

The Board of Commissioners of Fayette County, Georgia met in Official Session on Thursday, January 8, 2004, at 7:00 p.m. 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 W. Cofty, County Administrator  
Dennis Davenport, Assistant County Attorney  
Carol Chandler, Executive Assistant  
Karen Morley, Chief Deputy Clerk

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Commissioner Greg Dunn called the meeting to order, offered the Invocation and led the pledge to the Flag.

**COMMISSIONER GREG DUNN ELECTED CHAIRMAN FOR THE YEAR 2004:**

Commissioner Pfeifer said he would like to make a motion to elect Commissioner Dunn as Chairman of the Fayette County Board of Commissioners for the year 2004.

On motion made by Commissioner Pfeifer, seconded by Commissioner Wells to nominate Commissioner Dunn as Chairman of the Fayette County Board of Commissioners for the year 2004. The motion carried 4-1. Commissioner Frady abstained.

**COMMISSIONER LINDA WELLS ELECTED VICE CHAIR FOR THE YEAR 2004:**

Chairman Dunn said he would like to make a motion to nominate Commissioner Linda Wells as Vice Chair for the year 2004.

On motion made by Chairman Dunn, seconded by Commissioner Pfeifer to nominate Commissioner Linda Wells as Vice Chair of the Fayette County Board of Commissioners for the year 2004. The motion carried 5-0.

**REZONING PETITIONS:**

Commissioner Wells remarked at this point in the agenda 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 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.

**PETITION NO. RP-026-03:**

Acting Zoning Administrator Chris Venice read Petition No. RP-026-03, James H. Rutledge, Jr., Owner, and Sylvia Patterson, Agent, request to revise the recorded final. Plat of Adams Acres Subdivision, Phase II, to add property (5.00 acres) and add density (1 proposed lot) to an existing residential subdivision. She said this property was located in Land Lot 42 of the 7<sup>th</sup> District, fronted on Adams Court, and was zoned R-70. She said the Planning Commission recommended approval 5-0 and staff recommended approval.

James Rutledge, Jr., owner, asked for the Board's consideration in approving his request. He said he would be glad to answer any questions.

Chairman Dunn asked Mr. Rutledge to explain his request to the audience.

Mr. Rutledge remarked that he was asking to redraw a plat of Adams Acres Subdivision Phase II to add five acres and a density of one lot to an existing residential subdivision. He said he had six acres in front of the property that landlocked the five acres. He said this would unlock the five acres so that he could build his daughter a house.

Chairman Dunn asked Mr. Rutledge for the total amount of acreage.

Mr. Rutledge replied that there was a total of eleven acres plus. He said there was one home existing there already and he wanted to build another home. He said there was a five acre lot which was an old family lot and there was a six acre lot in the existing subdivision.

Chairman Dunn asked if anyone wished to speak in favor of this request. Hearing none, he asked if anyone wished to speak in opposition. Hearing none, he asked for the Board's pleasure in this matter.

On motion made by Commissioner Wells, seconded by Commissioner VanLandingham to approve Petition No. RP-026-03 as presented. The motion carried 5-0.

**PETITION NO. 1117-03:**

Acting Zoning Administrator Chris Venice read Petition No. 1117-03, Caroline L. Wilson, Owner, and Joe Simpson-Rich, Agent, request to rezone 25.1 acres from A-R to R-20 to develop a single-family residential subdivision. She said this property was located in Land Lots 42 and 23 of the 5<sup>th</sup> District and fronts on Inman Road. She said the Planning Commission recommended 4-1 with one condition and Staff recommended approval with one condition.

Tom Daniel stated he was the engineer and planner for Joe Simpson-Rich. He said he would like to present the Board with the up-to-date plats. He said this was a total 29 acre site located off of Inman Road. He remarked that the first three lots were currently zoned R-20 and the remaining property was A-G and R-40 mixed. He said he was requesting to bring the entire piece of property into a single conformity of R-20 zoning. He said to the north there was R-20 zoning, to the South and West there was R-20 and to the East was R-40. He said the plat before the Board was hopefully a revision that addressed the concerns that he had heard from the Planning and Zoning Commission. He said they fully intend to develop the homes in this subdivision to the minimum of R-40 standards and not the R-20 standards.

Chairman Dunn said in the Planning Commission minutes it stated that Mr. Daniel had stated that the petitioner intended to build the minimum 1,700 square foot house. He said this was not the standard for R-40.

Mr. Daniel replied that was correct. He said the minimum for R-40 was 1,500 square feet. He said would be staying at 1,700 square feet. He said the actual floor plan was for 1,750 square feet. He said a ten foot buffer was extended around the entirety of the property. He said staff had asked this of petitioner so that no one would be able to access this subdivision road and the subdivision road would be there these homes only. He said this buffer had been extended around this entirety property. He said they had shifted the

access off Inman Road to the northern property and the entire buffer, detention areas and greenspace would be dedicated to the county for their greenspace. He said there was also an issue back at the southwest corner lot 20 as listed on the plat where there was some concern that the area in there was not well vegetated. He said petitioner was willing as stated in the Planning and Zoning meeting to work with that property owner and adequately buffer and screen that area from this home and the homes along that area. He said those were the main points that they had taken away from the Planning and Zoning meeting and also concerns from residents that he had spoken with. He said petitioner was aware that the area around the creek was wet and petitioner was prepared to do the necessary engineering studies at the time to validate the soils and any environmental concerns that would need to be dealt with in that particular area. He said they had walked the property but would not intensively study this until they got through the rezoning process.

