Minutes

Board of Commissioners
May 26, 2011
7:00 P.M.

Notice: A complete audio recording of this meeting can be heard by accessing Fayette County's Website at www.fayettecountyga.gov. Click on "Board of Commissioners", then "County Commission Meetings", and follow the instructions. The entire meeting or a single topic can be heard.

The Board of Commissioners of Fayette County, Georgia, met in Official Session on Thursday, May 26, 2011, at 7:00 p.m. in the Public Meeting Room of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

Commissioners Present:	Herb Frady, Chairman Robert Horgan, Vice Chairman Steve Brown Lee Hearn Allen McCarty
Staff Present:	Jack Krakeel, County Administrator Scott Bennett, County Attorney Carol Chandler, Executive Assistant Floyd L. Jones, Deputy Clerk

---

Call to Order, Invocation and Pledge of Allegiance.

Chairman Frady called the May 26, 2011 Board of Commissioners meeting to Order at 7:01 p.m.

Commissioner Hearn gave the Invocation and led the Audience in the Pledge of Allegiance.

Acceptance of Agenda.

Chairman Frady asked for New Business 16 to be removed from the Agenda at the City of Fayetteville's request.

Commissioner Horgan moved to Accept the Agenda as published excluding New Business Item 16. Commissioner McCarty seconded the motion. No discussion followed. The motion passed unanimously.

PUBLIC HEARING

1. **Consideration of a Packaged Beer and Wine License for Chevron Food Mart, 1488 SR 92 South, Fayetteville, Georgia, Ram Niwas, Inc., Owner, and Jaymin Patel, Applicant. This property is located in Land Lot 256 of the 13th District, fronts on SR 92 South, and is zoned C-H. This is for a Change of Ownership.**

Director of Community Development Pete Frisina read the rules concerning Public Hearings. A copy of the rules, identified as "Attachment 1", follows these minutes and is made an official part hereof.

County Attorney Scott Bennett informed the Board that he had examined the request and that it was acceptable.

No one spoke in favor of or in opposition to this request.

Commissioner Brown moved to approve the Change of Ownership request of a Packaged Beer and Wine License for Chevron Food Mart, 1488 SR 92 South, Fayetteville, Georgia, Ram Niwas, Inc., Owner and Jaymin Patel, Applicant, that is located in Land Lot 256 of the 13th District, fronts on SR 92 South, and is zoned C-H. Commissioner Horgan seconded the motion. No discussion followed. The motion passed unanimously. A copy of the request, identified as "Attachment 2", follows these minutes and is made an official part hereof.

TEMPORARY RECESS

The Board recessed from 7:07 p.m. until 7:14 p.m. due to an electrical storm and power outage.

PUBLIC HEARING

2. Consideration of a Packaged Beer and Wine License for Flint River Store, 2664 SR 92 South, Fayetteville, Georgia, Larry and Beverly Corbin, Owners, and Beverly Corbin, Applicant. This property is located in Land Lot 117 of the 4th District, fronts on SR 92 South, and is zoned C-H. This is for a New Location.

County Attorney Scott Bennett informed the Board that he had reviewed the request it was acceptable.

Mr. Larry Corbin spoke in favor of the request. No one else spoke in favor of or in opposition to this request.

Commissioner Horgan moved to approve the New Location request for a Packaged Beer and Wine License for Flint River Store, 2664 SR 92 South, Fayetteville, Georgia, Larry and Beverly Corbin, Owners, and Beverly Corbin Applicant, that is located in Land Lot 117 of the 4th District, fronts on SR 92 South, and is zoned C-H. Commissioner Hearn seconded the motion. No discussion followed. The motion passed unanimously. A copy of the request, identified as "Attachment 3", follows these minutes and is made an official part hereof.

3. Consideration of proposed amendments to the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance, Article III. Definitions, Sec. 3-1. and Article V. General Provisions, Sec. 5-47. Standards for Telecommunications Antennas and Towers.

Director of Community Development Pete Frisina briefly recapped the need for and work involved with the proposed amendments to the Fayette County Code of Ordinances. No one else spoke in favor of or in opposition to this request.

