

## **BOARD OF COUNTY COMMISSIONERS**

Charles W. Oddo, Chairman  
Randy Ognio, Vice Chair  
David Barlow  
Steve Brown  
Charles D. Rousseau



## **FAYETTE COUNTY, GEORGIA**

Steve Rapson, County Administrator  
Dennis A. Davenport, County Attorney  
Floyd L. Jones, County Clerk  
Tameca P. White, Chief Deputy County Clerk

140 Stonewall Avenue West  
Public Meeting Room  
Fayetteville, GA 30214

# **MINUTES**

February 11, 2016  
7:00 p.m.

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Welcome to the meeting of your Fayette County Board of Commissioners. Your participation in County government is appreciated. All regularly scheduled Board meetings are open to the public and are held on the 2<sup>nd</sup> and 4<sup>th</sup> Thursday of each month at 7:00 p.m.

### **Call to Order**

Chairman Oddo called the February 11, 2016 Board of Commissioners meeting to order at 7:02 p.m.

### **Invocation by Commissioner Brown**

Commissioner Brown offered the Invocation.

### **Pledge of Allegiance**

Georgia State Representative Virgil Fludd led the Board and audience in the Pledge of Allegiance.

### **Acceptance of Agenda**

Commissioner Barlow moved to accept the Agenda as printed. Commissioner Brown seconded the motion. The motion passed 5-0.

### **PROCLAMATION/RECOGNITION:**

#### **1. Recognition of EMA Director / Division Chief Pete Nelms and his distinguished 26-year career with Fayette County.**

The Board, State Representative Virgil Fludd, Chief David Scarbrough, Deputy Chief Tom Bartlett, County Administrator Steve Rapson, and numerous firefighters recognized Division Chief Nelms' service to Fayette County and the State of Georgia. Chief Nelms' family joined him in receiving the recognition. A copy of the request, identified as "Attachment 1," follows these minutes and is made an official part hereof.

**PUBLIC HEARING:**

2. **Consideration of staff's request to adopt Resolution 2016-05 pertaining to the "Fayette County 2015 Annual Report on Fire Services Impact Fees, including Comprehensive Plan Amendments for Updates to the Capital Improvements Element and Short-Term Work Program (FY2016- FY2020)" and to transmit the document to the Atlanta Regional Commission and the Department of Community Affairs.**

Community Development Director Pete Frisina stated that the Permits and Inspections Department collects the impact fees when a building permit is issued and it also makes the collection for the towns of Brooks and Woolsey. He stated that the fees are transmitted to the Finance Department who keeps account of those payments. He stated that each year forms are completed to submit to the Atlanta Regional Commission and the Department of Community Affairs. He stated that the County has collected about \$170,000 this year in impact fees. Mr. Frisina explained that about fourteen years ago, Fayette County instituted an impact fee for fire services in order to pay the government back for improvements made to the fire service based on extended capacity for new population. He said the money is collected only for fire services.

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

Commissioner Brown moved to adopt Resolution 2016-05 pertaining to the "Fayette County 2015 Annual Report on Fire Services Impact Fees, including Comprehensive Plan Amendments for Updates to the Capital Improvements Element and Short-Term Work Program (FY2016- FY2020)" and to transmit the document to the Atlanta Regional Commission and the Department of Community Affairs. Commissioners Ognio and Barlow seconded the motion. The motion passed 5-0. Copies of the request and Resolution 2016-05, identified as "Attachment 2," follow these minutes and are made an official part hereof.

**CONSENT AGENDA:**

Commissioner Rousseau moved to approve the Consent Agenda. Commissioner Ognio seconded the motion. Brief discussion followed. The motion passed 5-0.

3. **Approval of staff's request for the Board of Commissioners to establish the annual Budget Calendar for Fiscal Year 2017 which begins July 1, 2016 and ends June 30, 2017. A copy of the request, identified as "Attachment 3," follows these minutes and is made an official part hereof.**
4. **Approval of the January 28, 2016 Board of Commissioners Meeting Minutes.**

**OLD BUSINESS:**

5. **Consideration of a request from the County Clerk for authorization to file the required Certificate of Appointment indicating that the Fayette County Republican Party has appointed Aaron Wright to the Board of Elections for a four-year term commencing February 1, 2016 and expiring January 31, 2020.**

**Greg Dunn:** Mr. Dunn, former Chairman of the Board of Commissioners, stated that he talked to each Commissioner and that the Board kindly postponed voting on this matter when it first came up at the January 28, 2016 Board of Commissioners meeting. He reported that since that time there has been no success in getting the Fayette County Republican Party to comply with the rules of electing someone to the Board of Elections. He stressed that the issue had nothing to do with the people but everything to do with a process that was not followed. Mr. Dunn understood that the Board may have been advised that the certificate had to be signed, but he suggested that a precedent had already been set by the Board when it took fourteen months amongst five Republicans to determine who was to sit on the Board of Elections. He asked the Board for a little more time for the party to solve its problem. He mentioned that there was an appeal in process and he questioned what would happen if his side won the appeal.

**Tyrone Jones:** Mr. Jones, serving as the Chairman of the Fayette County Republican Party, wished party business did not have to come before the Board of Commissioners. He stated that the party was as careful as possible to ensure the nominating process was executed positively and successfully. He stated that the party's leadership and the County Committee followed procedures every step of the way to ensure it was in compliance with established principles and values as well as policies and procedures. He said the party reexamined the process to ensure its integrity after being appraised of unfounded complaints by those who disagreed with the results. He said the problem with government is that the will of the people is not adhered to resulting in deprivation of freedom. He said the Republican Party voted and it is regretful that a small band of dissenters have a difficult time accepting that elections and appointments have term limits. Mr. Jones stated that it appeared to him that this is an engagement in the old game of cronyism. He explained that the people comprise the Republican Party, and he stressed that over the past three years the party has worked very hard to repair damage that has been done in the community by crony politics. He said the party has worked much too hard to regress to the "good old boys club" that tramples on the rights of those who disagree. He closed by asking the Board to make the right decision.

