

July 8, 2003

REGULAR MEETING
FLOYD COUNTY BOARD OF COMMISSIONERS
July 8, 2003 **2:00 P.M.**

PRESENT: Chairman Garry Fricks, Commissioners Tom Bennett, Chuck Hufstetler, Jerry Jennings, and John Mayes.

OTHERS

PRESENT: County Manager Kevin Poe, County Attorney Tom Manning, Clerk Michele Fountain, and Assistant County Manager Sammy Rich.

CALL TO ORDER: Chairman Fricks called the meeting to order.

INVOCATION: Commissioner Hufstetler led the Invocation.

PLEDGE OF

ALLEGIANCE: The Pledge of Allegiance was led by Commissioner Jennings.

ADOPTION OF

MINUTES: Chairman Fricks asked if the minutes were in order. County Attorney Manning replied that they were in order. Commissioner Hufstetler made a MOTION to adopt the minutes of the Regular Meeting of June 24, 2003 as presented. SECOND by Commissioner Mayes. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

PROCLAMATIONS

NATIONAL NIGHT OUT

Commissioner Mayes presented a Proclamation to Ouida Sams recognizing August 5, 2003 as National Night Out. Ms. Sams thanked the Board and invited everyone to attend a Rally on August 5 at the Greater Mount Calvary Baptist Church, 445 East 14th Street, from 4 until 6:30 p.m. and at 7 p.m. there will be program at the City Auditorium. Everyone is invited to participate in these activities.

FIRST READING
(SECOND READING/PUBLIC HEARING
TO BE HELD JULY 22, 2003 AT 6:00 P.M.

**FILE #38-2003Z, 5661 NEW CALHOUN
HIGHWAY, SHANNON, REQUEST
REZONING FROM H-I (HEAVY INDUSTRIAL)
TO H-C (HEAVY COMMERCIAL).
(PLANNING COMMISSION RECOMMENDATION:
APPROVAL [VOTE – UNANIMOUS])**

**FILE #41-2003Z, SUNSET DRIVE AND
PINEHURST DRIVE, REQUEST REZONING
FROM S-R (SUBURBAN RESIDENTIAL) TO
M-R (MULTI-RESIDENTIAL) TO BUILD
40 CONDOMINIUMS.
(PLANNING COMMISSION RECOMMENDATION:
APPROVAL [VOTE – UNANIMOUS])**

**FILE #42-2003Z, OLD CALHOUN ROAD,
REQUEST REZONING FROM S-R (SUBURBAN
RESIDENTIAL) TO C-C (COMMUNITY
COMMERCIAL) TO CONSTRUCT AND
OPERATE FIRE EXTINGUISHER SALES
AND SERVICE.
(PLANNING COMMISSION RECOMMENDATION:
APPROVAL [VOTE – UNANIMOUS])**

**FILE #43-2003Z, DEMPSEY @ BERT ROAD,
REQUEST REZONING FROM S-R (SUBURBAN
RESIDENTIAL) TO D-R (DUPLEX RESIDENTIAL)
TO CONSTRUCT DUPLEXES.
(PLANNING COMMISSION RECOMMENDATION:
APPROVAL WITH THREE CONDITIONS – ALL
UNITS WOULD BE CONNECTED TO SEWER,
A MINIMUM 6 INCH WATER LINE WOULD
RUN TO THE PROPERTY FROM OLD CALHOUN
ROAD AND ALL STRUCTURES WOULD FACE
THE STREET FOR EAST OF UTILITY CONNECTION**

[VOTE – UNANIMOUS])

FILE #44-2003Z, MIDWAY ROAD OFF WAX ROAD, REQUEST REZONING FROM S-R (SUBURBAN RESIDENTIAL) TO P-D (PLANNED DEVELOPMENT) FOR GOVERNMENT SERVICES MIXED USE FACILITY FOR PARK, FIRE STATION, TRANSFER STATION.

