

The Board of Commissioners of Fayette County, Georgia met in Official Session on January 13, 2005, 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  
William R. McNally, County Attorney  
Carol Chandler, Executive Assistant  
Karen Morley, Chief Deputy Clerk

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Chairman Dunn called the meeting to order, offered the Invocation and led the Pledge to the Flag.

Chairman Dunn remarked that Ida Burns-Fowler was running a little late and the Proclamation for "Wear Red Day" would be read and presented later in the meeting upon her arrival.

**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. 1134-04:**

Zoning Director Aaron Wheeler read Petition No. 1134-04, Clayton O. Carmack, Owner, and Mukut Gupta, President of Crown Development, Agent, request to rezone 40.55 acres from A-R to C-S to develop a single-family residential subdivision consisting of 18 lots. He said this property was located in Land Lots 4 and 29 of the 5th District and fronted on Old Senoia Road. He said the Planning Commission recommended approval subject to one (1) recommended condition (4-0-1) and Staff recommended approval subject to one (1) recommended condition.

Mukut Gupta said he was present with Becky Morris who was the landscape architect and land planner. He said he would like to request the rezoning of 40.55 acres of land on Old Senoia Road from A-R to C-S. He said he would like to develop a quality single-family subdivision consisting of 18 lots. He commented that for a conservation subdivision he would have to create a plan for two acre R-70 size lots. He said this plan had produced 18 numbers of two acre lots. He said under the R-70 zoning requirements he had platted and had come up with 18 numbers of two acre lots. He said this had been submitted to the staff. He said staff had concurred that this could be 18 two acre lots. He said in the conservation subdivision he had located 18 one acre lots with approximately 18 acres of open space. He said this open space was going to have a gazebo, walking trail, park benches and would be dedicated either to the homeowners association or Southern Conservancy Trust. He said the purpose of this was so that it could remain open space forever. He said among other things the conservation subdivision was better protection for the environment. He said fortunately this property also had a creek. He said, as seen in the plan, a good majority of the open space was along the bank of the creek. He pointed out that this exceeded the required normal buffer.

Mr. Gupta further remarked that beyond the protection of the water runoff and water runoff quality, he would like to improve the water quality when it leaves the site. He said he had a proposal, if allowed by the regulations and by county staff, to create a pond by installing a dike in the intermittent creek. He said staff had done a thorough investigation of this proposal and they had recommended approval with one condition that he accepted. He

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said the one condition was that no lot shall have immediate vehicular access to Old Senoia Road. He said this request complied with the county's Land Use Plan and the low density residential requirement which was one unit/1-2 acre. He said the proposed density was one unit per 2.08 acres which was beyond the upper limit of the Land Use Plan.

Mr. Gupta further remarked that county water was available at Harp Road and would be extended at his cost. He said the property did not contain flood plain and did not contain any wetlands. He said county regulations for runoff and sedimentation were all in place and he planned to meet all of the requirements. He said a Level III soil study by a licensed scientist would be done and all requirements of the Environmental Health Department would be met. He pointed out that no building permit would be issued in the county without the Environmental Health Department's approval. He said he was planning to have that approval before the construction. He said location of the property was within the fire suppress limit which was in the 5-8 minute range. He noted that the addition of this development would not be expected to increase the demand for emergency medical services. He said he had taken this information from the research done by county staff.

Mr. Gupta further remarked that in Staff's Analysis they stated that this project was in keeping with the Fayette County Land Use Plan. He said the proposed density was also in keeping with the Land Use Plan. He said the proposed rezoning would not adversely affect the existing use or usability of adjacent or nearby property. He said the proposed rezoning would not result in a burdensome use of roads, utilities, or schools. He said existing conditions and the area's continuing development as a single-family residential district support this petition. He said staff recommended approval and the Planning Commission also recommended approval with a 4-0-1 abstaining vote. He said he had demonstrated the quality of work that he does in this county and Peachtree City. He stated that this would be a quality product.

Chairman Dunn asked if anyone wished to speak in support of this request.

Mark Gray, 205 Alexander Ware Place, Fayetteville stated his home was just off Quarters Road and fairly close to the proposed development. He said he was in favor of this subdivision. He said he had always been for quality control growth in Fayette County and he felt this subdivision met that criteria. He said he liked the 18 acres being designated for green space. He said there were pressures on Fayette County with people moving in every day. He said he looked at this project as being the best possible alternative for this piece of property. He remarked that this Commission had done a great job in controlling growth but in five or ten years with another Commission the alternative could be something not as attractive as this project. He said this project met all of the Land Use Plans and also the low density requirement and he felt it would enhance property values. He said he was in favor of this subdivision.

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Chairman Dunn asked Mr. Gray how far his home was from the proposed project.

Mr. Gray responded probably no more than two or three miles.

Chairman Dunn clarified that Mr. Gray was not a neighbor and Mr. Gray agreed that he was not.

Chairman Dunn asked if anyone else wished to speak in favor of this request.

Dennis Chase, 290 Crabapple Road, Fayetteville said he was the President of the Line Creek Association. He said he had been asked to look into this development and he had gone out to the property to do an evaluation of the entire area.

Chairman Dunn asked Mr. Chase who had asked him to do the evaluation.

Mr. Chase replied a couple of the neighbors who were in opposition to this rezoning who were present at the Planning Commission meeting.

Mr. Chase said after he had evaluated the property he determined that there were more positives for the environmental protection than there were negatives. He said most of the property was covered with Loblolly Pine forest. He said the area he was most concerned with was the area along the stream. He remarked that there were a number of small springs that come into the main stream on both sides of it. He said there were wooded hillsides on the southside of the map as well as on the northside. He stated that there were two comments that had come out of the Staff's Analysis that he was concerned with. He said firstly the wetlands were based on the National Fish and Wildlife Service Wetlands inventory. He said when he was on site there were actually wetlands there and they covered an unknown amount of acreage. He said if the Board looked further in staff's comments it stated there was Appling, Cecil and Wehadkee soils. He said Wehadkee soils were typical of wetland soils and if these were present then there were wetlands there as well.

Mr. Chase further remarked that secondly, he also had a problem with the county's position that the dashed line on the U.S. Geological Survey maps indicated that this was an intermittent stream. He said it was his position that this was not an intermittent stream but it was a perennial stream because there was water in the stream all of the time. He said he had made that determination when he went on site after receiving county approval. He stated that he had taken biological samples from the stream and found approximately 15 different organisms. He said the importance of those organisms was that several of these have life spans of over one year in the water. He said perennial streams were identified as having flows essentially all year long. He said this was particularly important because downstream it was approximately 1,000 yards to Perry Creek. He said it enters

into a piece of property that Fayette County owns that was part of the county's mitigation plan. He said upstream from that location connected to another mitigation site which was Sams Lake consisting of 56 acres. He said one of the main reasons that he was in favor of this conservation subdivision was that the county would actually have the opportunity to begin by developing a green piece of property. He said if the proper conditions were put on the green space, it would be that way forever. He said following the next three pieces of property downstream to the mitigation property there would be a piece of green property there forever. He said downstream from here, taking into consideration that this was a perennial stream, there would be a wider setback on either side of the stream for perennial versus an intermittent stream. He said this was a development that already set aside a large piece of property on both sides of the creek. He stated in this area there were also some really nice hardwood trees on the property. He asked for the Board's consideration in accepting this request as a conservation subdivision as proposed but to make sure that the offer of a permanent green space be made through either the land trust or the homeowners association and carried this condition that it would be that way forever.

Mr. Chase further remarked that Mr. Gupta had mentioned that there was the possibility for a vegetated detention pond that he might be willing to install at the lower end. He said this would be particularly valuable here because even though there were some organisms in the water they had indicated that the water quality was fairly good. He noted that around the southeast corner off Old Senoia Road where the stream comes in, the stream actually begins on a piece of property on the other side of the road and drops down through a culvert on this property. He said the water there looked pretty bad and had a lot of foam, discoloration and red algae. He remarked that because of all of the springs found further downstream, it actually improved to the point of the north edge of the property where he found organisms. He said the vegetated wet pond would have the opportunity to maintain control over any water quality problems that already existed.

Mr. Chase said there were only one or two minor problems that he had with the project that were proposed and he had not discussed these with Crown Development. He noted that the conceptual paths come very close to the stream. He said he preferred that there be no paths right down into the stream, too close to it or actually trying to cross it. He said the one problem that he saw was that the corner lot #2 comes down very close to the stream and some of the contour lines show that may be down into a wetland area. He said it was not possible for him to determine on site because there were no pins located there. He cautioned the Board to look at lot #2 very carefully. He said in his opinion there were just too many positives to this project for the Board not to approve it.

Chairman Dunn asked Mr. Chase if the stream that was identified as intermittent was actually perennial and Mr. Chase replied yes that was correct.

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Chairman Dunn clarified that although staff's analysis stated that there were no wetlands, there were actually wetlands and Mr. Chase agreed that there were wetlands.

