

**THE FAYETTE COUNTY PLANNING COMMISSION** met on Thursday, September 1, 2005 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Public Meeting Room, First Floor, Fayetteville, Georgia.

**MEMBERS PRESENT:** Jim Graw, Chairman  
Douglas L. Powell, Vice-Chairman  
Bill Beckwith  
Al Gilbert  
Tim Thoms

**STAFF PRESENT:** Aaron Wheeler, Zoning Administrator  
Dennis Davenport, Assistant County Attorney  
Pete Frisina, Acting Planning and Zoning Director  
Delores Harrison, Zoning Technician  
Phyllis Williamson, Administrative Secretary  
Deputy Ben Thiel

**STAFF ABSENT:** Robyn S. Wilson, P.C. Secretary/Zoning Coordinator

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**Welcome and Call to Order:**

Chairman Jim Graw called the meeting to order and led the Pledge of Allegiance. He introduced the Board Members and Staff.

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**1. Consideration of the Minutes of the meeting held on August 4, 2005.**

Al Gilbert made a motion to approve the minutes of the meeting held on August 4, 2005. Tim Thoms seconded the motion. The motion passed 3-0-2. Bill Beckwith and Jim Graw abstained from the motion and said they were absent for that meeting.

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**2. Consideration of the Workshop Minutes of the meeting held on August 17, 2005.**

Vice-Chairman Doug Powell made a motion to approve the minutes of the August 17, 2005 Workshop meeting. Al Gilbert seconded the motion. The motion passed 5-0.

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**3. Consideration of the Workshop Minutes of the meeting held on July 21, 2005.**

Vice-Chairman Doug Powell made a motion to approve the minutes of the July 21, 2005 Workshop meeting. Bill Beckwith seconded the motion. The motion passed 4-0-1. Al Gilbert abstained from the motion and said he was absent for that meeting.

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Chairman Graw remarked that item numbers four (4) and five (5) would be considered by the Planning Commission tonight and only tonight. He said these were two (2) preliminary plats that had been submitted. He said these pieces of property had already been rezoned. He said the developer has submitted a plat for the Board to review and the technical aspects of that plat would be reviewed.

4. **Consideration of a preliminary plat, Common Oak, Office Park 54, LLC, Owners, and Becky B. Morris, LA, Agent. This property consists of 8.096 acres with 10 lots. This property is located in Land Lot 39 of the 7<sup>th</sup> District, fronts on S.R. 54 West, and is zoned O-I.**

Chairman Graw asked if the petitioner was present for this request.

Thomas Boynton remarked that he was one (1) of the owners of the property. He said he had no comments about the preliminary plat.

Vice-Chairman Powell said he had noticed on the preliminary plat that Nubbs Parkway did not have a length listed. He said he was sure that this was not a factor based on the lot, but it was a requirement for the planning check list.

Mr. Boynton replied that he did not know the length of the road.

Chairman Graw said he had reviewed this plat. He questioned if the 25 foot access easement in front of Lot 8 and Lot 9 was the road that he was going to have into those two (2) pieces of property.

Mr. Boynton replied yes that was correct. He said it would feed the parking areas for each one (1) of those buildings.

Aaron Wheeler remarked that for the purpose of the plat what was marked there was correct. Mr. Wheeler said when each piece comes in for a site plan, the idea that was discussed and what has been agreed to and what was shown was that the access would be through the parking areas through common drives between each property. He said for the purpose of the plat what was shown was accurate.

Chairman Graw remarked that there was no access easement in front of Lot 10. He asked if all of the parking for the three (3) buildings would be in front of Lot 8 and Lot 9.

Mr. Boynton replied no, there should be a parking lot for Lot 10 as well. He remarked that the easement would feed directly into the parking area for Lot 10.

Chairman Graw asked if there would be a 25 foot access in front of Lot 10.

Mr. Boynton replied no and stated that he did not believe that it was necessary. He said this was just a parking area.

Vice-Chairman Powell asked what the process was by which the Planning Commission would be adding the length of Nubbs Parkway to the plat.

Mr. Wheeler said Staff would have the applicant determine that and then have it written in on the official plat that was filed in the Zoning Department.

Vice-Chairman Doug Powell made a motion to approve the preliminary plat for the Common Oak Office Park with the addendum including the corrected length of Nubbs Parkway and also two (2) conditions. Tim Thoms seconded the motion with the correction of Nubbs Parkway length and the two (2) conditions.

Chairman Graw asked Mr. Boynton if he had seen the two (2) conditions.

Mr. Boynton replied yes he had them in front of him.

Chairman Graw said he would like to read the two (2) conditions into the minutes. He said the first condition (1) was the Environmental Health Department was exercising the right to not participate in the permitting process of the sewage system to serve this project. He said the State Department

of Human Resources and the State Department of Natural Resources Environmental Protection Division would permit community individual sewage disposal systems per the plat stamped received July 28, 2005. He said condition number (2) was that the applicant shall meet all of the requirements of the Georgia Department of Transportation, which shall include the dedication of right-of-way, location of curb cut for proposed street and any improvements necessary in the right-of-way of S.R. 54 West, once that information was provided by G.D.O.T. He said should there be dedication necessary, all setbacks shall be measured from the new right-of-way.