(PLANNING COMMISSION RECOMMENDATION: APPROVAL WITH TWO CONDITIONS: A 30 FOOT BUFFER AROUND THE HOUSEHOLD WASTE/ RECYCLABLES DROP-OFF CENTER, WITH NATURAL VEGETATION PRESERVED IF FEASIBLE, AND A MINIMUM OF 20 FOOT BUFFER AROUND THE REST OF THE PROPERTY WITH NATURAL VEGETATION PRESERVED IF FEASIBLE [VOTE – UNANIMOUS])

ULDC REVISIONS

**REVISE OR DELETE ARTICLE 6.10 CONCERNING SWALE DITCHES AND DRIVEWAYS.
(PLANNING COMMISSION RECOMMENDATION: REVISION AS AMENDED APPROVED [VOTE – UNANIMOUS])**

**REVISE OR DELETE ARTICLE 1.4.3a(2)(e) CONCERNING NON-CONFORMING USES.
(PLANNING COMMISSION RECOMMENDATION: TABLED [VOTE – UNANIMOUS])**

**REVISE OR DELETE ARTICLE 6.6.3a REGARDING THE REQUIREMENT FOR CONSTRUCTION OF SIDEWALKS IN THE CITY AND IN UNINCORPORATED AREAS OF FLOYD COUNTY.
(PLANNING COMMISSION RECOMMENDATION: REVISION APPROVED [VOTE – UNANIMOUS])**

**REVISE OR DELETE ARTICLE 6.7.9.a AND 6.7.9.f CONCERNING THE USE OF CONCRETE PIPE STORM DRAINS.
(PLANNING COMMISSION RECOMMENDATION: REVISION APPROVED [VOTE – UNANIMOUS])**

**REVISE OR DELETE ARTICLE 4.1.1e CONCERNING
TENANT DWELLINGS ON AGRICULTURAL LANDS.
PLANNING COMMISSION RECOMMENDATION:
REVISION APPROVED [VOTE – UNANIMOUS])**

**REVISE OR DELETE ARTICLE 3.4 CONCERNING
FARM EQUIPMENT SALES AND SERVICE
BUSINESSES.
(PLANNING COMMISSION RECOMMENDATION:
TABLED [VOTE – UNANIMOUS])**

**REVISE OR DELETE ARTICLE 3.4 CONCERNING
COMMUNICATION TOWERS.
(PLANNING COMMISSION RECOMMENDATION:
REVISION APPROVED [VOTE – UNANIMOUS])**

**REVISE OR DELETE ARTICLE 2.2.6 CONCERNING
DEVELOPMENTS OF REGIONAL IMPACT (DRI).
(PLANNING COMMISSION RECOMMENDATION:
REVISION APPROVED [VOTE – UNANIMOUS])**

**REVISE OR DELETE ARTICLE 2.2.3a(2)(a) AND
ARTICLE 2.11.7(d)(2)(a) CONCERNING NOTICE
TO SURROUNDING PROPERTY OWNERS.
(PLANNING COMMISSION RECOMMENDATION:
TABLED [VOTE – UNANIMOUS])**

CHAIRMAN'S REPORT

APPOINTMENTS.

Chairman Fricks stated there were two appointments. Clerk Michele Fountain stated the appointments were for the Airport Commission and the Forum Advisory Committee. She stated the Agenda Session recommended Thom Holt for the Airport Commission and Nancy Simmons for the Forum Advisory Committee. MOTION was made by Commissioner Mayes to approve the recommendation. SECOND by Commissioner Hufstetler. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

COMMISSIONER'S REPORT

WATER COMMITTEE

DISCUSS ACT ISSUES.

Commissioner Jennings, Committee Chairman, stated that he would move to authorize the Chairman to forward a letter to Mr. Trey Glen and Mr. Harold Reheis regarding the ACT Formula Agreement. This letter basically endorses the position stated by the City of Rome, both at the Public Hearing on June 12 and later in a letter dated June 19, 2003. It addresses the concerns that we, as a community, have over the current proposed ACT Agreement. The four areas that the City of Rome has indicated a concern, and also we are concerned, are the limitation of withdrawals based upon the 7Q10 formula; the flooding potential where the pool level of Lake Allatoona is raised. The third issue is interbasin transfers without requirements to return any of the treated waste water to the basin and the gorge; and the fourth is the inequitable treatment of consumptive and non-

consumptive withdrawals. Commissioner Jennings made a MOTION to authorize the Chairman to sign and forward this letter. SECOND by Commissioner Hufstetler.
VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

Commissioner Jennings noted that they have had some discussions with the Water Committee from the City of Rome regarding wholesale water rates for the County, the largest purchaser of water from the City. We are awaiting a proposal from the City in terms of those water rates and as soon as it is received, the information will be shared with the Commissioners.

DISCUSS WATER AND SEWER RATE.

