

The Board of Commissioners of Fayette County, Georgia met in Official Session on Thursday, September 25, 2003 in the public meeting room of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

COMMISSIONERS PRESENT: Greg Dunn, Chairman  
Linda Wells, Vice Chair  
Herb Frady  
Peter Pfeifer  
A. G. VanLandingham

STAFF MEMBERS PRESENT: Chris Cofty, County Administrator  
Dennis Davenport, County Attorney's Office  
Carol Chandler, Executive Assistant  
Peggy Butler, Executive Assistant, Deputy Clerk

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Chairman Dunn called the meeting to order, gave the invocation and led the pledge to the flag.

**PRESENTATION OF THE "LIGHTS ON AFTER SCHOOL" PROGRAM:** On behalf of the Board of Commissioners Chairman Dunn presented a proclamation to Julia Simpson, Director of the Community Schools After School Program. He said this was a program for children that would otherwise be unsupervised after school or in an environment with no one to observe their activities. He asked Julia Simpson to say a few words about the program. Chairman Dunn also introduced two participants of the program, Crystal Paden from Flat Rock Middle School and Torri Cooper from North Fayette Elementary. Ms. Simpson said the after school program serviced 2000 children in 19 schools in Fayette County. They provide enriching programs and supervise children who would otherwise be unsupervised in the afternoons after school. October 9<sup>th</sup> had been declared the day to recognize the value of the "Lights on After School" program.

**PUBLIC HEARING:**

Commissioner Wells said that before the Board heard the requests for rezoning tonight, a public hearing would take place regarding the proposed millage rates. She said afterwards the Board would consider requests for the rezoning of property in our county. She said the policy required at least two public hearings — the first before the Planning Commission and the second before the County Commissioners. She said at this hearing the Board would listen to the concerns of everyone, whether in favor or opposition to the rezoning petition. She pointed out when a rezoning petition was called, the petitioner or representative for the petitioner would be allowed 15 minutes in which to present the details of the request, followed by anyone who wanted to voice support for the request. She stated that the Chairman would then allow all those individuals who were opposed to the rezoning to stand for a moment to display their opposition. She said the Chairman would then ask those individuals who wished to come to the podium to speak to remain

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standing so the Board and staff could get an idea of how to allocate its time. She said the Board would allow up to 3 minutes for each speaker. She said when the persons speaking in opposition had finished, the petitioner would be given an opportunity to rebut any of the points raised. She remarked in fairness to all parties, the petitioner would be entitled to equal time to address the Commissioners as all those in opposition.

Commissioner Wells further remarked that these hearings were a part of the permanent record and speaking at the podium with the microphone helped staff with their task of recording comments and ensured everyone being heard. She remarked when it was an individual's turn to speak that they come to the podium, state their name and address and direct their comments to the Board only. She asked that after individuals speak that they sign the sheet that would be provided by the Marshal in order for names to be spelled correctly for the record.

Commissioner Wells stated that the Board wanted to hear from everyone who had something to say and they would pay close attention to each point raised. She said it would not be necessary for the same point to be raised over and over. She thanked everyone for their participation and announced that the Zoning Administrator would begin introducing each request in the order they appeared on tonight's agenda.

### **B. Consideration of Proposed Millage Rates for 2003:**

Mark Pullium, Director of Finance, directed the Board of Commissioner's attention to the Resolution for the millage rate for the digest year of 2003 and the fiscal year 2004. He said staff recommended the net millage rates for the general fund incorporated net maintenance and operations millage rate at 6.819 mills and for the unincorporated net maintenance and operations millage rate at 5.869 mills. He said the fire fund for the fire tax district net maintenance and operations millage rate was recommended at 3.391 mills. He said a motion and adoption of the resolution was needed if it was the wish of the Board.

Chairman Dunn asked if there was anyone present that would like to speak in reference to the millage rates being proposed. He said they had been advertised in the newspapers as well as copies available at the administration office. No one spoke in favor or against the proposed millage rates.

Chairman Dunn said this was the second year in a row that the County Commission had been able to lower the millage rate. Chairman Dunn congratulated Mr. Pullium, his staff and the entire Fayette County staff because they had trimmed down their budget to what was absolutely essential. He said this same staff had been able to provide additional services with a slight decrease in the taxes in the millage rate. He said this was the second year in a row they had led the way in this region in being able to roll back the millage rate on the reassessment of properties. He said most governments could not do that. He said he wanted to point out that the staff had been able to do this during some of the worst

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economic times in our country in the last two decades. He said it shows that the staff had eliminated everything in government that was not essential and the Board of Commissioners recognized and appreciated this.

