Consent #16-B

Minutes

Special Called Meeting
Board of Commissioners
January 15, 2014
5:00 P.M.

The Board of Commissioners of Fayette County, Georgia, met in a Special Called Meeting on January 15, 2014 at 5:00 p.m. in the Public Meeting Room of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

Commissioners Present:	Steve Brown, Chairman Charles Oddo, Vice Chairman David Barlow Allen McCarty Randy Ognio
Staff Present:	Steve Rapson, County Administrator Floyd L. Jones, County Clerk Dennis Davenport, Interim County Attorney

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Call to Order

Chairman Brown called the January 15, 2014 Special Called Meeting to order at 5: 03 p.m.

Acceptance of Agenda

Commissioner McCarty moved to accept the Agenda as published. Commissioner Ognio seconded the motion. No discussion followed. The motion passed unanimously.

NEW BUSINESS:

1. **Consideration of staff's request to adopt Ordinance 2014-01 amending the Fayette County Code of Ordinances, Section 5-163–Temporary Certificate of Occupancy (TCO) Prohibited and Section 5-813.–Temporary Certificate of Occupancy Prohibited.**

   Commissioner Oddo asked staff to provide an overview of what was being requested. Mr. Joe Scarborough, Director of Fayette County's Permits and Inspection Department, provided an overview of the request by explaining that the current Fayette County Building Code does not allow the building official to issue a Temporary Certificate of Occupancy (TCO). He said that with the significant increase of large, nonresidential developments, both ongoing and proposed within the county, that it would be beneficial to industry to consider allowing a TCO for a specific portion of the building should all the building, life-safety, accessibility, and fire codes be met for that portion of the building. Mr. Scarborough said there were many examples of where TCOs could be issued including such as office warehouses where the warehouse

portion meets the requirements for a TCO; allowing the owners to start stocking the warehouse while the office portion was still being constructed. He repeated that currently the County does not have provisions in place to help in these types of instances. Mr. Scarborough added that everyone was aware of Pinewood Studios but emphasized that this effort would be beneficial to all of the industry. He explained that this effort was limited in its scope since there are specific qualifications and restrictions that would have to be met, and that there would be a very tight rein on issuing TCOs.

Commissioner Oddo asked what would happen if the 45-day provision expired and the occupants are still not ready, and he asked if the occupants would be able to obtain another TCO. County Administrator Steve Rapson replied that at the end of the 45-day period there is a revocation provision that would apply. He added that one other caveat is that the TCO would be applied only to those sites with a minimum 50-acre tract and the building has to be more than 25,000 square feet. He said staff was trying to define the box so that it would be big enough to help industries in the future and not for an isolated case such as the Pinewood development. He explained that this effort was a "pro-business" approach in regards to allowing applicants to obtain a TCO and within 45-days obtaining a standard Certificate of Occupancy.

County Attorney Dennis Davenport asked the Board to refer to Section 5-167, and he explained that it addresses the issue of the expiration of the TCO. He told the Board that the problem with a TCO is that once someone is allowed to occupy a building it is hard to get them out of a building. He stated that this effort was putting into black and white that the occupants would be subject to a daily fine for every day that occupant is in violation of the County Code by not having a standard Certificate of Occupancy; and that the fines could become substantial.

Commissioner Ognio referred to Section 5-168, and he stated that while there were a few terms utilized revoking a Certificate of Occupancy, that the section did not address a situation where the occupant uses a section of the building without a Certificate of Occupancy. Mr. Davenport replied that, with regard to Section 5-168, the language was not added since it was what was in the current code. He said the only reason Section 5-168 was part of the document before the Board was because it was renumbered from Section 5-164 to Section 5-168, with the new provisions going in front of it. He said staff would likely have to come back and address the language in the future, but this effort was for the sole purpose of showing for housekeeping purposes, the renumbering of the sections. Mr. Scarborough added that Section 5-168 was originally drafted only for the revocation of a Certificate of Occupancy, but that the Board was considering the adoption of a whole new title under a Temporary Certificate of Occupancy.

Commissioner Ognio asked if there was any way to revoke a TCO. Mr. Davenport answered that due to the nature of the TCO being only 45-days long, whatever revocation procedure is put into place will be mute since the TCO would expire in 45-days. Commissioner Ognio said he was thinking about a scenario where the occupant starts utilizing a part of the building that they are not supposed to be utilizing, and he asked if there was any way that the County could address that. Mr. Davenport replied that assuming that happens it will take probably more than 30 or 45 days to bring that issue before a body and hear the facts as to what needs to be done to address the issue. He suggested that by the time those actions occur then the TCO would have expired. Commissioner Ognio replied that was why he thought there was some provision stating matters like these would not have to come before a body since something could be done without having to come before a body. Mr. Davenport answered that he had hoped to have this discussion in the future because the County cannot simply tell somebody to leave a building that they have been given permission to occupy, and that it would take some type of due process. Commissioner Ognio expressed concern that once someone is allowed to occupy a building that they it is their building and that the County

would not have any recourse to even remove them from the portion of the building they are not supposed to be in. Mr. Davenport replied that was the reason there was passive language in the recommended amendments before the Board stating "subject to a daily fine" if the occupant does not get a Certificate of Occupancy by the end of 45 days, and he said that was the best the County could do under the circumstances. He added that the daily fines would get to a point where it gets the occupants attention because there could be 15 or more citations going before a judge. Commissioner Ognio asked if the occupants could be issued a citation if they use part of the building that is not supposed to be used. Mr. Scarborough replied that they could be cited for illegal occupancy, that the County Marshals would issue the citation, and that the occupant would be brought before a judge. Mr. Scarborough added that the Fire Marshal had also stated that he has provisions to could revoke a Fire Safety Certificate and that the Building Code gives provisions to revoke a Certificate of Occupancy. He added that there was still a question of enforceability due to what the Building Code said versus a judge's interpretation of the Building Code.

Commissioner McCarty said he built a studio at one time that had an occupancy capacity of 3,200 people, and that they had to get a TCO with a 45-day allowance since the construction was not completed in time. He assured everyone the work in completing the studio was done by the end of the 45 days due to the fines associated with not completing the work on time.

Mr. Scarborough thanked those involved in getting this effort completed including Chairman Brown, Mr. Rapson, Mr. Davenport, the Fire Marshal, and Mr. Pete Frisina.

Commissioner Barlow pointed out that the occupant needed to submit a request in writing providing proper justification for receiving a TCO, and he asked if that effort was take care of "in-house." County Administrator Rapson replied he anticipated the occupant applying for a TCO within the next day or two. Chairman Brown added that they were really close to applying for a Certificate of Occupancy.

Commissioner Oddo moved to approve staff's request to adopt Ordinance 2014-01 amending the Fayette County Code of Ordinances, Section 5-163.–Temporary Certificate of Occupancy Prohibited and Section 5-813.–Temporary Certificate of Occupancy Prohibited. Commissioner Barlow seconded the motion. No discussion followed. The motion passed unanimously. Copies of the request and Ordinance 2014-01, identified as "Attachment 1", follow these minutes and are made an official part hereof.

ADJOURNMENT:

Commissioner McCarty moved to adjourn the January 15, 2014 Special Called Meeting. Commissioner Barlow seconded the motion. No discussion followed. The motion passed unanimously.

The Board adjourned the January 15, 2014 Special Called Meeting at 5:14 p.m.

Floyd L. Jones, County Clerk

Steve Brown, 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 January 2014.

Floyd L. Jones, County Clerk