

**May 23, 2006 -- regular meeting**

**REGULAR MEETING  
FLOYD COUNTY BOARD OF COMMISSIONERS  
May 23, 2006 5:30 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:** County Manager Kevin Poe led the Invocation.

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

**EXECUTIVE SESSION:**

County Attorney Manning stated over the last week they have had telephone communications with an attorney who threatened litigation regarding an ordinance that is before the Board today concerning business license for adult entertainment establishments. He stated basically based upon that conversation and the potential litigation that was discussed against the county in that phone conversation, he would recommend some revision as contained in your packet and suggest that it may be in order to go into Executive Session to cause discuss potential litigation. He stated he knows that this body normally does not go into Executive Session but based on dialogue with counsel that counsel, and based on that threat of litigation, he recommends that they might consider going into Executive Session which would require a motion and a second in order to do that and of course if they did go into Executive Session, they would not discuss anything but issues related to this potential litigation. Chairman Mayes stated the County Attorney is recommending going into Executive Session and called for a motion. Commissioner Hufstetler made a MOTION to go into Executive Session for the purposes stated by the County Attorney. SECOND by Commissioner Bennett. VOTING:

YES                      NO

Commissioner Fricks  
"      Hufstetler  
"      Jennings  
"      Bennett

Chairman Mayes

Motion Carried

The Board entered into Executive Session at 5:40 p.m. Chairman Mayes reconvened the meeting at 6:20 p.m.

**ADOPTION OF MINUTES:**

Chairman Mayes asked if the minutes were in order. County Attorney Tommy Manning stated the minutes had been reviewed and were in order. Commissioner Fricks made a MOTION to adopt the minutes of the Regular Meeting of May 9, 2006 and the Called Meeting of May 11, 2006 as presented. SECOND by Commissioner Hufstetler. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

**PUBLIC PARTICIPATION:**

**Serpentfoot, 324 Forsyth Street NE**, stated she has filed a petition to change her name to Ann Serpentfoot – Mooney which it may be that before this case comes to trial. She stated she has served each one of them one of these notices that she does intend to bring suit. She stated this is similar to the notice she served previously which she did not follow through on it after it looked like the West Third Street Development was dead. Now they have started it again, on top of which there is also another issue that she is very much interested in here and that is the plan to put a garden in the middle of The Forum parking lot. She stated that will just destroy The Forum parking lot. She stated the citizens of this county spent over \$14 million to build that Forum and the City of Rome was the ones that was promoting it. She stated she remembers Jack Dickey and some other commissioners on the county were opposed to putting it downtown and said they do not have enough parking and all this. She stated well, the city insisted on it and now the city has got it built downtown. She stated now they want to tear up the parking lot and put a garden in the middle of the parking lot. She stated a garden is beautiful, but the place where they need to see that they put that garden is over there on the John Ross sight. Where John Ross' home site was, over the bridge.

She stated the people of this county, older people like her, there is a lot of younger people that love to park close to where they are going to go and do not want to spend all their time looking for a parking place. She stated they do not want to have to walk across the bridge when they use The Forum. They do not want to walk across the bridge over there to West Third Street to park over there. They do not want to have to walk down next to the Hawthorne Suites. She stated what they want to do is move the parking and put a parking deck down next to the Hawthorne Suites. If the county citizens spent \$14 million to build The Forum, and they cannot park next to The Forum, they are going to put the parking down next to the Hawthorne Suites, who is that going to benefit? That is going to benefit Mr. Levy; she thinks he owns the Hawthorne Suites. She stated him and his customers will have the convenience of a parking deck right next to them. The citizens of this county spent their money on that Forum, are they going to have to walk down next to the Hawthorne Suites to park or walk over the bridge? Then she guesses they will close up The Forum and insist they build them another one somewhere else. This is not going to happen. They need to stop that or else she is going to bring suit on that. She stated put the garden over there in the middle of that land lot 244 to commemorate John Ross' home site. That is another thing they do not need to allow that to be developed. She stated they have finally agreed to put a little small park where John Ross' home was but that is like throwing a little bone out there. That is an insult when they think of how big a spot they have for Major Ridge and he was traitor to the Cherokees. He has this fraudulent treaty that he signed so that people if this county could steal that property from him, that was fraudulent. She stated she wants them to do the decent thing, and when she says decent she does not mean sex, she does not mean put their clothes on, that is not what she means by decent. Decent is like the people in the Declaration of Independence said a decent respect for the opinions of others. Do the decent, honest thing here and commemorate John Ross' sight with a memorial park that is comparable to what John Ridge had. John Ross was the principal chief of the Cherokees before his land was stolen.

