

THE FAYETTE COUNTY PLANNING COMMISSION held a **Workshop** on November 4, 2004 at 8:09 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Board of Commissioners Public Hearing Room, Fayetteville, Georgia.

MEMBERS PRESENT: Jim Graw, Chairman
Douglas Powell, Vice-Chairman
Bob Harbison
Bill Beckwith
Al Gilbert

MEMBERS ABSENT: None

STAFF PRESENT: Aaron Wheeler, Director of Zoning/Zoning Administrator
Chris Venice, Director of Planning/Community Development Division
Director (Left 9:11 P.M.)
Ron Salmons, County Engineer (Left 9:16 P.M.)
Phil Mallon, Assistant County Engineer (Left 9:16 P.M.)
Dennis Davenport, Assistant County Attorney
Delores Harrison, Zoning Technician
Robyn S. Wilson, P.C. Secretary/Zoning Coordinator

Welcome and Call to Order:

Chairman Graw called the meeting to order and introduced the Board Members and Staff.

* * * * *

1. Discussion of proposed amendments to the Fayette County Development Regulations, Article XII. Illicit Discharge and Illegal Connection Ordinance.

Ron Salmons advised that the Metropolitan North Georgia Water Planning District has developed six (6) model ordinances that the 14 counties in the metro area have to adopt or have a similar ordinance. He added that this is a State mandated ordinance. He confirmed that there are existing ordinances which will cover four (4) of the six (6) model ordinances. He said that the two (2) new ordinances will be coming from the Engineering Department. He noted that the second ordinance will be Stormwater Management/Post Stormwater Management. He remarked that the model ordinances were provided to the Engineering Department and some modifications have been made but none substantially.

Phil Mallon stated that the Illicit Discharge and Illegal Connection Ordinance has a fancy name but has a very simple purpose - it gives the County the ability to go onto property to inspect/investigate what is believed to be potential sources of pollution of the State waters or the County's storm sewer system. He said that if the County determines that there is a violation then the County would have enforcement action to stop the violation and mitigate any damage as a result of the violation. He pointed out that the definition of pollutant was broad because it includes everything except rain water. He added that State water and the County's Storm Sewer System is also very broad because it means any ditch or swale along the road or in somebody's back yard which flows into ultimately on of the County's creeks or rivers. He stressed that the intent of the ordinance was not to prohibit the use of fertilizer in their yard, however it does address what could happen if someone connect a drain from a workshop or outbuilding with a bathroom to one of the County's storm sewer system or runs a pipe directly to the back of their yard and lets the wastewater flow directly in the creek. He added that this type ordinance is very common if you look on the internet. He confirmed that there are two (2) reasons to adopt this ordinance: 1) Fayette County as a member of the district obligates the County to adopt the proposed ordinance and 2) Adoption is required under the County's National Pollution Discharge and Elimination System Permit which is a Federal Permit. He reported that the E.P.A. has a model ordinance and in comparison they are very similar. He stated that the Clean Water Act has a broad scope and if there was a real problem of point source, such as dumping used paint directly in our creeks, there are other means of stopping it but this would be an easier way.

Doug Powell asked Mr. Mallon to explain the difference between a point source and a non-point source.

Mr. Mallon replied that a point source is easily identifiable such as coming out of a pipe or coming through a channel or defined area where you could either get a sample or stop it. He added that a non-point source would be what you get from your yard when it rains, but it is harder to characterize or see.

Mr. Mallon stated that he would like to review the areas changed from the model ordinance. He referenced page 3, Section E. Responsibility for Administration and stated that the ordinance would be implemented and enforced by the Fayette County Engineering Department and the Fayette County Environmental Health Department. He added that the Environmental Health Department already has a lot of the authority issued through this ordinance. He reported that it will be an Environmental Health issue if it deals with animal or human waste while other violations such as fertilizer and paint will be handled by the Engineering Department.