Mr. Boynton said he agreed to the addendum and the two (2) conditions.

The motion passed unanimously 5-0.

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**5. Consideration of a preliminary plat, Edgewood, Jeff Ellis, Owner, and Randy Boyd, Agent. This property consists of 124.373 acres with 46 single-family dwelling lots. This property is located in Land Lots 253 and 254 of the 4<sup>th</sup> District, fronts on S.R. 85 South adjacent to Whitewater Middle School, and is zoned C-S.**

Randy Boyd said he was representing the owner of this project. He said this was the same property that they had brought before this Planning Commission two (2) months ago requesting a change in zoning from the R-75 to the C-S zoning. He said the preliminary plat that they had submitted to staff was the exact same design as the concept plan that they had presented to the Board with all of the requirements of the preliminary plat being addressed. He said they had submitted this to staff and they had a few comments. He said they did have to change a couple of names that were not approved. He asked for the Board's consideration to approve the plat as submitted tonight. He said they also ask for a variance to the 3,000 foot rule for roads, because due to the configuration of the property they did have to exceed the 3,000 foot limit. He said they also proposed, on the preliminary plat, a divided entrance street for the first 700 to 800 feet, with two (2) sixteen foot travel lanes, and with a sixteen foot wide island. He remarked that it was also recommended by the Director of Engineering, Phil Mallon, and that he was in support of this request.

Chairman Graw asked if there were any comments.

Al Gilbert made a motion to approve the preliminary plat. Bill Beckwith seconded the motion.

Chairman Graw asked if there was any further discussion.

Mr. Beckwith asked if approval also included the variance for the length. He said that was really part of the plat.

Al Gilbert asked to withdraw his motion.

Mr. Beckwith requested to withdraw his second to the motion.

Chairman Graw asked Attorney Davenport if both of these could be combined in the same motion. He noted that one (1) of the requests was for a variance.

Attorney Davenport replied that the record must clearly reflect what action the Board was taking. He said it was simpler to make it two (2) different motions so that there was no doubt about what was being granted. He said if the Board chose to combine this into one (1) motion then the Board could do that. He said the Board would have to make sure that there was no doubt about what was being granted.

Chairman Graw suggested the Board discuss the variance and then discuss the preliminary plat.

Vice-Chairman Powell said he did not understand how the Board could approve the preliminary plat without approving the variance. He said by approving the preliminary plat the variance was no longer required.

Bill Beckwith made a motion to approve the recommendation for the variance that would permit extended length of the entry road to 3,800 feet as presented. Al Gilbert seconded the motion.

Tim Thoms said this was the first time he had seen a variance on a street length. He said this was a fairly significant variance. He said he had read staff's comments and he felt the intent of the ordinance requiring 3,800 street length had been met by the dividing of the entrance. He asked if extending this street by almost 25% was common.

Chairman Graw said the Board has had several of these in the past where the Board has had to look at the cul-de-sac. He said because of the zoning ordinance and development regulations it had been difficult for them to fit what they needed to fit within the length of a cul-de-sac. He said the only way to get approval on something longer than 3,000 feet was to request a variance. He said the Board has had several situations like this one in the past. He felt the Board had to be flexible sometimes. He said this situation was somewhat extraordinary.

Mr. Beckwith felt this was a creative way to get an entrance road and would take away problems presented by a main road in excess of 3,000 feet. He said this should be sufficient, especially with the divided lanes extending that far in.

Chairman Graw called for the vote to approve 3,800 feet for the variance. The motion unanimously passed 5-0.

Chairman Graw said now the Board could discuss the preliminary plat. He said now that the Board had approved 3,800 feet, what were the comments about the preliminary plat.

Al Gilbert made a motion to approve the preliminary plat as submitted. Bill Beckwith seconded the motion.

Vice-Chairman Powell commented that the open space in C-S could be held in three (3) different legal forms. He said one (1) by the homeowners' association, secondly by the county in perpetuity and he could not recall the third. He said if all of the open space was deeded to the county, including the entrance way then that road would in fact meet the 3,000 foot criteria. He said this looked fine to him.

The motion carried 5-0.

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Chairman Graw said the following items would be considered by the Planning Commission tonight and by the Board of Commissioners on September 22, 2005. He said there were some rezoning requests in the next few items. He asked Zoning Administrator Aaron Wheeler to read the rules of procedure for the meeting tonight.