Commissioner Horgan moved to approve the proposed amendments to the Fayette County Code of Ordinances, Chapter 20. Zoning Ordinance, Article III. Definitions, Sec. 3-1. and Article V. General Provisions, Sec. 5-47. Standards for Telecommunications Antennas and Towers. Commissioner McCarty seconded the motion. No discussion followed. The motion passed unanimously. A copy of the request and Ordinance 2011-03, identified as "Attachment 4", follow these minutes and are made an official part hereof.

PUBLIC COMMENT

Steve Smithfield: Mr. Steve Smithfield spoke about "the controversy surrounding the appointment of Addison Lester III to the Fayette County Board of Elections by his cousin, Commissioner Lee Hearn." He stated that the appointment has sparked discussion in local media and it prompted a disapproving letter from Mr. James Webb, Jr., the attorney for the Republican Party. He continued that the appointment appeared to benefit the Lester-Hearn family since the West Fayetteville Bypass, as currently aligned, is near the Lester family's 109 acres of property. He also spoke about the silence from Commissioners Frady and Horgan on this issue.

David Hall: Mr. David Hall noted that the current agenda listed items related to the West Fayetteville Bypass, and he suggested that simply listing the items on the agenda indicated that the Board was still unwilling to listen to the citizens of Fayette County. He stated that the arguments favoring the West Fayetteville Bypass had been defeated, and yet the Board continued to press the agenda for its construction. He suggested that if the Board was setting the County's priorities, while ignoring the voice of the citizens, that the Board was not working for the people.

Gordon Furr: Mr. Gordon Furr told a joke about a preacher and his horse, and he utilized the joke as a parable about the Board and its work concerning the West Fayetteville Bypass in general and West Bridge Road in particular. He further asked the Board to correct road problems at Adams Road and Lee's Mill Road. He did not favor the West Fayetteville Bypass.

Vic Remeneski: Mr. Vic Remeneski asked the Board what it thought of the State of Nevada getting a waiver of "Obamacare" and asked if it thought it had anything to do with Senator Harry Reid. He also asked the Board what it thought of Nancy Pelosi's district getting waivers getting waivers as well. He conceded that while the waivers to those portions of the county could be coincidental, not many people believe they were simply coincidental. He suggested that the waivers gave the appearance of impropriety. He then asked if the taxpayers of Fayette County think it is coincidence that one of the Commissioner's family happened to own land near the West Fayetteville Bypass, which has become known as "the road to nowhere." He asked if the taxpayers thought it was coincidence that the West Fayetteville Bypass was moved from third on the SPLOST priority list to first. He closed his remarks saying "wisdom and guidance from the taxpayers should dictate and the prudent thing to do is that this project should be halted immediately:"

HEARING

4. Athena Schwantes has requested a hearing before the Board of Commissioners concerning a request for tax exemptions (this hearing is *not* considered a "public hearing"– no public comment will be permitted for this agenda item).

Commissioner Brown asked the Board and Ms. Schwantes if he could intercede on behalf of Ms. Schwantes, that he had researched the matter, that he had prepared some statements of fact that could be read for the record, and that he could close his remarks with a motion. Chairman Frady, on behalf of the Board, did not support Commissioner Brown's request saying it would be inappropriate, that Ms. Schwantes could present her own case, and that it present a conflict of interest since the Board was in the position of hearing and voting on a case– not pleading it. Commissioner Brown withdrew his request.

Ms Athena Schwantes began her case stating she is the surviving wife of Russell Schwantes, a professional firefighter for nineteen years who died in the line of duty. She claimed that in 2006 she was made aware of a new law that would provide tax exemptions for family members whose spouse died in the line of duty, and that in 2007 she went to the Tax Commissioner, George Wingo, to apply for the exemption. She said that Mr. Wingo specifically and verbally informed her she was not eligible for the exemption and sent her away without the proper documentation. She stated that beginning in 2006 she had begun the applications for tax

exemptions at the federal, state, and local levels, and that by making those applications demonstrated she had visited with the Tax Commissioner in 2007. She claimed that she returned to the Tax Commissioner's office again in 2009, was informed again that she did not qualify for tax exemption, and that she demanded the proper documentation. She noted that Tax Commissioner Wingo has agreed that she visited him in 2009 about tax exemptions. She said this demonstrated that if the Tax Commissioner was unwilling to provide documentation in 2009 it indicated he did not provide documentation in 2007. She summarized her case saying it really came down to whether or not she went to the Tax Commissioner in 2007 and whether or not she was provided the proper documentation to file for tax exemption. She claimed her documentation provided to the Board, and witnesses could verify her claim.

