

The Board of Commissioners of Fayette County, Georgia met in Official Session on Thursday, January 9, 2003, at 7:00 p.m. in the public meeting room of the Fayette County Administrative Complex, 140 Stonewall Avenue, Fayetteville, Georgia.

COMMISSIONERS PRESENT: Greg Dunn, Chairman
Linda Wells, Vice Chair
Herb Frady
A.G. VanLandingham

COMMISSIONER ABSENT: Peter Pfeifer

STAFF MEMBERS PRESENT: Chris W. Cofty, County Administrator
William R. McNally, County Attorney
Carol Chandler, Executive Assistant
Karen Morley, Chief Deputy Clerk

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

REZONING PETITIONS:

Commissioner Wells remarked at this point in the agenda the Board would consider requests for the rezoning of property in our county. She said the policy required at least two public hearings — the first before the Planning Commission and the second before the County Commissioners. She said at this hearing the Board would listen to the concerns of everyone, whether in favor or opposition to the rezoning petition. She pointed out when a rezoning petition was called, the petitioner or representative for the petitioner would be allowed 15 minutes in which to present the details of the request, followed by anyone who wanted to voice support for the request. She stated that the Chairman would then allow all those individuals who were opposed to the rezoning to stand for a moment to display their opposition. She said the Chairman would then ask those individuals who wished to come to the podium to speak to remain standing so the Board and staff could get an idea of how to allocate its time. She said the Board would allow up to 3 minutes for each speaker. She said when the persons speaking in opposition had finished, the petitioner would be given an opportunity to rebut any of the points raised. She remarked in fairness to all parties, the petitioner would be entitled to equal time to address the Commissioners as all those in opposition.

Commissioner Wells further remarked that these hearings were a part of the permanent record and speaking at the podium with the microphone helped staff with their task of recording comments and ensured everyone being heard. She remarked when it was an individual's turn to speak that they come to the podium, state their name and address and direct their comments to the Board only. She asked that after individuals speak that they sign the sheet that would be provided by the Marshal in order for names to be spelled correctly for the record.

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Commissioner Wells stated that the Board wanted to hear from everyone who had something to say and they would pay close attention to each point raised. She said it would not be necessary for the same point to be raised over and over. She thanked everyone for their participation and announced that the Zoning Administrator would begin introducing each request in the order they appeared on tonight's agenda.

Chairman Dunn remarked that he wanted to address an administrative procedure that the petitioners could avail themselves of at tonight's meeting. He said the policy of the Board was that the petitioners had the right to present their petitions before a full Board. He remarked that there was not a full Board tonight because Commissioner Pfeifer was still in the hospital. He said if any of the petitioners did not want their request to be heard by less than a full Board, then they should notify the Board and it can be tabled to the next zoning hearing. He said it was not known if Commissioner Pfeifer would be present at the next hearing. He said this would depend on how fast his recovery was. He said the policy was that a rezoning request could be tabled one time.

Mr. Wright, Mr. Nagrani and Mr. Holmes remarked that they wished to have their rezoning requests heard tonight.

PETITION NO. T-012-02:

Zoning Director Kathy Zeitler read Petition No. T-012-02, Lee and Renae Wright, Owners, and Lee Wright, Agent, request to increase the height of an existing monopole tower from 170 feet to 188 feet plus an 8 foot lightning rod. She said this property was located in Land Lot 186 of the 4th District, fronted on Chappell Road, and is zoned A-R. She remarked that the Planning Commission recommended approval with conditions 5-0 and Staff recommended approval with conditions.

Grover Bailey stated he was the attorney representing Mr. and Mrs. Wright in this application. He said this was an application for a variance to increase a tower which was located on their property from its present height of 170 feet to 188 feet plus an 8 foot lightning rod. He said the property in question was located on Chappell Road. He said this was a 15 acre parcel of land. He remarked that the present tower was located toward the rear of the property and the nearest residence to the tower was approximately 774 feet away. He pointed out that this was not 1,000 feet away as would need to be to meet the requirements of the ordinance but the dwelling was farther away than in some comparable locations. He said the staff report on this application was an extremely well done report and was very complete and very well reasoned. He said staff did recommend approval. He remarked that the Zoning Board of Appeals did unanimously recommend that this application be approved.

