

The Board of Commissioners of Fayette County, Georgia met in Official Session on Thursday, August 9, 2001, 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  
Carol Chandler, Executive Assistant  
William R. McNally, County Attorney  
Linda Rizzotto, Chief Deputy Clerk

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Chairman Dunn called the meeting to order, offered the Invocation and led the pledge to the Flag.

**CONSIDERATION OF PROPOSED AMENDMENTS TO THE FAYETTE COUNTY DEVELOPMENT REGULATIONS. ARTICLE VI. TREE RETENTION, PROTECTION AND REPLACEMENT:**

Commissioner Wells remarked there was a certain format for discussion of this public hearing. She said this would allow discussion to flow well and allow everyone who wished to speak to do so. She said the Board would be considering the tree retention, protection and replacement ordinance. She stated that once the ordinance was presented, the Board would give everyone present who was in favor of this particular ordinance the opportunity to stand in order to show their support. She said then anyone wishing to speak in favor would be asked to remain standing. She said anyone wishing to speak had three minutes to speak in favor of this particular ordinance. She said after each person speaks the Board would ask that the person sign the sheet located next to the podium. She asked that everyone speaking should tell the Board their name and address so the Board would know how to respond. She asked that all comments be kept directed to the Board and not to someone else in the audience. She said once the people who have spoken in favor of the ordinance have finished, the Board would ask everyone who was in opposition to the ordinance to stand to show their opposition. She said the Board would then ask those who wish to speak to remain standing so that the Board could have an idea of how many wish to speak. She said the same rules would then be followed. She asked again that all comments be addressed to the Board of Commissioners and not to the audience. She also asked that people wishing to speak to not be redundant. She said it was not necessary for people to repeat things that had been spoken before. She said the public hearing would now begin.

County Engineer Ron Salmons remarked that this was a public hearing for proposed revisions to the existing tree ordinance. He said the primary revisions were a result of complaints

coming in concerning timbering operations in residential areas. He said he had tried to address some of those concerns. He said in the same light he was trying to keep the balance between the landowners who have the timber and the rest of the community. He said what was presented was basically in two sections. He said the first portion there was a lot of highlighted areas and changes. He said most of that was word smithing of the existing ordinance as it was and the new section which was the only really substantive addition to the tree ordinance was in Section 185 on page 14. He said the first part he had tried to rearrange some of the verbiage to separate the mandatory items from the recommended items. He said there were two changes that were not in here prior to this time. He said those concerned issues about compaction and soil type around any trees to be planted. He said this was at the bottom of page 4 and then again on the top of page 5. He said the landscape area had to be the proper size for the root zone for the specimen trees that would be going in. He said other than that, all of the changes that were seen up to Section 185 all of that information was currently in the county's ordinance. He said the addition of Section 185 was on page 14 and went through page 15. He said this section basically addressed the timber harvesting operation. He said the object of the proposed revisions were threefold. He said one was to try and provide a screening buffer to lessen the negative impact to adjacent property, try to provide for better erosion and sediment control and try to provide for forestry forestation. He remarked that the application of this section would only be for lots or property of five acres or more and cover only commercial timbering operations. He said the major provisions of Section 185 was that it requires a plan to be submitted and it would have to be prepared by a registered forester.

Mr. Salmons further remarked that the proposal would require that the operations follow the Georgia Forestry Commission's Best Management Practice for Forestry. He said that would address the erosion control issues. He said at the present time that particular document was an advisory document by the Commission as it would be a regulatory document as far as the county was concerned. He said it addressed the erosion control area. He said the proposal would require a 25-foot buffer along the property lines and the owner would be able to manage that buffer. He said the owner could remove dead and diseased trees, infested trees or trees that might be blown down and damage a neighbor's property. He said the owner could remove up to 50% of the canopy trees in this buffer. He said those trees would be selected by a registered forester. He said the buffer would apply only to property adjacent to developed property. He said if the property was not developed then no buffer would be required. He said a graveled entrance would be required that would be 20 ft. by 100 ft. in length. He said this would help keep the mud from being tracked out on the roadway. He said the plan permits the reforestation and could either be by natural means or artificial means. He said if it was by natural means it would be requested that the seed trees be selected and marked by a registered forester. He said thinning of any timber stand would be permitted up to 50% of the trees without any marking of trees to be left. He said the plan would merely describe how the process would work and there would be no buffer requirements because by definition they would have addressed that. He said the permit would be good for a two-year period from the

point of issuance. He said this was a brief summary of what was being proposed. He said he was trying to keep a balance of the interest of all of the citizens of Fayette County and hopefully this had been done.

Chairman Dunn asked if anyone wished to speak in favor of the tree ordinance. Hearing none, he asked if anyone wished to speak in opposition to the tree ordinance. He asked anyone in the room who was opposed to the tree ordinance to stand up. He counted approximately 31 people. He asked anyone wishing to speak in opposition to remain standing. He said there were twelve people wishing to speak in opposition. He reminded each person that they would have three minutes to speak. He confirmed there were 13 people who wished to speak in opposition to the tree ordinance.

Brian Daughdrill of the law firm of Seyfarth Shaw, 1545 Peachtree Street NE, Atlanta stated he represented the Georgia Forestry Association. He said he was here to present the constitutional objections of the Georgia Forestry Association on behalf of its individual members who reside or own property in Fayette County. A copy of the legal objections, identified as "Attachment No. 1," follows these minutes and is made an official part hereof. He said this ordinance, while it had many good points, still had many constitutional deficiencies.