Mr. Wheeler remarked that tonight's public hearing was for the County Planning Commission to consider requests for the rezoning of property, plat approvals and issues related to County codes and regulations. He said Fayette County required two (2) public hearings for these requests. He said the first public hearing on the first Thursday of the month was heard by the Planning Commission and their vote was a recommendation to the Board of Commissioners. He said the second public hearing on the fourth Thursday of the month was by the Board of Commissioners and their vote would be the final decision of the county. He said procedures for the public hearing of each agenda item were as follows: (1) presentation by petitioner. He said once the agenda item was announced the petitioner will present the request to the Planning Commission. He said the petitioner along with those speaking in favor of the request would be granted a cumulative total of fifteen minutes for

presentation and rebuttal, (2) public comment. He said after the petitioner's presentation, the Planning Commission would ask for public comment. He stated that each petitioner may have a total of three (3) minutes each to address the Planning Commission. He said first the Planning Commission would hear those speaking in favor of the request. He stated then the Planning Commission would hear those speaking in opposition to the request and also grant a cumulative total of fifteen minutes to those opposed. He said each person who wishes to speak to the Planning Commission would come to the podium, print his/her name and address on the form provided, so that each speaker would accurately be identified in the minutes of the meeting. He said speakers were requested to speak only to the Planning Commission and not to the applicant or others in the audience. He said if a group wished to speak, a spokesperson should represent the group. He remarked that they ask that each person not repeat the same concerns of previous speakers. He said any items such as photographs or signed petitions that a speaker may wish to give to the Planning Commission, must be given to the Marshal. He said after everyone speaking in opposition has spoken, the Planning Commission would close the floor to further public comment on the agenda item. (3) rebuttal by petitioner. He said the petitioner would be given the remainder of his/her fifteen minutes for rebuttal and to address the Planning Commission about the issues. (4) motion and discussion by the Planning Commission. He said normally a Planning Commission member would make a motion to either approve, deny, approve with conditions or table and the motion would be seconded by another Planning Commission member. He said lack of a second would nullify the motion. He said the Planning Commission may ask questions or comment prior to or after a motion was made and seconded. (5) Planning Commission recommendation vote. He remarked that following discussion, the Chairman would call for the vote. He said the vote was not the final decision of the County only a recommendation to the Board of Commissioners who would consider the Planning Commission's position as well as other factors. He said provided that everyone understands these procedures the rezoning requests may begin now.

**6. Consideration of proposed amendments to the Fayette County Comprehensive Plan (Fayette County Land Use Plan) along the S.R. 54 West Corridor.**

Chairman Graw remarked that this item along with the next items on the agenda were public hearings and the public would be allowed to comment. He asked Acting Planning and Zoning Director Pete Frisina to discuss this item.

Mr. Frisina said the Board had discussed this item at the Planning Commission Workshop. He said there was a rezoning request in this area for sixteen acres. He said Staff had recommended approval based on the surrounding area and in the report Staff had said that it would pursue a land use amendment to this general area. He said this area was surrounded by the City of Fayetteville to the East, to the North was S.R. 54, to the West was Huiet Road and to the South were properties aligning on Lester Road. He said along this road were two (2) schools and two (2) churches. He said in the City there was the old Emory Clinic, a retirement development with homes located on eighth acre lots, Dogwood Forest which was an assisted living center and to the North was the expansion property for the Fayette County Hospital, as well as the large area that was land used O-I. He said to the West going toward Huiet Road was a new commercial development that consisted of a convenience store and several commercial suites. He said there was also the post office distribution facility. He said based on that surrounding existing use and future use, Staff was recommending that the area be amended on the Land Use Plan from low density residential to office.

Chairman Graw asked if there was anyone who wished to speak on this issue. Hearing none, he asked for the Board's pleasure in this matter.

Mr. Thoms clarified that it would be subject to the overlay and Mr. Frisina agreed.

Tim Thoms made a motion to approve the proposed amendments to the Fayette County Comprehensive Plan along the S.R. 54 West Corridor. Vice-Chairman Powell seconded the motion. The motion unanimously passed 5-0.

7. **Consideration of Petition No. 1151-05, 54 West, LLC, Owner, and Grover and Corlew, Agent, request to rezone 16.66 acres from A-R to O-I to develop a Professional Office Park. This property is located in Land Lot 8 of the 7<sup>th</sup> District and fronts on S.R. 54 West.**

Chairman Graw asked if the petitioner was present for this discussion.

Jeff Collins said he represented Grover and Corlew. He said they wished to rezone 16.66 acres from A-R to O-I to develop a professional office park. He said he would be glad to answer any questions. He said he had worked with Staff and looked forward to developing the property. He said they would be glad to take any and all recommendations and incorporate these into the plans. He presented a conceptual layout to the Board.

Paul Ricker representing Peacock Architects said he would be glad to answer any questions as well.

Mr. Thoms questioned the meaning of "MOB" and "COB" on the map.

Mr. Ricker replied that "MOB" stood for medical office building and "COB" was commercial office building.

Mr. Thoms questioned the bottom portion of the map where the walking trail was listed. He asked what the dashed lines on either side of the lake and creek were.

Mr. Ricker said these were the set back buffers from a creek. He said they had marked a 75 foot set-back because of pending legislation.

Mr. Thoms said it was his understanding that nothing could be done inside the setback and Mr. Ricker replied that was correct.

Mr. Gilbert said there were two (2) conditions and he asked the petitioner if he agreed to those.

Mr. Ricker replied that the petitioner was aware of the conditions and he agreed to these conditions.

