

The Board of Commissioners of Fayette County, Georgia met in Official Session on Thursday, August 10, 2006, 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
Robert Horgan
Peter Pfeifer

STAFF MEMBERS PRESENT: Chris Venice, County Administrator
Dennis Davenport, Assistant County Attorney
Carol Chandler, Executive Assistant
Karen Morley, Chief Deputy Clerk

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

DISCUSSION OF AN ANNEXATION REQUEST FROM THE TOWN OF TYRONE FOR JAMES R. HEATH, CONSISTING OF 16.695 ACRES IN LAND LOT 147 OF THE 7TH DISTRICT AND FRONTS ON TRICKUM CREEK ROAD:

Zoning Administrator Dennis Dutton remarked that this item was an annexation request and notice of intent for potential to object. He said this property was owned by James R. Heath located on Trickum Creek Road and consisted of 16.695 acres and zoned A-R. He said the staff's recommendation was to object to the following: staff having concerns regarding increased density, environmental issues and future road improvements, the additional number of lots and the proximity of the structure to septic to environmentally sensitive areas and the loss of right-of-way dedication were the major concerns for this annexation and rezoning by the Town of Tyrone.

Commissioner Frady asked how much of the property was buildable.

Mr. Dutton replied that approximately two or three more houses could be built on the property using their standards.

Commissioner Frady asked what the purpose was for the annexation.

Mr. Dutton responded that the purpose was for the setbacks not to be as stringent as what the County required. He said this would allow for more buildable area.

Commissioner Frady asked if Mr. Heath had stated what he planned to do with the property.

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Mr. Dutton responded that Mr. Heath had said that he just wanted to build his home on the property.

Chairman Dunn asked Mr. Dutton how he had determined two or three houses for the property.

Mr. Dutton replied that staff had measured off the property. He said there was a set back from the stream creek at the back of the property and they would not be able to build within the flood plain areas. He said this would pose a problem for Mr. Heath to get any permits for that.

Chairman Dunn said Mr. Heath's setbacks would be much different from the County's and they would gain quite a bit more of buildable land if the County agreed to this request.

Mr. Dutton replied yes that Mr. Heath would have more area to build on but he felt the numbers were not going to be as high as originally considered.

Chairman Dunn remarked that there were only 5.27 buildable acres on the land right now and it was zoned five acre lots. He said applicant stated that he wanted to move the house further back on the property. He said in order to do that the City was talking about bringing the property in and zoning it one acre lots and Mr. Dutton agreed.

Chairman Dunn stated that the applicant would now have over ten acres. He felt this would be going from one house on a septic system to somewhere between two and maybe up to nine or ten homes. He said if the property was zoned for one acre lots then they could build up to the capacity of one acre lots.

Mr. Dutton remarked that from the way in which the planning staff had drawn off the lots with all building setbacks in place and the potential for any other septic systems, the maximum showed a fourth lot but it was located in the flood plain and the buildable area would be too small.

Chairman Dunn said there could be that many lots with the way the property was now if it was rezoned. He said currently there were 5.7 buildable acres.

Mr. Dutton said he was also speaking about setbacks from the road from Trickum Creek. He said currently a 100 foot setback would push the property owner further up against the back property line and would allow him only to have drain fields in a particular area. He said he was not sure about the water or sewer that would be provided through Tyrone.

Chairman Dunn said one of his concerns was that this property touched the John Wieland Subdivision which was quite dense. He said if Mr. Wieland was allowed to bring sewers on to this property, he could have a lot of homes on there. He said another concern was

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that Trickum Creek flows into Line Creek which was one of Fayette County's major drinking water streams.

Chairman Dunn said he was going to be consistent with himself and recommend that the Board object to this request based on a land use objection for increased density.

Commissioner Wells interjected that Staff had listed three objections to this request.

Mr. Dutton replied yes that was correct. He said a concern was the increased density, environmental issues and future road improvements.

Chairman Dunn said the environmental issues were of great concern to him but in an annexation issue the only thing that would matter would be land use objections based on increased density or increased intensity.