Mr. Daughdrill said he had filed a legal objection with the Clerk and these would be incorporated. He said firstly the entrance requirement of only one entrance onto a piece of property rendered commercial harvest of timber impractical. He said in the Supreme Court in 1922 recognized that where you render the commercial harvest of timber, and in that case coal, the extraction of coal impractical then that affects the taking of it. He stated that also had a separate issue and that issue was that the one entrance had no proportionality which was required by a recent U.S. Supreme Court case. He said any decision that the Board would make must be roughly proportionate to the impact caused by the activity. He said if there was a piece of property that has a mile of road frontage and that piece of property was restricted to one entrance, particularly if it already had only one entrance, if there was a stream or anything else that would interfere with the ability of people to get onto the property from where that one entrance was the harvest of timber had been rendered commercially impractical. He said therefore that requirement would bear no rough proportionality to the overall scope of the project.

Mr. Daughdrill said a second area where there were problems with the ordinance, the ordinance did not restrict itself to the language that was proposed. He said the ordinance as it was written right now stated that "where timber to be harvested was adjacent to undeveloped property." He said the ordinance did not define what constituted undeveloped property. He said that was an unambiguous enough standard that someone could go in and put a ten foot camping trailer on a piece of property, use it three months out of the year for hunting and camping and technically qualify as undeveloped property without a definition in there. He said

this might not be the intent but there was no language in the ordinance which restricted its application. He said there were other designations in this ordinance that lack clear articulate guidelines to limit administrative decisions where authority was delegated. He said the Board had the authority where it would delegate it to an administrative official that this must be done with clear articulate guidelines that limit their discretion to the point where if things were done they would qualify and if things were not done, they would not qualify.

Daniel Langford, 167 McIntosh Road, Brooks stated said he was opposed to the timber harvesting restrictions being considered tonight. He said the majority of his family's farm was within the town limits of Brooks and thankfully not be subject to this. He said they also had approximately 100 acres located in the unincorporated county that would be affected. He said Hill Pine Farm had been in his family for more than 150 years. He said it was a cotton farm for 100 years, it was a cattle farm for the next 40 years and in the early 1980's were the fields seeded in pine seedlings. He said his family had never had any complaints about timber cuts or thinnings. He said they live on the farm, love it and wanted to preserve it and be good neighbors. He said what he could not understand and frankly can't accept was why after twenty years in the business the rules were being changed where he could not cut the trees he planted. He said it did not make sense to him why he could not have the freedom of having an open field configuration that had been there for years. He asked why folks who never even set foot on his property think they know better than he did what might be appropriate for it. He said his family had no intention of selling or developing Hill Pine Farm. He said he would like to hold on to it for as long as they can but if the county started limiting its sustainable forestry activities, it would hasten the day when his family and other families who own large tracts of undeveloped land have to develop those lands because there were no options left. He said most citizens around Brooks did not want to see this happen. He said he had a tangible legacy for the eighth generation on this farm. He urged the Board to limit neither his options nor his income by adopting this ordinance.

Gerald Woolsey, P.O. Box 10, Brooks stated that everyone in the room was aware of the constitutional limits on taking property without compensation. He said he owned timberland in Fayette County and he also owned valuable timber within the twenty-five-foot buffer in the proposed ordinance. He said the effect of this ordinance would be to reduce the value of specific trees within that buffer to zero dollars. He said the objective of the ordinance has been stated as beautification of the county and reduced visible impact on adjoining landowners. He said if the county wanted this property in trees to beautify the county, the county should pay for the money damages to him as the owner of the property. He said the correct way to take private property for public use was found in Title 22 of the Code of Georgia and he said this was the condemnation portion of the Code. He said those rules for condemnation apply to land as well as personal property. He said they require compensation except for contraband. He said if he had to leave a sellable tree standing on the property in order to obey the law then he would leave the tree to obey the law. He said then he would file a claim against the county for compensation for the money that it would cost him to leave the

trees that the ordinance required. He said he would pursue that claim by all lawful means. He said the county should expect no less of him or of the other land owners who were represented here tonight and those who were not present as well. He said as an example of what this represents to him, if Mr. Hearn was sent to the nursery with a truck and told him to load up the truck but not to pay for it because the county wanted the trees and the bushes and whatever the nursery sold to beautify a ballpark, the county courthouse grounds, he would expect Mr. Hearn to pay for it. He said if he decided to take the property without paying for it then that decision would not stand. He asked the Board to reject in total this timber harvesting ordinance and seek other ways to achieve the objectives that it presented.

Commissioner Wells asked Mr. Langford how many acres he owned and if he was using the acreage for timbering.

Mr. Langford replied he had 125 acres for timbering. He said he already had a timber plan that had been written by the Georgia Forestry Commission. He said he had a contract on that timber to sell it. He said if this ordinance passed it would impair that contract. He said this was another issue he did not bring up but it was germane to what Ms. Wells was asking?

Bill Baldwin, 642, Grant Road, Brooks stated he had been a resident of this area for the last twenty-one years. He said if this proposal which he considered ill conceived was passed it would not affect him or his timber because he had cut his last Fall. He said it would affect him in another way and that was his personal freedom. He said the Federal Government, the State Government and the Fayette County Government keep chipping away at his freedom not only in respect to this proposal, but also with building and zoning laws. He said the freedoms were not a part of this proposal so he would not go into that. He said it was Abraham Lincoln that said a foreign government could not take our freedom. He said if the citizens lose their freedom it would come from within and that was exactly what was happening in this Country today. He said the people of this Country were gradually losing our freedoms. He said he felt this plan was ill conceived and he hoped the Board voted against it. He said it strikes him as an empire building procedure. He said someone was taking authority, accepting responsibility, hiring people, and causing more and more taxes in Fayette County for this proposal. He said as a sideline he said he was a pilot and had been for a long time. He said when he flies over Georgia all one could see were trees. He said if you lose an engine there was no place to put the airplane except in the trees. He said Georgia did not need to conserve trees because there was a great deal of trees. He said the trees would be growing up faster than they could be cut down. He said his property was already coming back to where it was in just a year of growth.

