Minutes

Board of Commissioners
April 24, 2014
3:00 P.M.

The Board of Commissioners of Fayette County, Georgia, met in Official Session on April 24, 2014 at 7:00 p.m. in the Public Meeting Room of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

Commissioners Present:	Steve Brown, Chairman David Barlow Allen McCarty Randy Ognio
Commissioner Absent:	Charles Oddo, Vice Chairman
Staff Present:	Floyd L. Jones, County Clerk Tameca P. White, Deputy Clerk Dennis Davenport, County Attorney

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Call to Order, Invocation, and Pledge of Allegiance

Chairman Brown called the April 24, 2014 Board of Commissioners meeting to order at 7:02 p.m.

Commissioner McCarty offered the Invocation.

Chairman Brown led the audience in the Pledge of Allegiance.

Acceptance of Agenda

Chairman Brown moved to accept the Agenda while removing New Business Item #11 from the Agenda. Commissioner Barlow seconded the motion. No discussion followed. The motion passed 4-0-1 with Commissioner Oddo being absent from the meeting.

PRESENTATION / RECOGNITION:

1. Proclamation of April 26, 2014 as "Fayette County Pet Appreciation Day," and recognition of the Fayette County Humane Society.

Chairman Brown read the proclamation of April 26, 2014 as "Fayette County Pet Appreciation Day," and he recognized the Fayette County Humane Society. Dr. Britton Hammet-McCurry and Animal Control Officer Rani Rathburn spoke about the importance of Fayette County Pet Appreciation Day and of the work of the Fayette County Humane Society. Copies of the request and proclamation, identified as "Attachment 1," follow these minutes and are made an official part hereof.

2. Proclamation of April 2014 as "Safe Digging Month in Fayette County."

Commissioner McCarty read the proclamation of April 2014 as "Safe Digging Month in Fayette County." Copies of the request and proclamation, identified as "Attachment 2," follow these minutes and are made an official part hereof.

3. Proclamation of May 2014 as "Foster Care Month," and the week of May 12-18, 2014 as "Foster Parent Appreciation Week."

Commissioner Barlow read the proclamation of May 2014 as "Foster Care Month," and the week of May 12-18 as "Foster Parent Appreciation Week." Ms. Susan Boggs of the Fayette County Department of Family and Children Services and foster parent Alicia Smith spoke about the need and importance of foster care and foster parents. Copies of the request and proclamation, identified as "Attachment 3," follow these minutes and are made an official part hereof.

4. Recognition of the Sandy Creek SkillsUSA Chapter.

Chairman Brown read the recognition of the Sandy Creek SkillsUSA Chapter. The Board specifically recognized students Kasey Mekonian, Katherine Gilmer, Madison Riley and Carlisle Vidourek. Coach and Advisor Jeffrey Dykes spoke briefly about the Sandy Creek SkillsUSA Chapter. Copies of the request and recognition, identified as "Attachment 4," follow these minutes and are made an official part hereof.

Chairman Brown announced that Commissioner Oddo could not attend the meeting since he has a family member who is ill and who lives out of the county, and he said Commissioner Oddo had left the country to be with his family. He added that County Administrator Steve Rapson was also not attending the meeting since his mother passed away on Easter Sunday. He asked everyone to pray for keep both men and their families.

PUBLIC HEARING:

There were no items for Public Hearing.

CONSENT AGENDA:

Commissioner Barlow moved to accept the Consent Agenda as read. Commissioner Ognio seconded the motion. The motion passed 4-0-1 with Commissioner Oddo being absent.

5. Approval of a request from the Fayette County Juvenile Court for authorization to file continuation and enhancement grant applications, on behalf of the Fayette County Board of Commissioners, with the Governor's Office for Children and Families, and authorization for the Chairman to execute said documents. Copies of the request and supporting documents, identified as "Attachment 5," follow these minutes and are made an official part hereof.

6. Approval of staff's recommendation to declare a walk-in freezer as unserviceable and to authorize staff to sell the walk-in freezer on GovDeals.com with proceeds from the sale returning to Fayette County's General Fund. A copy of the request, identified as "Attachment 6," follows these minutes and is made an official part hereof.

7. Approval of staff's recommendation to add Claudia's Cove to the Fayette County Street Light Program. A copy of the request, identified as "Attachment 7," follows these minutes and is made an official part hereof.

