

**November 20, 2000**

**CALLED MEETING  
FLOYD COUNTY BOARD OF COMMISSIONERS  
NOVEMBER 20, 2000                      4:00 P.M.**

**PRESENT:**                      Chairman John Mayes, Commissioners Chuck Hufstetler, Garry Fricks, Jerry Jennings, and Tim Mahanay.

**OTHERS**

**PRESENT:**                      County Manager Kevin Poe, County Attorney Wade Hoyt, County Clerk Sue Broome, and Assistant County Manager Tom Tully.

**CALL TO ORDER:** Chairman Mayes called the meeting to order.

**INVOCATION:**              Commissioner Hufstetler led the Invocation.

**PLEDGE OF**

**ALLEGIANCE:**              The Pledge of Allegiance was led by Commissioner Fricks.

**PUBLIC PARTICIPATION:**

**FILE #012-2000SUP, 3420 KINGSTON HIGHWAY,  
REQUEST A SPECIAL USE PERMIT IN A S-R  
(SUBURBAN RESIDENTIAL) ZONING DISTRICT  
TO BUILD A COMMUNICATION TOWER. TAX  
MAP #54, AREA #0, PARCEL(S) #57.**

**(PLANNING COMMISSION RECOMMENDATION:  
DENY [VOTE – UNANIMOUS])**

**(FIRST READING HELD AUGUST 8, 2000 AT 2:00 P.M.)**

**(SECOND READING/PUBLIC HEARING HELD  
SEPTEMBER 26, 2000 AT 6:00 P.M.)**

**(SECOND READING/PUBLIC HEARING HELD  
OCTOBER 3, 2000 AT 2:00 P.M.)**

**(SECOND READING/PUBLIC HEARING HELD  
OCTOBER 24, 2000 AT 6:00 P.M. [NO ACTION])**

**(SECOND READING/PUBLIC HEARING HELD  
NOVEMBER 14, 2000 AT 2:00 P.M. [NO ACTION])**

Chairman Mayes asked that anyone wishing to participate in the Public Participation portion of the meeting to sign the sign-up sheet. He noted that each person will have three minutes to speak. County Attorney Wade Hoyt recommended that the Public Hearing be reopened by motion and vote.

**OPEN PUBLIC HEARING**

MOTION to re-open the Public Hearing was made by Commission Hufstetler, SECOND by Commissioner Fricks. VOTING:

YES

NO

Commissioner Hufstetler

" Fricks

" Jennings

" Mahanay

Motion Carried

Chairman Mayes stated that the Public Hearing is open and asked if the applicant would like to speak.

## SUPPORT

**Sean Caskie, Vice-President of Business Development for Signal One**, stated they are a telecommunications tower owner and operator, based in Chattanooga, Tennessee. He stated that he is there to hopefully finalize all of the issues and resolve their application for a Special Use Permit on Kingston Highway. Signal One had addressed the Board previously to request approval for the site. The opposition and the Commission have raised a number of issues and hopefully today all of the issues will be satisfied. He reviewed some of the points Signal One had brought forth on this application. Signal One has requested to build a tower, which will be a 200 foot tower, 199 feet to be specific, on a piece of property at 3420 Kingston Highway. This tower is located on a piece of property which is surrounded on all sides, except one, by property in commercial use. The tower will be 199 feet tall, which is down from the initial request of 250 feet to work with the community by reducing the tower so as not to be obtrusive and to keep it from being lit as required by the FAA with towers over 200 feet tall. They have a customer for this site who has redesigned their entire market in the Rome area twice to take into consideration co-locations. They have used all of the existing structures which are available to them in order to reduce the number of towers in the community. That is also Signal One's feeling. They build, own and operate towers and actively and aggressively market their sites to put the most number of people, users and carriers, on their towers as they possibly can. This is done to benefit the community by reducing the total number of towers in a community and it increases their value as a company because they make money with the more people they put on the tower. According to Floyd County's own map, there are no existing structures in this area. He noted that at sites near the six-mile intersection and near Armuchee behind the Food Lion they had withdrawn the applications in order to allow their customer to go on a structure already being built or planned in the area. They had evaluated other sites in the area, at the request of the business and also the County Commission. They evaluated a new tower located at a gas pumping station near the Kingston Highway and the By-Pass and the water tank at the Bartow County line. In both cases, the structures did not provide coverage to the area they need coverage. They have tried to evaluate all of the issues

