



CITY OF BROOKLET

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Joe Grooms III, Mayor
Nicky Gwinnett, Mayor Pro-Tem
Bradley Anderson, Councilman
Rebecca Kelly, Councilwoman
James Harrison, Councilman
Johnathan Graham, Councilman

City Attorney
Hugh Hunter

City Clerk
Lori Phillips

**DEDICATED WORK SESSION
MINUTES
MAY 5, 2022
6:30 PM**

1. **CALL TO ORDER** - Mayor Joe Grooms, III
2. **INVOCATION** - Mayor Joe Grooms, III
3. **DISCUSSION ITEMS:**

3.1. Downtown Sewer Project

Per Councilman Anderson, there was some interest about how a downtown sewer can be created, the initial discussion was for a single property owner, obviously one of the things that we want to do is make sure that we can do things fairly for all for those down in that area that need some level of sewer service. City Attorney prepared a legal opinion back in February 2022 and at that point in time, Attorney Hunter provided us with a process that he felt would keep the city on a legal path if that is what the city wanted to do.

The opinion of the City Attorney is as follows:

In short, for reasons which follow, it is my opinion that whatever action Council takes to remedy the problem should result in a substantial public benefit, and not primarily benefit one business only, and that a good option to accomplish this purpose would be the formation of a City Business Improvement District as authorized by state statute, whereby the cost of providing a sewage disposal system could be recouped by the City from the property owners benefiting from such system.

A. GRATUITIES

The gratuities clause of the Georgia Constitution provides, inter alia, that "The General Assembly shall not have the power to grant any donation or gratuity." Art.

A. GRATUITIES

The gratuities clause of the Georgia Constitution provides, inter alia, that "The General Assembly shall not have the power to grant any donation or gratuity." Art. III, Sec. VI, Par. VI(a). The Georgia Appellate Courts have construed this provision to also be applicable to

cities and counties. *Grand Lodge & c. v. City of Thomasville*, 226 Ga. 4, 7(3)(b), 172 SE 2d 612 (1970); *City of Lithia Springs v. Turley*, 241 Ga. App. 472,475, 526 SE 2d 364,367 (1999). In analyzing transactions under the gratuities clause, one (1) of the questions that must be asked is whether the municipality (public) obtains a substantial benefit. *City of Lithia Springs v. Turley*, *Supra*, 241 Ga. App. at 475, 526 SE 2d at 367. Therefore, whatever approach the City of Brooklet takes to deal with this problem, there must be a substantial public benefit. If the benefit flows totally or mostly to a private business without substantial public benefit, it is my opinion that the transaction would violate the gratuities clause of the Georgia Constitution.

B. GENERAL POWERS OF THE CITY REGARDING SEWER RELATED SERVICES

The City of Brooklet does have under its Charter the authority to acquire, lease, construct, operate, etc., public utilities, including sewage disposal systems. Brooklet Charter Section 1-4(20). The City also has the right to provide for the acquisition, construction, building, operation and maintenance of, among other things, public improvements. Brooklet Charter Section 1-4(26). Furthermore, the City has the power to make contracts for public utilities and public services, and to prescribe the rates and regulations therefore. Brooklet Charter 1-4(29). Additionally, the City has the authority to levy a fee, charge, or sewer tax necessary to assure the acquiring, constructing, equipping, operating, maintaining, and extending for a sewage disposal plant and sewage system, and to levy on those to whom sewers and sewage systems are made available a sewer service fee, charge, or sewer tax for the availability or use of the sewers, etc. Finally, the City has the authority to levy and provide for the collection of special assessments to cover the costs for any public improvements.

C. CITY BUSINESS IMPROVEMENT DISTRICTS

Chapter 43 of Title 36 with the Georgia Code provides authority to create City Business Improvement Districts. Brooklet would have the authority under that Act to create a business improvement district for the purpose of serving some or all of the downtown businesses with some type of sewage treatment system, and charge fees, taxes or both to recoup the cost of providing this service. O. C. G. A. § 36-43-1 et. seq. Under the Act, the boundaries of the special district would have to be defined, and could include those businesses in need of the service. If this route is taken, it could be implemented by a written petition signed and acknowledged by either: (1) 51% of the municipal taxpayers of the district proposed for creation; or (2) municipal taxpayers owning at least 51% of the taxable property subject to ad valorem real and personal property taxation in the proposed district. The petition must be accompanied by a district plan, budget and formula for imposing assessments on the taxpayers within the district. If approved, the city could impose

ad valorem taxes within the district, and/or add-ons to occupational taxes to recoup the monies spent. O. C. G. A. § 36-43-4 (2) & (5). A couple of ideas come to mind for apportioning the cost of any sewage disposal system. Perhaps the fairest would be to apportion costs based upon usage of the system. A second idea would be to apportion costs based upon the number of employees. There would have to be a public hearing and notice of that hearing advertised in the newspaper at least ten (10) days prior to the date of the hearing. If any of the costs are financed, we would need to look at any requirements for financing. Depending upon the source of financing, it is possible that there would have to be a special referendum held for qualified voters within the special district vote on any such financing, and the debt could not exceed, along with other debt of the City, 10% of the assessed value of all property taxes within the City. Georgia Constitution Art. IX, Sec. V, Par. II; Georgia Constitution Art. IX, Sec. V, Par. VI.

