



## *Action Agenda*

Board of Commissioners  
June 25, 2009  
7:00 P.M.

The Board of Commissioners of Fayette County, Georgia, met in Official Session on June 25, 2009 at 7:00 p.m. in the Public Meeting Room of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

<b>Commissioners Present:</b>	Jack Smith, Chairman Herb Frady, Vice-Chairman Lee Hearn Eric Maxwell
<b>Commissioner Absent:</b>	Robert Horgan
<b>Staff Present:</b>	Jack Krakeel, County Administrator Scott Bennett, County Attorney Carol Chandler, Executive Assistant Floyd Jones, Deputy Clerk

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### **Call to Order, Invocation, and Pledge of Allegiance.**

Chairman Smith called the June 25, 2009 Board of Commissioners meeting to order at 7:02 p.m.  
Commissioner Hearn gave the Invocation.  
Chairman Smith led the audience in the Pledge of Allegiance.

### **Acceptance of Agenda.**

Commissioner Hearn moved to Accept the Agenda as published. Commissioner Frady seconded the motion. The motion passed 4-0.

### **PRESENTATION/RECOGNITION:**

#### **A. Recognition of Mr. Derk Mueller and Mr. Mike Shaffan for their efforts in a boating rescue on Lake Horton.**

The Board of Commissioners, Chief Allen McCullough, and Chief Marshall Ed Collins recognized Mr. Derk Mueller, Mr. Mike Shaffan, and employees of the Public Safety Department for their efforts to rescue local fishermen Mr. William Waters, Mr. Jim Carp, and Mr. Bobby Cochran whose boat sank in Lake Horton.

**PUBLIC HEARING:**

**B. Public Hearing on the County's proposed annual budget for the fiscal year beginning July 1, 2009 and ending June 30, 2010.**

Finance Director Mary Holland gave a brief presentation of the proposed Fiscal Year 2010 budget to the Board and asked the Board to accept Resolution 2009-10 which would effectively adopt the proposed budget.

No one spoke in favor of the budget.

**Elizabeth "Liz" Maddox**: Ms. Elizabeth Maddox, a resident of Peachtree City, acknowledged she did not quite understand the budget and asked, if the budget were adopted in its present form, would additional money be prevented from being added to the budget. Chairman Smith replied money could not be added to the budget without a budget amendment which would use money budgeted in the Contingency Fund. Ms. Maddox asked if the proposed budget was a "tight" budget, and Chairman Smith replied that it was.

**Alice Jones**: Mrs. Alice Jones, a resident of Fayetteville, noted there was no money budgeted for the Kenwood Park Project despite staff's recommendations for funds to be utilized for grass mowing at other County parks. She told the Board that over the past weeks people from various communities have commented that County-owned property in Kenwood Park has become overgrown and out of control. She stated that only the property belonging to Phase I of the park was being cut. She suggested Contingency Funds or other funds be used to cut the County-owned property at the park.

**Gordon Furr**: Mr. Gordon Furr, a resident of Tyrone, stated the Town of Tyrone needed another fire station since new developments would be constructed north of town, but he questioned why money should be used to remove the old fire station when it can be used to protect all of Tyrone's subdivisions without having emergency vehicles enter SR 74. He asked that the new fire station be built on county property located along Sandy Creek Road and for the Board to simultaneously save the old fire station. Mr. Furr then asked how much money would be spent to construct the West Fayetteville Bypass since he was concerned about the cost. He suggested the money could be better used by repairing roads in the county.

Chairman Smith explained this hearing was not about SPLOST and he added he was unclear what Mr. Furr was advocating with respect to the fire station. Mr. Furr replied he did not understand the need to do away with a perfectly good fire station that is serving its purpose very well in order to construct another fire station.

Chairman Smith reminded Mr. Furr that the septic system at the old fire station has failed and the County has been threatened with eviction from the station by the Public Health Department. He said the County has very little choice in the matter since the Public Health Department has also informed the County it may not have any room on the property to expand the septic system. He added as far as SPLOST funds are concerned they were voted on by members of the voting public who spoke on what they wanted, after which the budget was adopted, and that the topic is not a recurring issue. He closed saying the Board is only addressing the budget currently presented before it.

