

The Board of Commissioners of Fayette County, Georgia met in Official Session on Thursday, August 26, 2004, at 7:00 p.m. in the public meeting room of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

COMMISSIONERS PRESENT: Greg Dunn, Chairman
Linda Wells, Vice Chair
Herb Frady
Peter Pfeifer
A.G. VanLandingham

STAFF MEMBERS PRESENT: Chris W. Cofty, County Administrator
William R. McNally, County Attorney
Carol Chandler, Executive Assistant
Peggy Butler, Chief Deputy Clerk

Chairman Dunn called the meeting to order, offered the invocation and led the pledge to the flag.

PUBLIC HEARING:
REZONING PETITIONS:

Commissioner Wells remarked at this point in the agenda the Board would consider requests for the rezoning of property in our county. She said the policy required at least two public hearings — the first before the Planning Commission and the second before the County Commissioners. She said at this hearing the Board would listen to the concerns of everyone, whether in favor or opposition to the rezoning petition. She pointed out when a rezoning petition was called, the petitioner or representative for the petitioner would be allowed 15 minutes in which to present the details of the request, followed by anyone who wanted to voice support for the request. She stated that the Chairman would then allow all those individuals who were opposed to the rezoning to stand for a moment to display their opposition. She said the Chairman would then ask those individuals who wished to come to the podium to speak to remain standing so the Board and staff could get an idea of how to allocate its time. She said the Board would allow up to 3 minutes for each speaker. She said when the persons speaking in opposition had finished, the petitioner would be given an opportunity to rebut any of the points raised. She remarked in fairness to all parties, the petitioner would be entitled to equal time to address the Commissioners as all those in opposition.

Commissioner Wells further remarked that these hearings were a part of the permanent record and speaking at the podium with the microphone helped staff with their task of recording comments and ensured everyone being heard. She remarked when it was an

individual's turn to speak that they come to the podium, state their name and address and direct their comments to the Board only. She asked that after individuals speak that they sign the sheet that would be provided by the Marshal in order for names to be spelled correctly for the record.

Commissioner Wells stated that the Board wanted to hear from everyone who had something to say and they would pay close attention to each point raised. She said it would not be necessary for the same point to be raised over and over. She thanked everyone for their participation and announced that the Zoning Administrator would begin introducing each request in the order they appeared on tonight's agenda.

PETITION NO. 1130-04

Zoning Director, Aaron Wheeler read Petition No. 1130-04, ARC Enterprises, Owners, and Scarbrough & Rolader Development, Agents, request to rezone 26.593 acres from R-70 to develop 12 single-family dwelling lots. This property is located in Land Lot 21 of the 7th District and fronts on Eastin Road and Sandy Creek Road.

Donna Black, represented Scarbrough & Rolader Development. stated they were proposing a twelve lot subdivision on 26 acres on Sandy Creek Road between Eastin Road and Flat Creek Trail. She said the property was currently zoned R-70 which allowed for 2 acre lots and they were requesting a change in the zoning from R-70 to Conservation Subdivision with twelve lots and over ten acres of open space which was about 40% of the site. She said approval of this request would result in no increase in density from the existing R-70 zoning. She said the site was surrounded by properties currently zoned R-70 and was in keeping in character of the area and land-use plan. Ms. Black said the purpose of the revision was to create open space within a small subdivision while providing one acre lots.

Ms. Black said approval of the conservation subdivision would benefit the county in several ways. She said it would decrease the acreage to be cleared for subdivision and home construction, reduce the amount of impervious surface by shortening the street, decrease the quantity of run-off, and by decreasing the amount of road way and utilities there would be less maintenance for the County in the future. She said the open space had been arranged to provide a set back and a buffer from the adjacent properties. She said the property was on County water and the Water Department had confirmed that there was sufficient capacity to serve the site. She said the Health Department had found the soil to be acceptable for septic.

Ms. Black said staff had recommended the property for approval with two conditions being; 1) an additional ten foot of right-of-way along Sandy Creek; and 2) that no lots had direct access to Sandy Creek Road. She said they were agreeable to both of these conditions.

Chairman Dunn asked if there was anyone who wished to speak in opposition of the rezoning. No one spoke. He then asked if there was anyone who wished to speak in favor of the rezoning. No one spoke.