8. Approval of staff's recommendation to adopt Ordinance 2014-07 enacting a new County Code entitled "The Code of Fayette County, Georgia."

Chairman Brown thanked County Attorney Dennis Davenport and his law firm for working to enact the new County Code. He told everyone that Fayette County, prior to the current Board, had not codified its ordinances for about seven or eight years creating a cumbersome process in using the ordinances. He stated that the codification meant the ordinances were now in one form, and would be easily accessed from the website. Mr. Davenport credited Municode for working with the county in the codification process. Copies of the request and Ordinance 2014-07, identified as "Attachment 8," follow these minutes and are made an official part hereof.

OLD BUSINESS:

There were no items of Old Business for consideration.

NEW BUSINESS:

9. Consideration of the Selection Committee's nomination of James L. Preau to the Fayette County Water Committee.

Commissioner Ognio moved to accept the Selection Committee's nomination of James L. Preau to the Fayette County Water Committee. Commissioners Barlow and McCarty seconded the motion. No discussion followed. The motion passed 4-0-1 with Commissioner Oddo being absent. A copy of the request, identified as "Attachment 9," follows these minutes and is made an official part hereof.

10. Consideration of staff's recommendation to adopt Ordinance 2014-08, establishing Operating Regulations for Short Term Lodging and Tourist Accommodations by designating Sections 6-165 through 6-205 of Article Vi as a new Article pertaining to "Tourist accommodations" to Chapter 6 of the Fayette County Code of Ordinances, becoming effective June 1, 2014.

Code Enforcement Officer Kathy Hobbs said this issue had been discussed for the past couple of months. She said it cooperated with the State's new regulations that passed for public health, and is a mirror image to state law.

Commissioner Ognio asked if a percentage of usage could be added to the ordinance, and he suggested if the property owners used the property more than 50% of the year as short-term rental then it has to be commercial, meaning commercial use would be disallowed in residential areas. He said if the County did not do something, then its zoning would be affected since there would be commercial uses in residential-zoned areas of the county.

County Attorney Dennis Davenport replied to Commissioner Ognio saying this matter was discussed in several meetings. He reminded the Board that the real issue that is causing negative impacts with short-term rentals is the use of the property that is inconsistent with a single-family residential use. He said examples of the inconsistent uses were holding big, noisy, and unwelcome gatherings that do not fit the

character of the neighborhood. He said one thing staff did with the ordinance was to limit special events, as defined in the ordinance, only in regards to tourist accommodation in commercial-zoned areas. He stated that a person running tourist accommodations in residential-zoned areas cannot have special events that would normally be acceptable in commercial-zoned areas. He said the ordinance only allow guests in a residential structure that the residential use that everyone else is abiding by, and he explained some of the limitations that were suggested. He said this ordinance would go a long way of getting rid of the commercial aspects of short-term rentals with a focus on the residential aspects, so that neighbors should not be able to tell if a person is occupying a residence on a short-term basis or if they are living at the house for twenty-five years. He said if there were complaints about a big gathering or a special event, then it the location could be in violation of the ordinance.

Commissioner Ognio replied that he was still concerned that if the property was being used more than 50% of the time for short-term rental then it would be a business; thus, a commercial use in a residential location. He asked if this ordinance would open the door for other commercial actions. Mr. Davenport replied that the ordinance was designed so that people would not be able to look at the property and tell it was being used for commercial use. He said he understood Commissioner Ognio's concern, but the ordinance would not allow for someone to simply know that commercial activity was occurring at the house. Commissioner Ognio asked if that would give the ability for anyone to have a business inside their home for commercial purposes so long as no one knew. Mr. Davenport said if this matter was taken to the logical extreme, when a person buys a home that is a commercial transaction. Commissioner Ognio replied that if this aspect was not studied, there could be zoning issues in the future since there is no way to control commercial uses in residential areas.

Commissioner McCarty said he looked up the definition of business and found it is a person's regular occupation or trade, and is the practice of making one's living by engaging in commerce. He said he looked at the definition of commerce and found it is the activity of building, of buying and selling, especially on a large scale of goods and service in the practice of making a living. He said people are allowed to grow honey in their yard without calling it a business in any zoning. He said his house is zoned R-70, but it was formally A-R, and he can sell money from his house without a license, permit, and without paying additional taxes with others' knowledge. He said he was totally against anything that will restrict a person's right to use their own personal property that they pay tax on. He added that under the Constitution, people are guaranteed the right to use their property. He added that Fayette County became a Constitutional County a few meetings earlier, and that he was against the proposed ordinance. He stated that the County already has the means necessary to take care of problems through law enforcement, as well as the authority, to handle problems. He said the county should enforce the problems with the means it already has. He stated this was another way to impose a tax, and that federal laws may also have to be imposed. He concluded that he would vote against the proposed ordinance.