raised by the community at this hearing and others, including the height of the tower, lights, health and safety concerns for epilepsy, seizures and things like that. They provided information on how property values were not affected and will provide further information today on that issue. In working with the issues raised by the community, they have lowered the tower, moved it to the center of the property, are not going to light the tower, they will have no machinery which will make noises and they will submit information to show there is no decrease or a depreciation in the level of appreciation of property values based on towers. He stated that he wanted the Commissioners to have information on their radio frequency generic study to show that this site is required. It is necessary, it does fill in a hole in the coverage, that a piece of property requested by the county to be evaluated did not work and the county's own consultant, R. W. Beck, did not ask that the water tank be evaluated. Three pieces of property which were evaluated by the consultant were determined to be no better, and in two cases worse, than this site. They had also evaluated those properties and believe that the results show that their site is the most suitable in this area.

**Joe Connor, Tritel**, stated that he wanted to reiterate a few things with respect to what Mr. Caskie's brought up. They had received a copy of Mr. Doulong's report from R. E. Beck last week. He had spoken with Mr. Doulong, along with Mr. Hoyt, on Friday concerning the findings of this report. Mr. Connor pointed out Mr. Doulong identified Alternative A as his most acceptable of the three alternatives that he set forth in his report. They have looked at the sites which are within 1,700 feet of the existing proposed location being discussed today. The landowner of Alternative A had been contacted in early March by Signal One and we were advised that she was not interested in leasing the site. This property would be across the street from the proposed site and you could see the tower from the proposed site. In the conversations with Mr. Doulong and Mr. Hoyt on Friday, he had asked if the setback requirements were met on the proposed site, which they have verified that they have been met, and is the proposed site just as acceptable in his opinion as any of the alternatives in the report. Mr. Doulong confirmed over the phone that is correct, in fact Alternative A is the only one he would suggest to be acceptable as an alternative, and it is just as acceptable as the site they have proposed, since they have reduced the tower to 200 feet and it does meet the setback requirements. With respect to radio frequency, he understands that an issue has been raised again with the prospective water tank off Kingston Highway. He presented a certificate and letter from Ken Cookston, who has given testimony to the Commission previously regarding radio frequency needs of the site, stating that the water tank site would not work, and would not provide the same coverage area need for this location. He presented, for the record, propagation maps demonstrating that and he explained the maps.

Commissioner Mahanay asked if they were saying that the water tank area does not have sufficient coverage. Mr. Connor stated that is correct, there is a ridge which drops down and they would not get the coverage on Highway 293 as on the proposed tower site. The site will also provide coverage in the adjacent county, which is not a coverage area for them.

Commissioner Jennings asked the location of the second site, in addition to the water tank site, which Mr. Caskie stated had been evaluated. Mr. Caskie replied they had looked at locating Tritel equipment on an existing SBA tower at Highway 293 and the By-Pass and at the water tank to see if the coverage would meet on Highway 293 and unfortunately it did not. They did evaluate using two sites instead of one. Mr. Connor presented, for the record, a letter from Mr. Cookston which verifies Mr. Caskie's response.