On motion made by Chairman Dunn, seconded by Commissioner Wells to object to the annexation request based on violation of the Land Use Plan with regard to increased density, discussion followed.

Chairman Dunn remarked that this Board consciously over the last several years had gone an extra step to further protect the County's water sources and made a much larger buffer than was required by the State. He noted that the State law said the County can be tougher than them in areas of water protection but the County must do the minimum. He noted that the City was doing the minimum and doing nothing wrong. He said the County was doing more than the minimum and he felt it should remain that way. He pointed out that this property would flow directly into the County's main drinking water source.

Commissioner Frady said he agreed with that when a subdivision was going in. He said the applicant had stated that he would only be building one home, but this might involve building more than one home.

The motion carried 4-1 with Commissioner Frady voting in opposition.

Chairman Dunn asked when the objection was due.

Attorney Davenport replied that the first time was the Notice of Intent to Object and that had a seven day window which was met. He said the Board now had ten days after the original seven day window. He said the letter would go out so that it was received within the ten day window.

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CONSENT AGENDA: On motion made by Commissioner Pfeifer, seconded by Commissioner Wells to approve the Consent Agenda as presented. The motion carried 5-0.

TAX ABATEMENTS AND TAX REFUNDS: Approval of tax abatements and tax refunds as recommended. A copy of the list of tax abatements and tax refunds, identified as "Attachment No. 1", follow these minutes and are made an official part hereof.

REQUEST FOR CURB CUT ON THE TDK EXTENSION: Approval of request for a curb cut on the TDK Extension. A copy of the request, identified as "Attachment No. 2", follows these minutes and is made an official part hereof.

WATER COMMITTEE RECOMMENDATION - MASSANA CONSTRUCTION AWARDED BID FOR HORTON CREEK PARK FENCING AND WALKING TRAILS: Approval of Water Committee recommendation to award bid for Horton Creek Park Fencing and Walking Trails to Massana Construction in the amount of \$166,640. A copy of the request and contract, identified as "Attachment No. 3", follows these minutes and is made an official part hereof.

SHERIFF'S OFFICE: Approval of request by Traffic Enforcement Division of the Sheriff's Office for permission to dispose of unserviceable uniform clothing items. A copy of the request, identified as "Attachment No. 4", follows these minutes and is made an official part hereof.

INSURANCE PREMIUM ROLLBACK: Approval of \$1,639,326 of the 2005 Insurance Premium Tax for rolling back the millage rate for 2006 for the Unincorporated area of Fayette County. A copy of the request, identified as "Attachment No. 5", follows these minutes and is made an official part hereof.

VICKERY LANE SUBDIVISION - MOTORIZED CART TRAVEL: Approval for the specified streets in Vickery Lane Subdivision to be authorized for the use of motorized cart travel per Ordinance 95-10, Streets in Vickery Lane Subdivision include: Vickery Lane, Kyle Court, Waters Way and Tranquil Court. A copy of the request, identified as "Attachment No. 6", follows these minutes and is made an official part hereof.

DEPARTMENT OF FIRE AND EMERGENCY SERVICES - ADOPTION OF FOUR COUNTY ORDINANCES REGARDING FIRE CODE: Approval of request by the Department of Fire and Emergency Services to adopt recommended changes to four County ordinances. A copy of the request as well as Ordinance No. 2006-10, Ordinance No. 2006-11, Ordinance No. 2006-12 and Ordinance No. 2006-13, identified as "Attachment No. 7", follow these minutes and are made an official part hereof.

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MINUTES: Approval of minutes for Board of Commissioners meeting held on July 27, 2006.

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:

HISTORICAL MARKER ON EBENEZER ROAD: Director of Public Works Lee Hearn said he had been contacted by Scott Gilbert of the Fayette County Historical Society with a request to place a historical marker within the right-of-way on Ebenezer Road. He said the marker would be located three feet on the right-of-way. He noted the right-of-way on Ebenezer Road was eighty feet and forty feet from the center of the road. He said the County allows telephone poles and other utilities in the right-of-way. He said he had gone to this location and looked at the spot. He said he had since called Mr. Gilbert and recommended to him that the historical marker be placed 37 feet from the center line of the road which would be three feet on the County's right-of-way. He said this was a historical marker much like the ones at Starr's Mill and the Old Courthouse grounds. He asked for the Board's consideration to approve this request.