County Attorney Scott Bennett replied on behalf of Fayette County. He explained that the exemption that Ms. Schwantes spoke about is covered in O.C.G.A. 48-5-48-.4 and that it says: "A person shall not receive the Homestead Exemption granted by subsection B of this code section unless the person or person's agent files an affidavit with the Tax Commissioner of the county in which that person resides, giving such information relative to receiving such exemptions that will enable the Tax Commissioner to make a determination as to whether such person is entitled to such exemption." He explained that the notion that there is no timeframe is inaccurate since the next part of the code reads: "The exemption shall be claimed and returned as provided in Code Section 48-5-50.1." He said if you go to that code section it reads: "If the Homestead Exemption is from county taxes for county school taxes, it shall be claimed and returned as provided in Code sections 48-5-45, 48-5-46, 48-5-49 and 48-5-50." He said if you go to Code section 48-5-45 the code reads: "The failure to file properly the application and schedule on or before the date for the closing of the books for the return of taxes of a calendar year in which the taxes are due, shall constitute a waiver of the Homestead Exemption on the part of the applicant failing to make application for such exemption for that year." Mr. Bennett explained that the Code requires an applicant to properly file an application in the year in which the tax exemption is being sought, and that it automatically renews just like a Homestead Exemption, but if an applicant does not file properly the tax exemption is waived for the year. He said the County knows no affidavit was filed, which is expressly required of the exemption, until the year 2011. He said the issue at hand is how does the County get around the language "shall not receive the Homestead absent an exemption." He added that the applicant claims to have known all about this legislation as early as 2006 when it was going on the ballot, and that she presumably read the legislation and knew she had to file an affidavit. He said the Board of Assessors heard all the evidence and made the recommendation to deny the refund because of the lack of an affidavit and since it was not properly filed, which was the crux of the issue. He made a second point saying the applicant did not receive the normal Homestead Exemption until 2009, because the home was apparently in her husband's name when he passed away. He said the County did not receive an application until 2009 for the normal Homestead Exemption, but no affidavit or application was received for the 100% Homestead Exemption. He said this opened questions about whether or not Ms. Schwantes would be eligible for exemption based on how here husband died. Mr. Bennett said he was asked to look into the question by Tax Commissioner Wingo and that he asked the Department of Revenue to provide direction on the issue. He reported that the Department of Revenue responded that it believed the death did qualify as being in the line of duty, and then Mr. Wingo informed Ms. Schwantes of the decision and asked her to apply for exemptions–which she did in 2011. He reiterated that the County's position is that it did not have a completed application until 2011, that the application was applied for that year, and that he did not know how the County could get around the language in the code.

Commissioner Brown made the following motion:

It is an absolute fact Ms. Schwantes' firefighter husband died in the line of duty and that Ms. Schwantes and her two children were determined eligible for the county exemption. That being said, the Fayette County Board of Commissioners has the authority to grant Ms. Schwantes the full exemption she is entitled to, so our hands are certainly not tied, and I move that the Board award the exemption dating back to 2007, recognizing her husband's ultimate sacrifice, using the powers given to the Board of Commissioners to remedy such matters.

Commissioner McCarty seconded the motion.

Commissioner Brown then added he wanted to make a few comments on the matter and read the following into the record:

Athena Schwantes facts

1. *Ms. Schwantes' husband was a firefighter.*

2. *Husband died in the line of duty as a firefighter.*

3. *Even though the Tax Commissioner and the County Attorney said told Ms. Schwantes she was ineligible for the exemption, it was later determined that she and children were, in fact, entitled to exemption.*

4. *Ms. Schwantes asked her neighbors to vote in favor of the referendum question for the exemption in question saying it would help her. The neighbors have confirmed this.*

5. *Ms. Schwantes asked for and received directions from the Firefighters' Association in Atlanta in 2007 on how to file for the exemption with the county and showed documentation to that end.*

6. *The Tax Commissioner's office has admitted they told Ms. Schwantes she did not qualify for the exemption; thus, they did not offer her the forms to complete.*

7. *Ms. Schwantes did file for the state and federal programs and was accepted based on the fact her husband did die in the line of duty.*

Conclusions

I find it incredibly difficult to believe that a widow with two dependent children who asked her neighbors to vote for the exemption in a voter referendum and who needed financial assistance and who purposefully asked the Firefighters' Association after the referendum passed in 2007 on how to apply for the exemption, that somehow, she waited until 2009 to want to file.