Vice-Chairman Powell said he would read the conditions. He said (1) that the owner/developer shall dedicate at no cost to Fayette County any additional right-of-way necessary as measured from the center line of S.R. 54 West and must be indicated on the site plan, once that information was provided by the Georgia Department of Transportation. He said should there be dedication necessary all setbacks shall be measured from the new right-of-way. He said condition (2) was should the property be subdivided in the future, no lot shall have immediate vehicular access to S.R. 54 West.

Chairman Graw asked Mr. Collins if the petitioner agreed with those two (2) conditions.

Mr. Collins replied that he agreed.

Mr. Thoms said this plan accommodates one of the concerns that he has about the O-I zoning moving South off of S.R. 54. He said this was keeping most of the intensities on S.R. 54. He said he liked the buffer area in the back to separate the churches and things like that.

Chairman Graw said he felt comfortable with O-I zoning in light of what was going in across the street. He said this was a good use for the property and a good fit.

Chairman Graw asked if there was any public comment. Hearing none, he asked for the Board's pleasure in this matter.

Vice-Chairman Powell made a motion to approve Petition No. 1151-05 with two (2) recommended conditions as stated.

Al Gilbert seconded the motion.

The motion unanimously passed 5-0.

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**8. Consideration of Petition No. 1153-05, Ms. Bobbie J. Roberts, Executrix of the Estate of Grace Prayor, Owner, and Rufus Prayor, Agent, request to rezone 2.15 acres from A-R to R-70 to develop one (1) single-family dwelling lot. This property is located in Land Lot 22 of the 5<sup>th</sup> District and fronts on Weldon Road.**

Chairman Graw asked if the petitioner was present for this request.

Rufus Prayor said he was representing his sister Bobbie Jean Roberts in this rezoning request. He said they would like to have the property rezoned from A-R to R-70. He said the property consisted of 2.15 acres and was located on Weldon Road.

Chairman Graw asked if there was any public comment on this request. Hearing none, he asked for the Board's pleasure in this matter.

Vice-Chairman Powell made a motion to approve Petition No. 1153-05 as presented. Bill Beckwith seconded the motion. The motion unanimously passed 5-0.

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**9. Consideration of Petition No. 1154-05, Allen and Judy Pendergrass, Owners, and Attorney Geoffrey Slade, Agent, request to rezone 4.756 acres from A-R to R-40 to develop two (2) single-family dwelling lots. This property is located in Land Lot 250 of the 13<sup>th</sup> District and fronts on Mitchell Road and S.R. 279.**

Chairman Graw asked if the petitioner was present for this rezoning request.

Geoff Slade said he was the agent for Allen and Judy Pendergrass. He said this was a two (2) lot subdivision located on S.R. 279 and Mitchell Road. He stated that Mr. Pendergrass purchased the property which was the former Bob Disharoon home. He said at the time he did not own the property on Mitchell Road. He said Mr. Pendergrass acquired that property which was previously subdivided in 1990 without authority of this Commission. He said Mr. Pendergrass would like to have separate lots instead of one (1) four (4) acre lot. He said there was a home already located on one (1) of the lots. He said behind that was another two (2) acre parcel that fronts on Mitchell Road.

Mr. Pendergrass remarked that this was already two (2) separate lots.

Aaron Wheeler said that this was currently two separate lots and was not an actual subdivision as recognized by the County. He said the application was to rezone a total of four (4) plus acres which actually consists of two (2) existing A-R non-conforming lots of record.

Mr. Slade said he would like to give the Board a little history of the property. He stated in 1990 Bob Disharoon owned this property and the entire four (4) acre plus tract was his home place. He sold the property to an individual and subdivided without going through the subdivision process. He said this occurred in 1990 and no one questioned it. He said the owner of the property who was Mr. Nasser lived there from 1990 until 2003. He said at that time the bank that had mortgaged the property foreclosed on it. He said Mr. Pendergrass purchased two (2) acres at the foreclosure sale but he did not purchase the other two (2) acre parcel. He remarked in 2005 Mr. Pendergrass acquired the other two (2) acres. He said Mr. Pendergrass took what had previously been one (1) parcel illegally subdivided into two (2) and he purchased the other parcel so that it became one (1) parcel. He said thereafter he wanted to subdivide it into two (2) parcels and that was why they were requesting this tonight.

Vice-Chairman Powell said as he understands this property would be going from two (2) separate A-R non-conforming lots to a proposed rezoning of R-40 for the two (2) separate lots.

Mr. Slade replied yes that was correct.

Chairman Graw asked if there was any public comment on this rezoning request. Hearing none, he asked for the Board's pleasure in this matter.

Chairman Graw questioned Attorney Davenport on this request. He said this involved a four (4) acre parcel that was supposedly illegally subdivided.