Attorney Bailey remarked that one of the objectives of the tower ordinance was to cut down on the proliferation of these towers. He said the objective was not to have a tower on every corner. He remarked that by increasing the height of this particular tower, the number of users

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could be pretty much doubled so that this would do away with the need for an additional tower. He said there was a competitive aspect to this in that Mr. Wright advised him that there did not seem to be much of a market for any use of towers below 170 feet. He stated his tower below the present level could not be effectively used for that purpose. He said Mr. Wright's tower had some unusual factors relating to it that some of the towers in the vicinity did not have. He remarked that the topography of the tower was such that the ground point was of a somewhat lower level than some of the nearby towers. He said Mr. Wright had a disadvantage of approximately 30 to 40 feet in his tower already with regard to some of the nearby towers. He said the line of sight from a tower to a receiver was very important in this industry. He said this could be achieved the higher the tower was. He said this brought up the matter of visual impact of increasing the height of the tower. He said obviously there was some visual impact that could not be denied. He said this property was pretty much surrounded on three sides by a road that was not immediately adjacent to the property. He said Lynn Drive ran along one side of the property although there were houses between that road and the property in question. He said Chappell Road was at the front portion of the property. He said he had gone to the property personally and looked to see if he could see the tower. He said if someone looked very hard, they could see the tower but it was not something that was readily seen. He felt the visual impact should not be great. He said the tower was located in more less the center of the property from side to side and located toward the rear of the property. He said the staff's report was very complete and it recommended approval. He felt this would not adversely affect the neighboring property owners in any substantial way and it was something that he felt should be approved.

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

Shaheen Bullard, 258 Chappell Road, Fayetteville remarked that he was located across the street. He said he had a heating and air contracting business. He said he used the Nextel system and he hoped that Nextel would try and locate at this end of the county. He said the coverage goes out in this area of the county. He said he would be in favor of the tower.

Chairman Dunn asked Mr. Bullard if the tower was directly across the road from him and Mr. Bullard replied yes.

Chairman Dunn asked Mr. Bullard if he could see the tower and Mr. Bullard replied no he could not see it at all.

Mr. Bullard remarked that the tower was surrounded by dense woods.

Chairman Dunn said there was one road in that area where you could see the tower.

Mr. Bullard responded if someone was coming from Lake Horton up Chappell Road, you could see the tower but you would have to be looking for it in order to see it.

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Chairman Dunn asked Mr. Bullard if he was concerned about the tower and Mr. Bullard replied no.

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

Randy Chancey, 107 Chappell Road, Fayetteville said he lived up the street from the tower. He said he would like to see a cellular tower locate there. He said he was also on the Nextel system. He said the tower had been there since he had lived at this location and it was just going to be extended. He said he had never seen the tower to this day. He said it was a bad area for cell service and especially for 911 calls.

Mike Wright, 345 Brooks-Woolsey Road, Fayetteville stated that his property was actually 2,500 to 3,000 feet total from this property. He said there was one other land owner between him and the property in question. He said he was an owner of a business as well and had terrible cell phone reception. He said he too would like to have better reception. He said he had tried several cell phone carriers and none of these had good reception in his area. He said he was also concerned about the safety issue as well as an additional line if necessary.

Chairman Dunn asked Mr. Wright if he was related to the applicant Lee Wright.

Mike Wright responded yes they were brothers.

Gene Bell, 343 Brooks-Woolsey Road, Fayetteville remarked that he lived across the field from Chappell Road. He said he could barely see the tower from Chappell Road when you drive by. He said the tower was low visibility. He said he was an outside salesman and covered six States and his wife was in outside sales and management. He said they both had offices at home and their cell phone reception was very poor in that area. He said 75% of their customers and inside support people and other people who needed to get in touch with them called them on their cell phones and could not get through. He said he was also concerned with the emergency numbers. He said this area sure could use the extra cell coverage. He said he was in favor of the extension of the tower.

Chairman Dunn remarked that the Board had received a letter from Doug Sebastian who was a neighbor of Mr. Wright. He said Mr. Sebastian spoke very highly in favor of the tower extension. He said this letter would be made an attachment to these minutes. A copy of the letter, identified as "Attachment No. 1", follows these minutes and is made an official part hereof.