No one else spoke in opposition to the budget.

Commissioner Maxwell moved to approve Resolution 2009-10 approving Fayette County's proposed annual budget of \$78,791,315, for the fiscal year beginning July 1, 2009 and ending June 30, 2010. Commissioner Hearn seconded the motion. The motion passed 4-0.

**C. Consideration of proposed amendments to the Fayette County Subdivision Regulations Section 3 General; Section 4 Approval of Subdivisions; Section 5 The Subdivision Plat; Section 9 Acceptance and Guarantee of Completed Improvements; and Section 10 Violations and Penalties. This item was deferred from the May 28, 2009 Board of Commissioners Meeting.**

Public Works Director Phil Mallon stated he was representing several departments to request the Board's approval of the proposed amendments to the Fayette County Subdivision Regulations and gave a brief history of how the County "got to this point". He concluded his presentation stating he would return with fully revised Subdivision Regulations at a Workshop Meeting prior to the September 24<sup>th</sup> Meeting and he anticipated the fully revised regulations would be adopted during the September 24<sup>th</sup> Board of Commissioners meeting.

Chairman Smith said there were two parts to this request. He explained the first part of the request was for the Board to give consensus allowing the departments to continue reviewing Fayette County's Subdivision Regulations. He asked for the Board's consensus on this matter and it was unanimously given.

**Randy Boyd:** Mr. Randy Boyd, a resident of Fayetteville, spoke in favor of the proposed amendments to the Fayette County Subdivision Regulations.

**Deron Hicks:** Mr. Deron Hicks, a resident of Warm Springs, Georgia, and General Council for the Homebuilders Association of Georgia, spoke on behalf of the members of the Homebuilders Association of Georgia. He said the members were concerned over the reason given for the one particular change allowing the Secretary of the Planning Commission to determine if Planning Commission approval had been given and signing the final plat instead of requiring the Planning Commission to take another action. Mr. Hicks added the membership thought this practice would create a delay in the approval process and asked the Board to delay approving the proposed amendments until further review is made. He was also concerned that the reason the change was being made was due to a perception that change was necessary.

Commissioner Maxwell moved to approve the proposed amendments to the Fayette County Subdivision Regulations Section 3 General; Section 4 Approval of Subdivisions; Section 5 The Subdivision Plat; Section 9 Acceptance of Guarantee of Completed Improvements; and Section 10 Violations and Penalties. Commissioner Hearn seconded the motion. The motion passed 4-0.

**D. Consideration of a Beer, Wine and Distilled Spirits Pouring Permit for Frank's at The Old Mill, 1095 SR 54 West, Fayetteville, Georgia. Frank Psomas, Owner/Applicant. This property is located in Land Lot 127 of the 5<sup>th</sup> District, fronts on SR 54 West, and is zoned C-C Conditional. This permit is for a New Location.**

**Frank Psomas:** Mr. Frank Psomas, a resident of Palmetto, Georgia, spoke in favor of this request.

**Neil Davis:** Mr. Neil Davis, a resident of Fayetteville, spoke in favor of this request.

Commissioner Frady moved to approve a Beer, Wine, and Distilled Spirits Pouring Permit for Frank's at The Old Mill, 1095 SR 54 West, Fayetteville, Georgia, Frank Psomas, Owner/Applicant. Commissioner Hearn seconded the motion. The motion passed 4-0.

- E. Consideration of a Packaged Beer and Wine License for SSN Highway 85, Inc., d/b/a Chevron Food Mart, 1488 SR 92 North, Fayetteville, Georgia, Shirin Nathani, Owner/Applicant. This property is located in Land Lot 256 of the 13<sup>th</sup> District, fronts on SR 92 North, and is zoned C-H. This is for a Change of Ownership only.**

**Shirin Nathani:** Ms. Shirin Nathani, a resident of Fayetteville, spoke in favor of this request.

Commissioner Frady moved to approve a Packaged Beer and Wine License for SSN Highway 85 Inc., d/b/a Chevron Food Mart, 1488 SR 92 North, Fayetteville, Georgia, Shirin Nathani, Owner/Applicant. Commissioner Hearn seconded the motion. The motion passed 4-0.

