

THE FAYETTE COUNTY ZONING BOARD OF APPEALS met on June 24, 2013, at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, First Floor, Fayetteville, Georgia.

MEMBERS PRESENT: Vic Bolton, Chairman
Brian Haren, Vice-Chairman
Bill Beckwith
Larry Blanks
Tom Mahon

STAFF PRESENT: Pete Frisina, Director of Community Services
Dennis Dutton, Zoning Administrator

Welcome and Call to Order:

Chairman Vic Bolton called the meeting to order and introduced the Board Members and staff.

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1. Consideration of the Minutes of the Meeting held on March 18, 2013.

Larry Blanks made a motion to approve the minutes. Brian Haren seconded the motion. Chairman Bolton called for the vote. The motion unanimously passed 5-0.

2. Consideration of the Minutes of the Meeting held on June 3, 2013.

Bill Beckwith made a motion to approve the minutes. Tom Mahon asked for correction in the minutes as the minutes contain dates listed as June 6, 2013 and they need to be changed to June 3, 2103. Bill Beckwith then made a motion to approve the minutes with the aforementioned corrections. Tom Mahon seconded the motion. Chairman Bolton asked for the vote. The motion unanimously passed 5-0.

3. Consideration of Petition No. A-598-13, Consideration of an Appeal from the actions of the Zoning Administrator regarding the extension of the zoning compliance for a SCI of Georgia, LLC. telecommunications tower located at 126 Crabapple Lane, Tyrone, GA 30290 by Matt Allen, Managing Member of Highwood Towers, LLC.

George Rosenzweig said he is the attorney for the applicant Matt Allen who could not be at the meeting tonight. He said this is an appeal from an attempt to extend an expired tower approval and Highwood is appealing the extension of that approval. He said the zoning ordinance states that a tower approval expires after 24 months and only the Board of Commissioners after a hearing can change or waive provisions of the tower ordinance. He added that in this case there was no action by the Board of Commissioners and has never been a hearing in front of the commissioners on this matter, therefore in spite of what may have been good intentions, there was no power in the Zoning Administrator to extend the

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expired tower approval. He said that he has already filed and served opposing council with a copy of our written argument and our exhibits and that he has a copy of these for each of the Zoning Board of Appeals members.

Chairman Bolton asked Mr. Rosenzweig to give the copies to staff to distribute to the Zoning Board of Appeals members.

George Rosenzweig said he is submitting a certified copy of the Zoning Ordinance for the record. He said what he attempted to do in this memo is to present our argument in direct paragraph points as he has had a lot of time in the last few days to read through the extensive record on this case but he felt it might be helpful to just simplify what we are arguing this evening. He added on May 13, 2011 the Zoning Administrator granted administrative approval of the SCI tower and that document is Exhibit 1 and the tower ordinance says that a tower approval expires after 24 months and that is in Exhibit 2. He said tower ordinance says that only Board of Commissioners, after a hearing, has the authority to reduce or waive requirements under the tower ordinance. He added that on April 23, 2013, shortly before the two (2) years was to expire, the Zoning Administrator through the County Attorney purported to extend the tower approval administratively but as I say in the brief on page two, paragraph five, there was never an approval by the commissioners and never a hearing and on page five is the memorandum from the Federal Communications Commission on this issue about who is at fault for the delay and whether the delay was beyond the control of SCI and here on the second page of tab five I have highlighted some facts that I don't think was clear from SCI submitted to the County Attorney because the delay was something, as it appears from the FCC record, largely the fault of SCI. He said as I have highlighted there it states that SCI didn't even apply for its FAA license until June 9, 2012 and that was 13 months into the license and at the bottom of page two of exhibit five of the FCC order states that the delay was actually caused by a stop work order that resulted from SCI clearing trees and doing activity on the property without FCC approval. He said finally I set out in my memorandum the law that I think we are all aware of it on the page three of my memo and that a letter without a hearing is without any legal force or effect where a County department effectively changes the text of the zoning ordinance without notice or approval it has no effect even if someone has spent substantial time or money in reliance on the order, so what we have here is a mistake the tower ordinance is very clear the approval expires after two (2) years and only the commissioners can extend or waive it and you all know there have never been any requests for a variance or anything of that sort and there is no power anywhere in the zoning ordinance for the Zoning Administrator to change the text of the tower ordinance by granting this extension so we are asking you reverse the Zoning Administrator's grant of this extension and with that I will reserve any additional time for rebuttal or answer any questions if you have any at this time.

