

THE FAYETTE COUNTY PLANNING COMMISSION met on November 20, 2014 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Fayetteville, Georgia.

MEMBERS PRESENT: Chairman, Al Gilbert
Brian Haren
Bob Simmons
Douglas Powell

MEMBERS ABSENT: Jim Graw, Vice-Chairman

STAFF PRESENT: Pete Frisina, Director of Community Services
Dennis Davenport, County Attorney

Welcome and Call to Order:

Chairman Gilbert called the Planning Commission Meeting to order. Chairman Gilbert introduced the Commission Members and Staff. Chairman Gilbert said Jim Graw was absent tonight.

1. Consideration of the Minutes of the Meeting held on November 6, 2014.

Bob Simmons made a motion to approve the minutes. Brian Haren seconded the motion. The motion passed 3-0-1. Doug Powell abstained because he was absent from the meeting on November 6, 2014. Jim Graw was absent.

2. Discussion of proposed amendment to the Zoning Ordinance, Article IX. Policies, Procedures and Standards Governing Amendments.

Dennis Davenport said the purpose of these amendments is to update the ordinance and remove any inconsistencies. He said throughout this article whenever it says "zoning administrator" that will be changed to "planning and zoning department." He added under (b) Sec. 110-291, "amendment" should be plural and "his" should be "his/her." He said many of these changes are similar form changes but there are some substantive changes as well. He added in (d) it says "A property which is improved with existing structures and which would become nonconforming within the zoning district for which the rezoning is sought may be considered for rezoning." and would the rezoning classify the structure as nonconforming or illegal?

Pete Frisina said technically a rezoning could make a structure illegal if it doesn't comply with the zoning district being sought but the County approves these rezonings with conditions that require action to bring the structure into compliance by removing it or seeking a variance within a certain period of time.

Doug Powell said we had a case in the southern portion of the county where the County required right-of-way which caused the lot to be nonconforming and the County approved it because we created the problem by taking right-of-way.

Chairman Gilbert asked would it be better to say nonconforming by action of the County.

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Dennis Davenport said he was questioning if you could actually categorize it as nonconforming because you are putting it into a zoning district where it doesn't fit and he just wanted to bring it to everybody's attention and he is alright with it. He said under 110-292 (a) (2) (b), do we have public hearings before the Board of Commissioners on the second Thursday.

Pete Frisina said occasionally a rezoning is heard on the second Thursday especially during the holidays when meeting get canceled.

Dennis Davenport said an item that the BOC wanted was to give more time for both sides to speak at a rezoning so the time will be increased from 15 minutes to 20 minutes.

Pete Frisina said we will have to recognize when a petitioner has presented their rezoning and they have used five (5) minutes of their time, since the public that speaks in favor of the rezoning will go toward their 20 minutes, because the petitioner will want to reserve a portion of their time, say five (5) minutes for rebuttal, so if a number of people get up and speak, the petitioner doesn't lose all of his time to rebut.

Chairman Gilbert said when Pinewood was presented there was probably 30 minutes of people speaking in favor.

Pete Frisina asked Dennis Davenport if it would be appropriate for the petitioner to reserve time and limit the time for the public to speak in favor.

Dennis Davenport said it all comes down to how much control you are going to have on other folks for example if the petitioner uses five (5) minutes for his presentation and wants to reserve five (5) minutes for rebuttal and are you going to tell that next person they only have 10 minutes to speak because the petitioner has reserved five (5) minutes for rebuttal.

Chairman Gilbert said the petitioner will have to ask the public for those five (5) minutes.

Doug Powell said the petitioner is not going to be aware of that.

Dennis Davenport said the way he has viewed that is if you have a lot of folks supporting you there may not be a need for rebuttal.

Pete Frisina said for Camp Southern Ground there were a lot of people in favor and a lot in opposition.

Bob Simmons asked if there are 10 people in support will they have 20 minutes in total to speak.

Pete Frisina said 20 minutes in total for both sides.