Commissioner Barlow said he understood Code Enforcement could not enforce any of the ordinances against people "in violation." He reminded everyone that people were in the audience who informed the Board of multiple disturbances due to short-term rentals, and that there was no enforcement rules in place. Officer Hobbs agreed with Commissioner Barlow. Commissioner Barlow replied that the ordinance would allow Code Enforcement to work with violators to the ordinance in order to keep the peace. Officer Hobbs added that the property owners would have to have a permit to have short-term rentals. Commissioner Barlow asked Officer Hobbs if she recommended the ordinance as presented, and Officer Hobbs replied that she did. Commissioner Barlow then asked Mr. Davenport if he recommended the ordinance as presented, and Mr. Davenport replied he did since it provides appropriate regulations. Commissioner Barlow added that if the Board errs on the side of the caution then it has the ability to amend the ordinance.

Commissioner Barlow moved to approve staff's recommendation to adopt Ordinance 2014-08, establishing Operating Regulations for Short Term Lodging and Tourist Accommodations by designating Sections 6-165 through 6-205 of Article VI as a new Article pertaining to "Tourist accommodations" to Chapter 6 of the Fayette County Code of Ordinances, becoming effective June 1, 2014. Commissioner Ognio seconded the motion.

Chairman Brown said he thought the proposed ordinance was an example where there was no perfect or even a really good solution. He said the Board was just trying to put a stake in the ground. He agreed that if the ordinance needs to be modified then it will be modified. He said the neighbors of the homes would keep an eye on the property and report the issues to Officer Hobbs.

County Attorney Dennis Davenport reminded the Board that Ordinance 2014-08 will provide for the enactment of an Excise Tax. He stated that the motion did not mention an Excise Tax, but he wanted it on the record that the ordinance would enact a 3% Excise Tax. He also said that the ordinance presented to the Board was not final since there were scriveners' errors that needed to be corrected; however, passing the ordinance would demonstrate the Board's intention of putting the regulations on the books effective June 1, 2014. Mr. Davenport also informed the Board that the Ordinance refers to a Schedule of Fees, but that the schedule is not actually in the ordinance. He stated that there would have to be a second motion to adopt the Schedule of Fees, and that the Schedule of Fees would come before the Board prior to June 1, 2014.

Commissioner McCarty suggested that this ordinance would regulate people having weddings on their property, but he was informed that it would not prevent him from having a wedding on his property. However, if he charged to have weddings on his property, the activity would be regulated by this ordinance.

Commissioner Barlow amended his motion to approve staff's recommendation to adopt Ordinance 2014-08 enacting an Excise Tax and establishing Operating Regulations for Short Term Lodging and Tourist Accommodations by designating Sections 6-165 through 6-205 of Article VI as a new Article pertaining to "Tourist accommodations" to Chapter 6 of the Fayette County Code of Ordinances, becoming effective June 1, 2014. Commissioner Ognio seconded the amended motion.

Mr. Ray Swann and Mr. David Arnold spoke in favor of the recommendation to adopt Ordinance 2014-08 while speaking about the ongoing problems in their neighborhood. Mrs. Denise Ognio asked a question about this ordinance. No one spoke in opposition to the recommendation.

The motion to approve staff's recommendation to adopt Ordinance 2014-08 enacting an Excise Tax and establishing Operating Regulations for Short Term Lodging and Tourist Accommodations by designating Sections 6-165 through 6-205 of Article VI as a new Article pertaining to "Tourist accommodations" to Chapter 6 of the Fayette County Code of Ordinances, becoming effective June 1, 2014 passed 4-0-1 with Commissioner Oddo being absent. Copies of the request and Ordinance 2014-08, identified as "Attachment 10," follow these minutes and are made an official part hereof.

11. Consideration of staff's recommendation to consolidate the City of Fayetteville's Fire Department into the Fayette County Fire Department, and for the consolidation of the departments to become fully operational on July 1, 2014.

