

CITY OF JOHNS CREEKCOUNCIL MEETING

July 22, 2013@ 7:00pm

The Mayor and Council of the City of Johns Creek held a monthly meeting on Monday, July 22, 2013. 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
Finance Director Monte Vavra
City Manager John Kachmar
City Attorney Bill Riley

PLEDGE OF ALLEGIANCE: Led by City Manager John Kachmar.

OPENING REMARKS: Mayor Bodker welcomed everyone to the meeting and issued a reminder about the dangers of the Chattahoochee River during this time of year. He cautioned those engaging in recreational activities to check with the National Park Service on the dam release schedule by calling 1855-Dam Flow. The Mayor also announced several upcoming City events, registration for the co-ed softball is open and interested individuals may register on the City's website, the city will be hosting a shredding event on Saturday, August 3rd, from 9am to 1pm, and there are still a few spots open for the Citizen Fire Academy, which begins in October for a 8- week course, and signup ends Oct 16. In closing, the Mayor mentioned the third installment of the *Movies at Newtown Park* series will be on Saturday, August 24th, with the feature presentation of *Oz: The Great and Powerful*

MINUTES: Council Member Raffensperger motioned, seconded by Council Member Stewart to approve the July 8, 2013 11:30am and 6:00pm Millage Rate Public Hearings Minutes, Work Session Summary and Council Meeting Minutes. There being no discussion, the motion passed unanimously.

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

PUBLIC COMMENT: Mr. John Buckett addressed Council and commented on the proposed pavement work planned for Parsons Road near Abbotts Bridge Road, discussed during tonight's Work Session, indicating he was in favor of the work, but was dismayed the St. Ives HOA was only notified of the plan today and was concerned about the impact the work would have on the residents and particularly contractors accessing the property; he would like to further discuss this issue with the City as well as the possibly of adding sidewalk curbing with this project and on adjacent roads.

Mr. Bill Maygar commented and stated he was disappointed with the Council's decision to pursue an investigation of Mayor Bodker on unsubstantiated charges. He said this taints the City, is politically motivated and he is concerned with the funds expended for the investigation and the matter could not have been handled in-house. He asked that Council disclose the concerns which prompted the investigation.

CONSENT AGENDA: Council Member Johnson motioned, seconded by Council Member Figueroa to approve the Consent Agenda, which included **RESOLUTION 2013-07-14** - Approve a Proclamation Recognizing W. Foster Michaelis as the 2013 National History Bee Elementary School National Champion and an **ACTION ITEM**- approve the Ratification of Right-of-Way Easement and Dedications to the City of Johns Creek There being no discussion, the motion passed unanimously.

ANNOUNCEMENTS: City Clerk Jones announced the following upcoming meeting:

- Monday, August 5th Work Session@5:00pm followed by 7:00pm Council Meeting

REPORTS & PRESENTATIONS: Mayor Bodker and the City Council presented a Proclamation to Foster Michaelis in recognition of his 2013 National History Bee Elementary School National Championship.

OLD BUSINESS:

ZONING TEXT AMENDMENT-A-13-001: A Public Hearing on Ordinance 2013-04-10 to Amend Article III, Section 3.3., "Definitions," Article XIX, Section 19.3.1, "Alternative Antenna Support Structure To Exceed The District Height," Article XIX, Section 19.3.1(2), "Antenna, Tower, And Associated Structures (Radio, T.V., Microwave Broadcasting, Etc.) To Exceed the District Height," And Article Xix, Section 19.4.7, "Antenna Tower, And Associated Structure (Radio, T.V., Microwave Broadcasting, Etc.) to Exceed the District Height," Of The Zoning Ordinance Of The City Of Johns Creek was held.

Assistant City Attorney Scott Hastey presented and distributed to Council photos of sample antenna tower structures. He reviewed the changes to the text amendment, noting the ordinance provides a process for obtaining administrative permits and establishes standards for various types of wireless communication support structures. He reviewed the districts where the antennas would be allowed, prohibited, and the size type and location of where the structures could be installed, noting any deviations from the requirements outlined for an administrative permit would require a Special Use Permit. This process would require the review and approval of the Council. Mr. Hastey highlighted several substantive changes to the provisions, including collocation, which allows the addition of transmission equipment on an existing antenna structure and permit the modification of the compound structure to be increased up to 20%, permitting the use in an AG1 district where institutional use has already been permitted, and allowing mounting of structures to buildings with added restrictions for building mounting. He informed Council the Planning Commission has reviewed the amendment and their comments have been incorporated in the documents presented to Council; and after holding two Public Hearings they have recommended approval of the amendment.