Mr. Mallon referenced page 3, Section 8-402. Definitions and stated that a definition had been added for Agriculture because there is an agricultural exemption in the proposed ordinance.

Mr. Mallon referenced page 4, Pollutant which is very complicated because it was taken from the Planning Commission's model ordinance and then compared it to what the E.P.A., as well as other counties have. He pointed out that the first sentence is the definition of pollutant and the remaining sentences are examples which could be considered pollutants. He reported that yard waste was eliminated because it is a very broad term and he did not want to consider a compost pile as being a pollutant. He advised that detergent was also eliminated because it could be associated with someone washing their car or deck.

Chairman Graw asked if the proposed ordinance could be amended to make it less strict or more strict than what was recommended.

Mr. Mallon replied that once the ordinance is adopted, the County Attorney must provide a letter to the State Environmental Protection Division stating that the ordinance substantially meets the intent of the model ordinance.

Bob Harbison stated that the term "offensive matter of any kind" is very broad and opens the door for anything someone may want to complain about.

Mr. Mallon commented that he did not see much danger in removing examples of pollutant because if it is not in the list doesn't mean the County can't say it is a pollutant but having the examples in the ordinance makes it tougher to argue that it is not a pollutant. He remarked that he did not want to trap people to be in violation.

Mr. Harbison asked if the E.P.A. has a list of pollutants which could be referenced rather than being very specific.

Mr. Mallon replied that the list is very technical in nature since it is a list of specific chemicals and you need a chemistry degree to understand it.

Mr. Harbison said he was sure that the County would not go out and arbitrarily go onto people's property and start checking for pollutants but if a complaint is received it will have to be investigated. He stated that this could open the door for some very dicey type situations between neighbors. He remarked that he would feel better with a better definition of pollutant.

Al Gilbert asked what would happen if he spilled some paint in his driveway and then washed it off and a neighbor calls in a complaint.

Mr. Mallon replied that the situation would be a violation of the ordinance, however in reality, the County would work with that person and advise them to use cat litter or similar drying agent.

Chairman Graw asked if the County has the right to work with the person or simply issue a citation.

Mr. Mallon said that the first step is to notify the property owner that there is a problem and then issue a letter stating that they are in violation of the ordinance and give them a set amount of time to correct the violation. He added that should they refuse to comply that a citation would be issued.

Bill Beckwith asked Mr. Mallon to clarify the last sentence under pollutant.

Mr. Mallon replied that it could mean waste solvents. He reported that the State is trying to buckle down on the washing down of concrete trucks in the nearest ditch.

Chairman Graw pointed out that one of the pollutants was pesticides, herbicides, and fertilizers which is used on lawns, however there is an exception for lawn watering.

Mr. Mallon concurred that this is a point of confusion, however it is addressed under the first sentence of pollutant. He added that it sounds like additional changes may need to be addressed for pollutant.

Mr. Harbison stated that he had some serious problems with the proposed ordinance because it seems we are trampling on personal rights since a Judge's order is not necessary to allow the County to go onto someone's personal property. He added that probable cause is needed.

Mr. Mallon explained that the Environmental Health Department already has this right and the Engineering Department has similar rights under the Erosion and Sediment Control Act.

Mr. Powell stated that the scope has not been addressed because if you are not near a separate storm sewer system, you don't have anything to worry about.

Mr. Mallon referenced page 5, Section 8-403.A. Prohibition of Illicit Discharges and stated that this is the whole thrust of the ordinance followed by a list of exemptions. He explained that individual residential and occasional noncommercial car washing was added.

Mr. Harbison asked where the separate storm sewer systems were located.

Mr. Mallon replied that this includes any storm pipes underneath roads, catch basins, and ditches. He explained that agricultural operations are exempt.

Mr. Harbison asked if there should not be some definition to say what type agricultural operations are exempt.

Mr. Mallon replied that the current definition is very broad, however there are other regulations on the books at the State and Federal level, such as the Clean Water Act. He said that if there is a really severe pollutant source entering the Flint River from an agricultural operation that this ordinance would make it easier for the County to go in and stop it.

