COUNTY AGENDA REQUEST

Department:	Planning and Zoning	Presenter(s):	Pete Frisina
Meeting Date:	Wednesday, January 4, 2012	Type of Request:	Old Business

Wording for the Agenda:

Discussion of proposed amendments to the Fayette County Code of Ordinance, Chapter 20. Zoning Ordinance and the Land Use Element of the Comprehensive Plan regarding illegal nonconforming lots.

Background/History/Details:

The County requires that illegal nonconforming lots be brought into zoning compliance before building permits for principal or accessory structures can issued. In many cases, this requires the lot to be rezoned to a zoning district that it can comply with in terms of lot size, lot width, etc. A problem arises when the rezoning request does not comply with the Future Land Use Plan. At the Board of Commissioners Workshop held October 5, 2011, the Board of Commissioners directed Attorney Bennett and Pete Frisina to work together to provide options pertaining to illegal nonconforming lots and to return later with recommendations.

What action are you seeking from the Board of Commissioners?

Staff is seeking direction from the Board of Commissioners regarding proposed amendments to the Zoning Ordinance and the development criteria in the Comprehensive Plan text for a rezoning request involving an illegal nonconforming lot that does not comply with the Future Land Use Plan.

If this item requires funding, please describe:

Not Applicable

Has this request been considered within the past two years?	Yes	If so, when?	Wednesday, October 5, 2011
Is Audio-Visual Equipment Required for this Request?	No	Backup Provided with Request?	Yes

STAFF USE ONLY

Approved by Finance	Not Applicable	Reviewed by Legal	
Approved by Purchasing	Not Applicable	County Clerk's Approval	Yes
Administrator's Approval	Yes		

Staff Notes:

Minutes

Board of Commissioners
October 5, 2011
3:30 P.M.

Notice: A complete audio recording of this meeting can be heard by accessing Fayette County's Website at www.fayettecountyga.gov. Click on "Board of Commissioners", then "County Commission Meetings", and follow the instructions. The entire meeting or a single topic can be heard.

The Board of Commissioners of Fayette County, Georgia, met in Official Session on October 5, 2011, at 3:30 p.m. in the Public Meeting Room of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

Commissioners Present:	Herb Frady, Chairman Robert Horgan, Vice Chairman Steve Brown Lee Hearn Allen McCarty
Staff Present:	Jack Krakeel, County Administrator Scott Bennett, County Attorney Carol Chandler, Executive Assistant Floyd Jones, Chief Deputy Clerk

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NEW BUSINESS:

1. Discussion of staff's request for direction on whether or not to propose amendments to the Fayette County Comprehensive Plan regarding illegal nonconforming lots.

Director of Community Development Pete Frisina requested the Board's direction on whether or not to propose amendments to the Fayette County Comprehensive Plan pertaining to illegal nonconforming lots. He explained that on occasion, staff finds lots in the County that have been subdivided or created in such a way that they become either legal nonconforming lots or illegal nonconforming lots that conflict with the current zoning requirements. He told the Board that when staff discovers an illegal nonconforming lot, it is the County's longstanding practice to make every effort to bring the lot into compliance with the County's Land Use Plan; however, there are some situations where the lots cannot be made to conform. He said the problem with approving illegal nonconforming lots is that it opens up the likelihood that other property owners would want similar exceptions made for their lots; effectively nullifying the Land Use Plan. He said staff would like to study the issue further and to attempt to provide some criteria for the Land Use Plan that would give some latitude to property owners who have illegal nonconforming lots, without creating greater conflicts for Fayette County in the future.

Commissioner Brown said he had a problem with the request because the responsibility for illegal nonconforming lots fell on the property owners and not on Fayette County. He said he had other concerns about this request since the Land Use Plan is a legal document that has to be defended in court, and if the

County gives exceptions to the plan then it could end up "in deep water". He suggested that property owners already have a potential remedy to their situation by filing a rezoning application.

Commissioner Hearn noted that some property owners with illegal nonconforming properties might have come into possession of them through an inheritance or in some other manner where they had no idea the lot was illegal and nonconforming. He said this situation makes it difficult for those property owners because when they come to the county to apply for a simple remodeling permit they are unable to get it because their property is illegal and nonconforming. He concluded that he would not want to have property owners in those situations to have to bear the whole responsibility. Mr. Frisina replied that staff's request was not to relieve everyone who has illegal nonconforming lots, that it was intended to provide relief for some property owners, and that staff's challenge would be to figure out under what circumstances the County would allow for relief. Discussion followed.

Commissioner McCarty asked Mr. Chris Presley to tell the Board of his experience with his property. Mr. Presley informed the Board that he is a real estate agent who purchased property in 2009. He briefly explained the process, including the investigative work, associated with purchasing property and he told of the difficulties a buyer would initially have if the property was determined to be illegal and nonconforming. He told the Board that the Land Use Plan became effective in 1980, but less than a year afterward the property changed size from 3.6 acres to 2.6 acres. Then, in 1983, someone built a house on the property after Fayette County issued a permit authorizing the build. He clarified that, since 1980, two permits were issues by Fayette County (prior to when he purchased the property) that indicated the property in question was qualified to build a house on it and to add a three-car garage to it. He added that the Fayette County's tax records show that the property is legal and conforming, and he was concerned that Fayette County has incorrect records. Commissioner Brown asked Mr. Presley if he had considered buying some of the adjoining land in order to bring the property into conformity. Mr. Presley replied that he absolutely would not since "the lot was legal when I purchased the lot".