I think the fact she pursued the state and federal exemptions was proof she was motivated to act on the local program that would provide her immediate financial relief.

The fact she was verbally rejected by the County Tax Commissioner but kept appealing, later being proven correct, is proof positive Ms. Schwantes was extremely motivated to obtain the exemptions she and her children were entitled to by law.

Unfortunately, we had some confusion related to points within the law which have now been clarified at the highest levels. I can say with great confidence that no one in county government, including the Tax Commissioner's office wants to withhold tax exemptions from a widow and her children, especially if criteria for the exemption are met.

Commissioner Brown gave further comment about Ms. Schwantes about her request. Extensive discussion followed during which the Board was informed by the Tax Assessor's Office Chief Appraiser, Joel Benton, that Ms. Schwantes did not apply for (and therefore did not receive) a normal Homestead Exemption until the year 2008 which was awarded in 2009. Since applying and receiving a normal Homestead Exemption is required prior to receiving any other tax exemption, including the exemption sought in this case, Ms. Schwantes did not qualify for the tax exemptions given to surviving spouses of those who died in the line of duty until the year 2009.

Commissioner Brown withdrew his motion to award the exemption dating back until 2007. Commissioner McCarty withdrew his second to the motion.

Commissioner Brown moved to amend his original motion to award the exemption dating back to the year 2009 in accordance to information provided by the Tax Assessors office.. Commissioner McCarty seconded the motion.

Chairman Frady commented that this hearing was a lesson for all involved. He said Ms. Schwantes had the Board's sympathy. He stated that the Board had to be very careful with the taxpayers' money, but he could support the motion. Commissioner McCarty added that Ms. Schwantes applied for her Homestead Exemption and was awarded it in 2009, and that, as he understood the law, Ms. Schwantes had to have the Homestead Exemption before she could receive any other exemption. He said the Board appeared to be in agreement that from the point she received her Homestead Exemption the firefighter's exemption could be applied as well.

The Board voted unanimously to approve the motion to award the exemption dating back to the year 2009. A copy of the request, Ms. Schwantes' documentation, and Commissioner Brown's comments, identified as "Attachment 5", follow these minutes and are made an official part hereof.

CONSENT AGENDA

Chairman Frady asked for Consent Agenda Item 13 to be removed from Consent since Commissioner Lee Hearn was not present at the May 12, 2011 Board of Commissioners meeting and would not be able to vote for approval of those minutes.

Commissioner Brown moved for Consent Agenda Items 6, 8, 11 and 13 to be removed from the Consent Agenda. Commissioner Horgan seconded the motion. No discussion followed. The motion passed unanimously.

Commissioner Brown moved to approve Consent Agenda with the exception of Items 6, 8, 11, and 13. Commissioner Horgan seconded the motion. No discussion followed. The motion passed unanimously.

5. **Approval of staff's request to transfer $8,000 from Animal Control's Restricted Donation Account to the department's existing Capital Project C-5041 Account for the purchase of two cat cages. A copy of the request, identified as "Attachment 6", follows these minutes and is made an official part hereof.**

6. **Approval of staff's recommendation to award Clearing and Grubbing Bid #789 to the low bidder, Rhino Services, LLC., in the amount of $87,891.00.**

   Commissioner Brown noted that Consent Agenda Item 6 was connected with the West Fayetteville Bypass, and since he did not support the West Fayetteville Bypass and since he thought it was an unwarranted project, he wanted to have the Consent Agenda Item removed so he could vote against it.