Attorney Davenport replied that with respect to what had been presented here tonight if a tract of property existed as one (1) tract of 4.66 acres with a house where it was currently situated and if in fact the property had been subdivided in 1990, what would constitute an illegal subdivision and would be a subdivision which put the two (2) lots at a smaller size than the minimum lot size for that particular zoning district. He said he had no independent knowledge what occurred back in 1990, but it could produce an illegal subdivision. He said the property then changes hands. He said if the County was aware of an illegal subdivision then the County would take steps to work with the property owners to rectify the problem in the best fashion that the County can, given the circumstances. He said here it seemed to have almost worked itself out, if that was what occurred back in 1990. He remarked when Mr. Pendergrass purchased the second parcel there would now be two (2) individual lots in common ownership. He said that in and of itself did not make it one (1) parcel. He said Mr. Pendergrass would need to take some affirmative action to make it one (1) parcel such as filing with the Tax Office or the Zoning Department that his intent was to combine this into one (1) parcel of property or recording something like that with the County deed records. He said there was no issue with respect to how many lots were being discussed. He remarked that the subdivision that occurred back in 1990 could have been an illegal subdivision, or it could have been a subdivision consistent with County regulations.

Chairman Graw asked if the Board could take up the rezoning of a 4.66 acre lot or should the Board consider two (2) lots.

Attorney Davenport said the Board was getting conflicting information from the petitioner at this time. He said the petitioner was claiming that he had two (2) lots and his attorney was claiming that he had one (1) lot. He said he did not have any other information to go one way or the other. He said if the petitioner did in fact have two (2) lots and they were seeking to rezone the two (2) lots, then that certainly could take place. He said he had no information tonight that said subdivision and that two (2) lots were being subdivided other than what was given to the Board by Mr. Pendergrass' agent. He said if in fact it was one (1) lot that the Board was considering it could certainly rezone one (1) lot. He said the first thing that the Board needed to do would be to clarify what it had before it and that was to decide if there was one (1) lot or two (2) lots.

Mr. Beckwith said there seemed to be a lot of confusion on this and questioned if there needed to be some more information.

Aaron Wheeler clarified that when this was initially submitted this was shown as one (1) lot. He said upon review, Staff determined that the guest house exceeded the maximum allowable square footage of a guest house which sparked research on Staff's part. He said after visiting the site and talking with the surveyor who provided the square footage and talking with the tax office, Staff was able to determine that currently there was a request to combine two (2) separate lots into one (1) lot that was not going to be approved after review by Staff. He said this was because of the fact that the guest house actually qualified as a single family residence due to square footage. He said at that point he had a conversation with Mr. Pendergrass who was the owner and advised him that he currently had two (2) separate lots that have to remain as two (2) separate lots because of the size of the structures on each lot. He said he also had deeds in his possession that he had obtained from the Tax Office dated 1978 for each separate lot. He said they were lots of record because they did not conform to the five (5) acre minimum A-R size. He said there were two (2) separate lots that



he was showing

in deeds from 1978, a letter from the Tax Office written by Mr. Slade's office requesting that they be recombined. He said Staff had advised the Tax Office that this could not be done and also advised Mr. Pendergrass that this could not be done. He said Mr. Pendergrass was to proceed at that point with the rezoning of two (2) separate lots both of which were lots of record that were independent of each other.

Chairman Graw clarified that in 1978 it was established that these were two (2) separate lots. He said according to the Attorney there were two (2) separate lots. He said Mr. Pendergrass remarked that there was only one (1) lot. He said there were two (2) deeds showing two (2) separate lots.

Attorney Davenport said he had not seen these documents that were being referred to. He said with respect to what Mr. Wheeler said in connection with these two (2) documents if in fact there were shown as separate properties in 1978, which predates the 1990 discussion, he did not know what had occurred since 1978. He said this would give the Board a starting point to say that at some point in time there were two (2) lots of record, zoned A-R, and most likely that was what those documents would show. He said maybe in 1990, this was not so much of a subdivision as the fact that there had always been two (2) lots and Mr. Disharoon sold it off and did not have to subdivide it because there were already two (2) lots. He said when the attempt to recombine occurred, there would have to be approval from several departments in the County because it affected not only the Tax Assessor's Office but also the Planning and Zoning Department. He said during the communication based upon this information, it became clear to Planning and Zoning that recombination could not occur because the structure on the second lot was too large to be considered an accessory structure thereby having two (2) principle structures on one (1) lot and making that an illegal lot. He said the recombination was denied. He said the request before the Board was for two (2) separate lots zoned A-R, seeking to be rezoned to the new zoning designation. He remarked that both of these lots were non-conforming lots of record as far as the County's position was concerned, based on the 1978 deeds.

Mr. Slade said he agreed with Attorney Davenport entirely and said he was 100% correct. He said there were two (2) residences with one (1) on each parcel. He said one (1) had been treated as a guest house, but it was larger than what would be permitted as a guest house. He said this was two (2) separate parcels each with its own residence. He said they were located in an A-R zoning district and the petitioner would like to rezone it so that it would be more appropriately zoned for the residences that were there.

Chairman Graw remarked that there were two (2) separate lots. He said one option would be to look at each lot standing on its own as a separate rezoning. He said the other option would be for the petitioner to do whatever he had to do to combine these parcels into one (1) lot.

Attorney Davenport interjected and said the last option would not be applicable. He said that would not be an option. He said as long as both structures were in existence they could not be combined. He said this was not a non-conforming structure per se and it was too large to be considered an accessory structure if it were combined with the other lot.

Chairman Graw said he would feel more comfortable with each lot being considered on its own. He said it might come out that both were R-40, but he would prefer to consider each one.