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Chairman Gilbert asked after the petitioner don't we only allow three (3) minutes per speaker.

Dennis Davenport said we don't have to have any limit at all but you pay a price for that in long meetings and State law says you have to have a minimum of 10 minutes per side but there is always this willingness to give people extra time and we have to think long and hard about that because once you get to an agenda with five (5) or six (6) rezonings and you give the first one extra time don't you think the other petitions would want the same consideration.

Pete Frisina asked Dennis Davenport if all of the petitioner's time is used up it would be appropriate for the Planning Commission or BOC to bring the petitioner up to answer to the concerns brought up by the opposition.

Dennis Davenport said that option is always available to the Planning Commission and BOC and they can ask anybody any question they want. He added that the problem of running out of time should be rare and that would be a way to address the problem.

Doug Powell said is it not allowable for the chairman to grant extra time?

Dennis Davenport said that provision will be pulled out of the ordinance.

Chairman Gilbert said when Dennis Davenport addressed the BOC he made that point.

Doug Powell said the ability to ask the petitioner questions will help the situation.

Doug Powell said one of the changes is we will now require a new legal ad when a petition is tabled to the future meeting.

Dennis Davenport said the reason we are changing that is to be consistent because we change the sign but we don't change the legal ad.

Doug Powell said he agrees with that and the other change was the petitioner can make only one (1) request to table. He asked why we are limiting him to one (1) time if it is of no fault of the petitioner that there is not a quorum and he tables and comes back to the next meeting and again there is not a quorum. He said the petitioner should have the right to present to the full commission.

Dennis Davenport said what about the person through no fault of his own has one of you abstain from a vote because of a conflict, they will never get a full board.

Doug Powell in that case the petitioner will never get a full board, but the petitioner wants the opportunity to be heard by a full board and comes back again when there is not a full board.

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Dennis Davenport said I only brought up the issue of the conflict to show that it is not unfair to have less than a full board it is just preferred to have a full board. He said if you want to wait until you have a full board I don't have a problem with that this was put in so you have a way to put a check on that and you don't have petitions continuing for two, three, four, or five meetings.

Pete Frisina said policy wise that is how we have handled it in the past.

Chairman Gilbert said he remembers when the County had a Board of Commissioner who was very ill and eventually passed away and there were a number of meetings without a full board because it took some time to fill that commission post.

Doug Powell said he could see that case but normally everybody tries to make the meetings but there have probably been times when we only had four (4) Planning Commissioners in consecutive meetings.

Dennis Davenport said the only downside he sees is increased cost of advertising because you can't put that burden on the petitioner if it is through no fault of his own.

Pete Frisina asked if the 60 day rule comes into play when a petition is repeatability tabled.

Dennis Davenport said that won't be an issue because we are going to re-advertise.

Doug Powell asked about the 100 day rule for the Planning Commission to make a recommendation.

Dennis Davenport asked if the 100 days starts with the hearing or application.

Pete Frisina said it starts with the application.

Dennis Davenport said that would create a problem and one more reason to put a limit in the ordinance. He said tabling due to the lack of a full board counts toward the 100 days but a table requested by a petitioner does not apply to the 100 days and he thinks this language is confusing and needs to be clarified.

Doug Powell said we have had a petitioner that requested to table for 60 days so that didn't count toward the 100 days.

Dennis Davenport said we need to address this conflict in the language because I can see someone requesting to table for lack of a full board and the 100 days runs and we are going to point to the fact that the petitioner requested the table therefore the 100 days doesn't run and he will say but it was less than a full board so therefore it does run.

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Doug Powell suggested allowing a petitioner to request to table no more than two (2) times.

Pete Frisina said once an application is accepted it takes about 30 days before the first meeting.

Doug Powell said so we are back to one (1) extension and I am good with that.

Chairman Gilbert said he thought we did allow anyone to table for more than 60 days.

Dennis Davenport said once we get beyond 60 days it becomes problematic.