**SECOND READINGS/PUBLIC HEARINGS  
(FIRST READINGS HELD MAY 9, 2006):**

- 1. FILE #42-2006Z, REQUEST REZONING  
FROM O-I (OFFICE INSTITUTIONAL) TO  
C-C (COMMUNITY COMMERCIAL) WITH  
A SPECIAL USE PERMIT TO CONSTRUCT  
MINI-WAREHOUSES ON PROPERTY LOCATED  
AT 1682 OLD CALHOUN ROAD. ZONING MAP  
K13W – PARCEL 093. (PLANNING COMMISSION  
RECOMMENDATION: APPROVE [VOTE: 5 – 3]):**

Chairman Mayes called for a motion to open the Public Hearing. Commissioner Hufstetler made a MOTION to open the Public Hearing. SECOND by Commissioner Fricks. VOTING:

YES

NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

Chairman Mayes stated the Public Hearing is open and asked Sue Hiller, Planning Department Director, to give a brief presentation. Ms. Hiller stated the subject property is an irregularly shaped parcel. It is triangular with frontage on both the Burton Road and the Calhoun Road. The surrounding properties on all sides are zoned S-R (Suburban Residential) although there is some commercial zoning to the north. Development on surrounding properties includes a church, a school, residences, and an antique store. There is another commercial use a little bit further to the north. This is an area where services and utilities are available. It does not appear to be within a flood plain. It is currently undeveloped and the plan would be to develop it with mini-warehouses. She stated she thinks there is a site plan showing the mini-warehouse plan. However, there are no dimensions on this site plan. It is a very irregularly shaped lot that becomes very narrow at one end so there are some staff concerns about whether this can be done and meet all of the requirements of the code for driveway width and so on. However, the applicant is indicating that they would put the landscaping strips along the road and there is a green strip indicating the buffer that would be there between this property and the church. The motion in this case was to approve. There were no conditions. It does come to the Board with a 5 – 3 vote recommending approval of the request.

Chairman Mayes asked if there is anyone here to speak in support or opposition of this item. He reviewed the procedures for Public Hearings. He stated those that wish to speak in support have up to 10 minutes to present their reasoning. Those in opposition have 10 minutes. Then those in support are offered a time for rebuttal. He stated they cannot bring in new evidence but can only rebut anything that has been brought up during the Public Hearing.

**Support: Jim Givens, 16 Commerce Court,** stated he has a contract on this property and his desire obviously is to develop it into a mini-warehouse complex. He stated one of the statements that Ms. Hiller made is a little bit erroneous. He stated the property does not have public sewer. Therefore, occupancy in the form of an office may be questionable. He stated he has not had it soil tested, but it is only three-quarters of an acre and it may not accept the septic tank. He stated the properties around it, there are some non-conforming uses such as a welding shop and an antique shop, both of which are metal buildings that have been there for many years. They preceded the ULDC so it would be somewhat of a continuous conformity to the property because of those preexisting conditions. He stated there is a church immediately to the north of the property along with the Unity Christian School, and then they hit the bypass itself. This is formally a state highway; access to the property

is excellent. It is his desire to go in there with a quality project and have a quality property in that community. He stated he has checked with the building inspection office and they can site buildings on that site. He stated he did check with both James Martin and Brian Roberts concerning that. He is here to answer any questions anyone might have.

**Support: Judy Shiflett, 37 Foxcroft Road,** stated she is here representing the seller. Mr. Givens said the he has a contract on the property, it is for sale. She stated she would like to be able to speak for the contract tonight and for the property on the rezoning. She knows that there is some opposition to that because there is going to be metal buildings. Their situation with this property is that the sellers are of age, they do not plan to develop the property themselves, it is just for sale. She stated whether Mr. Givens buys it or someone else buys it, it is for sale.

**Opposition: Rebakah Wright Skelton, 10 Burton Road,** stated she is representing her neighborhood. Tim Burton is on vacation. Griffin Burton is attending his grandson's graduation at Darlington from the lower school to upper school. She stated everyone that she has contacted says no to these metal buildings. They are a quiet neighborhood. She stated she lives directly across from this; it was her cousin's property. It is a beautiful lot and it has trees. They are in the county and she has rental property. She had a wonderful husband, Tommy Skelton, who was a painting contractor and they had rental property. She stated he could not go into the contracting business because they had three girls, so they went into the antique business. Her family lives up Juniper Street, which runs right by the barn, and it is a dead end. Bobby Blankenship and Dixie Blankenship Firestone lives at the end, and right directly across in the rental house on the corner is an 85-year-old widow named Catherine McCain. They rent their rental property to widowed women. The next house, which is the Bowman's, and he is retired. She had bought the old Flemister home and the Blankenship home there three years ago and have not developed it yet. The reason she could not buy this property is this 50 x 100 antique shop had to have a new roof on it so that took her money. She is looking forward to redoing the old Flemister-Blankenship home that is right behind Trinity Church. She stated this joins the Trinity Baptist Church and there is a big ditch and that is all that is separating it. She stated it has hedge bushes, which hides this big ditch. The Trinity Baptist Church pastor and his congregation went to this real estate company when they first put up their sign and asked how much they wanted because they wanted that property. They said it was \$41,000 so they said no way that they could pay \$41,000. The Trinity Baptist Church had twenty-eight members that signed a petition. She was raised where Unity Christian School is. That was her home and their garden was right there where the Trinity Baptist Church is. Everyone in their neighborhood, the Burtons and the Wrights, they have beautiful homes and they keep their lawns and all and it would be an intrusion. She stated the only business is North Georgia Equipment and David Parris told her they like them old hedges around that property, and they would hate to see it bulldozed down. If they bulldozed it down, all that water that would run down under the Calhoun Road and come right in on us. She stated Samuel Crowe told her that and he is against it. She stated of course they said they trust her to present this.