Attorney Davenport said the Board could designate the first parcel as Tract One (1) and the second parcel Tract Two (2) for clarification of action by the Board.

Vice-Chairman Powell made a motion to approve Tract One (1) of Petition No. 1154-05 to be rezoned from A-R to R-40. Tim Thoms seconded the motion.

The motion passed unanimously 5-0.

Vice-Chairman Powell made a motion to approve Tract Two (2) of Petition No. 1154-05 to be

rezoned from A-R to R-40 with one condition, that the owner/developer shall dedicate at no cost to Fayette County 30 feet of right-of-way as measured from the center line of Mitchell Road to create

a total of 60 feet of right-of-way.

Mr. Pendergrass interjected that he would agree to that condition.

Al Gilbert seconded the motion to approve.

Vice-Chairman Powell noted the access to Tract Two (2) was through Tract One (1). He said when driving to this site he could not see the access from the proposed garage location back to the two (2) story framed building behind the main house. He said his diagram indicated that it was all asphalt. He asked if that was correct.

Mr. Pendergrass replied yes that was correct.

Mr. Wheeler interjected that given the age and current status of the property, Staff was advising that the petitioner would not be required to have a second cut for that back piece of property unless he chose to access from Mitchell Road.

The motion passed unanimously 5-0.

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**10. Consideration of Petition No. T-015-05, William and Betty Shubert, Owners, and Jeffrey Evans of Powertel/Atlanta, Inc., Agent, request to construct a 150 foot Monopole Telecommunications Tower plus a 4 foot lightning rod. This property is located in Land Lot 104 of the 7<sup>th</sup> District, consists of 49.75 acres, fronts on Dogwood Trail Road, and is zoned A-R. Proposed tower does not comply with the 2 mile separation between tower facilities or the east side yard setback.**

Chairman Graw asked if the petitioner was present for this discussion.

Jeff Evans said he was representing Powertel/Atlanta, Inc. and was Agent for William and Betty Shubert. He said he was here as a result of an obligation that T-Mobile has to its customers. He said he was endeavoring to develop a network in Fayette County as they have done for the last several years. He said they have several other customers here already. He said the purpose of this facility in particular was to enhance the coverage to customers in and around the area along S.R. 74 intersecting Tyrone Road. He said the petitioner was aware of the County's concern for proliferation of towers. He said they were aware that the County was also concerned and wanted to encourage towers to go on certain designated highway corridors. He said some of the guidelines have been relaxed to accommodate that and they understood that. He said the applicant also was aware that the County was sensitive about keeping these facilities away from residential areas. He said to accomplish that, the County had included in its ordinance a mandate for a specific distance to be maintained from the facility to offsite residences.

Mr. Evans said he would like to briefly go over the petition and tell the Board how these issues have been addressed. He said they were proposing a 150 foot tower for the area. He said the parcel was wooded sufficiently enough to shield the facility from view.

Vice-Chairman Powell asked if the trees were deciduous trees or coniferous trees.

Mr. Evans said some of the trees were pine trees and the needles did not fall off in the winter. He said there were some deciduous trees on the property as well. He remarked within the property there was a 60' x 40' fenced compound that they would surround the entire facility with. He said the petitioner was aware that the Board was very concerned with maintaining the distance of at least 1,000 feet from the closest offsite residence. He said they had carefully placed the facility on this

parcel to meet that distance. He said they had done everything that they could to maintain that distance. He said in order to do that the petitioner was requesting some relief. He said this was about the only portion of this parcel that the facility could be placed. He said there was a pond and

a 100 foot flood plain. He said they were trying to stay outside of the flood plain and also keep it shielded within the tree line while at the same time maintaining the distance of the minimum 1,000 feet from surrounding residences. He said this was quite a job for them but they had been able to do that. He said in order for them to build this facility and maintain as much of the conditions of the ordinance that they could, they would like to request a little bit of relief from the County Ordinance in the way of a set back variance from the East property line. He said they were requesting that be reduced from 200 feet to 122 feet. He said they were requesting 78 feet relief there. He said they were 1.63 miles away from the closest tower. He said they had done all they could to cover their customers and maintain their obligation to them within that area even to the point where they had located their facilities on that next closest tower. He said they still had a great deficiency in that area by even putting their facilities on the existing tower that was closest to it. He remarked they were in a position that they had no other place to go but to find another place for a facility. He said they had done their very best to adhere to as much of the ordinance as possible.

Mr. Evans further remarked that they were pleased that the Staff had recommended approval with conditions and they agreed with their assessment. He said they were also willing to adhere to the four (4) conditions that they have outlined. He said the first condition (1) was that Fayette County would have the right to co-locate emergency and public safety antennaeas and equipment on the tower, as long as such equipment did not interfere with the operation and maintenance of the tower facility. He said secondly (2) the tower shall be designed to reduce visual intrusiveness by maintaining a neutral galvanized finish with non-reflective antennaeas and with all associated equipment at the site being neutral or earth tone colors with lighting to comply with the F.A.A. requirements. He said since the facility was 150 feet in height they were not required to light it and they did not intend to do so. He said thirdly (3) the tower would be limited to 150 feet and constructed to provide for at least three (3) users. He said fourthly (4) the entire area located within the minimum eight (8) foot fence shall be graveled to reduce erosion on site. He said all of these conditions were satisfactory to T-Mobile and they were certainly agreeable to them.