D. EXISTING DRAIN FIELD

The restaurant appears to have the most immediate need for sewage disposal. Apparently, there is a city-owned drainage field that could possibly be used with a modified lift station. If Council likes the City Business Improvement District concept, it might be possible to include allowing the restaurant to utilize that particular drainage field and recoup that cost from the restaurant, as part of the overall plan for the district for sewage disposal. Of course, the requisite number of property owners would need to approve the overall plan.

VI. Other Possibilities

There may be other possibilities to remedy the problem. But as stated at the outset, whatever option is chosen should have a substantial public benefit, and not the primary benefit accruing to one business only.

Per Attorney Hunter, from a legal stand point he has proposed the following, to create a special district such as a downtown business district and you would define the area of the sewage problem and the landowners themselves would meet and come up with a way to finance what they wanted to do and of course this legal opinion was done before the city was awarded the sewer infrastructure grant and it was thought that maybe one of the possibilities was to build a community sewage facility on a piece of city property, apparently that will probably take as long to get approval as it would if you would to the same to Statesboro. Per City Engineer Wesley Parker, that wouldn't be worth spending the money to do it twice. Per Attorney Hunter, in that same concept, if these property owners within this district were to agree and again this would get their votes in basically, to allow the restaurant (El Maguey) to do this and come up with a way of funding it through special assessments with sewers, so to do that to protect the city, you probably would have to get the property owners involved in it to, what if you spend all this money and the restaurant gets competition down the street and closes up, how will you recoup the money? Generally, it would be through taxes and maybe the property owner himself would be involved in that to protect the city or the city tax payers, but there might be away if everybody agreed within that concept of a

downtown business district to allow the restaurant to utilize the city property off of Railroad Street, if everyone voted for it and said this is how it is going to be funded, etc.... so that would be one possible way to do it. Another possible way would be to put it out for bids, there is a state statute that deals primarily with selling city property where you have to go through a bidding process, the same thing applies to leasing at least governmental type property and this piece of property off of Railroad Street is being used for a community sewer so that is a governmental use, so there is a statute where you have a governmental use of city property that you can lease that if you go through a bidding process and this one would be a little more complicated than just leasing a specific piece of property because you've got city rights-of-way that would be involved in it, you would have to have a franchise agreement with the successful bidder because they have to be able to have the right to utilize the city rights-of-way for piping and all that kind of stuff. But you can advertise it for bids, you can even put in there that the purpose of it is to solve this downtown sewage problem and reserve the right to reject any and all bids but if one of the other city businesses downtown bids on it, it would be kind of hard to turn down if they met the bid. City Attorney asked if the council thought if any other businesses would bid on it, Mayor Pro-Tem stated he didn't think they would. Per Councilman Anderson, he had a conversation with Farmers and Merchants/Morris bank, the CEO and they stated they would be interested in it as well, which is one of the reasons he does not want to create an inequitable situation where we have two property owners interested in it. Attorney Hunter asked if they would bid on it and Councilman Anderson stated that he didn't know if they would bid on it, he just knows that they need some sort of immediate relief as well. Councilman Anderson thinks that Wesley Parkers concern is that this was not a traditional or necessarily what the health department would legally bless per say and you don't want to take and put us or them in a bad situation where about e are doing something in terms of not being open to all or provided to all, in essence, we're going to let you do it, but we are going to kind of distance ourselves from it. So that is why Councilman Anderson thinks the concern for the bidding piece in that conversation was an issue. Per Attorney Hunter, the health department does not want to issue a permit for it and apparently would look the other way is what he thinks he is hearing from what Councilman Anderson is saying. Per Wesley Parker, they are not going to issue a permit for it, but they are not going to stop the process. Per Attorney Hugh Hunter, if we put it out for bids and he is not completely comfortable with this, but you could put it out for bid and say that the successful bidder has to obtain any and all required permits. Per Councilman Anderson, the other thing that I don't want to get involved with as a governmental entity as a whole and I think if you are an individual and you wanted to do things such as trenching a sewer line in the backyard and run the risk of not getting caught, then you can do that, he doesn't necessarily know that as a city we need to endorse, promote something that's not necessarily legal or even ethical. Per Mayor Grooms, what if you do all that work for that one individual and they do not get a permit to open up the second part? Per Wesley Parker, the way he understands it is that to open the second portion, does the health department have to sign off on that? Basically, what they were saying is that they do not traditionally permit offsite systems but if you were to use this other