Mr. Salmons reiterated that the County is mandated by State law to adopt this ordinance basically because the E.P.D. has so few staff personnel that they are pushing it down on the cities and counties to enforce the law. He advised that there are four (4) problem streams in the entire County: lower Flint River, Whitewater Creek as it comes out of Fulton County, Line Creek in Peachtree City, and Nash Creek.

Mr. Powell asked how this ordinance would affect an incident like there was last winter with the de-icing of airplanes.

Mr. Salmons replied that the spill was in Fulton County and that accidental spills were addressed under Section 8-406.

Chairman Graw asked if other cities were adopting an ordinance.

Mr. Salmons replied yes and included Fayetteville, Peachtree City, and Tyrone.

Mr. Mallon referenced page 7 and pointed out that the only change was to add the Fayette County Engineering Department and the Fayette County Environmental Health Department.

Mr. Gilbert commented that it doesn't seem right that the County could bypass any type security to go into an area of someone's business that you don't necessarily need to be going into because it could be where research and development is handled.

Mr. Powell asked Mr. Mallon to explain requiring monitoring equipment.

Mr. Mallon explained that if it is very obvious when a pollutant is getting into the water, however sometimes it is not very obvious and then monitoring equipment may be required. He further explained that an example of this would be runoff from a parking lot going into a stream killing fish or a failed septic tank which could require monitoring equipment.

Chairman Graw referenced page 7 and said that he had problems with the following statement:

“permitted to enter and inspect properties and facilities at reasonable times” and asked if this meant without permission of the property owner.

“as often as may be necessary” and asked who defines as often as necessary.

“ready access to all parts of the premises” and asked if this could be inside a person's home.

“as are necessary in the opinion of the Fayette County Engineering and/or Environmental Health Department” and asked who determines what is necessary.

“require the owner or operator to install monitoring equipment and perform monitoring as necessary and this equipment will be maintained at all times in a state of proper operating condition by the owner or operator at his/her own expense”

“The costs of clearing such access shall be borne by the owner or operator”

Chairman Graw stated that the County could walk into somebody's home and they have no rights whatsoever.

Mr. Mallon pointed out that reasonable cause is required.

Chairman Graw stated that if access is refused then a search warrant should be issued. He said that if the County wants to enter his house that they should come to the house with something issued by a Court which gives the County the right to enter the house.

Mr. Harbison added that he would like to see something that requires the County to contact the property owner and get permission before entering someone's property and then if they refuse to let the County enter the property then probable cause should be illustrated and the County be issued something in writing to enter the property. He stressed that the ordinance should be reviewed by the County Attorney's Office because the County is dealing with private property rights.

Mr. Mallon reiterated that the Sediment and Erosion Control Act already allows access.

Attorney Dennis Davenport advised that should Environmental Health have reason to believe that there is a failed septic system on someone's property and the reason is through observing the property or complaints of the neighbor or smelling the odor then they have the right to enter the property because this is probable cause. He stated that the first step is to contact the property owner because you don't want to do anything unless you have tried to make contact with the property owner, however you can't let the failure to contact the property owner be the controlling factor as to whether or not you can solve the problem. He said that there are circumstances which do dictate taking action even without the property owner's knowledge. He pointed out that the County has that ability now, however we do not take that step until it is the step of last resort. He commented that this is the typical protocol. He stressed that the contact is a must and an attempt should be made to make the contact but you can't let the contact be the threshold of allowing access to the property or not because if there is a problem you must have the ability to solve the problem. He said that he was having a problem understanding a serious health issue such as a failed septic system or the spilling of paint in the yard because health wise they seem to be different. He remarked that the overriding issue is public health, safety, and welfare which trumps the property rights because you don't have any property rights if you are doing something hostile to the public health.

Chairman Graw replied that he agrees with Attorney Davenport and Section 8-405. does not make distinctions in severity.