- F. Consideration of Petition Nos. 1215-09 and RP-045-05, Kenneth J. Lazarus of Southern Crescent Neurological Clinic, PC, Owner, and Randy Boyd, Agent, request to rezone Land Lots 1, 2, 3, and 4 of Ledgewood Subdivision consisting of 3.74 acres from R-40 to O-I to develop office-institutional uses; and to revise the Final Plat of Ledgewood Subdivision to change the use of said lots from Single-Family Residential to Office Uses and to combine the four (4) lots into one (1) lot. This property is located in Land Lot 127 of the 5<sup>th</sup> District and fronts on 54 West. STAFF RECOMMENDED APPROVAL WITH THREE (3) CONDITIONS. THE PLANNING COMMISSION RECOMMENDED APPROVAL 3-2 WITH THREE (3) CONDITIONS.**

Community Development Director Pete Frisina read the *Introduction for Public Hearings* before the rezoning request was heard.

Commissioner Maxwell announced he would recuse himself from this public hearing since Dr. Lazarus contributed to his campaign. Commissioner Maxwell then exited the meeting.

**Randy Boyd:** Mr. Randy Boyd, a resident of Fayetteville, returned to the Board to speak in favor and to give an explanation of the petitions. At the end of his presentation, he requested the second recommended condition to be amended stating the fence will be constructed during the time the building is constructed or during the development of the property.

**Gordon Furr:** Mr. Gordon Furr, a resident of Tyrone, returned to the Board stating he was unsure if he supported the requests, but requested that the County's engineers would "take care of the impervious run-off in retention ponds" created by mixing commercial development into residential areas. He explained that his mother lives in Fairburn, Georgia and her house was almost washed away due to "a development above them that did not even have a retention pond".

Commissioner Frady moved to approve Petition Numbers 1215-09 and RP-045-09, Kenneth J. Lazarus of Southern Crescent Neurological Clinic, PC, and Randy Boyd, Agent, request to rezone Land Lots 1, 2, 3, and 4 of Ledgewood Subdivision consisting of 3.74 acres, located in Land Lot 127 of the 5<sup>th</sup> District and fronting on SR 54 West, from R-40 to O-I to develop office-institutional uses, and to revise the Final Plat of Ledgewood Subdivision to change the use of said lots from Single-Family Residential to Office Uses and combine the four

(4) lots into one (1) lot, with the three conditions recommended by staff and the Planning Commission. Commissioner Hearn seconded the motion. The motion passed 3-0-1 with Commissioner Maxwell abstaining from the vote.

**Recognition of Cindy Morley:** Chairman Smith recognized Cindy Morley of the *Fayette Daily News* saying he understood this would be the last meeting she would attend in her current capacity. He continued that Cindy had been with *Fayette Daily News* for approximately 17 years and now she has accepted another position. He thanked her for her service to Fayette County, for her reporting, and said he could speak on and on about Mrs. Morley's contributions to the community. He concluded by thanking her for what she means to the community and wished her well in her new endeavor.

#### **PUBLIC COMMENT:**

**Elizabeth "Liz" Maddox:** Ms. Elizabeth Maddox, a resident of Peachtree City, returned to address the "water issue" and referenced a letter sent in a water bill that reported on data collected between January 1, 2008 and December 31, 2008. Her particular concern was about the "harmful potential effects of lead in water". Ms. Maddox then gave a number of suggestions to the Board regarding how to address the problems associated with lead in the water.

**Harold Bost:** Mr. Harold Bost, a resident of Fayetteville, acknowledged the Board does not have the power to remove Commissioner Robert Horgan from the Board before announcing if Commissioner Horgan did not resign by July 15, 2009 the members of Fayette Citizens for Open Government, or FayCOG, will initiate a recall petition against him. Mr. Bost then spoke against Commissioner Horgan questioning his performance as a Commissioner and the effects of marijuana on the Commissioner. He called on Commissioner Horgan to "save what little face he has left, to do the right thing, to resign, and resign right now".