   Commissioner Horgan moved to approve Consent Agenda Item 6. Commissioner Hearn seconded the motion. No discussion followed. The motion passed 3-2 with Commissioners Brown and McCarty voting in opposition. A copy of the request, identified as "Attachment 7", follows these minutes and is made an official part hereof.

7. **Approval of staff's request to increase the Library's Fiscal Year 2011 Donations Revenue Account and the Subscriptions and Books Expenditure Account by $110.00 to recognize donations to the Library. A copy of the request, identified as "Attachment 8", follows these minutes and is made an official part hereof.**

8. **Approval of staff's recommendation to award Proposal #788 to Mike Wright & Co., d/b/a Wright's Hydroseeding, establishing an annual contract for the installation of soil erosion and sediment control measures on various Public Work projects, in an amount not to exceed $154,586.**

   Commissioner Brown noted that Consent Agenda Item 8 also was connected with the West Fayetteville Bypass and he was not in favor of the West Fayetteville Bypass

   Commissioner Horgan moved to approve Consent Agenda Item 8. Commissioner Hearn seconded the motion. No discussion followed. The motion passed 3-2 with Commissioners Brown and McCarty voting in opposition. A copy of the request, identified as "Attachment 9", follows these minutes and is made an official part hereof.

9. **Approval of staff's recommendation to award Bid #787 for dust control on gravel roads to South Eastern Road Treatment for the application of calcium chloride at the rate of $0.24 per square yard for a total amount not to exceed $47,648.00. A copy of the request, identified as "Attachment 10", follows these minutes and is made an official part hereof.**

10. **Approval of staff's request to amend the Lakeridge III Street Light District to include one additional street light. A copy of the request, identified as "Attachment 11", follows these minutes and is made an official part hereof.**

11. Approval of recommendations from the Tax Assessor's Office regarding requests for tax refunds.

Commissioner Brown stated that, based on the Hearing that just occurred with Ms. Anita Schwantes, that the recommendation from the Tax Assessor's Office be "altered" to reflect the Board's decision.

County Attorney Scott Bennett replied that since a decision had already been made during the Hearing, that the Board should vote to strike only the recommendation that pertained to Ms. Schwantes, and then to accept the remainder of the recommendations.

Commissioner Brown moved to strike the Tax Assessor's recommendation pertaining to Ms. Athena Schwantes, and to approve the remainder of the Tax Assessor's recommendations as provided. Commissioner McCarty seconded the motion. No discussion followed. The motion passed unanimously. A copy of the request, identified as "Attachment 12", follows these minutes and is made an official part hereof.

12. Approval of the Sheriff's Office request to amend the Overtime Budget for the Fayette County Sheriff's Office Criminal Investigations Division by $8,861.41 for reimbursement for employees assigned to work with various Federal Agencies. A copy of the request, identified as "Attachment 13", follows these minutes and is made an official part hereof.

13. Approval of the Board of Commissioners April 28, 2011 Minutes, the Board of Commissioners May 4, 2011 Workshop Minutes, and the May 12, 2011 Board of Commissioners Minutes.

Commissioner Horgan moved to approve the Board of Commissioners April 28, 2011 Minutes and the Board of Commissioners May 4,2011 Workshop Minutes. Commissioner Hearn seconded the motion. No discussion followed. The motion passed unanimously.

Commissioner Horgan moved to approve the May 12, 2011 Board of Commissioners Minutes. Commissioner McCarty seconded the motion. No discussion followed. The motion passed 4-0-1 with Commissioner Hearn abstaining from the vote.

NEW BUSINESS

14. Consideration of staff's recommendation to renew the County's agreement for excess Workers' Compensation insurance and claims service with Midwest Employers Casualty Company, for one year, in the amount of $85,927.

Human Resources Director Connie Boehnke stated that one of the components of being self-insured for Workers' Compensation is the excess reinsurance, and she explained that each one of the County's claims is currently insured up to $350,000. She stated that the County did bid the reinsurance out, and of the three companies that were bid, only one responded and that was the current carrier– Midwest Employers Casualty Company. She said Midwest gave the County three options: to keep the retention at $350,000,

or to increase to $400,000 or $500,000, and she told the Board that staff recommended the $400,000 option. She informed the Board that the County has had only two claims in its history that reached that amount, and so staff felt very comfortable with each claim being reinsured after $400,000.

