

THE FAYETTE COUNTY PLANNING COMMISSION met on March 6, 2003 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Public Meeting Room, First Floor, Fayetteville, Georgia.

MEMBERS PRESENT: Jim Graw, Chairman
Al Gilbert, Vice-Chairman
Bob Harbison
Bill Beckwith
Douglas Powell

MEMBERS ABSENT: None

STAFF PRESENT: Bill McNally, County Attorney
Kathy Zeitler, Director of Zoning/Zoning Administrator
Delores Harrison, Zoning Technician
Robyn S. Wilson, P.C. Secretary/Zoning Coordinator
Deputy Warren Chamberlin

Welcome and Call to Order:

Chairman Graw called the meeting to order and led the Pledge of Allegiance. He introduced the Board Members and Staff and confirmed there was a quorum present.

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1. Consideration of the Minutes of the meeting held on February 6, 2003.

Chairman Graw asked the Board Members if they had any comments or changes to the Minutes as circulated. Doug Powell made the motion to approve the Minutes. Bill Beckwith seconded the motion. The motion unanimously passed 5-0.

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2. Consideration of the Workshop Minutes of the meeting held on February 6, 2003.

Chairman Graw asked the Board Members if they had any comments or changes to the February 6, 2003 Workshop Minutes as circulated. Doug Powell made the motion to approve the Workshop Minutes. Bob Harbison seconded the motion. The motion unanimously passed 5-0.

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3. Consideration of the Workshop Minutes of the meeting held on February 20, 2003.

Chairman Graw asked the Board Members if they had any comments or changes to the February 20, 2003 Workshop Minutes as circulated. Al Gilbert made the motion to approve the Workshop Minutes. Bob Harbison seconded the motion. The motion passed 4-0-1 with Doug Powell abstaining from the vote due to being absent from the Workshop.

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Kathy Zeitler read the procedures that would be followed including the fifteen (15) minute time limitation for presentation and opposition for petitions.

Chairman Graw advised the audience that the P.C. would make a recommendation to the B.O.C. who would make the final decision on the remaining items on the Agenda. He added that the B.O.C. would hear the following items on March 27, 2003.

**THE FOLLOWING ITEMS WILL BE CONSIDERED BY THE PLANNING COMMISSION
ON MARCH 6, 2003 AND BY THE BOARD OF COMMISSIONERS ON MARCH 27, 2003.**

4. **Consideration of Petition No. T-013-03, Lee and Renae Wright, Owners/Agents, request to increase the height of an existing Monopole Communications Tower from 170 feet to 188 feet plus an 8 foot lightning rod. This property is located in Land Lot 186 of the 4th District, fronts on Chappell Road, and is zoned A-R.**

Lee Wright presented a handout to the P.C. containing additional information. He requested to add an additional 18 feet to a 170 foot monopole tower. He said he had two (2) additional companies requesting to co-locate at the top of the tower. He stated that he presently had someone located at 165 to 170 feet and if an additional user was placed at the available space at 155 feet, they would not have adequate coverage needed around Lake Horton and the south side area of the county. He referenced page 1 of the handout and remarked that the south side around the tower site area has a very drastic topography, from 760 feet to 940 feet, which was actually a 180 foot change in elevation. He commented that Lake Horton is not shown on the map is in an area they are trying to cover because there are no other existing towers around the area. He referenced page 2 of the handout which indicates the existing towers, including the future 300 foot tower to be constructed at the corner of Porter Road and S.R. 85 South. He reported that his tower was needed even with the development of the 300 foot tower. He referenced page 3 which indicates the spectrum study, the R.F. study, the coverage area that would be generated from that one (1) tower, and it can not be covered from any other tower either, so it would require this tower for this particular carrier and the carrier on page 4.

Mr. Wright remarked that it was said that the 300 foot tower would cover the south side at the previous B.O.C. meeting, but T-Mobile who is presently located on the tower at 170 feet is going to locate on the 300 foot tower at approximately 160 feet. He advised that just because the tower was 300 feet high does not mean they will require a 300 feet elevation at which to locate. He said that there are certain elevations that each tower company will locate at just to get the coverage area that they need. He added that it is not the height of the tower as much as it is the actual handheld itself that is going to give the coverage, so basically each tower company is covering 1.50 to 2 miles around each tower to give the full coverage that they need to talk off of a cell phone. He explained that a cell phone averages 11/16 of a watt, and they are required to transmit off of that one particular device, and to get the coverage they are wanting to get in the area and around the lake it would require a tower, and there is not another tower there so the County tower will not cover the south side. He said the other two (2) companies will require this particular tower to get a signal in that area.