**Ben Morrell:** Mr. Ben Morrell, a resident of Fayetteville, spoke in "negation" of FayCOG and others calling for the censure, punishment or resignation of Commissioner Robert Horgan. He stated the reaction of those calling for some punishment is premature since the Commissioner has only been charged with a crime but not convicted. He further questioned if the same fervor would exist in the public if the Commissioner had been found to be an alcoholic or an abuser of prescription drugs. He concluded that Commissioner Horgan be held to the same standard as County employees which includes the possibility of treatment in a drug abuse program, and if the Commissioner "messes up again to fire him fast".

**Gordon Furr:** Mr. Gordon Furr, a resident of Tyrone, returned to the Board for a third time stating Commissioner Robert Horgan sits on the Board of Health before asking the Commissioners to remove him from that Board. Mr. Furr also spoke against sending raw and untreated sewage into the County's reservoirs, and he wanted to save the water for future generations. He did not like how the County was destroying the streams by emptying pollutants into them. He questioned why the County quit building bridges, why the County was building culverts, and was concerned that wildlife has to drink polluted water and could not get from one side of the road to another safely due to the culverts. He also mentioned if he could save the County or any of its cities some money he would be glad to help.

**Pat Hinchey:** Mr. Pat Hinchey, a resident of Fayette County, thanked Mr. Morrell for making some really good points and explained that he thought long and hard about filing an Ethics Complaint against Commissioner Horgan. He initially thought there was nothing to be done until Commissioner Horgan admitted on public record what he did and, as a result, Mr. Hinchey said he thought there was certainly an ethical problem since the Commissioner admitted wrongdoing, committed a crime, and the procedure needed to be followed. He continued that this issue really has nothing to do with the crime

itself since educated people can debate the effects of the drug war and the drug problem, but the problem was the Commissioner broke a currently standing law. He finished saying citizens are tired of elected people breaking the law and feeling they are above the law, and that is what this is all about.

**Alan Bell:** Mr. Alan Bell, a resident of Fayette County, said he was confused with this Board since he was led to believe it was against taking from a residential, planned subdivision, and rezoning it to O-I Commercial. He said he hoped to get fair and equal treatment from the Board.

### **CONSENT AGENDA:**

Commissioner Hearn moved to approve Consent Agenda Items 1-9. Commissioner Frady seconded the motion. Chairman Smith asked for Consent Agenda Item 8 to be removed and voted on separately. Commissioner Hearn amended his motion to approve Consent Agenda Items 1-9 with the exception of Consent Agenda Item 8. Commissioner Frady seconded the motion. The motion passed 4-0.

1. **Approval of request to reappoint Ken Schall to another three-year term on the McIntosh Trial Community Service Board, commencing July 1, 2009 and expiring June 30, 2010.**
2. **Approval of staff's recommended changes to the Benefits section of the Policies and Procedures Manual to concur with changes to the County's defined contribution and deferred compensation plans, along with the implementation of a defined benefit plan.**
3. **Approval of staff's request to replace Medic Unit 2 which was totaled in an accident in May.**
4. **Approval of request from the Sheriff's Department to dispose of a vehicle, by sale or trade, that was seized by the Tactical Narcotics Team.**
5. **Approval of the request from the Sheriff's Department to amend the Overtime Budget for the Fayette County Sheriff's Office Criminal Investigations Division by \$2,305.84 for reimbursement for employees assigned to work with various federal agencies.**
6. **Approval of staff's recommendation for the disposition of tax refund requests submitted by taxpayers in accordance with O.C.G.A. 48-5-380.**
7. **Approval of staff's recommendation that the fee for fingerprinting applicants for Beer, Wine, Alcohol, and Canvassers/Solicitor's business license be increased to \$50 per person due to an increase to the County by the Georgia Crime Information Center for processing fingerprints.**
8. **Approval of staff's request to award Proposal #P707 to Mike Wright and Co., d/b/a Wright's Hydro Seeding, for the purpose of having an annual county-wide contractor available for erosion control installation on public works projects.**

Chairman Smith announced the reason he asked for Consent Agenda Item 8 to be removed from the Consent Agenda was because he received campaign contributions from the principals in the company. He said he intended to abstain from the vote on this item. Commissioner Frady moved to approve Consent Agenda Item 8. Commissioner Hearn seconded the motion. The motion passed 3-0-1 with Chairman Smith abstaining from the vote.

