

CITY OF JOHNS CREEK
COUNCIL MEETING
January 30, 2012 @ 7:00pm

The Mayor and Council of the City of Johns Creek held a monthly meeting on Monday, January 30, 2012. The meeting was held at 7:00pm in the City Hall Council Chambers located at 12000 Findley Road, Suite 300 in Johns Creek, Georgia.

COUNCIL PRESENT: Post 1-Randall Johnson
 Post 2-Brad Raffensperger
 Post 3-Karen Richardson
 Post 4-Ivan Figueroa
 Post 5-Kelly Stewart
 Post 6-Bev Miller
 Mayor Mike Bodker

STAFF PRESENT: City Clerk Joan Jones
 City Manager Kachmar
 City Attorney Bill Riley

PLEDGE OF ALLEGIANCE: Led by Eagle Scouts Cullen Johnson and Leonard Washington, Troop 2000, and Scouts James and Ethan Belnap, Troop 2001 and Preston Krah, Troop 317.

OPENING REMARKS: Mayor Bodker welcomed everyone to the meeting, asked those in attendance for the zoning hearings to exercise proper decorum during the presentations, and as the room was crowded, he pointed out the exits. Mayor Bodker announced events being held by the Johns Creek Police Department to benefit Special Olympics, Saturday, February 18, the "Polar Plunge" into Lake Lanier and April 23, the 5th Annual Special Olympics Golf Tournament will be held at St. Ives Country Club. The Mayor mentioned the Johns Creek's Fire Department will hold "Super CPR Saturday" on February 18 at the Newtown Community Clubhouse, offering free classes for residents and business owners on how to perform cardiopulmonary resuscitation and how to use an AED. Mayor Bodker invited everyone to attend the 2012 State of the City address on Friday, February 3 at the Atlanta Athletic Club, advance tickets are \$5.00 and includes breakfast. He noted information about all the events mentioned and registration for any are available on the City's website. In closing, the Mayor commented on this year's GMA Mayor's Day events which he and several Council Members attended; the sessions were very useful and provided valuable for information on what is happening in other cities around state. The Mayor suggested visiting the GMA website to learn more about the cities around the state.

MINUTES: Council Member Johnson motioned, seconded by Council Member Richardson to approve the January 9, 2012 Work Session Summary and Council Meeting Minutes as presented. There being no discussion, the motion passed unanimously.

MEETING AGENDA APPROVED: Council Member Figueroa motioned, seconded by Council Member Raffensperger to approve the meeting agenda as presented. There being no discussion, the motion passed unanimously and the agenda was approved.

PUBLIC COMMENT: A citizen (who did not state name/nor complete comment card) commented on the timing of traffic signals on McGinnis Ferry Road, are excessively long at a few intersections during the weekend and off hours, impeding turns when there is no oncoming traffic. Mark Endres addressed Council and commented on the protection of the rights of property owners. He read a prepared statement in support of this position, citing historical views and opinions.

City Attorney Riley reminded Council that comments made during Public Comment periods regarding a pending zoning case may not be considered, only comments made during the zoning public hearings may be considered for zoning deliberations.

CONSENT AGENDA: Council Member Miller motioned, seconded by Council Member Figueroa to approve the Consent Agenda which included: **ACTION ITEM-** Approve Privileged Resolutions for Eagle Scout Cullen Rey Johnson and Leonard Thomas Washington III of Troop 3143; **ACTION ITEM-** Accept award (\$12,144) from U.S. Department of Justice to offset cost of bullet proof vest purchase; **ACTION ITEM-** Approve the bid award from C.W. Matthews (\$700,802.54) for the resurfacing of State bridge Road from Medlock Bridge Road to the Chattahoochee River; **ACTION ITEM-** Approve the submission for the Department Of Natural Resources Grant (\$35,000) for Shakerag Park Trails Project. There being no discussion, the motion passed unanimously and the Consent Agenda was approved.

