

November 26, 2003

**REGULAR MEETING  
FLOYD COUNTY BOARD OF COMMISSIONERS  
November 26, 2003                      6:00 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, County 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 and Flag Ceremony were presented by Lindale Cub Scout Pack 1. Chairman Fricks noted that the Scout Leader was Nancy Plebanski and he asked the Scouts to introduce themselves. Participants were Bobby Lee Winters, Brandon Payne, Jarred Graham, Jacob Patterson, James Parker, and Paul Wagner. Chairman Fricks thanked them for leading the Pledge and stated that they appreciated the honor of having them. Ms. Plebanski thanked the Commission for having them.

**PUBLIC PARTICIPATION**

**EMORY BROWNLOW REGARDING  
RELOCATION OF WAX FIRE STATION.**

**Emory Brownlow, Flint Hill Section of Howell's District**, stated that he has been there for 40 something years. He stated that many years ago they saw a great need in their community and that was for fire protection. They worked diligently to do that. He read a Petition and then presented it to the Commission. The Petition read "In 1981, several members of the Howell District approached the County Commission about building a Fire Station in this District. The Commission said at the time that funds were simply not available. Those members of the community who made the request then asked if the Commission would consider it if the community provided the land for the station. The Commission agreed and those community members went door-to-door soliciting funds to purchase an acre of land for a Fire Station. Enough was collected to purchase an acre of land and it was offered to the Commission. The Commission swapped that parcel for the current one and the Howell District got its Fire Station. Now, 22 years later \$180,000 has been spent to purchase land, not just for the Fire Station, but to move the Station out of the Howell District, putting this community at risk. Therefore, we, the undersigned strongly urge the Commission to reconsider its decision to remove the Fire

Station currently located on the Wax Road in Silver Creek and thereby leaving the Howell District without adequate fire protection.”

He stated that unless some of them have ever had a fire in their home, they can't realize . . . had a fire in his home and he held it at bay with a fire hose until somebody could come out from Rome to help him out with it and save the house. He stated that this Petition covers the area between Harmony Road and the Wax Road. If they know where Wax is, that was the dividing line. The Petitions signed were everything east of that Harmony Road. He stated that he did not have but 330 that signed the Petition, he has some more Petitions, but he had to put his wife in the hospital Saturday and she is still in the hospital so he did not get to pick up the Petitions that were ready for him. He would like to tell them just . . . He measured that when he found about the five miles, and it goes around the road and not as the crow flies. It goes into Dean Street, it goes all the way to Dean Street. That is a big asset to Rome on that section; you have Twickenham, Saddle Mountain and others. He is glad for them. But, it is also taking away protection that they have enjoyed in their part of the county. He stated that he had counted the residences in that area he was talking about, and he would be glad to go with Mr. Poe or anybody else, but there are 15 roads, some short, some four or five miles long in that section. He counted 520 residences. There are four churches and two businesses in the section. He stated that he can't express enough how important that is. He knows and the Commission knows that if they build a Fire Station, and move theirs, he calls it theirs because they worked so hard to get it, if they move it out then there is no earthly way that they will ever get a Fire Station and the protection they now enjoy. They would even . . . he knows there is a Fire Tax and maybe there should be a higher tax on the ones that benefit the most from the protection they have. Insurance rates will double and they will have longer waiting period to wait on a fire truck. He stated that he knew the 10-year contract is running out in December, probably the first of January sometime and he could not think of a better time for the County Commission to voice some input into saving that. If they have to build one, let it be built down at Lindale and give them some more coverage and they would be just as happy as they could be where they are. He stated that they appreciated them listening to their concerns and if, any of them had any questions they would like to ask him, if he can't answer it now he would promise that he would have an answer for them at the next Commission Meeting.

Commissioner Hufstetler stated that he had a question. He stated that Mr. Brownlow had stated that this would go up to, and since he (*Commissioner Hufstetler*) did not live in the area Mr. Brownlow would be more familiar, Dean Street. Mr. Brownlow stated that the new station would be out there in Midway Ball Park/Recreation area, but he measured it from there to see where five miles would be and that is where he came up with, Dean Street. Commissioner Hufstetler stated that from the new station, if you went five miles you would get to Dean Street. He stated that he was just wondering . . . There is a station on East 12<sup>th</sup> that would cover Dean Street, it couldn't be more than a mile. The data that the City is using on this was probably done a decade ago when their studies on realigning these stations was done. But, from what Mr. Brownlow is saying, he has questions of his own about how much more they are gaining. Mr. Brownlow is saying they are losing 520 residences when they move this station.

Commissioner Jennings asked how far they would be from the Midway Park. Mr. Brownlow replied that if they are moving the Fire Station from where it is now to the new one, it is 2½ miles, which does not sound like much, but you cut 2½ miles off of their end of the thing and then they are completely out of it as far as insurance is concerned and protection too. Commissioner Jennings asked if his home would be more than five miles from the new station. Mr. Brownlow did not understand what Commissioner Jennings had said. Commissioner Jennings asked him how far from the new station would his home be. Mr. Brownlow replied that it will be about 7½ miles. Commissioner Bennett asked if he was on the fringe of the coverage now. Mr. Brownlow replied, "Yes, and you cut 2½ miles off of that you have wiped out 520 residences with the same thing." He stated that they would not let anybody sign the petition that lived west of Harmony Road because they wanted to be honest and upfront with the Commission whenever they petitioned them. Commissioner Bennett stated that a five-mile location from the proposed new site was Harmony Road, the east side of Harmony Road. Mr. Brownlow replied, "Yes, from the Harmony Road."