### **OPPOSITION**

**Buddy Childers** stated that he had previously asked the Commission to be cautious as they made a decision on this issue. It is a decision they will live with the rest of their lives. He stated that one of his concerns is that Mr. Duolong pointed out in his recommendation that this is a residential area. It doesn't concern him as much about the particular location as it does that a precedence will be set. If it is allowed in a residential area, it doesn't matter if it is a few houses or a few hundred houses, it seems to him that a precedence will be set that a tower could be located in a residential area. He is also concerned, that the report stated that not much effort was made, but they found three alternative sites. If they could find three alternative sites without much effort, he wonders if there was a real effort made, how many other sites might be available which are not in a residential area. His greatest concern is the precedence they are setting for the rest of their lives and he hopes that at the very least this will be postponed until they can make sure that it is the best site available in the area and that it is not in a residential area to set a precedence. He also mentioned limiting the number of cell towers being built and applauds the companies for trying to limit the number of towers. He stated that he would appreciate the Commission making sure that they are not built in residential areas.

**Paul Cadle, local attorney**, stated that he had spoken at the hearing last week. He stated that Mr. Childers made some incredibly persuasive arguments. One of the key essential matters which needs to be considered is that under the statute that authorizes this, the statute preserves the local zoning authority. This means that they are not superseded by federal law, you are not superseded by arguments of constitutional rights which he had heard today. At previous meetings he kept hearing the tower company had constitutional rights. They are a company and don't have any constitutional rights. He has looked and cannot find any constitutional rights. The constitutional rights there are "by the people and for the people". The constitutional rights being discussed are the constitutional rights of the people there who do not want the large nuisance in the middle of their property, as no one would. The constitutional rights issue is a hollow issue; they are not being discriminated against. The current use of the property is residential, the intended use of the property is residential, and it was zoned residential when Signal One applied to put this tower up. It was zoned residential when Signal One entered into a lease with one of the owners of the property to put up a commercial tower, but they have nothing but complaints about how they have been discriminated against and how they have been put off. They just want to put something there, which is not intended there. If you look further into the statute, when they talk about basically a discrimination of their

constitutional rights, he thinks they are talking about that under the interpretation of the statutes. If you establish a precedence to allow these towers in residential neighborhoods in a situation where there is adamant opposition by the neighborhood, then you are going to have a problem when they want to put one next door to you. The other company will say that you approved this one for Signal One, so why not for us. He stated that Signal One says that all sides but one are commercial property; he does not feel they have looked at the site. There are houses all around that tower, the tower is in a residential neighborhood, it is not in a commercial neighborhood. They knew that when they came there. If this is allowed, you will be creating potential chaos which you may not be able to rectify later on down the road. They had stated that the height was lowered in order to prevent having to put light on the tower, unless the FAA requires lights. How close is it to the airport in Rome, do you think an almost 200 foot monstrosity will not have to be lit for airplanes flying over. He presented copies of medical documents from one of the residents stating that she suffers from epilepsy. Flashing lights are not good for epileptics and this will be in her back yard. At the last hearing the company stated they want to be good neighbors. They quickly dismissed the findings in the report as those sites won't work. They did not even look at them until they were mentioned. They had looked at one site and one site only. This is all about one thing only, it is about money and how can I get there the quickest. They have no right to this site, they have no legal claim to this site. This Commission has every legal bit of authority to deny it, under the law and under the statute itself, because it is opposed and because it conflicts with the intended and current use of the property, you are well within your rights to deny this application, and make them go out a look like they say they are. They don't have to look at but one, they want to put it where they want, when they want. He stated he is not criticizing that is the way business works. He asked the Commissioners to ask the residents if they want the tower in their back yard.

Chairman Mayes stated the rebuttal can address only what the opposition discussed.