ANNOUNCEMENTS: City Clerk Jones announced the following upcoming meetings:

- Tuesday, 2/7, @ 4:00pm—Recreation and Parks Advisory Committee; @7:00pm—Planning Commission Meeting
- Monday, 2/13, @ 5:00pm Council Work Session followed by 7:00pm City Council Meeting

Council Member Miller announced the 2012 Relay for Life will be held at Johns Creek High School beginning Saturday, May 5th at 4:00pm and will conclude at 6:00am on May 6. She urged everyone to come out and support the event to aid in cancer research.

REPORTS & PRESENTATIONS: Council Member Raffensperger read the following Privileged Resolution recognizing Eagle Scout Cullen Rey Johnson of Troop 3143.

The City of Johns Creek recognizes Cullen Rey Johnson of Troop 3143 on successfully completing all the rank requirements for Eagle. Whereas Eagle Scout Johnson has completed his Eagle Scout project by building an extension to the patio at Johns Creek United Methodist Church's barbecue pit; and whereas the larger patio area will allow the placement of additional tables and chairs which will increase the usefulness of the area, accommodating more members of the congregation to gather and enjoy their fellowship; and Whereas the Eagle Scout Award is a distinction that few achieve, the Mayor and Council of the City of Johns Creek congratulate Eagle Scout Cullen Rey Johnson on this achievement and wish him well in all his future endeavors.

Council Member Richardson read the following Privileged Resolution recognizing Eagle Scout Leonard Thomas Washington III of Troop 3143:

The City of Johns Creek recognizes Leonard Thomas Washington III of Troop 3143, on successfully completing all the rank requirements for Eagle. Whereas Eagle Scout Washington completed his community service project by replacing a small stage at the Autrey Mill Nature reserve with a new 20' X 16' stage area; and Whereas his task included dismantling the old structure and debris removal, the new and larger stage will enhance the safety of the performers as well as provide an opportunity for larger productions; Whereas Eagle Scout Washington contributed numerous hours to complete this project while still achieving academic honors, he exemplifies the values the scouting program instills in our youth. The Mayor and Council of the City of Johns Creek recognize and applaud Eagle Scout Leonard Thomas Washington III and wish him well in all his future endeavors.

Mayor Bodker provided a legislative update, mentioning several bills currently being discussed, including a bill requiring the registration of vacant properties, which would aid in identifying owners in response to maintenance issues; addressing inter-basin transfers or the disposal of waste water; internet gambling devices; revision of the open meetings/open records law, and several bills related to tax reform.

The Mayor reported on his participation on the Governor's *Transit Governance Task Force* which produced a report published on January 23 which includes their recommendations. One recommendation--form a Transit Committee to better coordinate a more cost effective and uniform approach to addressing transportation needs. More information can be found on the GMA or Georgia Assembly website. The

Mayor urged citizens to stay informed with the activities of their elected officials and share concerns and points of view about issues which are important to them.

OLD BUSINESS:

ZONING CASE RZ11-007 & VC 11-007 LENITY GROUP, LLC: Consideration of Ordinance 2011-12-25 for Zoning Case RZ11-007 & VC 11-007-1 Lenity Group, LLC - 6300 Block of Hospital Parkway- O-I Conditional to A-L Conditional – Allow a 124 unit retirement community with a concurrent variance to reduce the parking from 155 to 79 spaces. Planning and Zoning Administrator Justin Kirouac addressed Council and stated the applicant has requested a denial of this application without prejudice as issues with the seller of the property could not be sufficiently addressed. At the request of Council Member Johnson, Mr. Kirouac clarified that a denial without prejudice is a denial not based on the merits of the case, and is akin to an applicant withdrawal. Council Member Figueroa motioned, seconded by Council Member Stewart to deny without prejudice Ordinance 2011-12-25 for RZ11-007 & VC 11-007-1. During discussion, Council Member Figueroa clarified the applicant has to wait 12 months before re-filing the case. There being no further discussion, the motion passed and the case was denied without prejudice. (***ORDINANCE 2011-12-25***)

Prior to the call of the next zoning hearing, Council Member Raffensperger recused himself from discussion regarding Rezoning Case 11-009 and VC-11-009 1 & 2 as he has previously commented on this case publicly during his campaign for election.