Bill Cole, 285 Franklin Farm Circle said he was a lifetime resident of Fayette County. He said he had grown up in the South part of the county where his family still continued to own property. He said he had recently planted the property in timber. He said he had looked at his road

frontage of the timber parcel that had been planted approximately 1,200 feet road frontages on Antioch and 600 feet road frontage on Goza. He said he did a small equation and had come up with 60,000 square feet that according to this ordinance he would not be able to use. He said he had divided that by the total and came up with approximately 8.3% of his property that would become an aesthetics tax. He said this was what he was asking the Board to consider. He asked how much it was worth for the people going back and forth on those roads in value out of the pockets of the farmers as an aesthetics tax. He asked for the Board's consideration on this.

Commissioner Wells asked Mr. Cole how many acres he had.

Mr. Cole responded that he owned 100 plus acres and planted 44 acres.

J.W. Roberts, 240 Crabapple Road stated he had approximately 125 acres along the river there and he was proud of it and apparently the appraisers liked it too because they just jacked it up \$60,000. He said every time a tree comes down because of lightning, weather or whatever he would cut the tree up and burned it or did whatever he had to do with it. He said he didn't want to infest the rest of the property with the downed tree. He said if he understood the proposed ordinance he would now have to get a forester or somebody to say that he could cut the tree up and burn it and he would have to pay for this. He said this was the issue that concerned him.

Commissioner VanLandingham commented to Mr. Roberts that he didn't own 125 acres but the appraisers liked his property too.

Mr. Roberts said there was a little comfort there but not a whole lot.

J.L. McLucas, 1270 Highway 92 South, Fayetteville remarked that he recognized the importance of trees as far as beautification and pollution control. He said he was, however, opposed to Section 185 of the timber harvesting ordinance. He said he was opposed to the ordinance on the grounds that it was undue government interference and private property rights. He said in 1821 people had moved into Fayette County and took the land from the Creek Indians. He said the people immediately cut down approximately 90% of the trees for agriculture. He said the county had somehow survived without any government interference stopping that. He said in the 1930's, 40's and 50's farming went out and these trees grew back and there was probably 80% to 90% of the forest canopy back in place. He said this ordinance was not needed to regulate the harvesting of timber by private property owners for the beautification of Fayette County. He said there were plenty of trees in this county.

Jan Trammell Hutto, 187 Tyrone Road, Fayetteville said she did not come to the Board tonight in the vain of a real estate agent. She said she was coming to the Board talking as a native Fayette Countian with land inherited from her father. She said the land had been passed on

to her with the obligation that she pass it on to her children which she intended to do. She said her land would not put a child in the schools, it doesn't ride on the roads, it doesn't require any services except to put the fire out if it started one. She said these people here tonight had done a wonderful job in taking care of their property and none of them would probably sell it but passed on generation after generation. She said one of the things that makes Fayette County wonderful were the large tracts of land with trees. She said every year she gives Fayette County ten of her acres, or the same thing as, for taxes. She said she preferred to keep her land and trees and she had done a good job of tending to it for fifty years. She said she did not believe that she needed any help.

Travis Hardy, 108 Mask Road, Brooks remarked that he wanted to speak on the farming aspect. He said he had timber and he also tried to farm. He said he would like to know if he wanted to clean up a corner all the way to his property line which he does occasionally for planting, if he would be allowed to do that within twenty-five feet of the property line. He said he opposed the ordinance from the beginning. He said he agreed with everything the other citizens had said. He said he was a lifetime resident of Fayette County and had farmed all of his life on this particular property. He said he had also worked to keep the farm going and he did not believe that anyone could say that he was not a good steward on this property. He said he opposed a registered forester telling him that he could not cut a tree down. He asked the Board members what they would do if someone came to their place and told you that you could not cut a crepe myrtle or some other bush that was in front of your house within twenty-five feet of property. He said he has opposed this from the beginning and just could not see giving 25 percent of the trees around the edge of his property. He commented he did not have that much wooded acreage, probably fifty to sixty acres but he has never cut down any of those trees. He said some of those trees were very large and he loses about ten or fifteen every year

He said one of these days one of the trees would probably fall on a cow but he did not want any forester coming down there and telling him he had to cut a certain tree. He remarked he appreciated the Board letting him have his say. He said he hoped members of the Board would vote against this. He said most of the Board knew he was on the Planning Commission for many years and he tried his best to do the right thing while he was here.

Scott Jones, 505 Pinnacle Court, Norcross stated that he worked for the Georgia Forestry Association. He said the Georgia Forestry Association would like to recommend to the Fayette County Board of Commissioners that it remove Section 8-185 from consideration here tonight. He said if and when the county sees the need to reconsider timber operations within the county that they consult with the appropriate stake holders in the county, that being the forest landowners in this case. He asked that the Board solicit with the forest landowners to develop policies that offered incentives and not disincentives to bonafide forest landowners who work so hard to continue growing trees on their property. He said he also wanted to reaffirm his Association's commitment to Fayette County to help the system to develop workable solutions that were natural resource issues. He said he would be more than happy to help facilitate meetings with foresters and forest landowners in this county to help develop

these policies.