Commissioner Brown moved to approve Aaron Wright to the Board of Elections for a four-year term commencing February 1, 2016 and expiring January 31, 2020. Commissioner Ognio seconded the motion.

Commissioner Barlow read two letters that were sent to him, one from Mr. Greg Dunn and the other by Ms. Grace Caldwell. He stated that both letters were written by former commissioners who deserved to have their voices heard. He asked the Chairman to have the County Attorney provide the guidelines that the Board needs as a voting commission. He thought the public needed to hear what the Board was confronted with before it takes a vote.

Commissioner Ognio stated this concerned the Republican Party's appointment; not the Board's appointment. He pointed out the Board had a letter from the Republican Chairman stating Mr. Wright was the appointee and he reminded the Commissioners that the Board is not to adjudicate the rules of the Republican Party. He stated that the appointment that Mr. Dunn spoke referred to the County's nominee to the Board and had nothing to do with the parties. He closed saying it was the Board's position to only acknowledge the appointment.

Commissioner Brown stated he was disheartened that this matter went to a second meeting and he was disappointed that the letters Commissioner Barlow read were sent to only two commissioners instead of to all the commissioners. He agreed the fourteen-month appointment Mr. Dunn referred to was the Board appointment. He stated that he had filed a complaint against Ms. Watts when she was appointed to the Board of Elections by her son since he thought it was an ethical issue. He stated that Ms. Watts wrote a letter to the Board of Commissioners stating she would not campaign for any candidates but she violated that pledge by campaigning for Newt Gingrich's presidential bid when she had a fundraiser. He explained that he raised the complaint about her actions to the Executive Committee of the Republican Party since that is the proper way to handle these matters. Commissioner Brown said he was really worried about the Board micromanaging local political parties, without authority, because someone issued a complaint. He stated that if this matter has to go to the courts then Ms. Watts can go to the courts. He said he was tired of the innuendo that the Board has authority over the local parties and he urged the Board to approve the Republican Party's nominee.

**Lana Jones:** Mrs. Jones addressed Commissioner Barlow saying that while she appreciated his desire to represent previous commissioners, those who come to the Republican Party and pay their dues and voted have the say. She stated that Ms. Caldwell and Mr. Dunn have their opportunity through the Republican Party to vote. She said during the last meeting Commissioner Barlow was vocally standing for Ms. Watts, and she thought Commissioner Barlow was inappropriately supporting Ms. Watts. She suggested that most of the commissioners were inexperienced when they first took office and that Ms. Watts was inexperienced when she was first appointed to the Board of Elections. She stressed that this was a Republican Party issue that was unanimously voted on by the Executive Board followed up by a vote of the County Committee. She concluded that it was mockery for this issue to be taken up by the Board and she pointed out that the Democrat Party was not subjected to this scrutiny. She asked the Board to approve the appointment and to follow the process that has been adhered to for years.

**Bonnie Willis:** Mrs. Willis, Interim Secretary for the Fayette County Republican Party, stated she believes in facts and concrete evidence. She acknowledged this was an emotional issue and she wanted to allay the Board's concerns. She produced the minutes of the Republican Party as well as copies of a letter. She produced the rules for the party stating electronic voting can be conducted albeit the votes cannot be secret. She stated that each voter and how they voted can be identified. She stated that the final vote was 22 in favor of Mr. Aaron Wright out of 32 members. She reported that nine voted against Mr. Wright and one person abstained from the vote. She acknowledged that someone sent a letter making claims but there is no supporting documentation supporting those claims. She said it hurt her to think the people had to come to the Board and defend themselves as a party. She concluded that if the Board allows for three people to circumvent the authority of the Republican Party's chairman then it would say a lot about the Board of Commissioners.

Chairman Oddo clarified that his intention at the last meeting was to allow the party some additional time to work out its issues, which he would do that for any party. He agreed that he preferred for this issue to not be before the Board. He said the Commissioners had heard both sides presented but that the Board was not in a position to judge on the issues. He appreciated the passion on both sides of the issues but agreed that the Board's job stops with the confirming the appointment.

The motion to authorize the County Clerk to file the required Certificate of Appointment indicating that the Fayette County Republican Party has appointed Aaron Wright to the Board of Elections for a four-year term commencing February 1, 2016 and expiring January 31, 2020 passed 5-0. Copies of the request and Certificate of Appointment, identified as "Attachment 4," follows these minutes and is made an official part hereof.

## **NEW BUSINESS:**

### **6. Consideration of staff's recommendation to approve the proposed Security Camera Policy.**

Chief Marshal Harold Myers reminded the Board that staff issued a press release last year announcing that the county would install security cameras in parks and other areas. He said the press release raised concerns about privacy and the intended use of the cameras. He stated that the proposed policy restated the position and addressed the expectation of privacy both from the citizens and employees. He stated that the policy provides for the administration of the system and clearly defines the roles and responsibilities of those who have access to the images. He pointed out that the policy has a code of conduct that all people with access to the security camera and its footage will be required to sign. Chief Myers stated that the policy had been reviewed and approved by staff and was reviewed by County Attorney Dennis Davenport's office.