Commissioner Jennings, Committee Chairman stated that concerning the sewer rate, the City of Rome has hired a consulting firm to review and address the issue of the inequitable sewer rates in the City and County and to come up with, hopefully, a rate structure that is more equitable. He stated that he thought there was an agreement from the City of Rome early on that we would be intimately involved in this process. To date, the County Manager has had a very brief phone call from the consultants informing him that they were conducting this study, but we have had no further communication with this committee over this project. Commissioner Jennings stated that he is concerned about that because, obviously, significant numbers of county residents are on the City Sewer System. Through our SPLOST, the entire residents of the County are supporting the Waste Water Treatment Plant and sewage extensions in the Old Dalton Road area. It seems to him that we are due a greater consideration than simply a brief phone call. Chairman Fricks stated that it had been discussed in Caucus and he thought they were somewhat in agreement that they need to take action on this today.

There is a mechanism in place that is identified in the contract to insure that. It is an arbitration process, which basically brings third parties in here to arbitrate and review the information and from what he understands, it is a binding arbitration. They have the ability to exercise that the process be put into place. Commissioner Jennings stated that at this point he thought that they may need to do that because apparently they are not being consulted in the process. Chairman Fricks stated that being consulted or not, he thinks that at that point in time the only fair thing for the full constituency of Floyd County is to make sure that we do a fair process. He thinks this was drawn in the contract to be that process and hopefully we will see some good benefit for equalization of services provided everybody in Floyd County, whether it be City resident or County resident. He thinks that it will spread the cost of services more equally. It was asked if a Motion was needed. Chairman Fricks stated that he would prefer it and they will prepare a letter stating that they want to initiate the process immediately. County Manager Kevin Poe stated that he assumed this is a contractual issue and that we do need some written notification. County Attorney Tom Manning stated that he had not reviewed the contract and he would be glad to do. He has not seen the arbitration provision, but if it requires some type of action on behalf of the County he would suggest that they place that item on the Agenda and then take a formal vote on that. It can be done subject to attorney's review and he can let them know if there are any problems.

MOTION was made by Commissioner Mayes that this item be placed on the Agenda. SECOND by Commissioner Hufstetler. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

MOTION was made by Commissioner Hufstetler that they begin the arbitration process subject to the County Attorney's review. SECOND by Chairman Fricks.

Commissioner Bennett stated that if this could get formal about that process without... are we doing this basically because we are supposed to participate in the study? Chairman Fricks stated that if it is just only that, that was an agreement that they do a study and we were going to take a bigger role in it and (*it would*) help us work through that process. He stated that he thought this was designed as a fair mechanism and he always had the intent and thought that we need to exercise this process anyway. It probably should be done at various times, but he does not think it has ever been exercised as long as the contract has been in place. Commissioner Bennett stated that this Motion is for them to go ahead and vote the formal arbitration process in lieu of the study, or in addition to the study. Commissioner Hufstetler replied, "in addition to the study." Commissioner Bennett stated that the study is being done, that is not what they are saying, there was one issue or point about that, but also further, to go ahead according to the contract, that there be arbitration and advise them that we want to start the arbitration process, (*that*) is what the Motion is for. Chairman Fricks stated that what will probably happen in that study is that they will use that to provide the information to the arbitrators, he would assume. County Attorney Manning asked if they knew if they will receive any kind of formal recommendation regarding a new price structure today. He asked if they will know one way or the other in the Joint Meeting that is upcoming. Commissioner Hufstetler stated that he would be surprised, because if they have only contacted County Manager Poe one time. County Manager Poe stated that would be totally against what they (*the County*) requested from the beginning. Regarding the study, we asked to be involved in it from the beginning and we haven't reviewed anything. He stated that he is assuming that it is ongoing. They reported a month or so ago that they had started this study but no numbers have been seen. That is what they were trying to avoid from just getting the end result of it. There are a lot of things that they should be able to review that go into the water and sewer rates. Commissioner Jennings stated that it is his thinking that he supports ultimately getting to a point where we bring this to arbitration and he is wondering whether they are not somewhat premature in this. Perhaps this afternoon (*at the Joint City/County Commission Meeting*) we will have a golden opportunity to share our concerns about the lack of input on the part of the county in this study; and secondly, our thoughts about reviewing the contract and proposing arbitration after review of contract. He stated that he is wondering if they are not a little premature in invoking what they think is part of the contract at this point. Commissioner Mayes asked if Commissioner Jennings recommended that they hold off until the next meeting. Commissioner Jennings stated that he thought that might be their best alternative and bringing it up this afternoon in the Joint City/County Meeting as a concern that we have not been consulted in the process. Commissioner Hufstetler stated that he is not sure it is premature, he thought it should have been done six months ago. However, he is willing to wait one more meeting and therefore **he withdrew his Motion**. Chairman Fricks stated that he is also willing to wait, but he agreed with Commissioner Hufstetler. He thinks some validation of the process needs to take place no matter what, even if they do a thorough study, some outside validation. Today, if we went in and they gave us the results of the study and they said that they (*the City*) had justified it, the rates should be exactly like they are. He stated that he had been told that in past studies it justifies that. He also stated that he has a question mark in that without our (*the County*) involvement in that study. He would still want to