Bob Simmons asked why we are qualifying it to say a full board.

Dennis Davenport said it is because of your rules on voting you have to have three (3) votes to pass a motion. He said a petitioner that requests a table for reason other than the lack of a full board even when there is a lack of a full board, that table would not count toward the 100 days. He added that he has some issues with 110-299 "Conditional approvals." He said there are two schools of thought when it comes to conditional zoning and one thought is you can put any condition on a rezoning that you want and the other school of thought is you can only condition what has been identified as a negative of the rezoning which is then addressed by the condition and that's where I feel comfortable. He added that some people will add a condition to a rezoning to increase the minimum house size and I don't think that is a valid condition to put on the rezoning. He said a petitioner for rezoning that believes there is a less than favorable chance of getting the rezoning will offer up some things to get the rezoning and the County will approve the rezoning with conditions proposed by the petitioner and that development will have standards that nobody else will have but that's alright because the petitioner agreed to the conditions. He said the property is sold to someone else and the new owner wants to develop under the requirements of the zoning district and not the conditions and I don't know if those conditions are enforceable. He stated the County should never be in a position of approving a rezoning when the petitioner says I will meet these conditions if I get the rezoning as that could be contract zoning. He said the petition either meets the land use requirements and it is right for the County or it is not right for the County and should be denied. He stated that 110-299 (1), a and b it is almost that we are putting a value on the petitioner coming to the County and bargaining to get the rezoning and he would advise against doing that.

Chairman Gilbert said we use to condition the size of the house for a rezoning in the past but we don't do that anymore.

Doug Powell said what we did on South Jeff Davis was to change the zoning district to increase the house size.

Pete Frisina most of our conditions increase the setbacks to decrease conflicts between different uses.

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Doug Powell said we have placed vegetated buffers on property through a condition of zoning.

Dennis Davenport said that addresses a perceived negative effect of the rezoning and I am fine with that.

Pete Frisina said this section of the ordinance also says conditions on the use of the property and we don't recommend conditions on the use of the property anymore but we have a lot of properties with conditions of the use of the property.

Chairman Gilbert said we condition for dedication right-of-way.

Dennis Davenport said that's fine because the only time you can exact that type of contribution is when they want something from the County. He added that we should consider deleting (1) a and b because the County can propose conditions and (2), (3) and (4) do not need to be deleted.

Doug Powell said he would like for Jim Graw to offer his opinion of the changes concerning conditions.

Pete Frisina asked if we take it out does it preclude the petitioner from offering conditions.

Dennis Davenport said it wouldn't preclude the applicant from proposing conditions it just removes the template for doing so from the ordinance.

Chairman Gilbert said it is hard to enforce a condition if the petitioner is not in agreement with the condition.

Dennis Davenport said if you get to a point as the Planning Commission where you see the condition as necessary based on it addressing a perceived negative of the rezoning it doesn't matter if the petitioner agrees or not.

Doug Powell said he can withdraw.

Dennis Davenport said he can't withdraw once his item is read on the agenda he loses his opportunity to withdraw; he has to request to withdraw before the item is taken up by the Planning Commission and the Planning Commission must vote to approve the withdrawal.

Doug Powell said we normally read the conditions and ask the petitioner if he agrees to the conditions.

Dennis Davenport said it is not a problem with the petitioner agreeing on record to the conditions because that way he can't plead ignorance. He added that a petitioner can

request to withdraw prior to the petition being read on the agenda and prior to the public hearing and once the public hearing starts he has lost that ability to request to withdraw.

Doug Powell said we had a rezoning where the Planning Commission recommended a zoning the petitioner didn't request you mean he can't ask to withdraw.

Dennis Davenport said once the application is submitted the County is in control of the application not the petitioner.

Chairman Gilbert said we had a case once where the petitioner had opposition and he asked to table to allow time to meet with the neighbors to try to answer some of their concerns.