REZONING CASE RZ-11-009 & VC-11-009-1 & 2 – RACETRAC PETROLEUM – A Public Hearing and Consideration of Ordinance 2011-12-29 for RZ-11-009 & VC-11-009-1 & 2 – Racetrac Petroleum - 10600 Block of Medlock Bridge Road and 10600 Block of Parsons Road – O-I Conditional & R-4 Conditional to C-I Conditional – Allow a convenience store with fuel pumps and pocket park with concurrent variances to reduce landscape strip for utility box and allow sidewalk to encroach into buffer was held.

Planning and Zoning Administrator Justin Kirouac informed Council of the applicant's request to rezone a 5.94 acre parcel of land located in character area 9—141 (Medlock Bridge Road) Corridor, and noted commercial use would be consistent here and therefore staff recommended support of the rezoning from O-I Conditional and R4-Conditional to C-1 conditional to allow the commercial use along Medlock Bridge Road. However, the property is located on a collector road, Parsons Road, which is primarily residential and outside the activity nodes and staff recommended denial of the fuel pumps as this use is more intensive and inconsistent with the current uses. Mr. Kirouac noted the City's Comprehensive Plan considered 141/State Bridge, 141/Abbotts Bridge and 141/McGinnis Ferry intersections as activity nodes where more intensive uses exist. After their review of the case and a public hearing, the Planning Commission recommended denial without prejudice.

There was Council consensus to hold consecutive public hearings for the rezoning and variances allowing 30 minutes each for the applicant and opposition.

Mayor Bodker opened the public hearing for Ordinance 2011-12-29 for RZ-11-009 & VC-11-009-1 & 2 – Racetrac Petroleum - 10600 Block of Medlock Bridge Road and 10600 Block of Parsons Road – O-I Conditional & R-4 Conditional to C-I Conditional – Allow a convenience store with fuel pumps and pocket park with concurrent variances to reduce landscape strip for utility box and allow sidewalk to encroach into buffer and ask for those wishing to speak in support of the application.

City Clerk Jones read the zoning public hearing procedures.

Sean MacLauren, representative for the applicant, addressed Council and mentioned several meetings have been held with the community to receive feedback on the project and to address concerns. He

provided an overview of the Racetrac Company, which is located in Cobb, in existence for about 78 years, and one of the third largest companies in Georgia. Mr. MacLauren reviewed the proposed rezoning and variance requests and referencing the City's Comp Plan regarding the proposed uses for Character Area 9, the 141 corridor, describing the uses allowed as the "most intensive". He reviewed the request to allow a convenience store with gas pumps which would include a 3.5 acre pocket park to serve as a buffer between the site and the adjacent residential properties and the proposed planting and additional vegetation for screening and any light spillage. He noted the site plan provided for about 64% green space which would lower the overall density of the project. He presented a power point with renderings of the pocket park and the proposed market/ convenience store, provided a video showing the interior views of an existing store and described the construction details which the Johns Creek store would entail. He reviewed schematics of the existing traffic flow, provided an analysis indicating the business would generate no additional traffic, reviewed a proposal for improvements to existing traffics conditions, discussed adding one mile of sidewalks which will provide direct access to the greenway. Mr. MacLauren expressed to Council that this plans conforms to the City's Comp Plan and the development is suitable for this site.

Wendy Butler spoke on behalf on the applicant, citing the Steinberg Criteria for evaluating rezoning requests and indicated this project has met and/or exceeded the criteria based on the following: the current property zoned for office use has remained vacant and undeveloped for an extended period of time; there are office buildings and commercial uses on either side. The applicant purchased additional land to facilitate creating an extended buffer of over 3 acres with the adjacent residential properties, making half the property dedicated to green space, thereby minimizing its impact and making it more suitable for the requested zoning; the project will not adversely impact the usability of adjacent residential properties, as deliveries will be prohibited between the hours of 11pm and 6am. There will be minimum light spillage and a pocket park will be created for community use; the project will not be a burden on the streets and transportation, as intersection improvements are proposed to enhance the current traffic patterns; the proposed zoning conforms to the policies of the Comp Plan which identifies several intersections on the 141 corridor as activity nodes. She noted the area includes the most intensive commercial and residential use in the city. Ms. Butler referred to a PowerPoint slide citing the relevant section of the comp plan and referenced the commercial uses, current and proposed developments at the activity nodes— intersections of Medlock Bridge at McGinnis, at Abbots Bridge and at State Bridge Roads, as indicative of the appropriate uses for the corridor and contends this project conforms with the land use plan conditions