This item was removed from the Agenda at the acceptance of the Agenda. A copy of the request, identified as "Attachment 11," follows these minutes and is made an official part hereof.

12. Consideration of a request from the Environmental Health Department to adopt proposed Environmental Health Fee Schedule revisions.

Environmental Health County Manager Robert Kurbes and he said his department is charged with regulating both local and state mandated health related ordinances. He said the biggest regulations are the on-site sewage disposal or septic system program, the food service or restaurant inspection program, and tourist accommodation program that just got a little bit bigger. He stated that his department was established in 1980 for the first time in Fayette County, and that over the years the department has grown with the county, businesses, and workload. He said when the housing market took a hit, so did his department. He told the Board that the department is paying for the suffering as there is a backlog of new construction permits existing in his department, but that the workload is not being met with the current staffing. He told the Board that he was authorized to bring on a new inspector, and that the inspector is in training and is already shouldering part of the workload. He said it would be a few months before she is fully functional. Mr. Kurbes said that historically the Health Department has imposed fees for services to offset costs, and that the fees have been reviewed on about a ten-year basis. He said the current proposal avoided looking at body art fees and on-site sewage management fees that had recently been adjusted, and that he focused on fees that have not been adjusted since 2004. He spoke about how he arrived at the currently proposed fees and he told that the fees were reasonable for the services performed.

Commissioner Barlow spoke about the new hire to the Health Department and asked how she would fill the work requirements. Mr. Kurbes replied that she would be able to be an effective solo inspector once she has completed all of her certifications. He said she is already helping the department, but she is not allowed by law to go out and perform certain functions until she is certified. He stated that until she is certified, then the Environmental Health Department was still short-handed.

Chairman Brown thanked Mr. Kurbes for his work, and he said the Board is fully aware that the Environmental Health Department lost good employees and that the department is working on a bare-bones budget while shouldering a lot of complaints. He thanked Mr. Kurbes for enduring quite a few years of chaos. Mr. Kurbes thanked the Board for its compliments and said that while he reports to the state he feels that he also reports to the Board as he considers Fayette County home.

Commissioner Barlow moved to approve the request from the Environmental Health Department to adopt proposed Environmental Health Fee Schedule revisions. Commissioner Ognio seconded the motion. No discussion followed. The motion passed 4-0-1 with Commissioner Oddo being absent. A copy of the request, identified as "Attachment 12," follows these

13. Consideration of the April 9, 2014 Joint Meeting Minutes of the Fayette County's Board of Commissioners and the City of Fayetteville's City Council. Commissioners McCarty and Ognio were not present for this meeting.

14. Consideration of the April 10, 2014 Board of Commissioners Meeting Minutes. Commissioners McCarty and Ognio were not present for this meeting.

Chairman Brown pointed out that there was not a quorum present of those who were in attendance for the April 9 Meeting Minutes and the April 10, 2014 Meeting Minutes.

Chairman Brown moved to table the April 9, 2014 Joint Meeting Minutes and the April 10, 2014 Board of Commissioners Meeting Minutes to the May 8, 2014 Board of Commissioners Meeting. Commissioner Barlow seconded the motion. No discussion followed. The motion passed 4-0-1 with Commissioner Oddo being absent.

PUBLIC COMMENT:

Emory McHugh: Mr. McHugh spoke for approximately sixteen minutes about his concerns about the finances of Fayette County, and he felt the need to update his concerns that were raised at the March 11, 2014 Board of Commissioners meeting. He reminded the Board that at the previous meeting he raised concerns about the Comprehensive Annual Financial Report (CAFR) for the Fiscal Year ended June 30, 2013. He said the CAFR is prepared by the County's staff and that he had nothing to do with preparing that document. He reminded the Board that on March 11, 2014 he came to the Board to inform it that the CAFR was misleading and materially misstated, and he spoke about the response he received from the Board at the time. He stated that after the March 11, 2014 meeting, he decided to do further investigation into the CAFR in order to get facts. Mr. McHugh then spoke about his letter to the county's auditors, about his belief that Open Records was not provided to him properly, about information obtained from the State Auditor's Office, of questions to and responses from the County Finance's Department and of continuing concerns with the CAFR. He maintained that the CAFR remains materially misstated. He closed saying he was concerned that the County's revised CAFR shows that the County lost more than $9 million for the fiscal year ending June 30, 2013. He said that in his personal opinion, based on the information received the one day earlier from the County's Finance Department, he felt the loss was much higher. He quipped that he hoped the citizens would not find out and become over stressed, and he asked the Board to remember the third model of government as written in George Orwell's *1984*: "Ignorance is Strength."