## **REBUTTAL**

**Sean Caskie**, stated that he would like to address each specific point. Mr. Childers spoke on issues about this particular site being residential and I don't disagree with that as long as we bear in mind that all the surrounding uses of this property, except for one site, are commercial uses. Up and down Kingston Highway are commercial uses, there is a BP station, there is a parts store, and there is a safety products facility next door. All of the other sites proposed by the county's consultant are more residential in use than the site they propose. Further, this does not set precedence. He referred to Article 3 of the zoning district of the Rome/Floyd County Development Code. Communication, Radio or TV towers are permitted as special use in every single zone. Regarding the comments of the attorney, he will let Mr. Connors or Ms. Harmon comment on this. But it is true, federal law does preserve local zoning authority and may not be superceded by the FCC except in use specific areas. Regarding constitutional rights, he stated that, for the record, Signal One firmly believes that they have the same constitutional rights as their carrier does under the Telecom Act. In addition, they have

their own constitutional rights for due process and equal protection of the law and all the other issues. He does not think they need to go into that, it is very clear. This site meets every single requirement of the county zoning ordinance. There is no theoretical health impact on the human body. This site under the ULDC is permitted with a Special Use Permit, they meet the requirements of the ordinance. He apologized to the people for putting this site in an area, that frankly did not feel good, but every other site proposed by the county consultant was in a more densely residential area. They meet the requirements of the law and he asked that be kept as the only consideration today for this tower site.

**Joe Connor**, stated that there is no precedence, no case law cited, and he is not aware of any case law interpreting the Telecommunications Act of 1996, which says that you have full authority to deny the permit just because it is in a residential area. There is no requirement, no item of law or case law that stands for that proposition. He stated that he wants the Commissioners to understand that and realize that in making their decision today. If they go on any other site in this area, they are in somebody else's back yard, which is the way it is. This site has been reviewed numerous times and they are looking forward to a resolution today, one way or the other.

**Virginia Harmon**, stated that she is glad there are people like the Commissioners who serve on County Commissions when decisions such as this have to be made. The law is clear, the ordinance in this case was carefully drafted in order to avoid setting legal precedence. It states that you cannot have an ordinance that says you cannot put a cell tower in a residential area. The ordinance is well drafted to let them look at specific facts and circumstances. Where does this carrier find itself, how well does this carrier try to meet all of the other goals of your ordinance, what kind of record of compliance and effort has this carrier and its tenant shown you in the past. The law gives you guidance. In the ordinance, within the context of the federal and state laws previously cited, there is existing precedence which states that your ordinance cannot completely rule out cell towers in residential areas. To do so is a clear violation of the Telecommunications Act. In this incidence there are three people giving objections. You have good a company that has bent over backwards to try to come to you with every bit of evidence that they can to show you why this tower is needed in this location. It meets the requirements of the ordinance, it meets the test of law and she asked that when the Board finds itself in a hard place, to look to the law for guidance, and she feels that it is there in this case.

Commissioner Fricks asked about the question of surrounding properties all being commercial except one. Sean Caskie replied that the surrounding properties are commercial use at this time except for one site at the back of the property, which is residential. The property site and the property around are being used for commercial. Mr. Caskie reviewed the different property uses on a plat of the area.

Commissioner Mahanay stated that as he understands it, under the uses and zoning description, we have been talking usage but actual zoning, one side is commercial and the other three sides are zoned agricultural residential. Commissioner Fricks noted that if you are grandfathered in, that continues the use on that property. He stated that

currently they are recommending property owners to come and identify their existing uses for property identification.

Commissioner Fricks asked the determining factor in the utilization of lighting on a tower. Mr. Connor replied that typically, unless they are around an airport or flight path, no light is required below 200 feet. Mr. Caskie stated that whenever Signal One desires to place a tower somewhere, they have a number of different federal regulations to comply with. One of the requirements is a study, with the FAA, to determine the location of the tower relative to any and all airports in the area. In this particular case a study had been done on the original site several months ago, then the Planning Commission asked that it be moved further on the property. On the new study, it stated that the closest public airport (Richard B. Russell) is 7.11 nautical miles from their site. The closest private airport (Etowah Bend) is 5.36 nautical miles from the site. The FAA evaluates the study by their consultant, runs it through the same database that their consultant uses and comes back with a determination that states if a structure is built a certain height above sea level that it could cause an impact to air traffic, and it tells them what that height is. Below that height, the FAA does not require the site to be lit or painted, sometimes you see orange and white stripes going up and down the tower. If the tower is below the hazard to air navigation elevation, then they do not require it to be lit. In almost every case, 99.9% of the cases, 200 feet is a minimum for lighting a tower. Anything over 200 feet has to be lit. In some cases, if you were going to build a tower on airport property, then they could ask for it to be lit below 200 feet. But this particular site complies with Part 77 of the FAA Code. Part 77 is the part of the code which discusses lighting and painting the tower. They do not exceed the air navigation standards, so according to their preliminary results, the tower will not have to be lit. The initial site, 250 foot tower further back on the property, would have to be lit, but this site being under 200 feet will not require lighting at this time. The FAA could change their code next year, a new airport could be built close by or they could come back to them and say the situation has changed, you now have to light your tower. At this point in time it will not be lighted.