After further discussion, Commissioner Hearn said he did not mind if staff "put a study together" since the Board retains the right not to adopt its recommendations. He added that although he had no problem punishing those who break the law, he recognized that the current arrangement could also punish people who inherited their property and had no idea it was illegal and nonconforming. He recognized the issue was difficult and that the Board needed to proceed cautiously, but he said if he were in Mr. Presley's shoes he would like a process where he could be heard. Commissioner Brown replied that Mr. Presley already has an avenue to be heard.

County Attorney Scott Bennett informed the Board of several options that may be available to provide relief for property owners with illegal nonconforming lots. The Board directed Mr. Bennett and Mr. Frisina to work together to provide the Board with further information and options pertaining to concerns with illegal nonconforming lots, and to return later with recommendations. The Board took no action on this item. A copy of the request, identified as "Attachment 3", follows these minutes and is made an official part hereof.

To: Board of Commissioners

From: Pete Frisina, Director of Community Development PF

Date: November 22, 2011

Subject: Illegal Nonconforming Lots

On October 5, 2011, staff met with the Board of Commissioners (BOC) to discuss the issue of illegal nonconforming lots and the development of a policy where, under certain circumstances, these lots may be legitimized. The BOC asked staff to research the issue and seek guidance from the Planning Commission and County Attorney.

Three (3) alternatives were proposed by staff as follows:

Alt. 1. Create criteria in the Land Use Plan for the rezoning of an illegal nonconforming lot which does not comply with Land Use Plan. The goal is not to weaken the integrity of the Land Use Plan so it can be used against the County in other rezoning requests.

Alt. 2. Create Legal Nonconforming Status (LNS) sub-categories in the Zoning Ordinance for the rezoning of an illegal nonconforming lot. For example, if the lot is zoned A-R then you would request to rezone from A-R to A-R LNS.

Alt. 3. Create a procedure and criteria for the Zoning Board of Appeals to legitimize an illegal nonconforming lot through the variance process.

The County Attorney recommended Alt. 2. The Planning Commission concurred with his recommendation. It was also advised that the Land Use Element text be amended to address this procedure.

Alt. 2 would be handled through the standard rezoning process with additional factors to be considered in the review of the rezoning request. These proposed factors would include:

1. What is the history of the property, how and when was it made nonconforming;
2. Is the property vacant or developed;
3. Has the County issued any building permits for the property;
4. How many changes of ownership have taken place since the lot was made nonconforming;
5. Is the petitioner a bono-fide purchaser in good faith;
6. Are there any possible solutions to remediate the nonconformance;
7. Has the owner exhausted all options, including legal action, against the seller?

See attached proposed amendments.

10/05/11 – BOC Wkshop (Discussion Only)
10/20/11 – PC Wkshop (Discussion Only)
11/17/11 – PC Wkshop (Discussion Only)
01/04/12 – BOC Wkshop (Proposed Amendments)

ARTICLE III. DEFINITIONS

Bona-fide purchaser in good faith. A person who buys a property in good faith, without the knowledge of any illegal non-conformances.

ARTICLE VII. CONDITIONAL USES, NONCONFORMANCES, TRANSPORTATION CORRIDOR OVERLAY ZONE, AND COMMERCIAL DEVELOPMENT STANDARDS

Sec. 7-2. Nonconformances.

A. *Nonconforming Lots*. (Place as last paragraph under A.)

Consideration for the Rezoning of Illegal Nonconforming Lots. Any illegal nonconforming lot may be considered for rezoning to a Legal Nonconforming Status (LNS) sub-category of the same zoning district. For the purposes of this section, an illegal nonconforming lot is a lot which does not comply with the minimum lot area (acreage), minimum lot width at the building line, and/or the minimum required road frontage; whereas, a variance cannot be granted for said deficiencies by the Zoning Board of Appeals (see Article IX.) After approval of the rezoning, any existing illegal nonconforming structure(s) which are to remain will need a variance authorized by the Zoning Board of Appeals (see Article IX.) An illegal nonconforming use is prohibited. The petition for rezoning to a LNS sub-category of the same zoning district shall be evaluated per the following factors, in addition to those listed under Article XI. Policies, Procedures and Standards Governing Amendment:

1. ***That the applicant is a bona-fide purchaser in good faith of said illegal nonconforming lot.***
2. ***The history of the subject property in terms of date of the nonconformity, the chain of ownership, and relationship to abutting properties.***
3. ***Development status of the property (vacant or existing structures.)***
4. ***The issuance of building permit(s) for any structure(s).***
5. ***All initiatives taken by the applicant to remedy the nonconformance including, legal action against the seller and/or acquisition of adjacent property.***

Where the dimensional requirements of the zoning district cannot be met in terms of the placement of new structures, a variance authorized by the Zoning Board of Appeals shall be required.