go through this process, even if they get the study in, this process is designed in the contract to be a fair way of doing this.

Commissioner Bennett stated that he personally hopes that it was an oversight. Even though they have had a preliminary call, but he thinks that could be determined this afternoon. He stated that he would be in favor of it after the results of that study, which hopefully, they just haven't gotten around to yet and we haven't been notified. Hopefully they will get to participate in that as they anticipated and they can resolve this. Everybody thinks it is fair, and if not, we should invoke the provision of the agreement to go into arbitration. Commissioner Jennings stated that he thinks the action they have come close to taking today essentially signals that we are very, very concerned and anxious about this and it would give us some time for our attorney to look at the contract, give us some time to basically inform the City that we are concerned that nothing has taken place in involving the County in the process, and that we are strongly considering arbitration. Commissioner Jennings stated that he does not disagree with potential action that is taking place here today, he is just thinking, what if they wait at least a couple of weeks and also voice their concerns this afternoon and see what happens as a result of that? Commissioner Hufstetler stated that the Motion has been withdrawn and asked if they need to do anything further. Chairman Fricks stated that they just do not take any action at this time.

SPECIAL COMMITTEE REPORTS

CONSOLIDATION TASK FORCE.

Commissioner Bennett stated that he sat in for Chairman Fricks at the last meeting and as a matter of information, the Consolidation Task Force has been split into at least two groups. At the present time, one is education and the other is government. He stated that Commissioner Hufstetler may be able to tell them something about the education portion, but at the government portion it was decided to expand the committee to involve some of the community and they are soliciting names from the community for volunteers to participate in this process. He stated that he thought it is anticipated, on the government portion, to add approximately ten more members. He asked County Manager Poe if that was correct ten to fifteen. They really have not set a number. It had been mentioned several times but people hesitate to volunteer without being asked to volunteer. Hopefully in this public meeting they can encourage some people in the community to volunteer to participate in this study about unification of government in Floyd County. He invited the people in the audience or whomever might hear this to volunteer for these committees by contacting the County Manager's Office or the City Manager's Office for selection of committee members. Commissioner Mayes asked, If they decide to do an education committee, are they going to ask for volunteers? Commissioner Hufstetler stated that the Educational Sub-Committee will be a large committee and a smaller voting committee. They will get 30 individuals. These will come from the 20 School Councils that are set up in the County School System, the 10 School Councils that are set up in the City so they will be getting a broad, and hopefully diverse, range of people from different things. Out of that, they would add six voting members to the main committee. These six will come, four from the County and two from the City. The four from the County, there have been recommendations that they come from the four County school areas. This will prevent having a committee, for example, say there is not a single person from Armuchee that is involved in this committee, on the school

consolidation or there is nobody from Pepperell. The two from the City will be picked by the City representatives of the School System. He stated that this should bring in 30 all over and an additional six people who will actually be voting members, but the group of 30 will actually pick their six members to go on this committee.

Commissioner Bennett stated that from the government side, it was decided that there is not going to really be a effort to allocate between City, County, Cave Spring or whomever. They are looking for community participants and invite volunteers for this committee, which they think is important.

CLERK'S REPORT

CONSENT AGENDA.

Clerk Michele Fountain stated there were two items on the Consent Agenda for approval. MOTION was made by Commissioner Bennett to approve the Consent Agenda. SECOND by Commissioner Hufstetler.