Commissioner Wells asked for the location of Ms. Daniels' property.

Mr. Daniel replied that her property was the first property just south of the three lots.

Chairman Dunn said the record also indicated that if anyone had problems that Mr. Daniel would meet with them before coming before the Commissioners. He asked him if he had done that.

Mr. Daniel replied no, that they had not done all of that. He said he had spoken to Ms. Daniels personally and some others and tried to address these but with the holidays and all he had not been able to get there. He said they would continue to address any concerns.

Chairman Dunn asked if anyone wished to speak in favor of this request. Hearing none, he asked if anyone wished to speak in opposition. He asked those people to stand and he counted 40 people. He asked who wanted to speak at this meeting and seven responded that they wanted to speak.

Keith McCarter, 185 Cross Creek Trail, Fayetteville remarked that he had been a resident there for fourteen years. He said he understood that the developer wanted to commit to 1,700 square feet for the homes but R-40 would be the neighbors verification on that tract of property.

Brad Paullin, 180 Cross Creek Trail, Fayetteville felt Mr. Daniel had not bothered to get in touch with him about concerns. He said as a result of that he was concerned about what was being said about 1,700 square foot homes. He presented a petition to the Board. A copy of the petition, identified as "Attachment No. 1", follows these minutes and is made an official part hereof. He said this petition was in opposition to the zoning to R-20 and

consisted of ninety homeowners in Huntington Creek and Cross Creek Subdivisions. He said they were opposed to R-20 because they were currently zoned R-40 which was a more restrictive zoning. He said R-40 zoning would require larger homes. He said if R-20 zoning was accepted and smaller homes built in there, their homes would be compared against those homes and they would not be able to sell their properties. He said Mr. Daniel stated that they would be building 1,700 square foot homes but he had not done any testing on the property yet. He said if the developer was granted R-20 and realized later that he could not build 1,700 square foot homes there, the surrounding area would still be stuck with the R-20 zoning. He said this concerned him greatly. He said somebody later on could come back with a different project and it would be zoned R-20. He said there was really no reason why the property could not be zoned R-40. He remarked that developers try to request the lowest zoning restrictions because when they do get into problems later when streets are developed then they could always go back and at least cut corners where they needed to. He said if they needed to build smaller homes then there would be the potential. He said it would be to the developer's benefit to get the lowest zoning. He felt the developer was worried about going with the R-40 zoning and getting the most for his money. He said this property had been there for a long period of time for a good reason. He said there were wetlands on at least one third of this property and there could be a problem with lots perking for septic tanks. He said he attended the Planning and Zoning meeting and no soil testings had been done as of yet. He said the developer did not really know if he could even put this number of lots on the parcel. He said once the zoning was approved at R-20, the developer could come back and say that he could not do 22 lots but could do 15 lots and put these up into the cul-de-sac where he could shrink the sizes and put a few more lots in. He said once this zoning was approved, then all kinds of changes could come up and these were the things that the residents were worried about because they were unknown.

Chairman Dunn clarified that R-20 and R-40 were both one acre lots.

Mr. Paullin responded that some of the lots were larger than one acre and the developer could shrink some of the sizes of the lots that could affect the lot layout. He said the developer had already moved the street from the original proposal once. He said the street was located on the other side and before the December 8<sup>th</sup> the developer had put the street in his backyard. He said he was very concerned about this. He said he had no buffer in his backyard and he also lived on a cul-de-sac lot. He said he was asking for the Board's consideration for the street to be relocated back to the other side of the street that would not affect his property and remove one of the lots in the cul-de-sac. He said this would allow him to have at least the privacy that he had at this point in time.

Ken Beebe, 195 Cross Creek Trail, Fayetteville said everything that he wanted to say had already been said. He said one third of the property was swamp. He said they lived in R-40 zoning and the developer was proposing R-20. He said he felt threatened. He said he

had no guarantee that somewhere down the road something was not going to change. He said he was sure that any promises made tonight were done in good faith but things change. He said he would like to see R-40 zoning and also see the road moved. He said it was unfortunate that someone from the Planning and Zoning Commission did not have the opportunity to walk the land especially after a rain. He said there were parts of the property that smelled horrible. He said he did not see how in the world the property would perk.