Motion was made Commissioner Wells to approve Petition No. 1130-04 as presented with the two recommended conditions. Motion was seconded by Commissioner Frady.

Commissioner Pfeifer commented that this rezoning did exactly what a conservation was suppose to do.

Chairman Dunn said this rezoning did not add any more school children or traffic. He said this also gave us more green space in the County. He said this was exactly what they intended when they changed this zoning.

Motion carried 5-0. A copy of the recommended conditions, staff analysis and investigation, identified as "Attachment No. 1", follows these minutes and is made an official part hereof. A cop of the Ordinance and Resolution, identified as "Attachment No. 2", follows these minutes and is made an official part hereof.

PROPOSED AMENDMENTS TO THE ZONING ORDINANCE REGARDING ARTICLE III

Aaron Wheeler read the consideration of proposed amendments to the Fayette County Zoning Ordinance regarding Article III. Definitions, Section 3-46. Financial Institution. Mr. Wheeler said the Planning Commissioner determined that as with other businesses that in handling financial transactions beyond their normal scope, that the term "bank" was limiting and they wanted to go with the term financial institution. He said this was a definition that encompassed all the different types of uses under one umbrella.

Chairman Dunn asked if there was anyone who wished to speak in favor of against this proposed change. No one spoke in favor or against.

Motion was made by Commissioner Frady to approve Section 3-46 as presented. Motion was seconded by Commissioner Wells. Motion carried 5-0. A copy of the amendments, identified as "Attachment No. 3", follows these minutes and is made an official part hereof.

PROPOSED AMENDMENTS TO THE FAYETTE COUNTY ZONING ORDINANCE REGARDING ARTICLE VI.

Aaron Wheeler read the consideration of proposed amendments to the Fayette County Zoning Ordinance regarding Article VI. District Use Requirements, Section 6-24. C-S, Conservation Subdivision, A. Purpose. He said this was a clarification of an item in the Zoning Ordinance. He said the land use designations were proposed to be changed on

October 23, 2003 and approved on April 22, 2004. He said the zoning ordinance was not changed to reflect the current land use designations in the approved Fayette County land use plan. He said, for example, the name low density agricultural no longer existed, it was now called rural residential. He said this was an item clarification, making everything agree.

Chairman Dunn asked if there was anyone who wished to speak in favor or against this proposed change. No one spoke in favor or against.

Commissioner VanLandingham said he was having difficulty with this one. He said he understood what was being done, but he was not sure it was being done in the right way. He said we were changing the ordinance to fit the land use. He said the change that was presented would limit the placement of conservation subdivisions in parts of the County that we could use them.

Commissioner Wells said she did not see this as changing anything except terminology.

Commissioner Frady said it was eliminating the 2 to 5 acres wording. He said he thought they should change the land use plan and leave the ordinance. He said it was easier to change the land use plan than an ordinance.

Chris Venice, Director of Planning, said the one category that was amended back when they looked at the land use plan was the low density agricultural category that Commissioner Frady referred to. She said that was a density of a minimum of two acres to a minimum of five acres. She said when the land use plan was revised, they changed that category to rural residential and changed the density from two to five acres to two to three acres to tighten up the densities that were allowed in that area. She said the only change to be made now was to say that conservation subdivision could be considered in two land use categories, the rural residential which was two to three, and the low density residential which was one to two acres. She said they would not be interested in having a conservation subdivision in the minimum five acre area because they were not encouraging one acre lots in that area in the land use plan.

Motion was made by Commissioner Wells to adopt the changes in Article VI, Section 6-24 District Use Requirements. Motion was seconded by Commissioner Pfeifer. Motion carried 5-0. A copy of these amendments, identified as "Attachment No. 4", follows these minutes and is made an official part hereof.

PROPOSED AMENDMENTS TO THE FAYETTE COUNTY ZONING ORDINANCE REGARDING ARTICLE VII.