Robert Mudrinich: Mr. Mudrinich gave a letter to the Board and spoke to the Board of his request to change a school zone speed limit on Redwine Road for the South School Complex, around the Panther Path area, from 35 miles per hour to 25 miles per hour. Chairman Brown complimented Mr. Mudrinich for his research and said staff would examine his request. A copy of the letter, identified as "Attachment 13," follows these minutes and is made an official part hereof.

ADMINISTRATOR'S REPORTS:

There was no Administrator's Report.

ATTORNEY'S REPORTS:

New Business Item #10: County Attorney Dennis Davenport followed up on New Business #19- Tourist Accommodations saying staff would likely bring the Schedule of Fees to the Board at the May 8, 2014 meeting.

March 27, 2014 Executive Session Minutes: County Attorney Dennis Davenport informed the Board that there were Executive Session Minutes were available for review, but that there were no other Executive Session items to discuss. He asked for the Board's pleasure in whether or not it wanted to go into Executive Session to review the minutes. The Board consented to wait until the May 8, 2014 Board of Commissioners meeting.

COMMISSIONERS' REPORTS:

Commissioner McCarty: Commissioner McCarty thanked everyone for coming and giving comments. He said the presenters did a good job. He said everyone who is enforcing ordinances has their hand's full, and there are not enough people to enforce all the ordinances. He said his opinion was on the record and there were things that need to be addressed and fixed as they come up.

Commissioner Ognio: Commissioner Ognio thanked everyone for their thoughts and prayers, saying it was good to get back. He then replied to Mr. McHugh's public comments. Commissioners Brown and McCarty added to Commissioner Ognio's comments.

Commissioner Barlow: Commissioner Barlow said he was in the Leadership Fayette class. He said Mr. Rob Parker, the Executive Director of Southern Ground, shared a maxim that he thought was very interesting, namely, that a leader strives for the ability of when his identify is displayed when they call on a phone that the person on the other end of the phone finds it to be a good moment and they look forward to hearing what he has to say. He said it should not be where someone sees a name come up and the person on the other end "kicks it to 'leave a message'."

Chairman Brown: Chairman Brown acknowledged that previous County Commissioner Dennis Berkelbaugh passed away recently. He stated that Commissioner Berkelbaugh was elected into office in 1982 and that he served as a Commissioner for four years, and that he served as Chairman of the Board for two of his four years. Chairman Brown stated that the thoughts and prayers of the Board are with the Berkelbaugh family during this time, and that the Board appreciated his service to the people of Fayette County.

Commissioner Ognio: Commissioner Ognio said the thoughts and prayers of the Board are with County Administrator Steve Rapson on his mother's passing on Easter Sunday. He also stated that the Board's thoughts and prayers are with Commissioner Charles Oddo and his family as they are dealing with health issues. Chairman Brown commented on how trying things have been for individual board and staff members during the past month.

Chairman Brown: Chairman Brown told those new attendees to the meeting that Mr. McHugh comes to the meeting and often gives snide remarks. He said the Board gives him a lot of time and let him speak. He said Mr. McHugh does a lot of Open Records Requests and is a formal disgruntled employee. He said the County does respond to his Open Record Requests to the best of its ability, and that he takes pride in the fact that Fayette County has one of the most open and transparent governments in the State of Georgia. He said a lot of people have recognized Fayette County for its openness. He stated that the County takes the complaints and the criticisms just as it takes awards and compliments and accolades, and that people are more than welcome to come to a Board of Commissioners meeting and have their say. Chairman Brown then briefly replied to Mr. McHugh's public comments.

EXECUTIVE SESSION:

There was no Executive Session meeting.

ADJOURNMENT:

Commissioner Barlow moved to adjourn the April 24, 2014 Board of Commissioners meeting. Commissioner McCarty seconded the motion. There was no discussion. The motion passed 4-0-1.

The April 24, 2014 Board of Commissioners meeting was adjourned at 8:42 p.m.

Floyd L. Jones, County Clerk	Steve Brown, Chairman

The foregoing minutes were duly approved at an official meeting of the Board of Commissioners of Fayette County, Georgia, held on the 8th day of May 2014.

Floyd L. Jones, County Clerk