Motion was made by Commissioner Frady to adopt the millage rates as presented, seconded by Commissioner VanLandingham. Motion carried 5-0. A copy of the proposal identified as "Attachment No. 1" follows these minutes and is made an official part hereof.

### **REZONING PETITIONS:**

**Consideration of Petition No. 1112-03:** Zoning Director Kathy Zeitler read the petition. Frances L. Shockley, Owner, and Larry J. Seabolt of Seabolt & Company, Inc., Agent, request to rezone 0.51 acres from A-R to R-40 to add to a proposed subdivision. This property is located in Land Lot 150 of the 5<sup>th</sup> District and will front on the proposed extension of Kay Road. Planning Commission recommended approval 4-0. Staff recommended approval.

Larry Seabolt, of Seabolt & Company, stated this half acre was part of what was called Kay Drive for a long time but was never constructed. He said when this subdivision was rezoned over fifteen years ago the road was not rezoned at that time as an overall piece of property. He said there were four acre tracks with one that could not be used at this time because it did not have public access. He said one way to remedy that would be to extend Kay Drive to meet current County standards. He said in doing this, parts of the two four-acre tracks could be taken to create a four lot subdivision.

Chairman Dunn asked if anyone would like to speak for or against this application. No one spoke in favor or against the application.

Motion was made by Commissioner Wells to approve Petition No. 1112-03, seconded by Commissioner Pfeifer. Motion carried 5-0. A copy of the recommended conditions and Staff's Analysis and Investigation, identified as "Attachment No. 2" follows these minutes and is made an official part hereof. A copy of the Ordinance and Resolution granting said petition, identified as "Attachment No. 3", follows these minutes and is made an official part hereof.

**Consideration of Petition No. RP-024-03:** Zoning Director Kathy Zeitler read the petition. Frances L. Shockley, Sherry and Russell Brown, and Dr. Carol Shockley, Owners, and Larry J. Seabolt of Seabolt & Company, Inc., Agent, request to revise a recorded plat of an existing residential subdivision to add property to Lot 17 of Pleasant Pointe Subdivision, Phase I. This property consists of 1.95 acres zoned R-40 to be added to an existing 1.74 acre subdivision lot for a total lot size of 3.69 acres. Lot 17 of Pleasant Pointe Subdivision is located at 205 Felton Drive in Land Lot 150 of the 5<sup>th</sup> District, and is zoned R-40. Planning Commission recommended approval 4-0. Staff recommended approval.

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Larry Seabolt of Seabolt and Company, stated this 1.95 acres would be a remnant that would not be needed to create the four additional lots. He said it was also a part of the pond that was there now. He said one of the Shockley members now lived there on Lot 17 and this remnant would be added to that Lot.

Chairman Dunn asked if anyone would like to speak in favor or opposition to this petition. No one spoke in favor or against this application.

Motion was made by Commissioner VanLandingham to approve Petition No. RP-024-03. Seconded by Commissioner Wells. Motion carried 5-0. A copy of the recommended conditions and Staff's Analysis and Investigation, identified as "Attachment No. 4", follows these minutes and is made an official part hereof. A copy of the Ordinance and Resolution granting said petition, identified as "Attachment No. 5", follows these minutes and is made an official part hereof.

### **NEW BUSINESS:**

**ANNEXATION REQUEST:** Zoning Director Kathy Zeitler read the request. Consideration of annexation request from Tyrone for 10.8 acres in District 7, Land Lot 148 off Trickum Creek Road. Ms. Zeitler stated that once again the information from the Town of Tyrone had not included a development plan or any proposed use. She said it was indicated that the property owner had requested the town's A-R zoning which would be a minimum lot size of 3 acres. She said it was hard to assess the impacts of this annexation on the adjacent properties in the County without any idea of what use in the Town of Tyrone's A-R zoning district would be proposed. She said there were several uses that would require public hearings and would have negative impacts but the intended use of the property was not known. She said the subject property consisted of a cemetery that did not have known boundaries. She said a family cemetery was protected by state law and access had to be provided to it. She said the property had an 87 foot wide power line easement on it. She said it was a very long, narrow property. She said they were not sure of the intended use of the property and how to assess the impact this annexation would have. She said the property directly north of this property was annexed by Tyrone several years ago. It consisted of 32 acres. She said at that time Tyrone indicated that property was going to be zoned A-R and developed into 3 acre lots. She said once it was annexed it was acquired by a developer and the town rezoned it to a zoning district that allowed less than one acre lots with sewer. She said Trickum Creek Road was a county maintained easement and if it was annexed the County would still maintain that road. She said there were no water lines on Trickum Creek Road and any future development would be required to connect with county water line on Tyrone/Palmetto Road and, also, if annexed, the County would still provide fire and emergency medical services to that area per the local agreement to the Town of Tyrone. She said it was located in a significant ground water recharge area.