Zoning Coordinator Aaron Wheeler read the consideration of proposed amendments to the Fayette County Zoning Ordinance regarding Article VII, Conditional Uses, Exceptions

and Modifications, Section 7-7, Commercial Development Standards. He said the need for this amendment was discovered while they were working on the overlay zone amendments passed at the July 22 meeting. He said the idea was to make standards that would lend themselves to a larger commercial development while maintaining the residential character of State Road 54 overlay corridor. He said with the amount of land in question currently fell under the hospital district area, which is land used for O&I and was exempted from the overlay zone. He said the idea at this point was to have the current residential look even with the possibility of larger development that could go on these 45 acres. He said currently that look would have to be exactly like the look of the hospital.

Chairman Dunn said this would accommodate more medically oriented businesses to be near the hospital.

Chairman Dunn asked if there was anyone who wished to speak in favor of against this proposed change. No one spoke in favor or against.

Commissioner Frady said he talked to Mr. Wheeler today about the item stating that there should be no more than two drive-thru lanes. He said he did not know anyone who had two drive-thru lanes except the new McDonalds. He said that was dangerous because they had to merge into the left lane to get to the window to pay. He said he knew some banks had four drive-thrus. He said Aaron associated the idea with the one drive way that would fan out into four lanes. He said they needed to change the verbiage because it was actually saying you could have two drive-thrus which meant you could have one at the window and three more. He said we were using the verbiage of two drive-thrus.

Mr. Wheeler said they had banks called out on it before and were instructed that doing that would discriminate any other business except for a bank. He said it was also brought up that drug stores had a pick up window lane and they had a drop off window lane and that was why they did two. He said technically a bank would have only one drive-thru but offered multiple services in that drive-thru because it had one drive-thru entrance and one drive-thru exit which made it one drive-thru lane.

Mr. Wheeler said a bank could only have one drive-thru lane but they could spread out and offer different bays but it was still just one lane. He said that was because you entered in one lane and exited thru one lane.

County Attorney Bill McNally suggested that this information be deleted. He said in a restaurant there would not be more than two windows and one driveway. He said with a bank he had seen as many as four where they fanned out with machines. He said he did

not see why in this instance the number of drive-thru lanes had to be limited. He said let the business decide what it needed.

Motion was made by Commissioner Wells to adopt Article VII, Conditional Usages, Section 7-7 with the exclusion of defining how many lanes one can have in the drive-thru. Motion was seconded by Commissioner Frady. Motion carried 5-0. A copy of these amendments, identified as "Attachment No. 5", follows these minutes and is made an official part hereof.

LIQUOR BY THE DRINK ORDINANCE:

County Attorney Bill McNally stated he had given each Commissioner a sheet of questions to answer which would be included in the base ordinance. He said the first thing was to choose a fee for the on premise consumption. The state law provided that there was no limit for beer, no limit for wine, and a \$5,000 limit for distilled spirits. He said currently \$750 was being charged for beer and wine total. He said \$150 was charged at the time an application was made and this amount was credited towards the fee if the application was approved. He asked again what the Board wanted to charge for the distilled spirits addition to the existing licenses if the people qualified.

Chairman Dunn said the proposed ordinance had a proposal for \$1,250. Attorney McNally said there could have been a blank line there. He said that was not a suggestion.

Attorney McNally said the city of Peachtree City charged \$4,500 for the three and the city of Fayetteville charged \$7,000 for the fee. Chairman Dunn said Tyrone charged \$5,000.

Commissioner Frady said he would be satisfied with \$5,000 for all three. Commissioner VanLandingham said that sounded like a good figure.

Chairman Dunn said he would be satisfied with a lot less. He said it was the same amount of work that had to be done.

Commissioner Wells said they were basically just generating revenue on the backs of their businesses.

Motion was made by Commissioner Frady to charge \$5,000 license fee for beer, wine and liquor. Motion was seconded by Commissioner VanLandingham.

Chairman Dunn asked if there was anyone who wished to speak in favor of against the charge for the liquor by the drink license fee. No one spoke in favor or against.

Commissioner Wells said she had a problem charging what they could charge just because they could. She said there was not an increase in oversight, paperwork, etc. and they appeared greedy and just trying to get all the money they possibly could.

Commissioner Frady said they were charging less than some and more than some.