Mr. Chase remarked that the wetlands were approximately 20 feet to 30 feet on either side of the stream. He said with the presence of the Wehadkee soils this indicated that there were wetlands. He said the wetland inventory map was determined by leaf jets flying at 15,000 feet to 20,000 feet. He felt the Board needed to take into account when there was information available that even though it was not listed as a perennial stream on the map it could be identified that it was with the history of this area. He said he could tell it was because of the organisms living there. He said these organisms could not survive if the stream was dry half of the year.

Commissioner Pfeifer remarked that there were areas that were identified in the open space as unsuitable/marginal soils. He asked if this would be a problem.

Mr. Chase replied yes that would be the location that would most likely have unsuitable soils. He said the Appling soil was the best among the three that were listed. He remarked that sometimes Cecil soil worked well for septic and sometimes not. He said there were indications that this was a wet area, had been a wet area and would probably always be wet.

Chairman Dunn asked Mr. Chase how far back on the property he had gone. He asked him if he had found wetlands in the rear of the property.

Mr. Chase responded said he had gotten about half way back and somebody had posted a no trespassing sign. He said he takes those things very seriously and he would not walk on other people's property. He said most of what you see there was primarily loblolly pine.

Chairman Dunn said the report had also stated that there were no specimen trees on this site.

Mr. Chase replied that he did not agree with that. He said there were some loblolly pines, different species of oak trees and some other really nice trees out there. He said these were almost all within the green space that was going to be designated. He said there was a small strip of large trees that comes up under lot #7. He said he had discussed this with Crown Development the possibility of moving their trail going to the gazebo and back and having it go to between lots #6 and #7. He said that would make it a much nicer area for a trail as well as save the trees.

Chairman Dunn said his map indicated that there was not a 100 year flood plain problem on this property. He asked Mr. Chase for his thoughts on that.

Mr. Chase responded that the 100 year flood plain was something that FEMA redefined almost every ten years. He said this was generally based on the threat of annual flooding where building would be taking place. He felt this area did not have anything of that magnitude in this area for FEMA to worry about. He said he understood from some of the neighbors in the area that in fact there were some worse sections in that area although he had not seen it. He commented that the stream had incised fairly deeply into the valley floor. He said in some cases four to six feet. He said the developer would be leaving the green space along the edges of the stream.

Chairman Dunn said he lived fairly close to that area too. He recalled back in 1994 after Fayette County experienced some very heavy rains that area was pretty wet for a long period of time.

Mr. Chase said that was not his area of expertise and he was not here during that time. He said he was sure that the Board would be hearing from some of the neighbors in that area who were living there at that time.

Chairman Dunn asked Mr. Chase to clarify that some of the neighbors had asked him to look at this property and Mr. Chase replied yes.

Chairman Dunn asked Mr. Chase if after looking at area if he would oppose this request.

Mr. Chase responded that he wanted to speak in favor of the development. He said after speaking with the developer who agreed to make some changes to make sure that things were protected as opposed to what could be done with the property, he was in favor of it. He said the developer was going to take extra steps that would be good for the county.

Commissioner VanLandingham asked Mr. Chase to make sure that staff had a copy of his recommendations. A copy of the recommendations, identified as "Attachment No.1", follows these minutes and is made an official part hereof.

Chairman Dunn asked if anyone else wished to speak in favor of the petition.

Matt Tucker, 123 Summer Brooke, Peachtree City stated he had lived in Fayette County for twenty-six years. He said he had grown up in North Fayette, moved to South Jeff Davis and then moved to Peachtree City. He said this development would give second generation homeowners the feel of Peachtree City as well as an opportunity to stay closer to where they grew up in Fayette County. He felt this development would continue the high standards that his parents and their parents had set for Fayette County. He said this development would be right on point with what they would like to have the opportunity to come out and purchase. He said he wanted to support this project because he felt this was one of the best opportunities for this property.

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John Krieg, 165 Tarragon Drive, Fayetteville remarked that he was also a Fayette County business owner and President and Publisher of MD Publishing of Peachtree City. He said he agreed with Mark Gray's comments in favor of this development. He said he had known Mukut for several years and he had purchased the building where his business was currently located. He said he was very pleased with the building as well as Crown Development. He said the quality was second to none and more importantly Mukut's character and word were as good as gold. He said Mukut always does the right thing and does what he says he was going to do. He said the county would not go wrong with Crown Development.

Chairman Dunn asked if anyone else wished to speak in favor. Hearing none, he asked if anyone wished to speak in opposition. He asked for a head count of those standing in opposition and ten people were counted.

Delores Crowder, 478 Old Senoia Road, Fayetteville remarked that her residence was directly in front of the property. She said her question for the Board was what had changed since their last request for rezoning. She said Mr. Gupta still wanted to put 18 homes on this property on one acre lots. She said previously when Mr. Gupta wanted to build 18 homes on one acre lots for this site, he was turned down because of the impact on the area. She said the Planning and Zoning Commission had previously said that the admission of 18 lots might result in a burden on the roads, utilities and schools. She said if anything, the traffic impact had worsened because of the approval of the annexation of 108 acres at Old Senoia and Redwine Road on which 88 homes would be built and would substantially affect the traffic on Redwine Road. She said the Planning Commission had previously reported that the addition of 18 homes would add 172 trips per day. She said this would come to 1,204 trips per week and with the addition of the 88 homes for the Bellemeade Subdivision that would add 842.16 trips per day and would add 5,895.12 trips per week. She said the grand total for both of these subdivisions would be 7,099.12 trips per week on this road.

Ms. Crowder further remarked that the property was also prone to flooding and had extensively flooded before like in July of 1994. She said the property on the East side of Old Senoia Road was mostly wetlands and during heavy rains it overflows into this 40 acres on the West side of Old Senoia Road that Mr. Gupta was requesting to develop. She said in July of 1994 Old Senoia was a dirt road and it was washed away by the force of the water that flowed down onto this property. She said the road was closed for several days while it was being repaired and a huge pipe was put under the road which directs the water onto this 40 acres. She said then when Old Senoia Road was paved back in May of 1998 the road was actually built lower than the properties on the East side of the road. She said this had increased the runoff. She commented that the 25 foot buffer that Mr. Gupta was allowing off the stream was not going to be enough of a buffer. She said the trails, gazebo, picnic tables as well as the homes close to the stream would probably be



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underwater when the next big storm occurred. She pointed out that if this property was not in the 100 year flood plain, it should be and something should be done to protect the people who would be making their homes there and who may be unaware of the potential for flooding.

Ms. Crowder further remarked that she had spoken with the County's Engineer Phil Mallon who would be responsible if these homes flooded. She said Mr. Mallon told her that unfortunately it was usually the buyer beware and up to the buyer to investigate these things before buying. She said Mr. Mallon also told her that he would not want to buy a home in there because of all of the wet areas surrounding the property. She said flood plain protection manuals will tell you that in an area subject to flooding that the buffer should be free of recreation amenities including trails. She said the property had a number of serious problems already like wetlands. She said because of these wetlands there was a great deal of marginal and unsuitable soils on the property. She said if the zoning was approved, Mr. Gupta would concentrate 18 septic tanks on one acre lots. She said when these septic tanks fail there would be no backup or secondary drain fields to which to redirect the septic tanks other than onto the conservation property which was mostly wetlands that need to be protected. She said when these septic tanks fail they would empty into this creek and go downstream into Perry Creek and Whitewater Creek which supplies the drinking water for Fayette County. She said this stream was already heavily polluted from the Eastern side of the property.

Ms. Crowder further remarked that in order to access the property, Mr. Gupta was going to put another road over the stream. She said this would cause more runoffs and add additional pollution to the stream and cause further damage. She said the power substation that was built approximately one year ago was put in at a substantial cost because they had to run a road into the wetlands. She said this caused further damage to the stream. She said according to the A.R.C. conservation subdivision model ordinance, a road which is an impervious surface has prohibited activities in an open space and was not consistent with the goals of a conservation subdivision. She said this would also include the driveway that Mr. Gupta had put on lot #1. She said the residents of this area also had a problem with Mr. Gupta placing lot #1 approximately 75 feet from the road with little or no buffer when all of the homes in this area were 400 feet to 500 feet off the road. She said the A.R.C. also recommended buffers to separate the conservation subdivision from the other properties in the area. She said this would look totally out of character with the other homes. She said Planning and Zoning reported earlier in this rezoning, which would allow 18 lots, that it would adversely affect the existing use or usability of adjacent or nearby properties. She said as the density was proposed it was not consistent with the area. In conclusion she remarked that she was concerned that the wetlands were not subtracted to arrive at the 18 lots.