The ones that own businesses there, Samuel Crowe still lives there, Preacher Crowe's house is empty but still there and Haskell and David are just neighborhood folks and then herself, this property that she owns and Ralph Davis. She stated as they come in for the four lane, she was looking in the paper Monday and they have had two accidents on the Calhoun Road and the Burton Road. It has helped a lot with the new widening up there at the new road at the bypass but they have many cars that parents bring children to the Unity Christian School. She stated their schoolmaster is out of town but they said they are opposed to it. She pleads with the Commissioners to reconsider this because they want to keep a peaceful neighborhood, where they can sit in their yards and not have to worry about anything. She stated they do not want to be disturbed by the in and out of the traffic, and when they do not pay their bill at a mini-warehouse they have auctions and Calhoun Road has enough traffic as it is. She stated she appreciates their time.

Commissioner Hufstetler stated he would like to ask Ms. Skelton a question. He stated he is very familiar with that area and her business around there and the churches and everything. What would she think that lot could be used for? She stated the church would love to have it just to extend their lot. Commissioner Hufstetler asked they just did not want to pay the price that the other seller was paying. Ms. Skelton stated not the \$41,000 for less than acre of land, but they would clean it up and it has beautiful trees and it has shrubbery. Commissioner Hufstetler stated it is hard for them to tell someone that they want them to sell their land for less than they can sell it for. She stated anyone wants to get all they can out of it, but like she said, she made them an offer once but when that emergency came up on that 33-year old roof on her barn she had to put a roof on it.

**Rebuttal:** Mr. Givens stated the only thing he would like to remind the Board is, once again, the property is currently zoned O-I (Office Institutional). It appears as though one of the major objections that the opposition has is the objection to a metal building being built there. He stated a metal building can be built on this sight today for a church facility, an office facility, or any other use allowed without any permission from them as the Board of Commissioners so the metal building argument, in his opinion, is without merit. Commissioner Bennett asked Mr. Givens what about the hours, how does he intend to operate this, this is not going to have site management is it? Mr. Givens stated no it would not have site management; it is too small of a project for that. Commissioner Bennett asked as far as hours of operation and that sort of thing, are they going to have just a key card type thing where people could come in and out 24-hours a day? Mr. Givens stated typically they would want to shut it down at dark, 8:30 – 9:00 p.m. Commissioner Bennett asked is that how he would envision it being. Mr. Givens stated that would be his intent. He stated he does not like the idea of a 24-hour facility, he thinks it creates too many problems. Commissioner Bennett stated also the access, he was looking in the Planning Commission meetings and mentioned that the entrance is going to be off of Calhoun Road, is that right or will it be off of Burton? Mr. Givens stated he does not want to commit to that, only because they do not have a final site plan yet.

Commissioner Jennings asked what about lighting. Mr. Givens stated they would probably have some lighting but they would try to focus that on the facility itself. Commissioner Bennett asked what about their landscaping and buffers, as far as shielding it or anything like that, are they just planning on grassing it or what? Mr. Givens stated there are some existing shielding, cedar trees and some like that, they will try to preserve but they want a good facility, something that is attractive.

Chairman Mayes called for a motion to close the Public Hearing. Commissioner Hufstetler made a MOTION to close the Public Hearing. SECOND by Commissioner Fricks. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

**Discussion:** Commissioner Hufstetler stated if they approved he would think there would need to be some down lighting and hours of operation restrictions. Commissioner Bennett asked Ms. Hiller if she could tell them the various type facilities that could be built in O-I (Office Institutional). Ms. Hiller stated of the commercial zoning districts O-I is one of the most restrictive. She stated it essentially allows office and institutional type uses. It could be a medical or dental office, a church, a school, or a hospital if it was a bigger lot. The O-I district allows very, very few retail type uses unless they are like a small gift shop in a hospital accessory uses to those institutional uses. They would be allowed to put a motel there, but would not be allowed to put a restaurant in the O-I zoning district. Commissioner Bennett stated of course that lot would not lend itself to some of those things anyway he does not think. Ms. Hiller stated that is true with the odd shape and the small amount of area that is there. Commissioner Jennings stated although that is consistent with what is there with the church there. Ms. Hiller stated the O-I zoning is consistent for the church and the school that is true. Commissioner Jennings stated so they can understand why it was zoned that way. Commissioner Bennett stated but the rest of it was not and that is kind of strange. He stated the triangle was but where the church itself is it is S-R. He asked Assistant Manager Rich if everything up there S-R with the exception of the C-C and O-I zoning... Commissioner Hufstetler asked so Trinity is S-R is that what they are saying. Assistant Manager Rich stated it does appear to be. It is a non-conforming use, which is uncharacteristic. Commissioner Hufstetler stated that church has been there forever, he does not know why they would have zoned it S-R. Ms. Hiller stated as they point out that while O-I zoning is the most appropriate zoning for churches and schools, it is not the only zoning that

accommodates those two uses. She stated churches, especially, are allowed in almost any zoning district except heavy industrial.