Sandra Daniel, 389 Inman Road, Fayetteville said she appreciated the fact that the developer had moved the road to the opposite side. She said she still had some concerns such as property values. She said she agreed with some of the statements already made. She said she was concerned about the environmental issues. She said currently the water from the property in question runs onto her property pretty heavily. She said if the developer starts building and the vegetation and trees were removed then the runoff would just be greater. She said although the road was moved, she was concerned about it being on a hill and people turning into the property could cause accidents. She said she was also under the impression that her area was A-R consisting of five acre lots. She said she had five acres and she was told that it was blanket zoning. She said the house that she has as well as her neighbors' homes seemed to be R-5 which was five acres or more. She said the houses were built more than 1,200 square feet. She felt the only protection that the surrounding homeowners would have regarding 1,700 square foot homes would have to have this in writing from the developer. She said she was also concerned about the perk test because the property was also very wet. She expressed concern with nuisance, increased traffic, and security issues. She said the homeowners had not been contacted as they were told that they would be. She said Mr. Daniel had returned her call when she called him. She said she had asked him about the revisions and he told her that the revisions had been made and he would put a copy of the plat in her mailbox. She said he had done this last night about 8:00 p.m. She felt anything that would be approved should be put in writing. She said once a developer sells the property to a builder, the builder could do anything that he wanted. She was concerned that the value of her property being reduced. She said they had not been notified about the property being rezoned from A-R. She felt the back of the property should remain A-R and the entire proposal be denied. She pointed out that the Board of Commissioners had campaigned and pledged that they would not do this type of rezoning. She said the Board had a good track record where they had denied A-R rezonings. She said she and her neighbors were expecting the Board to continue to maintain their position to leave current A-R zonings as such. She said she appreciated any consideration that the Board could give in this matter.

William Brown, 411 Inman Road, Fayetteville said his property was located South of Ms. Daniel's property. He said he was concerned about the wetland areas. He said he did see where they had moved the road as well as the entrance to the road to the north side of the property. He said all of the other subdivisions on County Line and Inman Road all had

deceleration lanes. He felt this would be advisable and a necessity because of the curve and the sloping of the road. He said with the road expansion that was proposed for 2006, there would be more traffic in the area. He said he was also concerned about the school situation. He said the schools were already over populated as well as the school buses. He said currently it was standing room only on school buses. He said he was also under the assumption that this property was zoned A-R for five acre lots. He said one acre lots would hurt him on the resale value of his home. He said if this rezoning was approved, he would consider moving. He said the marshy areas had a tendency to smell during heavy rains. He said after there was a problem with septic systems, it would come back to the county to be fixed.

Toni Meade, 175 Cross Creek Trail, Fayetteville remarked that this matter was very dear to her heart. She said they try hard to keep their subdivision very nice and a suitable place to raise their children. She felt there were issues that might come up in the future regarding this proposal. She said she wanted to know who would be responsible to make sure that this developer did what they said they were going to do. She asked if there were agencies in place to make sure that this developer and builder would do what they were promising that they would do.

Chairman Dunn remarked that the county would make sure that this property was developed properly.

Ms. Meade expressed concern with the possibility of the lots going from five acre lots to one acre lots. She said the homes would have the potential to be a lot smaller. She felt this would be a detriment to them. She said they had lived there for twelve years and this development would hurt their investment. She said they also owned a corner lot in the area and they were concerned about selling that lot and the future of it.

Larry Hertsfeldt, 305 Stoneridge Way, Fayetteville said he lived in Huntington Creek Subdivision. He said he was concerned about this property being changed to an R-20. He said there was no guarantee that the builder would build to meet R-40 requirements if it was zoned R-20. He felt if the developer was going to build to an R-40 standard then the property needed to be zoned R-40.

Barbara Perkins, 190 Cross Creek Trail, Fayetteville. She said her concern was for the eight small children who live in the cul-de-sac. She said they had lived there for almost seven years. She said the reason they moved to that location was because of the surrounding area. She said this area had been zoned R-40 and she wanted to see it remain R-40.

Chairman Dunn asked Mr. Daniel if he had any rebuttal.

Mr. Daniel remarked that the only thing that he would like to clarify was that they had met with staff and this had been a staff recommendation to go to R-20 with one acre lots. He said this was because of the current piece of property. He said this was one piece of property that has two zonings. He said staff felt that legally it would be best to put this together. He said as he had stated in the Planning and Zoning Commission meeting, they did not want to down grade this area. He said they could not put anymore lots in an R-40 zoning than they could in an R-20 zoning. He said they would build 1,700 square foot homes. He said they were aware that they would have to prepare the necessary engineering statements and studies. He said in R-40 they would like to rezone the entire parcel to get the 22 lots. He said they had presented this as R-20 because staff in the Planning and Zoning Department had recommended approval of the R-20 to get both legally the conformity to this. He said there was already a majority of R-20 around the property.

Chairman Dunn remarked that there were a lot more R-40 lots around the property than R-20. He said one of the concerns that he has heard expressed was that Mr. Daniel had promised to meet with the people and did not. He said now these citizens were a little bit concerned about some of the other problems. He said if he was a landowner there he would feel the same way. He said these homeowners had their lives tied up in this piece of property. He said he had a little bit of a problem with Mr. Daniel not following up with the homeowners who had questions.

On motion made by Commissioner VanLandingham, seconded by Commissioner Wells to approve Petition No. 1117.03 to R-40 with the conditions that there will be a deceleration and acceleration lane and a ten (10) foot buffer that was recommended by staff, discussion followed.