On motion made by Commissioner Frady, seconded by Commissioner Pfeifer to allow the historical marker to be placed on the County's right-of-way and declare it a historical site. The motion carried 5-0.

ANNEXATION REQUEST FROM PEACHTREE CITY BY LEVITT & SONS: Dennis Dutton, Zoning Administrator informed the Board of an annexation request from Peachtree City by Levitt & Sons. He said this was a request for a 400.306 acre track to be developed by John Wieland Homes and Neighborhoods. He remarked that the second request was for an adjoining 379.493 acre track and an existing 89.146 track which was already in the City to be rezoned for limited use residential (LRU) and open space. He remarked that currently the property was zoned agricultural/residential and R-70. He said the future Land Use Map has this area listed for agricultural/residential and designated at one unit per one to two acres. He said the proposal was for 752 single family detached homes and a 27,000 square foot club house with indoor and outdoor pools, eight tennis courts, a greenhouse, craft room, card room, and so forth with 180.2 acres of greenspace. He said the access would be provided along McDuff Parkway. He said the applicant had contacted the Atlanta Regional Commission and gone through the DRI proceedings and was awaiting a meeting with GRTA which would be on September 14th.

Chairman Dunn noted that they had not gone through the process yet but were waiting to start the process. He said this Board had received nothing to respond to this yet.

Mr. Dutton said the applicant had submitted the rezoning to the City of Peachtree City.

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Mr. Dutton remarked that the second annexation involved with this property was the 397.49 acre tract of land. He said the existing zoning for that property was A-R and the request was for limited use residential plus limited use commercial and open space. He said the future land use was agricultural/residential. He said the proposal was for single family medium density, single family low density, commercial, open space and community service. He said for this 379.49 acres, 546 single family detached residential units was proposed. He said the gross density would be 1.4 dwelling units per acre, with neighborhood retail commercial on 5.7 acres. He said they had submitted their DRI form to the Atlanta Regional Commission and to the Department of Community Affairs.

Chairman Dunn asked if Mr. Dutton had reviewed this and determined how many buildable acres there were. He said he agreed with the figure for gross acres but a substantial amount of this property was located in the wetlands.

Mr. Dutton said yes and remarked that part of the problem was receiving this request on such short notice. He said it had been difficult to get all of the TRC members together and obtain all of the facts.

Chairman Dunn said the County had a rezoning request for the 379 acres a couple of years ago. He said the County fought that request with the City of Peachtree City and ended up in court over it. He said the court did uphold the County's Land Use Plan. He said the County went to two acre zoning and this was the reason the property had become R-70. He said the entire West village area was A-R for five acre lots. He said this request went down in that action to two acres per home. He remarked that he could not remember exactly what the buildable property was but felt it was substantially lower than 379 because of the wetlands and the flood plain. He said the same was on the adjoining 400 acres. He noted that huge areas of that were in wetlands. He said between the two properties there were 1,298 homes being proposed. He said this was an amazing amount of increased density from what the County went to court and tried to uphold there.

Mr. Dutton remarked that there would be 752 single family detached homes on the 400 acres and 546 single family detached homes on the 379 acres currently zoned two acres.

Chairman Dunn said this would be a tremendous increase in density for that area. He said if the City annexed the property then they could do whatever they wanted with it. He stated the County had fought to keep the density reasonable over there. He said the County had been through a lot with this piece of property during the last twenty years and had to deal with it three or four times during the last eight years. He said this Board had been consistent in saying that this was too much density for that area.