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James Baker, 381 Old Senoia Road, Fayetteville remarked that a subdivision like the one proposed simply did not fit with the current development already in this area. He felt it was simply a request for spot zoning. He said one of the reasons he built on Old Senoia Road was because the homes were on large acreage. He said he had purchased 15 acres to build his home on and in the process purchased an additional 10 acres. He said one of his close friends was purchasing 15 acres next to his property and was planning on building his home there. He said he firmly believed that the land owner had a right to sell his property, but he did not feel the land owner had the right to zone property in a way that had a negative impact on the area residents. He said he had a lot invested in his property and his home and so did his neighbors and they wanted to protect their investments. He said he had a question about the size and value of the proposed homes. He said he did not know if the proposed homes were equal to the homes in the area. He said he would like to comment about the statement that the creek was an intermittent creek. He stated this creek runs through his property and he could say for sure that this was not an intermittent creek. He said this creek runs on the backside of the property and he and the next door property owner plan on building a lake back in that portion. He expressed concern over the proposed development and questioned if this would eliminate the stream or contaminate the water in a way that would change the water supply on his property. He said Mr. Chase had commented about the red foam. He said he had this foam substance in the back of his property and he had never known what it was. He said he assumed it was the red algae that Mr. Chase referred to. He said he had a lot of foam in the back of his property and he felt this was pollution. He said he wanted to comment on the Bellemeade Subdivision and remarked that there was already a major project just one mile down the road. He said that project consisted of 90 plus homes and was already putting a strain on the traffic on Redwine Road, Old Senoia and the intersection of Harp and S.R. 85 as well as a strain on the schools. He said he understood that at S.R. 85 and Harp Road there had already been two or three fatalities. He said he would like to see a traffic light at that location. He questioned what was going to be done about the overcrowding of the surrounding schools. He said they were already bursting at the seams. He asked for the Board's consideration for the property to be developed in a way that it did not have a negative impact on the residents, the community and the environment. He said he also had been asked by Mr. and Mrs. Roberts, who own property on this road but could not be present tonight, to let the Board know that they were against this rezoning request.

Karen Powell, 470 Old Senoia Road, Fayetteville said her home was located directly across from the property in question. She said she wanted to comment on lot #1 and the house that would be located directly on the road. She said this really concerned her because it would disturb the flow of the road. She said all of the houses sit pretty far back off the road and they all had trees in the front yards. She said to have a house sitting close to the road with very little buffer would not be very attractive. She said it would change the view from her house and her neighbors as well. She said she had just added on to her house and she continued to invest in her property. She said her family planned

on being in this residence for a long time and would like to keep the conditions around them similar to the reason they had originally purchased the property. She said she had a problem with the phrase "green space" and felt it was just a buzz word. She said green space was what surrounding land owners see when they look out at the property every day. She asked why they had to develop land to make green space. She said the green space was already there. She said she had no problem with Mr. Carmack developing this property but questioned why it had to be rezoned. She asked why the zoning could not be left the way it currently was and have individual families come in and purchase the property just like the surrounding properties had. She said at some point people have to stand up and say yes for progress but she felt there was enough progress now. She said progress could be controlled. She said there did not need to be neighborhoods that looked like neighborhoods in Peachtree City. She said the people living on this road purchased those properties because there was large acreage, lots of trees and they were individual homes. She said this was not a standard neighborhood. She said this was the reason they had purchased property there, that was what her neighbors had built there and that was what they wanted to maintain. She asked for the Board's consideration to support those residents who had lived there on that road. She said they were fighting to maintain the way of life that they had invested in on that road and they hoped the Board would continue to support that.

Harry Sweatman, 516 Old Senoia Road, Fayetteville remarked that the corner of his lot was the site of the intermittent stream. He said when he first moved there he even thought it was what he would call a wet weather creek but after living there for the last 19 years he had determined that it was constantly wet. He said the wetlands that were near it were inaccessible to anybody that was less than three feet high. He said if someone were to step in this area they would sink in at least three feet deep. He said before he began speaking on this rezoning, he wanted to thank the Board of Commissioners for the Heritage Park. He said the Park had been a very good asset to this county and to this city. He said he wanted to thank the Board for having the nerve to get a S.P.L.O.S.T. and have it pass. He said he also wanted to thank the Board for the county's sign ordinance. He said this sign ordinance would not allow him to put two signs up in his yard and he would come back at a later date to make comments on that.

Mr. Sweatman further remarked he walks every morning. He said while walking he tries to dodge the traffic that has been building up over the past few years since the road went from a dirt road to a paved road. He said when he was walking and first saw the sign for C-S zoning he did not know what it meant. He said he thought C had always stood for something commercial and he could not imagine anything commercial going in on that road. He said he finally determined that it was going to be a commercial swamp. He said anyone could see that this property was definitely wet. He said he would like Mr. Chase to come over and determine where the real headwater was to the creek in his backyard. He said he thought it came from the other side of S.R. 85 and was certainly polluted to

something that no one would want to drink. He felt there was nothing alive in that portion of the creek on his property. He said he also hoped the engineers who were designing this subdivision were a lot better than the ones who designed the wetlands mitigation on Sams Lake. He said they had been out there twice in the last year and a half to rebuild that dam. He asked for the Board's consideration in not approving this request.

Terry Durant, 511 Old Senoia Road, Fayetteville remarked that her property was immediately adjacent to the proposed property to be developed. She said she had a situation concerning muddy well water. She said her septic tank backs up quite frequently and her basement floods. She said her house was located on a hill and these problems occur. She said at times the ground simply would not absorb fast enough. She commented to prospective buyers in the proposed subdivision that they should beware. She said even if these buyers have flood insurance, it probably would not pay off. She stated according to her former agent at State Farm Insurance, a person must be surrounded by two acres of flooded plain before they would honor the claim. She said the recent weather related disasters namely the hurricanes in Florida and Georgia and the enormous mud slides in California cost citizens millions if not billions of dollars in damage. She said these can be attributed to the destruction of the natural protective vegetation due solely to over building. She said citizens were given the charge to be stewards of the land and that responsibility should start right here in Fayette County. She asked if anyone was listening. She asked if anybody cared. She said certainly not the greedy developers who wanted to pave the county over. She said she had recently received an article in the mail that stated the typical homeowner's policy would not typically cover flood loss to home and contents. She said it certainly did not cover her property and commented that the first time she had over \$10,000 worth of damage that was not covered. She remarked that Federally backed mortgage in certain areas required flood insurance policies for the life of the mortgage. She stated that floods could happen anywhere and threaten a person's home. She said flood damage could be caused by hurricanes, winter thaws, rivers and streams going over their banks and certainly rains. She said in certain areas the chance of a flood loss was 25% greater than loss due to fire during the life of a 30 year mortgage.

Greg Powell, 470 Old Senoia Road, Fayetteville said he lived just North of where this subdivision was proposed. He said he keeps hearing things about creating green space. He said he did not understand how something could be created that was already there now. He said there was another issue that he did not understand. He said the land in question contained wetlands and was unbuildable. He said the people who have purchased this land obviously, and more than likely, bought it at a reduced rate. He felt the owner was coming to the county to try and have the property rezoned because there were wetlands on this property. He said this made no sense to him. He said he hoped that the Board would give every consideration to the homeowners in that area and protect the integrity of the zoning as it was originally intended.

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John Davis, 527 Old Senoia Road, Fayetteville said he had lived at this address for 25 years. He said his concern was also the perennial creek running through the property. He said he had seen that area flood more than once. He said his biggest concern was the growth on this road. He said everyone had watched what had happened on Harp Road with the subdivisions going in up and down that road. He said currently the traffic backs up past Old Senoia Road in the mornings and it would be that way on Old Senoia Road going into Harp Road pretty soon. He said the other issue was that this was going to be a precedent setting situation. He said there were 45 acres directly north of this piece of property that were also part of the heirs' 145 acres of property. He said that property was also subject to be developed after this piece of property was developed. He felt the county had designated Old Senoia Road as an alternate western bypass road with Harp Road being a western bypass road. He asked if this was correct.

Chairman Dunn and Commissioner Frady said they were not aware of that.

Mr. Davis remarked that he was pretty sure that he had read that in the newspaper. He said traffic was a big, big concern of the people living on Old Senoia Road. He said they felt the proposed subdivision was out of character with the houses currently on this road. He said all of the people who live on that road were in opposition to this proposed development. He said he would like to address Mark Gray, the gentleman who lives off Quarters Road. He remarked that it was further than any two miles from Old Senoia Road to Quarters Road. He said for the people who do not live on that road, he was sure that they did not mind housing developments but for the people who do live on it and have lived on it for any length of time, they have enjoyed their way of life. He said the residents did not want to get run over by a lot of subdivisions and he felt this was going to run the residents off.