Jake Mask, 420 Rising Star Road, Brooks said his dad had been a sharecropper throughout Fayette County from 1938 to 1955, and moved his family from one side of the county to the other, wherever somebody would let them farm. He said about 80 percent of the trees in the county that are here now were not here then. He said he had no problem with trees in Fayette County. He said he owned a farm in Brooks consisting of 345 acres. He said he did not feel like he owed anybody twenty 5 percent of his trees. He said he did not want anybody telling him that he needed a twenty five-foot buffer zone.

Ed Vanderslice, 583 Padgett Road, Senoia said his family owned 827 acres in the very South end of the county for the last thirty years. He said in 1975 they had cut the timber. He said back then he did not need an ordinance telling him what trees needed to stay and to mark trees. He said they had done a clear cut on a lot of that property. He said it was just about ready to be cut again. He said as far as reforestation goes, he said if you take and cut a piece of land clear, in no time it jumps right back with sweet gum or Pine or some other native species. He said there was no need for any ordinance saying that a certain number of seed trees needed to be left per acre or trees needed to be replanted. He said concerning erosion control that if the same piece of land was cleared within a couple of months time, depending on the time of year, the grass and shrubs and this was your erosion control there. He said the replanting of pine trees would have very little effect on the property. He said in reading this ordinance he was surprised at how it seemed it was written by someone who had no knowledge of timber and no basic knowledge of timber operations and timber management. He said he felt like this ordinance was totally unnecessary and was unfair to the timber landowners. He asked for the Board's consideration in rejecting the ordinance.

Barbara Buckley, 783 Ebenezer Road, Fayetteville asked for the definition of timber harvesting. She said this was for property in excess of five acres. She said if she purchased five or ten acres and cut the trees to build a house and sell the property, would this be considered timber harvesting. She said if the person next door to her had fifty acres and he decided that he wanted to make a lot of money he could take off every tree and build twenty-five houses. She said if those houses were there, and she still had her fifty acres and she decided to take a few acres of pulpwood out and the twenty-five neighbors might then tell her that they enjoyed her trees and order her not to cut them down. She questioned whether she was understood the ordinance the way it was. She said she understood this ordinance to apply only to people with more than five acres and anyone with less than five acres could cut every tree down on their property. She said she felt the ordinance was poorly written. She felt it would be taking trees without proper compensation. She felt the ordinance needed further review .

Fuller Anderson, 187 Corinth Road, Newnan said he worked for the Georgia Forestry Commission. He said he was a forester for Fayette County. He said he had taken the liberty to put some numbers to these ordinances that were coming out. He said he had taken 5 acres, 50 acres, 100 acres and a 250-acre tract. He said he took the buffer that they were

going to pertain to. He said one acre would be lost in a five-acre tract. He said 3.3 acres would be lost in a fifty-acre tract. He said 4.7 acres would be lost in a 100-acre tract. He said 7.5 acres would be lost in a 250-acre tract. He asked the Board to assume that on a 100-acre tract that a landowner was to receive \$1,500 per acre for timber. He said if the landowner was given 4.7 acres out then he would lose \$7,050 on the timber. He said if the same 100 acres was regenerated it would probably cost \$200 per acre to do it. He said the landowner would lose almost one-third of his replanting cost. He said this was just one thing that he was opposed to.

Commissioner VanLandingham asked if the \$1,500 was an established yield.

Mr. Anderson replied no. He said he had just taken that figure based on information that he had come up with. He said he had figured it at a low ball figure.

Commissioner VanLandingham asked if this property was natural regeneration.

Mr. Anderson replied that he was talking about a soft timber stand or a mature timber stand.

Chairman Dunn asked if there was anyone else to speak against this ordinance and there were none. He said two people had called him in the last day and asked if he would read some input from them. He said Charles Futral and Elizabeth Barnes could not be present and he had agreed to read these letters into the record. A copy of the two letters, identified as "Attachment No. 2", follow these minutes and are made an official part hereof. He asked the Board members if there were any comments.

Commissioner Frady said he felt Fayette County had more trees now than it had fifty years ago because the land was not being farmed as it once was and there were now trees on the farmland. He said he had different numbers from the gentleman who came up with the acreage that a twenty-five-foot buffer takes. He said if one acre or 209 feet was multiplied by 25 feet this came to 5,225 or 12 percent. He said 100 acres would be 12 acres according to his math. He said he wanted to table the ordinance at this time for maybe two months. He said the Board had received some new information today and he felt it would serve the community a lot better because he did not want to infringe on people's property rights. He said the longer he was on the Board the more he was against doing this. He said he thought the whole world was getting that way and he just didn't like this approach at all. He said the Board had to do some things but this was one of those things that it did not have to do. He said if people wanted to sell their property then they had a perfect right to sell their property and their trees but if they do cut their trees they need to clean it up. He said he would like to make a motion to table this ordinance to maybe the second meeting in October in order to give staff enough time to rewrite an ordinance concerning the information that the Board had received today

***On motion made by Commissioner Frady, seconded by Commissioner Wells to table this item to the October 25<sup>th</sup>, 2001 Board of Commissioners meeting, discussion***

***followed.***

Commissioner VanLandingham said he also felt the ordinance did not address the problems that exist in Fayette County. He felt if this ordinance was adopted as printed there was enough that would constitute taking of property without compensation in some cases. He said he did not think that the people here tonight were the ones that the ordinance was intended for. He said the purpose of the ordinance was for a different purpose other than what had been presented tonight. He said it had been a process for the county to get where it was and he was not in favor of adopting the ordinance tonight. He said there were a lot of things that he had learned in the last three weeks that made him think that the Board needed to look at this a little more. He said there were surrounding counties that had gone through this. He said those counties have workable ordinances that the Forestry Commission was reviewing. He said he realized some people would not want the Forestry Commission telling them what to do but there had to be a gauge somewhere. He said the Board would do all it possibly could. He said there was not a Commissioner on the Board that wanted to put more government on the Fayette County citizens. He said he could not support the ordinance the way it was presented.