Mr. Evans said lastly he would like to respectfully request that the Planning Commission recommend to the Board of Commissioners that this petition be approved.

Chairman Graw asked if anyone wished to speak on this item. Hearing none, he asked for the Board's pleasure in this matter.

Bill Beckwith said if the Planning Commission recommended approval of this it would still be subject to two (2) variances before the Zoning Board of Appeals. He asked if this might be a premature vote on the part of the Planning Commission. He asked if it would be more appropriate for T-Mobile to go before the Zoning Board of Appeals for consideration before a decision was made here.

Chairman Graw said he felt this was the avenue that petitioner would take if they could not meet the Zoning Ordinance.

Aaron Wheeler said in conferring with the County Attorney's Office it was determined that they would need to go before the Zoning Board of Appeals to request specific relief from what they were asking for here tonight. He said they would need to get approval for the use itself by coming before the Planning Commission and subsequently before the Board of Commissioners, because they could not request relief for a use that had not been approved yet.

Mr. Beckwith said basically the Planning Commission would be recommending approval or not approval of this tower being located on this site without any consideration of how close it was to any of the surrounding property or other tower.

Mr. Wheeler said Staff was just presenting the information and the Planning Commission would have to decide what it would be voting on whether it be for or against. He said Staff was not telling the Planning Commission what to do but just presenting the information as it applied from the Zoning Ordinance to this use.

Vice-Chairman Powell said Mr. Evans had stated that he had done everything that he could in terms of positioning on a subsequent tower. He asked what tower Mr. Evans had attempted to position on.

Mr. Evans replied it was a tower owned by S.B.A. and was located at 164 Flat Creek Drive. He said that tower was located 1.6 miles from the proposed location.

Vice-Chairman Powell asked if that was enumerated on the chart that the Commission had been provided.

Mr. Evans replied yes he believed it was.

Vice-Chairman Powell said he was unable to locate it on the map and also was unable to find the height of the tower.

Mr. Evans said they were already co-locating on that tower.

Vice-Chairman Powell questioned the height of the tower.

Mr. Evans replied the overall height of that structure was 199 feet.

Vice-Chairman Powell clarified that T-Mobile was already located on that tower.

Mr. Evans replied yes that was correct.

Vice-Chairman Powell said he had read this petition twice and was confused with the information in this petition and everyone needed to be on the same page. He said he would like to know what Mr. Evans had done in terms of complying with the Ordinance. He asked if the cost or the feasibility had been determined to raise that pole another 100 feet. He asked Mr. Evans if he had done a propagation diagram at 250 feet as opposed to the current 150 feet.

Mr. Evans interjected that the tower location was 199 feet. He said he had done a propagation study at the current location. He said the tower was 1.63 miles away and would not satisfy the service requirement for the customers in that area. He said they did not own the tower. He said they were allowed to co-locate at a specific height. He stated by being so far away from that particular area they could not cover their customers in the area of S.R. 74 and Tyrone Road by using a tower that was 1.64 miles away. He said he would be glad to show the Board the propagation maps that he had here tonight. He said one of the maps showed the coverage without the facility and another map showed it with the facility.

Vice-Chairman Powell clarified that T-Mobile was not the owner of the tower. He asked if Mr. Evans had gone to the owner of the tower and attempted to do a cost analysis to determine if they could go up on that pole.

Mr. Evans replied that they had studied that feasibility prior to selecting that site to build.

Vice-Chairman Powell asked where the propagation diagram from that feasibility study was.

Mr. Evans replied that he had not done one because that one was so far away that it was designed to cover a specific area that was outside of this one. He said even if the tower was raised they would not be able to cover this area.

Vice-Chairman Powell asked Mr. Evans how he made that determination.

Mr. Evans replied that he had determined that by taking the available height and doing a propagation study on the available height that they were granted at Flat Creek Road. He said the county's ordinance had a provision that the maximum height in a non highway corridor be limited to 200 feet.

Vice-Chairman Powell said he recalled the height in a non highway corridor being 500 feet and a highway corridor was 150 feet.

Mr. Evans remarked that a highway corridor was 250 feet and a non highway corridor was 150 feet.

Vice-Chairman Powell said he was questioning if Mr. Evans had gone back to the owner of the tower to see if it was feasible in terms of cost to go up on the tower.

Mr. Evans said he was not sure if that was an appropriate question to ask the proponent.

Chairman Graw said the petitioner did not own the tower and they could not be ask to increase the height of the tower.

Mr. Evans stated they would always explore the avenue rather than have to come to a jurisdiction and request the right to build a new facility. He said they do everything that they can to co-locate on whatever was available. He said this included requesting an extension of height if one was available. He said he was not allowed to do that and even if he was allowed to raise the height to 250 feet at that location, it would not cover the customers that they have in that area that they have an obligation to cover.