Commissioner Mayes asked about the process of getting a road to the point of going on County Maintenance and how do they know the road is ready for County Maintenance. County Manager Kevin Poe stated that after the subdivision plan is approved the developer has to work with the County Engineering staff to have periodic inspections done, submitting compaction reports and things such as that, and then when they think they have it all completed and finished, they ask for a final inspection and the Engineering staff goes out and does a final inspection. The County Engineer does that and then he submits a report, such as in the Agenda package, that goes through the different criteria and comes with a recommendation from the County Engineer. In this case it recommended that they accept the portions of roads on County Maintenance.

VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

1. Tax Refunds:

- a. Wayne D. Mullins, 19 Polaris Terrace, \$39.83
- b. Marie Inez McStotts, 1460 Kingston Highway, Kingston, \$88.90
- c. Willard & Lucille McEver, 201 East 4th Avenue, \$14.37
- d. Brenda S. Lambert, 18 Laurchrist Drive, \$71.00
- e. Carl G. & Timothy E. Momon, 72 Oreburg Road, SW, \$9.74

f. Martha H. Morris & Emily Kay Taylor, 2816 Ridgemore Road,
Atlanta, \$11.75

g. Ellen T. Nanfro, 2516 Country Club Drive, Lynn Haven, FL,
\$107.91

2. Request by Jackson Morgan, Eastside Realty for acceptance on County Maintenance of Edenfield Drive, SE and Ravenwood Drive, SE, which are included in Edenfield Estates,
Phase IV.

MANAGER'S REPORT

CONSIDER OPTION TO PURCHASE PROPERTY OFF EAST 12TH STREET FOR NEW HEALTH DEPARTMENT FACILITY.

DISCUSS GREENSPACE PROGRAM.

County Manager Kevin Poe stated that these items were discussed during the Caucus Session, but they require no formal Board action at this time.

ATTORNEY'S REPORT.

County Attorney Tom Manning stated that he had no report unless they wished to discuss further the non-conforming use amendment that was discussed in Caucus or do they want to continue to consider that language for a further time. Chairman Fricks asked if everyone felt comfortable or did they want to look it over and review the three options and maybe submit something back. Commissioner Hufstetler asked if they could get another option that, it talked about the buildings themselves being subject to setback but not the, say, parking lot. If they could get something that would incorporate that, he would like to look at that. County Attorney Manning stated they could do that and it would probably require crafting some language because he thought the definition of structure under the ULDC encompasses a parking lot. He stated that he would be glad to do that and they will have to work with the language and redefine, for this particular option the definition of structure. Commissioner Bennett stated that the setback may be a portion of it as opposed to buffer. He thought the buffer was added and causes problems with the setback because of the definition of buffer. County Attorney Manning asked if they were asking to make a fourth proposal that would eliminate parking lots, as he understands it, from any setback requirements with regard to non-conforming uses. Commissioner Hufstetler stated that it would limit only the requirements that were there at the time. County Attorney Manning asked which time. Commissioner Hufstetler replied, "before 1999." Chairman Fricks asked if it could be defined, just on the ULDC, that it meets all setback requirements only on new structures consisting of buildings or something like that. Just further define it in that area. Commissioner Bennett stated that parking lots are now defined as structures, is it structures or improvements?

Commissioner Bennett stated that a structure implies one thing and improvement could be a parking lot, but he would not think a parking lot would be a structure, but that may the way it is in the Code. County Attorney Manning stated that is the definition. Commissioner Bennett stated, "Or to redefine the structure to include only a building."

