

The Board of Commissioners of Fayette County, Georgia met in Official Session on Thursday, April 12, 2007, at 7:00 p.m. in the public meeting room of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

COMMISSIONERS PRESENT: Jack Smith, Chairman  
Herb Frady, Vice Chairman  
Robert Horgan  
Eric Maxwell  
Peter Pfeifer

STAFF MEMBERS PRESENT: Chris Venice, County Administrator  
William R. McNally, County Attorney  
Carol Chandler, Executive Assistant  
Peggy Butler, Chief Deputy Clerk

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Chairman Smith called the meeting to order.

Commissioner Pfeifer offered the Invocation.

Pledge of Allegiance.

**REZONING RULES:** Director of Community Development Pete Frisina remarked that tonight's public hearing was for the Board of Commissioners to consider a request for rezoning of property and any proposed amendments related to County codes and regulations. He said Fayette County required two public hearings for these requests. He said the first public hearing on the first Thursday of every month was held by the Fayette County Planning Commission and their vote was a recommendation to the Fayette County Board of Commissioners. He said the second public hearing was held on the fourth Thursday of every month by the Board of Commissioners and their vote was the final decision of the County.

Mr. Frisina said procedures for public hearings of each agenda item are as follows: (1) presentation by the petitioner. He said once the agenda item was announced the petitioner will present the request to the Board of Commissioners. He said the petitioner along with those speaking in favor of the request would be granted a cumulative total of fifteen (15) minutes for presentation and rebuttal. (2) public comment. He said after the petitioner's presentation the Chairman of the Board of Commissioners would ask for public comment. He said speakers will have a total of three (3) minutes each to address the Board of Commissioners. He said first the Board of Commissioners will hear those in favor of the

request and then the Board would hear those opposed to the request. He said a cumulative total of fifteen (15) minutes would be granted to each side. He said this pertained to speakers in favor of the request and those opposed. He said each person who wished to speak to the Board would come to the podium and print his/her name and address on the form provided so that each speaker would be accurately identified in the minutes of the meeting. He said speakers were requested to speak only to the Board and not to the applicant or others in the audience. He said if a group wished to speak then a spokesman should represent the group. He said it was asked that each speaker not repeat the same concerns as previous speakers. He said any items such as photographs or signed petitions that the speaker wishes the Board to have should be given to the Marshal. He said after all those in opposition have spoken, the Chairman of the Board would close the floor to further public comment on the agenda item. He said the petitioner would be given the remainder of his/her fifteen (15) minutes for rebuttal and to address the Board about the issues. He said normally a Commissioner would make a motion to either approve, deny, approve with conditions or table and then the motion seconded by another Board member. He remarked that lack of a second would nullify the motion. He said the Board of Commissioners can ask questions or make comments prior to or after a motion was made and seconded. He said following discussion, the Chairman would call for the vote. He said the vote by the Fayette County Board of Commissioners was the final County decision regarding the request.

**PETITION NO. 1192-07:**

Director of Community Development Pete Frisina read Petition No. 1192-07, Dan V. Stinchcomb, Owner, and Randy M. Boyd, Agent, request to rezone 213.77 acres from R-40 and A-R to R-50 to develop a single-family residential subdivision consisting of 92 lots. He said this property was located in Land Lots 5, 28, 29, and 30 of the 7th District and fronted on Davis Road and Ebenezer Church Road. He said the Planning Commission recommended denial 3-1 and Staff recommended denial. He said because revisions to the petition were presented to the Board, this item was tabled by the Board of Commissioners on March 22, 2007 and returned to the Planning Commission for further review at their April 5<sup>th</sup> meeting. He said the Planning Commission recommended R-80 conditional 4-1 and Staff recommended denial.

Randy Boyd said he was the agent for Dan Stinchcomb who was the owner of this property on Davis Road and Ebenezer Church Road. He said petitioner was asking for the Board's consideration to rezone this property from A-R and R-40 to R-50 with conditions that they had specified. He said currently the majority of the property was zoned A-R which was approximately 208 acres. He said there was a small piece of property along the Northern section of the property on Davis Road that was originally part of the Waterlace Subdivision that was zoned R-40 and consisted of approximately 5.8 acres. He said the land use amount designated this in a rural residential area of one dwelling unit per two to three

acres. He said this request for rezoning had come before the Planning Commission on March 15<sup>th</sup> and there were 106 lots. He said the request had been denied by a 3-1 vote. He said petitioner had gone back to the drawing board to bring this petition into compliance with staff with one dwelling unit per two acres. He said this would reduce the proposed subdivision from 106 to 92 lots. He said this petition had come before the Board of Commissioners on March 22<sup>nd</sup> where it was tabled and sent back to the Planning Commission. He said last week at the Planning Commission meeting the petitioner was told that no conditions could be attached to this rezoning. He said it had been very embarrassing to him because he had been coming before this Board for the last twenty-five years and he had not made up the zoning conditions. He said he had seen the same zoning conditions in the past on certain rezonings. He said he went back and reviewed the resolutions that he had taken these conditions from. He said one of the resolutions dated back as far as twenty years. He said he had a copy of that resolution and it referred to density and a four acre lot requirement along a creek and that property was zoned R-45. He said he had another rezoning request involving Westbridge Subdivision where Commissioner Frady was a Board member approximately nine years ago. He said at that time this was referred to as step down zoning. He said this went from five acre lots on Westbridge Road down to two acre lots and then down to one acre lots. He said that zoning was conditioned upon the basic concept plan. He said it was a one acre zoning and there was a mixture of different size lots but it was based on the concept plan. He said one of the other issues that was brought up last week was that they could not do was the house size. He said there was another zoning that he was part of approximately two years ago that was a C-S zoning which required a 2,100 square foot home. He said one of the concerns of one of the residents was that he would like to see the house size increase from 2,100 square feet to 2,500 square feet. He said he had done this and this was made part of the rezoning resolution to increase the house size to 2,500 square feet. He pointed out that this was a self-imposed condition. He said the current conditions indicate that the first condition was required by staff and the rest of the conditions were put in per the models that he had seen in the past. He said this had been a part of zoning for over twenty years. He said he had gotten some of the prior minutes from the Board of Commissioners' office and the minutes from the Planning and Zoning Department as well as the staff reports for all of these rezonings. He said the rezonings that had the conditions attached were brought up most of the time by staff and not brought up by the developer. He said in the past they have been made a part of the zoning conditions.