Commissioner Horgan asked why the County received virtually no response on the bid, and Mrs. Boehnke replied that the County has Public Safety personnel and many of the carriers do not want to cover Public Safety on the reinsurance since the risk is greater. She explained that in the Workers' Compensation pool for a governmental entity, the vendors are a smaller pool.

Mr. John Young, an independent agent with Atlantic General, who resides in Fayette County, addressed the Board concerning the selection of Midwest Employers Casualty Company and why so little responded to the bid, and he answered several questions for the Board.

Commissioner Brown moved to approve staff's recommendation to renew the County's agreement for excess Workers' Compensation insurance and claims service with Midwest Employers Casualty Company, for one year, in the amount of $85,927. Chairman Frady seconded the motion. The motion passed unanimously. A copy of the request, identified as "Attachment 14", follows these minutes and is made an official part hereof.

15. Consideration of a request from staff to approve Ordinance 2011-04, authorizing the Purchasing Department to purchase fuel, based on the lowest bid available, at a cost not to exceed $30,000 per bid in order to minimize the impact of price volatility, and for the Purchasing Director to provide a quarterly report to the Board concerning fuel purchases.

Interim Purchasing Director Ted Burgess informed the Board that the County solicits competitive bids for each purchase of gasoline or diesel fuel, and that vendors set the prices for those two commodities every day so that the County is unable to establish an annual contract with established prices. He stated that O.C.G.A. 2-119 gives the Director of Purchasing the authority to make purchases up to $20,000, and it stipulates that if a purchase exceeds $20,000 it can be made only after the prospective purchase has been approved by the Board of Commissioners on a competitive sealed basis. He explained that the price of fuel has become volatile in recent years, and explained that in August 2010 Fayette County paid an average of $2.21 for gasoline and $2.34 for diesel; however, a month ago, the County was paying $3.42 for gasoline and $3.52 for diesel. He explained that it higher costs calculated to a 59% increase for gasoline and a 50% increase for diesel. He told the Board that in the past twelve months, the County has purchased 294,000 gallons of gasoline and 113,000 gallons of diesel, and that during that time, a total of 51 fuel purchases were made– 23 of which, or 45% of them, were over $20,000. He said, in comparison to Fiscal Year 2009, on 26% of all purchases were over the $20,000 limit. He explained that current trends showed significantly more administrative work to obtain the same results simply because of volatile fuel prices.

County Attorney Scott Bennett then spoke about what needed to take place in order to meet the current administrative need facing the Purchasing Department. He said what really needed to be changed was the Local Legislation pertaining to purchases within Fayette County. He said he wanted to change the County's Local Act that would set limits on purchases to state: "the Board shall have authority to establish rules and regulations regarding purchases of Fayette County by the County Administrator or the Fayette County Purchasing Director provided such rules and regulations are not inconsistent with state law. The County shall not expend funds Fayette County made in violation of rules and regulations as established by the Board." He explained that the Board could change its Local Legislation, through its Home Rule power, by advertising and adopting it both of its June meetings. He said that is the process that is being

recommended and that staff was looking for authority from the Board to begin advertising the potential changes to the County's Local Legislation. Discussion followed during which Mr. Bennett answered questions from the Board.

The Board consented to authorize staff to advertise an amendment to Fayette County's Local Legislation pertaining to purchases in Fayette County in the County's legal organ, *The Fayette Daily News*. A copy of the request, identified as "Attachment 15", follows these minutes and is made an official part hereof.

16. Consideration of the City of Fayetteville's request for the Fayette County Road Department to resurface and stripe two segments of Redwine Road within Fayetteville's city limits.

This item was removed from the Agenda during the Acceptance of the Agenda. A copy of the request, identified as "Attachment 16", follows these minutes and is made an official part hereof.

17. Consideration of staff's request to allocate $250,000 of Special Purpose Local Option Sales Tax (SPLOST) 321 funds for the employment of temporary staff to assist with the construction of the West Fayetteville Bypass, Phase II (R-5) and other SPLOST projects.