Commissioner Brown asked if there was anything that was not implemented from the red-line version into the clean document that was provided to the Board. County Administrator Steve Rapson stated there were and he suggested that the Board review the comments to ensure the comments were adequately addressed. Commissioner Brown suggested that the proposed document should demonstrate the language that has been added or deleted in order to provide an easy understanding of the changes. He stated it was frustrating to hold two documents together and compare them. Mr. Rapson replied that in the future the Board will direct staff to write a policy for the Board's consideration. He anticipated that the Board would suggest red-line changes to the policy and the red-line changes would be returned back to the Board.

Commissioner Brown stated that at some point there needed to be a collaborative effort where a point person communicates with Board members so that there are not five sets of comments landing on a paper that requires a staff member to adjudicate which comments to add and which comments to disregard. He stated that the point person would be able to meld a document together by communicating with the commissioners. Chairman Oddo replied that the county basically had that process but the Board changed the process so there were kinks that had to be worked out.

Commissioner Ognio stated that since the policy was brand new, it would not be fair to provide it to the citizens in a red-line version since they need to be able to see the document as a whole. He added that, in fairness to being transparent, there needed to be a document with comments provided to the Board and for the document to be sent to the attorney for evaluation. He agreed that there needed to be a system that is better for both the citizens and commissioners to understand.

Commissioner Brown stated that he has some people who complain that meetings last too long. He said he was all about open meetings and records but he pointed out that there is no breach in ethics or law for the Chairman to communicate individually with the commissioners on policies in order to create a melded, draft document. He said the improved process would reduce the numbers of meeting to one meeting in order to approve policies. Mr. Rapson stated that the process is even more complicated since staff could provide a nice clean document to the Board at a meeting where it would receive conflicting comments from the Commissioners. He explained that, unfortunately, the comments would not come all at one time since additional comments would come after the public meeting. Commissioner Brown stated that it would require communication from the Board to reach an agreement. Mr. Rapson stated he would take responsibility working with the Chairman to make that communication, but if there is no consensus between the commissioners then the only thing staff could do is ask the conflicting commissioners to speak to each other.

Commissioner Brown moved to table the proposed policy and get a marked version of a final document so that if there is anything that needs to be sorted out then it can be sorted out and passed at the next meeting.

Commissioner Rousseau stated that his issues that he raised were based on procedural matters including chain of custody, who is making copies, and other procedural matters. Chief Myers added that only three or four changes were made. Commissioner Rousseau added that he has to defer to professional judgment on these matters and he pointed out that as issues arise and policy revisions are needed then those revisions can be made.

Commissioner Brown removed his motion to table.

Commissioners Brown and Rousseau moved to approve the proposed Security Camera Policy. Commissioner Ognio seconded the motion. The motion passed 5-0. A copy of the request, identified as "Attachment 5," follows these minutes and is made an official part hereof.

**7. Consideration of staff's request to work with Stifel-Merchant Capital Division Underwriters to pursue refunding a portion of the Series 2009 Water System Bonds for potential debt service savings.**

Chief Financial Officer Mary Parrott reported that in 2009 the Water System issued bonds for the purpose of paying off earlier bonds and a number of GEFA loans. She stated that \$16.5 million was then borrowed to build Lake McIntosh. She reported that the county has the opportunity to refund a portion of the bonds at a lower interest rate. She continued reporting that staff had been working with Stifel-Merchant Capital and that the county has a relationship with the company since it was involved in the original issue of the bonds. She stated that staff continually monitors bonds looking for opportunities like the ones being presented before the Board, and she stated that staff believes this is the time to consider the opportunity. She pointed out that three options were examined and that staff recommended a private placement in lieu of a public offering. She stated that a public offering is a very intense undertaking that costs a lot more money; approximately \$300,000.00. She stated that a private placement is about half the cost, is a much quicker undertaking, and allows for the county to lock in an interest rate. She estimated that this recommendation would save the Water System approximately \$65,000.00 annually in its debt service payment, but that it would all depend on the rate that is able to be obtained when the rate is structured.

Chairman Oddo mentioned that there were two private placement options: callable and non-callable. Mrs. Parrott agreed and stated that the non-callable would save a little bit more money upfront but it would lose the option of calling the bond later. She explained that after speaking with the bond attorney, the callable option, since it is not a lot of difference in the money, is recommended because it would give the county the opportunity to “grab these and other bonds and use opportunities to wrap them together and get a better deal.” She specified that staff’s recommendation was to approve the five-year callable private placement terms referred to as Option #3.

County Administrator Steve Rapson stated that the gross savings associated with Option #3 is \$881,969.00 and that present value dollars is about \$774,000.00. He stated that the county would save about \$63,000.00 in annual debt service, and since the recommendation is to privately place the bonds versus publicly placing them, the actual issuance cost is about \$149,000 cheaper. Mr. Rapson stated that the county would then have the option to do another refinance in the future if it wanted. Mrs. Parrott added that the average coupon for the original bond was about 4.5% interest, but the deals under consideration would take the county down to the 2% level.

Commissioner Ognio asked what the total bond was for the Water System. Mrs. Parrott replied that the total bond after this year’s payment is \$45 million. Mr. Rapson added that the only reason the county was considering refinancing \$16 million of the bond was because that was the only portion of the bond that is callable and that can be refinanced. He said if rates drop again in the coming years this could be refinanced again.

Commissioner Brown moved to approve staff working with Stifel-Merchant Capital Division Underwriters to pursue refunding a portion of the Series 2009 Water System Bonds, to go with Option #3 private placement callable for five years. Commissioner Barlow seconded the motion. The motion passed 5-0. A copy of the request, identified as “Attachment 6,” follows these minutes and is made an official part hereof.