Chairman Dunn said they were adding one classification of alcohol and he could see a little bit more of an administrative burden but not very much. He said he did not think it hurt sometime to be business friendly. He said he was satisfied with charging the \$1,250 as suggested.

Motion failed 2-3 with Chairman Dunn, Commissioner Wells and Commissioner Pfeifer voting in opposition.

Motion was made by Commissioner Wells to charge \$1,500 for the license fee for beer, wine and liquor. Motion was seconded by Commissioner Pfeifer. Motion carried 3-2 with Commissioner Frady and Commissioner VanLandingham voting in opposition.

Attorney McNally said on the current ordinance, which controlled the beer and wine, one half of the fee was charged for the second half of the year and was that what the Board wanted to do in this situation? He asked for the remainder of 2004 did the Board want one half of that fee charged, the fee prorated, or to charge the full fee.

Commissioner VanLandingham said he felt that to charge one-half when one-half year was passed was wrong. He said he thought it should be prorated.

Motion was made by Commissioner VanLandingham to prorate for the remainder of 2004 and to amend the old ordinance to read prorated by month the cost of the license fee. Motion was seconded by Commissioner Pfeifer.

Chairman Dunn asked if there was anyone who wished to speak in favor of against the proration of the license fee. No one spoke in favor or against.

Motion carried 5-0.

Attorney McNally said the current ordinance called for the hours of operation to be 9:00 a.m. to 11:55 p.m., Monday through Saturday, with no sales on Sunday or Christmas Day. He asked the Board if they wanted to authorize sales on Christmas Day in the new ordinance.

Motion was made by Commissioner VanLandingham to leave the ordinance as is in regards to no beer, wine or liquor sales on Christmas Day. Motion was seconded by Commissioner Wells.

Chairman Dunn asked if there was anyone who wished to speak in favor of against no sale of beer, wine or liquor on Christmas Day. No one spoke in favor or against.

Motion carried 5-0.

Attorney McNally said the law provided allowance of sales to occur as late as 2:55 a.m. on Sunday. He said Peachtree City permitted sales until 1:00 a.m. Sunday if it followed New Year's Eve. He asked the Board if they wanted to limited the time of sales and if they wanted to permit sales on Sunday only if it followed New Year's Eve?

Commissioner VanLandingham said he was saying no to staying open until 2:55 a.m.

Chairman Dunn said if you were having a party on New Year's Eve the celebration did not stop when the ball came down, it continued for a little while. He said he would not have a problem with adding an hour or two to that one day a year.

Commissioner Wells said she was torn on this one because if someone paid enough money to go to one of these parties and wanted to stay until 1:00 a.m. she did not have a problem with that. She said 2:55 a.m. was extending it further than she was comfortable with.

Commissioner Frady asked if they were going allow the establishment to sell someone 5 drinks at 11:55 a.m. and let them sit there and drink them.

Commissioner VanLandingham said if the time was extended to 2:55 a.m. the drinking would go on until 4:00 a.m. He said if it was cut off at 11:55 p.m. across the board then there would not be a problem with anyone interpreting or not knowing.

Commissioner Wells said the only exception they were talking about was when New Year's Eve fell on a Saturday.

Commissioner VanLandingham said that went into Sunday and he had a definite problem with that.

Motion was made by Commissioner VanLandingham to stop sales at 11:55 p.m. no matter what date. Motion was seconded b Commissioner Pfeifer.

Chairman Dunn asked if there was anyone who wished to speak in favor of against the time to stop sales. No one spoke in favor or against.

Motion failed 3-2 with Commissioner Dunn, Commissioner Frady and Commissioner Wells voting in opposition.

Motion was made by Commissioner Wells that on the rare times that New Year's Eve fell on a Saturday that the current hours of operation will go until 1:00 a.m. Motion was seconded by Chairman Dunn. Motion carried 4-1 with Commissioner VanLandingham voting in opposition.

Attorney McNally said he wanted to clarify where the Board stood at this point. He said normally the businesses would close at 11:55 p.m. Monday through Saturday, however, on the Saturday which would precede New Year's Day the business could remain open until 1:00 a.m.

Commissioner Wells clarified that was the bar that closed the establishment did not have to close. Attorney McNally said that was correct.