Mr. Boyd remarked that the petitioner disagreed that this plat could not be protected by zoning conditions. He presented some resolutions from prior rezonings to the Board to be made part of the public record. A copy of the documents, identified as "Attachment No. 1", follow these minutes and are made an official part hereof. He said he had come before this Board two years ago with R-50 zoning and at that time he had made an attempt to put as many lots on this property as possible. He said the number of lots came to approximately

142. He said his request was denied and he received no support. He noted that Commissioner Frady was a member of the Board at that time. He said he had gotten no support on the request and petitioner had not come back to the Board. He said it was not his intent at this time to come before this Board and ask for an R-50 blanket zoning without these conditions. He said petitioner had put these conditions on this request to support his concept plan. He said petitioner was not trying to get as many lots as he could on this plan. He said he would assume that the Board would go by what had taken place last week. He said if that was the case, the petitioner would not want to proceed in this rezoning request if the petitioner's request was not going to be voted on with these conditions. He said they were not asking for a maximum number of lots to go in this plan. He said the petitioner felt this was a good plan and it also meets the Comprehensive Land Use Plan. He said if the conditions could not be attached to it, then the petitioner would like to request that this petition be withdrawn in order to go back to the drawing board. He said it was not the petitioner's intent to pack in as many one acre lots on this property as possible. He thanked the Board members for their consideration in this request.

Chairman Smith asked Attorney McNally to address this issue.

Attorney McNally responded that in the past conditions have been placed on zonings. He said there were times when staff placed conditions on zonings and the County had maintained over the years to both staff and Commissioners that conditions could be placed on zoning that had to do with the individual piece of property that was being rezoned. He said if the Board did not favor access to one road as opposed to another then it could condition that zoning so that a road could not be accessed. He said that was a condition that was distinct to that piece of property. He said in the past Commissioners have at times placed conditions on zoning which he had said in his opinion were not enforceable. He said that was where a zoning district required 2,100 square foot houses and an applicant tells the Board that they wanted to build 2,600 square foot houses. He said the courts have upheld over the years that the Board of Commissioners has the opportunity to write the ordinance. He said if the Board puts in an ordinance where a zoning called for two acres and 2,500 square foot homes, the Board would not have the right to then say that the applicant would be given a 2,800 square foot home requirement. He said this would give the Board the right to discriminate in the County's zoning ordinance. He said this Board could place conditions on this and some of these conditions were valid. He said in his opinion some of the conditions were not enforceable or would place the burden of enforcement upon this County.

Chairman Smith asked Attorney McNally if there was a distinction between conditions that the Board would place upon a property and conditions that the applicants themselves would place upon the property.

Attorney McNally replied that the applicant could place conditions upon himself that would be enforceable provided they were distinct to that physical layout of the piece of property. He said a condition which was at variance with what the petitioner was permitted to do in the zoning ordinance would not be a valid and upholdable condition in his opinion.

Chairman Smith clarified that condition #4 stated that there was a three acre minimum buffer adjacent to Ebenezer Church in Windridge Subdivision and in Attorney McNally's opinion if this were to be rezoned to R-50 then that condition would not be enforceable because it was contrary to what R-50 zoning stated.

Attorney McNally replied yes that was correct. He said he believed that conditions #4 and #5 were conditions which in all likelihood the County could not enforce in a court of law.

Chairman Smith said Mr. Boyd had indicated an option that the applicant wished to withdraw this petition if this Board could not act on these conditions.

Mr. Boyd remarked that it was not the applicant's intent to ask for a zoning on this property for R-50 and then have the ability to try and pack in as many lots as possible. He said the applicant still disagreed and called the Board's attention to the zoning that was in place from 1987 requiring a four acre lot along the creek. He said that had been in place for twenty years and was adhered to in the final platting and had taken place twenty years ago and was still in place. He said at the Planning Commission meeting on March 15<sup>th</sup> he had read each of these conditions and nothing had been said about them. He said then last week he was drilled about conditions for this zoning and totally embarrassed because of the comments indicating that he had made up zoning as he went. He said he would never do that and he hoped that would be evidence to this Board that those conditions were based on what the Board of Commissioners had done in the past. He said he had not tried to make up zoning and he remarked that he would never do that. He said out of respect for the council's decision the applicant would respectfully request that this application be withdrawn. He said it was not the applicant's intent to ask for R-50 blanket zoning to get as many lots as possible on the property. He said the applicant was aware that this Board would not support anything like that. He said if the Board could not vote on this application as submitted, then the applicant respectfully requested that this petition be withdrawn. He said the applicants would go back to the drawing board because they did not want to pack the maximum number of lots on the property. He said this would give the applicants the opportunity to go back to the drawing board or to sell the property and somebody else possibly doing that. He said the applicants did not want this to happen and they wanted to protect this design.