Commissioner Jennings stated to move this forward he would make a MOTION to deny this request. The motion died for lack of second.

Commissioner Jennings stated if this were going to be approved, he thinks they definitely would want to uphold buffers. He thinks they would want to ensure that there is down lighting and he thinks they discussed hours of operation. Chairman Mayes stated he thinks the code of the ULDC addressed the buffers but they could and they have done the down lighting in the past especially mini-warehouses. Commissioner Bennett stated the buffers, being a landscape buffer, could be planted grass or a few shrubs. He stated he is sure the owner wants some visibility and they do not want it to be where it would be blinding or be a sight distance problem with people coming in and out of it. Chairman Mayes stated also, the nature of the mini-warehouse business, they do not want to put buffers like high bushes where a customer would feel unsafe accessing the site. Commissioner Jennings stated he thinks another issue is entrance. He stated Burton Road has residences on it. Is that an area where they want to direct traffic in for the warehouse or perhaps restricting it to an entrance off of Calhoun Road. Chairman Mayes asked Mr. Givens how many units he is going to have. Mr. Givens stated the proposal calls for approximately forty. Chairman Mayes asked Mr. Givens what he expected as far as traffic coming and going everyday. Mr. Givens said maybe two to five cars a day, and he does not know about the weekends, but it is not going to be anything to remotely compare to a fast food restaurant or a retail establishment. Chairman Mayes asked Mr. Givens if he is going to access Calhoun Road or Burton Road. Mr. Givens stated he is not certain of that yet. Commissioner Hufstetler stated what the school does and people will enter Burton Road when they are dropping their children off and then they exit this way. He stated that is part of the school policy so that they keep all of the traffic going in one direction but he thinks he is not going to add a lot of traffic there but he thinks another entrance off of Calhoun Avenue could be an extra stop out there on the highway that might be dangerous. Commissioner Bennett stated the areas that he is going for would be lighting and hours of operation so that it would not cause undue traffic in the neighborhood during an evening time or would be disruptive to the neighborhood. He stated with the antique store already there he would think that is probably going to generate several cars a day or it is not a very good active enterprise with only four or five cars a day coming if that is all the traffic they are going to generate.

Commissioner Bennett made a MOTION to approve subject to down lighting and that the hours of operation, that the facility not open prior to 7:30 a.m. or be open passed 9:00 p.m. County Attorney Manning asked Commissioner Bennett if he is saying the hour restriction is tied just to if the property is used for mini-warehouses. Commissioner Bennett stated yes. SECOND by Commissioner Hufstetler.

**Discussion:** Commissioner Hufstetler asked should it be restricted or can they restrict it just to those uses and let it be specific for mini-warehouses only and not open up other possibilities too? County Attorney Manning stated they could rezone the property conditioned upon use only as a mini-warehouse and with those hours but he was just asking that if it were to be used for other purposes within that C-C zoning. Commissioner Bennett stated he would clarify his MOTION to restrict it to the development of mini-warehouse with the conditions of down lighting and hours of operation from 7:30 a.m. to 9:00 p.m. SECOND by Commissioner Hufstetler.

Commissioner Jennings asked if a variance was sought for setbacks for amending setbacks and buffers, can they restrict it in terms of that there would no seeking of reduction of setbacks and buffers. Assistant Manager Rich stated by placing a condition they would restrict the owner from receiving a variance. He stated they cannot go through the variance process if they have a condition to a zoning. He stated they could not apply to vary that. Commissioner Jennings stated so they can condition that. Assistant Manager Rich stated correct, they can place the condition with the buffer and/or landscaping. Commissioner Bennett stated if Commissioner Jennings wanted to amend the motion, he would second it. Commissioner Jennings moved to AMEND THE MOTION that the setbacks and buffer requirements would have to be followed. SECOND by Commissioner Bennett. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

- 2. FILE #43-2006Z, REQUEST REZONING FROM C-C (COMMUNITY COMMERCIAL) TO H-C (HEAVY COMMERCIAL) FOR EXISTING COMMERCIAL USE OF PROPERTY AND TO OPERATE A FLEA MARKET ON PROPERTY LOCATED AT 2701 OLD CALHOUN ROAD. ZONING MAP L12X – PARCEL 013. (PLANNING COMMISSION: APPROVE [VOTE: 8 – 0]. WITH CONDITIONS: DOWN LIGHTING, FENCING AND BUFFERS:**