## **OPPOSITION**

**William Barker**, an adjoining property owner, stated the water tower had been discussed and it is his understanding they are supposed to take their equipment to the location to see that it will not work. He stated that according to Mr. Poe, no one has been in his office, he has the key and there is a locked gate there. He feels they have not been to that site to see if it will work. The county had stated in the paper that they will try to stay away from residential areas and will go to the water towers and landfills. He asked that the county go by what they said.

## **REBUTTAL**

**Sean Caskie**, stated that there are three locks on the gate and he did not get a key from Mr. Poe. There is a big green sign that says Floyd County Water Tank. He went there for the fourth time today with Mr. Connor and walked around the gate and walked

up the road. They did evaluate the water tank, he has been there, regardless of whether he has been to the county office or not. Because the tank was mentioned previously, he did evaluate the tank. He stated that on two other occasions Signal One has removed sites from zoning because there were other properties. They have gone through significant trouble and expense and effort on another site which is coming before the Commission in the future to reduce the impact of these towers. If the water tank had worked four months ago they would have been finished here, they would not be taking up your time, they would have gone on the water tank property. To address one more issue, the technology is designed such now that they do not have to physically place equipment on the property itself, they can do that very same study with the equipment by having the latitude and longitude of the location, which we do have and did evaluate. This information was submitted to this Commission previously, many months ago, it was resubmitted today and he feels that it shows clearly that the water tank was evaluated, a tower at the water tank was evaluated and unfortunately it did not work.

Commissioner Hufstetler stated that he did not see lighting as being the primary issue, but they have stated that it doesn't need to be lit, but Mr. Cadle stated that it certainly needs to be lit. He asked if there was evidence in another case that this tower had to be lit. *(The reply was not audible.)* Chairman Mayes asked for comments from Assistant County Manager Tom Tully regarding the reply. Assistant County Manager Tully stated that in their experience the FAA has not required lighting for a tower which is less than 200 feet.

MOTION was made by Commissioner Hufstetler to close the Public Hearing, SECOND by Commissioner Fricks. Commissioner Jennings stated they wanted to make sure that the R. W. Beck report prepared by Mr. Doulong, dated November 14, 2000 and also correspondence received today from R. W. Beck dated November 20, 2000 were a part of the record. County Attorney Wade Hoyt stated that they need to be acknowledged and accept them on the record. Commissioner Hufstetler withdrew his Motion.

MOTION was made by Commissioner Jennings to accept into the public record the R. W. Beck letters faxed to them on November 14, 2000 and November 20, 2000. SECOND by Commissioner Mahanay. VOTING:

YES

NO

Commissioner Hufstetler

" Fricks

" Jennings

" Mahanay

Motion Carried

MOTION was made by Commissioner Hufstetler to close the Public Hearing, SECOND by Commissioner Jennings. VOTING:



YES

NO

Commissioner Hufstetler

" Fricks

" Jennings

" Mahanay

Motion Carried

Commissioner Hufstetler asked that the attorney address some legal issues which had been brought up.