Chairman Bolton asked if there are anyone else who would like to speak in support of the

appeal.

Maria Kachadurian said she resides at 329 Loring Lane in Peachtree City and her property is adjacent to this tower property and she is here tonight to give her support to Highwood Towers in this matter and it is her belief that the actions that transpired in granting SCI an extension of their building permit was inappropriate and not compliance with the tower ordinance. She added upon review of the county code it was apparent to her that the code does not give the County Attorney the authority to act on behalf of the zoning administrator and that section 5-46, m of the zoning ordinance does not allow tower approvals to be extended, that SCI's building permit was not extended in compliance with section 5-115 of the county code and that the County's own ordinances appear to require a public hearing for such a decision. She added that she would point out a fallacy in Dennis Davenport's letter to SCI dated April 23, 2013 giving the reasons why he was extending the SCI's building permit where Mr. Davenport states that SCI was prevented in constructing the tower due in part to a petition against application that she filed with the FCC. She said he also states that the circumstance was beyond the control of SCI and therefore one of the reasons why he extended their permit. She added that this is factually incorrect as SCI did not comply with the FCC regulations and started the construction on the tower site before they had their registration from the FCC and it was because of this that she filed her petition because had SCI been in compliance with FCC she would have had no cause to petition the FCC. She said she contends therefore that SCI's compliance was completely in their control and that the delay in the construction was due to their own mismanagement and negligence. She added that residents of Fayette County have an expectation that both the intent and the spirit of the rule of law that are contained within the statutes be followed by those we entrust with the positions of power and a County which honors its laws is one that is grounded in fairness and constantly seeks a balance between large corporate interests and those of the common citizen. She said she is asking that the ZBA thoughtfully consider the appeal before them and that you give the due diligence and that do you what is right for the citizens of Fayette County.

Chairman Bolton asked if there was anyone else who would like to speak in favor of the appeal. Hearing none he asked if there was anyone who would like to speak in opposition of the appeal.

Kyle Williams said he was the attorney representing SCI and said he was before the ZBA back in 2011. He added that the time line is important to how we got here, what we are talking about tonight and what can be decided. He said that SCI is owned by two (2) individuals and is not a multi-national corporation and it is owned by Dave Herring and Lee Chapman. He said the timeline here February 9, 2011 my client filed with the County its application request for communications tower for a site located at 126 Crabapple Lane. He added that later that month Highwood Towers filed a competing application for a site that was in 1.5 miles of the SCI site. He said our towers in the appellant tonight are not **ZBA**