Chairman Dunn asked if anyone wished to speak in opposition to this request. He noted that three people in the audience stood up but only one wished to speak.

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Nancy Hubbard, 236 Lynn Drive, Fayetteville remarked that the tower was quite obvious from Chappell Road. She said it was definitely obvious from Lynn Drive. She said there must be approximately 20 people on Lynn Drive. She said most of these residents had lived there 30 years. She said they were certainly not in favor of this tower. She said there was too much vacant land down there such as Lake Horton area. She said the tower could be put around Lake Horton. She questioned having the tower in a neighborhood. She said she certainly was not in favor of this tower.

Chairman Dunn asked Ms. Hubbard if she was speaking for a group or just herself.

Ms. Hubbard replied that she was speaking for her neighbors. She said there were quite a few who could not attend this meeting.

Chairman Dunn asked the applicant Lee Wright if he wished to make a rebuttal.

Mr. Wright replied that he had no rebuttal.

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

Commissioner VanLandingham remarked that staff had labored for a long time to establish an ordinance for cell towers. He felt any change to an ordinance with a variance should be for a purpose that there was no other way that it could be done. He said other towers being built on the south side that the county was requiring to be built might very well fill the void in that area. He said he was aware of the void in service there. He said there seemed to be the feeling that the county had to be covered with cell usage. He said this did not mean that every company had to have complete coverage in this county. He said the disadvantage that existed now was a disadvantage that existed when the tower was built. He said he did not see any reason offered that would necessitate giving a variance to the county's ordinance. He felt it was well presented and the need was there but until his question was answered he could not support a variance on the county's ordinance. He asked if the cell towers that the county was requiring to be put in and those already approved for the south side would carry the need to the south side that needed to be there. He said he would have to know that before he could grant a variance to the county's existing ordinance.

Commissioner Wells said she would like to follow up with that. She said Attorney McNally had been very instrumental in negotiating all of those contracts for the E-911 coverage. She asked Attorney McNally how he felt coverage would overlap that area and if it would address the emergency means of the individuals on that side of the county.

Attorney McNally replied that the emergency needs would be addressed by that tower as far as the 911 and EMS service.

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Commissioner Wells clarified that the county's towers would cover that area and Attorney McNally replied yes.

Commissioner Frady remarked that the county's towers would only be for the county's emergency personnel.

Commissioner Wells interjected that companies would be able to co-locate on the county's towers.

Commissioner Wells said she agreed with Commissioner VanLandingham. She said staff had worked very hard in setting down certain standards for the county. She said if this had a more compelling reason other than financial interest for the person who had the site, she would probably be much more amenable to granting this variance request. She said there was coverage coming to the south side of the county. She said the Board would be addressing this and was already in the process of working very hard on it. She said that end of the county would have coverage probably as quickly as this individual could bring his up on line and have companies co-locate. She said the Board would be addressing the emergency issues in the south end of the county. She said there was enough height on the county's towers that Nextel or another company could co-locate if they wanted to. She said her biggest concern was that this was 774 feet from the nearest resident. She said the Board had allowed it under the administrative approval to exist but she did not feel it would be fair to the existing citizens in that area. She felt 774 feet to the closest home from a cell tower when the Board had said a minimum was 1,000 feet would not be a good reason for the Board to extend that.

Commissioner Frady asked Commissioner Wells to explain the administrative approval.

Commissioner Wells responded that the administrative approval was if the tower was under 170 feet high staff would have the authority to approve it and anything higher would have to come before the Board of Commissioners. She said even then there would still be setbacks that would have to be in place. She said one of those was that it was 1,000 feet to the nearest structure. She said the reason for the variance request tonight was that the applicant was asking to vary the distance from 1,000 feet.

Ms. Zeitler remarked that the current ordinance did require 1,000 feet from an off site residence and this clearly did not meet that because it was a pre-existing tower.

Commissioner Wells stated if the Board changed it now it would be changing what it currently required although it was grand fathered in.

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Ms. Zeitler stated the Board would be authorizing the existing tower to increase in height without meeting the current requirements. She said currently it was not required to meet the current height.

Commissioner Wells said it would be at the height that the Board would grant it.

Ms. Zeitler replied that would be up to the Board of Commissioners.

Commissioner Frady asked when the county's system would be in place.