#### **PUBLIC COMMENT:**

**Marilyn Watts:** Ms. Watts stated she had not intended to speak but Commissioner Brown said something that was absolutely false when he said her son appointed her to the Board of Elections. She stated that Mr. Brown’s comments were untrue since the Chairman of the Party does not make the appointment. She stated that she was nominated and recommended by a nominating committee and the full county committee voted for her to put her in the position. She acknowledged that her son was Chairman at the time of her appointment but that he did not appoint her to the position. She stated that she did not give a fund raiser for Newt Gingrich at the Peachtree City Airport since it was chaired by Peggy Perkins and Reverend George Dillard. She said she had not even been sworn into the Board of Elections when the fundraiser took place and she did not chair it. Ms. Watts asked Commissioner Brown to refrain from telling those things that he has repeated over and over. She stated that it had been mentioned earlier in the evening that she was sued by the Fayette County Republican Party, not for cause, but because the party wanted to put its own new person on the Board. She stated that the suit, which was by the Fayette County Republican Party, its former Chairman Scott Fabricius, and Attorney Richard Hobbs, cost the taxpayers about \$58,000.00. She stated the suit was frivolous and that it drug her name through the mud for three years. She stated that Commissioner Brown was one of the witnesses for the Plaintiffs. Commissioner Brown replied that he was called by Ms. Watts’ attorney to give a deposition; however, Ms. Watts disagreed with Mr. Brown’s reply. She added that Commissioner Brown was the Plaintiff’s witness and she stated that there were many things being said that were untrue. She said she would appreciate it if the people who brought the lawsuit would reimburse the county for \$58,000.00 and she stated that many citizens have asked her why the citizens had to pay for the lawsuit over an internal matter. She closed by asking the Board to consider recovering the money for the lawsuit.

**Alice Jones:** Mrs. Jones thanked Public Works Director Phil Mallon for working with the people on Lawson Lane and for putting in pipes to better manage the stormwater. She stated that the last storm caused trees to fall and the trees blocked the drains. She stated that the drain system is not open wide enough to take some of the debris causing a lot of build-up. She asked if the public works staff to come back to her street to address the matter before repeating that staff had done a wonderful job. Mrs. Jones stated that the water in her area has an odor to it and she asked if it could be addressed. Mrs. Jones stated that as she

drives throughout the county and its various municipalities, she sees that there are incarcerated people picking up trash along the roads. She stated that on State Route 279 people often throw trash on the road and she asked for "No Littering" signs to be put along the street.

**Richard Mix:** Mr. Mix stated that he is from Newnan, Georgia and a Republican candidate for the 3<sup>rd</sup> Congressional District. He stated he is not a politician but rather is a businessman and concerned citizen who is the father of two teenage daughters. He stated that he has worked in the film industry where he executive produced two feature films and has produced dozens of commercials and video product. He said the biggest thing he brings to the party is that he has traveled the world and has seen the impact that the political, economic, and social changes have made and the role the United States plays on the world stage. He thought it was valuable that someone in the position has a world-view. He added that it was important that Georgia's values would be taken to Washington D.C. while at the same time bringing power back to the states. Mr. Mix suggested that the people in Fayetteville know how to run Fayetteville better than people in Washington D.C. do. He stated he would be glad to meet with anyone and he invited everyone to visit his campaign office in downtown Newnan.

**Frank Gardner:** Mr. Gardner stated that at the last Board meeting there was a lengthy meeting about things that the Board took care of at this meeting. He asked all five Commissioners to talk to each other before coming to the meeting. He pointed out that emails were sent to two of the commissioners and not all five, and he asked for each Commissioner to look at each other and agree to forward information to everyone so that everyone can be on the same page. He reminded the Commissioners that over a year ago there was a debate about items being put on the Agenda fifteen minutes before the meeting, but now, things come up during the meeting, and he repeated his request that the Commissioners to communicate with each other before the meeting and to work out the details.

#### **ADMINISTRATOR'S REPORTS:**

**Peachtree City Policy received CALEA Accreditation:** County Administrator Steve Rapson acknowledged that Peachtree City's Police Department has been notified that they received the Commission on Accreditation for Law Enforcement Agencies (CALEA) accreditation for the eighth year in a row. He stated that the police department has invited the Board to go to the presentation on February 18, 2016 at 7:00 p.m.

**Appointment of two staff positions to the Transportation Committee:** County Administrator Steve Rapson stated that the Board needed to appoint two staff positions on the Transportation Committee. Chairman Oddo asked Mr. Rapson for recommendations and Mr. Rapson recommended Public Works Director Phil Mallon and Director of Engineering and Building Carlos Christian to the positions.

Commissioner Rousseau moved to appoint Mr. Mallon and Mr. Christian to the Transportation Committee. Commissioner Ognio seconded the motion. The motion passed 5-0.

**Appointment of two Commissioners to the Transportation Committee:** County Administrator Steve Rapson stated that two elected officials needed to be appointed to the Transportation Committee. Commissioner Barlow suggested that the appointments should be the Chairman and Vice Chairman. Commissioner Rousseau agreed since the Transportation Committee was formed at Commissioner Ognio's recommendation and since Chairman Oddo is the Board's representative at the Atlanta Regional Commission.

Commissioner Barlow made a motion that the Board's representatives to the Transportation Committee be Chairman Charles Oddo and Vice Chairman Randy Ognio. Commissioner Rousseau seconded the motion. The motion passed 5-0.