Commissioner Mahanay stated that for clarification purposes he would like to know the distance between this tower site and the nearest residence. Mr. Caskie replied that the closest residential structure is over 210 feet away. The fall zone of the tower is 210 feet and it stays within their property boundaries. The residential structures on property adjoining the site on the back side are set off their property lines some distance, but the tower itself has a 210 foot fall zone and they know they are within that. Commissioner Jennings asked if there was not a structure on the property. Mr. Caskie replied that is not a residence, it is a business.

County Attorney Wade Hoyt stated that he will present the facts as he see them. The only way that this Board can violate the constitutional rights of a cell tower company is by a direct violation of the terms of the Federal Telecommunications Act. The Federal Telecommunications Act puts two burdens on a local Board of Commissioners. One, that a decision is made in a reasonable length of time. Two, and the one that has caused most Boards tremendous problems, is that in order to deny a request for a cell tower you have to, in writing and in the record, find substantial evidence upon which to base your denial. You have done everything in your absolute power to find substantial evidence, if you can find it. You have heard from the residents, you have issued a directive to a local appraiser, you have hired, at a cost of probably \$5,000 or \$6,000, a local engineer. The engineer in his newest report has basically backed up on his first report and indicated to you that sites Alternate B and C are not appropriate. That the cell tower site and the Alternate Site A, are basically the same and there is evidence before you that Alternate Site A is not for sale. There is also evidence, by a radio frequency expert, that the water tower site is not appropriate. There no evidence before you, by a radio frequency expert, that it is appropriate, only that it is not. The cell tower ordinance does indicate that you are going to do your best not to locate towers in residential areas, and you have done that in every one that has been presented. The problem is the Telecommunications Act, which no one is happy about. There are many cases about what substantial evidence is and in his opinion, it is more than they have. County Attorney Hoyt read a decision from the Eleventh Circuit Court of Appeals, Judge Carnes of the Eleventh Circuit, involving Fulton County. Judge Carnes rejected the various grounds upon which the city attempted to justify its cell tower denial and said, *"It is no reason that simply a few citizens opposed the cell tower, that is not a sufficient legal reason."* County Attorney Hoyt stated that he would not want a tower next to his residence, but that is not the point. The point is that

the Board has to make a decision based on substantial evidence. They have decided that if you do not have substantial evidence and you cannot prove in the record that you have substantial evidence and if you go to the court and you lose, that you have to pay attorneys fees and damages, and in some instances that is a lot of money. He stated that he does not know how a Board of Commissioners could have done anything more than they did to try to help the neighborhood. At this stage of the game, his opinion is that you do not have anywhere near the substantial evidence needed to deny the application.

Commissioner Jennings referred to Mr. Doulong's latest letter. It mentions alternative sites, it stated "there may be other sites that can meet the wireless server's provider needs". He compares Alternative A with the current site before the Board, stating that "neither site is superior to the other from a coverage perspective" and indicates some areas where the coverage is comparable and some areas where both sites will not provide coverage. The letter also stated that he has not done an exhaustive study. Commissioner Jennings had talked with Mr. Doulong today and he did not have maps that he could check out to the northwest, southwest and southeast of the site. He basically was looking at a 90 degree sector from the site. There seems to be evidence which suggests there may be other sites. If they look at our Cell Tower Ordinance, "E" in their goals talks about providing services to the community effective and efficiently and he does not know if the criteria has been met for this current site. It seems to him that there is enough evidence from Mr. Doulong that suggests that there may be other sites available. He stated he is not an attorney and he is not a federal judge in the Eleventh Circuit and maybe a federal judge has to solve this case. He stated the he did not feel it was for them to serve as the court.

Chairman Mayes called for a Motion for denial or acceptance of this request. MOTION to **deny** the Special Use Permit was made by Commissioner Jennings, citing from the Cell Tower Ordinance, Goal A, which suggests that the site minimize adverse visual and residential impacts, Goal C which is to encourage location of communication towers in non-residential areas and Goal E which is to enhance the ability of providers of wireless communication services to deliver such services to the community effective and efficiently. He stated that he does not believe that the current site meets any one of the three criteria. There being no SECOND, Chairman Mayes called for another Motion.