Attorney McNally replied that he was hopeful that everything would be in place within the next eighteen months. He said the towers were being installed now. He said the other equipment was on order.

Commissioner Frady asked if there would be a sequence in going on line or would they all have to go on line at the same time.

Attorney McNally replied that it was thought there would be a sequence but Motorola had said they were going to try to do it all at one time.

Commissioner VanLandingham remarked that emergency use would take place in eighteen months but the towers would be operational as soon as they were built.

Attorney McNally replied that was correct.

Commissioner VanLandingham said it would not be eighteen months before there was coverage in that area.

Attorney McNally replied that it would probably be somewhere in the vicinity of 90 days.

Commissioner Frady felt in view of that he did not see any point in extending this tower if there would be coverage. He said he would vote for this if there was no coverage because he felt the emergency services were very much needed. He said in view of the fact that the county's tower was going to come along rather handily, he saw no reason in extending the tower in question.

Chairman Dunn said he was having a hard time understanding how there would be coverage when the county's tower goes up in this area. He said that was if someone located on the tower then there might be coverage.

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Attorney McNally replied that he had not been asked out coverage of a commercial nature. He said the question was whether or not the county's emergency services would be covered without this addition. He said emergency services would be covered.

Chairman Dunn felt the conversation had gone on to assuming that if the county got its towers up that regular phone service would be covered. He said he did not know if the Board could know that for sure.

Attorney McNally said he did not know what the coverage areas were. He said Mr. W right had told him that certain coverage areas on his and on the new county tower would overlap. He said he assumed that since Mr. Wright's tower was located further in one direction than the other tower that it probably would provide coverage that the other tower would not. He said he did not know what other towers if any were in that area.

Chairman Dunn said it was his concern that there was fairly poor coverage in the southern portion of the county. He said routinely you would go out of service when you drive in that area while talking on your cell phone. He said the county was required by the F.C.C. to ensure eventually that 95% of the county was covered.

Attorney McNally replied that the 95% coverage that Chairman Dunn was referring to was on the county's attempts to cover the county 95% with emergency 911 systems.

Chairman Dunn asked what the F.C.C. required for regular phone service.

Attorney McNally responded that he did not believe that the F.C.C. had set out a particular percentage. He said the F.C.C. had charged those companies who were in the cell tower business and have been licensed by the F.C.C. to provide coverage. He said that was the extent that it goes to. He said he did not really know if there were any companies that were not providing coverage and to what extent.

Chairman Dunn felt the county would want as much as 100% coverage for cell phone users in the county as possible and not just for 911. He said he knew for a fact in that area the coverage was pretty bad. He said also his concern was that the ordinance also stated that multiple users should be sought for a tower to prevent more towers from proliferating. He said he did not see 18 feet as being a big problem there. He said from most areas you would not see the tower. He said it was not very high. He said the county was putting towers up that were 300 feet high because of the 911 requirement. He felt this would be the purview of the cell phone companies. He said he was sure that these companies would not provide more coverage than they needed to. He felt this was a market issue. He said if the tower was there, he did not feel a cell phone carrier would put something on another tower to cover the same area. He said he could support this because he did not feel the additional 18 feet did anything particularly negative to the area. He said this also helped the county not have more towers.

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Commissioner Frady said he was leaning in favor of this request too until he heard the question that Commissioner Wells had asked. He said that question was is this tower going to replace this type of service when the county puts in its towers. He felt the county's towers were going to be used primarily for emergency services for emergency personnel and not for cell phones.

Commissioner Wells replied that was true but the county was going to allow commercial endeavors to co-locate. She said these towers were going to be higher than 188 feet. Attorney McNally said he had not gotten into the commercial use of the towers that were being erected at all. He said these were not the county's towers. He said the county was giving a ground lease in one location in exchange for the location on three towers of the county's 911 antennas. He remarked the height of the tower at the particular locations for the county's 911 throughout the county go from 150 feet in the center of the county to 500 feet on the two outer extremities to the north to 300 feet to the outer extremities to the south. He said all of these were altitudes which were dictated by the equipment that the county was putting on to get that 95% coverage that the county wanted to have throughout the county. He said with someone putting up a 300 foot tower such as a private company then they would have space on their tower for other users and would be renting out that space.