Commissioner Wells asked if the motion included the existing three lots to make all of the property R-40 and Commissioner VanLandingham replied yes it was for all of the property.

Chairman Dunn clarified that the three R-20 lots would be converted to R-40 and all of the A-R would be R-40 as well.

Commissioner VanLandingham said he did not know how staff had presented this to Mr. Daniel as legally R-20 because the property was legally zoned right now and there was nothing illegal about it. He said R-40 was his preference. He said most of the surrounding property was zoned A-R or R-40. He commented on the drainage that Ms. Daniel was concerned about. He said they could not turn water from its natural flow to go on anyone else. He said if that did happen, the developer would have to answer for that problem. He said the configuration of this piece of property was such that larger parcels would be almost impossible. He discussed the issue of traffic concerns. He said they had recently lowered the speed limit to 35 miles per hour because of the excessive speed. He said he



travels that road approximately three times each week and he understood why the speed was reduced there. He said these were the reasons that he recommended R-40.

Commissioner Wells said she would like to echo some of the comments made by Commissioner VanLandingham. She said she would also like to address Ms. Daniel specifically. She said this Board did campaign and has held standards very high in Fayette County. She said the preponderance of the property in question tonight was A-R but it was a very small strip. She said the Board had to be very careful to make sure that it did not do anything that would deprive an individual of their ability to profit from their land within certain standards. She said because of the configuration of this particular piece of property and because it was bordered on one side by R-40 and partially on the other side by R-20 and A-R, it makes sense that this tiny portion of property could be moved to R-40 and give this gentleman the right to develop and benefit from the use of his property. She said this, however, was not going to be a blanket rezoning of all of the A-R in that area to an R-40. She said she could promise that. She said this was a unique configuration and that was the only reason that she was in support of changing it to an R-40. She said the Board would be protecting the citizens in that area. She said this was a tiny piece of land that might take the Board to court for somebody to say that they were being denied the proper use of their property if the Board held it to an A-R or five acre standard in that particular area. She said the Board would be ensuring that the soil studies were done and done properly and allow the gentleman to develop the property to R-40 standards as he has already suggested that he intended to do.

Commissioner Pfeifer said he would like to comment in support of the motion. He said he wanted to address some of the concerns including the issue of lots perking, access to the subdivision and whether or not this was proper, wetlands and so forth. He said all of these concerns were addressed under separate ordinances and all of these issues will be enforced. He said he wanted to make sure that everyone understood that. He said if lots did not perk, then the person owning those lots would have to deal with that and live with whatever they have received as a zoning from the Board. He felt this motion was very fair. He said he wanted to comment on the minutes from the Planning and Zoning Commission. He said the minutes did state that the petitioner was going to discuss the rezoning request with the homeowners in the area prior to this meeting tonight. He said that was not done and he wanted it noted.

Commissioner Frady felt this rezoning was workable and he agreed with what the other Commissioners had said.

Chairman Dunn said he had no reason to believe that anything Mr. Daniel had said was not true and that R-40 standards would be used in this development. He said if Mr. Daniel walked away from this project and the Board had zoned this property R-20 then someone else could put in smaller homes. He said if what Mr. Daniel said was accurate then it

should not hurt him at all to have the development R-40 instead of R-20 and at the same time it would reassure the neighbors that small homes would not be built in there. He said he would support this motion as well.

Commissioner Frady commented on the issue of an alternate site for septic tanks. He said there would have to be a main site for the septic tank and an alternate site in case the main site fails. He said this would to every parcel in this proposal as well.

Chairman Dunn remarked that Mr. Daniel being an engineer did understand that if a lot did not perk then it did not perk. He said if a lot did not perk in Fayette County, then nothing could be built on that lot.

Assistant County Attorney Dennis Davenport interjected that only the A-R portion of the property had been advertised for rezoning. He said to convert both the R-20 and the A-R portion to R-40 might not be consistent with the advertising. He said the zoning plat showed 25 acres of A-R and the petition before the Board showed 25 acres of A-R so the R-20 could not be voted on because it was not advertised.

Chairman Dunn asked what the Board would need to do tonight.

Attorney Davenport remarked that if it was the Board's desire to change the A-R to R-40 that could be done this evening.

Chairman Dunn asked if something could be done if the petitioner changed his request.

Attorney Davenport replied that there must be an advertising of the R-20 if the R-20 was going to be rezoned. He said the R-20 could be advertised between the time of this meeting and the next Commission meeting and the R-20 portion could be handled at that time or the Board could handle the A-R and the R-20 at that time.

Commissioner Wells asked if the applicant would have to file another petition and pay additional money.

Acting Zoning Administrator Chris Venice replied yes the applicant would have to go through the rezoning process for those three lots currently zoned R-20.

Commissioner Wells asked Ms. Venice if she had a problem with part of the property being R-20 and part of it being R-40.

Ms. Venice replied that the county did not allow two zonings on one piece of property.

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Chairman Dunn remarked that clearly the Board was looking for a way to get R-40 on all of the lots and the Board would do whatever was necessary to get it.