Mr. Gary DeBurgomaster addressed Council and spoke in support of the project, stating he is a resident of the Glenside Subdivision and lives adjacent to the site of the proposed pocket park. He explained the project meets or exceeds the Stenberg Criteria and will benefit the community, offering the pocket park as a buffer, as opposed to an alternative, a large commercial development. He also mentioned the traffic improvements and additional sidewalks proposed would enhance the area, at no costs to the city. If this is not approved, the property may remain undeveloped as it has for 12 years. The applicant reserved the remainder of the time for rebuttal.

As there was no one else wishing to speak in support of the application, the Mayor called for those in opposition.

Mr. David Neuringer, spoke in opposition to the application explaining he has been a Glenhurst subdivision resident for 14 years and said the Racetrac is inappropriate for this location. He indicated the project does not meet the Stenberg Criteria and referenced a position paper provided to Council in support of his opinion. He reviewed a PowerPoint showing survey results from eight adjacent neighborhoods polled on this project of which a large percentage were in opposition, (encompassed 408 homeowners). He commended Racetrac for meeting with the community but commented there are many concerns with the project, including uncertainty of the proposed new market place/park concept and conflicts with the Comp plan. The scale and density characteristics are addressed in the comp. plan and allow developers flexibility

in this activity node. This project is not appropriate for this location, referring to page 47 and page 3 in the Comprehensive Plan regarding intensity in activities nodes. He disputed the applicants contention the Comp Plan supports the project by citing several points regarding development styles and scale of density inside and outside the activity nodes of the 141 Corridor.

Ms. Nancy Hyde, a resident of six years and president of the Myers Park Neighborhood Association spoke in opposition, stating the project does not fit this location. She explained the frontage of this commercial store is oriented to Parsons Road and the new lane is twice as long on Parsons Rd as it is on Medlock Bridge. The main entrance is on Parsons Road, this area is residential.

John Parsons spoke in opposition, informing Council he has lived in the city since the 1960s, lives in close proximity to the site and would be directly affected by the safety issues, noise and increased traffic it will produce. Citing the Stenberg Act, he said the project is not suitable for this location and reviewed a PowerPoint slide showing the zoning surrounding the site, indicating the residential properties would be adversely impacted by the proximity of this intense commercial use. He commented the site is appropriately zoned and is suitable for residential development and opposes any change to the current zoning.

Mr. Lih Lim, a 12 year resident of Glenside Subdivision spoke in opposition of the application and referenced information obtained from a certified appraisal study evaluating decreases in home property values based on the proximity of a gas station and/or convenience store. There is no increase to our property values or benefit with this park as it is small and offers no amenities.

Dr. JJ. Shah, owner of the Gwinnett Clinic and he spoke in opposition of the project, saying his office would have to share a driveway with a fuel station that has 20 pumps and convenience store. This would negatively impact the patients visiting his facility, possibly impede use of the driveway and affect his business operations.

Joel Evans, a 10-year resident and president of the Stonehaven Homeowners Association spoke in opposition of the project, commenting it will bring increased traffic, citing 10/24/11 Racetrac's traffic impact study and it also underestimated the volume. The traffic increase would add congestion at the Medlock Bridge/Parsons Rd, he reference the city's land use code and trip generation factors for convenient stores with fuel pumps figures. Traffic is bad at this intersection; he is willing to wait for the right development.