Commissioner Hufstetler stated that if they are providing duplicate coverage for Dean Street and they are not covering some other areas, how could they revisit this. Assistant County Manager Rich stated that he and County Manager Poe had talked a little about this earlier. Back during the SPLOST negotiations we thought that we would add additional stations. They do have the technology now, in house, they have the software that they can go in and draw the real five-miles, they can take a snapshot, they can tell exactly how many residences, they can look at values, assessed property values, etc. Commissioner Jennings stated that they need to do that. They do have the tools in place now to do the study and he would be glad to do that. County Manager Poe stated that they can also compare that to how it relates to other coverage areas from the other stations and what kind of overlap there is.

Chairman Fricks stated to Mr. Brownlow that they appreciated him coming and that they will do some follow-up on this and further research. Commissioner Hufstetler stated that once they get that information, they will get back with him. Mr. Brownlow stated that he appreciated any consideration the Commission could give them on that because they have worked hard. They are pleading with them now to consider this. Commissioner Hufstetler stated that he understood. Fire coverage is a big issue. Chairman Fricks stated that they would be glad to take a look at it.

#### **DELL SUTTON REGARDING VIOLATIONS OF COUNTY CODE.**

**Dell Sutton, 137 Halstead Smith Road, Rome**, stated that back in the first of the year, Stan Brooks got a rezoning to put duplexes on the adjoining property to hers. The last meeting she was at, Sid Wright spoke to them about her not getting notification. She stated that she had the letter from Floyd County, the office of the Manager and it says that her home was listed as part of 30A in accordance with the Tax Assessor records at the time Planning Staff researched the adjacent property owners, see that attached zoning map. She stated that the attached Zoning Map was the old Tax Map prior to her

purchasing the property. The Tax Map was H14X110A that would have been accurate to use, which was not used. She stated that her property was 110A, Stan's was 109 and 110. Instead of using that description, they used part of Parcel 30 and 30A. She stated that they had on the permit the address as being 135 Halstead Smith Road. She had where Stan Brooks, 5 Westridge Place had given her the thing for his taxes because it had 137 Halstead Smith Road. This is the address that the Tax Office had at the time of the rezoning for Stan Brooks, not 135 Halstead Smith Road. She stated that her property should not have been part of the rezoned property because the split was done 3/12/01. The rezoning was done this year. There is no way that her property was part of the property that was rezoned. So, she did require written notification as all of the other adjacent property owners. She did not receive it. She stated that the letter stated "with this being the case, that your property was part of that that was being rezoned, you did not receive a letter of notification. In accordance with State law, Floyd County posts a sign on properties that are being considered for rezoning." She stated that the sign, according to pictures, were placed on 107 Smith, not 135 or 137, she could not have known and Sammy . . . Commissioner Mayes stated that not to cut her off, but she and he had had a lot of conversation during this process, before this property got rezoned. She was upset about it and they had a lot of conversation during this process. He asked her, since she was not notified, how did she know that the property was being rezoned? She replied that the property 107 was being rezoned, Stan Brooks told her that 107 was being rezoned for a duplex. She stated that she knew that duplex was going on Lot 109, 107 Halstead Smith Road. She did not know and could not have known that there two duplexes were going up and one was going right next to her. That is where the clarification needed to come. Yes, she knew that the property across the driveway, 107 or they had it as 123 Halstead. Commissioner Mayes stated that he thought that, when they were talking, her argument was that the duplex that was going up was going up very close to her daughter's bedroom. She stated that it is. There are two different duplexes on one lot. She stated that, Stan Brooks got a five-foot inaccurate setback according to his Application for Building Permit. The lot size is 1815 x 238.5, one acre, back of the plat goes from 181 to 197 and it is a 15.74 inaccuracy. That inaccurate line that was drawn down the middle of her fish pond and the middle of her septic tank, allowed for the construction to be done on her property. They came over on her property, ran over her septic tank and pulled up her pipes that go from her septic tank to her drainage pipes. They pulled up her drains, which is a violation of County Code, they are laying in the back of the woods. Her property line was moved, she has filed complaints with the State and Federal offices and stuff. She had all the documentation. She called attention to the Tax Map that was used. It was so tiny you couldn't see. She had copies of the Tax Map. The lot that her lot came out of, her lot is 124 x 214.60, she thought, her property should have begun at 800 feet. Hers and Mr. Alexander's property lines would have joined and according to her deed and Stan Brooks' deed, Mr. McKinney's deed and Alexander's deed, all of them, that property would have begun at 800 feet. The lot was only 200 feet wide so Stan, when he put her property line at 673.83 feet, that, when he comes from 600 to 673 feet, his lot is only 73.83 wide. His building, according to the permit, is 48 feet wide, he has 26 to 30 feet in the front of that building, between the 600 feet. That puts that building right on 673 feet, it is on her property line. No setback requirements have been met, there is no buffer and there is a buffer required.