Chairman Fricks asked if a Building Permit is required to build a parking lot. He asked, if he wanted to pave his parking lot, would it require a Building Permit? County Manager Kevin Poe stated that he would have to get a grading... Commissioner Bennett stated that, depending on the size, it probably would require not only a Building Permit but a Water Management Plan. Commissioner Mayes stated that they were talking about resurfacing not expanding. He asked if they were opening a can of worms with this since it could open up a lot of different situations. Assistant County Manager Sammy Rich stated that it certainly could if they are talking about the non-conforming in general and the way it has been done is on a case-by-case basis. He stated that the more specific they could be, helps them on the staff level when people come up and they are asking, "I have a non-conforming, where do I fit?" He stated that it does make it unique. In an ideal world there would be an updated zoning map that we had confidence in, and we would not need this method. Commissioner Mayes stated that they are trying to fix it so that people who were already doing something before they had zoning, are not unduly restricted, and they are trying to come up with ways to do that. Commissioner Mayes asked how they fix this. County Attorney Manning stated that what they have given them is really proposal two and three, options were given that they have to decide what the policy of the Commission is with regard to when additions are built on to structures whether these individuals, who are a lawful non-conforming use, have to abide by the zoning requirements that would and usually exist for this type of activity or whether they have to abide by zoning rules and regulations that exist for the zoning designation that they have that really does not apply to them because they are non-conforming use. He stated that they are trying to give the Board options and for them (*the Board*) to tell them (*the Attorneys*) what philosophy the Board wants. Now they are going back to a third option and they talked about possibly a fourth to be considered. Commissioner Mayes stated that the flip side of this to consider is that a lot, since 1999, of people have bought property at grossly high prices and we have to protect them also. County Attorney Manning stated that, probably from a legal perspective, Policy #2 is arguably the legal position for the County to take. That is not to say the others are not positions that can be defended, he is just talking about the safest position. Commissioner Jennings stated that he thought Commissioner Mayes' point was a good one, but the danger of taking the one circumstance that we have on Highway 27 and generalizing that to all circumstances is like saying if they took a snapshot of Tommy Manning and said this is what people wear when they attend County Commission Meetings and we look around the room, we see a great diversity of what people choose to wear. Commissioner Jennings stated that they are generalizing from one circumstance to all circumstances in the County and we potentially are creating some problems. He stated that he thought they needed to be real careful as they go about this process. His position has been consistent throughout this process that persons who have non-conforming uses who wish to expand the use, do have a process that is in place that allows for community input in order for them to expand their non-conforming use. He stated that he knows that is not the will of the majority of this body, but that does allow for these exceptions to come forth and for there to be deliberation on those exceptions. He cautioned that the more loopholes provided in this, based on only one circumstance, we potentially are opening ourselves up to more problems than we are solving. Chairman Fricks stated that they keep referring back to that circumstance, but that is not

the only circumstance. He just used that as one of the most current examples. He stated that the most current example had been the previous meeting where he felt the amendment served its purpose because the only other option was to zone Heavy Commercial, which would have given him the opportunity to do something that was even more harmful to that neighborhood than expanding his existing use. The point of that is the owner had the business existing. He did a pretty good job of concealing it because the neighborhood was not aware of how many cars he had there, but the person that parked his cars on the front lot and possibly with a sign that said junkyard salvage yard and maybe had burned out cars on the front of his lot, probably got zoned properly when they identified the property. They are actually almost taking people who are doing a better job with concealing their usage and giving them the hindrance of having to rezone their property to continue the process, and patting the people on the back that are not being a good steward and covering their bad usage there. Commissioner Jennings stated that fact of the matter is that the current Code was basically what we reverted to with this gentleman, that he had a non-conforming use, that he could continue the non-conforming use so everybody walked out of here reasonably content. The property owners were concerned about a Heavy Industrial zoning and the gentleman wanted to continue his current use. It was asked who advised him to come here to begin with.

Chairman Fricks stated that he had always thought from day one that this amendment was in there. It had been addressed three times, one even prior to the ULDC being put into place and always we would just send to the Planning Commission our interpretation because we are the one that actually drew up the amendment in the first place. They would come back with a revision of different wording, which he does not understand. This is what our intent is, this is what we voted on and they well-defined their intent. He noted that he and Commissioner Jennings had had some long heated debates in a lot of all three of the processes and it was always very well defined by their examples and everything else and they cannot get the staff at the Planning Department to carry out the policy that they put in place. Every time that they were sent to them (*the Planning Department*) they would come back with a revision, which is ridiculous, and he was getting frustrated with that. He stated that he guessed what they are having to do once again is better define our wording so they have no flexibility in their interpretation. He looks at it as if it comes down to the court process, they are going to go back to the minutes of what they said when they put the amendment in place to figure out what the intent was and go by the letter of the law due to that. Commissioner Jennings stated that he also thought in Proposal #1, what the attorney has said is that the proposal presented by a previous County Attorney was problematic and was going to create more difficulties than it solved because of its imprecision so we may actually have been done a service by not putting that proposal into affect.

