COUNTY AGENDA REQUEST

Department:	Planning & Zoning	Presenter(s):	Dennis Dutton
Meeting Date:	Wednesday, April 4, 2012	Type of Request:	Old Business

Wording for the Agenda:

Discussion of proposed amendments to the County Code Chapter 20. Zoning Ord., Art. III.Definitions, Art. IV. Establishment of Districts, Art. VI. District Use Requirements, Art.VII. Conditional Uses, Nonconformances,Transportation Corridor Overlay Zone, Commercial Development Standards and Land Use Element (Future Land Use Map and Narrative of the Comp Plan regarding Nonconforming Lots.

Background/History/Details:

The County requires that illegal conforming lots be brought into zoning compliance before building permits for principal or accessory structures can be 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. At the Board of Commissioners Workshop held January 4, 2012, staff presented three (3) alternatives. The Board of Commissioners directed staff to continue working on Alternative 2 and to return later with recommendations.

What action are you seeking from the Board of Commissioners?

Direction from the Board of Commissioners on how to proceed with the proposed amendments and possible permission to advertise the proposed amendments to the Zoning Ordinance, regarding Illegal Nonconforming Lots, to be heard by the Planning Commission on May 3, 2012, and by the Board of Commissioners on May 24, 2012.

If this item requires funding, please describe:

Funds are not needed at this time, but will be part of an overall cost to update the Fayette County Code of Ordinances.

Has this request been considered within the past two years?	Yes	If so, when?	Wednesday, January 4, 2012
Is Audio-Visual Equipment Required for this Request?*	No	Backup Provided with Request?	Yes

**** All audio-visual material must be submitted to the County Clerk's Office no later than 48 hours prior to the meeting. It is also your department's responsibility to ensure all third-party audio-visual material is submitted at least 48 hours in advance.***

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

Staff Notes:

Minutes

Board of Commissioners
January 4, 2012
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 Wednesday, January 4, 2012, 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 Karen Morley, Chief Deputy Clerk

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

Director of Community Development Pete Frisina discussed this item with the Board. A copy of the request and backup, identified as "Attachment No. 6", follow these minutes and are made an official part hereof. Mr. Frisina remarked that this was a continuation of the discussion started on October 5th. He said staff had looked at three alternatives (1) a change in the Land Use Plan; (2) come up with a subcategory for the zoning districts; and (3) create a situation where they would go before the Zoning Board of Appeals. He noted the County Attorney favored alternative #2 and the Planning Commission concurred as well.

Commissioner Brown expressed concern with liability being put on the County's back when it really belongs on the property owner's back. He said he was also in favor of alternative #2. He felt it essential to put an amendment on

the original property deed stating the property was a nonconforming lot and having the exact rules and regulations for that piece of property listed on the deed.

Commissioner McCarty questioned the reasonable cut off date for these, and Mr. Frisina said the cut off date would be when the ordinance goes into effect. Mr. Frisina said the lots created prior to the date of the ordinance could remain as a non-conforming state. He said he did not feel there were as many getting through as there were many years ago.

County Attorney Scott Bennett suggested having only two criteria and those would be (1) property was purchased in good faith thinking it was a legal lot; and (2) property purchased many years ago that is nonconforming but was approved at that time.

There was a consensus of the Board for staff to continue working on Alternative #2 and come back to the Board at a future meeting for further discussion.

To: Board of Commissioners

From: Pete Frisina, Director of Community Development

Date: April 4, 2012

Subject: Illegal Nonconforming Lots

On October 5, 2011, and January 4, 2012, 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 and Board of Commissioners concurred with his recommendation. It was also advised that the Land Use Element text be amended to address this procedure.

Staff proposes the following amendments to the Land Use Element text and Zoning Ordinance for discussion:

LAND USE ELEMENT

FUTURE LAND USE MAP AND NARRATIVE
Illegal Nonconforming Lots

Illegal nonconforming lots may be given consideration for rezoning to a Legal Nonconforming Status (LNS) sub-category of the same zoning district under Articles VII. and XI. of the Zoning Ordinance.

ZONING ORDINANCE

Sec. 7-2. Nonconformances.