9. **Approval of request to allow Mallett Consulting, Inc. to proceed with engineering and design for the following three SPLOST projects: FC-2, I-10, and B-3. The terms and conditions associated with this Notice-To-Proceed are set in the County's Agreement for Professional Services dated August 1, 2005.**

**OLD BUSINESS:**

- G. **David and Sandra Rosa have requested a hearing before the Board of Commissioners concerning a request for tax refunds.**

Mrs. Sandra Rosa, a resident of Brooks, spoke on behalf of herself and her husband, requested a tax refund for the past seven years due to an error by the Assessor's Office, and gave an explanation of her request.

County Attorney Scott Bennett advised the Board that State Law prohibits the County from paying any debt it is not legally obligated to pay, and added that the Georgia Constitution states local governments shall not have the power to grant any donation or gratuity or forgive a debt or obligation owed to the public. He summarized that local governments cannot give away that which it does not owe. He recommended that only three of the seven years of tax refunds be granted to the Rosa's based on State Law.

Commissioner Maxwell moved to grant David and Sandra Rosa's request for a tax refund in the amount of \$2,064.25 for the years 2006, 2007, and 2008, and to deny the request for tax refunds in the amount of \$2,549.07 for the years of 2002, 2003, 2004, and 2005. Commissioner Frady seconded the motion. The motion passed 4-0.

- H. **Mr. Vincent Williams has requested a hearing before the Board of Commissioners concerning a request for tax refunds.**

Mr. Vincent Williams, a resident of Fayette County, requested the Board to reinstate his Senior Citizen Homestead Tax Exemption for the years 2007, 2008, and 2009, before giving an explanation of his request.

County Attorney Scott Bennett advised the Board to deny the request since Georgia's Homestead Exemption Statutes defines a homestead as real property owned by and in possession of the applicant as of January 1, and since Mr. Williams was not the record owner of the property. He said no deed was filed prior to Mr. William's seeking of a Homestead Exemption for the years 2007, 2008 and 2009, and therefore the Tax Assessor and the Tax Commissioner had no way to grant a Homestead Exemption. He concluded, based on the code sections, that the County had no choice but to deny the request due to a lack of ownership.

Commissioner Maxwell moved to deny Mr. Vincent Williams' request for a tax refund in the amount of \$1,001.72 due to lack of ownership and to deny Mr. Williams' request to reinstate his Homestead Tax Exemption for the years 2007, 2008 and 2009. Commissioner Hearn seconded the motion. The motion passed 4-0.

- I. **Consideration of a request that Mask Road be designated as an authorized street for motorized cart travel. Based on an evaluation of applied criteria, staff recommends denial of this request.**
- J. **Consideration of a request that McBride Road be designated as an authorized street for motorized cart travel. Based on an evaluation of applied criteria, staff recommends denial of this request.**

Community Development Director Pete Frisina asked if the Board would consent to hear New Business Items I and J simultaneously since they are similar requests. The Board consented to Mr. Frisina's request. Mr. Frisina then explained both Agenda Requests and explained why staff recommended denial of both requests.

Commissioner Hearn moved to deny the requests that Mask Road and McBride Road be designated as authorized streets for motorized cart travel as recommended by staff based on evaluations using applied criteria. Commissioner Frady seconded the motion. The motion passed 4-0.

**K. Approval of staff's recommendation to award a bid in the amount of \$2,048,595.70 to The Miller Group Inc. for Asphalt Resurfacing with Full Depth Reclamation (FDR) of nine County roads, totaling 10.06 miles. The work shall be funded with transportation Special Purpose Local Option Sales Tax (SPLOST) funds.**

Public Works Director Phil Mallon explained the purpose of this request and how it would be funded. He added that his request be changed to increase the bid amount and to add Redwine Road. He explained this change is a last minute request since Redwine Road was originally removed due to a concern for a lack of available funds and due to a belief that some of the federal stimulus monies could be used for the road. He said Redwine Road is being added back to the request since the County now realizes Redwine Road is not a good candidate for the stimulus money. He said the request was also added after working with the Finance Department and realizing the County has enough money in the 30% transportation SPLOST fund to award a contract for all ten roads.