Commissioner Frady asked if this petition could be withdrawn and tabled and then at the next meeting the applicant could advertise it and rezone the entire piece of property.

Commissioner Wells said the applicant would have to file a petition and start every thing all over again.

Ms. Venice remarked that the applicant had already paid a substantial sum for the A-R property so the Board could proceed with rezoning the R-40 tonight and then the applicant would take out a new petition, pay for the acreage of the R-20 and then bring that request before the Board in a rezoning petition in the usual process.

Commissioner Wells asked Mr. Daniel if that was what he would like to do.

Mr. Daniel replied yes that would be fine. He asked for consideration in waiving the petition fee because it was a staff recommendation from county staff that applicant go with R-20.

Commissioner Frady said he would agree to that request and Commissioner Wells agreed.

Chairman Dunn asked for the approximate amount of the fee.

Ms. Venice responded that the fee was based on acreage but the minimum fee was \$250.

Chairman Dunn said it was the consensus of the Board that it agreed to waive the applicant's fee. He said the three lots would have to be readvertised and this would be an R-40 subdivision. He said tonight the A-R would be converted to R-40.

Mr. Daniel asked the Board if applicant would have to go back before the Planning and Zoning Commission for this process. He asked if there was any way that applicant could get on the February meeting for the Planning and Zoning Commission.

Ms. Venice replied no and commented that the deadline would be February 1<sup>st</sup> to be heard in March.

Commissioner VanLandingham asked if the Board proceeded tonight in rezoning this property R-40 and this property was already zoned R-20 would this be a condition of the motion that applicant come back before the Board and rezone those lots R-40 to make this binding.

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Commissioner Wells replied yes, the applicant would have to do this. She said there could not be two different zonings in the same subdivision.

Chairman Dunn said the problem was that there were three lots in the R-20 area and the Board would not want the developer to build a smaller house there either.

Mr. Daniel asked if there was an option of developer having a conditional R-20 to the R-40 standards. He said that zoning condition goes with this property regardless of lots or owners.

Commissioner Wells replied no and the Board agreed that this could not be done.

Attorney Davenport remarked that this office has always been of the opinion that when someone attempts to condition a minimum house size greater than the minimum in the code and while the developer and builder might stick to it, it was something that could not be enforced to a third party.

Chairman Dunn remarked that the Board would have to amend the motion.

Commissioner VanLandingham said he would like to withdraw his motion and Commissioner Wells said she would withdraw her second to the motion.

On motion made by Commissioner VanLandingham, seconded by Commissioner Wells that the A-R portion of Petition No. 1117-03 be rezoned as R-40 conditioned with the acceleration and deceleration lanes and the stated condition of the ten foot buffer, discussion followed.

Attorney Davenport remarked that there was no acceleration or deceleration lane for this property. He said the A-R portion of this property was landlocked. He said there was no acceleration or deceleration issue for this portion of the property.

Mr. Daniel said that obviously now the developer was going to be asked to wait on the remaining three lots for a month. He asked if the developer could proceed in working with staff on the R-40 piece of property with construction documents and testing. He said right now staff would not accept that because the developer could not access the piece of property and they would not allow access through without something from the Board to say that the developer could proceed. He said basically the developer was being delay two months and this was going to be a lengthy process.

Ms. Venice remarked that the deadlines for site plan review were the first of the month to be heard that month. She said the January process had already begun. She said staff

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could go ahead and take the petition on February 1<sup>st</sup> and the rezoning and site plan review could occur simultaneously. She said it would still be in February.

Mr. Daniel said he wanted to make sure that the developer was not held up in progressing on in the area of engineering.

Chairman Dunn remarked that no work would be done on the property.

Ms. Venice remarked that no work would be done until site plan approval and that would not occur until the rezoning takes place.

Chairman Dunn clarified that everything in yellow on the plat was about to be rezoned R-40. He said the applicant would come back to the Board to request the other three lots to be rezoned R-40. He said he understood the applicant's concern in wanting to get started as soon as possible. He said this was going to take whatever time it would take in order to get it right.

Mr. Daniel said that was fine with applicant.

Commissioner Wells asked Commissioner VanLandingham to restate his motion again.

Commissioner VanLandingham clarified his motion.

On motion made by Commissioner VanLandingham, seconded by Commissioner Wells that Petition No. 1117-03 be approved as R-40 with the condition so stated in the proposal. The motion carried 5-0. A copy of the recommended condition, 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 approving Petition No. 1117-03, identified as "Attachment No. 3", follows these minutes and is made an official part hereof.

**CONSIDERATION OF PROPOSED AMENDMENTS TO THE FAYETTE COUNTY ZONING ORDINANCE REGARDING ARTICLE VII:**

Acting Zoning Administrator Chris Venice remarked that this item was for consideration of proposed amendments to the Fayette County Zoning Ordinance regarding Article VII. Conditional Uses, Exceptions, and Modifications, Section 7-6. Transportation Corridor Overlay Zone, A. S.R. 54 West and S.R. 74 South Overlay Zones, 6. Landscape Requirements; B. S.R. 85 North Overlay Zone, 5. Landscape Requirements; and C. General State Route Overlay Zone, 9. Landscape Requirements. She said the Planning Commission recommended approval 5-0.