neighboring property owners, they are not adjacent property owners they are a competitor of SCI and they are a competing telecommunications company that wants permission to do the same thing SCI has been granted permission to do. He added that the day after Highwood filed their application and were told that SCI was ahead of them, which is how the County prioritized and judged these applications, this long road started and Highwood sent an e-mail to staff complaining, Highwood filed a two (2) written objections, and Highwood filed a Superior Court lawsuit against the County, filed a Federal lawsuit against the County and was behind a petition with the FCC that is at issue tonight. He said the Superior Court action; the Federal action did not name SCI even though they were trying to revoke our permission to do what the County would allow us to do. He added that the Superior Court action has been denied in favor of the County and the Federal lawsuit is still pending with a motion for summary judgment filed by the County. He stated on May 13, 2011 the County issues our Certificate of Zoning Compliance, on October 13, 2011 we receive our building permit and we get down that road to when we were told by the County that even though we took the position that we did not have to file this license with the FCC that we would do it anyway to paper the file, so we filed an FCC license application, the FCC put it out for public comment and that is when we get this petition that challenges what we were doing. He said in spite of what you just heard, the petition did challenge only that we were taking down trees, it challenged whether we were in a wetland, whether we were in a floodplain, migratory birds, radio frequency, alternative site and they threw the kitchen sink at us and we had to stop because the petition put on place an automatic stay while the FCC evaluates the petition. He added that unfortunately for my client and me and the attorneys we had to hire in DC, the FCC has no timeline as to how quick they can make a decision or how slow they can make a decision. He said we aggressively responded to it, we defended against the petition and final on May 10, 2013 we were vindicated and FCC issued a multipage order that is in the record tonight that completely rejected the complaints against us and said go forth and continue to build, but those 11 months the petition was pending we could not go forward even though we had started moving dirt, even though we had started doing construction plans and spent money and bought the infrastructure, even though the certification and the building permit had never been revoked, SCI was simply put on pause and it wasn't because of anything we did, it was at the behest of the person who is now asking for relief from this Board in this County. He said if you look at what we did the previous eight (8) months we didn't sit on our hands, we undertook construction planning and bought the infrastructure and moved forward to build the tower. He said that it is his contention that even though activities were stayed for 11 months we continued to move forward under the certification and the permit, unfortunately for my client it meant they just paid more suits like me to do legal work than to do construction work. He stated due to our conversations with FCC, they said you will hear from us and out of an abundance of caution I contacted the County Attorneys, Dennis Davenport and Dana Maine, to tell them what was going on and what do we do because we don't want to lose what we have started building and what we have vested rights in and the Planning and Zoning Department vetted this and the County Attorneys vetted this and despite

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contentions tonight your Board of Commissioners did consider this and did take this up in an executive session which is my understanding. He said that right after these letters went back and forth the order comes from FCC saying go, the petition is rejected and construction resumes. He added that he will show the ZBA photos taken today of where construction is as we are substantially completed and the tower is up. He said we have not been issued a C/O but we are going through that same processes we would under normal circumstances. He said that you will see in our written materials to you and I sit on Decatur's ZBA and I don't like when attorneys send me a constitutional challenges but that is what the law is, so please take that for what it is that we have to ahead of your vote, ahead of your decision tell you we will disagree if we don't like your decisions and just please understand that because what you are being asked to do is going to create some tricky work for us as to what's the status of a tower that's built, what's the status of a certification and permit that have not been reversed. He stated our contentions are set forth with the appeal here is moot, the horse has left the barn, our tower is up, we have vested rights and certification of zoning compliance and building permit, respectively, we have earned the right of factually and legally to have relied on those two (2) documents for as long as we did and to do what we did and we did it because we were committed to providing service and coverage to areas that we were hearing from and seeing holes. He said Highwood Towers has an adequate remedy that they have yet to pursue even though we have raised it since day one, if they want to build a tower closer to ours than what your current ordinance allows there is a mechanism for them to have a variance to that, they are not foreclosed from doing that, they are allowed under your code to request a waiver from the Board of Commissioners that has yet to be filed and despite of all of the paperwork that comes across my desk from Highwood Towers on these multiple matters they haven't tried to take the straight line to the end result that they want. He said and finally it is our contention that the arguments just don't apply here as this is not a situation where a building permit or certification were abandoned, forgotten about, shelved, or shopped out to other folks, this is a situation where we proceeded in good faith and did everything we could when we could and the only reason we were delayed for 11 months was because of our competitor and I contend that the law should not support a competitor delaying a project and then taking the benefit of the delay that they caused about having this board deem that our permit or certification expired and I appreciate your time and it is good to you all again under the circumstances and respectively we ask that you deny this petition and I am happy to answer any questions.