Mr. Gilbert added that his concern isn't what is being done today but how things will be handled with a population of 200,000. He said that the personal touch will be gone and we start becoming a bureaucratic government instead of a people's government.

Attorney Davenport stated that things were being done consistent with the general principal of law. He said that anybody would approach the situation the same way as long as they have a good working knowledge of what the law allows you to do. He stressed that an ordinance would not be prepared if it conflicts with statutory law or case law which means you can't go into somebody's house just because an ordinance states that you can. He commented that you must be careful and write it consistent with what is recognized as the current state of the law with respects to property rights as well as how its balanced with the public interest and the public health, safety, and welfare.

Mr. Harbison said that there should be some way to word the ordinance to state the process which we would go through on average complaints that would protect property rights.

Attorney Davenport stated that the Code Enforcement Officer may need to go on the property to observe and inspect. He said that if you are unable to say that this is an immediate threat to the public health, safety, and welfare then don't take action but gather information and if it is an immediate threat be prepared to justify it because you are going to have to. He commented that minor violations should be treated differently from major violations.

Mr. Harbison suggested that the County Attorney's Office review the proposed ordinance and address the P.C.'s concerns.

Mr. Salmons reiterated that this section contains the exact language of the model ordinance with the exception of the names of the two (2) departments.

Mr. Mallon referenced page 10, Section D. Costs of abatement of the Violation and stated that the property owner may make an appeal to the County Administrator if they feel the cost of abatement is excessive.

Chairman Graw referenced page 10, Section E. Citations and asked who defines what is an intentional and flagrant violation.

Mr. Salmons advised the P.C. that the proposed ordinance was given the Attorney McNally approximately two (2) weeks ago.

Attorney Davenport stated that Attorney McNally had received the proposed ordinance but has not had an opportunity to review it and requested that another Workshop be held after tonight.

Mr. Harbison asked if there was a deadline for adoption of the proposed ordinance.

Mr. Mallon replied that both ordinances must be approved by April 1, 2005.

The P.C. concurred to discuss the proposed ordinance further at the next Workshop after it has been reviewed by the County Attorney's Office.

* * * * *

2. Discussion of proposed amendments to the Fayette County Zoning Ordinance, Article VII. Conditional Uses, Exceptions, and Modifications, Section 7-1.B. Conditional Uses Allowed, 34. Self-Storage Facility.

Aaron Wheeler advised that the changes have been made in the proposed amendment as discussed at a previous Workshop. He pointed out that the current ordinance does not address covered vehicle storage which is what the proposed amendment addresses.

The P.C. concurred that the proposed amendment was sufficient.

Chairman Graw instructed Robyn Wilson to advertise the item for the December Public Hearing.

* * * * *

3. Discussion of proposed amendments to the Fayette County Zoning Ordinance, Article V. General Provisions regarding Carports, Detached.

Aaron Wheeler advised that the proposed amendment had been discussed at a previous Workshop. He added that this proposed amendment would also address the prefabricated detached carports which you see all over the County.

Doug Powell suggested that the language be amended to state that "A building permit is required prior to installation." be added to the proposed amendment. He asked if boats could be stored under a detached carport.

Mr. Wheeler replied that a boat on a trailer would be allowed.

Chairman Graw instructed Robyn Wilson to advertise the item for the December Public Hearing.

* * * * *

4. Discussion of proposed amendments to the Fayette County Zoning Ordinance, Article V. General Provisions regarding Section 5-9. Single-Family Dwelling, A. Additions to a Single-Family Structure and Section 5-10. Accessory uses and structures, D. Number.

Aaron Wheeler advised that the proposed amendment had been discussed at a previous Workshop. He stated that after further review the proposed amendment needed to be separated to address an addition to a single-family structure and the connection of an accessory structure via a breezeway.

Chairman Graw asked if there should be a maximum length for an addition to a single-family structure.