Commissioner Jennings stated that as he understands it, there are five things that are concerning to her. There is a lot line dispute, he thought he heard her say that her property was improperly rezoned, and asked her if her property was rezoned. Ms. Sutton replied that is what that thing said. Thirdly, there was lack of notification to her of this rezoning. Fourth, the septic system was breached because of this lot line dispute. Fifth, the building itself, there are setback problems with the duplex that is in there. Commissioner Jennings asked Ms. Sutton if that was the five things. *Ms. Sutton's response was not audible.*

Chairman Fricks stated that one thing he might address before, she is welcome to go through all of them, but they do have some time limitations. He thought that a lot of them are aware of all of the issues and just to bring the Board up to date on them, he thought that County Attorney Manning and Assistant County Manager Rich were in the process of working on this. They asked her to list all of the items for which she had concerns. Ms. Sutton stated that she did that and put it in the mail. Chairman Fricks stated that they had reviewed those and, from what he understands, they had tried to get together on Monday, and she was available, but George Anderson was not available to meet with them on Monday. He thought that was the first proposal. Ms. Sutton replied, "Yes, but . . ." Chairman Fricks stated that what they want to do, if they are in violation of Code, they want to pursue that and follow that and that is important to them. He stated that all of the issues, the land lot, the surveys, the notification, all of these processes, they are looking at. Truly they want to find the problem. One of the things today, there is not really anything . . . He stated that he thought when he had met with her earlier that he asked her what she wanted them to do. Ms. Sutton stated that Stan Brooks is in violation of County Code and he has a Permit of Occupancy. Chairman Fricks stated that is what they are doing in the process. They have to review this, if they approach staffing, let's say they have carried out the process, what they are doing at this point in time is to have the attorneys review, and he thought that is what they were prepared to present to her yesterday. Ms. Sutton stated that she understands that and this has been eight months. Chairman Fricks stated that he understands. Ms. Sutton stated that her home is being flooded with raw sewage because he did not use Best Management Practice which is not only a violation of County Code, but State Law. Chairman Fricks stated that is exactly what they want to evaluate if they are in that scenario and they do want to find out that their staff and personnel are carrying out the Codes to the fullest and he promised that they have every intention of finding out that. Commissioner Hufstetler asked if they need to put some sort of time limit on that. Chairman Fricks stated that they had been prepared to meet on Monday, but when they called Ms. Sutton . . . Ms. Sutton stated that the last meeting they had was probably five weeks ago. Chairman Fricks stated that he would be honest with her, every time that they have met, she has entered in some new issues. She stated that is because she is finding out new information. Chairman Fricks agreed and stated that they tried to address them individually and he thinks that is why they asked her to just list what she feels is in violation and they will be glad to pursue that. Ms. Sutton stated that she had given them probably ten things. Chairman Fricks stated that he thought they were prepared to go over them with her the previous day. Commissioner Mayes stated to Ms. Sutton that, in the meantime, they did run sewage nearby her house.

She replied, "Yes, they did and Stan Brooks would have had to give her a recorded easement across his property and she has never heard anything about him doing that, for her to be tied into that sewage." She stated that when she got the money from her homeowners where she could have paid for that then all of a sudden the County, City or whoever, the Health Department decided that she could have a septic system. She paid \$3,500 for a septic system that she finds out that it is put in the front yard where all of the damage is done where the water, because he did not do Best Management Practices, and it floods her yard and property. She stated that they put the new tank in there too deep, they didn't remove the water pipes and put in all of her drainage, a lot of things. So now she, although she has \$3,500, has that mess all over her . . . her property is destroyed.

Chairman Fricks stated that in addressing that, early on they had discussed some possibilities of looking at the assistance of tying her into the sewer and he did not think that was suitable to her at one point in time. Ms. Sutton asked why she should have to pay \$40 extra a month for sewage when she did not do this. Her septic tank was fine until Floyd County allowed Stan and Stan did it and now she has to have City Sewage and has to take on an added expense that is somebody else's fault. Chairman Fricks stated that he thought that was where they are at now. Ms. Sutton stated that, "Okay, she agreed to do that and her homeowners would have paid for that several months ago and all of a sudden, she can have a septic system. They come put the septic tank in and Chris Collier from the Health Department comes out and says, 'Oh, Ms. Sutton, by the way the new tank we put in today is probably not going to perk due to poor soil conditions.'" She stated that it hasn't. Chairman Fricks stated that he thought they were just reiterating all of the issues they are currently addressing and they are limited on time today. He stated that he is sorry, he is not trying to be rude. Commissioner Hufstetler asked if there was a timetable that everybody could agree on. County Attorney Manning stated that they had asked Ms. Sutton if she would be available, and if she wants Mr. Anderson there to be present next Tuesday or . . . Ms. Sutton stated Monday or Tuesday, whenever George can. She stated that she had asked for a proposal over and over, she had asked . . . he is in violation and he has continued to do the construction. He has got the Permit of Occupancy, which is totally wrong, it is illegal and he has continued as if there is no problem. Chairman Fricks stated that he would be honest with her, he does not know what the answers are to that and he does not know what they found out, but their instruction to the attorney was to review it and to find out if they carried out the procedures properly that they needed to be carrying out and he thinks at that point in time, he thinks that is what they had wanted to bring her up to date on, as he said, he does not think anybody is non-compassionate to her concerns, he thinks they definitely are, it is just . . . Ms. Sutton stated that this is a real pain, she has two teenager daughters and this has been hard. Chairman Fricks stated that they understand and he thought that a number of the Commissioners had been out to visit her house and he thinks that everybody has a genuine concern on this issue and they want to get to the bottom of it and . . . Ms. Sutton stated that she cannot understand. One more and she promised that she would quit, he did get a five-foot inaccurate setback and the same day that thing was correct "right here". He was still allowed to use that permit. Chairman Fricks stated that he thought in the interim, before he started construction, he was required to move his foundation back to the full setback, and asked if he was correct on that. Assistant County