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Ms. Venice asked for the Board's consideration to withdraw this item from the agenda this evening. She said there were too many questions and concerns regarding this item for staff to proceed. She asked for the Board's consideration to send this item back to the Planning Commission workshop and it would be brought back to the Board just as soon as these concerns could be resolved.

On motion made by Commissioner Wells, seconded by Commissioner Frady to withdraw this item per the request of the Acting Zoning Administrator Chris Venice. The motion carried 5-0.

**DISCUSSION OF WEB UPDATE CONTRACT WITH DESIGN PREVIEWS, INC. D/B/A 11 FINGERS:**

Commissioner Wells said that she had spoken with Finance Director Mark Pullium regarding this item. She said she had just received a copy of the contracts this afternoon and she had not had a chance to review these. She asked for consideration to table this item until the next meeting.

Chairman Dunn said he had requested this item to be tabled from the last meeting because the Board had a contract that it was asked to vote on that night. He said staff had done a lot of hard work and they had changed things. He said he gave them a lot of credit for quickly getting changes made, however, they arrived late. He stated now the Board had two contracts to consider that were not before the Board last time. He felt this was a new request.

It was the consensus of the Board that this item be tabled to a future Commission meeting.

**CONSIDERATION TO PUT BEFORE THE VOTERS OF FAYETTE COUNTY AN ORDINANCE THAT WOULD ALLOW FACILITIES IN THE UNINCORPORATED PORTION OF THE COUNTY TO SELL "LIQUOR BY THE DRINK":**

Chairman Dunn said the Board had a request from one of the county's citizens. He said the Palmer Course at Starr's Mill was requesting that liquor by the drink in the unincorporated county be put on the March 4<sup>th</sup> Presidential Primary Ballot. He said he had contacted Mr. Boykin and informed him that this was an impossibility because of some of the technical requirements of doing this. He said if this was done it would have to wait until July. He said Mr. Boykin's request was that this issue be put on the ballot and let the citizens of the county vote on whether or not they would like liquor by the drink in the unincorporated county. He said one of the issues that Mr. Boykin raised in his letter was that 52% of the county including all three of the larger cities already have liquor by the drink. He said any business that sells food or beverages in the unincorporated county was at somewhat of a disadvantage business wise. He said Mr. Boykin was asking for consideration for this issue to be put out for a vote by the citizens.

Commissioner VanLandingham said he had some reservations and he said he would resolve not to put this on the ballot by action of the Board. He said the restaurants that were already in the county were there in full knowledge of the restrictions. He said these restaurants were not being deprived of anything. He felt the proper way to handle this would be to have a petition circulated getting the required signatures prior to it coming to the Board. He said he did not feel that the Board should take the initiative to do this. He felt the petition was the way to handle this. He said he appreciated Mr. Boykin's honesty in stating that this was a monetary issue but that would be for just a very few people. He felt the cost that would be incurred through the abuse of alcohol that there was no way that he could in good conscience take the initiative to bring this about in the unincorporated area. He said the cost that was incurred through rehabilitation from treatment through the accidents that occur was tremendous. He felt the Board of Commissioners had no business bringing this to the citizens. He said if the citizens wanted this done through a petition, then that was the way it would be. He said as far as this Board taking the initiative to do it, he did not feel that the Board should get involved.

Commissioner Frady said he agreed and would not vote to initiate this action. He said if the required number of signatures was obtained from the citizens, then he would support this item going on a ballot.

Commissioner Pfeifer said he would have to agree that there was a process of getting an issue on a ballot. He said one way was either by having a petition signed by members of the public and the other one was coming before this Board for permission. He said he would not oppose this issue being on a ballot but he felt it should get there by public petition.

Commissioner Wells remarked that a couple of years ago she would have been in exactly the same position. She said as she had gotten older, she felt she had gotten a little wiser. She said since 9/11 she had been very concerned about government becoming more and more intrusive. She said when they started talking about a national I.D. card and fingerprinting she started looking at her role as an elected leader. She said she had started looking at every decision that she makes on the Board even more closely than she did before. She said she had come to realize that she was on the Board to represent the people. She said she was not there as a parent of the people. She said she did not have a problem with putting this on the ballot for the constituents to vote on. She said she believed the constituents in Fayette County were educated and intelligent people who could make up their own minds. She said for her to say that they were not and that this was not good for them or bad for them would put her in a very maternalistic position.

Commissioner Wells further commented that she also had another problem with this. She said she was not saying that she was in favor of liquor by the drink or opposed to it. She said it was immaterial because she did not drink liquor so it did not matter to her. She said what mattered to her was whether or not the citizens had a right to express themselves at the polls. She said she had pulled up some information on Mothers Against Drunk Driving. She said what amazed

her was the fact that it said that a standard drink was defined as twelve ounces of beer, five ounces of wine or 1.5 ounces of 80 proof distilled spirits. She said the important part was that it said all of these contain the same amount of alcohol. She said in Fayette County citizens could buy beer and wine. She said for some reason this Board had decided that people could not buy distilled spirits or liquor. She asked what the Board was governing here if these all have the same amount of alcohol in them. She said it was not her role to say that this was immoral or that this was not right. She agreed that there were costs for treating people who have alcoholism but there were costs for a lot of things. She said this Board has to determine that as adults in the community that the voters have a right to vote on it. She said as indicated in the letter 52% of the citizens in Fayette County have all decided that this was what they wanted. She said whether she was in favor of this or not, it was her responsibility to put it on the ballot and allow the citizens to vote for it especially since people can already drink beer and wine and the alcohol content was the same.

