

May 11, 2006

CALLED MEETING
FLOYD COUNTY BOARD OF COMMISSIONERS
May 11, 2006 **12:00 P.M.**

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

OTHERS

PRESENT: County Attorney Tommy Manning, County Clerk Kathy Arp, County Manager Kevin Poe and Assistant County Manager Sammy Rich.

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

INVOCATION: Chairman Mayes led the Invocation.

**PROPOSED AGREEMENT BETWEEN
FLOYD COUNTY AND NORTHWEST
GEORGIA, LLC REGARDING PROPERTY
AROUND STATE MUTUAL STADIUM:**

County Attorney Manning stated they have before them the proposed Agreement between Northwest Georgia, LLC and Floyd County regarding Declarations of Covenants, Conditions and Restrictions. He stated since their last meeting Northwest Georgia, LLC and the Evans' have been in contact with each other. He stated they had received a letter from the Evans' asking them to hold up on this matter. He stated he has since talked to Benno Rothschild who represents the Evans. He stated he has sent him a copy of the letter that has been signed by Bob Evans and has been told that Donald Evans and Kevin Evans are signing the document as well, and he certainly accepts that representation. It is documentation that issues have been worked out that were of concern to the county. He stated the letter from Mr. Rothschild states that Evans agrees that the Letter will confirm that, for good and valuable consideration, the Evans agree that the Letter of Intent be amended and modified to provide that, as to any portion of the property owned by Evans and subject to the Letter of Intent which has or is hereafter conveyed to Northwest Georgia, LLC, upon any such transfer to Northwest Georgia, LLC such property shall be released from the provisions of the Letter of Intent. Thereafter the county and Northwest shall be entitled to modify, amend or terminate the Letter of Intent as to such property or enter into any new agreement governing the development of such property as they may desire.

Mr. Manning stated so they are saying that the property that has been sold already to Northwest is no longer subject to the Letter of Intent. He stated the agreement that they are considering today also contemplates the property that Northwest has contracted to buy from the Evans to come under covenants and restrictions being considered by the Commission. But, according to the terms of the agreement that they are

considering today, property to be purchased by Northwest would not be subject to the covenants until that sale took place, and he thinks that would be consistent with what is contained in the document that they have. He stated they will see from Northwest they are agreeing that they will not oppose any variance to construction of a building higher than eighty-eight feet on the property that the county owns, but to which the Evans retain air rights. He stated the Evans have signed this document saying that... first of all, let him back up, the reason he was out of the room, as he was looking at the bottom paragraph of the last whereas on the first page and they may not have that but it says that the county and Northwest predecessor and title entered into a Letter of Intent with respect to Northwest and the county and Northwest acknowledge and agree the Letter of Intent as it may have been amended is not binding on the county and Northwest. He stated now they have a letter from Evans, they have seen this and they are okay with them going forward with this, they being the Evans, and they have sent a letter saying that the Letter of Intent is not binding on any property sold to Northwest. But it is binding until remaining property is sold to them, but once Northwest gets it, it is not binding anymore so a little bit of an ambiguity exists there because the county says it is not binding at all. He stated the Evans have sent this letter, and they have given them their blessing to go forward with this. He stated he thinks they want to go forward with it just as it is. He stated he does not anticipate a problem. He stated based on that, the only other issue is the Braves. They have communicated with Kevin and they have said that they did not anticipate any problem. They reviewed it, but they have not had any final word from their legal counsel so he is not anticipating a problem. County Manager Poe stated they told Doc Kibler the same thing. County Attorney Manning asked Mr. Kibler what they told him. Mr. Kibler stated in the conversation he had with Mike Dunn this morning, and they went through all the documents that the Evans sent, the document that they sent to the Evans and also the document that they have in front of them, and Mike Dunn said that the Braves are not opposed to any of the documents but they still reserve the right for his attorneys to render some opinion, but Mike's opinion was that he did not see a problem. County Attorney Manning stated he does not know of any problem they may have unless it dealt with height west of Braves Boulevard and east of Short Stop Way. Commissioner Fricks stated in terms of their contract with the Braves, he does not see any violations of any of the terms. County Manager Poe stated there is an Architectural Review Committee. Mr. Kibler stated from this day forward he is not opposed to an eighty-eight foot structure there. County Manager Poe stated the Braves will be able to have input and their interests are similar to the county's or are the same interests. County Attorney Manning stated he just wants to point out all of their comments have been no problem but they did not hear any final word from legal. Northwest however needs the document to move forward with its plan. Commissioner Hufstetler asked so what does County Attorney Manning need a motion to include? County Attorney Manning stated he thinks it is kind of a policy question for them. County Manager Poe stated like Commissioner Fricks said, what they are doing does not have any impact on other agreements they have. Commissioner Fricks stated it is not tied to any of the issues in the contract so this was always just kind of a protection mode that they provided for them in their investment as well. County Attorney Manning stated one of the reasons they did this was to make sure that there are covenants out there. He stated they give some protection to the development that occurs which hopefully is much more than they had before and hopefully will be what the Braves want. Commissioner Fricks stated even in

those additional tracts they still have architectural review so placement can be considered as well. Commissioner Bennett stated their ability to use the parking is on the current Evans property which they anticipate purchasing but the county has the right to use that. Mr. Kibler stated he does not think that this document has any standing in that. County Attorney Manning stated their previous agreement was they have the right to use that property until it is released by the Corp or sold whichever occurs first.

Commissioner Fricks made a MOTION to approve the Agreement Between Owners and Declaration of Covenants, Conditions and Restrictions Between Floyd County, Georgia and Northwest Georgia, LLC. SECOND by Commissioner Jennings. VOTING:

YES NO

Commissioner Fricks
" Hufstetler
" Jennings
" Bennett
Chairman Mayes

Motion Carried

ADJOURNMENT:

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

YES NO

Commissioner Fricks
" Hufstetler
" Jennings
" Bennett
Chairman Mayes

Motion Carried

COMMISSIONERS

FLOYD COUNTY BOARD OF

KATHY ARP, COUNTY CLERK