MOTION for **approval** was made by Commissioner Mahanay, stating that unfortunately they were selecting the lesser of two evils, but he does feel the Commission has exercised due diligence. SECOND by Commissioner Fricks.

Commissioner Jennings stated that he would like to amend the Motion to require that the cell tower company put up a cell tower that is the newest design that is the tree design type of cell tower so that we place that requirement on the cell tower that is placed on this location. In clarification of the design, Commissioner Jennings stated that the new design looks like a giant metal tree. Commissioner Mahanay stated that he had seen photos of this design but asked what the height would be. Chairman Mayes asked for comments from the County Attorney. County Attorney Hoyt stated that the Motion would have to be voted on first. It would encourage the tower sites to be less obtrusive,

but he was not sure that they have the authority to require that. Commissioner Jennings stated that they regularly make special requirements for Special Use Permits. County Attorney Hoyt stated that, they would be stronger if this was being done in reference to a Variance as opposed to where they are at this point. It was noted that a SECOND to the amendment was required.

There being no Second so there was a vote on the original Motion of Commissioner Mahanay. Commissioner Hufstetler stated that it is not perhaps the thing they want to do, but he does not feel that legally they have any other choice in the matter. He stated that he feels they have spent more time and expense on this request, trying to find an alternative solution and he has not seen one yet or information which could be used to deny it. He stated that in the past this company has withdrawn requests and feels that if they could locate it on the water tower it would be in their economic interest, and thinks if that was a possibility they would do that. This is his reason for voting yes on the request.

Commissioner Jennings stated that they have heard constitutional arguments and heard attorneys speak on both sides of the constitutional issues. Clearly there is some debate in terms of our rights as a Commission and it seems to him the courts should resolve the issue.

VOTING:

YES

NO

Commissioner Hufstetler

" Fricks

Commissioner Jennings

" Mahanay

Motion Carried

## **DISCUSS G.E. E.P.A PERMIT**

Chairman Mayes stated that this item requires a 4/5 vote to be added to the Agenda. MOTION was made by Commissioner Hufstetler that this be added to the Agenda, SECOND by Commissioner Frick. VOTING:

YES

NO

Commissioner Hufstetler

" Fricks

" Jennings

" Mahanay

Motion Carried

Commissioner Hufstetler stated he had had discussions with Bill Morris, a geologist at Floyd College, and requested that he be allowed to address the Board.

**Bill Morris, 2622 Garden Lakes Blvd.,** stated he wanted to convey information he has gathered over the past couple of weeks from a number of sources, from news reports, from the General Electric Public Hearing last week, and from personal research by himself and his students. General Electric has applied for a permit modification from Georgia Hazardous Waste on their property. It seems that there is a toxic suit in Floyd County. He had learned, over the last week or so, that the modification, when complete, will address both the material stored and Landfill A. Currently under review, and available for comment by the public, is another part of the permit modification, which is limited to the extraction and remediation of the groundwater system underneath the GE site. GE is proposing that they install a HVE Testing System, High Vacuum Extraction with steam enhancement. They will attempt to basically extract contaminants from under the GE property with the high vacuum system and use steam to mobilize volatiles that are in the water. Many of the PCBs for instance won't actually be extracted under this system, but the volatiles that mobilize the PCBs will. It will at least remove, through a technique that is pretty well understood and seems to be working in other places, some of the material that has moved away from Landfill A. The second part of the permit modification would speak to the encapsulation of Landfill A, specifically capping the landfill with a low permeability cover to prevent precipitation from reaching the materials going down into the water system. The permit modification, in his opinion, is a desirable thing. GE is proposing that they will install several additional recovery wells; about seven more wells on the property, there are over a hundred wells now. Also in the permit modifications, they are addressing some problems underneath one of the larger buildings on the property, with a test pump. Several things have been removed from the original plan of this modification request. They are asking that some of the monitoring wells be deleted from the site where they no longer collect samples. He believes they should be indicating support of the HVE System, that they do not delete the wells, that every well on site is monitored and that they continue to monitor the ground system for a long enough period of time to determine the true character of the system. He stated that they do not feel that the groundwater characterization is complete now, there are other factors at work and he believes that they should continue monitoring in detail for a long period of time. There is also a lack of data on a new problem that they have been made aware of, which is the presence of dioxin. Dioxin is more dangerous than any other chemical that has been mentioned on the property. This all has to do with the first phase of the permit modification and comments are due on that by December 12, 2000. Chairman Mayes asked if he supports the vacuum system. Mr. Morris replied that he does. Chairman Mayes asked if it would not be better to empty out the landfill. Mr. Morris replied, absolutely. Mr. Morris noted that GE has not submitted the final plan for the encapsulation of Landfill A, this is due about January 20. Chairman Mayes asked if that means to leave it there forever. Mr. Morris replied that it does. The comment period will be open for 90 days after the submission of that portion. Commissioner Fricks asked the length of term regarding monitoring the water levels. Mr. Morris stated that he is recommending indefinitely, but they are dealing with a dynamic system which will be