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

YES

NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

Chairman Mayes stated the Public Hearing is open and asked Sue Hiller, Planning Department Director, to give a brief presentation. Ms. Hiller stated the subject property was a drive-in movie theatre at one point that use is no longer in effect. It has been used most recently as a music venue. There is also an auto repair shop on this property. There were some steps taken, and then some initial use of this as a flea market, but a flea market requires H-C zoning and that is why this request is before them today. She stated both to allow the flea market to operate and also to legalize the legal non-conforming use of an auto repair shop. This actually was tabled by the Planning Commission the first time it came around because although they felt, and staff did too, that there may be need for a venue for flea markets in Floyd County. They seem to have a lot of them that pop up here and there. She stated that flea markets, when they are operating, have the potential to have some impact on their surroundings especially in terms of the amount of traffic and so on that goes on there. The Planning Commission asked for an additional site plan. She stated looking at the surrounding properties they have zoning ranging from S-R (Suburban Residential) to H-I (Heavy Industrial). There is a fuel storage plant. There are residences. There is another auto repair facility. This is a property where services and utilities are available. Willow and Berwin Roads are classified as local roads although Old Calhoun is classified as an arterial. Any new development on this site, any change in use, would have to conform with all the requirements of the ULDC. That would include parking, ADA accessibility, provision of restrooms, etc. as well as storm water management plan and any improvements that would have to be made to manage storm water. A site plan has been submitted by the applicant. He has shown in general where the parking areas would be. There is a playground area proposed. The buildings show where restrooms would be. One is an existing building and then there are some buildings proposed that would be essentially the flea market booths. It is showing a one-way drive that would come in off of Willow and exit onto Berwin Road. She stated obviously this site plan does not include enough detail to get a building or development permit with, but it does appear to indicate that there is room on this property to properly develop a flea market site that could meet the requirements of the code and provide that sort of venue in Rome and Floyd County. She stated they did have an adjacent property owner at the Planning Commission meeting that was concerned about the dust that might arise from this. There was some discussion about whether paving the drives through this would probably take care of that. She stated the motion in this case was to approve the request with the condition of down lighting so that the light would not spill out onto adjacent properties. That

motion was then amended to require fencing along Berwin and Calhoun Roads, with shrubbery or trees on the outside of the fence. That was agreed on by the original motion maker and the vote was 8 – 0 to support that motion with those conditions placed on it.

Chairman Mayes asked Ms. Hiller what did she say about paving. Ms. Hiller stated the current code requires that parking areas and driveways be paved. What there is on this property now is some old paving. Some areas have been graveled and some have been tarred through the years that this has been used for various kinds of things like music festivals and so on. However, if they are going to redevelop it, change the use and build new things on it, they do have to do that in conformance with the code or they would have to seek a variance that would allow them to keep what is essentially under their code an unpaved parking lot. Chairman Mayes asked but she is not recommending or the Planning Commission did not recommend that they require them to put paving down. Ms. Hiller stated the Planning Commission she thinks was relying on the fact that re-development does have to conform with the ULDC and that would require paving. They did not put that as a condition of the rezoning or recommend that as a condition of the rezoning and if it is not a condition of the rezoning, they can certainly seek a variance on that issue if they choose to.

Chairman Mayes asked if there is anyone here to speak in support or opposition of this item.

**Support: Marina Echanique, 759 Ausborn Road,** stated what was considered the first time with the down lighting and the fencing with the shrubbery, it was considered and they are working on that. Also, for the parking and the pavement, they are working with the building inspector to see whether it is needed or not. They are not sure yet, it does have gravel right now. Besides that, everything else that was stated, the bathroom has been built. There is a one-way street. There is going to be a parking attendant so that parking is a little bit organized. There is one entrance and one exit and the exit had two ways that they can go so that traffic is controlled. It is only going to operate on the weekends, Saturdays and Sundays, from 10:00 a.m. to 2:00 p.m. so there would not be any business flow during the week for the neighborhood. Commissioner Hufstetler asked is there other businesses going to be on this sight other than the flea market. Ms. Echanique stated there is currently an auto shop, she thinks the property before was a heavy industrial and it got switched to a commercial without the person that is on there currently, she is not sure but he did not know, and they are planning on putting a restaurant, that is in the works along with the flea market but they are planning on putting a restaurant which will be working on the weekends only to go along with the flea market. Commissioner Hufstetler asked so the restaurant would only be weekends too. She stated it would be part of the flea market, the whole project of that. Commissioner Bennett asked refreshments and food during the flea market operating hours. She stated yes.

Commissioner Fricks made a MOTION to close the Public Hearing.  
SECOND by Commissioner Jennings. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

Commissioner Jennings made a MOTION to approve this rezoning request with the conditions that were placed upon the rezoning at the Planning Commission of the down lighting, the fencing, and vegetative buffers outside of the fencing.

**Discussion:** Commissioner Hufstetler asked what about their stating that they are agreeable to do it only on weekends. That it is only going to be a Saturday and Sunday operation. Commissioner Hufstetler stated he knows that she had offered that they were doing that, that it would not disrupt the neighborhood during the week. Commissioner Jennings stated that is on the Old Calhoun Road. They have got the oil place right next door. It is a fairly busy road he does not think that it is going to make that much difference. Commissioner Bennett asked Commissioner Jennings if he was going to add the weekends to it. Commissioner Jennings stated he does not necessarily see a need to do that. Commissioner Fricks stated he thinks that if they get into the weekends, they start holidays and different factors like that. Commissioner Hufstetler asked what about daylight hours or something. Commissioner Bennett stated it probably would be daylight hours, he does not think it is lit. Commissioner Hufstetler stated it should be it is just that it is evolving into different things and he hesitate to open up a heavy commercial zone to something that could evolve into and open the door to anything because if this is not successful they may want to do something else. Commissioner Jennings asked can they restrict it to flea market operations. County Attorney Manning stated they talked about that last time. He stated he thinks it would be more susceptible to a challenge if they said they are allowing a zoning change but only for a particular use and only for a particular time period. He does not have any law to quote them right off the top of his head but that would concern him. Commissioner Hufstetler stated well a lot of things can go into heavy commercial. Commissioner Bennett stated across the street is heavy commercial also.