Craig Sagon, 404 Old Senoia Road, Fayetteville stated his residence was just south of the proposed development. He said he loved Fayette County and was born and raised here. He said his first home had been in a one acre subdivision and he did not like it. He remarked that he had looked for approximately one year before finding this piece of property that he currently lived on. He said his property consisted of approximately four acres. He remarked that his home was approximately 350 feet off the roadway. He said he had attended the Planning and Zoning meeting to see what was planned for across the street. He said he determined that the property across the street was going to be five acre lots and this was the reason he had built his home where it was now. He said he had spent a great deal of money on his house and it was his dream home. He said he planned on living there for the rest of his life. He said he and his wife have a six year old daughter. He said if this subdivision goes in, it would kill him and the value of his home. He said one acre lots was not something that he wanted directly across the street from him or he would have stayed where he was. He said he had spent a great deal of time and money just like the other people living on this road who have built their dream homes. He said this was

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something that he never dreamed would ever have happened or he would never have built his home there. He said he loved Fayette County and loved the people here and he would like the area to stay the way it was. He felt this developer should also go by the same guidelines that they had gone by when they built their houses. He said the people putting in this subdivision did not care what went in there because they did not live there. He said there were already some really big issues such as the wetland issues and water issues. He said he had a filter system on his well now and it had to be checked once per month because the water was bad water and they could not drink it. He asked what this would do to the water if 18 septic tanks on wetlands. He asked if the sewer would contaminate the water worse than it already was. He said they already had some issues with the water. He said he did not feel 18 houses on one acre lots was going to be what was needed there. He questioned in lieu of 18 houses why not 10 houses. He said this development did not look like a conservation subdivision to him. He said conservation would be 10 houses on forty acres. He said if this developer could not do this then maybe another builder could come in and build some larger scale homes on a little more property.

Bridgette Sagon, 404 Old Senoia Road, Fayetteville said her main concern was the schools. She said they had one child and her daughter was the only child on this road. She said her daughter has to attend Spring Hill Elementary. She said she assumed all of the time that Sara Harp Minter was being built that it would be the school her daughter would attend. She said she had told her daughter for two years that was where she would go to school. She stated that she went to the Board of Education who informed her that the school was over capacity and had been since it opened. She said the additional children from this subdivision would have a tremendous affect on the schools in this area. She said they were second generation Fayette County residents. She asked for the Board's consideration to leave the area the way it currently was.

Marshal Pritchett, 426 Old Senoia Road, Fayetteville said he had lived here for 22 years. He said the reason he had purchased his property was because of the acreage. He said he had 3.283 acres with plenty of yard for his two daughters to play ball in the front yard. He said he could have moved to Peachtree City and purchased a larger home with smaller acreage but he decided to stay in Fayette County, purchase his land and build his home. He said he was sure glad he did. He said he hoped the Commissioners would listen to everybody speaking tonight because they had lived there for a long time. He said the traffic had definitely increased and it was getting worse. He said it was a cut through from Harp Road to S.R. 85. He said it was a nightmare to try and cross S.R. 85 in the morning. He said he hoped the Board would listen and understand the homeowners who live in that area now.

Chairman Dunn asked if anyone else wished to speak in opposition to this rezoning. Hearing none, he remarked that Mr. Gupta would now have time for rebuttal.

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Mr. Gupta remarked that it appeared that there were three main questions. He said (1) was wetland; (2) whether the creek was intermittent or perennial; and (3) flood plain. He said he was also a licensed civil engineer in the State of Georgia, Florida and Alabama. He said as a civil engineer he would like to remind the Board that wetland definition was based on certain criteria. He said (1) was vegetation and (2) type of soil. He said he was also involved in environmental work such as a wastewater treatment plant. He said at this stage those detail works have not been done. He said if the Board approved this rezoning then they could proceed with all of the studies. He said this was a Federal law and also the Georgia State law. He said nothing would be built in a wetland. He said a wetland would not be disturbed. He stated that he had a high respect for Dennis Chase's capabilities and all that he does. He said Mr. Chase was absolutely correct saying that some of the wetland might be very close to the creek and possibly 25 feet. He said when he gets to the point of doing the final construction drawing, at that time he would have all of those things checked. He said he would realign the lots if this was necessary. He remarked the county had its system with the county engineer and county planner to verify these results and only then would they give out a permit to start construction.

Mr. Gupta commented on the issue of the stream being intermittent or perennial. He said he did not invent that nor had he decided whether the stream was or not. He said it was a question of what had been defined by the State and County as well as the Federal Government. He said as Chairman Dunn had previously mentioned in 1994 there had been some water on this property.

Chairman Dunn interjected that it was like a river.

Mr. Gupta remarked that could be the result of a number of things and he thought he had walked that property one time. He said some of the things that come to mind would be the possibility of an underground spring. He stated as far as the waterway being clear or not he did not know. He said maybe a tree fell or something got blocked. He said it might be a question of either lack of maintenance or something else that had not been noticed. He said as far as he was concerned he could only look on this property. He said he did not have the right to go downstream to determine if something was blocked or not. He said if that was the case, he asked for the Board's consideration in not penalizing him for other people's previous action. He said all he was requesting of the Board was to look into the merit of this particular property and not to penalize him for something that somebody else had done. He commented on the 100 year flood plain. He said this was very similar to what he had said about an intermittent or perennial creek and remarked that this would be decided by FEMA. He said this was one of the many reasons that they had wanted a conservation subdivision where there was the possibility of having the houses a distance away from the open space. He said the flooding would happen as long as it did not happen in the area used by people where there was a road, driveway or that kind of thing. He felt strongly that their plan reflected this. He said they had used the county's adopted

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Land Use Plan and had done everything that was in the rules and regulations of the county zoning. He said this was not an emotional thing as far as he was concerned but the rule of law. He said they would follow the law and whatever the law required of them. He asked for the Board's consideration in approving this petition.

Chairman Dunn remarked that several people had concerns about the one single lot that would come close to the road which was out of character with the area.

Mr. Gupta replied that they had looked into the existing soil level I. He said there were three levels of soil study. He said as far as water quality for septic tank was concerned, that location was the most desirable. He said they had not gone to a level III test which they would do if this petition was approved. He said he could agree today without any hesitation to review that lot and put it closer to the cul-de-sac. He stated that there were two questions regarding lot #1. He said firstly the lot was close to Old Senoia Road. He said at the present time there was a 75 feet set back from the right-of-way. He said they could create that as an undisturbed buffer. He said that means from the right-of-way up to the building line. He said personally if they build this house they would push it as far away as possible. He said the Board could put the 75 feet set back as a condition that this would be an undisturbed buffer he would gladly accept that. He said he certainly understood these concerns. He said they would be very much willing to have that buffer.

Chairman Dunn asked for the Board's pleasure in this matter.

Commissioner Pfeifer remarked that he would like to make a motion to approve Petition No. 1134-04 but would like to revise it as follows. He said he would like to change the zoning from A-R to C-S but subdivide it under the R-85 zoning district instead of the requested R-70.

Commissioner Frady asked what Commissioner Pfeifer's purpose was in this.

Commissioner Pfeifer replied that his purpose was that the R-85 zoning was three acres and he felt that it was much more in keeping with the area than one or two acre lots were. He said the last time the Board had talked about this property it was felt that two acres was out of character. He said there was also a lot of concern expressed that this would have a domino effect on the large properties near it and if this property was rezoned then they would come and approach the Board and it would have no reason to rezone those properties. He said in his opinion in looking at the property in the area three acres made sense and two acres did not.

Chairman Dunn asked Commissioner Pfeifer to repeat his motion.



Commissioner Pfeifer said his motion was to change the zoning from A-R to C-S but subdivide it under the R-85 zoning district which was a three acre minimum.

Commissioner Wells said this would allow the houses to be built on one and a half acres.

Commissioner Pfeifer said this would reduce the number of lots from 18 to 13.

Chairman Dunn asked if there was a second to Commissioner Pfeifer's motion. Hearing none, he remarked that the motion had failed for lack of a second. He asked for the Board's pleasure in this matter.

Commissioner Frady felt this was, according to the Planning Commission as well as staff, in keeping with the Land Use Plan. He felt there would be a legal question somewhere down the road that would need to be addressed. He said if this was a legal zoning for this property under the Land Use Plan, he did not know what choices were left. He said staff had said, contrary to one comment made tonight, that this proposed development had a net density of two acres per unit. He said the net density was derived by subtracting the area of streets, right-of-ways, the 100 year flood plain, water impoundments and lands which were to be dedicated to a government authority as defined in Article III. He said he did not know if the Board would have any choice in the manner of this zoning. He said contrary to what everyone thinks if the county gets sued for this, which possibly might happen, the taxpayers would have to pay for all of the legal costs and probably have a judgment contrary to what was hoped for. He said these were some of the things that he felt needed to be looked at in these kinds of areas. He said there were just about as many one acre lots in this area as there were A-R lots. He said according to the map that the Board has, across the street there was plenty of these. He said there was R-40 lots across the street from most of this property which was one acre lots and zoned R-40. He said across from that was R-45 and then on Harp Road it was R-45 lots and all of those were one acre lots. He said these were some of the things that needed to be taken into consideration. He said as far as he could see in doing the job that the county needed to do he would make a motion to approve Petition No. 1134-04.