Commissioner Pfeifer said he would like to urge the City of Peachtree City to not do this. He said this would totally change the character of that area. He said there had been several long running discussions about transportation in that area. He said one of the issues was that if this was a senior housing project there would be no impact on the schools but they were also talking about a school site within the project. He said with this

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number of houses plus commercial, plus recreation, and plus a school site it was astounding that they would ask people to move to an area like that. He said the other point that he would like to make was the issue of water use. He said one of the things that this County had done a fabulous job with was water use. He said Fayette County did not have the problems like some of the other areas have. He said Fayette County has a plan that culminates in building Lake McIntosh in that area and the whole water system size was based on assumptions of the land use. He said whereas older citizens may not use the schools they do drink and use water. He said if the development in this County continued, there would not be enough water.

Chairman Dunn said one of the issues that he had spoken to the Mayor about in the past was the 400 acre parcel with 752 houses being proposed. He said he was told that the builder had been sent back to the drawing board and he had reduced the number of homes from 752 to 350 homes. He said now the project was back again with 752 homes being proposed. He said they were asking for 1,298 houses to be put on 752 gross acres. He said he doubted that there was more than 500 acres in there that was buildable.

Commissioner Frady asked Attorney Davenport if there was anything that he could add.

Attorney Davenport replied that this was the area known as the West village. He said this was also an area that was an unincorporated island and one of the rare times that he could remember where the County had received a request that involved an unincorporated island. He said this method of annexation was one that provided a very limited basis to have any objection with respect to annex the unincorporated island then. He said if there were any issues that this Board wanted to bring to the attention of Peachtree City then it certainly could do that. He pointed out the way in which the annexation framework was set out in the law, the law encourages the annexation of unincorporated islands even more so than typical annexations during the 100% or the 60% method.

Commissioner Frady clarified that the County could send its objection, but it probably would not do any good.

Chairman Dunn interjected if an objection was sent, then possibly the County might be able to negotiate down the density. He said this had nothing to do with a turf war but the issue of the amount of traffic and wear and tear on the County's infrastructure. He said he would like to sit down with them and try to get a reduction in density.

Attorney Davenport interjected that this was a different stage in the process. He said while this item was within the seven day window for a Notice of Intent to Object, in order to meet the time frame for the ten day window for the objection to be put in place if this was the desire of the Board, there would have to be a called meeting to make that occur because the Board's next meeting would not occur in time to meet the ten day window. He noted if the Board had enough information before it this evening and the Board wanted to enter an objection this evening then that certainly be done.

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Chairman Dunn said he certainly had enough information to enter an objection. He said it would be a land use objection.

Commissioner Wells asked if the Board's objection would follow the same format even though this was an unincorporated island or would it be different.

Attorney Davenport replied that the problem with the language in the law as it was written now related to the 2004 amendments that came in at the same time that the S.P.L.O.S.T. amendments came in. He said they amended this entire objection process in its entirety with very substantial changes. He remarked that there was a provision under the unincorporated island section which stated that a municipality had sole discretion for annexing unincorporated islands. He said the information in 363611 was put in place after that language. He said the 363611 language did not address the issue of unincorporated islands, however that was typically used under the 100% method and the 60% method. He said although this was new, there was a strong presumption in favor of allowing the annexation of unincorporated islands.

Chairman Dunn said he realized that the County's objection might be ignored and then taken in as an island but he hoped that they would want to sit down and at least try and trim down some of the density. He said there had been complaints for years regarding McDuff Parkway and now that would be extended and would cause a lot of traffic problems on S.R. 74, S.R. 54 and inside of this area.

Commissioner Wells said since the language of the legislation was very clear about the cities having the ultimate authority as to whether or not they annex an unincorporated island, it did not sound like the County would have much recourse here. She said the language was very clear that if the City decided to do it then they could do it. She felt the County's best bet would be to strongly object to the land use of the property but not necessarily object to the annexation itself. She said she would also like to sit down and discuss this with the City but the County did not have any legal basis for objecting based upon the language of that particular legislation.

Chairman Dunn said the legislation did allow the County to object and the first step would be to sit down and mediate this with the City.

Attorney Davenport said that was correct. He said ultimately the Board could sit down and speak with the City representatives but that would grow into a citizen review panel if no conclusion could be reached with respect to that.

Chairman Dunn suggested the Board write the City a letter stating its objection and request a meeting with them to discuss this further.