In discussion, Council Member Miller clarified the highlighted edits in the draft document to distinguish between original text, those changes recommended by Legal and those of the Planning Commission; and Attorney Hastey confirmed for Council Member Richardson a permit would be required for a collocation where the size of the compound or antenna structure is enlarged.

Mayor Bodker opened the Public Hearing for Ordinance 2013-04-10 to Amend Article III, Section 3.3., "Definitions," Article XIX, Section 19.3.1, "Alternative Antenna Support Structure to Exceed the District Height," Article XIX, Section 19.3.1(2), "Antenna, Tower, And Associated Structures (Radio, T.V., Microwave Broadcasting, Etc.) To Exceed The District Height," And Article Xix, Section 19.4.7, "Antenna Tower, And Associated Structure (Radio, T.V., Microwave Broadcasting, Etc.) To Exceed The District Height," Of The Zoning Ordinance Of The City Of Johns Creek and called for all those speaking in favor.

City Clerk Jones read the Zoning Public Hearing Procedures.

Mr. David Kirk, a representative from Troutman and Saunders, addressed Council, stating he represented Verizon Wireless and was also speaking on behalf of AT&T. He voiced support of the amendment and thanked Council for previously deferring consideration of this matter to allow the time for members of the telecommunications industry to meet with staff and the Planning Commission to address their concerns. He commended Attorney Hastey and Community Development's Mike Williams and Justin Kirouac for their efforts in working with the industry to draft an amendment which they could support. He also recognized in attendance, Mr. Dennis Boyden from AT&T and Rudy Kilgen from the technical side of the industry if Council had additional questions.

As there was no one else wishing to speak, Mayor Bodker closed the Public Hearing.

Mayor Bodker reviewed each page of the proposed amendment for Council's comments. There were comments on *page 4, definitions*; Council Member Miller asked for clarification on defining "historic structures" and Community Development Director Williams indicated staff will refer to the Historic Study commissioned by the City last year as a guide. There was also discussion on processes in place at the local, state and national levels to ensure the proper identification of structures deemed historic; Mayor Bodker commented on the reference to *Communication Services*, and it was noted the distinction is made to distinguish between retail facilities and "wireless service structures"; Mayor Bodker commented on the "*Propagation Study*" and Legal clarified the application requires submission of the study which identifies an area where there are service needs and includes a proposal of various locations for placing a structure to meet the need; There were additional comments and discussion on pages 7, 8, 9, 18, 24, 27, 28 and 31 which included having consistency in the terms throughout the text, addressing possible noise issues with the equipment and the costs associated with obtaining an administrative permit.

Council Member Miller motioned, seconded by Council Member Richardson to approve Ordinance 2013-04-10 amended as follows: on *page 7, Section 3(b) 1.- Insert, ...residential dwelling a "minimum" distance equal to the height...;* *page 8, Section 3(b) 11.- insert, ...professional "Civil and/or Structural" Engineer licensed in the State of Georgia...;* *page 18, Section 5(b) 5.- replace the word "may" with, ...as approved by the Director "shall" be installed...;* *page 24, Section 6(b) 1.- Insert, ...residential dwelling a "minimum"*

distance equal to one and one-half (1 ½)...; Page 27, Section 6(c) 6.- insert, ...photo simulation "**and balloon test**" of the tower...; page 28, Section 6(c) 15.- to read, ...shall not exceed "**\$3,500.00**"...; page 31, 6(e) 3.-, to read ... State requirements, for "**45 days**" prior to...; There being no further discussion the motion passed unanimously. (**ORDINANCE 2013-04-10**)

NEW BUSINESS:

REZONING CASE RZ-13-007 CURTIS HICKS – 5400 BLOCK OF STATE BRIDGE ROAD: The Public Hearing and Consideration of Ordinance 2013-07-18 for Rezoning Case RZ-13-007 Curtis Hicks – 5400 Block of State Bridge Road – R-1 Conditional and O-I Conditional to MIX Conditional to Allow 60 townhomes, 5,000 square feet of office and 9,275 square feet of retail and VC-13-007- and Concurrent Variance to reduce landscape strip along State Bridge Road from 30 feet to 10 feet was deferred.

Deputy Director Kirouac informed Council the applicant has requested a deferral and has subsequently revised the rezoning request. The deferral was approved by the Planning Commission and he requested Council defer consideration of this application to the August 26th Council Meeting.