On motion made by Commissioner Frady, seconded by Commissioner VanLandingham to approve Petition No. 1134-04, discussion followed.

Commissioner VanLandingham said there had been some statements made that he would like to clear up. He said the concern was the septic tanks going in on 18 lots. He said the county had recently revised some of the requirements for septic tanks. He said not only did they have to have a primary site but they also had to have a secondary site. He said if both sites were not located on the lot then it would not be buildable. He said no one could build on a lot if it was not buildable. He commented on the statement of making green space. He said the county was not making green space but was conserving green

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space. He said this was the reason the county had gone to the trouble of creating this classification and that was to give an opportunity to conserve green space in the county. He said there was a statement made by Mr. Chase about some of the things that could go in this area that would be more detrimental to what was being proposed tonight. He felt sometimes people forget that the land that they live on right now was once part of a larger tract of land. He said it had been subdivided and it was smaller than it was before. He said he would love to see Fayette County stay the way that it was right now, but it was not possible. He said it was not legally possible. He said there was an area that needed to be looked at that was beyond what the Board could see and that was to see what the county was going to encounter in the future. He said he could see the effort that had been made by the developer to bring something of quality to this area. He commented the reason he would not second the other motion was because of the size of the houses. He felt the Board had an opportunity here to do two things and they were to conserve space and to have an opportunity for the property owner to use their land to suit their needs.

Commissioner Pfeifer said he would like to address some of the issues that had just been raised. He agreed that the proposed zoning was legal zoning but it was not the only legal zoning and as a matter of fact it was the highest density legal zoning in that area. He also commented on the house size issue. He said in looking at the applicant's documentation these lots were proposed to be sold in the high \$300,000's. He said in looking at building costs, this indicated a house size of approximately 3,300 square feet. He remarked that the zoning that he had proposed that was not seconded was a minimum of 3,000 square feet so it would fit.

Commissioner Wells remarked that the land was zoned A-R for five acre lots. She said it had been land used for one to two acres. She said this puts the Board in a difficult situation. She said she wanted to preserve the status quo for people already living in that area and have a certain expectation. She said her discomfort was in the fact that it was land used one to two acres. She said once you get past Harp Road one area was land used two to three acres and the other area was one to two acres. She said legally it was A-R and the Board could hold the developers to A-R. She said the Board could also approve one to two acre lots. She said the Board then gets into a situation where what was best, right and for the highest use of the landowner. She said this issue had come up a number of times before and she has had several issues with the 150 acres that would domino all the way down the road. She said there would be an impact on the schools. She said she was concerned about the wetlands and the streams and things of that nature. She said she had voted against the one acre and the two acre lots. She said she had supported conservation subdivisions and she felt it was a good use in some areas. She said she had a huge problem with this project where one acre lots would be the average in this area where the standard had been pretty well set for three to five acres. She said there were some lots along the way that have one acre but it was not the preponderance of the lots. She said chances were really, really high that if the Board did not grant this

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rezoning tonight the county would be sued. She said that would be a perfectly legal and reasonable stage of action. She said the Board would have to weigh this – if the county was going to pay out more legal fees to defend something that the county may or may not win. She said her bigger concern was that there was a precedent set in Fayette County when one of the judges overturned a ruling and gave the developer a higher density than they probably would have gotten had they just gone along with the land use and the zoning. She said this was not an easy situation for the Board tonight. She said the Board must look at what was best for the people who were already living there, what was right and fair for the person who purchased the property and what cost would be put on the taxpayers by the Board's decision.

Commissioner Wells further remarked that however it turned out tonight, she wanted everyone to realize that every member of the Board was trying to do what was the very, very best for all of Fayette County. She said the Board was torn. She said this was a difficult situation. She remarked that she did not like this particular layout. She said the developer had done an excellent job in trying to work where he thought the county wanted him to go. She said she would much rather see two acre lots than to see this. She said the Board had told the developer that it did not want two acre lots so the Board must struggle with this to determine what was the best and the right for the citizens of Fayette County. She said she just wanted everyone to understand what the Board was dealing with here. She said this would not be something that was easily decided on and each member of the Board was doing the best that they could do. She said she could not support this motion but she was not sure where she would go with it.

Chairman Dunn remarked that he had been a member of the Board of Commissioners for the last six years and this was the third time that this piece of property had come before the Board for a decision. He said the Board had made decisions in the past with all of the information available at the time and now it was back again. He said one of the things that had not been discussed tonight was the role of this Board was not only to look after the welfare of the community, the neighborhood and everything else but it was also to preserve the property rights of the individuals who owned it. He said just because people did not want the property owners to do something with the property did not mean that they could not do something with it. He said there were some comments made before such as some of the lots that people were living on now that used to be farms and now they were not. He said this just intensified the problem that the Board had because most of the people in the community know that this Board probably more than any other was really trying to preserve Fayette County as much as it can knowing that the Board cannot totally do that.

Chairman Dunn further remarked that generally he would support conservation subdivisions. He said with the package before him from staff he was pretty sure that he was going to support this request. He said one of the problems that he had now with doing anything with this property was the fact that he did not know what the Board was dealing

with. He said he respected Dennis Chase tremendously who said that there were wetlands on this property. He said Mr. Chase had never been wrong and he had identified wetlands throughout the county when he was opposed to something being done. He said Mr. Chase had identified wetlands here. He said the county's records show that there were no wetlands. He said the neighbors had identified flooding, wetlands and everything else out there where the county's records indicated that it was not a problem. He said he felt like he could not just ignore everybody's experience who lived there nor could he ignore Mr. Chase's comments about wetlands being on this property. He said Mr. Chase had said he was not sure where all of the wetlands were on this property because he had only partially walked the property.

Chairman Dunn further remarked that there was another factor here. He said Mr. Gupta was one of the finer developers so if somebody was going to develop the property in that area then he was one of the individuals that people would want to do it. He said he did not know any development that Mr. Gupta had ever done that was unsatisfactory or that caused this community any problems. He said this makes the Board's problem even worse. He said if this was a lousy developer, it would make the Board's decision a lot easier. He said right now he was sitting here not knowing what to do with this because now he had been presented information tonight that he did not know how to ingest. He said he supported the conservation subdivision that was presented. He said he felt it looked good but if there were wetlands out there and constant flooding, that was not indicated in any of the Board's information. He said he recalled and had looked back in some of the old records and this was the same thing that these citizens were telling the Board one and a half years ago and two and one half years ago. He said apparently nothing had changed. He stated this property was wet and had flooded many, many times. He remarked that the Board had the responsibility to keep community standards and the health, welfare and safety of the community were one concern and the property rights were another concern. He said the Board was also charged by the Federal and State government to be preservers of the land and the wetlands in America. He said the wetlands could not be destroyed whether people wanted to destroy them or not. He said some developers had done that and he did not feel that Mr. Gupta would intentionally do that. He said he really wanted to know what was on this property. He said he was having a difficult time right now because he thought he knew. He said if all of the neighbors had said tonight that they did not want this subdivision in there because there were wetlands and they had no expertise, he would measure that to a certain degree. He said the neighbors' opinion was not worth as much as the expert's opinion who said there were wetlands on this property. He said he was not sure where the wetlands were on the property and before he could approve something like this, he wanted to know where the wetlands were. He said he wanted to know if the Board was doing its proper role as preservers of the environment here by allowing something to happen. He said he was aware that this subdivision could not be put in the wetlands if these were discovered to be wetlands.

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Commissioner Frady clarified that this subdivision could not be built in a flood plain or wetlands.

Chairman Dunn said he agreed but commented that sometimes wetlands were not easy to determine. He said he wanted to look further into this piece of property and he was not prepared to vote on this tonight and he was when he walked into the meeting. He said he really did believe that Mr. Gupta had kept faith with the county in trying to put a product out there that met all of the rules. He said he did not even know exactly what he wanted to be done out there to determine the wetlands.

Mr. Gupta remarked that he would like Dennis Chase to come up and tell us a little bit more clearly about this property. He said it was his understanding that wetland was along the creek and that was based on the type of the soil. He said he was committed to the extent of the wetland to move the lot or lose the lot if it was in the wetland. He said firstly any wetland area would be avoided. He said secondly he had tremendous respect for Dennis Chase's capability but this was not his specialization. He said he would have licensed soil scientists coming by and delineating the wetland. He said this would be picked up in the surveying and then he would present to county staff with this certification stating that this was the extent of the wetland and this was the edge of the lot. He said in other words the lot itself would not be on the wetland. He remarked that he could accept that condition from the Board if this was the question.

Chairman Dunn said he had just expressed concern that he was uncomfortable at this point because of the additional information. He said he did not know if this was a problem for any of the other Board members but it was for him.