Commissioner Hearn moved to approve staff's recommendation to award a bid in the amount of \$2,932,383.50 to The Miller Group, Inc., for Asphalt Resurfacing with Full Depth Reclamation of ten County Roads, including Redwine Road, totaling 14.40 miles, and for the work to be funded with transportation Special Purpose Local Option Sales Tax funds. Commissioner Frady seconded the motion. The motion passed 4-0.

## **ADMINISTRATOR'S REPORT**

**Consumer Confidence Report:** County Administrator Jack Krakeel asked for the record to reflect that the Annual Water Quality Report which was issued by the Fayette County Water System earlier this year stated the County's water quality passed all threshold levels mandated by the Environmental Protection Division, or EPD, especially those pertaining to any threat of lead or copper.

Chairman Smith asked Utilities Systems Director Tony Parrott about the comments made by Ms. Maddox earlier in the meeting and asked where she may have derived her information. Mr. Parrott replied there is some required language in the Consumer Confidence Report about lead and copper, but added Fayette County does not have a problem with lead or copper in its water. Chairman Smith said he derived from Ms. Maddox's comments that Fayette County had sent out a notice about a lead problem in our water and he wanted to be clear the County did not send out a notice about a lead problem. Mr. Parrott reiterated that a notice was mailed stating there was not a problem with lead and copper in Fayette County's water.

## ATTORNEY'S REPORT

**Powers Heating and Air:** County Attorney Scott Bennett reported on May 14, 2009 the Board of Commissioners awarded a bid to Power's Heating and Air in the amount of \$70,496 for air conditioning units to be installed at Crosstown Water Treatment Plant and the Flint River Pump Station. He said he received the contract from Mallet Consulting and he reviewed the contract ensuring all the bonds and insurance are present. He asked for the Chairman to be authorized to sign the contract.

Commissioner Frady moved to authorized the Chairman to sign a contract with Q.T. Contracting, Inc., doing business as Power's Heating and Air, in the amount of \$70,496, for the construction of air conditioning at Crosstown Water Treatment Plant and Flint River Pump Station. Commissioner Hearn seconded the motion. The motion passed 4-0.

## STAFF REPORT

**Update on Several GDOT Transportation Projects:** Public Works Director Phil Mallon reminded the Board that he had been asked to provide updates on several GDOT Transportation Projects at the July 2009 Workshop Meeting. He told the Board he would not be present for the meeting and asked if he could give the updates during Staff Reports. The Board agreed to his request. Mr. Mallon then updated the Board regarding the following GDOT Transportation Projects:

- Bernhard Road at SR 92
- Hilo Road and Kingswood Drive at SR 85
- Harp Road at SR 85
- Widening of SR 74 from SR 85 to Cooper Circle.

Commissioner Hearn asked for an additional update in September regarding these projects, encouraged Mr. Mallon in his work and efforts with GDOT, and offered to go to Atlanta to talk to head management at GDOT.

## BOARD REPORT

There was no Board Report.

## EXECUTIVE SESSION

**Real Estate Acquisition:** County Administrator Jack Krakeel announced Real Estate Acquisition needed to be discussed in Executive Session. Commissioner Maxwell moved to adjourn to Executive Session for the purpose of discussing Real Estate Acquisition. Commissioner Frady seconded the motion. The motion passed 4-0.

The Board of Commissioners adjourned to Executive Session at 9:41 p.m. and returned to Official Session at 10:17 p.m.

**Executive Session Affidavit:** Commissioner Hearn moved to authorize the Chairman to sign an Executive Session Affidavit stating Real Estate Acquisition was discussed in Executive Session. Commissioner Maxwell seconded the motion. The motion passed 4-0.

## **ADJOURNMENT**

Chairman Smith announced there was no other business coming before the Board and adjourned the June 25, 2009 Board of Commissioners Meeting.

The June 25, 2009 Board of Commissioners Meeting adjourned at 10:18 p.m.

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**Floyd L. Jones, Deputy Clerk**