Commissioner Hufstetler stated that all he was saying in his other option was that they talk about the possibility of no setbacks at all and he was just trying to say that this would be some protections, say the buildings don't encroach on it, but leave the parking lots there, it is just kind of a compromise. County Attorney Manning asked, just so he would be clear, is he looking for a proposal that requires setbacks only with regard to what they call traditional structures, that means buildings? Commissioner Hufstetler responded, "Yes." County Attorney Manning asked if he wanted those setback requirements to have to be related to the zoning that would exist for the particular use that now exists in the ULDC. Commissioner Hufstetler replied that he was not sure where he fell on that. There is talk about, if you are in a subdivision, meeting subdivision

setbacks, etc. and he could be flexible on what they need to look at on that. That is fair. His point is that because of the situation out here where somebody has a parking lot that they can't pave to continue in business and make it better, maybe if we left the parking lot out of it, if they are already grandfathered in, that that would give enough flexibility to be able to allow somebody to continue business, but yet, not take away all setbacks at all and say they can go to the edge of the property. County Attorney Manning asked, structure is defined as, among other things, including buildings, you would want there to be setbacks with regard to the buildings, as he understands what he (*Commissioner Hufstetler*) is saying? Commissioner Hufstetler stated, "Yes, if they are adding on to the building he thinks they need to..." County Attorney Manning stated that it also has driveways and he assumed that he wanted that out. Commissioner Hufstetler stated whatever meets the old Code. Commissioner Bennett stated that he thought that in the old Code that was not considered to need a setback, the new Code may require if you have a buffer, in order to build a buffer, that effectively makes it a setback, but you could severely restrict somebody and there are any number of places you can look and see that. Where you have a building setback and you actually use the setback for drives to access the building and you obviously have to keep the drive on your property, but the setback was to keep structures from intruding. When you bring in buffers and you basically say we don't want any improvement in this piece of ground, it has to be greenspace or something like that, but he thinks that, in reality, restricts the use of the piece of property, what used to be a setback for a structure now becomes when a structure is defined as a driveway. He does not think Webster does it that way, but our Code may do it that way. Basically you are creating a buffer by defining any improvement as a structure.

Commissioner Hufstetler stated that interpretation from the City and County have been different on this, which meant someone did similar things in the City with no hearing at all. Chairman Fricks stated that they did an administrative change on allowing it to go ahead and take place and move in the City when it was the same exact piece of property under the same conditions. County Manager Poe stated that it was exact, the property was a similar situation. Chairman Fricks stated that it was the same property use.

Commissioner Jennings asked if he had mini-warehouses on this piece of property and his mini-warehouses are next to a residential area and there is a requirement in the Code for a buffer, if we say that the driveway could be considered a buffer. Basically this owner of mini-warehouses could put a driveway in the buffer zone, when in fact what we intended was that there be some sort of vegetation, trees and vegetation be put in the buffer zone to protect those adjacent property owners. Commissioner Hufstetler stated that he was not talking about somebody new building mini-warehouses, he is talking about someone that has an existing use. Commissioner Jennings stated that was the case. This person had existing mini-warehouses he wanted to expand on that piece of property the mini-warehouse. If we deem the driveways are a legitimate buffer, he could have put a driveway all way up to the property line with his adjacent property. Commissioner Hufstetler stated that the people that moved in there could have put a driveway in when he bought it, so we are trying to ... Commissioner Bennett stated that is the point he is trying to make. He thinks that if there were no buffers before, you have the setback for a structure and a driveway could go on a setback. That was accepted use in subdivisions and the whole works. You just could not build a structure in a setback, but the structure was assumed to be a building, but if you redefine the structure as a drive, you then create a buffer by defining a drive as a structure and then requiring the setback for the structure. That basically creates the

buffer without saying it is a buffer and the guy in the mini-warehouse, if he had the three front acres developed and he wanted to develop the back two acres, now when you say you have to offset it, you can continue to use the driveway, but because now a driveway is considered a structure and it has to meet the setback, then you have to bring the driveway 20' off the fence line, so to speak. Commissioner Jennings stated, "the new part of the driveway, not an existing driveway." Commissioner Bennett replied, "Yes, the new part of the driveway so he may have 300 lineal feet of mini-warehouses next to a fence line which backs up to a subdivision, but if he wants to add three more buildings down through there, they all have to set back, they may or may not require plantings." He further stated that if you define the drive as a setback, or as a structure, you then have created a buffer without calling it a buffer, and he is sure that the other definition of a buffer is that there have to be plantings in them and things like that. Definitions achieve certain results without specifically saying that and in reality they do, is what may be taking place here. County Attorney Manning stated that he will work up another report.

ADJOURNMENT:

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

YES

NO

Commissioner Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

At the time of this vote, Commissioner Hufstetler had already left the meeting.

**FLOYD COUNTY BOARD OF COMMISSIONERS
GARRY E. FRICKS, CHAIRMAN**