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Ms. Zeitler said based on the problems with no development plan or any proposed use indicated on the application, as well as the physical characteristics of the site with the cemetery and power line easement, along with the history of annexation with Tyrone of the adjacent property, staff objected to the annexation. She said the County's land use plan had the property designated for low density residential which allowed a minimum lot size of 1 to 2 acres if it was rezoned in the County. She said the objection would stand unless Tyrone conditioned this annexation to where the property would never be zoned more intensely than a minimum of 1 to 2 acre single-family residential lots. She said then an agreement could be entered into.

Chairman Dunn asked the Board for any comments.

Commissioner Wells said she felt it was summed up well and most telling was the second sentence that said "once again". She said it seemed they continually got into situations where the Board was not provided the information nor the development plan, and not given all the information needed in order to assess the situation to decide if there was a justifiable objection. She also pointed out the sentence that stated that several requests made to the Town of Tyrone for additional information had been ignored. She said the Board of Commissioners represented every citizen in the County therefore what happened within Tyrone had an interest to the Commissioners and what happened to County property that was annexed was important and the Board had both a responsibility and an obligation to make sure it was developed the best way possible. She said they simply did not know and in order to make an informed decision on this and to respond in an effective manner they needed to have this information. She said because of the past history of being told something and not provided with a hard copy and then changing once annexed, she was very reluctant to take a "hands off" attitude. She said she supported the objection from the Zoning Administrator.

Commissioner VanLandingham said he tried twice to call to find out why they had not received the information. He said he had not been able to talk with anyone yet. He said he had strong objections based on the recommendations of the Planning Commission. He said he felt the Board had obligations to the citizens of Fayette County and without adequate information they could not make a decision. He said he would object on this basis.

Commissioner Frady said he would vote for the objection because they would not give the information needed. He said the information should have been with the request. He said normally he was not against annexations if they were properly presented but he wanted to see those requesting annexations to be thorough in what they presented. He said there was not even a legal description. He said he could not support this.

Commissioner Pfeifer said he agreed with all the remarks made. He said they had had this discussion before. He said a letter had been written to them before. He said if they

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were not going to take the trouble to let them know what their plans for the property were so the Board could properly make the decision they were elected to make, his intention from here forward was to assume the worse.

Chairman Dunn said he wanted to make something clear. He said Ms. Zeitler talked about an annexation contiguous to this piece of property two years ago. He said it was a 32 acre piece of property that the Town of Tyrone asked to annex. They said they were going to annex it into the city and keep the land use the same as it was in the County, which was A-R. He said they took it into the town as A-R, and within weeks the town created a new category for John Wieland Homes, a LUR (Limited Use Residential) zoning category, which

allowed Mr. Wieland to put more houses in there than one per acre. The minimum lot size in Tyrone at that time was one acre. He said a separate zoning category was created for this piece of property and as soon as the platt was approved by the City of Tyrone, the new zoning category was done away with. Chairman Dunn said the piece of property being discussed tonight sat next to the property mentioned above. He said the owner of this property was already Mr. John Wieland. He said based on the fact that they would not tell what they were doing and based on the fact that on Mr. Wieland's property right next to this they went from a 3 acre requirement to less than an 1 acre requirement by creating a separate deal and then doing away with that deal he would have to assume the worse. He said they could go throughout the County doing this if the Board did not object to it and try to put a stop to it. He said he could not support this request for annexation.

Motion was made by Commissioner Wells to respond with an objection for the proposed annexation that Tyrone presented, seconded by Commissioner VanLandingham. Motion carried 5-0.