Commissioner VanLandingham said in all fairness to Mr. Gupta, it was his understanding that there were wetlands in the conservation areas. He said there were no wetlands found any other way. He said this would be determined at the time the soil samples were done then it would show up there. He said he did not care what the Board did tonight if it revealed that this soil was not suitable, Mr. Gupta would not be issued a permit. He said this was plain and simple. He said this was the safeguard in the county's zoning ordinances and the compliance that must be met to be able to obtain a permit. He said it was his understanding that the wetlands were along the creek bank. He said if there was flooding in this area as widespread as it had been portrayed tonight, he felt this was an area of concern that should be considered. He said he did not know of a way to deal with that. He said there was no way for the Board to deal with that.

Commissioner Frady said the Board did not have a way to deal with it but the Engineering Department had a way. He said this was the same thing with septic systems. He said the Board could not approve septic systems or disapprove them but the Health Department was responsible for that. He said if a piece of property would not perk, then no one could

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build on that property. He said he did not care who owned the property, they could not build on it. He said the Health Department had to have the soil samples done and they approve or disapprove septic systems. He said no one could build anything in the wetlands.

Chairman Dunn said he did not want to say no to this tonight but he could not say yes. He said he wanted to know more about this piece of property and it was that plain and simple. He said he did not know where he stood legally on that but he wanted to find out if this was flood plain. He said the documents the Board used to determine it were from prior to the floods of 1994 and another document was from the 1980's. He said the latest map for the wetlands was 1994 prior to the flood. He said he was looking at this and he was concerned. He stated that his concern tonight was the Board might force this to a vote at this point with this motion and a second. He felt the Board was trying to come up with a good compromise for what could go on this property. He said if the Board voted on this right now and three Board members said they did not support this, then the motion would fail and the applicant would be rebuked on this and he did not want to rebuke petitioner tonight without knowing more about this piece of property. He said today he could not figure out how he would learn more about it, but he was going to try.

Commissioner Frady said he would be glad to withdraw his motion if the Board wanted to review it further.

Chairman Dunn said he would like to check this property out further. He said he did not know what kind of resolution that he could come to personally but he felt it would be unfair to Mr. Gupta for him to say no because he was not sure of the facts.

Chairman Dunn said it sounded to him like the wetland was a lot more predominant than indicated.

Commissioner Frady said he would like to do the fair thing in this and he felt everyone here was concerned about it. He said he was concerned about it. He stated that he had lived here for the last thirty years and he had tried to preserve everything in this county as best he could including not going to court. He said as Commissioners this must be taken into consideration. He said that might not be the Board's first priority but it was a priority that must be looked at. He said he would be happy to withdraw his motion so that the Board could get more information on this issue. He said he would be glad to withdraw the motion.

Commissioner VanLandingham said he would withdraw his second to the motion.

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Chairman Dunn remarked that the motion had been withdrawn and this would allow the Board more time to research the issues. He said this item would be tabled to a February meeting.

Attorney McNally interjected that the Board has had the public hearing on this matter. He said if the Board wanted to table this, it must be tabled to a date certain. He said everyone here was on notice that the Board's decision was going to be made that night.

Chairman Dunn remarked that this item would be tabled to the February 24<sup>th</sup> Commission meeting.

Mr. Gupta interjected that he would be out of the country on that date.

Chairman Dunn said Mr. Gupta's presence in the United States would not impact how the Board votes on this matter. He remarked that Mr. Gupta's representatives would be present. He said quite frankly it was not necessary for anyone to come that night.

Attorney McNally asked how the Board was going to receive the information.

Chairman Dunn replied that he had to determine if the Board could get somebody out there to analyze the property fairly quickly.

Attorney McNally said he had heard Mr. Gupta say that he was going to hire someone to delineate any wetlands.

Mr. Gupta interjected that he meant after this item was approved. He said he could pay for that evaluation before the vote and the request might be denied.

Chairman Dunn remarked that would be a risk that Mr. Gupta would have to take. He said if Mr. Gupta had an evaluation done before a decision and wetlands showed up, he could not build on the property anyway.

Commissioner Frady said he had withdrawn his motion that the Board could look further into this issue. He asked if the county's Engineering Department was going to look into this.

Attorney McNally interjected that ordinarily the Engineering Department was going to go by Federal Wetland Delineation Map. He said if the Board wanted something more than that, he felt the Board would need to hire someone with credentials in the field of determining wetland delineation. He said either the Board would have to do that or the developer would have to do that. He said ordinarily wetlands were determined by the Engineering Department during the development phase and not during the zoning phase.

He said if the Board was fearful if this entire piece of property was eaten up with wetlands, then the Board would need to do what it needed to do. He said the Board did have that concern that it would have to hire someone with the credentials to determine what was a wetland.

Commissioner Frady asked if this property was designated on any maps, charts or otherwise that it was wetland and in the flood plain.

Chairman Dunn clarified that the charts and maps said that it was not. He said there were many pieces of property that had been found in the county where the wetlands were not even close.

Mr. Gupta remarked that he would go ahead and get a wetland study done and present it to the Board as soon as he could.

Chairman Dunn said if Mr. Gupta hired someone and they could not get the study done by then the Board would put it on later.

Chairman Dunn clarified that he had also heard Mr. Gupta say that he was going to show some concern about the lot that sits right out on the road as opposed to everybody else's house.

Mr. Gupta said as far as he was concerned 75 feet was more than the right-of-way of the road itself.

Chairman Dunn said he was just confirming that there was concern and if there was something Mr. Gupta could do to mitigate that problem then he would.

Attorney McNally said he would prefer to see a decision not be put off more than 30 days unless the Board wanted to readvertise.

Chairman Dunn asked Mr. Gupta if he could get this done in 30 days and he replied yes.

Commissioner Wells clarified that the date of February 24<sup>th</sup> was more than 30 days from now.

Attorney McNally remarked that the date of February 10<sup>th</sup> would be the date for this hearing.

Chairman Dunn clarified that Mr. Gupta would hire someone to evaluate this property and get a full report to the Board before February 10<sup>th</sup>. He said the Board would make a decision at the February 10<sup>th</sup> Commission meeting.



Commissioner VanLandingham said he just wanted to thank everyone tonight and the information that they had brought to the Board on this matter. He said this just goes to show that sometimes the information that the Board has that is supplied by the Federal Government was not accurate. He said if it were not for people like this, the Board probably would not take a second look. He said he wanted to impress that the Board was faced with decisions such as this where the Board knows that it would impact lives but sometimes there was not very much that could be done about it. He said the Board did have the people's interest at heart.

Chairman Dunn said in order to be technically correct he would need to make a motion.

On motion made by Chairman Dunn, seconded by Commissioner Wells to table Petition No. 1134-04 to the February 10, 2005 Commissioners' meeting. The motion carried 5-0.

**PROCLAMATION FOR "WEAR RED DAY":**

Commissioner Wells read and the Board presented a Proclamation to Regional Director Ida Burns-Fowler representing the American Heart Association proclaiming February 4, 2005 as "Wear Red Day" in Fayette County. A copy of the Proclamation, identified as "Attachment No. 2", follows these minutes and is made an official part hereof.

**PETITION NO. 1135-04:**

Zoning Director Aaron Wheeler read Petition No. 1135-04, Charles M. and Judith R. Wood, Owners/Agents, request to rezone 1.42 acres from A-R to R-40 to develop one (1) single-family dwelling lot. He said this property was located in Land Lot 120 of the 5th District and fronted on Callaway Road. He said the Planning Commission recommended approval subject to one (1) recommended condition (5-0) and Staff recommended approval subject to one (1) recommended condition.

Charles Wood remarked that his lot was a non-conforming lot of record and zoned A-R. He said the set backs for this zoning were really great and because of this he had filed for a variance a few months ago and was turned down. He said the variance committee at the time told him that if a rezoning was approved that the granting of a variance would not be necessary. He said this was the reason he was before the Board tonight for his second hearing on this matter. He stated his property had a unique design and commented that it was pie shaped. He said this was the reason he was requesting this rezoning. He said he would like to get the full use of this property. He commented that the property that directly borderlines the back part of his property was all zoned R-40. He said he realized that his property would be the only R-40 in his area. He asked for the Board's consideration in approving his request.

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Chairman Dunn asked if anyone wished to speak in favor of this petition. 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 Pfeifer to approve Petition No. 1135-04 with one recommended condition, discussion followed.

Commissioner VanLandingham asked Mr. Wood if he had this property surveyed and if he could meet all of the setbacks.

Mr. Wood said the builder had set out some string indicating the setback condition. He said the 75 feet building line would set him back further but the house would sit on the property just fine. He said it would allow him to move toward the north property line a little further.

The motion carried 5-0. A copy of the recommended condition, Staff's Analysis and Investigation, identified as "Attachment No. 3", follows these minutes and are made an official part hereof. A copy of the Ordinance and Resolution granting Petition No. 1135-04, identified as "Attachment No. 4", follow these minutes and are made an official part hereof.