Attorney McNally said the next question was Sunday sales. He said Sunday sales were permitted in the state of Georgia only by a special referendum that would allow the sales to be made on Sunday. He said otherwise Sunday sales were excluded. He said the law the citizens passed did not permit sales on Sunday. He said if they wanted that, it would have to be another referendum question.

Chairman Dunn said it was too late to put a referendum on the November election.

Chairman Dunn asked if anyone wished to speak in favor or opposition of Sunday sales. No one spoke in opposition.

John Boykin stated he was the CEO of Wyatt Golf Enterprises which operated the Palmer Course at Starr's Mill. He stated that when he and the representatives of Old Mill Steakhouse and The Italian Oven asked that the referendum be put on the summer vote they specifically requested in all of their documentation, along with a copy of Peachtree City's version of the ordinance, that Sunday sales be included. He said it was his impression that Sunday sales was a part of this presentation and the vote last July included that. He said at no point was it ever communicated to him that it was not a part of the package. He said it was a tremendous disadvantage to his golf course to not be able to have Sunday sales. He said the weekend provided more opportunity for people to play at the golf course. He said when they could not have a beer or a glass of wine after a completion of a round of golf they did not want to play golf at his course.

Commissioner Wells said in response to Mr. Boykin's comments that she also did not understand that they had to have a second referendum to sale liquor on Sundays.

Chairman Dunn said he was not aware of the fact that a separate referendum was needed for Sunday sales.

Mr. Boykin said he knew there were two options to have the liquor by the drink ordinance written and put into law. He said one option was for the County Commissioners to vote to put it on a referendum. He said another option was to petition it to be put on. He said he understood there was an option that the County Commissioners as a group could vote this into law.

Chairman Dunn replied that was incorrect. He said they could not vote the ordinance into law. He said it was one of the few areas in Georgia law that they could not do.

Commissioner Frady said they could approve beer and wine but they could not approve liquor.

Attorney McNally said that was correct. He said the only way Sunday sales could be had was to have a separate referendum question. He said if it had been put on the last referendum it would have to have been two separate questions.

Mr. Boykin asked why when that was a specific request when their information was submitted was this not addressed until tonight.

Chairman Dunn said two of the commissioners had stated they were not aware that there was a dichotomy.

Attorney McNally wanted to clarify for the ordinance that the Finance Department now collected all taxes. He said he was assuming the Board wanted that to continue.

Motion was made by Commissioner VanLandingham for the Finance Department to collect the excise taxes and returns regarding this ordinance. Motion was seconded by Commissioner Wells.

Chairman Dunn asked if there was anyone who wished to speak in favor or opposition of the Finance Department collecting the excise taxes and returns. No one spoke in favor or opposition.

Motion carried 5-0.

Attorney McNally said the state, within the last year or two, had increased the percent of alcohol from 6% to 14%. He said this was something that had to be put in the ordinance. He said the current beer and wine ordinance limited the sales to 6% beer now and he thought most of the grocery stores were selling 14% as well. He said he thought the Board would want to bring both ordinances up to state standards and comply with the 14% limitations.

Commissioner Pfeifer asked that instead of specifying a percentage could the ordinance state the percentage be what the state allowed.

Attorney McNally said that they could.

Motion was made by Commissioner Wells to change both ordinances to allow the alcohol content of a malt beverage to be 14%. Motion was seconded by Commissioner Pfeifer.

Chairman Dunn asked if there was anyone who wished to speak in favor or against the percentage of alcohol in the beer. No one spoke in favor or against this.

Attorney McNally said this included beer by the drink and packaged sales.

Motion carried 5-0.

Attorney McNally asked on those locations where background checks had already been done on the beer and wine licenses could those background checks be incorporated into the distilled spirits?

Chairman Dunn asked if there was anyone who wished to speak in favor or against the background checks and licenses. No one spoke in favor or against this.

Motion was made by Commissioner Wells, seconded by Commissioner Frady, for background checks be incorporated into distilled spirits license.

Motion carried 5-0.

Attorney McNally said there was currently charged a 3% excise tax on current sales and did the Board want to continue the same tax.

Motion was made by Commissioner Frady, seconded by Commissioner Wells, to leave the excise tax charged as is.