Chairman Bolton asked Kyle Williams that he said that there was a component of the filing with the FCC that was optional or wasn't required could you clarify that for me please.

Kyle Williams said the staff may better to explain but my understanding was we were not within a flight pattern and e would not have to go through this license but we voluntarily did because we knew we could pass it.

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Chairman Bolton asked staff for clarification as to whether this the 200 foot requirement that requires you to file a s if it is my understanding the feds require you to file if its 200 feet or more or it is in the direction flight path of an airport.

Pete Frisina asked Chairman Bolton if he was talking about the FAA or the FCC.

Chairman Bolton said he was thinking the FAA but we are talking about the FCC and that was his mistake so the filing you made was the FCC filing.

Kyle Williams said they made the FAA filing as well.

Chairman Bolton said I thought I heard something to the effect that you did it but didn't have to and I was trying to make sure I understood that, help me with that please.

Brian Haren said I think that was the FCC.

Kyle Williams said it was the FCC.

Chairman Bolton asked how was there doubt that that filing was required.

Kyle Williams said he was confused and he was thinking of the FAA.

Chairman Bolton said so you filed with the FAA.

Kyle Williams said that was correct which resulted in some delay and we have always tried to do all we were asked to do.

Bill Beckwith said in the letter from the FCC it states that the division also lifts the stop-work order issued to SCI on June 19, 2012, why did they do that.

Kyle Williams said that with the filing of a petition it is a petition to challenge that acts as automatic stay and we had started work.

Bill Beckwith said the letter says "We reserve the right to initiate enforcement action against SCI Towers for beginning construction while the application was still pending."

Kyle Williams said they also reserve the right to come back and find something wrong later and they have not instigated any further actions what so ever.

Bill Beckwith said you were working before you got the permit to work.

Kyle Williams said not before we go the permit to work but the FCC license to work.

Bill Beckwith said so the application was still pending.

Kyle Williams said correct.

Bill Beckwith said I have a letter from Dennis Dutton to Matt Allen of Highwood Towers that says first paragraph "To the extent that you are seeking to appeal the extension of the building permit, building permits are no administered under the zoning ordinance and cannot be appealed to the Zoning Board of Appeals."

Dennis Dutton said that is correct.

Bill Beckwith said why are we here if that can't be done.

Pete Frisina said they are appealing the extension of the zoning certification.

Bill Beckwith said OK.

Chairman Bolton asked if there was anyone else who would like to speak in opposition to the petition tonight.

Chairman Bolton said the tower ordinance does allow for tower construction within a mile and a half with a request before the Board of Commissioners and I worked in tower communications years ago and it's done all the time was there a rational why we didn't go to the Board of Commissioners and make that request visa vie appealing the request from SCI.

George Rosenzweig said I suspect that the idea was it would be hopeless and fruitless and they had rights under the existing appeal.

Chairman Bolton asked George Rosenzweig to make his rebuttal

George Rosenzweig said the tower ordinance 5-47 requires that a copy of the carriers FCC license be filed at the time of the application and not to rehash old news you are familiar with but that is one of the ways this whole thing went off track, SCI didn't have its licenses when they made their original application, then they proceeded ahead without those licenses and FCC called them on that and they were held up and if they had followed the rules to begin with they wouldn't have been in that situation because they would have had the license at the time of the application and we could go around and around as attorneys as to the public policy and what's fair and who follows what rules and yada, yada, yada, but I think that one is at least a toss-up. George Rosenzweig said speaking about what the Board of

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Commissioners told them they did in executive session, my goodness, I mean where to begin on that, I cite you cases in my memorandum that say if an action isn't without a public hearing, an official action, it doesn't amount to anything, it doesn't vest any rights and he would just be surprised having dealt with Fayette County and its Attorney for many years that they told them what they did in executive session and took an official position that wasn't in their minutes. He added they had control on whether they followed the rules two (2) years ago, they didn't have what they were supposed to have in the form in the form of licenses, that as they say turned around and bit them in the rear end, it delayed their application, it expired and again the rules weren't followed and the decision be reversed and let the Board of Commissioners have a public hearing and decide whether to extend it, which I think flips around your point one the 1.5 towers, they could have gone to the Board of Commissioners and followed the rules and gotten an extension or the waiver of the FCC license and with that I will sit down.