Chairman Smith pointed out that this Board could vote on this application tonight but it was Mr. Boyd's comment tonight about withdrawing that led him to ask if the petitioner wanted

to withdraw. He said Attorney McNally had said that these two conditions in his opinion were not enforceable but this did not mean that this Board could not hear the rezoning tonight and actually vote on it.

Mr. Boyd said he felt out of respect for this Board and his twenty-five years of experience in presenting these zonings that if this property were sold that somebody might come in and try to pack in 141 acre lots. He said he would not want to be a party to that. He said if that might open the door for this possibility, he would not want to burden the Board or the residents with that. He said there was always the possibility that Mr. Stinchcomb might not develop the property. He said if Mr. Stinchcomb sold the property and then somebody had the opportunity to do this for a difference of 140 lots down to 92 lots it would be well worth going to court over. He said if it was not enforceable and 140 lots were allowed on the property, he would be totally embarrassed to do that. He said if he could not attach those conditions to this rezoning request that Attorney McNally felt comfortable with, then he would respectfully request that the Board allow the petitioner to withdraw the petition. He said this would allow the petitioner to come back to the Board at a later date with a plan that could be enforced.

Chairman Smith clarified that with the petitioner now withdrawing the request, there was no need for further comment regarding this item and he would declare the public hearing closed.

#### **PUBLIC COMMENT:**

Members of the public are allowed up to five minutes each to address the Board on any issues of concern.

**Citizen:** A citizen commented on the possible closing of the Fayette Counseling Center and the effect this would have on the community. She said she understood that the State of Georgia was reducing their funding and that the Fayette Counseling Center was seen as a satellite center in this division, therefore it would be one of the first to close if the County could not fill in the funding gap. She asked that the Board do whatever it could to make sure that this vital service remained in Fayette County. She said if this service was not available to Fayette County, her brother-in-law would suffer in the following ways. She said he received counseling from Fayette Counseling Center and without that Center her brother-in-law would have no access to counseling for his mental illness which was Schizoaffective Disorder. She said when he had come to live with her and her husband, he had been living on the street and eating out of garbage cans at fast food restaurants. She said he received social security benefits which helped with his food and clothing. She said they had sought out counseling for him which led them to Fayette Counseling Center. She said he looked forward to his appointments because it gave him an outlet to express himself without criticism because of his appearance. She said the Center supplied a lot of

his medications because of his limited income of social security. She said as a Fayette County citizen she was requesting that residents of Fayette County do whatever it takes to keep such an outstanding County service in place and to look for ways to expand these services in the future. She said they would be greatly appreciative if the Board would consider the continuation of the Fayette Counseling Center and make it available to people like her brother-in-law.

**Jerry Darby:** Jerry Darby, 179 Davis Road, Fayetteville expressed concern regarding the fact that the County had no zoning requirements for a sewage lift station and the distance from a homeowner's property line. He said this meant that a developer could put a sewage lift station anywhere he wanted to. He said he was concerned because he was sure the Stinchcomb property would sooner or later be developed and he would like the Board to address this issue. He remarked that his property bordered Stonebriar West and he had just recently found out that his property line went directly through the lift station. He felt there needed to be some type of zoning requirement that a lift station would have to be a specified distance from a homeowner's property line.

Commissioner Frady said if anyone wanted to put in a sewage lift station it would have to be considered a utility and they could put these stations anywhere they wanted to.

Attorney McNally responded that this lift station was the City of Fayetteville's station and it would be the City's requirements that would control where it was placed on that property.

Mr. Darby said he thought there were restrictions about fences being too close to property lines.

Commissioner Frady said utility companies could just about put these lift stations wherever they wanted to and the County would have no control over them.

Mr. Darby expressed concern with a situation on his property that might occur if this lift station were to malfunction. He said the City and the County's line was his property line. He said because the development was located in the City and the silt and everything went onto his property, he went to the City and they told him it was not their fault because it was in the County. He said when he came to the County to complain, he was told that the lift station was in the City.

**Jane Fanslow:** Director of the Fayette Counseling Center Jane Fanslow said she wanted to thank the Board members for all of their efforts in helping the Center stay in Fayette County. She said she wanted to reiterate as a matter of public record that she as well as all of the supporters of the Fayette Counseling Center recognize the fact that the County was addressing a State problem. She said the State of Georgia needed to address mental

health funding cuts. She said it was only with gratitude that supporters of the Center had looked to this Board to help fill in the gap that the State had made. She said she wanted to make sure there were no lines blurred between County and State and that supporters of the Fayette Counseling Center recognized this Board's efforts as being above and beyond.

Chairman Smith thanked Ms. Fanslow for her comments. He said there were several Commissioners who had the opportunity to speak with State Senators about some of the issues regarding mental health and the possibility of working out a solution. He said the Board of Commissioners sympathized with her and were also trying to find a solution.

Commissioner Maxwell said he did not know where the misinformation had come from that this Board was trying to shut the Fayette Counseling Center down. He said this Board had never been on record making any statement that it was going to close this Center. He said he did not know where that information came from but it did not come from this Board.

Ms. Fanslow felt that this Board had been lumped together with all governmental entities and this was one of the reasons she was present tonight and that was to make sure that citizens knew that this situation was a result of cutbacks in State funding.

**CONSENT AGENDA:** Commissioner Maxwell requested that item no. 1 be removed for discussion. On motion made by Commissioner Frady, seconded by Commissioner Pfeifer to approve consent agenda item nos. 2, 3, 4, and 5 as presented. The motion carried 5-0.