system, they imply that they would but he does not have anything in writing, so that is a risk, basically if they were to use this capacity down here that would be enough. Per Mayor Grooms, the only capacity that we can use would be from the restaurant and that would be the only, we couldn't put Farmers and Merchants/ Morris Bank on it because of the understanding it would be just for the one business. Per Wesley Parker, we would assume that but we could probably tell the health department that we have a public health concern because the reason the health department were doing things in a nontraditional manner is we have a public health hazard there. Per Councilman Graham, can we take the individuals out and just say that it is for that whole side of the street? That it is not draining properly and that the city is coming in to put in a line that will drain into a bigger landfill and its for all? Per Councilman Anderson, I think that goes back to what your initial conversation was which was the downtown district and if we do that and that may be permissible to, the concern was that was a year to get that possibly permitted. Per Councilwoman Kelly, it's going to take almost as long to that as it would to just do the sewer project. Per Councilman Graham, I understand that, but to take the individual businesses out and to say that we levitating this side of the street because raised concerns of the sewer system, that businesses can be open, that would take the restaurant and everything out, they will still have to deal with the health department, but we can say as the city, we are not building it for the restaurant, we are building it the downtown development. Per Mayor Pro-Tem, Wesley do you think the health department will let us catch all four of them? Per Wesley Parker, I believe at that point they are going to ask for an analysis, we would need to provide some sort of waste water analysis. Per Mayor Grooms, the only way you are going to get that is to see how much water you are consuming to be able to get a part of it. Per Wesley Parker, it will be hard to tell because he thinks most of those buildings are empty. Per Wesley Parker, its possible. Per Mayor Pro-Tem Gwinnett, if the health department would let us do that whole side of the street as a temporary fix that would relieve the pressure down there and make everybody happy and we can get something done without waiting two to three years to make anything move. Per Councilwoman Kelly, do we have to pay for it, or does the property owners pay for it? Per Mayor Pro-Tem Gwinnett, I do not see why we wouldn't have to pay for it because we are going to charge them a sewer fee and I thought as long as someone was paying you a fee its not gratuitous. Per Councilman Anderson, he thinks yes and no. Here's mu thing, do we other people in the city of Brooklet that have legitimate sewer issues that in terms of there is no legitimate fix on their property. Per Mayor Pro-Tem Gwinnett, sure we do. Per Councilman Anderson, then if that is the case how do we pick and choose. Per Attorney Hunter, you can classify, if you have several that are the same boat that would be a lot more arguable than one. Per Councilman Andersons biggest concern saying we are going to do this temporarily because we have the bigger project coming, I think when you look at the scope of the larger project and I think getting the sewage line to Statesboro we will have two to two and a half million dollars easily in just that project and not a soul in the city tied to that collecting any money and then your talking in terms of easily, my assumption, I don't know if it's the least expensive but probably what makes the most sense where you capture the most homes is take the inner part of the city because that is where the line is going

straight through and try to connect it as quickly as possible, the problem is your going to tear up more streets but we're easily going to stack another two and a half, three million on that just to get some houses to fund or to at least partially fund among that. Until we get more direction and can really do a true time line and get a cost of what that bonding project would be, it may out price itself. Per Mayor Pro-Tem Gwinnett, that's the one good thing about running that line down Railroad Street, it is technically temporary, but has soon as that lift station goes in and that line goes to Statesboro, you abandon that field down there and you reverse that line that is already there and pump it back to the new lift station and that gives you an immediate 25 customers which is not much but it is a start.

There was a brief discussion about hiring a consultant to walk us through, to help give us an idea with the bonding service and someone that has the experience to help guide us.

Councilman Anderson will reach out to GEFA for more information about what is our bonding compacity, Councilwoman Kelly will also go through her documents from GMA to look for information as well.

Council agrees that we need to move forward with asking Wesley Parker to begin working towards a new well.

If anyone would like a recorded copy of the meeting in order to listen to the full discussion, please contact the City Clerk.

4. ADJOURNMENT

Motion made to adjourn.

Motion:

Second:

Ayes: Brad Anderson, Nicky Gwinnett, James Harrison, Johnathan Graham, and Rebecca Kelly

Motion carried 5-0

Approved this _____ day of _____, _____.

Joe A. Grooms, III, Mayor

Lori Phillips, City Clerk