Chairman Bolton asked Maria Kachadurian, it's a little challenging but I want to ask you anyway, one of the things we do at this Board is probably the hardest part of our job is try to read between the lines and understand what goes on with what we deal with but the majority of what we see is somebody that wants to put a garage closer to their yard line than the law allows, can we do it ten feet away when it is supposed to be 25 feet away and sometimes people come to us in circumstances where they are in a bind, they have already built it, they broke ground and we have to try to help to try to figure out how we help that problem and one of the things we use in the standards we look at for a variance is the origin or the intent of the challenge and I am saying all of this is a lot of our decisions are made based on whether we feel the applicant or petitioner have willfully ignored the law and not done what he or she should have done like request a building permit or has been a victim of an accidental thing like the County changes an ordinance or widens a road. He said one of the things that sometimes we see but not often we've not done one of these and frankly we have to very careful that we don't allow ourselves to be used in a competitive tug of war. He said we are like a very tiny weeny version of a Supreme Court for zoning in that we are not supposed to make laws we are just supposed to read what they say and tell you what it supposedly allows and doesn't allow. Chairman Bolton asked Maria Kachadurian what was it about what they were doing that caused you to file with the FCC, what is the fact that they started work, were you opposed to the tower next door to you in the first place so you wanted them to build on the other side, so what was your motivation to file with the FCC.

Maria Kachadurian said absolutely I was opposed to the tower being built so close to my home and I was opposed to the tower being approved and being built to begin with a nd especially since it is 550 feet from my house and my oncologist has advised me I need to be a quarter mile away from a cell tower and this is necessitating me to move now and so I decided that I was going to take on this fight and make sure that the Fayette County ordinances and rules were applied properly and so as construction began I researched cell

tower construction in wetlands, I also started researching the FCC regulations concerning cell towers in wetlands, I also at that time researching Army Corps of Engineers ordinances as far as all of that was concerned and I asked them to investigate because I thought SCI wasn't following their regulations. She added that she determined she had an opportunity to appeal based on the wetlands issue and I had 30 days to appeal and found out where to find the public filing I realized that their application appeared after they had started construction so I contacted Don Johnson who is an attorney with the FCC and told them I was concerned that they have started construction and I don't have a right to have a say on anything as I was still trying to get a hold of their environmental assessment which was filed as part of their application with the FCC so my petition would have never been filed and I knew that I didn't have a strong case before the FCC but after this happened I decided I was going to try and that's why I filed the petition.

Chairman Bolton said he was just curious as you were perfectly within your rights to file the petition I thought maybe they dropped a tree on your fence or something that made you notice that they were not doing something right so mainly it was that you didn't want the tower there in the first place because your home was so close to the tower.

Chairman Bolton Asked Kyle Williams how the construction was started before the FCC license was granted.

Kyle Williams said we were never told we couldn't start construction by the County and when the FCC said stop we stopped for 11 months and asked what they needed from us and it was a mistake but were happy to sit and wait.

Chairman Bolton asked if you normally have the license before you start or do you start and then get that documentation.

Kyle Williams said he would beg ignorance on that and his clients would not operate in that way.

Larry Blanks said there are a lot of legal issues on both sides and we are not a court of law and we cannot try the case and he thinks we need to avoid many of these legal points because we are not qualified to make a decision on those legal points we need to make a decision on the merits on the past history and what has happened in the process as it applies to the ordinance.