Council Member Richardson motioned, seconded by Council Member Stewart to defer consideration of Ordinance 2013-07-18 to the August 26, 2013 Council Meeting. There being no discussion, the motion passed unanimously and the case was deferred.

REZONING CASE RZ-13-008 – ABBOTTS BRIDGE MIXED-USE, LLC – 5000 – 5100 BLOCK OF ABBOTTS BRIDGE ROAD: The Public Hearing and Consideration of Ordinance 2013-07-20 for Rezoning Case RZ-13-008 – Abbots Bridge Mixed-Use, LLC – 5000 – 5100 Block of Abbots Bridge Road -MIX Conditional and AG-1 to MIX Conditional - Change in conditions to alter site plan to allow 105 multi-family units, 5,000 SF of office space, and 5,000 SF of retail space and VC-13-008-1 & 2 – Concurrent variances to reduce the required 40-foot landscape strip to twenty (20) and thirty (30) feet; and to deviate from Community Standards on building materials was deferred.

Deputy Director Kirouac informed Council the applicant has also requested a deferral which was approved by the Planning Commission. He requested Council defer consideration of this application to the August 26th Council Meeting.

Council Member Johnson motioned, seconded by Council Member Miller to defer consideration of Ordinance 2013-07-20 to the August 26, 2013 Council Meeting. There being no discussion, the motion passed unanimously and the case was deferred.

CITY OF JOHNS CREEK 2013 AD VALOREM TAX RATE A Public Hearing and Consideration of Ordinance 2013-07-21 for the Mayor and Council to Fix the Ad Valorem Tax Rate of the City of Johns Creek for Fiscal Year 2013 and for Other Purposes was held. Finance Director Vavra presented and indicated this was the third and final public hearing prior to adoption of the 2013 Millage Rate. He stated there was an estimated decrease of about \$50 million property assessments from previous year.

Mayor Bodker opened the public hearing for Ordinance 2013-07-21 for the Mayor and Council to Fix the Ad Valorem Tax Rate of the City of Johns Creek for Fiscal Year 2013 at 4.614 Mills and for Other Purposes. The Mayor noted this is the same rate that has been in place since City's incorporation and opened the public hearing calling for all those who wished to comment to come forward.

Stephanie Endres addressed Council and asked that the tax remain the same or better yet be rolled back.

There being no one else wishing to speak, Mayor Bodker closed the Public Hearing. Council Member Figueroa motioned, seconded by Council Member Stewart to adopt Ordinance 2013-07-21 to Fix the Ad Valorem Tax Rate of the City of Johns Creek at 4.614 Mills for Fiscal Year 2013 and for Other Purposes. Mayor Bodker commented there is a decline in the digest and property assessments; noting that from 2008 to date cumulatively the City has lost about \$2 million in property taxes but has managed to do more with less. There being no further comments the motion passed unanimously setting the 2013 Ad Valorem. (**ORDINANCE 2013-07-21**)

MEMORANDUM OF UNDERSTANDING BETWEEN CITY OF JOHNS CREEK, GEORGIA AND THE JOHNS CREEK VETERANS ASSOCIATION: Assistant City Attorney Hasteley addressed Council and noted the changes Council discussed during the July 8th Work Session have been incorporated in the document presented for consideration. Council Member Richardson motioned, seconded by Council Member Raffensperger to approve the Action Item approving the Memorandum of Understanding between the City of Johns Creek, Georgia and the Johns Creek Veterans Association, Inc. Regarding the Johns Creek Veterans Memorial Walk. There being no discussion the motion passed unanimously. (**ACTION ITEM**)

BID AWARD TO STEELE & ASSOCIATES: As this item was discussed during a Council Work Session, there were no additional questions. Council Member Johnson motioned, seconded by Council Member Figueroa to Approve the Bid Award to Steele & Associates, Inc. in the Amount of \$136,737.35 for the Construction of a 10-foot Wide Trail along the North Side of Kimball Bridge Road and Webb Bridge Road to Jones Bridge Road. There being no discussion the motion passed unanimously. **(ACTION ITEM)**

EXTEND THE LEASE TERM FOR 11445 JOHNS CREEK PARKWAY (PUBLIC SAFETY BUILDING): As this item was discussed during a Council Work Session, there were no additional questions. Council Member Richardson motioned, seconded by Council Member Miller to Approve Resolution 2013-07-15 to Authorize and Approve the Exercise of an Option to Extend the Lease Term for 11445 Johns Creek Parkway (Public Safety Building) for an Additional One(1) Year Term. There being no discussion, the motion passed unanimously. **(RESOLUTION 2013-07-15)**