Mr. Wright explained that Nextel, Southern Link, BellSouth, and Verizon can carry at a higher elevation and go for 6-8 miles, but PCS carriers such as AT&T, Sprint, and T-Mobile operate at a much higher frequency range and they require a much smaller cell that they operate in. He advised that the only way they can get coverage in the area is to go to his tower, which is why he is proposing the 18 foot extension.

Mr. Wright stated that one of the conditions of approval was the FAA letter of approval and he referenced the last page of the handout showing the license was approved on February 13, 2003 with no lighting required. He closed by saying he would be glad to answer any questions.

Chairman Graw asked if there was anyone to speak in favor of the petition. Hearing none, he asked if there was anyone to speak in opposition of the petition.

Ron Cherry of 161 Lynn Drive explained that Lynn Drive is the street adjacent to the tower. He presented handouts to the P.C. He stated that he, and the other citizens present representing the Lynn Drive/Chappell area, does not have problems with their cell phones along Chappell Road or the Lake Horton area. He said that two (2) people would speak who represented local citizens in the area.

Mr. Cherry remarked that there are several reasons that they are opposing the tower extension. He said that there were some problems with the construction of the tower which were not properly addressed before. He stated that they had fought the original 1997 request for a 480 foot tower which was rejected and they appreciated that. He commented that prior to the construction of the current tower, even after its approval to be 150 feet plus an extension of 20 feet to take it to the current 170 feet, that there was an attempt made by Mr. Wright to build a 25-30 foot mound the size of the base of the constructed tower which is there today, including the fenced area around it for the sole purpose of getting an additional 25-30 feet for the tower. He advised that this was fill dirt and the area where the tower is located is a bottom area, but it was the only location under the zoning law at that time where he could place the tower so it would not interfere with him having the view of the tower. He reported that it interferes with all of their views and their properties. He went on to say that the mound was removed after being forced by the County, however someone did not finish the job. He advised that there is still about 10 feet of fill dirt in the entire area where the tower is currently placed which is against the topography ordinance. He said that they have a distorted, allocated adjusted dirt mound still existing which this tower is placed on. He stated that one of the issues is that not only is it against the law there are 25 acres where the natural drain comes down in the valley that flows across where this tower sits today which used to be the drain area and a small creek which no longer exists. He added that even though the water flows through the area keeping the dirt soft and it being fill dirt, if an extension is added to this tower and put the panels on it you will be capturing wind from all directions and subjecting this tower to more movement which eventually could cause it to fall, being the fact that it is illegally installed as it is. He remarked that the existing tower was to be 150 feet and has an approved 20 foot extension already, plus the illegal 10 feet so it already sits at 180 feet above the original topography of the ground. He reported that the tower should accommodate four (4) users and there are only two (2) on it, which does not meet the ordinance requirements and guidelines for towers up to 180 feet. He added that it would have four (4) panels on it instead of two (2) panels. Mr. Cherry said that Mr. Wright claimed the trees in the area and the topography limit his needs, however he was well versed on the topography of that land before he selected that site. He stated that if Mr. Wright erred and intended to go back and get extensions later, since his mound would have done the job but was illegal is the problem today and is why there are not extra panels on the tower today. He reported that Mr. Wright wants to expand his commercial business at the neighborhoods expense. He reiterated that Mr. Wright says topography limits his needs but again he was well versed on the laws governing and it stands illegal today.

In regard to point #2., Mr. Cherry said that Mr. Wright claimed that the trees on the surrounding area impair the use of the tower at its current height, however he was well aware of the trees when he purchased the property. He stated that everyone was being deceived and mislead again by Mr. Wright as the trees stand very mature 30-70 years old and they will not grow any taller, nor will the hills change in the area unless they are physically done so by people, so the trees are not an issue. He added that there is no justification for the extension. He commented that Mr. Wright says that you can see only 15-20 feet of the top of the tower from the surrounding areas, again we are being deceived and mislead. He advised that the photographs from surrounding areas looking straight from Chappell Road across his property show about 70-80 feet, and from the surrounding yards from different porches and driveways there is 27 feet and more exposed already. He pointed out that the red dots on the photographs are where the tower will be located after the extension is approved. He commented that each one is full view and that every inch of the addition will be additional exposure for the neighborhood which is not fair to the property owners at their expense.

Mr. Cherry stated that they support the addition of a tower on a main corridor at S.R. 85 South and Porter Road and other locations along main corridors and remote locations. He said that the tower on S.R. 85 South and Porter Road would eliminate the need for any extension by Mr. Wright and further proliferation of more towers would go away. He stressed that they strongly oppose towers and any extensions in any neighborhoods. He commented that once the tower has been altered and it has been that it should no longer fall under the grandfather clause, and if it did not fall under the grandfather clause then it could not exist today. He added that if Mr. Wright applied for an application today he would be denied for this location.

In closing, he said he had heard about what all has gone on with Planning and Zoning since towers originally started and after the dates that this was originally installed. He stated that from talking with some people in the government that they knew a lot of hard work had gone into getting an ordinance together for the purpose of having a standard that would work for all. He added that they do not need to continue coming up and having requests for variances and the P.C. does not need to keep having to deal with it. He asked why the County could not stick to the current ordinance which had been approved and put in place. He went on to say that they are not against anyone engaging in a commercial business for personal profit, so long as it is not at the detriment of others, yet they have continued to have to fight further tower expansions solely for the personal financial gain of one individual at the expense of surrounding neighbors. He commented that the facts show that Mr. Wright has no regard for the law, or rules or regulations set forth by the P.C. or the citizens and tax payers of this County, because it is all about personal financial gain. He reported that most of the residents had been in the area for 30 years or more. He asked that the P.C. do the right thing and reject this and any further requests for extending the tower height. He also asked that the P.C. rule against the request and in favor of the group of citizens represented here tonight and on a petition which will be submitted, and impact, not in favor of one individual, but for the group of citizens that are impacted for the sole purpose of his personal financial gain. He continued by saying that we the citizens of this group thank you for your time but ask you to do the right thing.

Chairman Graw asked if there was anyone else to speak in opposition of the petition.

Clyde Hobgood of 197 Lynn Drive presented a petition containing approximately 64 names in opposition of the tower extension of 18 feet. He asked how increasing the height of the tower by 18 feet would provide space for three (3) additional users stated on page 1-5 if there is a 10 foot separation needed between antennas as stated on page 1-3. He said that there is plenty of space between the existing antennas and the tree line foliage. He questioned the legality of the Agent Authorization who filled out that Wrights were present and being notarized on page 2 of the papers of Mr. Wright. He added that page 2 contains a lot of spaces which have not been filled out. He asked if this was going to be commercial since it should be, then why isn't Mr. Wright rezoning his property to commercial and pay commercial taxes because it is a business for him. He asked for justification on the site from different houses around because there is not a 1,000 feet between any house and the tower. He stated that if Mr. Wright keeps going up with the tower then it is going to be hurting their section of town of south Fayette County. He added that the tax payers did not think it was right for Mr. Wright to keep messing up the beautiful foliage. He reported that they are getting more aviation around south Fayette County from not only Peachtree City but from Hampton. He further reported that they were getting helicopters flying low and Cessnas and Cubs flying through there. He remarked that Mr. Wright was going to be about four (4) feet from having to place a permanent flashing light on top of the tower. He said that this would be another problem the property owners would have, facing a blinking red light constantly, 24 hours a day, 365 days per year.

Mr. Hobgood remarked that they moved to Fayette County in 1971 to have a country atmosphere. He said that they love it but that they did not want a tower in their back yard and he could see the tower from his back yard. He requested the P.C. to turn down the petition. He added that they are not against Mr. Wright for doing something like this but still they have a right too. He remarked that he hoped and prayed that each P.C. member will look and see that Mr. Wright should have figured all this out before he put the final tower in the ground, that it was too short. He commented that they fought it back in 1998 and here they are again. He asked if they were going to have to come back every time and try to fight this.

In rebuttal, Mr. Wright advised that the tower elevation had been handled and Mrs. Zeitler could confirm this information. He said that there use to be a knoll on the property and he built a level pad. He stated that if you looked at the spectrum study maps and all the geological maps the original ground elevation was running around 883 and the last co-locator, T-Mobile, is in at 862.5. He added that there was never 25 feet, however there was 10 feet in question, but Mrs. Zeitler could confirm that it has been taken off.

Kathy Zeitler advised that the problem was resolved to the satisfaction of the County Engineer who worked very closely with Mr. Wright.

At this time, Chairman Graw closed the floor from public comments.

Al Gilbert asked Mr. Wright if he agreed to the recommended conditions.

Mr. Wright confirmed that he agreed with the two (2) recommended conditions.

Bob Harbison stated that the last time the P.C. heard the extension that he voted for the extension. He said he had read some information on this request that he did not remember reading on the other request and asked what the wind loading for the original 150 foot tower was.

Mr. Wright replied 70 miles, and is engineer stamped for the extension. He added that the foundation is for a 190 foot tower. He explained that he started out with a 150 foot tower in hopes of adding to the height as additional towers were erected in the County at that time, such as the Arnold Road, McBride Road, and Morgan Road towers. He confirmed that all these towers were approved for 180 feet, but the Morgan Road tower had added height twice and now stands at 199 feet, and the McBride Road tower is at 195 feet, which is what he had hopes of extending to, which is the operating level everyone is wanting to go in at. He reported that everyone is staying below 199 feet to avoid lighting of the monopole. He added that any tower above 199 feet would require lighting and his would never have any.

Chairman Graw asked when the tower was constructed.

Mr. Wright answered that he had applied for the tower in 1998.

Mrs. Zeitler advised that the site plan was approved in 2000.

Chairman Graw asked why the tower was built there.

Mr. Wright replied that the tower was located on his property and a tower was needed in the area and no other area was approved.

Chairman Graw asked if he foresaw any problems with the height of the tower at that time.

Mr. Wright replied that he did not, since there were three (3) other towers constructed and approved at 180 feet, and he assumed he could get approval also. He added that these towers were within 1,000 feet of a residence and some closer than his.

Chairman Graw asked Mr. Wright if he had guarantees that there would be 3 more co-locators on the tower.

Mr. Wright replied that he had two (2) for sure, with room for one (1) more. He advised that each cell tower is capable of handling approximately 85 phone calls at a time, and eventually the Porter Road tower will fill up, and to get the additional service they would have to jump to another tower. He explained that Nextel, BellSouth, and Verizon go for the higher level towers, but the PCS companies such as T-Mobile, AT&T, and Sprint work within small cells, but once BellSouth and Verizon start getting over 85 phone calls at one (1) time they are going to have to have another tower to pull off of so that you won't get dropped phone calls, so eventually they will have to forward to another tower or construct another tower, because they can only handle so many calls from one (1) tower. He advised that this is why, in Atlanta, you see a tower every quarter of a mile or half-mile on the side of buildings, or whatever, because they can only handle so many phone calls at the time. He said that everybody is wanting their cell phones to work inside the house and the companies are getting complaints because the cell phones aren't working at home and these are business people and they are losing business. He added that the phone companies are showing coverage on their maps

but they don't have coverage down there. He went on to say that you can purchase an AT&T or Sprint phone and go home to the south end of the County, you don't have coverage but people with BellSouth, Verizon, and Nextel have coverage in the south end of the County.

Doug Powell asked why he could not place another user on the tower now.

Mr. Wright explained that the user would have to locate at 155 feet and it would not give them the coverage they need to get to the south end of the County. He said that the line of sight is a problem for getting a signal from another tower, plus to get adequate coverage along S.R. 92 along the bridge, and Lake Horton is not getting the coverage. He stated that the County tower at Porter Road would provide coverage along S.R. 85 and eventually Bernhard Road but the other end of Lake Horton has no coverage.

Mr. Powell asked Mr. Wright to explain page 3 and page 4.

Mr. Wright said that page 3 shows the coverage for AT&T at 188 feet and page 4 shows the coverage for Sprint at 188 feet.

Mr. Powell asked if there were coverage sheets showing the comparison between the current tower height and the existing tower height.

Mr. Wright explained that T-Mobile is locked in for 165 to 170 feet and AT&T and Sprint will have a co-shared lease at 188 feet, however Sprint's coverage is not as good as AT&T. He added that they are willing to locate at 188 feet, even though a higher level would be better, since there are no towers in the area and they do not foresee getting any towers in the area.

Mr. Powell asked if the difference between AT&T and Sprint was technology.

Mr. Wright replied that he did not know.

Chairman Graw asked if there were any further comments. Hearing none, he called for a motion.

Bill Beckwith made the motion to approve the petition. Al Gilbert seconded the motion.

Mr. Harbison stated that cell phone towers have been one of the County's biggest nightmares. He said it was a tough decision because no one wants a tower in their back yard, but the P.C. is faced with the situation to either allow a tower to increase its height or allow an additional tower, and Mr. Wright stated that there would not be any additional towers in the area due to the ordinance.

Chairman Graw said that it has been a balancing act, do we agree to increase the height or do we have another tower. He added that he did not think the citizens want another tower, so is 18 feet worth another tower. At this time, he called for the vote.

The motion passed 4-1 with Doug Powell voting in opposition.

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5. Consideration of Petition No. RP-021-03, South-Tree Enterprises, Inc., Owner, and Chuck Ogletree, Agent, request approval of the revision of a recorded plat, Lee's Mill Landing, Phase III, to allow the subdivision of Lot 32 consisting of 4.002 acres into two (2) single-family dwelling lots. This property is located in Land Lot 46 of the 7th District, fronts on Lees Overlook and Mill Run, and is zoned R-70.

Chuck Ogletree stated he was the current owner of the four (4) acre tract which he was requesting to subdivide into two (2) 2-acre lots. He said that the previous owners deeded the lot over to Mr. Ogletree with the construction of a new house. He commented that the new house was completed

on Lot 32 and he is in the process of deeding the lot back to the previous owners. He confirmed that the original preliminary plat indicated the four (4) acre tract as two (2) separate lots, however prior to the final plat being recorded the lot was platted as a four (4) acre tract. He remarked that the streets and curbing were designed for two (2) separate lots. He commented that there are not houses in the dead end of the cul-de-sac. He said the property was an eyesore since it was grown up, no one taking care of it, and a constant maintenance property with people littering. He commented that there is a possibility of one (1) driveway being put in on the right side of the cul-de-sac for Lot 35 because it is questionable if Lot 35 can be built on or not. He went on to say that it would be a whole lot better of if you could put another house in the cul-de-sac mainly for the people to take care of it. He said that the proposed lots would be consistent with the size and density with the majority of the lots in Phase III, since most of the lots are two (2) acre lots with some larger lots.

Mr. Ogletree advised that he had received a letter from Jeff Kilgore of the Environmental Health Department regarding the soils. He stated that after receiving the letter he had a Level III Soil Study performed and the soil on the eastern portion of this lot is suitable for an alternative type system which will be determined by Environmental Health.

Mr. Ogletree commented that based on Staff's Comments he meets the requirements for subdividing the lot back to its original two (2) 2-acre lots. He added that there are letters from the surrounding homeowners who do not object to subdividing the lot.

Chairman Graw asked if there was anyone to speak in favor of the petition. Hearing none, he asked if there was anyone to speak in opposition of the petition.

Darryl Wilson of Lot 39 presented a petition containing 71 names and the final plat of Phase III to the P.C. He advised that he was a member of the Lees Lake Homeowners Association, also a board member on the Lees Mill Landing Homeowners Association, and the Chairman of the Architectural Review Board. He said that the original plat did show Lots 32, 33, 34, and 35. He stated that Mr. Morris confirmed that the lots were combined because the Fayette County Engineering Department and Environmental Health Department advised him prior to approval of Phase III that these were identified as bad lots. He remarked that the Permit Department did not have any record of Lot 32 until October of 2001. He commented that Mr. Morris combined the lots for tax consideration and removed the property from consideration of development. He went on to say that Mr. Morris stated that when he sold Lot 31 he included Lots 32-35 with the understanding that they were bad lots and would not perc and would not be developed.

Mr. Wilson said that Mr. Ogletree failed to address one issue that is a great concern to the neighborhood. He stated that a portion of the neighborhood is on the floodplain of Whitewater Creek and there is a lake, Lees Lake, in some of the back yards. He pointed out that portions of Lot 32-35 do fall within a protected area as defined by the Fayette County Water Protection Ordinance of 1987. He remarked that the portion of Lot 32 within the protected area encompasses the entire northern and western boundaries of the proposed Lot 33. He commented that the adjacent lot, Lot 35 is completely in the floodplain of Whitewater Creek.

Mr. Wilson advised that there are protected covenants and South-Tree has been a member since they purchased Lot 28 in 1997. He said that they currently own two (2) properties and by this action three (3) properties, however they have never paid dues to the homeowners association; they have never returned a phone call; they did not comply with the Homeowners Association Architectural Review Board for construction on Lot 32; or for this action to subdivide the property.

Mr. Wilson stated that the protected covenants state that a drainage easement may not be moved, altered, or destroyed, however several of the homeowners did witness prior to October, 2001 the tampering of or destruction of the drainage easement on Lot 31 and Lot 32. He said that the drainage easement on Lot 32 runs from a buried headstone in the northeast corner of the lot through a paved driveway and onto Lot 31. He commented that the residents on Mill Run did see 30" drainage pipes buried in this area in at least 3-4 feet of soil. He remarked that he and his wife had heard the trucks

dumping dirt and banging tailgates early in the morning. He went on to say that prior to the tampering the headstones were separated to dissipate the storm water in no less than 8 separate catch basins. He pointed out that one (1) catch basin is in the corner of Lot 31 and two (2) are in the northeast corner of Lot 32. He stated that the residents believe that all of the water from the catch basins was redirected into one drainage easement which borders Lot 35 and Lot 36 instead of three catch basins based on the way the water is flowing. He added that there is a house on Lot 36. He said that they believe the water is illegally flowing into the floodplain of Whitewater Creek. He reported that there was quite a bit of standing water on Lot 33 due to the removal of trees in the flood zone which is strictly prohibited. He remarked that there has been an influx of mosquito activity in the neighborhood. He commented that there also is a visible stream and also a stream of mud flowing through Lot 32 thru Lot 35 directly into Whitewater Creek which is quite objectionable. He continued by saying that the owner of Lot 36 had a serious water problem in her basement and the trickle of water has become a small stream. Mr. Wilson said that South Tree has not acted responsibly within the subdivision.

Lamont Richardson stated that he owns property in Lees Mill Landing Subdivision. He said he and his wife had built their dream home there. He remarked that the developer wants to subdivide this lot without even first coming to the community to see if there are any objections or if something could be worked out to make this work. He commented that the developer has not only disregarded the residents but so the fact that there is a lake and overflow of water and over development in the area. He said that some of these issues needed to be resolved but he is changing the makeup of the area. He reported that people have devoted a lot of time and money in developing homes in the area and they do not want to see it destroyed by a developer coming in and subdividing the property. He commented that he knew the lot was four (4) acres but there is two (2) acres which has a problem with wetlands and he wants to develop it anyway. He added that the price of the home had not been mentioned and this should have been addressed to the community prior to appearing before the P.C. Mr. Richardson asked the P.C. to deny the request because they did not want the community destroyed just to have another house developed in the neighborhood.

In rebuttal, Mr. Ogletree stated that in 1991 when the final plat was recorded, issues with septic tanks were different than they are today since there are a lot of new systems out today. He said that the systems available today were not available 12-13 years ago and technology has changed, so the ability to put in a septic system in soils not suitable 12-13 years ago, the possibility is available today. He remarked that the septic system would have to be approved by the Fayette County Health Department. He reported that if he were allowed to subdivide the lot but the Health Department said it is not suitable to build on then they have lost nothing, it is still a vacant lot. He confirmed that there is more than one (1) acre out of the floodplain and there is adequate space on the backside of the lot to locate a house and septic system. He added that there are wetlands and underground springs on the front section of the lot, and it is a swampy area in the front, the north section of lot 33 along the cul-de-sac. He reported that the water did drain within 30 feet of the cul-de-sac and comes to a halt and stands and there is a problem with mosquitoes. He said that by developing a house on this lot, these issues could be addressed, however if nothing is done with this lot it will sit and always be a problem. He stated that to his knowledge he had not received any phone calls from the Homeowners Association and he has someone to answer the phone five (5) days a week from 9:00 A.M. to 5:00 P.M.

Mr. Ogletree reported that the storm sewer was extended on Lot 32 across and underneath the driveway. He said that any issues with the storm sewer should be addressed by the Engineering Department and he would be happy to meet them on the site. He confirmed that he did not remove any of the trees from the floodplain and that they were already gone when he purchased the lot. He remarked that the property owner of Lot 32 would like to subdivide this lot and sell Lot 33 to one of their relatives for them to build a house on. He closed by saying he would be happy to answer any more questions.

At this time, Chairman Graw closed the floor from public comments.

Bill Beckwith verified that this request is a revision to a final subdivision plat.

Kathy Zeitler replied yes. She advised that if the request is approved then a revised final plat must be approved by all the County departments before it can be recorded.

Mr. Beckwith confirmed that the P.C. will make a recommendation to the B.O.C. and the B.O.C. will make the final decision.

Mrs. Zeitler replied that anytime there is a platted subdivision and density is added, public hearing approval by the B.O.C. is required.

Mr. Beckwith asked Mrs. Zeitler if she knew why the one (1) lot was not shown as two (2) lots on the final plat.

Mrs. Zeitler advised that the preliminary plat indicated Lots 32 thru 35, however the final plat indicated those lots as being combined, but there was nothing in the file to indicate why. She said the developer probably made that decision based on whether the lots would perc or not, due to the soils.

Doug Powell reiterated that Mr. Ogletree has stated that if the lot is subdivided it cannot be built on without approval from the Health Department. He added that Mr. Kilgore defines the lot as challenging soil conditions with a seasonal water table. He stated that he could attest that there is plenty of water on the lot currently, and he would be interested in knowing what the staff would say if they were out there looking at it right now. He stressed that there was no guarantee if the request was approved tonight that it could be built on and he would be very surprised if they could.

Mr. Beckwith added that if the property is not subdivided that it is for sure that nothing will happen to improve Lot 33 because it is part of a larger lot. He said that the possibility of conditions being improved if the lot was subdivided and a house was constructed, it would then be subject to environmental controls and other regulations to protect the area and control the drainage. He added that the property owner has the right to subdivide and it could be a benefit to the community if the lot was subdivided and a house was constructed on the lot and the drainage conditions were remedied.

Bill Beckwith made a motion to approve the petition. Bob Harbison seconded the motion.

Chairman Graw stated that there is a petition with approximately 71 signatures in opposition and four (4) letters in support of the lot being subdivided, which will be made a part of the official record. He said that he has always taken the position that he would hate to be surprised. He remarked that the residents bought and built in the subdivision with the knowledge that there was a lot on a cul-de-sac consisting of four (4) acres and now to see somebody subdivide the lot is a complete surprise. He pointed out that there is also an eight (8) acre lot, Lot 35 and he expressed concern about setting a precedent for the eight (8) acre lot.

At this time, Chairman Graw called for the vote. The vote passed 3-2 with Chairman Graw and Doug Powell voting in opposition.

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Chairman Graw called for a break at 8:14 P.M. He reconvened the meeting at 8:19 P.M.

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6. **Consideration of Petition No. 1105-03, Charles and Ellen Thompson, Owners, and Roger Fisher, Agent, request to rezone 2.01 acres from A-R to O-I to develop an Office. This property is located in Land Lot 127 of the 5th District and fronts on S.R. 54 West.**

Charles Thompson stated that he and his wife were the owners of the property. He thanked the Staff for recommending approval, but stated he needed to address the recommended condition because it was going to be a financial difficulty. He added that there were some statements in the Staff Analysis regarding the realignment of the drive which has not been done. He said he would never change a drive without going to the G.D.O.T. for approval because they could fine him \$10,000 per day. He commented that he had owned the property for three (3) years and the cut across from the property is off-set. He reported that he had repaved the driveway and had put in concrete in the same location where the asphalt was previously. He explained that the block wall was falling down and he had put up crossties in that area. He suggested allowing him to plant Leyland Cypress in an area 5-6 feet by Mr. Huddleston who does not object to the planting. He submitted pictures to the P.C. and stated he could come out from the curve at the concrete drive and angle it out with an acceleration lane and also increase the curb cut to line up which would have to be approved by the G.D.O.T.

Roger Fisher referenced page 3-5. which states that with the existing driveway location the required 30 foot buffer along the west property line will not be possible and if a variance is approved to delete the 30 foot buffer adjacent to the west property line, there would be a significant potential for negative impacts on the adjacent residential use. He said that the existing house is not a large structure. He commented that the driveway is pre-existing and the impact of cars generated from the proposed use will not be significant. He pointed out that the adjacent structure is approximately 150 feet from the subject property.

Mr. Thompson advised that the subject property is served by County water and does not know about a well being on the subject property. He referenced one (1) of the photographs which indicated the water meter. He added that the subject property will be utilized for a real estate office, doctors office, or attorneys office.

Chairman Graw asked if there was anyone to speak in favor of the petition. Hearing none, he asked if there was anyone to speak in opposition. Hearing none and with no rebuttal required, he closed the floor from public comments.

Doug Powell verified that Mr. Thompson was asking for a variance on the 30 foot buffer requirement.

Mr. Thompson said that there is approximately 25 feet of concrete and there is another 4-5 feet of property which sets up high and he would like to stagger Leyland Cypress for a buffer.

Mr. Powell said that the ordinance required a 30 foot buffer plus a 15 foot setback.

Mr. Thompson replied that this could not be accomplished due to the location of the existing house.

Mr. Powell advised that the property was being rezoned and the P.C. has to be considerate of the residential neighborhood.

Mr. Thompson said he would be glad to get a letter from the adjacent property owner stating he has no problem with the Leyland Cypress.

Mr. Powell remarked that he had visited the property and tried to visualize himself in the adjacent house while 145 cars drive in and out of the site every day.

Mr. Thompson commented that he did not think that there would be that many.

Mr. Powell replied that he was not an expert but the experts say that it would accommodate 145 daily trips.

Bob Harbison verified that the overlay zone prohibits the P.C. from granting a variance.

Kathy Zeitler replied yes, that the P.C. was only considering the rezoning. She said that if Mr. Thompson wanted a variance approved that he would later have to appear before the Zoning Board of Appeals.

Chairman Graw said he would like to split the recommended condition into two (2) conditions. He asked Mr. Thompson if he agreed to the 30 foot buffer requirement.

Mr. Thompson replied that he did not agree to tear out a concrete driveway at the expense of \$72.00 per yard which is only two (2) years old.

Chairman Graw stated that the second condition was relocation of the existing driveway toward the interior of the subject property to align with the new curb cut required by G.D.O.T.

Mr. Thompson replied that he agreed and should have been done a long time ago but he did not relocate the entrance.

Mrs. Zeitler clarified that the condition states the driveway will be relocated, not the curb cut, because G.D.O.T. is going to require a new curb cut and that and did not have a choice in that matter. She stated that the condition requires the driveway to align with the new curb cut, so basically it will be a new driveway.

Chairman Graw restated that he would have to move the driveway.

Mr. Thompson stated that he did not agree with that condition. He said it did not make any sense at all to tear up the existing driveway and relocate it 20 feet away because it is pre-existing.

Al Gilbert stated that the P.C. could not issue a variance and all they could do is recommend the zoning under the rules and regulations. He said they were going to have to go with the recommended condition because that is in the ordinance, and then a variance would have to be filed with the Z.B.A.

Mr. Harbison verified that the condition is a part of the ordinance and is being reiterated in the condition.

Mrs. Zeitler confirmed that the 30 foot buffer is part of the ordinance requirements, however the realignment of the driveway is not.

Mr. Thompson asked if a driveway could be considered a buffer.

Mr. Gilbert advised that a driveway is a impervious surface and a buffer has got to be landscaped.

Mr. Thompson replied that there is grass on the other side of the driveway for about eight (8) feet.

Mrs. Zeitler asked if there was not a retaining wall and steep slope in that location.

Mr. Thompson replied that there was a retaining wall there and it is needed. He said the retaining wall is beautiful and by adding the Leyland Cypress it would meet the regulation of buffering.

Mr. Gilbert stated that the driveway should align with the curb cut, which is between Mr. Thompson and the G.D.O.T. He added that if he did not like the rules he could go to the Z.B.A. and ask for relief because the P.C. does not have the authority to change the ordinance.

Mr. Thompson pointed out that the impact of the driveway would cost approximately \$14,000 and it would be foolish to tear up the driveway and move it and mess up the beauty of the structure.

Chairman Graw called for a motion.

Bob Harbison made a motion to recommend approval of the petition subject to the recommended condition. Al Gilbert seconded the motion.

Chairman Graw reiterated that the petitioner does not agree to the recommended condition.

Mrs. Zeitler advised that if the petition is approved with the recommended condition then he must meet the condition or go back to the B.O.C. to delete or modify the condition. She stressed that he could not seek a variance if there is a board imposed condition of rezoning.

Bob Harbison withdrew his motion. Al Gilbert withdrew his second.

Bob Harbison amended his motion to approve the petition subject to the alignment of the driveway with the curb cut. He stated that the 30 foot buffer was a requirement which the petitioner should be able to vary if he chose to do so. Al Gilbert seconded the motion.

Mr. Powell verified that the petitioner had to comply with the 30 foot buffer.

Mr. Harbison replied that the petitioner would have to comply unless the Z.B.A. grants a variance regarding the buffer.

Mr. Powell verified that if the 30 foot buffer was removed from the condition then the petitioner could apply for a variance.

Mr. Harbison replied he would have the right to appeal.

Chairman Graw called for the vote. The motion passed 4-1 with Doug Powell voting in opposition.

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7. Consideration of Petition No. 1106-03, Mary L. Locklin, Owner, and Crane & Associates, Inc. and Billy Brundage, Agents, request to rezone 56.007 acres from A-R to R-40 to develop a single-family residential subdivision consisting of approximately 42 lots. This property is located in Land Lot 70 of the 5th District and fronts on Price Road.

Billy Brundage of Brundage Engineering, Agent, requested to rezone 56 acres on Price Road from A-R to R-40. He referenced the Staff Analysis and pointed out that the request is in keeping with the Land Use Plan. He confirmed that they were proposing 42 single-family lots on 56 acres, however the number of lots may decrease due to watershed restrictions. He added that the proposed rezoning will not adversely affect the existing use or usability of adjacent or nearby property and is consistent with surrounding properties. He said it would not result in a burdensome use in road, utilities, or schools.

Mr. Brundage reported that the subject property is located immediately south of the Fayetteville City Limits and the property in the city is currently zoned commercial, however it is not completely developed at this time. He stated that the subject property is basically behind Ingles and added that there is not development right up to the property line. He confirmed that the zoning to the north is commercial; northern half of east side is zoned for townhouses and the remainder of the east property line is Kingswood Subdivision, consisting of one (1) acre lots.

Mr. Brundage went on to say that they are asking for one (1) acre lots which is consistent with the area. He remarked that he had a map designating the zonings in the area.

Chairman Graw asked if there was anyone to speak in favor of the petition. Hearing none, he asked if there was anyone to speak in opposition of the petition. Hearing none and with no rebuttal, he closed the floor from public comments.

Bob Harbison made the motion to approve the petition subject to one (1) condition. Doug Powell seconded the motion. The motion unanimously passed 5-0.

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Chairman Graw asked if there was any further business. He reminded the P.C. of the Workshop scheduled for March 20, 2003 had been canceled and rescheduled to be held immediately after the April Public Hearing.

There being no further business, Bob Harbison made the motion to adjourn the meeting. Doug Powell seconded the motion. The motion for adjournment unanimously passed 5-0. The meeting adjourned at 8:40 P.M.

PLANNING COMMISSION
OF
FAYETTE COUNTY

ATTEST:

JIM GRAW
CHAIRMAN

ROBYN S. WILSON
SECRETARY