Public Works Director Phil Mallon requested Board authorization of up to $250,000 utilizing Transportation SPLOST 321 funds to hire temporary / seasonal staff to assist with field work, namely road construction projects. He said the majority of the work was expected to be used for the West Fayetteville Bypass–Phase II, although it would be likely that the workers could be assigned to smaller projects. He said the intent of the request, if approved, is that the money would be used in one of three ways: 1) to possibly hire through Human Resources somebody into the Road Department, 2) use the services of a temporary placement agencies, and 3) to obtain proposals from contracts on lending an operator and a piece of equipment. He said staff would identified the cheapest method, depending on the particular need, and he asked for authorization for the money to be set aside for this purpose. Discussion followed.

Commissioner Hearn moved to approve staff's request to allocate $250,000 of Special Purpose Local Option Sales Tax (SPLOST) 321 funds for the employment of temporary staff to assist with the construction of the West Fayetteville Bypass, Phase II (R-5) and other SPLOST projects. Commissioner Horgan seconded the motion.

Commissioner Brown stated he would not vote in favor of the request since it involved the West Fayetteville Bypass, and since he thought the West Fayetteville Bypass was unwarranted and that it was even "more significantly clouded by the revelations that we have had in the past couple of weeks about land ownership."

The motion passed 3-2 with Commissioner Brown and Commissioner McCarty voting in opposition. A copy of the request, identified as "Attachment 17", follows these minutes and is made an official part hereof.

18. Consideration of staff's recommendation to award engineering and design services for the proposed Veteran's Parkway Bridge (WFB-2) over Whitewater Creek to Heath & Lineback Engineers, Inc., in an amount not to exceed $133,238.

Public Works Director Phil Mallon stated that this agenda request pertained to the West Fayetteville Bypass-- Phase II. He explained that the project requires the construction of a new bridge over Whitewater Creek, and that now is the appropriate time to make the design. He said staff solicited competitive bids from two companies, both of which have or are in the process of doing bridge design work for Fayette County. He said the quotes were very close, and all else being equal, the County went with the lower bid offered by Heath & Lineback Engineers. He asked for the Board to approve engineering and design services to Heath and Lineback in an amount not to exceed $133,238. Discussion followed.

Commissioner Horgan moved to approve staff's recommendation to award engineering and design services for the proposed Veteran's Parkway Bridge (WFB-2) over Whitewater Creek to Heath and Lineback Engineers, Inc., in an amount not to exceed $133,238. Commissioner Hearn seconded the motion.

Commissioner Brown stated he would oppose the request since it concerned the West Fayetteville Bypass, a road that the majority of the citizens of Fayette County do not want.

The motion passed 3-2 with Commissioner Brown and Commissioner McCarty voting in opposition. A copy of the request, identified as "Attachment 18", follows these minutes and is made an official part hereof.

19. Engineering staff will provide an update on the proposed design for SPLOST Project FC-15, intersection improvements at Goza Road, Inman Road, and State Route 92.

County Engineer Carlos Christian informed the Board that Wilton & Associates had been previously approved to make a study of the intersection located at Inman Road, Goza Road, and State Route 92. He said the purpose study was to provide options to align Inman Road with Goza Road, to provide a left-turn traffic movements going to Inman Elementary, and to make it a safer intersection where people coming out from Inman and Goza Roads would have less opportunities for conflict with traffic travel along State Route 92. Three options were studied: 1) placing a traffic light at the intersection, 2) creating a roundabout at the intersection, and 3) creating a two-way stop at the intersection.

Mr. Christian informed the Board that adding a traffic light at the intersection was not warranted. He said creating a roundabout had some promise, but as the study advanced the cost, required right-of-way, and scope of the project grew as well. He concluded that staff thought it was losing the overall objective of aligning the intersection with a roundabout, however, he added that the Georgia Department of Transportation had expressed an interest in placing a roundabout at the intersection at a future date. The third option, proceeding with a two-way stop at the intersection, would be an appropriate design due to safety mitigation and since it met the intent of the 2003 SPLOST referendum.