**RECREATION DEPARTMENT:** Approval of staff's recommendation to award Proposal #P595, replacement of Ball Field Lighting for McCurry Park North Soccer Field #7, to the company with the lowest and best proposal, Middle Georgia Lighting, in the amount of \$69,700, pending submission of applicable bonds and other documents; and authorization for the Chairman to execute the subsequent contracts.

Commissioner Maxwell said he would like the Board to discuss this item during the discussion of Kenwood Park listed under new business.

**ROAD DEPARTMENT:** Approval of staff's recommendation to award Bid #604, Paving Machine, to low bidder, Roadtec, Inc., for the net price of \$268,487 including the optional grade and slope control and trade-in allowance and authorization for the Chairman to execute subsequent contracts, subject to submission of applicable bonds and other documents. A copy of the request and contract, identified as "Attachment No. 2", follow these minutes and are made an official part hereof.



**WATER COMMITTEE RECOMMENDATION:** Approval of Water Committee's recommendation to negotiate an agreement with Peachtree City Airport Authority to monitor the holding pond at the Crosstown Water Plant and authorization for the Chairman to execute the subsequent agreement. A copy of the recommendation and contract, identified as "Attachment No. 3", follow these minutes and are made an official part hereof.

**PURCHASING DEPARTMENT - TRANSFER OF FUNDS:** Approval of staff's recommendation for a budget adjustment to transfer funds in the amount of \$6,020 from the Purchasing Department's Salary Account to its Contract Labor Account. A copy of the request, identified as "Attachment No. 4", follows these minutes and is made an official part hereof.

**TAX REFUND AND ABATEMENT REQUESTS:** Approval of list of tax refund and abatement requests as recommended. A copy of the list of tax refunds and abatement requests, identified as "Attachment No. 5", follow these minutes and are made an official part hereof.

**DISCUSSION OF NEW ENVIRONMENTAL HEALTH FEES AS PRESENTED BY THE ENVIRONMENTAL HEALTH DEPARTMENT:**

Director of the Environmental Health Department Rick Fehr said he was present tonight on behalf of the Fayette County Board of Health concerning two fees that they had approved at their last meeting. He said this information had been provided to the Board concerning the fee increases. He said these fees were important to the Environmental Health Department in that there were essentially three sources of funding at the Health Department. He said one was State Grant and Aid wherein the State designates a certain amount for the State regulations that this Health Department enforces and the State health benefits that were provided to the community. He said this was in the form of a contract that the Board of Health signs with the State. He said secondly there was funding from the County and the third major source of funding were the fees. He remarked that staff had approached the Board of Health at their most recent meeting with information about the need for a fee increase. He said two of the fees were for sewage system permit applications for new construction and also permit applications for repairs. He said the current fee for new construction was \$275 and the fee for the sewage system repairs was \$100. He said one fee had not been changed since 1994 and the other fee since 1999. He said there had been a request for the Health Department to look at the average cost to perform these services. He said the Board's packet included the Health Department's average cost that was being incurred for these two services. He said based on that information, staff was asking the Board of Commissioners to approve \$325 for a new construction permit fee and \$300 for a repair permit fee. He said this was required by State

law that any fees approved by the Board of Health could not be adopted until the Board of Commissioners approved the fees.

Commissioner Frady asked Mr. Fehr if he had included a sheet explaining how much revenue this would bring in compared to the amount of revenue that was coming in currently.

Mr. Fehr replied no he had not because of the fact that there was no way for staff to predict how many permit applications for new construction or permit applications for repair systems there would be.

Commissioner Horgan asked Mr. Fehr if he had based the proposed fees on a cost analysis for all of the different steps that were currently required. He noted the last change in the fees was in 1999.

Mr. Fehr replied yes. He said the rules and regulations that the Health Department was required to enforce keep changing. He said this year there would be new and very complex food service regulations that were going to take effect during this year. He said there were many more different types of sewage systems that had come about and much more information that was required. He said the State now required State Certified Soil Professionals to provide the Health Department with reports. He said this resulted in certification and more training for staff. He said many of the programs that the Health Department was enforcing were causing a more complex situation.

Commissioner Frady asked when was the last time that the Health Department had a fee upgrade.

Mr. Fehr replied that there were some fees that were approved by the County Commissioners last year.

Commissioner Frady said the Board at that time had not voted to approve these fees and he recalled it was because they were already twice as much as adjoining counties.

Mr. Fehr remarked that the repair permit fee in the amount of \$300 would be significantly higher. He said the new construction fee was somewhat higher than other counties. He said if the Health Department did not collect sufficient fees then it would not be able to meet its responsibilities. He said at best it would mean extraordinary delays in issuing permits and other approvals to the community. He said the Health Department did have a contract with the State of Georgia that if the required work was not done, then the State would have the ability to either decrease or eliminate the State Grant and Aid. He said this would have a very serious impact on the Health Department.

Commissioner Frady asked Mr. Fehr how many permits had been issued last year.

Mr. Fehr replied approximately 500 permits.

Commissioner Horgan asked if this figure included permits for new and repaired systems and Mr. Fehr replied yes.

Commissioner Pfeifer asked how the other counties were managing with their fee rates when Fayette County was having trouble and the fees here were much higher than the other counties.