Manager Rich stated that they actually had to put a stop work order on him, but he did move it, he did proceed with construction. Commissioner Bennett stated that is what he understood, but he heard something different here tonight, that there may be a property line dispute. Assistant County Manager Rich stated that they are aware of the property line dispute and . . . Commissioner Bennett stated that is the first he has heard of this. Ms. Sutton stated that it is not a dispute, She noted on a plat where her property line is. She stated that she can show anybody that comes out there exactly where they drew the line across her septic system and if they had not drawn an inaccurate line across that, the damage would not have been done. County Attorney Manning stated that one of the things they were going to try to do with Ms. Sutton was to sit down and go through all of these issues, item by item. One of the issues is the property line dispute and he thought there were two different surveys that show the line at two different locations. Commissioner Bennett stated that is the only way they could determine if there is a violation on the setback. It is obvious that Ms. Sutton's septic system was on the adjoining property, that was discovered he thought when they were doing excavation and they relocated her septic system and put it in her front yard. He saw that being done the day he was out there and he thought maybe that handled the immediate situation of at least the sewage problem. As far as making a determination on this, he thought they would have to resolve where that property line is and then go from there. *Comment made by Ms. Sutton was not audible.*

Commissioner Bennett stated that he thought they were all interested, he was not trying to make her feel good, because . . . Ms. Sutton stated that she understood that they are interested, but as she had said, it has been five weeks since the last time she was at a meeting. Commissioner Bennett stated that if they could just get this meeting together where they will know which way to go because new things continue to come up. Ms. Sutton stated that is because she keeps getting more and more information. Commissioner Bennett stated that all the information she could get, she needed to have and to bring to them and, they will try and address them. Ms. Sutton stated that she had about two . . . Chairman Fricks stated that the items that he is addressing at this time, at one of the last meetings they had, they asked her to list them all and email them and he thinks that is what they are working off of now. Ms. Sutton stated that she did. Chairman Fricks stated that they have only had that list probably two weeks or something like that. County Attorney Manning stated a little bit longer than that. Chairman Fricks stated that it is a little bit time consuming to go through all of them, reviewing the staff positions on them and seeing what all was done. He promised her that they are not sitting there ignoring them. Ms. Sutton stated that she knew that and she realizes they have a lot on their plate. Chairman Fricks stated that hopefully they will get this addressed and find out what the issues are. He stated that they know what the policies are, but do not know how well they are carried out in this scenario or not and they truly want to find out how well. Commissioner Mayes asked Ms. Sutton if she is able to use her property at all right now. Ms. Sutton replied that if you don't flush the commode more than twice a day and if you don't take shower more than a couple of times you know, every other day or whatever, and as long as her children are out of the house. This has damaged her heating and air-conditioning unit because all of that raw sewage ran in it, the carpet in her daughter's room is horrible because of the water flooding, because Best Management

Practices weren't put in place, no screens, no nothing, no ditch, no anything. All that flood water runs across that sewage and they even crushed the septic tank instead of filling it with sand and covering it, so all of the contaminated water runs into her carport and into her daughter's bedroom. Commissioner Mayes asked if her carpet was kind of contaminated right now? Ms. Sutton replied, "Yes, they have already had to redo the floor in the bathroom and now it is molding and this is causing a lot more damage than just the septic tank and that is what she tries to get everybody to understand. This is a lot more involved than just the septic tank. She thanked the Commissioners and stated that she was sorry.

Commissioner Hufstetler asked if he could say one more thing to the Wax Station people. He stated that he was talking like a bureaucrat earlier by throwing out acronyms like GIS and not really explaining to them about what is going on. He stated that several years ago they started taking aerial photographs and they have company that digitized them and it is now on computer so that the stuff they were doing when they were driving from road to road, they have the technology to do that. So what they are going to do is to look at these two stations, how many houses are covered, how many do they lose coverage on. Mr. Brownlow asked if he could come up front so he would be able to understand what was being said. Commissioner Hufstetler stated that he was saying that they have the technology now on computer where they have taken all of these aerial photographs to say this station will cover these houses. They can look at the two stations and look at the duplicate coverage on Dean Street. When the station relocations were designed years ago, that technology was not available to the City or County. Now that they have it, this a good way to use it and so that is what they are going to do and when they get that information, they will get back with Mr. Brownlow and share it with him. Mr. Brownlow replied, "Please do, because it is real important to them."

#### **ADOPTION OF**

#### **MINUTES:**

County Attorney Tom Manning stated that the Minutes were in order. Commissioner Hufstetler made a MOTION to adopt the minutes of the Regular Meeting of September 9, 2003 as presented. SECOND by Commissioner Bennett. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

#### **RESOLUTIONS**

#### **RESOLUTION DECLARING PROPERTIES UNSERVICABLE.**

Chairman Fricks asked if someone would like to place this Resolution into a Motion. County Attorney Manning stated that during Caucus the Chairman had received a Resolution that does all that is necessary to go forward with the Auction of Surplus Property that is taking place on December 10 and he submitted that Resolution for the Commission's consideration. Commissioner Jennings made a MOTION to approve the Resolution Declaring Properties Unservicable. SECOND by Commissioner Hufstetler. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

SECOND READING/PUBLIC HEARING  
(FIRST READING HELD NOVEMBER 11,  
2003 AT 2:00 P.M.)

**FILE #65-2003Z, REQUEST REZONING FROM  
S-R (SUBURBAN-RESIDENTIAL) TO M-R  
(MULTI-FAMILY RESIDENTIAL) TO  
CONSTRUCT QUADRI-PLEXES ON  
PROPERTY LOCATED ON WAX ROAD  
AT MIDWAY PARK ROAD, ZONING  
MAP 230-00-PART OF 028.  
(PLANNING COMMISSION RECOMMENDATION:  
APPROVE [VOTE – UNANIMOUS])**

Chairman Fricks called for a Motion to Open the Public Hearing. Commissioner Mayes made a MOTION to open the Public Hearing. SECOND by Commissioner Bennett. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

Chairman Fricks asked if there was anyone who would like to speak in support or opposition on this zoning issue. There being no one present wanting to speak, Commissioner Bennett made a MOTION to close the Public Hearing. SECOND by Commissioner Hufstetler. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

Chairman Fricks asked Ms. Sue Hiller to make her presentation.