Commissioner Pfeifer said he had some comments too but would wait to express those, but he did agree with what had been said thus far. He said he believed if not legally, philosophically this was a taking of property with no compensation.

Commissioner Wells said she wanted to assure everyone that the purpose of this ordinance and the reason the Board had started looking at this was not to take anyone's property, not to put any burden's on anyone and prevent them from making profit on their forest products. She said one of the reasons the Board was looking at this was because many of the areas in the community were being clear cut under the auspices of forestry and then being sold to developers and getting around a lot of the ordinances already in place. She said the reason the Board was looking at this was not strictly for aesthetics. She said the Board was mandated by law to look at the public safety, health and welfare of the community. She stated that it had been proven over time that trees did contribute to that. She said Fayette County was located in a non attainment area and the Feds and the State is always breathing down their necks saying that Fayette County's air is always too dirty and too polluted. She said the reason the Board wanted to take a look at this was not to encroach upon anyone's right to earn a living. She said the reason the Board was looking at maintaining trees was to make sure that the Board did not indiscriminately clear cut the entire county in order to make a profit for developers. She said the Board was looking at an ordinance to keep as many trees as possible to keep the air clean. She said another reason was to conserve energy, heating and cooling. She said this was something that everyone needed to look at with the price of energy continuing to escalate. She said it had been proven that trees help maintain that. She said another issue was prevention of soil erosion. She said it might be that property did regrow itself and that the erosion takes care of itself in 50 percent or even ninety of the cases. She said there was a situation right now on one of the county roads where trees had been harvested and it truly looked like a war zone. She said the land was left with pine stubs

standing and trees knocked over with the good trees being taken and the bad trees left. She said it was very clear that the people came in and harvested this when it was very wet. She said there were deep trenches and erosion going on because the area was in a low-lying area and it floods on a regular basis. She said this type of thing was not good for anyone. She said just because one person received a profit did not mean the rest of the county should suffer.

Commissioner Wells further remarked that the Board was very concerned about improving water quality and the trees help with that. She said all of this was to say that the Board would go back and look at a tree ordinance. She said it was never intended to infringe upon anyone's right to make a profit. She said it was always intended on the preservation of the quality of Fayette County. She said this ordinance as presented tonight was not going to pass. She said the Board would go back and look at it but the Board would be looking at it not from something that was beautiful from a neighbor's point of view, but what was best for the public safety, health and welfare of Fayette County.

Chairman Dunn remarked that he would not agree with two Commissioners' comments who described this as a taking because there would be circumstances under which he was sure it would not be. He said he did not think it would be wise on this Board's part to describe that as a taking. He said that was not the issue here. He said the issue here was that three of the Commissioners sat on this Board about two years ago and they asked the county staff and the Planning and Zoning Commission to help with a problem. He said the problem was to put an end to the look of an atom bomb being dropped on property that developers were developing. He said the developers took every blade of grass and everything else with it. He said the citizens could see this happening around the county and he didn't think anyone wanted that. He said the current ordinance in its current form would actually hit the exact wrong group of people. He said he hit the people who were legitimately harvesting timber. He said that was never what the Board wanted to do. He said the Board did not want to take people's property and did not want to hurt people from harvesting. He said one of the things that people can already see because of the input tonight was that this ordinance was not going to pass like this. He said he was not personally in favor of any kind of a buffer on a legitimate harvesting of trees. He said he did not feel this ordinance was fair. He said the Board would not be passing the ordinance in this way. He asked that citizens who have a lot of experience in this area to join the Board in trying to put an ordinance together that would preserve the citizens' rights and also help the Board to put some controls in on development in Fayette County so that it would remain a beautiful county. He said this was the goal of the Board.

Chairman Dunn said he would personally appreciate any of the citizens coming in, calling, faxing or giving the Board suggestions on this ordinance. He said this Board was for controlling growth rather than having the pavement all over Fayette County. He said he appreciated the citizens' input tonight.

Commissioner Wells asked County Engineer Ron Salmons if the October 25<sup>th</sup> date would give him enough time to work on this and Mr. Salmons replied yes.

*The motion carried 5-0.*

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**DISCUSSION OF INDIGENT DEFENSE FOR FAYETTE COUNTY:**

Attorneys Jim Bischoff and Brian Bischoff gave a power point presentation to those in attendance regarding the provision for indigent defense for Fayette County. A copy of his presentation and the items Mr. Bischoff covered are addressed in the attached proposal, identified as "Attachment No. 3", follows these minutes and is made an official part hereof.

After the official presentation the attorneys answered questions from the Board.