Nancy Calzone, a 16 year resident lives in the Highgate Subdivision spoke in opposition of the project, indicating it is inappropriate for a residential community and the pocket park proposed is a large buffer offered to compensate. It will include a detention pond for run-off from the gas station and plans to donate this buffer to the city or another entity. She agreed there is a need for more green space reviewed PowerPoint slides showing other pocket parks and asked for the current zoning to remain. We want our tax dollars used for pocket parks that are an asset to the community.

Kevin Brown, a resident of 15 years lives in the Glenhurst Subdivision and is a member of the Johns Creek Chamber. He spoke in opposition of the project and indicated he has filed with Council a constitutional objection to this project. He reviewed the neighborhood survey results opposing the project and reiterated the other objections mentioned above related to traffic and the pocket park/buffer.

As there was no more time remaining for the opposition, the applicant presented his rebuttal. Mr. MacLauren clarified definitions/references of activity nodes and intensive uses in the Comp Plan. He referenced 2009 rezoning case RZ-09-013 as smaller scale use in an activity node. He noted 141 is an appropriate location for the Racetrac and mentioned any intensity of use is mitigated by the construction of the pocket park; the trip count shows a less than 3% increase (along 141) in traffic, the methodology used for the study was approved by staff and is routinely used across the state. He reminded surveys are interesting but zoning is not based on surveys, it is based on property rights and the comprehensive plan,

and commented the pocket park was suggested by the community and Racetrac feels this is a nice addition, but is willing to leave the land vacant. This is an acceptable buffer and per Staff and Planning Commission, the park must be donated, however it would be maintained in the interim. This is a developed landscape buffer and the comprehensive plan indicates a pocket park can be developed in commercial areas. Mr. MacLauren requested Council approve the request and waived his remaining time.

Mayor Bodker closed the public hearing. During discussion, Council Member Figueroa clarified staff's position on the park, Mr. Kirouac, commented staff recommended commercial use with a park; Council Member Johnson asked about defining intensive uses, Mr. Kirouac responded there are different levels of intensive uses depending on the particular geographic location and the individual characteristics of an area. Mr. Kirouac, at the request of Council Member Johnson reviewed the current zoning: C1 which allows retail and offices, restrictions would be based on a particular site plan; O-I would be office use or financial institutions; R4 is single family homes, detached. Council Member Richardson inquired about areas zoned with residential adjacent to a fuel center, there are two, existing Kroger stores with fuel stations added and Council Member Miller reviewed the parking areas and the lighting, Mr. MacLauren commented there is limited parking in the rear for staff with lighting away from the park and the options for installing lights in the park is subject to Council feedback. Council Members Richardson and Miller mentioned visiting the new Racetrac in Acworth and inquired if the scale is similar to the one being proposed, by which Mr. MacLauren it is very similar. Council Member Stewart inquired on the volume and frequency of fuel trucks, Mr. MacLauren indicated it would be based on demand, but typical stores receive delivery once a day and would conform to delivery hours specified above. Council Member Johnson asked about the site selection, which is based on location, traffic flow and visibility; Per Council Member Figueroa request Mr. Kirouac explained the Comp Plan allows for commercial use along the 141 Corridor and in reviewing past zoning decisions for 141/Medlock Bridge, historically the policy was to limit the number of fuel stations along the corridor and many of the location prohibitions were incorporated into the comp plan, drawing distinctions between arterial roads such as McGinnis Ferry or Abbotts Bridge, in contrast to collector roads such as Parsons Road, which tend to be more residential. There was brief discussion by Mayor Bodker and Council Member Richardson regarding collector road vs. arterial roads during the development of the comprehensive plan and there was a difference in the 141 corridor. Council Member Johnson asked Public Works Director Black to comment on traffic; Mr. Black did not anticipate substantial increases in traffic from the business, but did say actual traffic counts would have to be performed; he mentioned overall traffic in the area has increased 20% in the last year.

Council Member Figueroa noted options available to the Council and Mr. MacLauren noted there was no interest in developing the project without the fuel pumps. Mr. Kirouac clarified the distinctions between a denial and denial without prejudice.