Mr. Fehr remarked that was the problem. He said as indicated in an article in the Atlanta Journal and Constitution in March there was a State committee that came out with a report that said Georgia Public Health was in crisis. He said the Health Department was part of a Health District which was comprised of twelve counties. He said there were a couple of counties that were facing either cutting staff or possibly considering more serious financial difficulties because they were not able to have the necessary funding to perform those responsibilities that they were being required to do. He said certainly the Fayette County Health Department's position was not as difficult as some of the other counties that were bordering on tremendous financial difficulties because this Department had charged higher fees than some of the other counties. He said this had enabled Fayette County Health Department to avoid some of the difficulties that some of the other counties were facing with their budgets. He said this was certainly something that the Health Department was trying to avoid and at the same time having fees in a similar range as other counties. He said if the Health Department was going to have to have a certain amount of funding to be able to perform the functions that were required, it could not always be said that just because another county was not charging enough that Fayette County should follow that pattern. He said with issues of today, there was always the issue of whether or not the Health Department would be reactive or proactive. He said with the fee increases that the Board of Health approved unanimously was something to help the Department be proactive in order to avoid budgetary problems that other counties were facing at this time.

Commissioner Frady remarked that in 2006 there were 253 permits less than were done in 2005. He said so far this year there had only been 37 permits for three months.

Mr. Fehr said what had occurred in the past with the building industry was certainly no indication of what would occur in the future. He said if there was a lot less permitting of new construction, it would mean a significant decrease in the amount of funding that the Department received and could place the Department in a very severe position in trying to maintain staff.

Commissioner Frady felt the decrease in residential permits for new construction was a future indicator and said these had been decreasing for a while.

Mr. Fehr remarked that permits were also issued for repair or replacement of systems. He said the Board of Health had approved two fees with one being for new construction and one for repairs.

Chairman Smith asked Mr. Fehr how much his Department's work load had increased because of new regulations in environmental health areas.

Mr. Fehr replied it had increased significantly. He said during the last several years the State had designated a new program involving public swimming pools which had not been a responsibility of the Department in past history for health departments. He said the Environmental Health Department had also been given an additional mandated responsibility of addressing emergency response to disasters. He said there had been the recent 2005 Smoke Free Act and the Health Departments were required to address the enforcement of those regulations. He said these were just three of the programs that have been added in the last three years and with the sewage regulations there were new systems that were always being brought to staff's attention for approval that must now be addressed. He commented on the soil reports and remarked that staff must have additional knowledge and training on soil. He said staff members had to have additional training as well as certification from the State of Georgia or they would not be able to issue permits for either new or repair construction. He remarked that the maximum length of time for most systems was approximately 30 to 35 years. He said 30 years ago Fayette County's growth was starting to peak so the systems that were approved at that time were now going to start to fail in higher and higher numbers. He said staff expected that there was going to be a more significant need for them to do replacement work for those systems. He said these systems were going to start to fail.

Chairman Smith asked if there were any other questions. Hearing none, he asked for the Board's pleasure in this matter.

Commissioner Frady said he would be able to agree to increase the fee for new construction by \$50 and the fee for repair by \$100. He felt the surrounding counties' fees should be reviewed in order to make a judgment for the cost of fees here in Fayette County.

Chairman Smith felt this was what the Fayette County Board of Health had done and that was to make a judgment and ask for the Board's consideration in approving the fees.

Commissioner Horgan felt efficiency did not really have a part into what was being discussed as far as increasing the fees as the issue of more steps that were required in the process.

Commissioner Frady said Mr. Fehr had given the Board an efficiency pricing.

Commissioner Horgan said Mr. Fehr had provided the Board with a cost analysis stating that these were the steps that were required now. He felt these steps were not exaggerated and he felt the time required by staff had significantly increased.

Commissioner Horgan said he would like to make a motion for the Board to accept the fees as presented by the Fayette County Environmental Health Department.

Chairman Smith asked if there was a second to the motion. Hearing none, he said the motion died for a lack of a second.

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

Commissioner Maxwell said he would like to make a motion.

On motion made by Commissioner Maxwell, seconded by Commissioner Frady not to change the fees at all, discussion followed.

Commissioner Maxwell remarked that it had been less than one year since Mr. Fehr had been before this Board with a fee increase request and it had been turned down at that time. He said at that time the information was that Fayette County fees were at the high end of the scale compared to the other counties. He said he saw no reason why Fayette County should be increasing the fees when it was already at the high end and other counties were lower. He said he would find himself in agreement with Commissioners Pfeifer, Dunn and Wells of the last administration on not increasing this fee.

Chairman Smith said he would like to point out two issues. He said one issue was that the fee structure in other counties was not necessarily a direct indicator of what the cost of operating a different county was. He said their cost might be more than they would be willing to charge for fees. He said it did not know if it would be fair to equate what someone else's fee structure was as compared to Fayette County's fee structure. He said he did, however, feel it was an excellent comparison to look at the cost structure that the County was under versus the price that the County was charging to do the inspection. He said based on that he felt this was where the Environmental Health Board had come back and said that the current cost structure was such that they suggested these increases in fees.

Commissioner Pfeifer said he agreed with Commissioner Maxwell's statement. He said tonight was the first time that the article in the A.J.C. had been discussed about other health departments being underfunded. He said this information really addressed his concern in this area. He said he would need more information but he would not deny that it was not there. He said he would like to see more information about why Fayette County's fees were so far out of line or why the other counties' situation was so bad. He said Fayette County provided services on a much higher level than the surrounding counties and he wanted to make sure that this was what the Board was talking about doing before he would support an increase.

Commissioner Maxwell said he would withdraw his motion and table this item until Rick Fehr could bring more information to the Board.

It was the consensus of the Board that the Director of the Environmental Health Department Rick Fehr get further information on this item and bring it back to the Board at a future date.