Commissioner Frady asked if these towers would be ready in 90 days.

Attorney McNally replied yes and stated that they would be ready in 90 days. He said he did not really know anything about what areas they would cover versus what areas Mr. Wright would cover. He said it could be that 300 foot tower was needed and also Mr. Wright's tower. He said he was not involved in that.

Commissioner Frady said this was put in place for the county's equipment which was very powerful. He said he assumed it was a lot more powerful than phone equipment.

Attorney McNally replied yes that was correct.

Commissioner Frady said if the county put an antennae on top of one of the county's towers it might not reach these people. He said that could possibly occur.

Attorney McNally replied yes that was exactly correct.

Commissioner Frady said the county's towers would be an umbrella and those five umbrellas would cover the entire county. He said this did not mean that the phone equipment would reach every area that the county's would reach because the county's would be so much more powerful. He said he had come into the meeting to support this request because he said having phones was essential.

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Attorney McNally said as he understood it the main problem in talking on the phone was not basically a tower but a person's handheld unit. He said they going go for approximately one and a half miles. He said these series of towers in essence get someone's message and then hand it off from tower to tower to get it to the person someone is speaking to. He said that was where the towers were needed. He said once someone drives a mile and a half away from the tower that someone was talking with then if another tower was not picking that person up their signal would be lost.

Commissioner Frady said he would have to agree with Chairman Dunn. He said the county's ordinance said the county should do what it could do to have less towers in the county. He said he could not see a problem with the additional 18 feet. He said if it was going to be 90 days and the problem would be alleviated then that would be fine, but he said he was not hearing that it would.

Commissioner Frady said he would like to make a motion approving 18 feet.

On motion made by Commissioner Frady, seconded by Chairman Dunn to approve Petition No. T-012-02 with conditions, discussion followed.

Commissioner Frady felt the importance of emergencies outweighed 18 feet.

Chairman Dunn felt with the additional 18 feet the county would be able to alleviate the need for a couple more towers. He said he was sure that vendors were not going to put up stations that were not necessary.

Commissioner Wells said the Board did not know if this was going to alleviate the need for additional towers in that area. She said this was originally built with the intent of having three additional carriers on the tower. She said at this point in time there were only two carriers on the tower. She said the topography had a lot to do with that as far as the height on the pole where the carrier was being located. She said there were poles all over the county that were 100 to 150 feet and carriers have co-located on those. She said she did not know that by extending this an additional 18 feet that the coverage areas would be addressed in that area. She said the Board did not know who would be co-locating on that tower. She said it was not known if it would be Nextel or whomever. She said the Board also did not know what the county was going to be leasing off of or if the towers would be 300 feet high. She said it was not known if that was going to address the problem in that area. She said she saw this request more as a money making proposition for an individual rather than a service for the community. She said she had a problem with putting this tower that close to an existing subdivision for monetary purposes.

Chairman Dunn said he did not feel that anyone ever put up a tower for anything other than monetary purposes.

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Commissioner Wells said she did not want to infringe upon existing homeowners.

Commissioner Frady said his mind was overtaken by the fact that emergency portion outweighed everything. He said he never thought about the money. He said safety could not be bought.

Commissioner Wells said emergency would be covered with the county towers that would be going up.

Commissioner Frady said the county's five towers might be at a distance that it would not cover it. He said these towers were scattered all the way from the north side to the south side of the county. He said these would not necessarily guarantee that the county would have the coverage.

Commissioner VanLandingham said his view on this was strictly a variance to an ordinance that was not substantiated. He said there was no proof that it would eliminate towers. He said there was no proof that the towers that the county was putting up would not take care of the need on the south side. He said there was no way that the Board could approve enough towers so that every company that operates cell phones would have complete coverage in this county. He remarked that he was looking at the integrity of the ordinance and changing that. He said if the Board changed this ordinance then someone would come up with another change. He said while this tower was not under the new requirements for setbacks, if the Board approved a variance to it then the Board would be saying that the setback was not important. He felt the integrity of the ordinance had not been proven that it should be changed. He said staff had labored a long time to get an ordinance that the county could work with and now it was being considered for change for no reason.

Commissioner Frady remarked that sometimes there was an ordinance that did not cover everything and that was the reason a variance could be requested in certain types of situations. He said no one could prove whether this was better or worse.