Commissioner Frady agreed and said that would also be his recommendation. He said he would like the letter to state that while the County realized its position as far as an objection

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goes, that the County would certainly appreciate them taking into consideration lesser density for that area.

Chairman Dunn said these figures were twice as much as the last figures that the City had quoted him.

On motion made by Commissioner Frady, seconded by Commissioner Wells to write a letter to Peachtree City to explain their position and request that they consider lesser density in the area they intend to annex. The motion carried 5-0. A copy of the letter, identified as "Attachment No. 8", follows these minutes and is made an official part hereof.

ANNEXATION REQUEST FROM PEACHTREE CITY BY GROUP VI: Zoning Administrator Dennis Dutton informed the Board of an annexation and rezoning request from Peachtree City by Group VI Corporation. He said the property was located off of S.R. 74 South within the Mills Farms subdivision at Redwine Road. He said the purpose of this annexation was for annexation and rezoning to develop a multi building professional and medical office complex with overall square footage of 100,000 square feet and a retail component. He said it was his understanding that 5.7 acres were rezoned from A-R to O-I by the County and was also in the general State Route overlay zone. He said permits had been secured and they have received the approval from D.O.T. He remarked that there were five acre tracts on some of the A-R property and the O-I would allow for one acre tracts. He said he had not received anything from them requesting a rezoning but it was expressed to him that they were going to request for limited use commercial zoning which would allow for one acre tracts.

Commissioner Frady asked if the developer was already disturbing the soil in that area.

Mr. Dutton replied yes they were.

Chairman Dunn said the County had been working with Group VI to develop a medical complex and it was rezoned to O-I. He noted that there was no commercial on that site at all and no commercial could be built there right now. He said he had never heard a word about putting commercial on this property. He said the County had changed its ordinance to accommodate them on the architecture of the building and the County had worked very closely with them on what they had wanted to do. He said this was the first time he had heard that they wanted to be brought into the City. He said he also was not aware that they wanted to go in the City in order to put commercial on the property. He asked if this was included in the rezoning request.

Mr. Dutton responded yes it was. He said the applicant expressed a desire to develop a portion of the site with retail component. He said the application did not specifically give the acreage or the size of the facility.

Chairman Dunn said it was his understanding that they were considering it because they wanted to be hooked up to sewer because these were medical facilities that they were

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building in there. He said they could hook up to sewer without an annexation. He noted that there was a sewer line on Redwine Road that goes into the school system.

On motion made by Commissioner Pfeifer, seconded by Commissioner Horgan to object to this annexation and rezoning request based on the violation of the Land Use Plan. The motion carried 5-0. A copy of the letter, identified as "Attachment No. 9", follows these minutes and is made an official part hereof.

Commissioner Wells asked Attorney Davenport if this would require the Board to hold a special called meeting.

Attorney Davenport said it was his understanding of the Board's motion that it was lodging an objection this evening and not a Notice of Intent to Object.

EXECUTIVE SESSION: Assistant Attorney Dennis Davenport requested an Executive Session to discuss two legal items.

EXECUTIVE SESSION: On motion made by Commissioner Wells, seconded by Chairman Dunn to adjourn to executive session to discuss two legal items. The motion carried 5-0.

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

It was the consensus of the Board for the Attorney to proceed in this matter.

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

On motion made by Commissioner Frady, seconded by Commissioner Pfeifer for the Attorney to proceed in this matter. The motion carried 5-0.

EXECUTIVE SESSION AFFIDAVIT: On motion made by Commissioner Wells, seconded by Commissioner Pfeifer to authorize the Chairman to execute the Executive Session Affidavit affirming that two legal items were discussed in executive session. The motion carried 5-0. A copy of the Affidavit, identified as "Attachment No.10", 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 7:58 p.m.

Karen Morley, Chief Deputy Clerk

Gregory M. Dunn, Chairman

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The foregoing minutes were duly approved at an official meeting of the Board of Commissioners of Fayette County, Georgia, held on the 6th of September, 2006.

Karen Morley, Chief Deputy Clerk