Commissioner Bennett asked Commissioner Jennings if he could restate his motion. Commissioner Jennings stated his MOTION is to approve with the Planning Commission's conditions of down lighting, fencing and buffers outside the fencing. SECOND by Commissioner Fricks. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

**3. FILE #50-2006Z, REQUEST REZONING FROM C-C (COMMUNITY COMMERCIAL) TO H-C (HEAVY COMMERCIAL) FOR MOBILE HOMES SALES ON PROPERTY LOCATED ON HIGHWAY 27 SOUTH AT NOWACK ROAD. ZONING MAP I16X – PARCEL 076. (PLANNING COMMISSION RECOMMENDATION: APPROVE [VOTE: 8 – 0]):**

Chairman Mayes called for a motion to open the Public Hearing. Commissioner Hufstetler made a MOTION to open the Public Hearing. SECOND by Commissioner Bennett. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

Chairman Mayes stated the Public Hearing is open and asked Sue Hiller, Planning Department Director, to give a brief presentation. Ms. Hiller stated the subject property fronts on both Nowack Road Cedartown Highway. She stated surrounding uses and zoning include O-I (Office Institutional), S-R (Suburban Residential), Commercial, Heavy Industrial, Walker Mountain Landfill and Light Industrial, that dominates in the Cedartown Highway corridor along there, and includes such uses as some truck terminal type operations. She stated she thinks this property has ended up being a storage place for manufactured homes. Some of these were new, but most were used. However, use of this property for manufactured home sales has not been continuous and in fact has not occurred for some time so there is no grandfathering, no legal non-conforming use and that is why the applicant is before them today. She stated they wish to develop this now as a manufactured home sales lot and that does require rezoning to H-C (Heavy Commercial). Although there is some residential land close by this, again, it is in a highway corridor. She stated it is

a very highly traveled highway corridor and the uses are generally fairly industrial and heavy commercial there.

Commissioner Jennings asked Ms. Hiller what kind of requirements are there for parking and vegetation. Ms. Hiller stated this will be a redevelopment of the site. They want to build a sales office. They will be required do landscaping along the street frontages and buffers on any sides where there are adjacent residential. Commissioner Jennings stated so there will be some requirements to kind of upgrade that property. Ms. Hiller stated that is correct. She stated when they do sales of mobile homes, cars and so on under the code they cannot park them right up to the road and in the right of way. They have to set them back and put some landscaping in there.

Chairman Mayes asked if there is anyone here to speak in support or opposition of this item.

**Support:** **John Ivestor, 24 Saddle Mountain Road**, stated he works for and is representing Larry Martin who is the property owner. He stated they bought this property in approximately 2001 when the ULDC was being formulated by GZI. He stated at the time it was a mobile home sales lot and it has always been a mobile home sales lot to his knowledge. After they bought it, they lost their customer because the customer died and they did not get anybody to take his place. Since that time, they have let several mobile home suppliers store their mobile homes there. He pointed out that there are 13 acres involved in the total package. They are only going to be using the front portion, which will be approximately 4 acres at the front of the property, for the mobile home sales lot. The balance of that property is developable but they have no future plans to develop that site.

Commissioner Hufstetler made a MOTION to close the Public Hearing. SECOND by Commissioner Fricks. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

Commissioner Hufstetler made a MOTION to approve the rezoning request from C-C (Community Commercial) to H-C (Heavy Commercial). SECOND by Commissioner Fricks. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

**4. FILE #51-2006Z, REQUEST REZONING FROM S-R (SUBURBAN RESIDENTIAL) TO L-I (LIGHT INDUSTRIAL) TO MARKET FOR COMMERCIAL AND LIGHT INDUSTRIAL USE PROPERTY LOCATED ON HIGHWAY 140. ZONING MAP M09 – PARCEL 042A. (PLANNING COMMISSION RECOMMENDATION: APPROVE [VOTE: 7 – 1]). WITH CONDITIONS: BUFFERS, SETBACKS AND LIGHTING AS REQUIRED BY ULDC:**

Chairman Mayes called for a motion to open the Public Hearing. Commissioner Hufstetler made a MOTION to open the Public Hearing. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

Chairman Mayes stated the Public Hearing is open and asked Sue Hiller, Planning Department Director, to give a brief presentation. Ms. Hiller stated she wants to point out that the staff report that they got in their packet says that this is being rezoned to H-I (Heavy Industrial). That is not the case. It is being rezoned to L-I (Light Industrial) and the ad that they ran in the newspaper and the signage and so on reflected that. She stated this is a property that is currently a rural residential property surrounded on three sides by rural residential property that is zoned S-R (Suburban Residential). However, there is a small distribution facility that is appropriately zoned L-I (Light Industrial). Further to the east along Turkey Mountain Road there is also some industrial uses but right in this immediate vicinity the predominate land use is rural and residential. North, toward the property it is pretty much undeveloped land right now. South, across the street, is rural, agricultural, and residential uses. To the east along the highway and west along the highway, there is not a great deal of development there. It is a very rural area. Ms. Hiller stated the staff recommendation on this one was actually to deny. This is a speculative rezoning and they always have some concerns about that, particularly in an area where the

prevalent development is residential. She stated people have already invested in this area and there is some development there so they have some concerns about that. She stated the staff recommendation again was to deny, but staff went on to say that if it was going to be approved it should be conditioned on provisions of all landscaping buffers and setbacks in accordance with the ULDC, of downward directed lighting that would not spill over onto other properties in this area. The motion made by the Planning Commission was to approve it with those conditions placed on the approval. After some discussion the vote was 7 – 1 to recommend approval of the rezoning with the conditions as stated.