#### **ATTORNEY'S REPORTS:**

**Consideration of Pursuing Attorney's Fees:** County Attorney Dennis Davenport reminded the Board that at the last meeting he brought a report to the Board as a follow-up to some litigation regarding the Fayette County Republican Party and Ms. Marilyn Watts. He reminded the Board that he had mentioned that the attorney's fees for that litigation were approximately \$58,000.00

but that the actual number was \$57,712.74. He further reminded the Board that at the conclusion of the litigation there is a forty-five day window where the prevailing party can seek attorney's fees. He pointed out that just because the prevailing party seeks the attorney's fees, it does not mean they will actually get them, but he added that if the attorney's fees are not sought they definitely would not be awarded. Mr. Davenport added that if the prevailing party chooses to seek attorney's fees, it would also have to decide who to go after to get the attorney's fees. He reminded the Board that the deadline to file any motion for attorney's fees is Monday, February 15, 2016, and he asked for direction on how to proceed.

Commissioner Rousseau asked what the traditional route of the options is what was the precedent for seeking attorney's fees. Mr. Davenport stated that if the Board is looking at which of the three Plaintiffs, or a combination of the Plaintiffs, or all the Plaintiffs, and if the Board is using a litmus test to find a reason to exclude any of the three Plaintiffs, and since the attorney does not have to be brought in unless the Board wants to, then it could [make a decision.] He stated he did not have exposure to the litigation to know what happened other than the fact that the end result was in favor of Ms. Watts. Mr. Davenport stated that since the Board financed Ms. Watts' defense then it could seek attorney's fees. Commissioner Rousseau asked if the suit was brought by the party or by the individuals. Mr. Davenport replied that the suit was styled as coming both from the Republican Party and from Mr. Scott Fabricius both as its Chairman and individually. Commissioner Rousseau asked if Mr. Fabricius was acting in his capacity as Chairman for the lawsuit and Mr. Davenport replied that he was. Commissioner Rousseau replied that was the answer for him. Mr. Davenport replied that Mr. Richard Hobbs was the attorney representing the Plaintiffs. Mr. Davenport clarified that the Fayette County Republican Party, Mr. Scott Fabricius as both individually and as Chairman of the Republican Party, and Mr. Hobbs comprised the universe of potential people attorney's fees could be sought from, and he clarified that the fees could be sought from any combination of the people or all of them.

Commissioner Ognio stated that he understood that the fees could only be awarded if it was first determined that the lawsuit was frivolous. Mr. Davenport agreed and he stated a judge would have to determine if the lawsuit was frivolous. Commissioner Ognio asked how the process would work and if it would cost more money to get the determination from the judge. Mr. Davenport replied that it would require a legal motion and a brief involving several hours of legal work. He stated that the other side would make a response and once it has been provided to the judge then the judge can request some kind of oral argument before making a decision. Mr. Davenport stated it would be up to the judge to make the determination if it merits awarding attorney's fees and how much is awarded.

Commissioner Brown suggested it was not a frivolous lawsuit since the judge would not have moved the case forward to trial if it had been a frivolous lawsuit. He stated there were appeals made by Ms. Watts' attorney to have the trial ceased at the earliest possible moment. Mr. Davenport stated that Commissioner Brown's comments were the argument the other party's attorneys would make since that is the nature of the lawsuit. Commissioner Brown reiterated that any movement to quash the lawsuit was denied, but Mr. Davenport replied that Commissioner Brown was asking a question that he did not have an answer to. Mr. Davenport reiterated that the prevailing party can seek attorney's fees.

Commissioner Ognio stated that this effort would ask Ms. Watts and her attorney to go after the fees and to return the money to the citizens of Fayette County. Mr. Davenport agreed saying it would be Marilyn Watts filing the motion and making the argument and any dollars received on behalf of that would be forwarded to the county.

Commissioner Brown stated this was a dangerous argument and that it was referred to as a "slap suit." He stated that a slap suit is a strategic lawsuit against public participation, and he said when the government starts suing people for criticism or claims of unethical behavior then it permanently silences the public out of fear of retribution from a government that has "one whale of a budget." He said if the Board wants to scare the public into filing any complaints or claims this is the best way to do it. He stated it was a horrible precedent since it is oppressive and would send a message to the citizens of Fayette County that if someone complains against the government the government will get you back. Mr. Davenport replied that what was being considered was not a lawsuit, but Commissioner Brown disagreed with that statement.

Commissioner Rousseau stated that he could understand how someone could see this issue in the way that Commissioner Brown stated, but he disagreed with Commissioner Brown's understanding by stating this was a procedural matter. He explained that the County defended Ms. Watts in her capacity as the representative of the party doing a job on the county's behalf as a

member of the Board of Elections. Mr. Davenport replied that Commissioner Rousseau's understanding was a point of issue about three years ago because it was not an issue where there was an insurance company who would come in and defend. He said the county looked at the matter and made a determination that the allegations and petition were made against Ms. Watts arguable in her capacity of a member of the Board of Elections. He said the Board chose, based on the analysis, to provide the defense of Ms. Watts because, even though the insurance company could not provide the defense, the county chose to do so. He said the reason was because the county wanted everyone to understand that so long as someone was operating in their official capacity the county would stand behind them. Commissioner Rousseau stated that the Board voted to defend Ms. Watts and he was confused why the county would not do the same in this matter. He said he did not take this matter as the county coming back on someone but that that this issue is a part of the ongoing process. Mr. Davenport replied that Commissioner Rousseau had a pretty good handle on the situation. Commissioner Rousseau reiterated that the Board was given options on whether or not to defend Ms. Watts, it voted to defend her at a public meeting for acting in her official capacity as a member of the Board of Elections, the matter went to the court and she was vindicated, and now the Board needs to vote again to possibly recover the money it spent. Mr. Davenport stated that there was a caveat to the representation, namely, if she was found to have operated beyond the scope of her authority and if the court had ruled against her, she would have to reimburse the county for money spent in her defense.