Attorney Bischoff remarked that he was working on an idea about talking with the District Attorney and setting up a plea day for everybody who was already in the system to proceed if they have pleas available or would be available to go ahead and plea and cut it off so they wouldn't take any new people. He said for instance, theirs that they were processing already would be cut off at this point and we would send a bill in for what we had done up to that point. He said the cases that were left and going to trial they would be willing to take them over, however, they would have the option of staying where they were at. He commented his office would have the responsibility of that he presumed, unless it was some sort of death penalty case. He said in transitioning out, one would do just the opposite. He said there would be a cut off date and he would try to get every single thing he could plead prior to that day and then there would be the switch. He said his firm would continue with the cases that it wanted to from that point on and charging. He stated he had not worked this out exactly but these were his ideas on it.

Commissioner Wells interjected that Attorney Bischoff and she had spoken about this idea off and on for several years. She said she would not be able to support this. She said she had some very real concerns about going to this. She said she did not see how this could be cost effective for Mr. Bischoff's firm to do this. She said her concern was, if Mr. Bischoff got in there and if there were more clients than anticipated, then it would become less cost effective for Mr. Bischoff to handle it. She said there was always the possibility that Mr. Bischoff's firm or any other firm could say that this was more than they bargained for and they might need to renegotiate the contract or they would leave. She said, in addition, that she did not feel this was the best way to handle the indigent defense. She said there had been a lot of articles recently of problems with this type of defense. She said she was aware that there were problems with the present system but she was not sure that those problems were severe enough for her to consider changing. She said if she considered changing and going to this particular mode of indigent defense she would not accept any bid proposal unless it went out for bids. She felt it was irresponsible for the Board to allow anyone to come in and present the Board with a proposal of this magnitude without giving other people the opportunity to at least also bid on it. She felt it would be irresponsible for the Board to assume that there was only one way to do this and to draft a proposal she would want to seek input from other people. She said an R.F.P. would be sent out. She said this involved \$250,000 and although it was service she felt the Board would be doing less than its responsibility unless it followed the

pattern that it normally followed.

Commissioner Wells further remarked that she had spoken with a number of the judges and they were not in support of this. She said if she was going to consider bringing this into play, she would also want to have a public hearing so that the people who were currently doing it would have an opportunity to have input and the people who were in the system such as Mr. Harris and some of the other people. She said she had spoken to some of the court personnel and they were adamantly opposed to the county switching to something of this nature. She said some of them had been extremely vocal in this. She felt for the Board to unilaterally make a decision to jump into a system of which none of the Board was an expert and change it in such a drastic fashion would be irresponsible for the Board to do so. She said under those circumstances, and this was nothing personal, but she was not convinced that this was the way the county should go. She said she was definitely convinced that this was not the route that the Board should implement if it decided to go that way.

Attorney Bischoff said he had always respected Commissioner Wells and still did. He said he understood what she was saying. He said in Spalding County this had worked very well and Johnny Mustella had fewer people in the system than he did.

Commissioner Wells said she did not want to get into a debate about this but there were some problems in Spalding County prior to Mr. Musteller's demise. She said she did not feel it appropriate for the Board to discuss the problems that were there. She said she really did not want to get into a discussion about that.

Commissioner Frady said he was curious enough about it to find out if there was an avenue there that might help the county. He said he was not sure about this but he felt obligated to check into this.

Attorney Bischoff said he had talked with a lot of people too. He said some of the statements that had been made surprised him very much.

Chairman Dunn said he would like to address a few thoughts on this issue. He said he had spoken to Attorney Bischoff about this. He said he had actually spoken with people on the Georgia Indigent Defense Commission that was in progress right now. He said after he had spoken with them and without specifics of this proposal, he had mentioned to them that he was looking into perhaps changing the current system. He said there were approximately three systems that could be used. He said one was the system currently in use, there could be a public defender or it could be contracted out to one firm which was Mr. Bischoff's proposal. He said according to some of the people one of their concerns was that the proposed system was the worst/ best system. He said with the lawsuits in Georgia now many of them were involved with the current system. He said the lawsuit was an inadequate defense for the poor and uneducated people. He said he knew Mr. Bischoff was aware of several of the cases that have been getting publicly over the last couple of years in Georgia.

Mr. Bischoff said yes, he was aware of these cases.

Chairman Dunn stated in his research he was finding quite a bit of opposition to this kind of a system. He said he also found that members of the Indigent Defense Commission were not fond of this kind of system. He pointed out that this didn't necessarily sway him one way or the other. He said they were not necessarily real pleased with the public defender's system. He said in many jurisdictions the public defenders were being accused of not being able to get a job elsewhere. He said the public defenders had not provided adequate defense for some of their clients and some of those cases were in court. He said one of the members of the Defense Commission stated that Fayette County had the system that they were going to recommend. He said he was not sure what was right or wrong about this he wasn't sure yet. He said that group of people, the ones who were doing the study for the State were not in favor of this proposal. He said he did believe, however, that if Fayette County were to go to the proposed system there would be cost savings. He remarked that there were other concerns that he might have. He said he did not have his mind made up at this point. He said he was very concerned about certain things that he was hearing about all three of these options. He said it appeared to him that in a system like this where there was an unknown number of clients and this was rising every year. He said there were guidelines in the State about how many people an attorney could represent in a year. He asked Mr. Bischoff to comment on this.

Mr. Bischoff said no, not particularly. He said there were no guidelines per se.

Chairman Dunn commented that he did read on the internet that there was suggested levels of how many clients one lawyer should represent in a year and that kind of thing. He added that he didn't remember what the numbers were but he would be looking further into this. He remarked it seemed to him if there were an awful lot of people and there will be, and he wanted their comments on this, it seemed like there was a disincentive in this system for you to go to trial with anybody. He said going to trial would take much more time. He said one could spend more time on one trial than you would spend on one hundred people who would plead. He said the attorney would get the same amount of money.