Chairman Mayes asked if there is anyone here to speak in support or opposition of this item.

**Support:** Joe Wade, 194 Turner Road, stated he is representing the owners of this property who would like to market the property. He stated they believe that with it being located on Highway 140, with the access to interstate 75, and the equal access to either Chattanooga or Atlanta, that this is the highest and best use for the property in order to sale it and get the most out of it. He stated they have no problem with all of the conditions, setbacks, rules and regulations. That is fine with them.

Chairman Mayes called for a motion to close the Public Hearing. Commissioner Hufstetler made a MOTION to close the Public Hearing. SECOND by Commissioner Jennings. VOTING:

	YES	NO
Commissioner Fricks		
" Hufstetler		
" Jennings		
" Bennett		
Chairman Mayes		

Motion Carried

Commissioner Jennings made a MOTION to deny this rezoning request from S-R (Suburban Residential) to L-I (Light Industrial).

**Discussion:** Commissioner Bennett stated they have to get a motion to discuss and he has a question, how did that L-I get there, does anybody know? Commissioner Bennett asked Ms. Hiller did that get zoned L-I just to conform to existing use, or was it zoned L-I before the building was built there? Ms. Hiller stated she believes that building has been there for some time, and probably predates the zoning code, so when they came through and decided what zoning was going to be there they zoned it for what was there at that time. Commissioner Jennings stated he is concerned that the Highway 140 corridor is a suburban or agricultural residential

area, and they have this anomaly that is there, that historically was there. He stated he does not know that it is their best interest to continue to allow that light industrial development along 140 that is primarily residential. Commissioner Bennett stated he knows that it is adjacent to an L-I, but what do they do, with or without prejudice if they allow them to come back? Assistant Manager Sammy Rich asked is the question if they were denying the applicant. Commissioner Bennett stated yes. Assistant Manager Rich stated if they deny without prejudice they can come back within 6 months.

Commissioner Bennett asked Commissioner Jennings if he would like to do change his motion to deny without prejudice. Commissioner Jennings stated yes he is willing to do that. SECOND by Commissioner Bennett.

Commissioner Bennett stated he stated he is pretty flexible as far as rezoning property for a purpose for people to have the highest and best use but he kind of hesitates just knowing this area. He knows it is on a major corridor and someday down the road that may develop as commercial or industrial with some of the other properties that are up in there. He asked is there sewage on this property? Commissioner Hufstetler stated no. Commissioner Bennett stated there is no sewage and that sort of thing. He stated if they have got somebody who would tell them that it might fit in the community already with another light industrial next to it that might be compatible with the agricultural residential zoning he does not think he would have a problem. But just to zone it, knowing what could go in light industrial on a speculative basis, he kind of hesitates to do that. VOTING:

YES

NO

Commissioner Fricks

Commissioner Hufstetler

" Jennings

" Bennett

Chairman Mayes

Motion Carried

- 5. FILE #52-2006Z, REQUEST REZONING FROM H-C (HEAVY COMMERCIAL) TO S-R (SUBURBAN RESIDENTIAL) FOR SINGLE-FAMILY RESIDENTIAL USE OF PROPERTY LOCATED AT 74 LINDSEY DRIVE. ZONING MAP J11X – PART OF PARCEL 352, TRACT #14. (PLANNING COMMISSION RECOMMENDATION: APPROVE [VOTE: 8 – 0]). WITH CONDITIONS: RECORDED PLAT:**

Chairman Mayes called for a motion to open the Public Hearing. Commissioner Hufstetler made a MOTION to open the Public Hearing. SECOND by Commissioner Jennings. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

Chairman Mayes stated the Public Hearing is open and asked Sue Hiller, Planning Department Director, to give a brief presentation. Ms. Hiller stated the subject property is actually part of a larger lot and they have not subdivided it at this point. She stated to the north, south and east is single-family residential zoning. To the north it is wooded land and to the south there is single-family residential. To the east, it is wooded land. To the west, there is a junk yard, but it is not on the same lot. It is on the H-C that is a little further to the west. Then there is a warehouse and distribution spot, but most of the development away from the Martha Berry Corridor in this area is residential zoning. What is being proposed for this property is single-family. She stated this is not inconsistent or incompatible with most of the surrounding land uses. She stated they did have one person at the Planning Commission meeting who was concerned about flooding on the property, and whether it could be developed without causing drainage issues. It is within the flood plain, at least partly, but not within the flood way of some tributaries of Big Dry Creek and there are ways to develop within a flood plain, they just have to work with building inspection to make sure that they fill correctly. She stated other services and utilities are available. Lindsey Drive is classified as a local road. To the north, it is undeveloped land at this time. To the south, is also mostly undeveloped land although there is a residence to the south. To the east and to the west along Lindsey Road, it is a very narrow road. She stated staffs recommendation was that it be approved conditioned on submittal of a recorded plat that would show the line there, and that only that portion would be rezoned at this time. There was a motion to approve and it comes to the Board with a unanimous recommendation that they approve.