Commissioner Frady felt that beer and wine were state law and there was not much the county could do about it. He said he was not deciding on what the people could or could not do. He said he was going the way in which he thought the people could get this on the ballot. He said if enough signatures were obtained he would be the first one to put this on the ballot.

Commissioner Wells said the Board members were elected to make decisions and the decision here was if 52% of the community had already said that they wanted to have liquor by the drink should the Board say they needed to go back through the list of getting signatures and come back and show the Board that they really want this on a ballot. She felt this was treating the citizens of Fayette County as though they were not bright enough to figure out what they wanted.

Commissioner Frady said he took exception to Commissioner Wells' saying that the Board was saying that the people were not smart enough. He said the citizens were smart enough. He said this was only Commissioner Wells' interpretation and not the Board's interpretation. He said the Board was not interpreting but just saying how the citizens should do it.

Commissioner Wells said what she was hearing was very paternalistic and this caused her concern.

Chairman Dunn said he agreed with Commissioner Wells for some of the same reasons and also had some other reasons. He said the law provided two ways of making this decision to get something on a ballot.

Attorney Davenport remarked that it would take approximately 20% to 30% of the registered voters in the last Presidential election county-wide.



Chairman Dunn said this would take thousands of signatures and people could get signatures but it would take time. He said county staff would have to verify each and every signature and track down the person who made the signature. He said this was an awful lot of work for county staff. He noted that already most people in the county had access to liquor by the drink where they live. He said the only people who had not had the opportunity to vote on this were the people who lived in the unincorporated county and he felt they should be able to vote. He said he now lived in the unincorporated county. He said he lived in the City of Fayetteville when the liquor by the drink was on the ballot there. He said he voted in that election and if his vote had been the swing vote there would be no alcohol in the City of Fayetteville. He said this was irrelevant. He said anyone in the unincorporated county could vote without putting county staff through such a drill to verify thousands of signatures. He said this was also no cost to a taxpayer to put it on the ballot. He felt people could just vote yes or no and the county was not going to tell people how to vote or advocate one way or the other for it. He said this would save a lot of trouble and it was the most cost effective way to do it and the taxpayers would pay nothing for it. He said the people in the county would all be treated equally. He said he was sympathetic to the abuse of alcohol and the damage that it can do but anyone in the unincorporated county who wanted to abuse alcohol could get in their vehicle, drive to a city and then drive back. He said he did not feel the Board was doing anything to stop D.U.I.'s or to stop people from abusing alcohol if it was not available in the unincorporated county. He said there were only a couple of restaurants that this would apply to at this point. He said one of these was The Olde Mill restaurant on S.R. 54. He pointed out that these two restaurants were sitting at a disadvantageous position because every restaurant in all three cities in the county could sell alcohol now. He felt it would be consistent on the part of the Board not to say whether it was for it or against it but just to allow it to go on the ballot.

Commissioner Pfeifer asked how the cities had gotten their requests on the ballot.

Commissioner VanLandingham replied it was done by petition.

Chairman Dunn remarked that it was petitioned twice in Fayetteville and failed. He said the third vote was not a petition. He said the third vote by the City Council was to put it on the ballot. He said in Tyrone it was a decision by the Town Council without a petition. He said he did not recall how this was done in Peachtree City since it was so long ago.

Commissioner Frady said that he had always taken the stand on this issue that he would never vote to put this on a ballot without a petition and he was going to stand by that. He said this had been his position since he had been in politics.

Chairman Dunn clarified for Mr. Boykin that the only way that this would be put on the ballot was if the appropriate amount of signatures were garnished by people in the unincorporated county.

**CONSENT AGENDA:** Commissioner Frady requested item number 3 be removed for discussion. On motion made by Commissioner Wells, seconded by Commissioner Frady to approve consent agenda items 1, 2, 4, 5, 6, 7, 8, 9 and 10 as presented. The motion carried 5-0.

**AUTHORIZATION TO SIGN CHECKS:** Approve authorization to sign checks combining any of the following two signatures for transactions exceeding \$5,000: Chairman, Vice Chairman, County Administrator.

**AUTHORIZATION TO SIGN CHECKS:** Approve authorization to sign checks for transactions \$4,999 or less: Chairman, Vice Chairman, County Administrator.

**AUTHORIZATION TO EXECUTE CONTRACTS, RESOLUTIONS, AGREEMENTS AND OTHER DOCUMENTS:** Approval of the Chairman and Vice Chairman to execute contracts, resolutions, agreements and other documents on behalf of the Board of Commissioners.