Mr. Wheeler replied that the corridor is required to be heated and cooled so a maximum length did not seem to be necessary.

Attorney Dennis Davenport questioned Section 5-10.D. and pointed out that the proposed amendment states that an accessory structure is not counted as an accessory structure when attached by a breezeway so if the accessory structure is no longer an accessory structure, what is it. He said that if an accessory structure is attached via a breezeway then it is not a part of the house but is an accessory structure which is a change in policy.

Mr. Wheeler replied yes. He explained that there are housing plans, which under common roof, have a garage that is not attached specifically to the structure but via a breezeway and we did not want to penalize people who utilized this type of house plan to say that because you have chosen this house plan you now have an accessory structure as opposed to somebody else who also has a garage which is not classified as an accessory structure.

Attorney Davenport advised that less than 900 square feet with a breezeway is considered part of the house but greater than 900 square feet is not part of the house and the difference is only the size of the area. He stated that it looks as if we are making an exception to something.

Bob Harbison asked Attorney Davenport what was the classification of a garage attached to a house via a breezeway.

Attorney Davenport replied that under the current ordinance, the garage would be classified as an accessory structure and the proposed amendment is stating the opposite.

Mr. Harbison stated that he didn't feel like it should always be considered as an accessory structure.

Attorney Davenport asked if the garage is not classified as an accessory structure then why couldn't it be larger than 900 square feet.

Mr. Wheeler replied that you could provided it is connected by a heated/cooled corridor.

Attorney Davenport reiterated that if it is not an accessory structure at 899 square feet then why is it an accessory structure at 901 square feet and asked what was the difference.

Mr. Wheeler replied that an accessory structure is restricted to a maximum of 900 square feet total.

Attorney Davenport replied that we have said that it is not an accessory structure. He stressed that if you are calling an accessory structure at 899 square feet but not an accessory structure at 901 square feet then you are not being consistent with the definition and you will get nailed against the wall. He stated that the first time he tries to enforce this proposal in Court, the Court will reply that this is not an accessory structure and the County will lose in Court.

Mr. Wheeler stated that an accessory structure may not exceed a maximum of 900 square feet.

Attorney Davenport replied that the sentence is being used as if it makes a difference in the example and it doesn't because it is the same building. He pointed out that the square footage did not change the character of the building. He explained that you don't want someone to build a large accessory structure, connect it to a house with a breezeway, and call it part of the house because it is only a part of the house when connected by a heated/cooled corridor. He said that the proposed amendment seemed to be backing into a result and anytime you start out with a conclusion and try to draw up things to back into that conclusion, you wind up in trouble.

Mr. Harbison stated that the garage attached via a breezeway should not be counted as an accessory structure but should be considered part of the house plan.

Attorney Davenport stated that there is a conflict between the current ordinance and the proposed amendment. He added that the presence of the breezeway either is the difference or it is not the difference, no matter what the size is because it is not part of the primary structure because it is smaller than 900 square feet and not if it is larger than 900 square feet.

Chairman Graw instructed Mr. Wheeler to get with Attorney Davenport to rework the proposed amendment so it can be discussed further at the next Workshop. The P.C. concurred.

* * * * *

Chairman Graw asked if there was any further business.

Aaron Wheeler asked the P.C. if they wanted to hold the Workshop after the Public Hearing in December or schedule it for December 16, 2004.

The P.C. concurred to reschedule the Workshop for after the Public Hearing due to the holidays.

Al Gilbert suggested that if the Engineering Department will be presenting an ordinance for review that a separate Workshop be scheduled.

Hearing no further business, Bill Beckwith made a motion to adjourn the workshop. Al Gilbert seconded the motion. The motion unanimously passed 5-0. The workshop adjourned at 9:45 P.M.

PLANNING COMMISSION
OF
FAYETTE COUNTY

ATTEST:

JIM GRAW
CHAIRMAN

ROBYN S. WILSON
P.C. SECRETARY