Chairman Dunn remarked that the staff had done a great job. He said staff recommended that they be allowed to do this. He called for the vote.

The motion failed 2-2 with Commissioner Wells and Commissioner VanLandingham voting in opposition. Commissioner Pfeifer was absent.

PETITION NO. 1100-02:

Zoning Director Kathy Zeitler read Petition No. 1100-02, Michael L. and Kathie L. Graves, Owners/Agents, request to rezone 5.047 acres from R-70 to R-85 to develop one (1) single-family dwelling lot. She said this property was located in Land Lot 193 of the 5th District and

fronts on Eastin Road. She said the Planning Commission recommended approval 5-0 and Staff recommended approval.

Michael Graves, owner/agent, asked for the Board's consideration in rezoning this property so that he could build a house on it. He said the home would be his primary residence next door to his parents. He said he had aging parents and he would like to be able to help out and take care of them. He remarked the problem with the lot was that it was not buildable as it existed because of the zoning. He said the zoning required the lot width to be 175 feet and the lot at its very maximum would only go up to approximately 150 feet because there were existing houses on both sides. He said with the setbacks on the houses there was no way to extend the property line. He stated the way the property was laid out there was a lake on the back side and he would not be able to move back any further to try and take advantage of the width. He said there were a little bit more stricter standards that he would like but he still felt like he could comply with these and get the house built there. He said it would require a little bit bigger house than what he would have liked to have put there but he could comply with these.

Chairman Dunn remarked the home would be 3,000 square feet as opposed to a minimum of 1,500 in R-70 so the home would be twice as much as the minimum. He asked what size house Mr. Graves was planning.

Mr. Graves replied he was just a little bit over 3,000 square feet now but before he was at 2,300 square feet.

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

On motion made by Commissioner Wells, seconded by Commissioner VanLandingham to approve Petition No. 1100-02. The motion carried 4-0. Commissioner Pfeifer was absent. A copy of Staff's Analysis and Investigation, identified as "Attachment No. 2", follow these minutes and are made an official part hereof. A copy of the Ordinance and Resolution approving Petition No. 1100-02, identified as "Attachment No. 3", follow these minutes and are made an official part hereof.

PETITION NO. 1101-02:

Zoning Director Kathy Zeitler read Petition No. 1101-02, Ashok K. Nagrani, Owner/Agent, request to rezone 3.00 acres from C-H Conditional to C-H Conditional to delete one condition regarding use restrictions. She said this property was located in Land Lot 233 of the 5th District and fronts on S.R. 85 North. She said the Planning Commission recommended approval as C-H with no conditions 5-0. Staff recommended approval as C-H with no conditions.

Ashok Nagrani, owner/agent, said he owned the Rainbow Center located on S.R. 85 North approximately three miles from the administrative complex. He said at the time the center was built in 1987 that portion of Fayette County was not very well developed. He said the rezoning had a condition attached to it which only allowed certain uses for the property. He stated that two years later two more buildings were made part of the same center and those were rezoned to C-H conditional but there were no land use restrictions attached to it. He said today all of the properties located on S.R. 85 that were zoned C-H conditional did not have any use restrictions attached. He said in the last couple of months several instances had come up where he was not able to get tenants to move into the center because in that particular location the use restrictions prohibited them from being able to operate.

Mr. Nagrani further remarked that in view of the fact that the Zoning Commission did not put use restrictions, he was not operating on a level playing field. He asked for the Board's consideration in removing the condition so that the best and highest use of the property could be obtained and also compete fairly with the surrounding businesses.

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

On motion made by Commissioner Frady, seconded by Commissioner Wells to approve Petition No. 1101-02. The motion carried 4-0. Commissioner Pfeifer was absent. A copy of Staff's Analysis and Investigation, identified as "Attachment No. 4", follow these minutes and are made an official part hereof. A copy of the Ordinance and Resolution approving Petition No. 1101-02, identified as "Attachment No. 5", follow these minutes and are made an official part hereof.

PETITION NO. 1102-02:

Zoning Director Kathy Zeitler read Petition No. 1102-02, J.D. Holmes of PTC Properties, Inc., Owner/Agent, request to rezone 3.55 acres from C-H to O-I to allow massage use at an existing Health Club/Fitness Center. She said this property was located in Land Lot 69 of the 7th District and fronted on S.R. 54 West. She said the Planning Commission recommended approval with one condition 5-0 and Staff recommended approval with one condition.