Chairman Dunn asked if there was anyone who wished to speak in favor or opposition of the 3% charge of the excise tax. No one spoke in favor or against this.

Motion carried 5-0.

Attorney McNally asked the Board if they wanted a provision in the ordinance to permit mini bars in the hotel rooms. He said there were no hotels now but they would want this on the books for future use.

Motion was made by Commissioner Frady to permit mini bars in the hotel rooms. Motion was seconded by Commissioner Dunn. Discussion followed.

Commissioner VanLandingham asked if the mini bars were in the hotel rooms were they required to have the same license as a regular bar. Attorney McNally said they would have to have a license.

Chairman Dunn asked if there was anyone who wished to speak in favor or against having mini bars in hotel rooms. No one spoke for or against this.

Motion carried 5-0.

Attorney McNally said with the provisions just passed, the Board had an ordinance that could be moved on tonight with the changes just made.

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Motion was made by Commissioner Wells to incorporate all previous votes into the ordinance and have it drafted to become effective immediately. Motion was seconded by Commissioner Pfeifer.

Chairman Dunn asked if there was anyone who wished to speak in favor or against the entire ordinance. No one spoke in favor or against this.

Commissioner Frady said he said there had been problems in past as to what was considered a premises. He asked on a golf course what was included as premises. He asked if drinks could be taken into the pro shop. Attorney McNally said they had provided for the premises in the existing ordinance to include the golf course where a cart could go out on the golf course and serve mixed drinks.

Motion carried 5-0. A copy of this ordinance, identified as "Attachment No. 6", follows these minutes and is made an official part hereof.

CONSENT AGENDA: Motion was made by Commissioner Wells to approve the Consent Agenda as presented. Motion was seconded by Commissioner Frady. Motion carried 5-0.

INSURANCE REIMBURSEMENT FROM GENERAL FUND TO SHERIFF'S

DEPARTMENT: Approval of transfer of insurance reimbursement from General Fund to Sheriff's Department-Criminal Investigation Division budget. A copy of the information, identified as "Attachment No. 7", follows these minutes and is made an official part hereof.

LIBRARY BUDGET ADJUSTMENT: Approval of Library budget adjustment due to overage in FY04 line items. A copy of the adjustment, identified as "Attachment No. 8", follows these minutes and is made an official part hereof.

ROAD DEPARTMENT TO PERFORM WORK FOR THE BOARD OF

EDUCATION: Approval to allow the Road Department to perform work for the Board of Education at Wildcat Way at Whitewater High School. A copy of the request, identified as "Attachment No. 8", follows these minutes and is made an official part hereof.

BOARD MINUTES: Approval of minutes for Board of Commissioners meetings held on August 4, 2004 and August 12, 2004.

PUBLIC COMMENT:

Members of the public are allowed up to five minutes each to address the Board on issues of concern other than those items which are on this evening's agenda. There was no public comment.

STAFF REPORTS:

Attorney McNally: County Attorney Bill McNally asked for an Executive Session to discuss one legal item.

EXECUTIVE SESSION: Motion was made by Commissioner Wells to adjourn to Executive Session to discuss one legal item. Motion was seconded by Commissioner VanLandingham. Motion carried 5-0.

LEGAL: Attorney Davenport discussed a legal item with the Board.

Motion was made by Commissioner Wells to authorize Attorney Davenport to proceed in this matter. Motion was seconded by Commissioner VanLandingham. Motion carried 5-0.

EXECUTIVE SESSION AFFIDAVIT: Motion was made by Commissioner Wells to authorize the Chairman to execute the Executive Session Affidavit affirming that one legal item was discussed in Executive Session. Motion was seconded by Commissioner Frady. Motion carried 5-0. A copy of the affidavit, identified as "Attachment No. 9", follows these minutes and is made an official part hereof.

There being no further business to come before the Board, Chairman Dunn adjourned the meeting at 8:30 p.m.

Peggy Butler, Chief Deputy Clerk

Gregory M. Dunn, Chairman

The foregoing minutes were duly approved at an official meeting of the Board of Commissioners of Fayette County, Georgia, held on the 23rd day of September 2004.

Peggy Butler, Chief Deputy Clerk