Chairman Oddo stated that the Board has a duty to the taxpayers to guard their money, and in this case, the Board included in its original vote to defend Ms. Watts a clause to recoup the funds spent for the defense. He stated that this was a two-way street and that everyone went into the lawsuit with their eyes open. He stated that it was a fiduciary responsibility to the citizens to recoup the money that was used in the case. He understood it was a difficult situation but he did not see any way around the matter. Commissioner Brown replied that there was no vote to "go the other way" but there was only a vote that if she was found guilty then she would recoup the funds. He stated that the discussion was about a two-way street even though the original vote only included a one-way street where Ms. Watts would repay the county if she was found guilty. Commissioner Brown stated he was probably the strongest 1<sup>st</sup> Amendment advocate in Fayette County since he had gone to court against Peachtree City's attorney, utilizing his own funds, and won on 1<sup>st</sup> Amendment grounds. He stated that the chilling impact of having government come down on people and set an example that if you speak out and cite that there might be an ethical violation or something is improper or illegal, then the example is that the people are doing it at great peril to themselves. He stated that the Board needs to be careful when it creates a chilling effect on public speech.

Commissioner Rousseau said he understood those dynamics but insisted there is a process in place. Chairman Oddo stated that it would encourage people to sue if they knew the government would not or could not recoup the costs. He stated that there are attorneys who will go after governments if they have nothing to lose. He thought this case was one where the county should try to recoup the funds.

Commissioner Brown stated there was a reason the federal government created the whistle-blower law, namely, to protect people who would feel threatened for losing their federal job or being sued by the federal government, and he said the law was to protect free speech. He said government needs to go the extra mile in the protection of liberties in the defense of public speech. He said the government needs to extend every opportunity for the public to protest and complain and cite their grievances, and when the government turns that back into the other direction it is telling the public that it is in jeopardy of losing its income, home, and personal property because of the complaint. He said if people appreciate liberty and the rights guaranteed under the Bill of Rights, then the government needs to go the extra mile since the government is the 900-pound gorilla that will sit on anyone who objects to it.

Commissioner Rousseau stated that he respectfully disagreed with Commissioner Brown since the matter was not about an individual but about the Fayette County Republican Party. He said it was not an individual who started the lawsuit but rather an organization that initiated the lawsuit with individuals bearing claim to what they thought they saw. Mr. Davenport replied that the suit's style was a bit confusing since it said the Fayette County Republican Party and Scott Fabricius as its Chairman and individually. Commissioner Rousseau stated that the lawsuit came in three capacities: Chairman Fabricius, as the party itself, and individually. He granted Commissioner Brown's point at an individual level but he stated Mr. Fabricius sued as Chairman of

an organization that cost Fayette County money and that needed to be addressed. He did not see it as going after the individual where the impression of a 900-pound gorilla is attacking an individual. He reiterated that the Plaintiffs presented themselves as an entity.

Commissioner Brown stated that if a political entity brought the suit then it is political speech and he cautioned against going against any political entity that espouses a political point of view since that is just as dangerous as attacking the individual. Commissioner Rousseau stated he agreed with Commissioner Brown that the government needs to be careful not to crush individual or political speech, but he added that he saw this matter in another light. He quipped that it appeared there were some interesting things going on with the Fayette County Republican Party.

Commissioner Brown moved to consider not going forward in the name of protecting the citizen's ability and confidence in the government that they can cite grievances without the fear of retribution. The motion died for lack of a second.

Commissioner Rousseau moved that the County Attorney be instructed to seek compensation for the lawsuit that was filed to recover the funds in the amount of \$57,712.74 and for the funds to be returned to the taxpayers of Fayette County. Commissioner Barlow seconded the motion.

Mr. Davenport asked if the motion was to seek the attorney's fees solely from the Republican Party. Commissioner Rousseau asked Mr. Davenport for his guidance on whom to seek the fees from without sending a message that the Board is attacking any one person. He said the Board spent money defending someone who was acting in their capacity of an authorized Board and he asked what was the fiduciary responsibility to the taxpayers to recover the money. He said he did not want to send the chilling message but that the chips have to fall where they fall sometimes.

Chairman Oddo suggested that the attorney's fees should be sought from all the Plaintiffs since all the Plaintiffs were named and since they acted as a group.

Commissioner Rousseau amended his motion that the County Attorney be instructed to seek compensation from all Plaintiffs for the lawsuit that was filed to recover the funds in the amount of \$57,712.74 and for the funds to be returned to the taxpayers of Fayette County. Commissioner Barlow seconded the amended motion.

Commissioner Ognio stated that he kind of agreed with Commissioner Brown but the problem is that if it is determined that the lawsuit was frivolous then it is outside the box since it invites frivolous lawsuits from everyone if the county does not go after the funds. He said if the judge determines the lawsuit was not frivolous then it is what it is. Commissioner Ognio stated that it was a hard decision in the first place when the Board first became involved and this too was a hard decision. He agreed that people need to be very aware of what they accuse others of and they need to make sure they have all the facts. He said he would not try the case but in this matter the Board would have to go after recovery of the fees since it was the citizens' money.

Commissioner Brown stated that there was a motion made to dismiss the suit but that the motion was denied and the case was sent to trial. He said that told him that the case was not frivolous. Commissioner Ognio stated that if that was the case then the judge has to make that determination. Commissioner Rousseau agreed with Commissioner Ognio and he stated the Board was putting the case forward to a judge for a determination.