Attorney Bischoff said this was true and the other system worked just the opposite. He stated first of all he had mentioned earlier one of the reasons that people go into the District Attorney's Office early, and there were a lot of very big criminal defense attorneys who go there first, was to pick up the jury experience. He said jury trials were his life and if he could spend every day in a jury trial that would be what he was doing. He commented that you had to look at the integrity of the people you were dealing with and of course he would be boss. He said the decision as to whether a case will go to trial was made number one by the client but he would never persuade the client not to for any reason. He said he knew of no reason that he had ever not gone to trial and he had certainly never gone to trial for money. He said this was what his firm did because it was made up of trial lawyers. He said the incentive was not in there but it was moving them quicker so an attorney could adequately prepare for them. He said one of the biggest weaknesses in the current system was a lot of the attorneys were not prepared to go to trial and they almost end up in tears at calendar call because they were

being forced to and they are not ready. He said this would not happen with his system because the attorneys would be ready. He said he did not know of anything else to tell the Board but that would never happen in a situation that he was running. He said there was incentive, yes, if an attorney could talk a client into not going to trial then less time would be spent. He said it was just like today, if something could be spread out there would be more money. He said there were people who would abuse that. He said in looking at this system, one must look at integrity too and the person one was dealing with.

Attorney Brian Bischoff said he would like to address a couple of issues. He said firstly in order to have a respect between Mr. Harris, Ms. Landis, Jim, Tommy and Jamie, there would have to be a professional relationship there that they would know that the firm would be taking cases to trial that needed to be taken to trial. He said on a purely professional relationship basis he would have no relationship with them at all if he never took a case to trial. He said they would not give him a plea negotiation that was proper if they knew that they had no chance of losing a case because he was going to take a plea sooner or later. He said there would have to be that degree of respect there. He said any good defense attorney would tell you that you have to be willing to take cases to trial that need to go to trial and the District Attorney the same way and the Solicitor the same way in order to keep both sides on their toes. He said with the current system there was the incentive to go too long. He said ethically one could go all the way up to the calendar call and the judge would set a date and after that date it would be a blind plea and no plea negotiations. He said ethically if an attorney would be doing his client a disservice by entering a blind plea or taking him to trial when the attorney knows there was a case, it would be better suited to plea. He said the attorney had until that date to do as much investigation as possible and to make extra money. He said he was not accusing anyone of doing this but certainly that would be the incentive. He said an attorney would know that he could still fulfill his obligation if the client was pleaded by that date with a plea negotiation. He said on the other hand where it was ethically responsible to take that case to trial because there were defenses there. He said there was no getting around the ethical requirement that this be done. He said it was not like they could plea today and then say we were going to go back and take it to trial. He said as an attorney when he had stood up and took his oath, he believed in the system and wanted to be ethical. He said ethically he would never tell a client to plea when he thought he had a valid defense that he thought could win a case. He said it was always a fine line.

Chairman Dunn said he wanted to make it plain that no member of the Board of Commissioners questioned the integrity of any member of the Bischoff firm. He said the system that was being proposed was the system that most often comes under assault for inadequate defense. He said one of the problems that he had with this system was that it was the system that gets attacked most often for inadequate defense. He said saving money and making the system was more efficient was certainly a concern of this Board. He said regardless of whom the indigent person was they deserve their constitutional rights to an adequate defense. He said they deserved to know what was going on in their lives and because they were ignorant or poor did not mean that they did not deserve the best. He said he had not made up his mind on this issue. He said he was first trying to decide if the current

system needed to be changed. He said if the system was going to be changed then it should go out there for bid.

Commissioner Frady asked for the reason the Defense Commission members were saying that the proposed system was the worst. He asked if this had to do with the people who were running it.

Chairman Dunn replied that he did not know. He said there were so many clients coming through who were on a fixed income. He said clients could only be given so much time. He said routinely attorneys do not have enough time to sit down and meet with their clients to know if they should plea, go to trial or whatever.

Commissioner Frady asked if this was because the people that are running the system were not doing their job properly. He said if a system was run well then it would probably do well. He said he was trying to decide if this was based on the people strictly doing the system.

Chairman Dunn responded the people who are doing it were not providing an adequate defense. He said it was not just those people but could also be the system that someone would be put into with hundreds of clients coming at you and there would be this relatively small contract with the county to get it done at that price.

Attorney Bischoff said one of the reasons he had come up with the numbers that he had come up with was because he knew he would have to have incentive for the Board to do this. He said those numbers were real and the reason they were was because if they go below that amount it was not cost efficient for what he had to do to provide the services for public defense. He said if someone came in and did \$200,000 they could have it. He said he could not do the job for \$200,000. He said the lowest bid was not always the most efficient.

Chairman Dunn said he understood that. He said the county did not always go with the lowest bidder but there would be a range to look at.

Attorney Brian Bischoff remarked from his personal experience that this was what he wanted to do. He said his love of the law lies with criminal defense. He said he also knew the person who would be hired to do this also had criminal defense as his love of the law. He said at least 90 percent of both practices would be concentrated in nothing but this proposal. He said as it was now you could not make a living off of \$45 to \$60 per hour doing nothing but indigent defense. He said this was the reason he loved this proposal. He said he would be able to concentrate his area of the law and what he loved. He said he did not care if he was out in the jail every day talking to clients. He stated he knew the person they were considering hiring for felt the same way. He said he loved to fight for the low man on the pole.