**CONSIDERATION OF BID AWARD FOR KENWOOD PARK, PHASE I BUILDINGS AND RECREATION FACILITIES, AS PRESENTED BY THE PARKS AND RECREATION DEPARTMENT:**

Chairman Smith remarked that consent agenda item no. 1 would also be discussed under this topic.

Director of the Parks and Recreation Department Anita Godbee remarked that she would be discussing the continued construction of Kenwood Park. She said they were in the process of completing the site work of Phase I at Kenwood Park. She said in order to continue the construction of Kenwood Park specifications to receive bids for Phase I Buildings and Facilities had been sent out. She said this would include items such as picnic shelters, restrooms, tennis courts, basketball courts, site lighting and a maintenance building. She said in the specifications that were submitted to the potential bidders it was noted that the County reserved the right to eliminate or modify quantities of a selected bid items in order to meet necessary budget limitations. She said with this in mind when the bids were received, the Recreation Commission of Fayette County got together to review the bids and the financial status at Kenwood Park. She said they in turn recommended due to financial reasons that the construction of the maintenance building in this particular phase of construction be eliminated until future funds and the need arises for the maintenance building.

Ms. Godbee said the Recreation Commission had also recommended relocation of the picnic pavilion to higher ground which was approximately 10 feet back in order to eliminate the need for a retaining wall. She said with the elimination of the maintenance building and

the relocation of the pavilion there would be a savings of \$463,839 realized. She said with these adjustments a recommendation had been made to award the contract to Headley Construction. She said in order to complete all of the phases of this construction, the Recreation Commission also recommended to reallocate additional funding from some of the other C.I.P. projects such as Gingercake, Lake Horton, Lake Kedron, Starr's Mill and Kelly Park. She said the Recreation Commission felt these projects were no longer warranted such as Gingercake Park or would be funded by the Water System such as Lake Horton. She asked for the Board's pleasure in this matter.

Commissioner Frady clarified that Ms. Godbee had stated that Headley Construction was being recommended.

Ms. Godbee replied yes that was correct. She said with the maintenance building being eliminated and the pavilion being moved back that Headley Construction was the low bidder.

Commissioner Frady said he had a problem with that recommendation. He said in the original bid Headley Construction was \$100,000 higher on the building bid than the other company. He said for the remainder of that they had bid \$165,000 to \$139,000. He felt the bid should be awarded to the lowest bidder overall and if staff needed to negotiate with them then that could be done as well. He said he did not appreciate the fact that the other company had a \$100,000 higher bid if the building stayed in. He said he was aware that they had bid this separately but he could not support the recommendation. He said he could support the bid being awarded to the original low bidder.

Commissioner Maxwell questioned what the Board had set aside for the cost of the project, how it would be paid for and where the money was located. He said he was not sure if he was even comfortable enough to proceed to vote on a bid of the project. He said he would concur 100% with Commissioner Frady on what he had just said about the low bidder. He said these were companies that the County deals with on a regular basis. He said he was familiar with at least four of the companies. He said it was his understanding that generally the practice was to take a bid as a whole or not and this was a project bid with 21 different items. He said he had some business concerns about doing business in this way.

Commissioner Horgan asked for the different changes in the pricing of the building that had been removed and Commissioner Frady replied approximately \$100,000.

Chairman Smith said he would like to deal with this as two different issues. He said one issue was the recommendation to award the bid and second was the park construction itself.

Commissioner Frady clarified that any approval of this bid would not trigger a start to work.

Ms. Godbee agreed and said this would not occur until a contract was signed.

Commissioner Horgan asked if it would be a possible recommendation that this project be rebid with each one of these construction companies knowing that the building was removed from the project. He said these companies may have added something in their bid regarding this building. He felt this might be the fairest thing to do at this point.

Chairman Smith said the Board was basically looking at a little more than a 20% change in the scope of the project. He felt that was a pretty significant change but he was not sure if rebidding was the way to go. He said the problem was that all of the companies now have all of the bid information and trying to get a competitive bid would be difficult.

Commissioner Frady remarked that there was less than \$30,000 between Headley Construction Company and Trammel-Horton.

Ms. Godbee replied there was \$34,759 between those two bidders.

Commissioner Pfeifer clarified that companies had submitted bids based on the initial request.

Ms. Godbee responded no and stated the bidders had bid on line by line item. She said they were told that due to budget constraints, certain items may be taken out.

Commissioner Horgan clarified that the bidders were aware of the fact that certain items could be removed.

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

Commissioner Frady said he did not know if it would be fair to bid this again or not. He said all of the companies were now aware of the figures.

Chairman Smith said the Board had three choices. He said number one was that the Board could take the low bidder on the overall package and negotiate with the items extracted. He said number two was that the Board could take the low bidder with the items extracted which would be a different low bidder. He said number three was that the Board could have this sent out for rebid.



On motion made by Commissioner Frady, seconded by Commissioner Pfeifer to award the bid to the original low bidder and negotiate with the Recreation Department to come up with a number, discussion followed.

Commissioner Maxwell said the only problem with going forward with a vote right now which was of concern to him was that he did not know how this was going to be funded.

Chairman Smith said if the Board voted on this motion then it would actually vote to award the contract.

Commissioner Maxwell said he could support the motion but he would want to hear the financial part as to how the County would be paying for this project.

Commissioner Frady and Commissioner Pfeifer said they would withdraw the motion.

Chairman Smith suggested the Board discuss the funding of this project.

