Tumlin called forward those wishing to speak regarding this matter: James Eubanks, who resides at 220 Wright Street and owns property downtown. Benny Robinson, owner of Robinson's Coins, Atlanta Street.

Jasper Sharp, who was recently booted when he parked in wrong parking lot downtown.

Gary Leake, owner of McCrackins, Atlanta Street.

Brett Tillman, owner of Atlantic Coast Contracting that manages a parking lot downtown.

Brian Buckaloo, owner and operator of the downtown trolley.

Phillip Duck, owner of the Lucky Draw Tattoo Palor, Atlanta Street.

Michael Lydell, Marietta resident.

Further discussion was held.

A substitute motion was made by Council King, seconded by Council member Lewis, to approve the ordinance that was passed out of the Judicial/Legislative Committee, with a fee of \$75.

An amendment to the motion was made by Council member Sinclair, seconded by Council member Chalfant, to change the fee to \$50. The motion carried by the following vote:

Vote: 4 - 3 - 0 Approved

Voting Against: Annette Lewis, Jim King and Philip M. Goldstein

Mayor Tumlin called for a vote on the substitute motion.

The motion was made by Council King, seconded by Council member Lewis, to approve the ordinance that was passed out of the Judicial/Legislative Committee, with the amendment to change the fee to \$50. The motion carried by the following vote:

Vote: 4 - 3 - 0 Approved as Amended

Voting Against: Annette Lewis, Van Pearlberg and Philip M. Goldstein

Manor Parc Subdivision - Sight Distance Easements

20111136

Manor Parc Subdivision - Sight Distance Easements

Motion accepting sight distance easements from CG Cole Street, LLC and Manor Parc H1, LLC, subject to approval of all documents by the City Manager, City Attorney and Public Works Director.

Motion accepting sight distance easements from CG Cole Street, LLC and Manor Parc H1, LLC; and a construction easement of up to 10 feet on the west part of Lots 27 and 28, and immediately adjacent to the east side of the sight distance easement property; subject to the review and approval of the City Attorney, City Manager, Public Works Director and Development Services Director.

The motion was made by Council member Goldstein, seconded by Council member King, that this matter be Approved. The motion carried by the following vote:

Vote: 4 - 0 – 1 Approved as Amended

Abstaining: Johnny Sinclair

Absent for the vote: Annette Lewis and Grif Chalfant

20111137

Manor Parc Subdivision - Exchange of Property

Motion authorizing exchange of property with CG Cole Street, LLC and Manor Parc H1, LLC subject to approval of all documents by the City Manager, City Attorney and Public Works Director.

The motion was made by Council member Goldstein, seconded by Council member King, that this matter be Approved. The motion carried by the following vote:

Vote: 4 - 0 – 1 Approved

Abstaining: Johnny Sinclair

Absent for the vote: Annette Lewis and Grif Chalfant

20111082

Manor Parc Subdivision

Motion to approve the Revised Final Plat for Manor Parc Subdivision. Also, motion to approve a stipulation to the revised Detailed Plan for Manor Parc Subdivision to allow the existing 46" wide stair that accesses both lots 29 & 30 to remain. Approval of the final plat is subject to the review and approval of the City Attorney, City Manager, Public Works Director and Development Services Director.

Council member Goldstein disclosed that he banks with BB&T. BB&T is the seller of some of the property related to this matter.

Council member Sinclair disclosed that he has a business relationship with a party involved in this development and will abstain regarding this matter.

Motion to approve the Revised Final Plat for Manor Parc Subdivision with the provision that a construction easement of up to 10 feet shall be shown on the

* **20111069** **Tower Road Directional Sign at entrance of Wellstar Kennestone Hospital**

Motion authorizing an easement allowing Wellstar Kennestone Hospital to install and maintain a way finding sign encroaching into the Tower Road right of way 4 feet 10 inches perpendicular and by 3 feet along the right of way with no portion of above ground sign to be closer than 12 inches to the existing sidewalk as shown on the attached drawings for Wellstar Kennestone, provided by Henry Incorporated, last revised 11-10-11. Sign must comply with all applicable ordinances and processes not otherwise addressed in this motion. Approval is subject to approval of final easement, location, and indemnification agreement(s) by the City Attorney and Public Works Director.

Council member Johnny Sinclair disclosed that he serves on the Kennestone Regional Board.