Chairman Dunn remarked that he had spoken to a couple of judges himself and one of the judges said they were not in favor of this system. He said the judge came back and said if the Board decided to go with this system, Attorney Bischoff was probably one of the few who

could make it work. He said this had much more to do with the system than the people.

Attorney J. Bischoff requested that the Board also speak to the Solicitors and the Assistant D.A.'s.

Chairman Dunn said he would guarantee them that the Board would keep an open mind. Commissioner VanLandingham said when the Board first talked about this he started investigating because he knew very little. He said he was looking at two major areas. He said one was that the offender would have the best representation that could be provided and the second was that the county could save some money and still do that. He said he had found out real quick that was not the only way that he could look at it. He said there were many other things to look at. He said he had spoken with three judges but had not spoken with the solicitors yet. He remarked that he got the same answer that Chairman Dunn had mentioned and that was if anyone could do it then it would be the Bischoffs. He said there were problems in every way this was looked at. He said the Board would have to see which problems it could manage the best. He said he would certainly support the bid process if it was chosen. He said he would need more time. He said he hoped no one was doubting the integrity of this firm because that was not his position. He said he was looking at the real problems that would have to be dealt with.

Commissioner Pfeifer interjected that he too had done some research and had seen some newspaper articles referring to this type of system. He felt in those cases there would be a Board that had hired somebody and then inadequately supervised what they were doing and the responsibility would ultimately fall back to them for failure to do that. He said he wanted to make sure that the Board did not put itself in that situation because that was not the way things were done here.

Commissioner Wells said the county did not have the expertise to supervise something of this nature.

Commissioner Pfeifer remarked somebody on those cases should have been watching the case load and so forth.

Chairman Dunn said he certainly appreciated the exchange of information on this issue. He said ultimately each member of the Board would have to vote on whether to change the system and if so how to do it.

Commissioner Wells said she believed every member of the Board felt the same way that she does and she would therefore speak for the Board. She said they did not believe that in Fayette County justice was for sale and it would not go necessarily to the lowest bidder but to the person who could best represent every indigent person. She said everyone in Fayette County deserved a fair shake. She stated if the Board did decide to go this route and to put it out to bid it would be for more than just the bottom line and for more than just the dollars. She said this was one of the things this Board was known for and that was fairness and

justice.

Commissioner Frady said this was included in all of our bid procedures. He said a lot of low bids were turned down.

Commissioner Wells said this was not a money-driven thing. She said justice was not for sale in Fayette County.

Attorney Bischoff remarked that the point he was trying to make was that people who underbid things get into trouble whether it was a construction job or anything else and he did not intend on doing that.

**CONSENT AGENDA:** *On motion made by Commissioner Wells, seconded by Commissioner VanLandingham to approve the consent agenda as presented. The motion carried 5-0.*

**TIFTON TURF AWARDED BID - REPAIRS OF WEEMAN SOCCER FIELD:**

Approval to award the bid for completion of repairs to Weeman Field at the Soccer Complex to Tifton Turf in the amount of \$8,885.

**VETERANS DAY CAR SHOW:** Approve request from the Atlanta Camaro/Firebird Association to sponsor a Veterans Day car show at the Administrative Complex parking lot on Saturday, November 3, 2001.

**SHERIFF'S DEPARTMENT - TRANSFER OF FUNDS:** Approve request from the Sheriff's Department to transfer \$2,254.82 (insurance reimbursement funds) to categories #130-5433 (\$842.21) and #130-5742 (\$1,417.64).

**MINUTES:** Approval of minutes for Board of Commissioners meeting held on August 1, 2001.

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**PUBLIC COMMENT:**

Members of the public are allowed up to three 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:**

**BOND REFINANCING FOR THE JAIL COMPLEX:** Attorney Dennis Davenport remarked

that the Public Facilities Authority met on August 8<sup>th</sup> and approved the bond refinancing that would begin a process for a net savings of \$3.366 million over the original bond indebtedness. He said he had a Resolution prepared that ratified the bond refinancing together with related documents. He asked for the Board's consideration in authorizing the Chairman to execute these documents.

***On motion made by Commissioner Frady, seconded by Commissioner Wells to authorize the Chairman to execute the resolution and related documents regarding the bond refinancing for the new jail complex. The motion carried 5-0. A copy of the Resolution and document, identified as "Attachment No. 4", follows these minutes and is made an official part hereof.***

**EXECUTIVE SESSION:** Commissioner VanLandingham requested an Executive Session to discuss two legal matters and one personnel item.

**EXECUTIVE SESSION:** ***On motion made by Commissioner Wells, seconded by Commissioner Frady to adjourn to Executive Session to discuss two legal matters and one personnel item. The motion carried 5-0.***

**LEGAL:** Commissioner VanLandingham reported to the Board on a legal matter.

The Board took no action on this matter.

**LEGAL:** Commissioner VanLandingham briefed the Board on a legal matter.

It was the consensus of the Board that staff be directed to proceed in this matter.

**PERSONNEL:** Commissioner VanLandingham briefed the Board on a matter of personnel.

It was the consensus of the Board that staff be directed to proceed in this matter.

**EXECUTIVE SESSION AFFIDAVIT:** ***On motion made by Commissioner Wells, seconded by Commissioner Frady to authorize the Chairman to execute the Executive Session Affidavit affirming that two legal matters and one personnel item were discussed in Executive Session. The motion carried 5-0. A copy of the Affidavit, identified as "Attachment No. 5", 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 9:30 p.m.

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**August 9, 2001**  
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Linda Rizzotto, 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 August, 2001.

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Linda Rizzotto, Chief Deputy Clerk  
Prepared by: Karen Morley