**Sue Hiller, Rome/Floyd Planning Commission**, noted the subject property on the map. It is S-R to the west, there is Community Commercial property, some of it is undeveloped. To the south is H-I, an automobile junkyard and residential. To the east is residential property and to the north is residential property. The P-D, the turquoise plat is the newest County Park Complex, the one that was recently rezoned for that use. She presented pictures of the subject property and surrounding area. She stated that the property is vacant land at the current time. She stated that this application was originally filed in October and at that point they asked the applicant to withdraw because the ULDC says that multi-family residential is appropriate in areas where there is sewer and there is no sewer to this property. Any development on it will have to be to a septic tank. The applicant went back to the building official who is, as you know, the official interpreter of the ULDC and his determination was that if the Board of Health would approve septic tanks, that it would be okay to have multi-family residential there. It went to the Planning Commission in November and, as reported to the Board, the Staff Recommendation was to approve. It seemed an appropriate use. There it is between single-family residential and a junkyard to the south and commercial property that will be located at the intersection of the Wax Road and Rockmart Highway. The Planning Commission's recommendation is approval and that was a unanimous vote.

Chairman Fricks called for a Motion. Commissioner Hufstetler made a MOTION to **approve** the rezoning request from S-R to M-R to construct quadri-plexes. SECOND by Commissioner Mayes. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

**FILE #72-2003Z, REQUEST REZONING  
FROM C-C (COMMUNITY COMMERCIAL)  
TO H-C (HEAVY COMMERCIAL) TO  
CONSTRUCT MINI-WAREHOUSES ON  
PROPERTY LOCATED ON HIGHWAY 27  
NORTH, ZONING MAP 508C-02-025.  
(PLANNING COMMISSION RECOMMENDATION:  
TABLE [VOTE – UNANIMOUS])**

Commissioner Bennett stated that, just as information, wasn't this tabled pending receipt of more information and should they even be discussing it at this point or is this one of the peculiarities of the Code that even though the Planning Commission tables it, the Board has to consider it. Ms. Hiller stated that it is a peculiarity that once it is advertised, she guesses that it goes on the Board's Agenda. It was tabled because there was no site plan submitted for the project. Commissioner Hufstetler asked if they need to open the Public Hearing. County Attorney Manning stated that they did not need to open the Public Hearing. As was mentioned at the Agenda Meeting, the ULDC wording with regard to the options for the Planning Commission is not the greatest language. The ULDC language would be better suited if tabling were a specific option listed for the Planning Commission. Currently the ULDC says, "The Planning Commission, after they have their Public Hearing shall make its recommendation or take such other action as may be appropriate." It then list four options for them, none of which includes tabling, but he thinks the "or take such other action," gives them the ability to table and he thinks that is okay. He stated that what they may do to clarify the ULDC is to propose amendment language that would allow the Planning Commission to table and only give them the ability to table for a couple of meetings so that they don't have the ability just to hold something. The Planning Commission has never held a matter for a lengthy time at the Planning Commission level. They have talked with David Smith at Brinson, Askew and Berry about the issue and he sees it the same way. Commissioner Bennett asked if they are supposed to act on this. County Attorney Manning replied, "No, because it has been tabled." He stated that he are taking the position that tabling is an appropriate course for the Planning Commission to take. Commissioner Bennett stated that he thought this party is trying to get that information and he would hate for him to have to go all the way back through the process again in time so this lets him come on back to the next meeting. County Attorney Manning stated that once they (*Planning Commission*) take action it will come to the Commission. County Attorney Manning stated that one can see the wisdom from time to time for the Planning Commission needing to table something.

**FILE #08-2003SUP, REQUEST SPECIAL  
USE PERMIT FOR S-R (SUBURBAN  
RESIDENTIAL) ZONING TO ALLOW  
PERSONAL CARE HOME (3-6 PERSONS)  
ON PROPERTY LOCATED AT 8876 CEDARTOWN**

**ROAD, ZONING MAP 824-00-009.**  
**(PLANNING COMMISSION RECOMMENDATION:**  
**APPROVE [VOTE – UNANIMOUS])**

Commissioner Hufstetler made a MOTION to open the Public Hearing. SECOND by Commissioner Jennings. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

Chairman Fricks stated that the Public Hearing was open and asked if anyone would like to speak in support or opposition of this issue. Their being no one present wishing to speak, MOTION was made by Commissioner Hufstetler to close the Public Hearing. SECOND by Commission Bennett. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

Commissioner Jennings made a MOTION to approve the Special Use Permit for zoning to allow a personal care home. SECOND by Commissioner Hufstetler. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

**REVISE ARTICLE 3, TABLES 3.1 AND 3.2,**

**CONCERNING USES PERMITTED BY RIGHT  
BUT WITH LIMITATIONS.  
(PLANNING COMMISSION RECOMMENDATION:  
TABLE [VOTE – UNANIMOUS])**

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

Chairman Fricks called for a Motion to open the Public Hearing. MOTION was made by Commissioner Hufstetler. SECOND by Commissioner Jennings. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

Chairman Fricks stated that the Public Hearing was open and asked if anybody would like to address this issue in either support or opposition. There being no one present wanting to speak in support or opposition, MOTION was made by Commissioner Hufstetler to close the Public Hearing. SECOND by Commissioner Jennings. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

Chairman Fricks called for a Motion on this issue, concerning surrounding property owners. Commissioner Bennett asked if they could discuss that without a Motion.