Commissioner Frady said he would like the verbiage changed to “and other documents approved by the Board of Commissioners.”

On motion made by Commissioner Frady, seconded by Commissioner VanLandingham to change the verbiage on this item to read “Approval of the Chairman and Vice Chairman to execute contracts, resolutions, agreements and other documents approved by the Board of Commissioners.” The motion carried 5-0.

**APPROVAL OF COMMISSION MEETING SCHEDULE FOR 2004:** Approval of proposed meeting schedule for 2004. A copy of the schedule, identified as “Attachment No. 4”, follows these minutes and is made an official part hereof.

**RESOLUTION NO. 2004-01 APPROVED:** Approve Resolution No. 2004-01 to appropriate funds necessary for the lease payment on the jail expansion and courthouse. A copy of the Resolution, identified as “Attachment No. 5”, follows these minutes and is made an official part hereof.

**RESOLUTION NO. 2004-02 APPROVED:** Approve Resolution No. 2004-02 renewing Resolution No. 90-07 which imposes a \$1.50 monthly “911” charge upon each exchange access facility subscribed to by telephone subscribers. A copy of the Resolution, identified as “Attachment No. 6”, follows these minutes and is made an official part hereof.

**RESOLUTION NO. 2004-03 APPROVED:** Approve Resolution No. 2004-03 renewing Resolution adopted on March 25, 1999 which imposes a \$1.00 monthly “911” wireless

enhanced charge upon each exchange access facility subscribed to by telephone subscribers. A copy of the Resolution, identified as "Attachment No. 7", follows these minutes and is made an official part hereof.

**SONS OF CONFEDERATE VETERANS - SIGN REQUEST APPROVED:** Approval of request from the Sons of Confederate Veterans to place a sign on the old courthouse lawn on April 3 through April 17, 2004 to advertise the annual celebration of Confederate Memorial Day on April 26<sup>th</sup>. A copy of the request, identified as "Attachment No. 8", follows these minutes and is made an official part hereof.

**THERESE OCHEL TREE REAPPOINTED TO BOARD OF TAX ASSESSORS:** Approval of request from Tax Assessor Ellen Mills to reappoint Therese Ocheltree to a six year term on the Board of Tax Assessors commencing January 1, 2004 and expiring on December 31, 2009. A copy of the request, identified as "Attachment No. 9", follows these minutes and is made an official part hereof.

**MINUTES APPROVED:** Approval of minutes for Board of Commissioners meetings held on December 3, 2003, December 11, 2003 and Special Called Executive Session held on December 22, 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.

There was no public comment.

**STAFF REPORTS:**

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

**APPROVAL OF APPOINTMENTS:** Chairman Dunn stated there was a request from the Democratic and Republican Parties to approve their new appointments for the four year terms on the Board of Elections. A copy of the requests, identified as "Attachment No. 10", follow these minutes and are made an official part hereof. He said the Republican Party had nominated Richard Hobbs to serve the next four year term. He said the term would commence on February 1, 2004 and there was a requirement to get this to the State fifteen days prior to the completion of the current people's term of office. He said the Democratic Party had nominated Al Lamothe for another four year term and was the current person serving on that board. He remarked that Richard Hobbs would be replacing Steve Kiser. He noted that Marilyn Watts was the Commission's representative.

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On motion made by Commissioner Wells, seconded by Commissioner VanLandingham to execute and forward the Affidavits to the State. The motion carried 5-0.

Chairman Dunn remarked that Steve Kiser had served on the board with distinction for four years and Mr. Lamothe had served on the board as well. He said both of them had done a great job during the elections and their service to the community was greatly appreciated.

**EXECUTIVE SESSION:** On motion made by Commissioner Wells, seconded by Commissioner VanLandingham to adjourn to executive session to discuss four legal items. The motion carried 5-0.

**LEGAL:** Attorney Davenport advised the Board on a legal item.

The Board took no action on this matter.

**LEGAL:** Attorney Davenport advised the Board on a legal item.

The Board took no action.

**LEGAL:** Attorney Davenport advised the Board on a legal item.

On motion made by Commissioner Wells, seconded by Commissioner Frady authorizing Attorney Davenport to proceed in this matter. The motion carried 5-0.

**LEGAL:** Attorney Davenport advised the Board on a legal item.

On motion made by Commissioner VanLandingham, seconded by Commissioner Frady authorizing Attorney Davenport to proceed in this matter. The motion carried 5-0.

**EXECUTIVE SESSION AFFIDAVIT:** On motion made by Commissioner Wells, seconded by Commissioner Pfeifer to authorize the Chairman to execute the Executive Session Affidavit affirming that four legal items were discussed in executive session. The motion carried 5-0. A copy of the Affidavit, identified as "Attachment No. 11", 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 9:20 p.m.

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Karen Morley, Chief Deputy Clerk

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Gregory M. Dunn, Chairman

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The foregoing minutes were duly approved at an official meeting of the Board of Commissioners of Fayette County, Georgia, held on the 4<sup>th</sup> day of February, 2004.

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Karen Morley, Chief Deputy Clerk