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

**Elections Department to conduct the City of Peachtree City General Election:**

Request from City of Peachtree City for the Elections Department to conduct their November 4, 2003 General Election. A copy of the request identified as "Attachment No. 6", follows these minutes and is made an official part hereof.

**Authorization to donate used breathing apparatus and turnout gear:**

Approval of request from Jack Krakeel, Department of Fire and Emergency Services, for authorization to donate used breathing apparatus and turnout gear to the Georgia

Forestry Commission. A copy of the request identified as "Attachment No. 7", follows these minutes and is made an official part hereof.

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### **Bid award to Shockley Plumbing Company:**

Approval of recommendation from Tony Parrott of the Water Committee for authorization of Shockley Plumbing Company to connect two City of Fayetteville wholesale meter locations, Banks Road and Ellis Road, into the loop waterline to give better flows to the area. A copy of the recommendation identified as "Attachment No. 8", follows these minutes and is made an official part hereof.

### **Authorization of Mallett and Associates to do engineering study:**

Approval of recommendation from Tony Parrott of the Water Committee to authorize Mallett and Associates to do an engineering study of the pressure and flows on the water lines on Highway 74 North. A copy of the recommendation identified as "Attachment No. 9", follows these minutes and is made an official part hereof.

### **Execution of Federal Annual Certification:**

Approval of Resolution 2003-12 authorizing execution of Federal Annual Certification by Commissioner Linda Wells, Vice Chair. A copy of the Resolution identified as "Attachment No. 10", follows these minutes and is made an official part hereof.

### **Tax refund - Community Sales, Inc.:**

Approval of recommendation to approve a request from Community Sales Inc. to refund real property taxes for the year 2003 in the amount up to \$237.30.

### **Homestead Exemption refund - David J. Brucker:**

Approval of recommendation to approve a request from David J. Brucker to refund their Homestead Exemption for years 2001 and 2002 in the total amount of \$501.40.

### **Sign request - Fayette Society of Fine Art:**

Request from the Fayette Society of Fine Art to place a sign on the Old Courthouse lawn, October 26 - November 8, 2003, advertising their art show. A copy of the request identified as "Attachment No. 11", follows these minutes and is made an official part hereof.

### **Sign request - Joseph Sams School:**

Request from the Joseph Sams School and the Hope House Respite Center for Special Needs Children to place a sign on the Old Courthouse lawn December 1-6

and 15-20,2003, advertising "A Christmas Spectacular" show. A copy of the request identified as "Attachment No. 12", follows these minutes and is made an official part hereof.

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### **Sheriff's Department supplemental budget requests:**

Approval of fiscal year 2003 supplemental budget requests from the Sheriff's Department. A copy of the request identified as "Attachment No. 13", follows these minutes and is made an official part hereof.

### **Approval of Board of Commissioners Meeting Minutes:**

Approval of minutes for Board of Commissioners meetings held on August 28, 2003 and September 11, 2003.

### **PUBLIC COMMENT:**

Members of the public are allowed up to five minutes each to address the Board on issues of concern other than those items which are on this evening's agenda.

**NONE**

### **STAFF REPORTS:**

Dennis Davenport from the County Attorney's office asked the Board to consider a first amendment to the Development Agreement between Patten Seed Company and the Fayette County Board of Commissioners. He said this issue had developed over the past several days. He said the matter involved the pending sale of the Canogate 9 golf courses. He said he was contacted because Planterra Ridge, one of the courses to be sold, presented some problems for the lender's attorney. The reason for the problem was in 1992 when it was sought to develop Planterra Ridge, they needed certain easements from the County because the property was adjacent to the land that was to become the future Lake McIntosh. He said an agreement was entered into in 1992 between the County and Patton Seed Company, the owner of the property. He said the agreement was to assure that when the course was developed the integrity of Lake McIntosh would be protected. He said the problem that surfaced was a paragraph in the agreement that made Patton Seed Company the Guarantor to Fayette County that nothing would ever happen to Lake McIntosh. He said given the climate of the times it was very difficult to make someone a Guarantor against criminal acts. He said the lender's attorney was apprehensive to proceed with the closing with that language. He said he looked at the language and worked with the attorneys representing the purchaser and lender to find a language that would protect Fayette County and still meet the desires and needs of the purchaser and lender. He said he felt they had come across

some amendments to that agreement, and while it did not take away from the integrity of the lake, it did reduce that higher standard of being an insurer or guarantor verses just a reasonable property owner that would take reasonable measures to make sure things were taken care of. He said what he presented now was a proposed amendment to that agreement which amended three paragraphs. He said he wanted to clarify there was also a flood easement on the property from 780 feet

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to 790 feet and clarify the definition of unuseable drinking water because that was a key term in the agreement. He said he believed after speaking to several parties he felt a good amendment to the agreement had been composed if it met with the Commissioners' approval.