Commissioner Bennett stated that his thoughts, and he had expressed them in the Caucus, were, and he doesn't have the solution, but, if they maintain the records, why should they not be responsible for their accuracy? He stated that he did not have the

solution to that, he did hear in there that some time they send out as many as 20 to 30 notices. But, they are typically only required to notify those who are across the street or behind and to each side. He asked if that is an uncommon thing to have happen. Is it typically only four or typically ten or whatever? Ms. Hiller replied that it is hard to say, of course the bigger the piece of property, usually the more adjacent property owners there are. She stated that they do only notify adjacent, whether they touch or they are across the street, they don't go another tier out from there. Commissioner Bennett stated that typically would be four or five unless they had a very large tract. Chairman Fricks stated that probably today would be a good example. Chairman Fricks suggested that they look at what they had today. Commissioner Bennett stated that there were four or maybe five. Ms. Hiller asked which tract they were referring to. Commissioner Bennett replied Ms. Sutton's, and that brings up one of the problems and he does not know how they were to solve that. He guessed that it will come out in the meeting that County Attorney Manning and Assistant County Manager Rich have with Ms. Sutton about her supposedly having bought the property in 2001, it was rezoned in 2003 and she did not receive written notice. He stated that it was possible that it got mailed, but they have no way of knowing that other than they have their copy of the letter saying it may have been sent. There is no requirement of the person to whom the notice is sent to respond back like a registered letter or anything like that. He stated that he knows that puts a burden on us to do things like that and we don't want to flip the whole world around on one unfortunate incident. As important as it is to Ms. Sutton, he can understand her point, but he would not want to change everything just over one case like that. He stated again that he is only raising the problem; he has not offered the solution, he understands that. It just kind of seems unfair in a way that they can dodge, even though legally and even though they are using good effort to do it, our responsibility to notify adjacent property owners.

Commissioner Jennings asked County Attorney Manning, when they do a ropes course, they have people sign a waiver that limits the responsibility if somebody gets hurt. If somebody wants to sue them and claim negligence, they are going to sue whether they have signed that waiver or not. He would suspect that that is the case here too. If somebody wanted to sue them because of improper notification, they are going to sue them regardless of whether this language is broadened to limit our responsibility. They are going to sue us anyway. For his part, he does not see any reason for them not to approve this revision because he thinks if somebody can prove negligence on our part, whether this is changed or not, they are going to pursue that route. He asked if that made sense as a line of reasoning. County Attorney Manning replied that he thinks that it makes sense. He thinks that by adopting the amendment they are trying to leave . . . Commissioner Jennings stated that trying to limit it, if somebody is irritated enough, this isn't going to keep them from going after the Planning Department or going after us. Chairman Fricks stated that he thought what County Attorney Manning is saying is that he thinks their goal . . . he would rather know particular issues and do everything that they possibly can do to make sure these people know of the issues and address the issues before they make the decision on them. So that it is not after the fact and they are having to react. He stated that Ms. Sutton's position, it is a hard scenario, how do you fix it at this point in time? He stated that he knows that, on her, they had some people addressing setback requirements on the backside of that property at the same hearing and they made

adjustments to accommodate for that. He stated that he is agreeing with Commissioner Bennett, that they should make every effort to know any objections or concerns that anybody has around there so they can put that in their decision making process before they make that decision rather than trying to react afterward. Commissioner Bennett stated, and not to say that they are not doing that now, he thinks there is a conscientious effort to do that and there are safeguards for people to be able to speak if they are going to be affected. He stated that he does not offer the solution except as a procedure or a policy to try and ascertain whether in fact, somebody receives a notice or not. He stated that he knows that puts more burden on staff and he does not want just one incident out of thousands of incidences to cause them unnecessary expense or anything like that, but for the one person or the two people that may fall through the crack he did think . . .

Commissioner Jennings stated that he would suggest that the number of people who have claimed lack of notification is a fairly high percentage that has come in front of them. He thinks it is an issue. Commissioner Hufstetler stated that he agreed that it has been a fairly high percentage. Commissioner Bennett stated that this may just address procedure that they try to implement in the future. He is not just trying to speak against this, it just seems kind of self-serving that it is our records but they are exempting themselves for inaccurate records. Commissioner Hufstetler stated that his point would be that if they do have a high percentage, if then they take away their responsibility, does it mean that they are less diligent. Maybe it wouldn't be, but the potential is there, just being human nature to be less diligent on notifying people and then say, "Hey, we don't have to really notify you anyway." Commissioner Bennett added, "Because it says in here we don't have to do it, we did our best effort." Commissioner Hufstetler stated that, like Commissioner Bennett, he does not know what the answer is, but he is not comfortable with what they are doing. Commissioner Jennings stated that he did not think anybody is comfortable with it.

County Attorney Manning stated that one thing that they may want to think about is that they could possibly have a scenario where they went through a zoning change and had someone who didn't appear, but it was an important change and they want input from all affected citizens. He stated that he could envision a scenario where input from someone might not have affected their decision to and how they ultimately voted on the change. Yet they may be faced with litigation that makes them go back to where they began and say they approved the zoning change and someone didn't get a notice, it might not have ultimately affected the outcome. He knows that they want everyone to have notice, he understands that well. They want input from their constituents. Potentially with the language that currently exists, under certain circumstances the zoning change may by this body be declared improper or at least create an argument for that. He stated that he thinks they are trying to look for some language that would, they want them to do their best efforts all of the time, but that doesn't have this shall language in there or at least modifies that shall language in some form.