**PETITION NO. RP-028-04:**

Zoning Director Aaron Wheeler read Petition No. RP-028-04, DMD Properties, LLC, Owner, and Mark Darby, Agent, request to subdivide Lot 3 of Bylock Acres into a 1.717 acre tract and a 1.513 acre lot. He said this property was located in Land Lot 34 of the 5th District, fronted on Redwine Road, and was zoned R-40. He said the Planning Commission recommended approval subject to two (2) recommended conditions (3-2) and Staff recommended approval subject to one (1) recommended condition.

Mark Darby said he was the owner of the property. He said this property was and had been already zoned R-40 and had been since the county zoning that called for R-40 residential one to one and a half acre minimum lot sizes. He said what he was proposing did not require any change in zoning and did not require any variances or any deviation from the county Land Use Plan. He said basically he wanted to divide the lot according to the current zoning standards. He remarked that his plats met and exceeded all of the minimum requirements. He commented that two years ago the Board of Commissioners had reviewed and approved to divide two lots off the northern end of the property with the previous owner. He said that owner had retained the southern end of the property in tact which actually had four buildings on it, their home, two barns and a large well house. He said he was very familiar with the area on Redwine Road. He said in 1968 he and his parents moved to Fayette County and he grew up just two and a half miles from this property. He said he currently lived less than a mile north of the property right off of Redwine Road. He said if the Board members have seen this property or been by it, it was

probably one of the worst looking properties that the county has on Redwine Road. He said this basically was a large trash dump with a lot of ugly buildings. He said for seven months this property was for sale and it was advertised that it could be divided into two buildable lots. He said he rode by the property every day and he finally went down to the Planning and Zoning Department. He said he did some research and found out that with the Board's approval it could be divided into two buildable lots and met and exceeded all of the requirements and was already zoned R-40 and was in the Land Use Plan for that. He said he did purchase the property and staff recommended that it be approved. He said he went before the Planning Commission and they approved it as well.

Mr. Wood further remarked that he was in agreement with the two conditions basically to give the county the additional land for free for extra right-of-way. He said he had also agreed to and has had several meetings regarding the septic issue where part of the drain field encroaches a little bit on the new lot. He stated that the end of the drain field would need to be moved. He said he had already spoken to the Health Department about that and all of those issues have been worked out. He said basically with the Board's approval, his plans were to remove the three old buildings. He said he had already hauled several tons of garbage off this property. He said it was covered with furniture, mattresses and a lot of trash. He said he was also going to remove the old junky buildings that can be seen from Redwine Road. He felt this would be an improvement for the surrounding homeowners as well as for the county. He said he appreciated the Board's time and consideration in approving this request.

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

On motion made by Commissioner VanLandingham, seconded by Commissioner Wells to approve Petition No. RP-028-04 with one recommended condition, discussion followed.

Commissioner Wells asked Mr. Darby if he had spoken to the neighbors about this application. She pointed out that this was technically a subdivision.

Mr. Darby replied that he had spoken to one of his neighbors who lived two lots over. He said he had been to the other neighbor's house five or six times and left notes and messages. He said he had just heard from the other neighbor. He agreed that this was a "subdivision". He said the Health Department did not call this a subdivision so they did not try to regulate that. He remarked that there were two other lots that were divided from the property but they did not share a road. He said they have driveways on Redwine Road and this did not look like a subdivision. He said he guessed that it would be called a subdivision since two lots had been divided. He said he had met with the neighbor living

on lot #1. He said she had some questions originally and he had answered those. He said he felt she was going to be glad to see all of the junk torn down and removed.

Commissioner Wells asked if the neighbor was present, and if so for her to come before the Board to answer questions.

Commissioner Wells asked the neighbor Nickie Jantzer if she knew the neighbor living on lot #2.

Ms. Jantzer replied yes and stated she had met her once briefly.

Commissioner Wells asked if they had talked about this.

Ms. Jantzer replied the landowner on lot #2 said she was glad to have the junk removed. She said they were both concerned and would like only one house on that property. She said they also understand that Mr. Darby was perfectly within his rights to do this. She said this was a very pastoral setting and very quiet and she would be looking directly out to a new neighbor. She said Mr. Darby had assured her that he would put trees in and they would have more of a problem looking at three houses than her looking at the one house. She said she had come tonight to see how this process worked and remarked that she might be coming before the Board with a proposal of her own for lot #1. She said if she had her preference there would only be one house on the lot and Mr. Darby just fix up the existing home and get rid of the junk.

Commissioner Wells said the Board was usually pretty cautious here about changing a lot whenever there was already a built out subdivision. She said that had been the Board's history that once people have bought their homes, the subdivision has been platted and it was built out that the county not come in and divide out the lots again. She remarked that she was not sure that the fact that this was only a three lot subdivision should really determine that the rules could be changed for that. She stated historically she had voted against a builder being able to come in and do this. She said when the staff told Mr. Darby that technically this lot could be divided, she was assuming that no one told him that one of the reasons that he might be turned down was because it was already a developed subdivision. She said she had concerns with the county coming in and resubdividing built out subdivisions.

Commissioner Frady asked if the lot was platted as a three lot subdivision.

Commissioner Wells replied yes, and stated that this lot was platted as a three lot subdivision.

Chairman Dunn remarked that this property was discussed with the Board two years ago.

Commissioner Wells remarked now Mr. Darby wanted to subdivide the property and also Ms. Jantzer had stated that she also might come before the Board to subdivide her property as well. She felt this would start the domino effect in that area. She said this subdivision was called Bylock Acres and now the county would approve Mr. Darby to go back after the subdivision was completed and start knocking down buildings and dividing lots. She agreed the zoning would allow for this but she questioned if this was really what the county should start doing. She said it did not matter if it was a three lot subdivision or thirty lot subdivision. She said she understood what Mr. Darby was trying to do and it would be a benefit for this lot but she also expressed concern that this would set a precedent for subdivisions throughout the county.

Commissioner Frady said the Board had historically turned down such requests. He said the Board felt this was the definition of a subdivision. He said if the Board allowed one then it would just spread throughout the county. He said it did not matter if there were only three lots or if there were forty lots. He said there was a similar situation on S.R. 54 where there was an overlay zone. He said there could be office/institutional on S.R. 54 but the Board would not allow subdivisions. He said people had come before the Board and asked to take a house out of a subdivision and make it office/institutional. He said there were already places there that were designated office/institutional and the Board was not going to remove a house out of a subdivision and make it office/institutional. He said he would love to be able to tell this gentleman that the Board would do this but it just could not be done.

Commissioner Wells expressed concern with this setting a precedent.

Commissioner VanLandingham said he had made the motion in order to bring all of this out for discussion. He said if he had made a motion to deny this request, the Board would just have voted on it and moved on and Mr. Darby would not have understood why the Board had turned him down. He said he too had concerns with dividing lots within a subdivision. He said he could not support this request.

Commissioner Pfeifer said he agreed with the concerns that had been expressed.

Chairman Dunn felt the record of this Board indicated that this had only been done one time and a health issue was involved. He said the lot was contaminated or something of that nature. He said the Board had a record of not doing this because it believed that when people purchase a home they should reasonably understand what the area was going to be like in a few years. He said in October, 2002 the county honored Mr. Darby's request and made this a three lot subdivision where it used to be a seven plus acre lot. He said two years later Mr. Darby had proposed this change. He said he had looked at

this closely and he could not see any compelling reason to change the subdivision plat.

Chairman Dunn said there was a motion and a second to the motion to approve this request. He called for the vote.

The motion failed 0-5 with Chairman Dunn, Commissioner Wells, Commissioner Frady, Commissioner Pfeifer and Commissioner VanLandingham voting in opposition.

**ORDINANCE NO. 2005-02 - AMENDMENTS TO THE FAYETTE COUNTY ZONING ORDINANCE, ARTICLE VII. CONDITIONAL USES, EXCEPTIONS, AND MODIFICATIONS, SECTION 7-1.B. CONDITIONAL USES ALLOWED, 34. SELF-STORAGE FACILITY:**

Director of Zoning Aaron Wheeler remarked that the Planning Commission had recommended approval of these amendments 5-0.

Chairman Dunn asked if anyone wished to speak in favor of this ordinance. Hearing none, he asked if anyone wished to against these amendments.

Huie Bray, 167 Friendship Church Road, Fayetteville said he felt this should be sent back to the Planning Commission for reworking. He said he did not like the numbers that were shown.

Commissioner Frady said he wanted to clarify that Mr. Bray was unable to attend the Planning Commission meeting. He commented that Mr. Bray had twenty-five years experience in this field. He remarked that Mr. Bray had called him and they had reviewed the numbers. He said he was agreeing with some of the things that Mr. Bray was saying. He said he had asked Mr. Bray to come to this meeting to provide this information to the Board.

Commissioner VanLandingham interjected that for the sake of legality there was only two items that the Board could address on this particular matter that had been advertised and any other items would have to be discussed at a later date.