Chairman Dunn interjected that he and Mr. Holmes had a business relationship which prohibited him from taking part in the discussion or the vote on this issue.

Commissioner Wells asked the petitioner to proceed.

J.D. Holmes, 140 Old Mill Court, Fayetteville said he owned the property on which Gold's Gym in Peachtree City resided. He said he would like to rezone from C-H to O-I to allow for massage therapy at the health club.

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Commissioner Wells asked if anyone wished to speak in favor of the petition. Hearing none, she asked if anyone wished to speak in opposition to the request. Hearing none, she asked for the Board's consideration in this matter.

On motion made by Commissioner Frady, seconded by Commissioner Wells to approve Petition No. 1102-02, discussion followed.

Commissioner VanLandingham asked for clarification of massage therapy. He asked if the Board permitted this type of massage therapy, would this allow for future massage parlors in the county.

Attorney McNally replied that this particular facility previously had that zoning and the massage therapy in it. He said this would not permit anything or open the doors for anything different. Commissioner VanLandingham interjected that he was not speaking about Mr. Holmes' facility but was referring to a future use.

Attorney McNally replied no, this could not occur.

Commissioner Wells said she was a member of the Board of Commissioners when this was previously discussed. She said the Board at that time was very intensive in looking at this situation to make sure that it did not have any ramifications for other types of massage facilities. She said the Board at that time had looked at that issue very carefully and she could assure everyone that this would not be opening the door for anything of that nature.

Commissioner VanLandingham said his was not a question on this petition but on a future use.

Attorney McNally said this was allowable under the county's ordinance.

Commissioner Wells clarified that this would not allow any new uses under separate zonings and Attorney McNally agreed.

Commissioner Wells called for the vote.

The motion carried 3-0-1 with Chairman Dunn abstaining from the vote. Commissioner Pfeifer was absent. A copy of the recommended condition, Staff's Analysis and Investigation, identified as "Attachment No. 6", follow these minutes and are made an official part hereof. A copy of the Ordinance and Resolution approving Petition No. 1102-02, identified as "Attachment No. 7", follow these minutes and are made an official part hereof.

CONSENT AGENDA: On motion made by Commissioner Wells, seconded by Commissioner Frady to approve the consent agenda as presented. The motion carried 4-0. Commissioner Pfeifer was absent.

MINUTES: Approval of minutes for Board of Commissioners meeting held on January 2, 2003.

PUBLIC COMMENT:

Members of the public are allowed up to five minutes each to address the Board on issues of concern other than those items which are on this evening's agenda.

There was no public comment.

STAFF REPORTS:

EXECUTIVE SESSION: Attorney McNally requested an executive session to discuss five legal matters.

EXECUTIVE SESSION: On motion made by Commissioner Wells, seconded by Commissioner VanLandingham to adjourn to executive session to discuss five legal matters. The motion carried 4-0. Commissioner Pfeifer was absent.

LEGAL: Attorney McNally advised the Board on a legal matter.

The Board took no action on this matter.

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

The Board took no action on this matter.

LEGAL: Attorney McNally discussed a legal matter with the Board.

The Board took no action on this matter.

LEGAL: Attorney McNally advised the Board on a legal matter.

The Board took no action on this matter.

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

The Board took no action on this matter.

EXECUTIVE SESSION AFFIDAVIT: On motion made by Commissioner Wells, seconded by Commissioner Frady to authorize the Chairman to execute the Executive Session Affidavit affirming that five legal matters were discussed in executive session. The motion carried 4-0.

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Commissioner Pfeifer was absent. A copy of the Executive Session Affidavit, identified as "Attachment No. 8", follows these minutes and is made an official part hereof.

There being no further business to come before the Board, Chairman Dunn adjourned the meeting at 8:15 p.m.

Karen Morley, Chief Deputy Clerk

Gregory M. Dunn, Chairman

The foregoing minutes were duly approved at an official meeting of the Board of Commissioners of Fayette County, Georgia, held on the 23rd day of January, 2003.

Karen Morley, Chief Deputy Clerk