Commissioner Bennett stated that again, he is not trying to suggest the language except this language seems pretty self-serving. Basically we maintain the records, but if

we don't maintain the records properly, the fact that we sent it to someone identified improperly in the records, we are still absolved because we are on both ends of that.

Commissioner Bennett asked if County Attorney Manning could review this more. County Attorney Manning suggested tabling this and then he will look at the language again and also he will try to make some inquiries with some other counties about how they handle this issue because he is sure it is a sticky issue. Commissioner Jennings stated perhaps saying that our Planning Department will make our best effort to determine adjacent property owners using all available records as opposed to the wording here which is "these may be insufficient but County and City shall not be held responsible for insufficient notification caused by inaccurate, out of date or otherwise incomplete tax maps." He stated that he thought the wording bothers all of them. He thought they could say the best efforts using available records will be made to provide notification, or something along those lines. Commissioner Hufstetler stated instead of if all of our records are wrong, we don't have any responsibility. Commissioner Bennett added, or responsibility to pursue it further with some amount of judgment involved to do that. Chairman Fricks stated that they will taken no action.

#### CHAIRMAN'S REPORT

#### APPOINTMENTS.

Chairman Fricks stated that there was one appointment to be considered. Commissioner Hufstetler made a MOTION to appoint Larry Madden to the Animal Control Board. SECOND by Commissioner Mayes. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

#### COMMISSIONER'S REPORT

#### ADMINISTRATIVE/FINANCE COMMITTEE.

**DISCUSS SELECTION OF FIRM TO  
HANDLE EMPLOYEE BENEFITS  
INSURANCE PROJECTS.**

Commissioner Hufstetler, Committee Chairman, stated that a committee composed of Al Leonard, Kevin Poe, Larry Johnson, himself and Commissioner Bennett have looked at this and short listed three firms, including the current one. The recommendation is to award this to the local firm and low bidder of Garner & Glover. He stated that he made this in the form of a MOTION. SECOND by Commissioner Bennett. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

#### **WATER COMMITTEE.**

Commissioner Jennings, Committee Chairman stated that, as a reminder, next Tuesday at 5 p.m. at the Forum there will be a meeting addressing Lock and Dam plans or concerns.

#### **CLERK'S REPORT**

#### **CONSENT AGENDA.**

County Clerk Michele Fountain stated that there were two items on the Consent Agenda and she presented them for approval. Commissioner Hufstetler made a MOTION to approve the Consent Agenda. SECOND by Commissioner Jennings. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

#### **1. Tax Refunds:**

- a. Hall & Anthony Properties, 422 East Eighth Street, \$20.45
- b. Joe's Transmission, Inc., 800 Calhoun Avenue, \$36.50

2. Neeliya, LLC, d/b/a Neeliya Food Shop, 2995 Cedartown Highway, Rome, Self-Service Fuel.

#### MANAGER'S REPORT

**REQUEST FROM DISTRICT ATTORNEY  
FOR PURCHASE OF COMPUTERS AND  
LASER PRINTERS.  
(DEFERRED FROM NOVEMBER 11, 2003  
MEETING)**

County Manager Kevin Poe presented a request from the District Attorney to purchase four computers totaling \$6,600 out of her Departmental Equipment Budget, and also to purchase two printers for the amount of \$1,242 out of her Departmental Equipment Budget and purchase two printers for the cost of \$1,242 out of her Condemnation Account. This was presented for their consideration. Chairman Fricks called for a Motion. Commissioner Hufstetler made a MOTION to approve the request for the purchase of computers and laser printers and accept the Manager's recommendations on which accounts to bring them from. SECOND by Commissioner Jennings. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

**DISCUSS REQUEST FROM STATE  
PROBATION OFFICE FOR FUNDING  
FOR ALCOHOL/DRUG COUNSELING  
SERVICES.**

No action was taken.

**AWARD BID FOR IN CAR VIDEO  
CAMERA SYSTEMS.**

County Manager Kevin Poe stated that bids were recently taken for the purchase of In-Car Video Cameras Systems. The low bidder was Eagleye Technology at a cost of \$2,500 each. The recommendation is, considering that they have been awarded the Local Law Enforcement Block Grant, that they purchase 21 cameras from Eagleye at their low

bid of \$2,500 each. Commissioner Bennett made a MOTION that they accept the Manager's recommendation. SECOND by Commissioner Hufstetler. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

**DISCUSS ACCEPTANCE OF GRANT  
AWARD FOR NEW BRUSH FIRE  
FIGHTING TRUCK.**

County Manager Kevin Poe stated that a Grant Application had been submitted under the Emergency Preparedness and Response Directorate to the Assist Firefighters Grant Program. They had submitted a request to purchase a Brush Firefighting Truck in the amount of \$75,000 with \$52,500 to come from Federal funds from the grant program and the local match to be \$22,500. This was presented for their consideration whether to accept this grant or not. Commissioner Jennings made a MOTION to accept this grant for the purchase of a Brush Firefighting Truck. SECOND by Commissioner Bennett. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