Commissioner Barlow stated that this was what some would call a conundrum because the county deserves to be reimbursed if in fact that is what the judge determines is the case. He said unless the county goes forward the judge is not going to get the opportunity. He said he did not know how he could explain to a citizen that the county did not care about the funds. He felt the county needed to go after recovering the attorney's fees.

Mr. Davenport said he wanted to make sure the motion accomplishes what is desired. He understood the motion was to seek attorney's fees from all Plaintiffs and he asked if the motion was specifically excluding the Plaintiffs' attorney. Mr. Davenport clarified that the attorney is not a Plaintiff but he represents the Plaintiffs.

Commissioner Rousseau asked what is the traditional way to pursue the attorney's fees. Mr. Davenport replied that every case that is tried is different meaning how to pursue attorney's fees have different possibilities.

Commissioner Rousseau amended his motion that the County Attorney be instructed to seek compensation from all Plaintiffs, including the attorney, for the lawsuit that was filed to recover the funds in the amount of \$57,712.74 and for the funds to be returned to the taxpayers of Fayette County. Commissioner Barlow seconded the amended motion. The motion passed 4-1 with Commissioner Brown voting in opposition.

**Notice of Executive Session:** County Attorney Dennis Davenport notified the Board of one personnel matter and review of the January 28, 2016 Executive Session Minutes for consideration in Executive Session.

## **COMMISSIONERS' REPORTS:**

### **Commissioner Ognio**

**Early Voting for the Presidential Primary:** Commissioner Ognio stated that elections are going forward and early voting has begun for the presidential primary. He stated that the people need to think before they vote early since there is a chance the candidate they vote for may not be a candidate in the coming days.

**Georgia House Bill 129- Fluoride:** Commissioner Ognio stated that the Georgia General Assembly is in session and he encouraged everyone to keep up with the various bills being considered. He stated that Fayette County's fluoride bill, House Bill 129, is still in committee and cannot get out of committee. He asked the people to call their representatives and ask them to get the bill out of committee. He said if it does not get out of committee during this session then the bill will die since it is in the second year of a two-year cycle. He encouraged everyone to get involved and make a difference in state government.

### **Commissioner Rousseau**

**Ms. Anderson's Birthday:** Commissioner Rousseau celebrated Ms. Anderson who recently celebrated her 95<sup>th</sup> birthday. He said Ms. Anderson has been in Fayette County for a lifetime and he asked everyone to join him in recognizing her birthday.

**Passing Away of Mr. Ed Lee:** Commissioner Rousseau added that the Fayette community had lost an individual recently referring to Mr. Ed Lee who was married to Joycelyne Lee. He stated that Mr. Lee passed away recently but that he had had the pleasure of meeting them. He sent his well wishes and prayers to the Lee family.

**Thanks to Citizens for Coming to the Meeting:** Commissioner Rousseau thanked the residents for sharing their concerns and candor. He pointed out that people will stop him and share issues that are important to them.

**Attorney's Fees:** Commissioner Rousseau reiterated that the Board had a fiduciary responsibility to at least try to recover attorney's fees. He said every penny counts in these times and this is a principled issue for him, not a personal issue. He said his demeanor is about the business of the county. He thanked his colleagues and he appreciated their warm welcome.

### **Commissioner Barlow**

**Comments on Lawsuit and Thanks to Ms. Watts for Her Service:** Commissioner Barlow thanked the people for coming to the meeting. He thanked Ms. Caldwell for coming to the meeting. He stated that he did not realize that the letter went to only two Commissioners or he would have distributed the letter to the other Commissioners. He thanked Ms. Watts for her years of service on the Board of Elections. He recalled that there was genuine contentiousness in the lawsuit and he thought she was rightly "set free" since it was a terrible situation. He preferred that Ms. Watts would have stayed on the Board of Election due to her knowledge. He pointed out that Mr. Aaron Wright was in the audience shaking his head, and he speculated that Mr. Wright must be assuming he would get Ms. Watts' eighteen years of knowledge overnight. Commissioner Barlow stated this was a precarious election cycle and he thought it was important to have as much leadership as possible on the Board. He thanked Ms.

Watts for making a Herculean effort to do what was right, and he said there had not been a complaint on the processes or procedures of the Board of Elections. He recalled that last year Ms. Watts was credited for her comments and that she was correct in what she had said. He said he would take the heat for supporting Ms. Watts and he closed by once again thanking her for her work.

**Percentage of Fayette County Citizens Carrying Concealed Weapons:** Commissioner Barlow stated that he read that 18% of Fayette County's citizens have a concealed carry permit, that he was a part of that 18%, and he thought one out of six carrying was good. He suggested that there needed to be more and get the numbers up to twenty percent.

### **Commissioner Brown**

**House Bill 370 "Gag Act" and "Incumbent Protection Act":** Commissioner Brown asked the people to pay close attention to House Bill 370, which is being sponsored by a local legislator, and he said the bill is referred to as the "Gag Act" and the "Incumbent Protection Act." He said it is a bill that will require local groups, which are loosely defined encompassing local environmental groups, a mom's groups, school groups, homeowners associations, or other groups, if the group wants to cite how a legislator is voting, to file as a lobbyist. He stated that the bill is an absolute travesty and is trying to force groups, through the intimidation of the government, when they speak out and disseminate information, to be assessed state charges if the group did not file as a lobbyist. He said it sets a very dangerous precedent and local legislators should not be ashamed of how they vote. He said legislators should never be shielded from how they voted, especially six months prior to an election, which is what is required in the legislation. He asked everyone to call their state representatives and senators and urge them to bring House Bill 370 to a very quick death.