A. *Nonconforming Lots.*

Consideration for the Rezoning of Illegal Nonconforming Lots. An 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.) The continuation of 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. Whether the applicant is a bona-fide purchaser in good faith of said illegal nonconforming lot without the knowledge of any illegal nonconformance, has provided documentation that there was no disclosure of nonconformance made at the time of acquisition of the property and the property was acquired with a non-contingent contract, as applicable;
2. Whether the applicant created the illegal nonconforming lot by any of his/her actions or has a familial relationship to an individual that created the illegal nonconforming lot;
3. Whether the land owner has attempted to bring the illegal non-conforming lot into compliance. The land owner must provide the county copies of all documentation detailing such attempt(s) and the detailed result of such attempt(s);
4. Whether the applicant has executed and signed an affidavit affirming all of the above are true and correct;
5. Whether the County issued any building permit(s) for any structure(s) on the illegal nonconforming lot including the circumstances involved with the issuance of said permits;
6. Whether the subject property is developed or vacant. A vacant lot created after the effective date of (insert date of ordinance approval) shall not be given consideration for rezoning to a (LNS) sub-category of the same zoning district.

Where the dimensional requirements of the zoning district cannot be met in terms of the placement of new improvements, a variance authorized by the Zoning Board of Appeals shall be required. In the event that a landlocked Illegal Nonconforming Lot is rezoned to a Legal Nonconforming Status, a 20 foot easement to a public street that has been duly recorded and made a part of the property deed shall be required prior to the issuance of building permits.

(Commentary: These are the other factors that are considered in a rezoning)
Sec. 11-11. Standards for Map Amendment (Rezoning) Evaluation.
All proposed map amendments shall be evaluated with special emphasis being placed on the relationship of the proposal to the Land Use Plan and related development policies of Fayette County. The Zoning Administrator shall prepare a report for each proposed map amendment which shall recommend a course of action including recommended conditions, if any. The following factors shall be considered by the Zoning Administrator, the Planning Commission and the Board of Commissioners when reviewing a request for rezoning:

A. Whether the zoning proposal is in conformity with the Land Use Plan and policies contained therein;
B. Whether the zoning proposal will adversely affect the existing use or usability of adjacent or nearby property;
C. Whether the zoning proposal will result in a use which will or could cause an excessive or burdensome use of existing or planned streets, utilities, or schools;
D. Whether there is other existing or changing conditions affecting the use and development of the property which give supporting grounds for either approval or disapproval of the zoning proposal.

Upon further review, the following additional articles of the Zoning Ordinance also need to be amended: Article III. Definitions; Article IV. Establishment of Districts; Article VII. Conditional Uses, Nonconformances, Transportation Corridor Overlay Zone, and Commercial Development Standards:

ARTICLE III. DEFINITIONS

Bona-fide purchaser in good faith. A person who purchases or acquires, in some other manner, a property in good faith, without the knowledge of any illegal non-conformances.

ARTICLE IV. ESTABLISHMENT OF DISTRICTS

The Legal Nonconforming Status (LNS) designation, as administered in Article VI, shall be considered a sub-category of the particular zoning district. (To be added under the list of zoning districts.)

ARTICLE VI. DISTRICT USE REQUIREMENTS

The Legal Nonconforming Status (LNS) designation, as administered in Article VI, shall be considered a sub-category of the particular zoning district.

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

Sec. 7-1. Conditional Use Approval. Conditional Uses include certain uses which are allowed in a particular zoning district, including the Legal Nonconforming Status (LNS) sub-category, provided that all conditions specified under the Zoning Ordinance are met. The Zoning Administrator shall issue a Conditional Use Permit for each use listed below upon compliance with all specified conditions and approvals by the appropriate County officials.

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)
01/19/12 – PC Wkshop (Discussion Only)
02/02/12 – PC Wkshop
02/16/12 – PC Wkshop
03/01/12 – PC Wkshop
03/15/12 – PC Wkshop
04/04/12 – BOC Wkshop

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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.)

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2. Whether the applicant created the illegal nonconforming lot by any of his/her actions or has a familial relationship to an individual that created the illegal nonconforming lot;

3. Whether the land owner has attempted to bring the illegal non-conforming lot into compliance. The land owner must provide the county copies of all documentation detailing such attempt(s) and the detailed result of such attempt(s); (Note: this measure has been discussed before and would imply that if the nonconformance could be eliminated in some manner (acquire more property, etc.) then that should be pursued and documented if it fails to produce results. The County would have to make a determination as to the level someone would have to reach to prove it is not feasible to eliminate the nonconformance.)
4. Whether the applicant has executed and signed an affidavit affirming all of the above are true and correct;
5. Whether the County issued any building permit(s) for any structure(s) on the illegal nonconforming lot including the circumstances involved with the issuance of said permits;
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