Council Member Miller motioned, seconded by Council Member Stewart to deny Ordinance 2011-12-29 for RZ-11-009 & VC-11-009-1 & 2. In further discussion, Council Members, Richardson, Figueroa, Miller and Mayor Bodker noted the concept and design of this Racetrac market place is innovative but the development at the proposed location is not a suitable fit; Council Member Johnson disagreed and commented residents he talked with supported the project, liked the addition of the pocket park and the development would be more suitable than a four story office building; there was clarification that in O-I a four-story building would be allowed and not limited to two-stories. There being no further discussion, Mayor Bodker called the question and the motion passed 5 in favor and 1 opposed; with Mayor Bodker and Council Members Miller, Stewart, Richardson and Figueroa voting in support of the motion and Council Member Johnson opposing the motion. (**ORDINANCE 2011-12-29-DENIED**)

Council Member Raffensperger returned to the dais for the remainder of the meeting. Mayor Bodker called for a five-minute recess as attendees were leaving the council chambers. Mayor Bodker called the meeting back to order.

NEW BUSINESS:

ELECTION OF MAYOR PRO TEM: Mayor Bodker opened the floor for nominations. Council Member Johnson nominated Council Member Miller for Mayor-Pro-Tem. There were no other nominations. Council Member Johnson motioned, seconded by Council Member Richardson to elect Council Member Miller as Mayor-Pro-Tem. There being no further discussion the motion passed unanimously and Council Member Miller was elected as the Mayor Pro-Tem. **(ACTION ITEM)**

FUND BALANCE POLICY: As this item was discussed during a previous Work Session Meeting, Council had no additional questions and no presentation was requested. Council Member Figueroa motioned, seconded by Council Member Richardson to approve Resolution 2012-01-02 to adopt and approve the Fund Balance Policy in Accordance with GASB 54 for the City of Johns Creek. There being no further discussion the motion passed unanimously. **(RESOLUTION 2012-01-02)**

APPOINTMENT TO THE BOARD OF ZONING APPEALS: Mayor Bodker mentioned the nominee for Post B of the BZA was withdrawn after submission to Council and this post will be considered at another time. He nominated the appointment of current members, Lea Taylor for Post A and Mary Shevlin for Post C. Council Member Richardson motioned, seconded by Council Member Figueroa to approve Resolution 2012-01-03 as amended, appointing Lea Taylor- Post A and Mary Shevlin- Post C of the Johns Creek Board of Zoning Appeals. There being no discussion, the motion passed unanimously. **(RESOLUTION 2012-01-03)**

APPOINTMENT TO THE PLANNING COMMISSION: Mayor Bodker nominated Steve Broadbent to the vacant Post A, and re-nominated Stan Hicks to Post B and Kerry Middlebrooks to Post C of the Planning Commission. Council Member Stewart motioned, seconded by Council Member Miller to approve Resolution 2012-01-04 appointing Steve Broadbent- Post A, Stan Hicks-Post B and Kerry Middlebrooks-Post C to the Johns Creek Planning Commission. There being no discussion, the motion passed unanimously. **(RESOLUTION 2012-01-04)**

APPOINTMENT TO THE CITY OF JOHNS CREEK CVB: Mayor Bodker nominated Michael Cannady to the CVB, mentioning he previously served on the Board. Council Member Miller motioned, seconded by Council Member Raffensperger to approve Resolution 2012-01-05 appointing Michael Cannady to the CVB, There being no discussion, the motion passed unanimously. **(RESOLUTION 2012-01-05)**

OTHER BUSINESS: No Other Business.

PUBLIC COMMENT: Mark Endres commented on the denial of the Racetrac rezoning request and commended Council Member Johnson on supporting the project , suggested those in opposition could pool funds to purchase the property and said the neighborhood could use a gas station going south on Medlock.

MAYOR'S COMMENT: Mayor Bodker thanked everyone for attending and sharing their opinions with Council.

ADJOURNMENT: There being no further business, Council Member Figueroa motioned, seconded by Council Member Stewart to adjourn the meeting. The motion carried unanimously and the meeting was adjourned.

Approved by:

Attested by:

Michael E. Bodker, Mayor

Joan C. Jones, City Clerk