Chairman Graw said he would like to clarify the information. He said the applicant was co-locating on another tower. He said the question was if the applicant had gone to the owner of that tower and asked that owner if he or she could increase the height of that tower. He asked Mr. Evans for the answer to that question.

Mr. Evans replied that before he would even come before the Board that was the first step that would be taken.

Chairman Graw asked Mr. Evans if he had asked the owner.

Mr. Evans replied that the first step that he would take was to do an analysis of that existing tower and determine from the existing tower submittal whether that tower would work. He said if that answer was no, then he would then go out and find the best site possible in the area that they were trying to cover. He said it was much more cost efficient for them as a wireless service provider to co-locate. He said they would much rather do that. He said their last course of action to fulfill the obligations to customers was to build a new facility. He remarked that they were not present tonight to just build facilities for the sake of building them, but here to build this facility as an obligation to customers and this was the reason they were doing this.

Chairman Graw said the bottom line was that even if the person who owned the tower increased the height of the tower by 100 feet, this would still not accomplish the applicant's needs.

Mr. Evans replied yes that was correct. He said this was because of the fact that it was so far away.

Vice-Chairman Powell said he would like to see the propagation study in which this comment came from.

Chairman Graw said he understood that but the owner was probably not going to increase the height anyway because that would be a cost to that owner. He asked why the owner would want to increase the height for this gentlemen at the owner's expense.

Vice-Chairman Powell said if he was T-Mobile and wanted to increase the height of the tower then

he would pay for that expense. He said he would do a cost analysis to determine the cost of increasing the tower versus the cost of building a new tower.

Chairman Graw asked if Vice-Chairman Powell had another question.

Vice-Chairman Powell asked if the neighbor to the East of the tower was aware of this situation.

Mr. Evans replied that he believed Mr. and Mrs. Shubert were present tonight. He said this had been advertised according to regulations and signs posted.

Chairman Graw clarified that everyone surrounding the tower was aware of this and had been advertised as such.

Mr. Evans said he had called repeatedly to the Zoning Office on at least two (2) or three (3) occasions to find out whether or not there had been any calls on this request as well as any opposition to the facility. He said to date there have been none.

Mr. Wheeler interjected that there had been one (1) call in opposition.

Chairman Graw said if anyone was in opposition it was their responsibility to attend this meeting tonight and make that known. He said it was irrelevant how many people have called the Zoning Office. He asked if there were any further comments. Hearing none, he asked for the Board's pleasure in this matter.

Mr. Beckwith said if the Board made a motion recommending approval that would allow this process to go ahead. He said this would really depend on what the Zoning Board of Appeals would say about what variances would be required. He said he was a little bit conflicted with this since the location of the tower would require variances.

Bill Beckwith made a motion to recommend approval to the Board of Commissioners including the four (4) recommended conditions. Al Gilbert seconded the motion.

Chairman Graw asked for clarification that Mr. Beckwith would be voting on this request in light of his position on the Zoning Board of Appeals.

Mr. Beckwith said he would be voting on this item and noted that he had made the motion.

Mr. Beckwith said this Board was not considering the fact at this point in time that there were variances that would be required. He said that would come up at another meeting. He said that would have no relevance to what he was going to say tonight.

Al Gilbert said he probably traveled Dogwood Trail more than anyone in this room. He said this was a pretty isolated area out there and it was very sparse. He said the closer you get to S.R. 74 from Dogwood Trail there was some really heavy duty development going in. He said there were some huge office parks and a huge church. He felt if someone was going to locate a cell tower then this would probably be the best place for it. He said the distance requirement would vary sometimes for different situations. He said it was hard to tell if the two (2) mile radius would work in every case. He said he felt this location would fit the need for this cell tower and it was a good location for it.

Vice-Chairman Powell said he would agree that Dogwood Trail was a pretty remote area; however, when he looked at the two variances that were going to be required he had doubts about whether the Board should recommend approval.

Mr. Beckwith said this Board would never know if the two variances would be approved unless this item was forwarded to the Board of Commissioners and allow them to make the final decision. He

felt that the issue of the variances was something that did not need to be considered tonight.

Chairman Graw said this issue would have to go to the Board of Commissioners where they could make the final determination based on criteria provided them. He said the Zoning Board of Appeals would hear this request if the Board of Commissioners approved it first.

Mr. Thoms said he understood what Vice-Chairman Powell was saying about this. He said the applicant needed to demonstrate to the satisfaction of the County that no existing tower nor any towers in the approval process could accommodate the applicant's proposed antennae.

Chairman Graw called for the vote.

The motion passed unanimously 3-2 with Chairman Graw and Vice-Chairman Powell voting in opposition.

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Chairman Graw asked the Board for a motion to adjourn so that the Board could go into the special workshop meeting.

Al Gilbert made a motion to adjourn the meeting at 8:35 p.m. Vice-Chairman Powell seconded the motion. The motion passed unanimously 5-0.

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**PLANNING COMMISSION**  
**OF**  
**FAYETTE COUNTY**

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**JIM GRAW**  
**CHAIRMAN**

**ATTEST:**

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**DELORES HARRISON**  
**ZONING TECHNICIAN**