He said the necessity for acting in such haste was the closing was eminent and this was the last obstacle in the deal. He said if it met with the approval of the Board he would recommend this amendment.

Commissioner Frady wanted make sure that the water pool was rendered safe, stayed safe and no foreign fertilizers would be getting near the water. He also said he did not understand where the easements were.

Attorney Davenport said there were a number of easements. He said one was the flood easement. The County has the right to flood the elevation on this property anywhere from 780 feet to 790 feet. He said in the event the 100 or 250 year storm came through, the easement would allow those storm waters to encroach upon the Planterra Ridge property up to 790 feet. He said back in 1992 when easements were needed to construct the golf course, there were quite a bit of legal descriptions between Fayette County and Patton Seed and several other property owners that went toward identification of where flood easements were going to be and easements of lake levels with the 780 foot pool. He said his goal was to adequately protect the integrity of the future drinking water. He said he felt these amendments would do that.

Commissioner Frady asked if it was found later that water was contaminated by something being used on the golf course were there any sanctions in the agreement? He asked if we would get fined by the EPD. He asked if there was anything in the agreement that would hold us harmless.

Attorney Davenport said yes that was in the original agreement and he further clarified that so that they would have to change their procedures if there were any environmental laws. The original agreement said that Patton would do nothing to cause the Lake McIntosh water to be unuseable for drinking water purposes and he further clarified that by saying if we were

told by the State of Georgia or any other entity who regulates drinking water that we could not draw from Lake McIntosh because it contained chemicals that are customarily found on a golf course, that would make Patton responsible.

Chairman Dunn stated that the biggest objection here was the wording. Never was it contemplated what we might go through today such as terrorism threats and things like that. So, if someone came across their property and polluted the lake and had nothing to do with them they would not want to be held accountable.

Attorney Davenport said that was correct.

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Chairman Dunn said that had been taken out because we could not prevent people from going across county property and polluting the lake. We have tightened up the agreement in other areas also.

Attorney Davenport said that was correct.

Chairman Dunn said he saw it as strengthening the agreement and eliminating the one thing meaningless in this day and age that we could not hold them accountable if someone came across the golf course that they had no control over.

Motion was made by Commissioner Wells, seconded by Commissioner Frady, to adopt the changes to the development agreement between Patten Seed Company and the Fayette County Board of Commissioners. Motion carried 5-0. A copy of the agreement, identified as "Attachment No. 14", follows these minutes and is made an official part hereof.

**EXECUTIVE SESSION:** Attorney Davenport requested an executive session to discuss four legal items for Executive Session.

**EXECUTIVE SESSION:** Motion was made by Commissioner Wells, seconded by Commissioner Pfeiffer, to adjourn to executive session to discuss four legal items. Motion carried 5-0.

**REAL ESTATE:** Attorney Davenport discussed a real estate item with the Board

The Board set aside this matter.

**REAL ESTATE:** Attorney Davenport discussed a real estate item with the Board.

The Board took no action on this matter.

**REAL ESTATE:** Attorney Davenport discussed a real estate item with the Board.

The Board took no action on this matter.

**LEGAL:** Attorney Davenport discussed a legal matter with the Board.

The Board took no action on this matter.

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**EXECUTIVE SESSION AFFIDAVIT:** Motion was made by Commissioner Wells, seconded by Commissioner VanLandingham, to authorize the Chairman to execute the Executive Session affidavit affirming that one real estate item was set aside and two real estate items and one legal matter were discussed in Executive Session. Motion carried 5-0. A copy of the Executive Session Affidavit, identified as "Attachment No. 15", follows these minutes and is made an official part hereof.

There being no further business to come before the Board, Chairman Dunn adjourned the meeting at 8:10 p.m.

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Peggy Butler, Chief Deputy Clerk

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Gregory M. Dunn, Chairman

The foregoing minutes were duly approved at an official meeting of the Board of Commissioners of Fayette County, Georgia, held on the 25th day of September, 2003.

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Peggy Butler, Chief Deputy Clerk