Mr. Wheeler remarked that under Section 7-1.B. 34. regarding self-storage facility which was item "e" was where staff was considering making the change. He said Mr. Bray had requested that the 700 square feet per parking space be increased to 850 square feet. He said Mr. Bray was also requesting an additional sentence be added that said aisle ways adjacent to boat and RV parking shall be a minimum of 50 feet unless angle parking. He said these were Mr. Bray's recommendations additional to the proposed changes before the Board.

Commissioner Wells asked Mr. Wheeler how staff felt about these recommendations.

Mr. Wheeler replied that staff was not opposed to them.

On motion made by Commissioner Wells, seconded by Commissioner Frady to approve the proposed amendments recommended by staff to the Fayette County Zoning Ordinance Article VII. Conditional Uses, Exceptions, and Modifications, Section 7-1.B. Conditional Uses Allowed, 34. Self-storage facility as well as additional recommended conditions made by Mr. Bray. The motion carried 5-0. A copy of Ordinance No. 2005-02, identified as "Attachment No. 5", follows these minutes and is made an official part hereof.

Chairman Dunn said he was aware that Mr. Bray had additional recommendations that he would like staff to review. He said the Board would be recommending that these go back to staff for review. He said those particular changes were not advertised for tonight and the Board could not discuss them now.

Mr. Wheeler said staff would take Mr. Bray's additional recommendations back to the Planning Commission Workshop for review.

**CONSIDERATION OF PROPOSED AMENDMENTS TO THE FAYETTE COUNTY ZONING ORDINANCE, ARTICLE V. GENERAL PROVISIONS REGARDING CARPORTS, DETACHED:**

Director of Zoning Aaron Wheeler remarked that the Planning Commission had recommended approval (4-1).

Chairman Dunn asked what the exact changes were in this item.

Mr. Wheeler replied that in this particular instance there was not a change. He said staff was actually making a complete addition to the ordinance. He said over the last few months staff had noticed more and more of these prefabricated carports. He said these carports could usually be purchased at a hardware store such as Lowe's or Home Depot. He said they set up in a short time and a car could be parked under these. He said unfortunately the county's ordinance did not allow these because they were not specifically addressed. He said staff did not feel that this was a detriment in any way but felt there needed to be some control over where they go and what they were placed on so that they were safe.

Commissioner Frady asked Attorney McNally for clarification on a statement in the staff's analysis of this item. He said it stated that currently there was nothing in the ordinance

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that addressed this issue and because of that these structures were not allowed. He asked how the county could regulate something that was not allowed.

Chairman Dunn said he had the same question.

Attorney McNally said the county would not disallow these because they were not covered and this was the reason for the amendment to this ordinance.

Commissioner VanLandingham questioned the enforcement of this ordinance by the Marshal's Office. He asked what the county would do if a Marshal asked someone to take down a structure that was put up before this ordinance would go in effect.

Attorney McNally said the county could not do that. He said the county would have to regulate new structures.

Chairman Dunn asked if structures currently in place would be considered grand fathered and he pointed out that this was not what was stated in the Planning and Zoning's records.

Commissioner VanLandingham stated if a structure was put up five years ago it would have to be removed if this ordinance goes in effect.

Commissioner Frady said he would hate to have to send a marshal out and direct someone that they had to take down the structure.

Commissioner VanLandingham remarked that this discussion was about carports but questioned pole barns. He said there was a distinct difference in these.

Commissioner Frady remarked that a detached carport was not a pole barn.

Director of Planning Chris Venice interjected that this referred to a structure that has four poles and a roof. She said this had traditionally been allowed by the ordinance in A-R zoning. She said people had chosen to put that same type of structure consisting of four poles and a roof in a residential area.

Chairman Dunn also commented that the change referred to cloth, fabric, vinyl, plastic or plastic type material attached via string, rope, or bungee cords, etc. was not allowed. He asked what was allowed.

Mr. Wheeler said people could use basically anything that was not listed there.

Chairman Dunn felt the Board agreed with what staff was trying to do but the wording here would put everybody in the county in violation.



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Mr. Wheeler remarked that in most cases these structures tended to be made out of some form of standing seam metal. He said the metal ribs would be put up and then a metal roof would be put on top. He said in some instances there were some that could be put up that were temporary in nature. He said this kind of structure breaks down and can be put back up. He said others were a metal frame and basically a blue tarp secured by bungee cords to the metal frame. He said he had actual personal experience with those being blown down in not a very strong wind. He said those could become a safety hazard.

Chairman Dunn said he did not know the feeling of the other Board members but he would rather see a regulation stating what must be done. He also questioned the use of the word etc. and what that meant.

Commissioner Wells remarked that the memo referred to a prefabricated metal carport structure. She felt there needed to be a definition of what those were.

Chairman Dunn questioned that from an enforcement standpoint how would the county know when one of these had been put up unless they were seen doing it.

Commissioner Wells said the person would have to get a permit.

Attorney McNally said if the circumstances would be one where a citation was issued because the officer was that sure that the structure had been put up since the date of the ordinance, then he felt that the person would be required to produce the evidence that it had been put up before the ordinance. He said this could be proven by a sales receipt.

Chairman Dunn remarked that staff felt that prefabs were not a detriment to Fayette County.

Commissioner Wells felt this should be sent back to the Planning Commission for further clarification.

Mr. Wheeler stated that he would take this back to the Planning Commission for more discussion.

On motion made by Commissioner Wells, seconded by Commissioner Frady to table this item to the February 24, 2005 Board of Commissioners' meeting. The motion carried 5-0.

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

**EMERGENCY SERVICES - BID AWARD TO CUMMINS SOUTH:** Approval of recommendation from Director of Purchasing Tim Jones to award bid to Cummins

South in the amount of \$25,656.38 as the lowest bidder that met the specifications for the purchase of a standby emergency generator. A copy of the memorandum, identified as "Attachment No. 6", follows these minutes and is made an official part hereof.

**COMMUNICATIONS - BID AWARD TO MOTOROLA:** Approval of recommendation from Director of Purchasing Tim Jones to award bid to Motorola in the amount of \$30,560 for a Channel Bank Upgrade for the 911 center. A copy of the memorandum, identified as "Attachment No. 7", follows these minutes and is made an official part hereof.

**ORDINANCE NO. 2005-03 - WATER SYSTEM CROSS CONNECTION CONTROL:** Approval of Water Committee request to adopt an Ordinance to amend the Code of Ordinances for Fayette County as it pertains to cross connection control (Article V of Chapter 19). A copy of Ordinance No. 2005-03, identified as "Attachment No. 8", follows these minutes and is made an official part hereof.

**MARSHAL'S OFFICE - TRANSFER OF FUNDS:** Approval of request from the Marshal's Office to transfer \$953.43 from the general budget fund to Marshal's Account #522233 for Vehicle Repair. A copy of the memorandum, identified as "Attachment No. 9", follows these minutes and is made an official part hereof.

**SHERIFF'S OFFICE - TRANSFER OF FUNDS:** Approval of request from the Sheriff's Department to transfer \$108.84 from the General Fund to Budget Category 10030330-522233 as a result of insurance compensation for a motor vehicle crash. A copy of the memorandum, identified as "Attachment No. 10", follows these minutes and is made an official part hereof.

**MCINTOSH TRAIL - BUDGETARY FUNDS:** Approval of request from Director of Business Services Mark Pullium to approve a request from McIntosh Trail to use budgetary funds for Day Support instead of Supported Employment during FY 2005. A copy of the memorandum, identified as "Attachment No. 11", follows these minutes and is made an official part hereof.

**BARTER ENTERPRISES - TAX ABATEMENT:** Approval of a tax abatement to Barter Enterprises in the amount of \$10,127.89 for the years 2002 and 2003.

**MINUTES:** Approval of minutes for Board of Commissioners meeting held on December 9, 2004.

**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 McNally requested an executive session to discuss three legal items.

Commissioner VanLandingham requested an executive session to discuss one legal item.

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

**LEGAL:** Attorney McNally discussed a legal item with the Board.

On motion made by Commissioner Wells, seconded by Commissioner VanLandingham to authorize Attorney McNally to proceed in this matter. The motion carried 5-0.

**LEGAL:** Attorney McNally reported to the Board on a legal item.

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

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

The Board took no action in this matter.

**LEGAL:** Commissioner VanLandingham advised the Board on a legal item.

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

**EXECUTIVE SESSION AFFIDAVIT:** On motion made by Commissioner Wells, seconded by Commissioner VanLandingham 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 Executive Session Affidavit, identified as "Attachment No. 12", follows these minutes and is made an official part hereof.

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There being no further business to come before the Board, Chairman Dunn adjourned the meeting at 10:20 p.m.

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Karen Morley, Chief Deputy Clerk

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Gregory M. Dunn, Chairman

The foregoing minutes were duly approved at an official meeting of the Board of Commissioners of Fayette County, Georgia, held on the 2<sup>nd</sup> day of February, 2005.

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Karen Morley, Chief Deputy Clerk