Motion to approve with amendments to the Revocable Easement Agreement by the City Attorney.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 – 0

Approved as Amended

APPEARANCES:

OTHER BUSINESS:

20111071 **V2011-40 Marietta Housing Authority 55 Henderson Street; 216 and 220 Crescent Circle**

Motion to approve variances for property located in Land Lots 12300 and 12310, District 16, Parcels 1000, 0900, and 0240 and being known as 55 Henderson Street, 216 and 220 Crescent Circle, as follows:

1. Variance to increase the allowable number of beds from 48 to 150, in order to allow the existing number of units in the current facility [Section 708.23(19)(b)]
2. 2. Variance to increase the allowable floor area ratio from 0.75 to 1.13. [Section 708.23 H]
3. Variance to reduce the required 30 foot buffer and the required 6 foot side yard setback in order to accommodate only those areas where the existing building, sidewalk and easements that currently encroach into the buffer and/or setback. No trees will be removed from the buffer area, and in any areas where the current buffer is determined by the City Arborist to be insufficient, additional trees shall be planted to improve the buffer. [Section 708.23(H).
4. Variance to waive the requirement for a permanent wall or solid fence not less than six feet in height as part of the buffer adjacent to residential properties. [Section 710.05(D)]
5. Variance from the optional site design elements of the Commercial Corridor Design Overlay District. [Section 712.09 (G)(2.a)]

Motion to table V2011-33 [Variance] Traton Homes (Rockford Township) Land Lots 00360, 00370, and 00380, District 19.

This Matter was Approved on the Consent Agenda.

Vote: 7 - 0 - 0 Approved to Table

* 20111138

Traton Homes (Rockford Township) Land Lots 00360, 00370, and 00380, District 19.

Motion to approve extension of the current deadline for tree installation at Rockford Township and to direct staff to require the following of Traton Homes:

(1) Provide letters to extend the current deadline for tree installation for Lots 19, 20, 25, 32, 33 and 57, which have already received certificates of occupancy from December 31, 2011 to February 28, 2012. Traton Homes shall request permission from all property owners to enter their property in order to plant trees in compliance with the new landscape plan.

(2) For any new requests for certificates of occupancy, Traton Homes must submit letters verifying that they will either comply with the current tree plan or will comply with the new landscape plan by February 28, 2012, and further, that Traton Homes has informed new property owners of this requirement and have written permission from said property owners to enter their property in order to plant trees in compliance with the new landscape plan.

Mayor Tumlin disclosed that in 2009 political contributions were reported from Traton and its principals in the aggregate of over \$250. Also, Smith, Tumlin, McCurley & Patrick, P.C., represented Mr. John Elliott in the sale and separation of the Smith Manning property.

Council member Sinclair disclosed that in 2009 he received a political contribution of greater than \$250 from Mr. Bill Poston of Traton Corporation. Also, he sold Mr. Will Etheredge, the neighboring property owner at the Smith Manning House, his house. In addition, he was the listing agent at Rockford for Mr. John Elliott, the previous owner, in his capacity as a Realtor at Harry Norman Realtors, but the project went bankrupt before they sold anything.

Motion to approve the extension with an amendment to # 1 that should read, "...Traton Homes shall request permission from all property owners to enter their property in order to plant trees in compliance with the new landscape plan."

This Matter was Approved as Amended on the Consent Agenda.

Vote: 7 - 0 - 0 Approved as Amended

20111114 Vehicle Immobilization Ordinance

Ordinance presented by Mayor Tumlin concerning Vehicle Immobilization.

No Action Taken

20111091 BLW Actions of December 12, 2011

Review and approval of the December 12, 2011 actions and minutes of the Marietta Board of Lights and Water.

Motion to approve the BLW Actions of December 12, 2011, with the exception of agenda item 20111099 Purchased Power Adjustment/ Policy No. 3.11.

This Matter was Approved as Amended on the Consent Agenda.

Vote: 4 - 1 – 0 Approved as Amended

Voting Against: Philip M. Goldstein

Absent for the vote: Annette Lewis and Grif Chalfant

UNSCHEDULED APPEARANCES:

ADJOURNMENT:

Date Approved: 01/11/2012

R. Steve Tumlin, Mayor

Attest: _____
Stephanie Guy, City Clerk