Bill Beckwith said let me go back to 2011 when we first heard this if I remember correctly we discussed a problem with the application process and the FCC application and I think we agreed that since the application was submitted we would go ahead and allow the zoning change.

Larry Blanks said I believe the issue was when the application was submitted there were some components missing.

Bill Beckwith asked the application for what.

Larry Blanks said the initial application to build the tower and it was approved by the zoning administrator and there was some missing components and from what I remember it was customary that if there were missing components there was a time period for those to be submitted and completed and I think that was one of the challenges that came before this Board.

Dennis Dutton said there are two things we are looking at and that is the ordinance and County policy so anytime we review a site plan we take all site plans in and we never get a site plan that is correct and both of those applications came in one came in first they did not have all their components and the second one that came in did not have all their components but we have to have a period of time to review it and since then we changed the ordinance the say what we have to have when it comes in to make it policy to make sure we could look at it from there and after that we would look at the other components that met what was required per the ordinance itself.

Chairman Bolton said that was largely the crux of the issue the last time we heard this case which is the way the ordinance read at that time was you have 30 days to review it was that right.

Dennis Dutton said yes.

Chairman Bolton said we were asked to void the application because it was filed incomplete but the ordinance doesn't allow us to do that and it basically gives you time to review it and then you can request from the petitioner whatever is missing.

Dennis Dutton said our County departments have a 14 day period to review so that is why we had a 14 day turnaround on that.

Brian Haren said the last time we considered this that decision is what it is and it stands so the only thing that has brought this back into this room is the delay that was introduced into this process by the FCC stop work order so that is basically it and it was the FCC stop work order that has caused us to come back in and I think we have a good background on what caused that stop work order to be issued. He added now we are looking at a stop work order that was put in place through no fault of SCI as far as I am concerned and they were basically held hostage to a timeline that is established followed at whim by a Federal agency and that's my perspective.

Bill Beckwith said I agree to what you said to a point but I think that we've heard that Kyle Williams does not have the material information as to why SCI started to build and I think that is a material question and I wonder if we need to get that information from the SCI horse's mouth.

Chairman Bolton said in my mind the core issue is whether the County Attorney has the authority to extend the date of the construction, whether the bull dozer wouldn't start or there was some rare bird on site or it rained every day and we couldn't dig in the Georgia clay you got to the end of the two (2) year window and it was apparent that the construction was not going to be complete the construction and so the letters and the phone calls begin and we some more time to do this and that is the substantial issue before us. He stated that the tough part of this job is we look at the ordinance, person comes before us we say A or B, we B it's a no or C it's a yes and we move on. He added it is in areas where there is gray or there is not clear language that we have to do a lot more work and the zoning ordinance doesn't spell it out word for word specific to the situation and this is the first one of these we've had where there are two (20 towers trying to go in at once and there is this whole competing appeal situation in the history of this body and what that means is we refereeing an ordinance that was written to a specific set of guidelines that doesn't speak directly to what happens if in the two (2) years that someone is granted to build the tower someone intervenes that precludes them from doing so and when that happens we have to make a decision based on our best read of the language or what we perceive what the intent of the zoning to be.

Bill Beckwith said I think the reason the stop work order was issued is important to us because yes a stop work order was issued and it caused a delay and in my mind was it the fault of the FCC or the tower folks and I think that is material to our decision.

Larry Blanks said or was the fault of a letter received by FCC from one of the neighbors and we don't know.