**DISCUSS REQUEST FROM TALLATOONA  
REGARDING FUNDING FOR ELDERLY  
TRANSPORTATION PROGRAM.**

County Manager Kevin Poe stated that they had talked briefly about the request from Tallatoona and a copy of an email was a part of the Agenda Package. He stated that basically what they are asking them to do is pick up the funding for a program that they say cost \$25,000. The County was putting in \$15,000 and the State was putting in \$10,000 per year. They are now saying that because of a cut in State funding, for the program to continue, the County would have to put up the full \$25,000. He stated that he

thought the discussion centered around the fact that the County is not really posturing itself to necessarily pick up cuts from all of these different State agencies. Commissioner Jennings stated that he thought it would be worth their while to request some information from Tallatoona as far as the extent that this service is being used, who is making use of it, and how is it accessed. He thinks the broader issue of transportation in the County is an issue that had been put on a back burner for awhile and maybe they should look at this on a broader perspective. Is this the best use of our money? Certainly if citizens need this, they should consider it, but he is uncomfortable responding to an email that includes no information whatsoever about what the services are, who uses it, and how often, so he would seek some more information. County Manager Poe stated that Linda Leachman, who sent the email, said that she would be willing to come discuss the matter before the Commissioners. Commissioner Jennings suggested that perhaps they bring people from the Area Agency on Aging, Debbie Studdard at the Coosa Valley RDC is over the Area Agency on Aging for 15 counties and it might be helpful for her to come and talk with them about what other counties are doing, how are they funding new services and what services are they providing. Commissioner Bennett stated that when they come to discuss, that they may bring questions or more information about the items Commissioner Jennings listed for their consideration. County Manager Poe stated that he would contact them and asked if they wanted to do this at a Caucus Session. It was the consensus that it will be done during a Caucus Session.

#### **AWARD BID FOR CURB AND GUTTER WORK AT NORTH FLOYD PARK.**

County Manager Kevin Poe stated that they had taken sealed bids for Concrete Curb and Gutter Work at North Floyd Park and the low bidder was LNBJ in the amount of \$52,333.75. He recommended accepting the bid from the low bidder. Commissioner Bennett made a MOTION to accept the Manager's recommendation and award to the low bidder for concrete curb and gutter for the North Floyd Park to LNBJ. SECOND by Commissioner Mayes. VOTING:

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

#### **DISCUSS FY2004 BUDGET HEARING PROCESS.**

County Manager Kevin Poe stated that this item is to discuss the Budget Hearing process to see how they want to go about proceeding with the Budget Hearings this year when they want to start on them. There had been some talk in the Agenda Session about trying to maybe not

necessarily have every department come before them, but just certain key departments or areas where they have issues to try to define those more and bring those before the Commission. Commissioner Hufstetler asked if they could just do like the State and just give everybody a 5% cut and not have a meeting. County Manager Poe stated that one thing he had thought about and he would be willing to do is try to do a real quick review of all of the departmental budgets and try to just highlight the key areas in each department. Some of them might have decreases, but they might have 1% increase just because of benefits, but other than that there are no decreases or increases. He stated that he could go through each department and just do some kind of general notes and highlight certain points where they can just review that. Then if there are things in particular they want to follow-up on or certainly departmental budgets they think have more issues than others, they could make a list of those and then start scheduling Budget Hearings. He asked if they wanted to wait until the first of the year to start those hearings or do they want to try to get them started as soon as possible. Commissioner Hufstetler asked if they could have an overall review of it and then perhaps they could meet and look at that and then from there schedule the meetings. County Manager Poe stated that he could have that ready next week and that would be around the week of the 8<sup>th</sup> to try to set up a meeting on that Monday or Tuesday to have a general budget discussion. Commissioner Jennings stated that there is a Commission Meeting on the 9<sup>th</sup>, and it starts at noon, if they started it . . . County Manager Poe stated that they had been thinking about doing a field trip after the next Commission Meeting to North Floyd Park and he wanted to mention that if they are talking about doing something on that date. Chairman Fricks stated that they had looked at this beforehand and they had talked about doing that prior, but there was some reason that they could not, but he did not remember what it was. Commissioner Hufstetler asked if maybe they could have a meeting on that Monday. County Manager Poe agreed. Commissioner Hufstetler stated that they had the Workers Comp carrier scheduled some time that morning, but they could move that. County Manager Poe suggested that they move that back to 11 o'clock and start it at 8:30 or 9 a.m. Commissioner Jennings requested that they have sausage biscuits.

Chairman Fricks asked if there was any interest in going out, after the next meeting, and review the progress at Armuchee Park and try to share the plans with them and tell them where everything is going. Commissioner Jennings stated that on the 9<sup>th</sup> they have the Crisis Response Team meeting at 4 p.m. at the Forum, and that is the Commission's early meeting and sometimes those go fairly quickly. He will need to be back for the 4 p.m. meeting. County Manager Poe stated that if they can finish the meeting by 3 p.m. they could probably work that out.

The Budget Hearings Meeting was scheduled for December 8<sup>th</sup> at 8:30 a.m. He stated that they can now run a report that they will put in the packages, being put together for them, as the main report. It actually does the historical comparison on the same sheet as well as providing the current year actuals, the current year budget and the recommended budget all on one spreadsheet. This used to be they had to do the historical comparisons on a separate spreadsheet and they had to flip back and forth but this kind of puts two of them together and puts all of the information they need on one page so that is what they are going to do. If they want to look at it after the meeting, he had extra copies, basically they will set up so they can look at that as they go through because it gives them basically two reports as one.

## **ADJOURNMENT:**

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

YES

NO

Commissioner Hufstetler

" Mayes

" Jennings

" Bennett

Chairman Fricks

Motion Carried

**COMMISSIONERS**

**CHAIRMAN**

**FLOYD COUNTY BOARD OF**

**GARRY E. FRICKS,**