subject to climate controls. Commissioner Fricks stated that right now they are talking about it being subject to or until the encapsulation takes place. Mr. Morris replied that the monitoring will continue after the encapsulation. The first part deals with how they will extract volatile materials and liquids. The big picture would involve maintaining this HVE System as well as capping Landfill A. Chairman Mayes stated that it is his opinion that the Commission should recommend that everything, which should not be there, is removed from the site, and it be taken to an appropriate hazardous waste facility. Mr. Morris stated that GE is counting on this coming in as a package, the HVE System and support of capping Landfill A. He personally feels that the material in Landfill A should be removed and that the HVE System should continue to operate. Commissioner Hufstetler asked where the system would be operating, if it is removed. Mr. Morris stated that the maps that have been prepared by the GE consultants are showing migration contaminants away from Landfill A so the recovery plan had several wells drilled and they will use existing wells around the perimeter of the property.

Commissioner Hufstetler asked there had been migration away from this site and if that had been in the last several years. Commissioner Fricks stated the he understands that it is currently migrating, even during the drought situation now. Commissioner Mahanay asked if the high vacuum extraction process will eliminate this migration, if it is maintained properly. Mr. Morris stated he understands the system, but not the technical components to a degree that he could address this question appropriately. He stated that he understands that the technique has been successful in other areas. The real issue is source control, with Landfill A being the source and that is what we want to get educated on and be able to address. Commissioner Jennings stated that as he understands it, the assumption is that the wells are properly placed, but there is no telling if the material is migrating in other directions. Mr. Morris stated that the problem with the groundwater system is that it is classified as a fractured system as opposed to an isotropic, and he gave a brief explanation of the two type systems. Commissioner Hufstetler stated that he feels they should invite the City Commission to be a part of this, if a letter is sent.

County Manager Kevin Poe noted that there will be a meeting on December 11, 2000 of General Electric, EPA, EPD, and the City and County Commissions, and that John Bennett had contacted Richard Lester regarding the meeting. It was determined that the Mr. Morris will draft a letter, which will be given to the County Manager and this item will be on the November 28, 2000 Agenda. Commissioner Fricks thanked Mr. Morris for his interest.

#### **ADJOURNMENT:**

There being no further business to come before the Board, MOTION was made by Commissioner Hufstetler, SECOND by Commissioner Mahanay, that the meeting be adjourned. VOTING:

YES

NO

Commissioner Hufstetler

" Fricks  
" Jennings  
" Mahanay

Motion Carried

**COMMISSIONERS**

**FLOYD COUNTY BOARD OF**

**JOHN MAYES, CHAIRMAN**