BID AWARD TO BALDWIN PAVING: As this item was discussed during tonight's Council Work Session, there were no additional questions. Council Member Raffensperger motioned, seconded by Council Member Richardson to approve the Action Item to approve the Bid Award to Baldwin Paving in the amount of \$117,562.99 for reconstruction of a portion of Parsons Road near Abbotts Bridge Road. There being no discussion, the motion passed unanimously. **(ACTION ITEM)**

WAIVER OF AN ATTORNEY-CLIENT PRIVILEGE: Council Member Johnson reported and asked Council to consider waiving the Attorney Client Privilege in regard to providing information during the investigation of the Mayor which has commenced. (Mayor Bodker recused himself from further discussion as the matter involves him, Mayor Pro Tem Miller now presided). Council Member Johnson continued that this waiver would allow the City Attorney and/or other Attorney's which have worked on behalf of the City to be able to answer inquiries during the investigation noting anything discussed during Executive Session will be redacted. Council Member Richardson wanted to clarify this waiver would only be applicable to allow the firm conducting the investigation, Wilson Morton & Downs, to access information; Council Member Stewart asked City Attorney Riley his opinion on whether the Waiver is necessary. Attorney Riley expressed some reservations on providing advice on the issue, indicating he is also a witness in the investigation and as an attorney has some ambivalence as to what kind of information can be provided without having the client- privilege waived; Council Member Figueroa suggested modifying the waiver to specify the attorney-client waiver is "solely" for providing information relating to the investigation; Council Member Stewart asked for clarification on whether the specific attorneys for which the waiver would be applicable could be named, and it was noted there have been several who have worked on behalf of the City and in an effort to not hinder the investigation this was left open ended. Council Member Johnson motioned, seconded by Council Member Raffensperger to waive the attorney- client privilege as specified in a document read into the record by the City Clerk as follows:

In order that the investigation authorized by the City Council for the City of Johns Creek into the conduct and actions of the Mayor in relation to the City Charter, City Ethics Code and State and Federal Laws may proceed unimpeded, and that all relevant information may be gathered by the law firm of Wilson Morton & Downs, LLC serving as the investigators for the City Council, which includes each of its members and the Mayor, and on behalf of the City of Johns Creek and so that the facts and truth may be determined as it relates to the same, the Johns Creek City Council hereby declares and resolves the following:

The undersigned members of the City Council of Johns Creek, which includes the Mayor, knowingly waive the attorney-client privilege with respect to all attorney-client privileged advice and communications we have had, in our official capacities, and on behalf of the City with the following attorneys: William Riley, Esq.; Scott Hastey, Esq.; other attorneys at the law firm of Riley McLendon, LLC; and any other attorneys who have from time to time worked on or are now working on matters related to the City in representation of this Council, which includes each of its members and the Mayor, in their official capacities and the City. This waiver of attorney-client privilege is solely given to permit all such attorneys to speak freely, fully and openly with the investigators with respect to any and all advice and communications they have had with the Council, each of its members including the Mayor, in their official capacities and any and all staff members of the City or entities contracted with the City who may have communicated or consulted with such attorneys in relation to City business or matters related to the same.

We further declare and resolve that those voting in favor of this waiver, knowingly waive any attorney-client privilege that may exist with any such attorneys as noted in the paragraph above with respect to any and all communications that may have been outside of our official capacities, if any such communications exist, that are related to the subject matter of the investigation.

There being no further discussion the motion passed unanimously.

Mayor Bodker returned to the dais.

OTHER BUSINESS: No other Business.

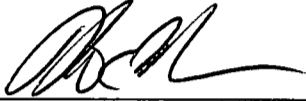
PUBLIC COMMENT: Mr. John Buckett addressed Council and discussed the upcoming Parsons Road pavement project and asked that the St. Ives HOA and their security team be kept informed as the work proceeds.

MAYOR'S COMMENT: Mayor Bodker thanked all for attending. He again urged caution when engaging in recreational activities on the Chattahoochee River and wished everyone a good night.

EXECUTIVE SESSION: No Executive Session held.

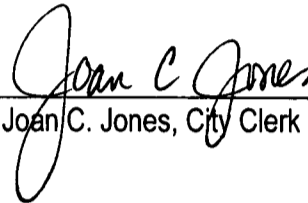
ADJOURNMENT: Council Member Johnson motioned to adjourn the meeting, seconded by Council Member Miller. The motion carried unanimously and the meeting was adjourned.

Approved by:



Michael E. Bodker, Mayor

Attested:



Joan C. Jones, City Clerk