Chairman Bolton said we are allowed to dig into intent here and we are trying to ferret it out and there is this principle of NIMBY not in my back yard and I want my cell call to continue uninterrupted but I don't want to look at the cell tower that keeps it that way. He said he believes the question is whether the authority existed in our ordinance for the extension of this deadline of two (2) years and we can go into the why of the being in that position and whose fault it was as one side would say the contractor was trying to scoot by and cut corners and the other side would say they thought they were OK to do that and it was the neighbor that caused the problem whether or not the problem was to any particular person and in my the issue is whether the ordinance allows the county attorney to issue the extension and that is not a thing we are in position to decide and my opinion is this and I believe that because of the role that he plays that the County Attorney is the voice of the County Commission, he is their legal representation, he is their agent just like these two (2) gentlemen are the agents

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for the two(2) parties here in this room tonight and so I believe if we are subject to a decision made by the legally appointed representation of the County that we are obligated to respect that decision and I believe this is one of those cases where there were words that were not written and a decision had to be made by someone who is in the position to make that decision and I believe the attorney is the guy who should make that decision and I believe if there is still a challenge to that that still exists then that is something that belongs in another forum and not this one.

Larry Blanks said one of my thoughts is we are not a court of law and I think the number one issue we are facing tonight is whether the County Attorney has the authority to issue the extension, the extension is issued for other outside things whether they were the fault of the applicant or whatever, but the County Attorney acting as part of the County on behalf of the Commissioners issued the extension and I am of the opinion that we need to support that decision.

Bill Beckwith said if it were to come out that something else caused the stoppage of the work besides what's apparent I wonder if that decision would have been different but we don't know that.

Larry Blanks said we don't have that information so based on the information that Mr. Davenport at the time, Mr. Dutton, the decision was made to grant the extension illegally that is not our decision here to decide if that were legal or illegal.

Bill Beckwith said or improper.

Larry Blanks said proper or improper OK thank you that sounds better.

Chairman Bolton said I think the ultimate decision here is that when things in our ordinance or any other aspects of the law or policy is unclear the attorney is the person that interprets it it is his job to say there isn't a black or white here, I'm in the gray here and this is what I believe is the proper thing, the legal thing or the intent of the ordinance or the law in question and so I am of the opinion that is it not our place to operate in contravention of that and if that needs to be addressed there are resources to address it but it is not this forum.

Tom Mahon made a motion to deny petition number A-598-13. Larry Blanks seconded the motion to deny. Chairman Vic Bolton called for questions or comments, and hearing none called for the vote. The motion unanimously passed 5-0.

4. Discussion of proposed amendments to the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance, Article IX Zoning Board of Appeals regarding: illegal lots.

Chairman Bolton said the ZBA had suggested that criterion #1 be changed to reduce the 10 year period of ownership of the illegal lot.

Pete Frisina said he had made the changes to the variance criterion #1 concerning the 10 year period of when the lot was made illegal that was suggested by the ZBA. He added the current proposal for criterion # 1 says that the person has to own the lot for at least five years and if they haven't owned the lot for at least five years the illegality of the lot needs to go back at least 10 years. He said he was trying to set a period of time that won't encourage people to create an illegal lot but not be too long to be able to ask for a variance.

Bill Beckwith said the Planning Commission had the same concerns as the ZBA.

Pete Frisina said what he is trying to avoid is someone getting around the intent of the regulations by creating an illegal lot, selling it to someone to get the variance and then selling it back to the person who made the lot illegal, because the person who made the lot illegal can never get the variance regardless of how much time has passed.

Chairman Bolton said he thought it was a reasonable approach.

Bill Beckwith said it was a good approach and if it becomes a problem the County will have to revisit the ordinance.

Larry Blanks said the only concern he has is when property is passed down through the family and they may have unintentionally created an illegal lot some time back but is still part of the family.

Pete Frisina asked the ZBA if they were good with the proposed changes.

It was a consensus of the ZBA to send the amendments to the Board of Commissioners for their consideration.

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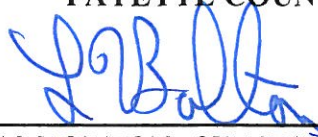
Chairman Bolton asked if there was any further business.

There being no further business, Bill Beckwith made the motion to adjourn the meeting and the meeting adjourned at 8:23pm.

ZONING BOARD OF APPEALS

OF

FAYETTE COUNTY



VIC BOLTON, CHAIRMAN



ATTEST