**Comments on Pete Nelm's Service to Fayette County:** Commissioner Brown thanked Mr. Pete Nelms for his work and he said most people do not know how much work he has done behind the scenes. He stated that many of the funds Mr. Nelms raises through the grant process goes to the local municipalities. He said that Mr. Nelms would leave huge shoes to fill.

**Marilyn Watts Appointment:** Commissioner Brown stated that the whole issue Ms. Watts' son appointing her to the position was that the point that he raised was he asked if Vice-Chairman Paul Ploenner would make the appointment. He thought the appearance of impropriety was reason enough for concern. He stated that Vice-Chairman Ploenner did not do it. He stated that he never stated Ms. Watts chaired a fundraiser but rather that she helped organize the fundraiser. He said he and two other people called Newt Gingrich's office and each one was told of Ms. Watts's involvement. Commissioner Brown stated that if a motion is made to quash a lawsuit and it is dismissed then it is unlikely that it is a frivolous lawsuit.

**Marilyn Watts Reply:** Ms. Watts stated that the very issue that was in court for three years was filed as a complaint. She stated that the only complaint Fayette County has ever had at the State Election Board was filed by Mr. Hobbs and Mr. Fabricius. She stated that the State Election Board, two years ago, unanimously stated that Ms. Watts had done nothing wrong and called the complaint frivolous. She stated that Mr. Hobbs and Mr. Fabricius persisted and went on with the court case and were undeterred, resulting in a financial cost to the taxpayers. She said the State Elections Board has full knowledge about what is and is not acceptable and that Board immediately dismissed the case and called it frivolous. She said she was so convinced of her case that she was willing to pay the \$58,000.00 if she lost even though she did not lose the case.

**Chairman Oddo:** Chairman Oddo stated that if the Board is going to direct comments to the public then the public should have the right to answer the complaints. Commissioner Brown disagreed stating that the matter was on the Agenda and voted on so it was not a comment about a random citizens. Chairman Oddo replied that the matter had been voted on and settled.

### **Commissioner Ognio**

**Future Daughter-in Law:** Commissioner Ognio stated his family is growing since his son proposed to his girlfriend and she said "yes." He said he has a future daughter-in-law and he congratulated his son, Rocky, and his finance, Jody. The Board offered their congratulations.

## **Chairman Oddo**

**Happy Valentine's Day:** Chairman Oddo wished everyone a Happy Valentine's Day.

**Making Decisions on Behalf of Fayette County:** Chairman Oddo hoped one lesson that everyone would take away from the meeting is that being on the Board is not easy since it requires making difficult decisions. He believed everyone was passionate about their positions and that the Board was doing its best to make the best decisions. He said there have been some trying times and everyone has made their decisions. He said the decisions were not personal but that the decisions were made in the best interest of Fayette County.

**Remembering Riverdale Police Officer Killed in the Line of Duty:** Chairman Oddo stated that it is a shame what is going on in the county and that a local policeman in Riverdale lost his life in the line of duty earlier in the day. He asked everyone to pray for the family and the county.

**Running for Reelection:** Chairman Oddo announced that he has decided to run for reelection and that his name would be on the ballot.

## **EXECUTIVE SESSION:**

**Personnel and Review of the January 28, 2016 Executive Session Minutes:** Commissioner Brown moved to recess into Executive Session. Commissioner Rousseau seconded the motion. The motion passed 5-0.

The Board recessed into Executive Session at 9:13 p.m. and returned to Official Session at 9:44 p.m.

**Return to Official Session and Authorization to Sign the Executive Session Affidavit:** Commissioner Ognio moved to exit Executive Session and for the Chairman to be authorized to sign the affidavit. Commissioner Brown seconded the motion. The motion passed 5-0. The Executive Session Affidavit, identified as "Attachment 7," follows these minutes and is made an official part hereof.

**Approval of the January 28, 2016 Executive Session Minutes:** Commissioner Ognio moved to approve the January 28, 2016 Executive Session Minutes. Commissioner Brown seconded the motion. The motion passed 5-0.

**Approval of the County Administrator Employment Agreement:** Commissioner Ognio stated that that the Board had on the dais the County Administrator's Employment Agreement for Board approval. He stated that the extension would be for three years and ten months from February 12, 2016 until December 31, 2019. He stated that in Section 3(a) the salary would reflect his current salary. Commissioner Ognio stated that the second sentence in Section 3(b) would be eliminated in its entirety. He stated that Section 4(c) would be eliminated. Commissioner Ognio stated that Section 5(a) would provide for 27 personal days. He stated that Section 6 would include that the regular replacement of said vehicle would be done per the county's vehicle replacement policy. He stated that Section 13(b) would be eliminated in its entirety. He noted that the Administrator's new address was included in the contract.

Commissioner Ognio moved to approve the County Administrator Employment Agreement extension. Commissioner Rousseau seconded the motion. The motion passed 5-0. A copy of the agreement, identified as "Attachment 8," follows these minutes and is made an official part hereof.

**ADJOURNMENT:**

Commissioner Brown moved to adjourn the February 11, 2016 Board of Commissioners meeting. Commissioners Barlow and Rousseau seconded the motion. The motion passed 5-0.

The February 11, 2016 Board of Commissioners meeting was adjourned at 9:47 p.m.

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Floyd L. Jones, County Clerk

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Chairman

The foregoing minutes were duly approved at an official meeting of the Board of Commissioners of Fayette County, Georgia, held on the 25<sup>th</sup> day of February 2016. Referenced attachments are available upon request at the County Clerk's Office.

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Floyd L. Jones, County Clerk