Commissioner Hearn agreed that the two roads needed to be aligned since it would make the road a safer intersection for the traveling public. He thought at the present time it would be hard for him to support a roundabout or a traffic signal since they were not warranted. He agreed that the intention of the 2003 SPLOST referendum was to move forward with a two-way stop where the motoring public on Inman Road and Goza Road both have to yield to the traffic on State Route 92, and he added that by making the

"alignment clear it would be a much cleaner and safer intersection for the traveling public". Commissioner Horgan agreed with Commissioner Hearn. Commissioner McCarty added that he liked the proposed alignment and stop signs.

The Board took no action and gave no direction on this item. A copy of the request, identified as "Attachment 19", follows these minutes and is made an official part hereof.

ADMINISTRATOR'S REPORTS

There was no Administrator's Report.

COMMISSIONERS REPORTS

Commissioner Steve Brown: Commissioner Brown spoke about the SPLOST meetings that occur monthly prior to the second Thursday night Board of Commissioners meeting. He said he wanted to attend the meeting but was unsure whether that meant the meeting needed to be publically advertised on the chance a third Commissioner decided to attend. Commissioner Brown further noted that the Board's vote is often split 3-2 on SPLOST concerns, and that a Commissioner representing both sides of the split should attend the SPLOST meeting. After considerable discussion, the Board consented to allow Commissioner Hearn and Commissioner Brown to attend the SPLOST meeting, to work to prevent a quorum of Commissioners from attending the meeting, and to not advertise the meeting as a public meeting. Chairman Frady added he did not want Commissioners to go to the meeting and try to influence the outcome since it was not their job, and he if the situation arises where a Commissioner does try to influence the meeting that the Board would handle the problem. Commissioner Brown replied that he would not run the meeting, and Chairman Frady said he would remember that promise.

Commissioner Lee Hearn: Commissioner Lee Hearn addressed Mr. Steve Smithfield's public comment, and he reminded Mr. Smithfield and those in agreement with him, that he left his position as Public Works Director in May 2007 and did not return in any capacity until January 2009 as Commissioner. He said during his time away from the County is when former Commissioners Jack Smith and Eric Maxwell relocated the West Fayetteville Bypass from its position closer to the hospital to align more closely with Huiet Road and its current alignment. He said he had no influence at all with the County because he was not an employee or an elected official at the time. He continued that his family has no interest in the property that is owned by the Lester's at Tyrone Road and State Route 54, and he pointed out that there is not a need for an additional road frontage when there is 106 acres at the corner of Tyrone Road and State Route 54, which is a four-lane divided highway.

Chairman Herb Frady: Chairman Frady replied to Mr. Smithfield's comments Attorney Jim Webb did write him, and in the letter he said Commissioner Hearn did not violate Fayette County's Ethics Ordinance. He explained that the Ethics Ordinance defines an immediate family as a "man, his wife, and his children", and it does not go outside to other relationships. He repeated that Commissioner Hearn had not violated anything. He said he had made the statement before, that the detractors were not paying attention to it, and he could not understand why people were upset when nothing had been violated.

EXECUTIVE SESSION

County Attorney Scott Bennett informed the Board that a matter of litigation needed to be discussed in Executive Session.

Litigation: Commissioner McCarty moved to recess into Executive Session in order to discuss a matter of litigation. Commissioner Hearn seconded the motion. No discussion followed. The motion passed unanimously.

The Board recessed at 8:56 p.m. and returned to Official Session at 9:03 p.m.

Executive Session Affidavit: Commissioner Brown moved to authorize the Chairman to sign an Executive Session Affidavit stating a matter of litigation was discussed during Executive Session. Commissioner McCarty seconded the motion. No discussion followed. The motion passed unanimously. A copy of the Executive Session Affidavit, identified as "Attachment 20", follows these minutes and is made an official part hereof.

ADJOURNMENT

Commissioner Brown moved to adjourn the May 26, 2011 Board of Commissioners meeting. Commissioner mcCarty seconded the motion. No discussion followed. The motion passed unanimously.

The Board of Commissioners adjourned their May 26, 2011 Meeting at 9:03 p.m.

_____ _____

Floyd L. Jones, Deputy Clerk Herbert E. Frady, Chairman

The foregoing minutes were duly approved at an official meeting of the Board of Commissioners of Fayette County, Georgia, held on the 9th day of June 2011.

_____

Floyd L. Jones, Deputy Clerk