Attorney McNally said if the Board awarded the project then the process would begin where the paperwork was being completed and so forth. He said the Chairman would sign the contract and then bonds would be obtained and so forth.

Commissioner Frady asked Attorney McNally if it was alright if the Board made a motion that did not trigger a starting date until some time in the future.

Attorney McNally responded yes, the Board could do that.

Chairman Smith said the problem was that the bids have time limits on them and he did not think they were good forever.

Chairman Smith commented on the funding. He said the scope of the project had been reduced from \$2,000,069 to \$1,605,000. He said there were funds in the Gingercake Creek Park project that were in the C.I.P. for that park.

Commissioner Maxwell asked if there was money in a bank account right now.

Chairman Smith replied yes there was money in a bank account right now. He asked Finance Director Mary Holland to provide these figures.

Ms. Holland replied that in the 2008 account there was \$157,900 and in the 2007 account there was \$27,500,

Chairman Smith asked Ms. Holland to provide the figures for the Lake Horton project.

Ms. Holland responded for 2007 there was \$52,550 and in 2008 there was \$75,350.

Ms. Holland remarked that for Lake Kedron there was \$50,000 budgeted for 2007 and \$27,950 in 2008.

Ms. Holland remarked that Starrs Mill Park funding was all in 2006.

Chairman Smith asked Ms. Holland about Kelly Park.

Ms. Holland responded that the \$479,000 figure listed was actually for the entire Kelly Park project and \$100,000 was scheduled to be funded in 2008.

Chairman Smith interjected that funding for Kelly Park was already in the C.I.P.

Ms. Holland interjected that in 2008 there was another \$500,000 scheduled for Kenwood Park.

Chairman Smith commented that the total figure listed versus the total to be funded in 2008 was approximately \$850,000 that was scheduled in 2008 and the balance of it was already there.

Ms. Holland remarked that the 2008 funds were actually undesignated but were reserved.

Commissioner Maxwell asked when the Board was initially considering the Kenwood Park plan if there was a dollar figure given for how much it would cost to get through Phase I and if so, what the figure was.

Ms. Godbee responded that figure was \$3.1 million but that was an estimated cost. She said they had no hard figures at that time but now there were hard numbers.

Commissioner Maxwell asked what the hard number was now for Phase I.

Ms. Godbee replied \$4.3 million was the hard figure now.

Commissioner Maxwell asked if this figure was the figure after cutting out some of the "bells and whistles."

Ms. Godbee replied no, that figure was with everything included.

Commissioner Maxwell asked if the figure for taking out some of the “bells and whistles” was \$500,000.

Ms. Godbee responded the figure was close to \$500,000.

Ms. Holland interjected that in 2003 the Board actually starting appropriating on an annual basis \$500,000 to put in Kenwood Park so each year that was building up. She said this past year the Board actually raised that to \$1 million to get it up to this point. She said it was her understanding that the overall project for the entire park was over \$19 million.

Ms. Godbee remarked the \$19 million was the estimated cost.

Commissioner Frady said the estimated cost was \$17.5 million.

Chairman Smith said the original figure was estimated at \$17.5 million but that figure was a little over three years old.

Commissioner Maxwell asked if funds were being taken from other parks in order to fund Kenwood Park.

Chairman Smith interjected yes, that was correct. He said funds were being deferred at the Recreation Commission’s request for other parks in an effort to complete Phase I of Kenwood Park on the original time schedule that had been presented to the residents of that area of the County.

Commissioner Maxwell asked if there were any grant dollars or anything of that nature other than tax dollars and if any effort had been made to get any kind of funds through grants.

Ms. Godbee replied no.

Commissioner Pfeifer remarked that the original land purchase was used with greenspace funds.

Commissioner Frady interjected that the land had cost \$1.4 million.

Commissioner Maxwell asked if item no. 1 that he had removed from the consent agenda for lighting of the soccer field at McCurry Park was involved in this equation or was it a separate fund.

Ms. Godbee replied that was a separate fund. She said the Recreation Commission did not want to take any funds from existing parks such as McCurry Park, Brooks Park or Kiwanis Park to put toward Kenwood Park. She said the Recreation Commission wanted to keep that separate.

Commissioner Frady asked if the Recreation Commission was agreeable with the list that Ms. Godbee had tonight and she replied yes they were agreeable.

Commissioner Horgan asked Ms. Godbee for the status of the parks where money was being taken.

Ms. Godbee replied that nothing had been done whatsoever.

Commissioner Pfeifer said this was one of the issues that he had when the Recreation Plan was being developed. He said significant funding was in the Plan for the existing parks which would need to be kept up. He said it was very difficult to expand the park program while existing parks needed ongoing maintenance. He said it was a real balancing act to try and accomplish that.

Commissioner Maxwell said he wanted state-of-the-art parks and he did not have a problem with that. He said he had a problem with such things as the Kiwanis Park fields being serviced by port-a-johns. He stated that he had a hard time dedicating this much money to Kenwood Park when there were problems with other parks.

Ms. Godbee said she had requested funds in next year's budget for restrooms at Kiwanis Park in order to address that problem.

Chairman Smith said the money that was being deferred involved items that have little immediate impact on the recreation programs themselves. He said he commended them from looking at it from that perspective. He said they were not doing anything to harm either the recreational activities that were being built at Kenwood Park nor were they doing anything to harm the existing recreation facilities and programs. He felt this was a good plan.

Commissioner Frady said he thought so too. He said he had looked at all of the lists for each park on the C.I.P. and there were quite a few items on there that were being deferred that would not be disastrous.