Dennis Davenport said that is a legitimate reason to table but it will increase the advertising costs. He said an applicant can withdraw prior to the legal ad being run but once the legal ad has been run the Planning Commission and BOC have to vote to allow a withdrawal. He said in the portion of the ordinance dealing with the ZBA we use the terms petitioner, appellant, and applicant interchangeably and we need to use just one term like petitioner. He added that the language addressing a request to table should be consistent with the language being proposed for the Planning Commission and BOC and under Writ of certiorari it should be "seek" and not "file." He added that other than some form changes that is all he has for the ZBA.

Pete Frisina said he and Dennis Davenport will get together on the changes we discussed tonight and bring it back the Planning Commission.

3. Discussion of wedding/event facility in the A-R Zoning District.

Pete Frisina said he tried to address the language concerning a minimum lot size and allowing multiple lots to make up a site as a farm could be made up of multiple lots and perhaps we could recognize the total of all of those properties for this use. He stated he couldn't come up with something that made him feel comfortable when we are dealing with multiple lots so he is staying with minimum lot size instead of a minimum site size.

Dennis Davenport said this has been a similar issue with the tax assessor where a property owner owns multiple adjacent properties and wants just one (1) tax bill because they are using the property as one (1) lot but if they want one (1) tax bill they need to combine the properties. He added it may be more valuable to have multiple parcels, but it is more difficult for the County to regulate them as one (1) lot.

Doug Powell asked how that would affect the property we have been discussing.

Pete Frisina said that individual has two (2) properties consisting of a 20 acre lot and a three (3) acre lot. He added that the 20 acre lot would meet the proposed minimum lot size but the three (3) acre lot would not but it could be combined with the 20 acre lot. He said #2 is the language dealing with unpaved roads proposed by Phil Mallon is based on our discussion at the last meeting. He added it gives the County Engineer the ability to do an evaluation of the road and ask

for improvements if he determines it is necessary or deny the use if the road is beyond its carrying capacity.

Dennis Davenport asks about the internal local road designation.

Pete Frisina said that is a subdivision street and we want to preclude this type of use in a residential subdivision.

Brian Haren asked with the definition of private event does the County want to regulate a private wedding on their property.

Pete Frisina said that is not the intent.

Dennis Davenport said Brian makes a good point and we need to include that the private event is being held with the purpose of receiving some sort of consideration.

Pete Frisina said that the basic premise is it is a business where someone is paying a fee to hold the event.

Dennis Davenport said the definition for a private event needs to reflect the consideration aspect because any wedding would fit this definition. Dennis Davenport said he would work on the definitions of events and get something back to the Planning Commission.

Dennis Davenport asked if the ordinance addresses alcohol.

Pete Frisina said the zoning ordinance doesn't regulate alcohol and he didn't know how this would fit into the alcohol ordinance.

Doug Powell asked if there is a difference between selling and serving.

Dennis Davenport said the alcohol regulation doesn't differentiate between selling and serving unless it is a private function and the reason we differentiate private functions, like the family wedding, the County does not want to be involved with that but if you charge for the function the County does get involved.

Doug Powell said what if the facility supplies the alcohol.

Dennis Davenport said individuals can bring in their own alcohol for a private event but nobody from the facility should be serving it.

Pete Frisina said he would continue to work on the regulations and bring it back to the Planning Commission.

4. Discussion of the number of dogs as regulated in the Zoning Ordinance.

Pete Frisina said he talked to Commissioner McCarty and said that he was not pursuing this at this time and he would come back later to discuss the subject.

Doug Powell asked if he mentioned chickens.

Pete Frisina said chickens will come up again as there is a movement toward urban and suburban agriculture and it is very popular at this time.

Chairman Gilbert asked if there would be a meeting in two weeks.

Pete Frisina said there would be a meeting in two weeks.

Bob Simmons made a motion to adjourn the meeting.

Chairman Gilbert said the meeting was adjourned at 8:00 pm.

PLANNING COMMISSION
OF
FAYETTE COUNTY



AL GILBERT, CHAIRMAN

ATTEST:

