

THE FAYETTE COUNTY PLANNING COMMISSION met on Thursday, August 4, 2005 at 7:00 P.M. in the Fayette County Administrative Complex, 140 Stonewall Avenue West, Public Meeting Room, First Floor, Fayetteville, Georgia.

MEMBERS PRESENT: Douglas L. Powell, Vice-Chairman
Al Gilbert
Tim Thoms

MEMBERS ABSENT: Jim Graw, Chairman
Bill Beckwith

STAFF PRESENT: Pete Frisina, Acting Director of Planning and Zoning
Aaron Wheeler, Zoning Administrator
Delores Harrison, Zoning Technician
Dennis Davenport, Assistant County Attorney
Karen Morley, Chief Deputy Clerk
Sgt. Earl Williams

STAFF ABSENT: Robyn S. Wilson, P.C. Secretary/Zoning Coordinator

Welcome and Call to Order:

Vice-Chairman Doug Powell called the meeting to order and led the Pledge of Allegiance. He introduced the Board Members and Staff. He announced that he would be presiding as Chairman in the absence of Chairman Jim Graw who had a prior commitment tonight.

Vice-Chairman Powell remarked that having only three (3) members of the Planning Commission present tonight, in lieu of the full five (5) member Board, might impact some of the petitions tonight. He asked Zoning Administrator Aaron Wheeler to read the rules of procedure for the meeting tonight.

Mr. Wheeler remarked that tonight's public hearing was for the County Planning Commission to consider requests for the rezoning of property, plat approvals and issues related to County codes and regulations. He said Fayette County required two public hearings for these requests. He said the first public hearing on the first Thursday of the month was heard by the Planning Commission and their vote was a recommendation to the Board of Commissioners. He said the second public hearing on the fourth Thursday of the month was by the Board of Commissioners and their vote would be the final decision of the county. He said procedures for the public hearing of each agenda item are as follows: (1) Presentation by petitioner. He said once the agenda item was announced the petitioner will present the request to the Planning Commission. He said the petitioner, along with those speaking in favor of the request, would be granted a cumulative total of fifteen minutes for presentation and rebuttal. (2) Public comment. He said after the petitioner's presentation, the Planning Commission would ask for public comment. He stated that each petitioner may have a total of three minutes each to address the Planning Commission. He said first the Planning Commission would hear those speaking in favor of the request. He stated then the Planning Commission would hear those speaking in opposition to the request and also grant a cumulative total of fifteen minutes to those opposed. He said each person who wishes to speak to the Planning Commission would come to the podium, print his/her name and address on the form provided so that each speaker would accurately be identified in the minutes of the meeting. He said speakers were requested to speak only to the Planning Commission and not to the applicant or others in the audience. He said if a group wished to speak, a spokesperson should represent the group. He remarked that they ask that each person not repeat the same concerns of previous speakers. He said any items, such as photographs or signed petitions that a speaker may wish to give to the Planning Commission, must be given to the Marshal. He said after all persons speaking in opposition have spoken, the Planning Commission would close the floor to further public comment on the agenda item. (3) Rebuttal by petitioner. He said the petitioner would be given the remainder of his/her fifteen minutes for rebuttal and to address the Planning Commission about the issues. (4) Motion and discussion by the Planning Commission. He said normally a Planning Commission member would make a motion to either approve, deny, approve with conditions or table and the motion would be seconded by another Planning Commission member. He said lack of a second would nullify the motion. He said the Planning Commission may ask questions or comment prior to or

after a motion was made and seconded. (5) Planning Commission recommendation vote. He remarked that following discussion, the Chairman would call for the vote. He said the vote was not the final decision of the County, only a recommendation to the Board of Commissioners who would consider the Planning Commission's position as well as other factors. He said if there was not a full Board present at the public hearing, the petitioner may request to table the petition to the Planning Commission public hearing for the following month, provided the petitioner requests to table the agenda item prior to the presentation. He said provided that everyone understands these procedures the rezoning requests may begin now.

Vice-Chairman Powell said he would like to elaborate on the last paragraph that Mr. Wheeler read. He said there was not a full Board present tonight. He pointed out that there were only three members. He said in order for the Board to approve a petition this evening, all three (3) members would have to vote in approval before it could be sent forward to the Board of Commissioners as being approved. He said if the Board voted tonight in a 2-1 vote, that would mean that the petition was denied because there was not a majority of the five (5) Planning Commissioners who were normally present. He remarked that consequently, if an applicant wanted to table until next month, then it might behoove that applicant to postpone and table their petition until next month. He said the Board would proceed with the first agenda item.

* * * * *

1. Consideration of the Minutes of the meeting held on July 7, 2005.

Vice-Chairman Powell asked the Board Members if they had any comments or changes to the Minutes as circulated.

Tim Thoms made a motion to approve the July 7, 2005 Minutes with one (1) change regarding Petition No. 1144-05 on the fifth page of that petition in the last paragraph before Chairman Graw called for the vote. He said the first sentence said Mr. Thoms commented that the C-S was more preferable. He said in reading that in black and white context, he would like a secretary to check and see if he said less preferable or more preferable. Al Gilbert seconded the motion. The motion unanimously passed 3-0. Chairman Graw and Bill Beckwith were absent.

* * * * *

2. Consideration of the Workshop Minutes of the meeting held on July 21, 2005.

Vice-Chairman Powell remarked that the ruling that was just explained did apply here because Al Gilbert was not in attendance at the Workshop Meeting. He said this meant that there were only two members present who had attended the Workshop; therefore, there was not a majority to approve those Minutes. He said those Minutes would have to be approved at the Board's next meeting.

Vice-Chairman Powell made a motion to table the approval of the Workshop Minutes of the meeting held on July 21, 2005 until the September 1, 2005 Meeting. Al Gilbert seconded the motion. The motion unanimously passed 3-0. Chairman Graw and Bill Beckwith were absent.

* * * * *

THE FOLLOWING ITEMS WILL BE CONSIDERED BY THE PLANNING COMMISSION ON AUGUST 4, 2005.

3. Consideration of a preliminary plat, Common Oak, Office Park 54, LLC, Owners, and Becky B. Morris, LA, Agent. This property consists of 8.096 acres with 10 lots. This property is located in Land Lot 39 of the 7th District, fronts on S.R. 54 West, and is zoned O-I.

Vice-Chairman Powell asked if the petitioner for Common Oak Office Park 54 was present. No one spoke up as the petitioner. Vice-Chairman Powell said it was his understanding that this item would be tabled tonight. He asked if there was a motion to table.

Tim Thoms made a motion to table this item to the September 1, 2005 Meeting. Al Gilbert seconded the motion. The motion unanimously passed 3-0. Chairman Graw and Bill Beckwith were absent.

* * * * *

THE FOLLOWING ITEMS WILL BE CONSIDERED BY THE PLANNING COMMISSION ON AUGUST 4, 2005 AND BY THE BOARD OF COMMISSIONERS ON AUGUST 25, 2005.

4. **Consideration of Petition No. 1147-05, Christine Parker Newton and Claudine Banks Oakley, Owners, and Thomas B. Chandler, Agent, request to rezone 39.03 acres from A-R to R-45 to develop 31 single-family dwelling lots. This property is located in Land Lots 226 and 255 of the 5th District and fronts on New Hope Road.**

Zoning Administrator Aaron Wheeler read the petition request.

Larry Seabolt said he was representing the petitioner. He said this request was to rezone 39.03 acres with 31 lots which would be a minimum of one (1) acre. He said the entrance would come off New Hope Road and that the subdivision would be serviced with one (1) entrance. He remarked the subject property was located just east of the intersection at S.R. 92 by the water tower.

Assistant County Attorney Dennis Davenport interjected that for the record it would be best if the petitioner indicated that he wished to go forward before getting into his presentation.

Vice-Chairman Powell asked Mr. Seabolt if he elected to continue this evening with his petition or would he prefer to table until next month.

Mr. Seabolt replied that he wished to continue.

Mr. Seabolt remarked that everything was covered in the Board's packets and he did not have anything additional to add at this time. He said he agreed with the conditions and had no problem with meeting any of those.

Vice-Chairman Powell asked if anyone wished to speak in favor of this petition. Hearing none, he asked if anyone wished to speak in opposition.

Bud Chastain, 1019 New Hope Road, Fayetteville said his property was right in the middle of this property. He said he had two (2) acres in the very center of the property. He remarked he had no objection to his neighbors trying to sell their property, but was concerned with the number of houses on such a small tract of land. He said there were already a lot of car accidents at the red light on New Hope Road. He also stated that he could hardly back out of his driveway without getting hit. He felt it was too many homes for the area. He said the area would be so crowded that everybody would be shoved in together. He said he had moved here for the quality of life they would be getting as far as the rural part of the county. He said it was getting to the point now where it seemed like money was getting in the way of everything. He said he had no problem with his neighbors selling their property but felt two (2) acre tracts would be better and make the area nicer. He said it was all pastures and there were no trees or anything left and he felt his home would be cramped with all of the proposed houses coming in. He said there would be one (1) entrance into the subdivision with a cul-de-sac on one (1) side of him. He pointed out that in some of the other neighborhoods with two (2) acre tracts or larger it was a lot nicer. He felt Fayette County was turning into a place now where there was nothing but "For Sale" signs. He said everybody that had moved here to begin with was leaving. He said now it was all newcomers who were coming in who just want a house just to live in and not have a yard. He said it was getting to a point where it was pushing out all of the citizens who were here first. He said a lot of the landowners came here to purchase the land and

make money for the future and their retirement. He said he had nothing against that, but the citizens who were left were getting squeezed. He said almost every week at New Hope Road and S.R. 92 there were accidents and it was getting harder and harder to get out of his driveway. He said it was getting to the point where the citizens were going to be squeezed so much that it would not be worth living in. He said people were running out of places to go.

Vice-Chairman Powell asked if anyone else wished to speak in opposition.

Judy Chastain said she wanted to address some issues that her husband had not. She expressed concern with the quality of homes that were going to be built and especially the square footage, if there would be a homeowners association, and concerned with property values and single family homes being built on such small acreage. She said this development would leave no green space and their home was right in the center. She said there was also the concern of traffic flow on New Hope Road and commented that currently it was horrendous. She said there was one (1) entrance and exit to this proposed subdivision which would be to the right of their driveway. She stated about a quarter of a block there was a red light. She said the safety issues were of great concern for everyone living in that area.

Vice-Chairman Powell asked if anyone else wished to speak in opposition. Hearing none, he asked the petitioner if he had any rebuttal.

Mr. Seabolt remarked that he had no further comments.

Vice-Chairman Powell closed the floor from public comments and asked the Board if there were any questions.

Tim Thoms asked when the R-45 zoned property that was adjacent to the property that runs along S.R. 92 Breckenridge was rezoned.

Mr. Gilbert replied that it had been at least ten (10) years ago or longer.

Mr. Thoms asked if the R-45 zoned property that was on both sides of the road was rezoned at the same time.

Mr. Gilbert responded yes just about the same time.

Vice-Chairman Powell interjected that one (1) parcel was R-45 and the other was R-70.

Mr. Thoms remarked that R-70 was basically on the other side of S.R. 92. He clarified that it was blanket zoned when the zoning was originally done in the county approximately 20 years ago. He said he understood the petitioner's request as well as Mr. and Mrs. Chastain's concerns about having one (1) acre lots surrounding them. He said the reason he had asked the question about the R-45 zoning adjacent was in looking at the Land Use Plan, staff had said that it did meet the requirements of the Land Use Plan and R-45 zoning. He said there were several properties as staff had noted that were A-R that adjoin this property. He said this area has a rural atmosphere except for the subdivision that was R-45. He said most of the homes were on larger acre tracts and at the corner of S.R. 92 there was the Hopewell Community Club House which has been there for many years. He said he could see how one (1) acre lots could impact this area. He said he also had a concern about the density even though it was technically within the Land Use Plan. He said with the surrounding property he was not sure if it would fit on all sides completely with the zoning that was in place on the other properties.

Mr. Gilbert said he felt too often it was easy to point out where A-R property was located in an area. He said if the original concept plan was reviewed, Agricultural Residential (A-R) was a holding pattern that properties were put in at the time the County's Land Use Plan was set up. He said if A-R was used as a criteria every time to deny a zoning, then there should not be any zoning in the County now at all. He said at one point 85% to 90% of this County was zoned A-R. He said this

was the reason for the Land Use Plan and this was what the Board really needed to base its decisions on. He questioned what the Land Use Plan said was appropriate for this area and the R-45 zoning meets the land use for the area.

Vice-Chairman Powell said he would agree with that but he could also see Mr. Thoms point of view. He said he had driven over to the property and probably spent a half hour there. He said the Chastains were definitely surrounded by this development. He said when they come out into their backyard and look to the left they were going to see ten to fifteen homes and when they look behind their house they would see another ten (10) or 15 homes as well as looking to the east they would see another ten (10) or fifteen (15) homes. He said traffic was definitely a problem but this was a problem throughout the County. He said this Board had talked about traffic at the last meeting and the Board would probably talk about traffic at the next meeting. He said until the County gets some relief from Georgia Department of Transportation (G.D.O.T.) to widen the roads, traffic would continue to be a problem because Fayette County was a very desirable County to move to. He said Fayette County had a Land Use Plan that had been approved not only by the Planning Commission but also by the Board of Commissioners and it was reviewed every year. He said one could see that the northern part of the County was becoming much more dense than the southern part. He stated that was just a natural reaction with the northern part being so close to Atlanta. He said he did not know how one could "stem the tide" of people moving south. He pointed out that the 39 acre tract was on the market and he found it interesting that no one raised their hand to say that they would purchase it and start a farm. He said nobody was farming these days. He said Fayette County lost 35% of its farmland in the last 15 years and he did not know if he liked that. He said he preferred it more rural but he was not sure how it could be stopped. He said the Land Use Plan that was designated for that area would allow the R-45 zoning and he could not see how this Board could deny this petitioner's his request. He remarked that the traffic was going to be a problem but he felt what was being seen in the northern part of the County was inevitable.

Al Gilbert made a motion to recommend approval of this zoning with the two (2) conditions as listed.

Vice-Chairman Powell asked the petitioner if he was aware of the two (2) conditions.

Mr. Gilbert interjected that the petitioner had stated earlier that he was familiar with them.

Tim Thoms seconded the motion.

Vice-Chairman Powell called the question.

The vote was 2-1 with Tim Thoms voting in opposition. Chairman Graw and Bill Beckwith were absent. Due to the lack of three (3) affirmative votes, the petition was denied.

Mrs. Chastain asked what the conditions were for this rezoning. She said she was not familiar with them.

Vice-Chairman Powell said he would be glad to read those conditions. He said in terms of right-of-way whenever there was a property that was rezoned it would have to conform with the right-of-way laws that the County was bound by. He said in this case ten (10) feet of right-of-way has to be deeded from the property owner back to the County at no cost to the County for future widening of the road. He said one condition was to dedicate at no cost to Fayette County ten (10) feet of right-of-way. He said the other condition was that no lot should have immediate access onto New Hope Road with the exception of one (1) entrance way and no other lots could have access to New Hope Road.

Mr. Gilbert said Mrs. Chastain had asked a question earlier that he could answer and that was if there would be a Homeowners' Association. He remarked that effective July 1, 2005 any development would have a Homeowners' Association because Fayette County had adopted the State Erosion Control rules and that was how it could be monitored and paid for. He said anything that

was zoned tonight and anything hence forth would have a Homeowners' Association.

Vice-Chairman Powell interjected that R-45 zoning would require a minimum 1,800 square foot home. He said he had no idea what the developer would be putting in there but there really had not been too many 1,800 square foot homes built in the County lately.

Assistant County Attorney Dennis Davenport pointed out that even though there was a 2-1 vote to approve the request, it would go forward as a denial to the Board of Commissioners.

Vice-Chairman Powell confirmed that it would go forward as a denial to the Board of Commissioners. He said the petition needed a 3-0 or a unanimous vote from the members tonight in order to go forward as a recommended approval. He said the Board of Commissioners would be hearing these same petitions at their August 25, 2005 Meeting. He noted that the Board of Commissioners' vote would be the final vote.

* * * * *

5. Consideration of Petition No. 1148-05, Berachah Bible Church, Owners, and W. Ronald Newton, Agent, request to rezone 13.34 acres from A-R to R-40 to develop additional church facilities. This property is located in Land Lot 202 of the 5th District and fronts on Corinth Road.

Zoning Administrator Aaron Wheeler read this petition request.

Vice-Chairman Powell asked if the petitioner was present.

Assistant County Attorney Dennis Davenport felt it would be prudent with respect to each petition tonight that the petitioner affirmatively state that he was going forward in light of less than a full Board.

Vice-Chairman Powell asked Mr. Newton if he wanted to continue tonight or table to the next meeting.

Weyman Ronald Newton, 310 Corinth Road, Fayette County said he would like to proceed tonight. He said Berachah Bible Church was located on Corinth Road and had been for approximately 25 years. He said there was a property that the Church was originally built on and about six (6) years ago they had purchased property adjacent to the property. He said his property was zoned residential and the adjacent property was zoned agricultural. He said they did have a fundraising program for that and it was purchased from an individual who lived just across the side road which was a dirt road. He said there were three (3) properties on that and one (1) of those was their associate pastor's. He said the other two (2) remaining houses were the only two (2) others that were within immediate eyesight of his property. He said they were pretty much sheltered from the surrounding area and most of the immediate area was residential as well. He said they had come into the County Offices to get a building permit about six weeks ago and realized that there were two (2) different zonings. He said they were told that they needed to have both properties zoned the same. He said this was the reason for requesting this rezoning so that they could build their church. He said after they were told this, they went back and actually re-evaluated their plan as to where they could situate the church expansion and whether or not they could do it all on the original piece of property and just save the rest for parking or whatever. He said they realized that they could not. He said just a small piece of the church expansion was going to go over onto the new property so they need to get it zoned so that all of the property was zoned the same. He said this was the reason for this request.

Vice-Chairman Powell asked for clarification that the existing church facility was on A-R zoned land.

Mr. Newton replied the existing church was on R-40. He said they were requesting to rezone the thirteen acres from A-R to R-40 so that it would all be residential. He said this request was solely for the purpose of getting the one (1) little corner of the church built.

Vice-Chairman Powell said if Mr. Newton was finished with his presentation he could have a seat. He asked if anyone wished to speak in favor of this petition. Hearing none, he asked if anyone wished to speak in opposition to the petition. Hearing none, he closed the floor from public comments and asked for the Board's comments.

Al Gilbert asked Mr. Newton if he was familiar with the two (2) conditions that Staff had recommended.

Mr. Newton replied yes.

Mr. Gilbert asked Mr. Newton if he agreed to those conditions.

Mr. Newton replied yes.

Al Gilbert made a motion to recommend approval subject to the recommended conditions. Tim Thoms seconded the motion.

Vice-Chairman Powell asked if there was any more discussion by the Board.

Mr. Thoms asked if R-40 zoning was required for the buffers that were needed.

Mr. Newton said the buffers had not been an issue.

Mr. Thoms remarked that it appeared from the plan that there appeared to be more than a 50 foot buffer with the parking.

Mr. Newton said he was unaware that the buffer would be different.

Vice-Chairman Powell said the buffers were identical.

Zoning Administrator Aaron Wheeler interjected that a church is a conditional use in all residential districts and; therefore, in that conditional use, has its own setbacks and buffers required. He said regardless which residential district being it R-40 or A-R they would be the same.

Mr. Thoms questioned if the Staff set the conditions or would the Board approve this as R-40 conditional zoning tonight.

Mr. Wheeler replied that based on review Staff had determined some recommended conditions. He said if the Board chose to approve with those recommended conditions, it would be a recommended approval of R-40 conditional.

Mr. Thoms asked if it would have to be conditional anyway because it was a church.

Mr. Wheeler said it was a conditional use but the actual zoning would be R-40 conditional.

Vice-Chairman Powell interjected that it would just be an authorized conditional use. He called for the vote.

The motion carried unanimously 3-0. Chairman Graw and Bill Beckwith were absent.

* * * * *

6. **Consideration of Petition No. 1149-05, Ann Hammond and Agnes Scott College, Inc., Owners, and Gadson H. Woodall, III, Agent, request to rezone 164.22 acres from A-R to C-S to develop a proposed subdivision consisting of 65 single-family dwelling lots. This property is located in Land Lots 223 and 224 of the 13th District and fronts on Wagon Wheel Trail.**

Zoning Administrator Wheeler read the rezoning request.

Robert Harville said he was with Lancaster Associates, a Planning and Engineering Firm representing the applicant Gadson Woodall.

Vice-Chairman Powell asked Mr. Harville if he wished to proceed tonight or did he wish to table until the next meeting.

Mr. Harville responded that the applicant wished to proceed this evening.

Mr. Harville said they propose to rezone the subject property from A-R to C-S (Conservation Subdivision). He said the proposal was for a community of 65 lots on a total of 164.2 acres. He said this would yield a net density of 0.44 lots per acre and minimum lot size would be one acre. He said they felt this was very good use of this property. He said the Conservation Subdivision would allow them to set aside the more difficult components of the property leaving them undeveloped which would allow them to address some of the topographic challenges of the property, with some of the rock that was present out there, and also to recognize the small branch that bisects the property nearby allowing them a larger buffer area along that sensitive portion of the property. He said the C-S subdivision would allow them to set aside 46% of the land in conservation area. He said they felt this was a wonderful asset for the community. He said that land would be side aside in perpetuity which they felt was a responsible stewardship of the land. He said this request complied with the Comprehensive Plan which identified this area as low density or one (1) lot for every one (1) to two (2) acres. He said the Comprehensive Plan also allowed for Conservation Subdivisions. He said Staff analysis recognized that this proposal would not adversely affect the usability or use of adjacent or nearby properties, nor would the proposal result in a burdensome use of roads, utilities or schools. He said they had reviewed Staff's recommendations that included four (4) proposed conditions. He said they had no problem with these conditions. He said they respectfully asked for the Board's approval on this application.

Vice-Chairman Powell asked if anyone wished to speak in favor of this petition. Hearing none, he asked if anyone wished to speak in opposition.

Willie Mitchell said he lived in the Brierfield Subdivision and was also the President of the Brierfield Homeowners' Association. He said he was certainly not someone to stand in the way of progress. He stated he did not have a really big issue with this proposed subdivision but he did have some concerns. He said he was concerned with the square footage of the homes, the lot size and the traffic flow on Westbridge Road which was already pretty heavy in the morning and evening. He said he assumed the subdivision would lead out to Westbridge Road and 65 additional homes coming into this area would certainly create additional traffic. He commented on his concern with the square footage of the homes. He said in Brierfield there was a minimum square footage of 2,200 for a ranch style home and 2,400 square feet for a two-story home. He said the homes ranged in price anywhere from \$350,000 to approximately \$1.5 million. He said his concern was with homes having 2,100 square feet. He said he had no idea if the homes would be three (3) sides brick or all brick. He said he had no idea what the upgrades would be in the homes but he would like to see homes in that area be comparable to the homes in Brierfield. He said if builders were allowed to come in and build \$200,000 or \$250,000 homes it might hurt the value of the existing homes in Brierfield. He said that was his concern and also the concern of a number of the residents in Brierfield.

Vice-Chairman Powell asked if anyone else wished to speak in opposition.

Rebecca Pell, 373 Westbridge Road remarked that she lived across the street from the entrance to Wagon Wheel Trail from where this subdivision was going to be built. She said she and her husband John moved here 20 years ago and they purchased the Rice's old home place of five (5) acres with a little pond behind it. She said at that time Westbridge was already established and Westbridge Acres had developed since the time they had lived there. She said they use the dirt road quite a bit to go up to their neighbors who were landowners and who had enjoyed that area quite a bit. She said recently with all of the rains that road had been washed out. She said the bridge at the base of that hill had been washed out twice.

Vice-Chairman Powell asked if this was on Wagon Wheel Trail.

Ms. Pell replied yes it was. She said she was interested to know who would maintain that road. She said at the present time it was the County. She said it was a rock road and it takes some doing to get the County up there sometimes. She said right now the ditches on either side of that road were very, very deep. She said it was impassible at times if another car was coming in the opposite direction. She remarked that the intersection at Westbridge Road and Highway 92, where many of the children have to go out to attend Sandy Creek High School, was terrible right now if they have to make a left hand turn and go south on Highway 92. She said the other exit was off of Davis and there was another way, if one were heading in the other direction rather than coming out onto Westbridge Road. She said she agreed with the Chastains' remarks regarding the intersection at New Hope Road for students going there by the blue water tower had really been a difficult intersection. She said both sides going east and west were just two (2) lanes. She said she was concerned with the safety of the children who were going to be moving into that subdivision. She said she was not aware of the four (4) conditions although she and her husband had come in to look at the plat. She questioned the green space and asked if that was the area that would be unbuildable. She said there was also a telephone tower and some power lines going through the property.

Vice-Chairman Powell felt a lot of these questions may be answered as the Board proceeds. He said it was the intent to take the tower down but this was a question that he had as well. He commented on the C-S subdivision. He said a yield plan was performed and that yield plan was based on an R-70 zoning which was two (2) acres. He remarked that R-70 was quite preferable for this area so a yield plan was laid out for R-70. He said no more lots could be put in than would fit in an R-70 subdivision. He said the benefit was that it allows the builder to condense the actual location where he builds the homes and then provides green space to the County. He said the County was mandated by Georgia Law to come up with 20% green space. He said the conservation subdivision helps the County fulfill that goal. He said it also cuts down on the impervious surface and did not spread it out and keeps it centralized which results in less water runoff. He said there were a lot of benefits to the Conservation Subdivision. He said the petitioner remarked initially to that issue. He said the entire tract of land was 164 acres and then some right-of-way would have to be dedicated and that would be approximately an acre and a half (1.50). He said the lot area for the homes to go on was actually 68 acres. He remarked in addition to that there was an amenity area built in at three (3) acres, open space for 75 acres, detention area of almost 5.5 acres and then the road that was going to go through the subdivision was almost 10.5 acres. He said, per the ordinance, the petitioner must dedicate 40% of the property as a conservation area. He said the petitioner was dedicating 46% of that area for conservation and an additional thirteen acres for the amenities and the right-of-way. He said only 41% of the entire piece of property was being used for homebuilding purposes.

Ms. Pell questioned the 68 acres being designated for building homes and asked if there were 65 homes.

Vice-Chairman Powell replied yes.

Ms. Pell remarked that very few of the homes would be on two (2) acres.

Vice-Chairman Powell remarked that the yield plan was based on two (2) acres but the actual lot size would be one (1) acre plus.

Ms. Pell thanked the Board for its consideration in this matter. She said they were very concerned about their taxes continuing to rise. She said they had not really improved their property and their taxes continued to increase.

Vice-Chairman Powell asked if anyone else wished to speak in opposition. Hearing none, he asked the petitioner for any rebuttal.

Mr. Harville said he very much appreciated the input of the citizens. He said they had raised some good concerns that he would be glad to address. He said the minimum home size that was proposed would be 2,500 square feet and that would be above the minimums in the adjacent subdivision. He said they were attracted to this region for the same reason the other homeowners were. He said the quality of the homes were very nice and they wanted to be a part of that. He felt they could augment what was already there and build to the same quality as well. He said the lot size would be a one (1) acre minimum. He said it was important to be aware that over half the subdivision was set aside for open space. He said if the total number of lots was spread over the entire subdivision it would equate to larger than two (2) acres per lot. He said the benefit of the land was set aside in an undisturbed manner under the control of the County. He commented on the traffic on Westbridge and on Wagon Wheel Trail. He said one of the Staff's conditions was to improve Wagon Wheel Trail all the way up to the first project entrance and that would be paved and brought up to County standards. He said they would also be dedicating right-of-way to the County. He said presently the County did not possess a right-of-way on Wagon Wheel Trail. He said he presumed it was a prescriptive easement but the dedication of right-of-way would bring this into a true right-of-way condition. He commented on the overall traffic. He said Staff's feeling was that this would not be burdensome on the road patterns in the area. He said he would be happy to answer any further questions.

Vice-Chairman Powell closed the floor from public comments and asked the Board if there were any questions.

Mr. Gilbert clarified that Mr. Harville had done a layout on the R-70 calculating the number of lots. He asked if the yield would have been 65 lots.

Mr. Harville said he had that plan with him tonight and he could project that on the screen. He said this yield plan had been submitted to and reviewed by and significantly revised based on County comments. He said Staff was very instrumental in providing input through this process. He said this was not a land plan that they had arrived at easily but it showed the same number of lots as shown on the conservation plan with a total of 65 lots.

Mr. Thoms said he had questions regarding the cell tower. He said he did not see anything in the plan where this tower was to be removed. He asked if this was the intent and where was the intent mentioned.

Mr. Harville replied that the intent was to not renew the tower lease. He said currently they have an operating cell tower and provisions had been made to set aside a lot of record for them which complied to Staff's recommendations. He said they did not propose to renew their lease and would have the tower removed as soon as possible.

Vice-Chairman Powell said this was not a condition but it was just to make it saleable.

Mr. Thoms said in looking at the yield plan he questioned the minimum set back for housing from a cell tower.

Mr. Wheeler responded that according to Article V which houses the tower ordinance, if there was an existing home on an adjoining lot it would be 1,000 feet. He said in this case there were no homes built currently and the fact that the tower was there first, there was no minimum set back to an adjoining lot.

Mr. Harville said they had looked at what the fall zone of the tower would be and set all of the houses outside of that area so that there would not be any danger.

Vice-Chairman Powell asked Mr. Harville if this was how he performed the yield plan.

Mr. Harville replied yes.

Mr. Thoms asked for the distance of the fall zone.

Mr. Harville responded that he did not recall that figure.

Mr. Thoms pointed out on the yield plan that lot #27 appeared to be within approximately 100 feet or so of the tower including the building area.

Mr. Harville remarked that the buildable portion of that lot would be up at the front building set back line keeping in mind that the drawing was at one (1) inch equals 200 feet so it was a very small scale. He said the footprint of the house would be up near the street which would be outside of that zone. He said Mr. Thoms was correct in that some of the lot itself was within the fall zone.

Mr. Thoms said his plan showed a one (1) to 100 scale. He said the yield plan showed 68 lots and only 65 lots were being done in the concept plan. He said the yield plan did not necessarily determine lots that would be saleable or buildable and he was not sure if there was enough information on the yield plan to be able to determine that 65 lots were needed in the C-S concept plan. He said Mr. Harville had met those requirements but the one (1) concern was that more lots were being yielded than could actually be done if it was an R-70 zoning.

Mr. Harville said from the tower itself it would be over 350 feet to the rear of the house. He commented that it was proposed that the cell tower was going to be removed. He said they would not put something on the market that they thought they could not sell.

Mr. Thoms asked for clarification on the rock found on the property. He asked if this was the area that would be going in the open space plan.

Mr. Harville replied that some of it would be in the open space.

Mr. Thoms said in the intent of the Conservation Subdivision he did not see how this open space qualified as an intent of the Conservation Subdivision.

Mr. Harville felt the open space did meet the intent of C-S. He said they had worked with staff on that issue. He said the initial application had not and they had removed detention ponds and other aspects of the property that did not meet the intent of the open space ordinance. He said although the rear of the property had been set aside for open space, it was highly developable land. He said there was no reason why a street could not be put there or homes built there. He said the beauty of this ordinance was that it allowed them a smaller development footprint which he felt was a wonderful thing in that it allowed them to reduce the impervious surface on the property which would reduce runoff and improve the water quality which would reduce the number of trees that might be taken down. He felt this was a real win/win situation and commented that Staff had worked very hard with him on the plan.

Mr. Gilbert commented that Staff along with Zoning and Engineering personnel took part in looking over this concept. He said everybody was making sure that this was meeting the criteria for C-S and this comes from expertise in Engineering and other expertise on Staff. He said this was not something that this petitioner just brought in the room tonight for the Board to make a decision on. He said Staff had already stated that this plan was meeting the yield requirements. He said the plan was also meeting the set aside requirements for the natural area.

Mr. Harville remarked that this process had started over one year ago and he had been working with Staff and the applicant over the course of that time. He said this was not something that they bring lightly before the Board this evening.

Mr. Thoms said he had also met with Staff to discuss this. He said his concerns go back to the information that Staff had given and information that had been provided to them to be able to determine if the yield plan was satisfactory to start a concept plan. He said once this Board approved the concept plan for a certain number of lots, the petitioner was able to build it with minor changes. He said Staff was under the responsibility to determine that the criteria had been met. He said there was a check list that Staff goes by to determine this criteria. He said he questioned if Staff was given enough information to be able to say that 62 lots could be built on a yield plan. He said they were not doing that. He said the yield plan was a theoretical piece of paper to look at to make a determination. He clarified that a Level I soil analysis had been done.

Mr. Harville replied yes that was correct.

Mr. Thoms said it was his experience that a Level I soil analysis was not going to allow the opportunity to build on some lots.

Mr. Gilbert interjected that this Board was not approving the petitioner to build houses. He said this Board was approving or turning down a zoning request. He said the petitioner had an engineer that has said this was correct. He said he would not want to be an engineer turning in information that was not correct.

Mr. Harville remarked that Staff would also have the opportunity to review the Board's concerns as the permit approval process proceeds for development plans.

Vice-Chairman Powell remarked that the soil might not be such that a home could be built there in which case the number of homes would have to be reduced. He said it may turn out that there was a substantial area out there that was not buildable and the lots may have to be reduced by five (5). He said this was a concept plan and until Staff got out there and actually worked on it, no one knew how many of the 65 lots were buildable.

Mr. Harville said it was his understanding that to deviate significantly from this plan he would have to come back before this Board. He said this Board was not giving up a lot of control here.

Mr. Thoms remarked that the yield plan determined that there could be 68 lots and the petitioner proposed 65 lots. He said once those were condensed to a one (1) acre lot and clustered into the buildable area, then it would be much easier to build on that lot. He felt by the default of the system this was increasing the density in the entire county by going with the yield plan that meets all of the criteria and this was based on professional engineer's criteria. He said a Level I soil analysis was not suitable all of the time. He said if this Board approved 65 lots for a concept plan, then the petitioner was good to go.

Vice-Chairman Powell interjected that this petitioner could go in there with R-45 zoning and do the same thing with more lots without any conservation space.

Mr. Thoms said the petitioner would have to come for approval for R-45.

Vice-Chairman Powell agreed that was correct but in terms of the Land Use Plan R-45 zoning would be acceptable.

Mr. Thoms remarked that with R-45 there would be several factors to consider if that zoning request was brought in. He said there were health, welfare and safety considerations that would have to be made. He said to be perfectly honest, he was in a dilemma right now because he understood the design of how this subdivision would work but he felt it was up to the Planning Commission when making a recommendation for approval or denial to maintain the open space in the county. He said

the open space was not a rocky area and full of power lines. He said he had a problem with preserving that type of open space.

Mr. Harville said if the Board looked at their plan carefully they had not preserved the power lines or bad land. He said the entire section in the rear of the property was prime land and unencumbered by any easement. He said the setback from the homes in the area of the branch that bisects the property had been increased. He remarked that the power line that traverses on the eastern portion of the property was not actually on the property and was not part of the open space. He said the power line that was located to the north of the property was not part of the property and was not included in the open space. He said there was a lot of technical background and analysis that had gone into this plan both on the part of him and the firm that was both a planning and engineering firm. He said they pride themselves on planning things in a manner that respond to the conditions on the property that they feel they can fully engineer because they must be responsible through the life of this subdivision. He said additionally the County Staff provided an extremely thorough review and they were a pleasure to work with. He said they had spent a lot of time with Staff on this project and he felt there had been a very thorough review. He said Staff had reviewed this based on sound engineering practices and the criteria in the County's ordinances. He said they had followed everything that was in the zoning and development ordinances and there was not much else that they could have done. He said he did not mean that disrespectfully at all.

Mr. Thoms said he was just expressing some of his concerns and he felt that was his job on the Board.

Vice-Chairman Powell said he had a question in regard to the concept plan. He said the drawing indicated that no amenity or recreation areas were proposed for this project. He pointed out that three (3) acres had been set aside and on the concept plan there was an amenity area drawn with four (4) tennis courts, swimming pool and parking for approximately 25 vehicles. He asked for clarification.

Mr. Harville replied that the concept plan was required to be a yield analysis. He said there was no amenity area required for subdivisions; therefore, if looking at this from purely a yield standpoint, it was advantageous not to put an amenity area in there to establish a minimum yield. He said this was the way in which they approached this. He said in order to address the market concerns of the community, an amenity area was deemed to be desirable and they would be building on three (3) fewer lots than the yield plan recognized. He said he did not think the Board should feel that there had been anything done that was not up to par.

Vice-Chairman Powell said the intent of the concept plan was to set aside property for an amenity area but not to put in any amenities.

Mr. Harville said in the concept plan the intent was to see what the maximum yield of the property would be under R-70 zoning.

Vice-Chairman Powell remarked that under the C-S plan he still saw the tennis courts, parking lot and swimming pool.

Mr. Thoms said an amenity area would be built. He said this had not been done for the yield plan in order to determine how many lots they could get.

Mr. Harville remarked that was correct and they did intend to build the amenity area.

Vice-Chairman Powell remarked there was a note on the top of the C-S concept drawing that said no amenity or recreation areas were proposed in this project.

Mr. Harville said that was an error. He said that apparently carried over from the yield plan and he apologized for that error.

Vice-Chairman Powell asked if there were any plans for the open space in terms of trails. He said he realized this was not indicated.

Mr. Harville said he would need to consult with the owner if the Board would allow him a moment. He said the owner was willing to commit to approximately 3,000 feet of walking trails.

Vice-Chairman Powell pointed out that this was in accordance with the concept plan requirement that stated the concept plan should include uses and improvements planned for the conservation area. He clarified that there would be walking trails.

Mr. Thoms asked if the pipeline easement was calculated as far as open area.

Mr. Harville responded that the majority of the pipeline easement falls within the power easement. He said they overlay one another and it would appear that the edge of the pipeline easement did extend into the property marginally. He said it was included in the open space but asked the Board to keep in mind that this might very well be included on the rear of somebody's property as well.

Mr. Thoms questioned the location of the cemetery. He asked for the size of the cemetery and if it was part of the open space.

Mr. Harville replied yes it was. He said Staff had recommended that this area be set aside, fenced and have an access way to it. He said they would be glad to comply with Staff's recommendations.

Al Gilbert made a motion to recommend approval of this request with conditions. Tim Thoms seconded the motion.

Vice-Chairman Powell remarked that there were four (4) stated conditions. He said the motion was to approve with the C-S conditional with the four (4) conditions as listed. He said the petitioner was aware of these conditions.

The vote was 2-1 with Tim Thoms voting in opposition. Chairman Graw and Bill Beckwith were absent. Due to the lack of three (3) affirmative votes, the petition was denied.

Vice-Chairman Powell noted for the record that the motion did not pass.

Willie Mitchell asked the Board to read the four (4) conditions.

Vice-Chairman Powell said the conditions were as follows:

1. The owner/developer shall dedicate, at no cost to Fayette County, thirty(30) feet of right-of way as measured from the centerline of Wagon Wheel Trail to create a total of sixty (60) feet of right-of-way.
2. No lot shall have immediate vehicular access to Wagon Wheel Trail.
3. During the Preliminary Plat phase, the cemetery shown along the eastern boundary line must be delineated by its own legal description, be deeded to the homeowner's association, have a four (4) foot high fence placed around the entire perimeter, and have a 20 foot permanent public access easement from Wagon Wheel Trail.
4. The applicant shall be required to pave Wagon Wheel Trail to the first entrance of the subdivision.

Mr. Gilbert interjected that this Board had already voted on this petition. He said anyone having further questions could attend the County Commission meeting on August 25, 2005.

Vice-Chairman Powell clarified that this vote would have to be 3-0 to go forward to the Board of Commissioners with a recommendation to approve. He said the Board of Commissioners would hear this same petition on August 25, 2005, and they would have an opportunity to read the minutes from this meeting and then receive the same briefing from the petitioner. He said the Commission would make the final recommendation to either approve or deny the petitioner's request for C-S subdivision. He said this was the first of two (2) public hearings and the Planning Commission makes a recommendation to the Board of Commissioners.

* * * * *

7. **Consideration of Petition No. 1150-05, Ussiel Hernandez, Owner/Agent, request to rezone 7.50 acres from R-20 to A-R to allow agricultural-residential uses. This property is located in Land Lot 195 of the 5th District and fronts on S.R. 92 North.**

Zoning Administrator Aaron Wheeler read the petition request.

Ussiel Hernandez remarked that he was the petitioner for this request.

Vice-Chairman Powell asked Mr. Hernandez if he wished to continue with his request or table it to the September 1, 2005 Meeting.

Mr. Hernandez replied that he wanted to continue tonight. Mr. Hernandez said he just wanted to keep his goats.

Vice-Chairman Powell said he was assuming, based on the Staff analysis, that Mr. Hernandez wanted to rezone from R-20 to A-R. He pointed out that this was all a contiguous piece of property going from R-20 zoning to A-R zoning. He noted that Tract B consisted of 3.5 acres and Tract A consisted of four (4) acres. He clarified that both of those tracts were currently zoned R-40.

Mr. Hernandez said that was correct.

Vice-Chairman Powell asked if anyone wished to speak in favor of this request. Hearing none, he asked if anyone wished to speak in opposition to this request. Hearing none and with no rebuttal required, he closed the floor from public comment. He asked the Board for its pleasure in this matter.

Mr. Thoms remarked that ordinances were in place to have a residential area that was higher density than agricultural. He said it appeared that all of the surrounding property was a much higher density than agricultural. He said although this was not a neighborhood property there were neighborhoods close by and he was not sure if goats were in keeping with the neighborhood. He said Mr. Hernandez would have 7.5 acres and the A-R zoning would allow him to raise goats. He said he would hate to deny somebody the opportunity to do what they feel like they want to do on their property if they go through the proper channels as long as the intent was what the County was trying to get across. He said he could understand why Staff's recommendation was for denial and he did not know if he had a disagreement with that.

Al Gilbert interjected that this was a tough request.

Vice-Chairman Powell asked Mr. Hernandez what type of livestock did he intend to graze on the property.

Mr. Hernandez replied just what he had right now.

Vice-Chairman Powell asked him how long he has had the goats.

Mr. Hernandez responded approximately five (5) years.

Vice-Chairman Powell asked him if he had any intent of raising any other animals.

Mr. Hernandez replied no.

Vice-Chairman Powell clarified that the intent was to bring two pieces of R-40 together to make 7.5 acres and rezone it to A-R. He said this would be a conforming lot in that case. He noted that there was also 270 feet of buffer behind the home which was 90 yards of buffer for an easement for the power line. He questioned if the power line would bother the goats.

Mr. Hernandez replied yes it would.

Vice-Chairman Powell remarked that Mr. Hernandez was on S.R. 92 and he was not sure of the width of the road but it also provided a good buffer. He pointed out that the property adjacent to the North was unoccupied. He said he had taken the liberty of driving to this property. He questioned the kind of animals the next door neighbor had.

Mr. Hernandez replied he had llamas and horses.

Vice-Chairman Powell asked how many llamas and horses did the neighbor have.

Mr. Hernandez replied that he did not know.

Vice-Chairman Powell remarked that Staff's comments were not supported by the technical review. He said the technical review stated that this proposed rezoning was in compliance with the Land Use Plan. He said he also noted that the Health Department had the opportunity to comment on this but did not. He said this request was in compliance with the Land Use Plan and was buffered uniquely by easements.

Vice-Chairman Powell made a motion to approve this zoning request from R-20 to A-R. Tim Thoms seconded the motion.

Al Gilbert pointed out that there was a condition on this zoning.

Vice-Chairman Powell said he would like to withdraw his motion and restate it.

Vice-Chairman Powell made a motion to approve with one (1) condition.

Vice-Chairman Powell asked Mr. Hernandez if he was aware of the condition.

Mr. Hernandez replied no.

Vice-Chairman Powell remarked that the condition was that the owner/developer shall revise and record a plat indicating the combination of the four (4) acre tract with the 3.5 acre tract for a total lot size of 7.5 acres. He said Mr. Hernandez would have to record a new plat and record it under A-R. He said he was little concerned with this rezoning. He said anything that the Georgia Department of Transportation (G.D.O.T.) may need in terms of right-of-way needed to be considered.

Assistant County Attorney Dennis Davenport remarked that on S.R. 92 the State of Georgia would have what they want.

Vice-Chairman Powell asked if this would be a condition based on what the Georgia Department of Transportation wanted.

Attorney Davenport responded that a condition was typically put in when property fronted on County right-of-way to make sure that there was sufficient public right-of-way for the County, but to his knowledge this had not been done with state highways. He said the state's right-of-way was already in place.

Vice-Chairman Powell felt it might be wise to limit the access of this new combined lot to the existing one (1) driveway access. He asked Mr. Hernandez if he would agree to that.

Mr. Hernandez replied yes.

Vice-Chairman Powell clarified that the motion was to approve the zoning from R-40 to A-R with two (2) conditions, to record the plat and that there be single access onto the property onto S.R. 92.

Tim Thoms seconded the motion with the two (2) conditions.

Al Gilbert said he was going to vote no because he was aware of what that area was turning into up there. He said this was not a strong no and commented that he felt sorry for Mr. Hernandez's situation. He said he felt the County did not have to right something that was a wrong. He said he just did not feel comfortable doing that at this point in time especially in that area. He said this was not an A-R area any longer.

The vote was 1-2 with Tim Thoms and Al Gilbert voting in opposition to the motion. Chairman Graw and Bill Beckwith were absent. Due to the lack of three (3) affirmative votes, the petition was denied.

Vice-Chairman Powell remarked that the Board would take a short break at 8:29 p.m.

Vice-Chairman Powell reconvened the meeting at 8:30 p.m. He asked Mr. Wheeler to read the next item on the agenda.

* * * * *

8. Consideration of Petition No. 1151-05, 54 West, LLC, Owner, and Grover and Corlew, Agent, request to rezone 16.66 acres from A-R to O-I to develop a Professional Office Park. This property is located in Land Lot 8 of the 7th District and fronts on S.R. 54 West.

Zoning Administrator Aaron Wheeler read the rezoning request.

Vice-Chairman Powell asked if the petitioner was present.

Jeff Collins said he was appearing on behalf of Grover and Corlew. He said they would like to request a table to the September 1, 2005 Planning Commission meeting.

Al Gilbert made a motion to table this request to the September 1, 2005 Planning Commission meeting. Tim Thoms seconded the motion. The motion unanimously passed 3-0. Chairman Graw and Bill Beckwith were absent.

* * * * *

9. Consideration of Petition No. 1152-05, Humber Construction, LLC, Owner, and Brad Humber, Agent, request to rezone 80.44 acres from A-R to C-S to develop a proposed subdivision consisting of 32 single-family dwelling lots. This property is located in Land Lots 229 and 252 of the 4th District and fronts on McBride Road.

Zoning Administrator Aaron Wheeler read the rezoning request.

Vice-Chairman Powell asked if the petitioner was present for this request.

Brad Humber said he was the petitioner.

Vice-Chairman Powell asked Mr. Humber if he wished to proceed with the hearing tonight or table the request.

Mr. Humber replied that he wished to proceed tonight. He said he was requesting 80 acres to be rezoned to C-S with 32 lots. He said the yield plan also stated 32 lots with one (1) lot having an existing home. He remarked that nature trails and open space were also planned with over 44 acres of open space and conservation area. He said he was aware that the land use was two to three acres but the net density was .42 which was over two (2) acres. He asked for the Board's consideration in approving this request. He said all of Staff's recommendations were also included in the packet and he had agreed to comply with the two (2) conditions.

Vice-Chairman Powell asked if anyone wished to speak in favor of the petition.

Tammy Jones remarked that she was currently in the process of building a new home on McBride Road. She said her property would be next to the proposed subdivision. She said she had been a resident of the County for over thirty years and as the Board had said earlier change was inevitable. She said she did not believe that this property would remain agricultural. She said Mr. Humber and his contractors would be working on her home and she had actually visited some of the homes that had already been built. She said she was familiar with the caliber and quality of those homes. She said Mr. Humber had discussed the subdivision with her and his inclusion of the trails and green space. She said based on everything that Mr. Humber had told her and the fact that change was inevitable, she felt the quality and caliber of the homes that he would build would have a positive effect on her property value. She asked for the Board's consideration in approving this project.

Vice-Chairman Powell asked if anyone else wished to speak in favor of the petition.

Jerry Jones said he was Tammy Jones' father. He said he had watched this land all of his life. He said his grandfather had farmed the land with mules for fifty years and his great grandfather had owned the property prior to him. He said this property was no longer good for farm land. He said he had looked long and hard before he sold the property. He said his mother lived just to the right side of the property in the house beside the lake. He said his aunt lived next door to her and he had been very careful about who he sold the property to and how it would impact the community. He said he did not think the land could be better used than with the green space and walking trails and beautiful homes. He asked for the Board's consideration in approving this request so that these homes could be built and the community improved. He said he was aware of the concerns regarding traffic. He said he had seen McBride Road since it was a two-lane road. He said there used to be three (3) houses on the road. He said the traffic was going to continue to grow and it was inevitable. He said he felt that it was not going to impact the community that much. He said there were probably no houses in view of any other houses.

Vice-Chairman Powell asked if anyone else wished to speak in favor of the petition.

David Barronton said he was a homebuilder in the Horsemen's Run Subdivision off Goza Road and he wanted the Board to know that he was in favor of this petition. He said he also lived in the area and he wanted to express his concern and make the Board aware of the quality of houses that would be built on this property. He said the homes would be like the homes in Horsemen's Run.

Vice-Chairman Powell asked if anyone else wished to speak in favor of the petition. Hearing none, he asked if anyone wished to speak in opposition.

Walter Ivey felt this subdivision would impact the community. He said whenever there was one (1) more house built here, it made an impact on everybody. He commented that the taxes just keep going up and up. He commented on the reasons the Board should deny this. He said this Board had looked at three (3) or four (4) other properties in the last five (5) years on McBride Road and it was always consistent and kept these properties A-R. He said if the Board was not consistent now that it would have to go back and apologize to the prior rezoning requests who were zoned A-R. He said the traffic would also have an impact on that area. He said his family used to walk leisurely along McBride Road but now it was a race track. He said the buses were the worst offenders. He also called attention to the topo map for the property. He remarked that thirteen years ago he had to prove before he built his house that he was 500 feet off the center line. He said his home was more than double that but he had to hire an engineer to make a determination before he could even get a building permit. He remarked that these lots were not 500 feet off the center line. He said there used to be fish and crawdads in the creek but now there were none. He said his daughter had done a science project at Whitewater Middle School and she had tested the creek. He remarked that the phosphates were ten times the Federal limit. He noted that this was a result of fertilizer coming off yards. He said this creek runs into Whitewater Creek and then goes down to Starrs Mill.

Vice-Chairman Powell asked if anyone else wished to speak in opposition to the petition.

Ann Daniel remarked that she knew Charlie Mask because he was a friend and a neighbor. She said she did not feel that this was what he had in mind for this property. She said he used the land for kennels and he also had chickens. She said there were horses next door and also sheep on Mr. and Mrs. Richardson's property. She said the property was drawn out for one (1) acre lots. She said just last month there was a subdivision down Highway 85 with 43 homes. She said that would result in 86 more cars on the highway and if this subdivision was approved there would be a total of 150 more cars. She said the homeowners could not take this anymore and commented that they were getting tired of it. She said the children were being put in jeopardy of getting killed. She said her taxes just kept going up and she was just paying for someone else's children to go to school.

Vice-Chairman Powell asked if anyone else wished to speak in opposition to the petition.

Scott Gilbert remarked that he lived at 591 McBride on approximately 12 acres. He said everybody knew nobody was going to come in and put a farm on this property. He pointed out that there were still agricultural activities in this community and this was the first good reason that the zoning should remain the way it was. He said a tree farmer lived across the street, another resident has a very big garden and people have cattle. He said there was agriculture there or related types of agriculture in that area. He said they were not opposed to people coming in but there was a way to build homes on the property that would remain consistent with the community. He also pointed out that people were still building homes on Highway 85. He felt by leaving the zoning in its current designation it would protect the community and at the same time would allow people to build houses there. He said residents were requesting the builder do that under the current zoning.

Vice-Chairman Powell asked if anyone else wished to speak in opposition.

Davita DeLaughter said she lived at 754 McBride Road and remarked that recently Fayette County had been recognized as the sixth or seventh best place to live in this Country. She said in looking at this petition as well as others that she had seen tonight more and more homes were being built that increase the density and subsequent problems that most people moved here to avoid. She said some counties had even declared moratoriums on building homes because of rapid building without the infrastructure in place to support them. She felt that Fayette County was now at a crossroad. She said she hoped the Commission would take the action to stop this spiral toward increasing density simply because the land was there. She said in the case of Fayette County less was more.

Vice-Chairman Powell asked if anyone else wished to speak in opposition.

Cedrick Webb said he lived at 587 McBride Road and he had spoken about three (3) or four (4) years ago when the property across the street was requesting an additional build on without the additional five (5) acres. He said at that time he had moved out here because of the square footage of the land. He said he had no problem with anyone building, but he did not want or need a subdivision of this size near him. He said he had moved here because of the large tracts of land and he felt it would disservice the citizens if this was changed. He felt if the building continued, the area was going to continue to spiral downward.

Vice-Chairman Powell asked if anyone else wished to speak in opposition.

Betsy Thoms said she lived on McBride Road and she would be directly affected by this rezoning. She said she had purchased on McBride Road because it was a rural environment. She said they knew that eventually someone would come along and want to make a profit on McBride Road. She said everyone was alright with that because of the five (5) acre zoning. She said her neighbors owned the 20 acres adjacent to this property and they have children and horses on the property. She said because of prior scheduling they were unable to attend the meeting tonight. She said they also were opposed to this rezoning. She commented on the traffic and remarked that it was almost impossible in the morning to make a left hand turn onto Highway 85 coming out of McBride Road. She said she wanted to live in Fayette County because of the safety of the zoning. She said this was what set Fayette County apart. She said she felt now that higher profits for developers was more important than the profits they currently achieve with the current five acre lots. She thanked the Board for allowing her neighborhood to continue to grow in the manner that it currently was allowed to grow in and allow them to have the lifestyle that they enjoy.

Vice-Chairman Powell asked if anyone else wished to speak in opposition.

Jim McBride said he had lived on McBride Road for 40 years. He said he had no problem with the development coming into the community but he wanted it to remain five (5) acre tracts. He said there had been several times when people have asked to lower that density and they have been denied that in the past. He said this had been in keeping with the way that the residents of that area have wanted the area to be developed. He said the requirement for five (5) acres had applied to many people in the past and he did not think this subdivision should be any different now.

Vice-Chairman Powell asked if anyone else wished to speak in opposition. Hearing none, he asked the petitioner if there was any rebuttal.

Brad Humber felt this was the best development concept for this plan. He said they would be preserving the wetlands and the areas behind it. He said the green space would be bordering all of the wetlands, which would actually bring the houses further away from the natural wetlands and Shoal Creek. He said there was also green space bordering all of the outlying properties which were zoned A-R. He said he did not see how this subdivision would take anything away from the surrounding farms or gardens. He said there would also be nature trails and he felt it would be an enhancement. He felt this subdivision would allow property values to go up.

Hearing no further comments, Vice-Chairman Powell closed the floor from public comments and asked for the Board's pleasure in this request.

Al Gilbert asked petitioner if he had reviewed the conditions that Staff had recommended.

Mr. Humber replied yes he had and they did comply with those.

Tim Thoms asked for clarification from Mr. Jones that he had sold this property to Mr. Humber.

Mr. Jones replied yes he had sold Brad the property. Tim Thoms said he was very familiar with the property and lived directly across the street. He said Mr. Humber would be protecting the wetlands and this was a great goal and concept, but he was doing this at the expense of several of the residents who live adjacent to this property who have the five (5) acres of property or larger. He said he had

several problems with this particular development. He referred to the yield plan, the Level I soil analysis and the number of lots that were determined from the yield plan. He asked Mr. Humber how many lots were allowed from the yield plan.

Mr. Humber replied 32 lots.

Mr. Thoms said those were based on two (2) acres under the R-70 constraints. He asked him if he had obtained a Level I soil analysis.

Mr. Humber replied yes.

Mr. Thoms said he had not been on that property in several years but it was very wet in the back of the property. He felt some of these lots would not be buildable based upon the Level I soil analysis. He said the yield plan stated that 32 lots would be produced but in actuality it would not. He said the difference in this C-S zoning and others that the Board had heard in the past was that the density of the land use was being changed. He said technically the Land Use Map did allow one (1) unit per two (2) to three (3) acres in rural residential which was what the land use category was for this property. He said it was not agricultural residential land use. He said that land was located down below Goza Road. He said this was rural residential property. He said in living there and seeing that, this area was rural residential. He said technically the property complied with that; however, it takes it to the very maximum density to the minimum size of that instead of being two (2) to three (3) acres it was barely two (2) acres density. He said this was not in keeping with the surrounding properties and would have an adverse affect on the properties. He said he lived on several acres and actually farmed his property. He pointed out that it was not just farming in A-R, but agricultural residential and that allowed many different things to happen in that zoning category. He said one (1) of those was the dilemma before the Board tonight with the gentleman wanting to raise goats. He said if he purchased property in this area he could raise goats because it was zoned A-R. He said he had a problem with putting houses on one (1) acre tracts in the middle of a rural residential area even though the concepts of the C-S and the goals of C-S zoning were good, he did not feel this fits with current development. He felt the Board did not have the information to determine that there were 32 lots there available to be built on and therefore be allowed in the concept plan.

Mr. Thoms further remarked that the overriding concern in this case was that as the County changes from the C-S to try and achieve the 20% open space across the County, the net density was being increased across the County very, very quickly. He said the County did not have the infrastructure to support it and did not have the information in place to make solid decisions as to whether or not this was actually achieving the objectives. He said he just could not see the Board approving this request tonight.

Vice-Chairman Powell remarked that everybody who came to Fayette County to live in a rural area were part of the problem unless their relatives came here back in the 1700's. He said he was also part of the problem because he wanted to live in a low density County. He said he did know how the tide could be held back of people wanting to come to this County. He remarked this was done with a Land Use Plan and with judicial use of zoning. He said Mr. Ivey had asked the question regarding consistency. He said this County was not the same as it was yesterday and that was the problem. He said when he moved here there were cows in front of his property and now he has to travel three (3) miles to see a cow. He said the Land Use Plan was updated every year and the zoning for this particular parcel allowed for the C-S subdivision and it fits with the Land Use Plan. He commented on the safety issue. He said he did not live far from this piece of property, but he would have to go out of his way to drive pass it. He said he was one of the people having to wait five (5) minutes to make a left hand turn and most of the time he had to make a right hand turn and go out of his way. He said he did not know if the transportation plan adequately addressed this specific problem, but where monies could be obtained it was used to increase the width and capacity of County roads. He said the area would become less desirable with more people moving here without an infrastructure that could support it. He said he thought long and hard about this and he had driven around the area. He said he had reviewed the yield plan and there would be 2.5 acres per home, although this did not take into consideration the right-of-ways and so forth. He said he did

have some questions concerning the concept plan in terms of the amenities plan for the picnic area and the materials that would be used for the walking trails.

Mr. Humber said he did plan to put in a gazebo and maybe even some type of playground area in the common area. He said he would be using asphalt for the walking trails.

Vice-Chairman Powell asked if there was any further discussion from the Board.

Al Gilbert felt every C-S zoning that had come up for discussion tonight has had a crowd of people speaking out. He said the public needed to be aware that this was a zoning classification that went into effect three (3) years ago. He said it was a known fact that the more impervious surface that was put in this County, the bigger the lots and the fertilizer that was put on these lots would affect the water runoff. He said the C-S zoning would help address the environmental concerns and it was not something to make more the County more dense. He said the C-S zoning ordinance was passed because it was felt it was the best situation for the County and the County Commission had also passed it. He said this petitioner meets the criteria for it. He said he could not step out on a limb and say no to this petition. He said this petitioner could take him to court and sue him if he denies him this zoning. He said this petitioner met the criteria that was laid out for this particular zoning and he had no choice but to vote for it.

Tim Thoms said he had some technical questions on the plan. He said the concept plan showed the walking trails in the 25 foot undisturbed buffer. He asked Mr. Humber and staff if this was correct. He pointed out that the undisturbed buffer should remain undisturbed. He said one (1) major concern that he had on the technical aspect of it was the note that the stormwater management would be addressed on the construction plans using a peak analysis study, that no detention basin would be needed for this site. He questioned staff as to where the water would go.

Zoning Administrator Aaron Wheeler replied that this was just a recommendation. He said Mr. Humber had not been approved for it. He said engineering had reviewed this and Acting County Engineer Phil Mallon had made this determination and this was the recommendation before the Board.

Mr. Thoms pointed out that in this particular case the current zoning was five (5) acre minimum. He said with the C-S plan it was basically a 2.5 acre minimum based on R-70 zoning. He said the Board would be changing the zoning if it voted for recommendation of approval.

Vice-Chairman Powell interjected that the Land Use Plan had already been changed and it had been updated in the last eight (8) months.

Tim Thoms said he would like to make a motion to deny approval of this petition. Hearing no second the motion died.

Vice-Chairman Powell asked if there was another motion.

Al Gilbert made a motion to recommend approval with two (2) conditions. Tim Thoms seconded the motion.

Vice-Chairman Powell called for the vote and the vote was 2-1 with Tim Thoms voting in opposition. Chairman Graw and Bill Beckwith were absent. Due to the lack of three (3) affirmative votes, the petition was denied.

Vice-Chairman Powell said the Board would take a five (5) minute recess at 9:16 p.m. before the next item on the agenda was discussed.

Vice-Chairman Powell reconvened the meeting at 9:24 p.m.

* * * * *

10. Consideration of proposed amendments to the Fayette County Zoning Ordinance regarding Article III. Definitions, Section 3-60. Kennel (amend), Section 3-62. Livestock (amend), Section 3-6. Animal (add in its entirety), Section 3-7. Animal, Exotic (add in its entirety), and renumber Article III, as required.

Zoning Administrator Aaron Wheeler read the proposed Amendments to this portion of the Zoning Ordinance. He said this proposed amendment came about based on a citizen request. He said upon review the current Ordinance stated that anything over three (3) animals constituted a kennel. He said there was no definition of animal or exotic animal and after review Staff felt that the number of animals listed under livestock was deficient and needed to have some animals added. He said Staff was directed to review the Ordinance and based on review and consulting with Animal Control and their expertise, Staff had determined that the current three animals was slightly restrictive and that four (4) animals was a better number because it would allow three (3) dogs plus one cat or any combination thereof. He said Staff was proposing in this Amendment to do four (4) things: (1) Define what an animal was for the purpose of the Zoning Ordinance of Fayette County; (2) Increase the limit of animals from three (3) to four (4); (3) Provide a definition of exotic animals; and (4) Altering the definition of kennel to be in accordance with the new definition of animal so that they compliment each other. He said it also amended the definition of livestock to include those animals which may have been left out in the initial definition. He said the new animal definition would allow the owner to have up to three (3) dogs and still have one (1) cat or any combination thereof. He said it also gives the definition of exotic animals that should a member of County Staff come across someone who was raising an illegal exotic animal the ability to cite them if that was necessary or handle it in a manner that they see fit. He said it would change the kennel definition to be in accordance with the new definition of animal if it was approved and it changes the livestock definition for clarification. He said this item had been discussed in workshops and was now being brought to the Board for public hearing.

Vice-Chairman Powell asked if anyone wished to speak in favor or opposition to this item. Hearing none, he asked for the Board's pleasure in this matter.

Tim Thoms made a motion to approve the proposed amendments. Al Gilbert seconded the motion.

Vice-Chairman Powell said he wanted to state for the record that the Board had discussed this at three (3) Workshops. He said this was a good ordinance now and if it could be adhered to it would be good for the County. He said the numbers were good although it was hard to count the number of animals that a house may have.

Mr. Gilbert said he wanted to thank Staff for all of their hard work and effort on this.

Mr. Thoms felt the Board compromised on this and felt there could be more animals. He felt the problem was with a nuisance and not the number of animals. He said this was the compromise that had been reached. He said he also appreciated Staff's hard work on this.

Vice-Chairman Powell called for the vote. The motion unanimously passed 3-0. Chairman Graw and Bill Beckwith were absent.

Vice-Chairman Powell asked if there was a motion to adjourn the meeting.

Al Gilbert made a motion to adjourn the meeting. Tim Thoms seconded the motion.

Clemens Presogna, 290 Sunderland Circle stated he wanted to speak under new business before the Board adjourned. He said he wanted to comment on the two issues that were tabled. He said he had gone to the Zoning Department to request information about those and was told that the information would be provided at the Zoning meeting. He said he found the presentations very limited. He said when he had gone to the Zoning Office to ask for the plans regarding item #3 on the Agenda and he was shown an old plat book and was told that these plats were even wrong. He said when he asked to see the plan, nothing was presented and he was told he could get that at this meeting. He said this

was the first meeting that he had attended.

Vice-Chairman Powell interjected that because these items were tabled Mr. Presogna would have to come back to the September 1, 2005 meeting.

Zoning Administrator Aaron Wheeler said he would be glad to meet with Mr. Presogna and provide him with this information.

Assistant County Dennis Davenport interjected that there was no reason this gentleman could not see the plan and questioned where he had gone to get this information.

Mr. Presogna said he had gone upstairs to the Zoning Office on the second floor. He said he was shown old plat books that were on the left hand side on a table.

Mr. Wheeler apologized and said he would take the time personally to discuss this with Mr. Presogna.

Mr. Thoms interjected that there was a motion on the floor to adjourn and discussions on these items were finished.

Attorney Davenport said the meeting had ended when the Board discussed the last item on the Agenda and made the motion to adjourn. He said he knew of no item for New Business on tonight's Agenda.

Vice-Chairman Powell called for the vote to adjourn. The motion unanimously passed 3-0. Chairman Graw and Bill Beckwith were absent. The meeting adjourned at 9:35 p.m.

* * * * *

PLANNING COMMISSION
OF
FAYETTE COUNTY

DOUGLAS L. POWELL
VICE-CHAIRMAN

ATTEST:

KAREN MORLEY
CHIEF DEPUTY CLERK