Commissioner Maxwell said he did not disagree that this was a good plan. He said the problem was when there was an initial starting budget of \$3.1 million and it ended up \$4.3 million. He said this was a 25% error.

Chairman Smith said he did not disagree but the situation that this Board was in was that there was a part that had to be completed.

Commissioner Maxwell said his hand was forced to vote for the completion of this park but he had not created this problem.

Chairman Smith said Commissioner Maxwell's point was well taken and that was that this Board had to be more diligent in monitoring those costs.

Commissioner Maxwell said there was a Phase II and a Phase III and if he was still on the Board he was going to be more diligent. He felt 25% error on a project was a huge error.

Ms. Godbee interjected that it had not been anticipated that the Georgia Department of Transportation had required them to upgrade the turn lane. She said that had cost, in itself, \$500,000. She said that was just one item that she knew had not been anticipated whatsoever.

Commissioner Frady said that was one item that had shocked everyone.

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

On motion made by Commissioner Frady, seconded by Commissioner Horgan to accept the Recreation Commission's recommendation for reallocation of funds in the C.I.P. and the elimination of the items from the original bid sheet for the phase I buildings and recreation facilities, discussion followed.

Chairman Smith clarified that the Board was only voting on the funding mechanism for the park and not awarding the construction contract.

The motion carried 5-0. A copy of the Recreation Commission's recommendation, identified as "Attachment No. 6", follows these minutes and is made an official part hereof.

Chairman Smith asked for the Board's pleasure on the funding issue.

On motion made by Commissioner Frady, seconded by Commissioner Horgan that the original low bidder Trammell-Horton be awarded the contract for the overall project for Kenwood Park Phase I buildings and recreation facilities and for the Recreation Commission to negotiate with this bidder for lower pricing. The motion carried 5-0. (See May 10, 2007 minutes for approval of actual contract)

**Consent Agenda Item #1:**

1. Approval of staff's recommendation to award Proposal #P595, replacement of Ball Field Lighting for McCurry Park North Soccer Field #7, to the company with the lowest and best proposal, Middle Georgia Lighting, in the amount of \$69,700, pending submission of applicable bonds and other documents; and authorization for the Chairman to execute the subsequent contracts.

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

On motion made by Commissioner Maxwell, seconded by Commissioner Frady to approve consent agenda item #1 as presented. The motion carried 5-0. A copy of the request and contract, identified as "Attachment No. 7", follow these minutes and are made an official part hereof.

**STAFF REPORTS:**

**REQUEST FOR ANNEXATION:** Director of Community Development Pete Frisina remarked on a request for annexation of approximately 21 acres located on Mann Road that the County had received from the Town of Tyrone.

Commissioner Frady asked if the Legislature had passed any legislation regarding the five day response time.

Mr. Frisina responded that he thought that legislation was currently pending and had not been passed yet. He said currently the County had five days to respond to an annexation request. He said staff had received this request this afternoon and it was a request to annex approximately 21 acres on Mann Road just outside of the Town of Tyrone. He said there was a technical aspect that he noticed as soon as he saw the request. He pointed out on the map the boundary for Tyrone. He said if this plat was correct, any annexation of this property would form an island which would not be allowable under State law. He said he would recommend that the County object to this annexation request based on the fact that the property would form an island. He said the Board would normally draft a letter signed by the Chairman that would be sent to the City stating the County's objections to the annexation request.

On motion made by Commissioner Frady, seconded by Commissioner Horgan to authorize the Chairman to send a letter to the Town of Tyrone stating the County's objection to this annexation request. The motion carried 5-0. A copy of the letter, identified as "Attachment No. 8", follows these minutes and is made an official part hereof.

**EXECUTIVE SESSION:** Commissioner Frady requested an Executive Session to discuss two legal matters.

Commissioner Maxwell requested an Executive Session to discuss one legal matter.

Chairman Smith requested an Executive Session to discuss one legal matter and one personnel matter.

**EXECUTIVE SESSION:** On motion made by Commissioner Frady, seconded by Commissioner Horgan to adjourn to Executive Session to discuss four legal matters and one personnel matter. The motion carried 5-0.

**LEGAL:** Commissioner Maxwell discussed a legal matter with the Board.

The Board took no action on this matter.

**LEGAL:** Commissioner Frady discussed a legal matter with the Board.

The Board took no action on this matter.

**LEGAL:** Commissioner Frady discussed a legal matter with the Board.

The Board took no action on this matter.

**LEGAL:** Chairman Smith discussed a legal matter with the Board.

The Board took no action on this matter.

**PERSONNEL:** Chairman Smith discussed a personnel item with the Board.

The Board took no action on this matter.

**EXECUTIVE SESSION AFFIDAVIT:** On motion made by Commissioner Frady, seconded by Commissioner Horgan to authorize the Chairman to execute the Executive Session Affidavit affirming that four legal matters and one personnel matter were discussed in executive session. The motion carried 5-0. A copy of the Affidavit, identified as "Attachment No. 9", follows these minutes and is made an official part hereof.

Chairman Smith reconvened the meeting to open session.

Chairman Smith stated that the Board had discussed four legal matters and one personnel matter and no action had been taken on these items.

On motion made by Commissioner Frady, seconded by Commissioner Horgan to adjourn the meeting at 9:55 p.m. The motion carried 5-0.

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Karen Morley, Chief Deputy Clerk

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Jack R. Smith, Chairman

The foregoing minutes were duly approved at an official meeting of the Board of Commissioners of Fayette County, Georgia, held on the 10<sup>th</sup> day of May, 2007.

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Karen Morley, Chief Deputy Clerk