Chairman Mayes asked if there was anyone here to speak in support or opposition of this item. Seeing none, Commissioner Hufstetler made a MOTION to close the Public Hearing. SECOND by Commissioner Fricks. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings

" Bennett  
Chairman Mayes

Motion Carried

Commissioner Hufstetler made a MOTION to approve the rezoning request from H-C (Heavy Commercial) to S-R (Suburban Residential) conditioned upon a recorded plat as recommended by the Planning Commission. SECOND by Commissioner Bennett. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

- 6. FILE #53-2006Z, REQUEST REZONING FORM S-R (SUBURBAN RESIDENTIAL) TO H-I (HEAVY INDUSTRIAL) TO MARKET FOR COMMERCIAL PURPOSES PROPERTY LOCATED ON 4357 ADAIRSVILLE HWY, 7756 CALHOUN HWY, ROME-CALHOUN HWY, AUTRY ROAD, ADAIRSVILLE ROAD. ZONING MAP N09 – PARCELS 086, 058, 051, 052, 060, 059. (PLANNING COMMISSION RECOMMENDATION: APPROVE [VOTE: 3 – 5 TO DENY]):**

Chairman Mayes called for a motion to open the Public Hearing. Commissioner Hufstetler made a MOTION to open the Public Hearing. SECOND by Commissioner Bennett. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

Chairman Mayes stated the Public Hearing is open and asked Sue Hiller, Planning Department Director, to give a brief presentation. Ms. Hiller stated the subject consists of several lots and a total of about 397 acres of land. It does have frontage on both the Adairsville Road, Highway 140 and on the New Calhoun Road

which is Highway 53. This is largely undeveloped property. It has been used residentially and agriculturally. The surrounding properties to the north, south, east and west are zoned S-R (Suburban Residential). They are used mainly residentially and some agriculturally although, there is some commercial use around the intersection of Adairsville Road and Highway 53. Within the corridor of Highway 53 there is a fair amount of industrial land. She stated she thinks it is important to note that there is a fair amount of industry stretching all the way along Highway 53, and some undeveloped land that is zoned both L-I and H-I in the corridor. This is an area that is attractive for this type of development because services and utilities, while they are not to every site, are available and of course, they have the transportation link along the Adairsville Road to I-75, which is located to the east. Again, this is a speculative rezoning and the applicant in this case is the Development Authority. They do have some track record in this area of attracting industries. While they are heavy industrial they have been relatively clean industries but whenever there is a speculative rezoning there are some concerns for the other development in the area, which again is largely rural and residential. To the north, across Highway 53, is rural residential property. To the south is undeveloped rural residential type property. There are many little lots in this area that are developed with residences, as well as farms, that are still in this area where there are livestock and crop operations as well as family homes on these properties. Because of the development in the area and the speculative nature of the rezoning, staff's recommendation was that if the Planning Commission chose to support rezoning of this property, it be conditioned on provision of complete buffers with no variances at least on the perimeter of this property where it does come up against residential property. That it be conditioned on placing loading docks and truck-ways on the sides of buildings away from some of that residential property. That it be conditioned on down lighting that would not spill over onto adjacent properties. The H-I zoning does require some very large buffers and if they are properly managed they can provide a significant amount of separation between residential property and the industry that is on the site. The motion in this case however was to deny the request, so no conditions were attached to that.

Commissioner Jennings stated to Ms. Hiller that she mentioned buffers, and asked what was the nature of the staff recommended buffers there. Ms. Hiller stated staff recommended that approval be conditioned on provision of all landscaping buffers and setbacks in accordance with the ULDC and that would apply to the perimeter of the property not within the property. Location of loading docks and parking lots on sides of buildings away from residential property. Preservation of existing mature vegetation within buffer areas and landscaping strips augmented by landscaping and other screening as needed and design of security lighting that would not spill over onto adjacent properties.

Chairman Mayes stated the County Attorney has suggested because of his conflict that he let the Vice-Chairman, Commissioner Jennings, take over with proceedings while they deal with this particular issue so he will just be here. County Attorney Manning stated Chairman Mayes will not participate and Commissioner Jennings can handle the administration of the Public Hearing. Vice-Chairman

Jennings stated they have opened the Public Hearing and they have heard from Ms. Hiller. He asked if there is anyone here to speak in support or opposition of this rezoning item.

**Support: Sam Freeman, 18 North Pheasant Run,** stated he is here tonight representing the Development Authority of Floyd County of which he is the Chairman. He is also speaking on behalf of the Rome-Floyd County Development Authority. They have optioned this piece of property jointly to develop it for heavy industrial use if the zoning is approved. The community is interested in more manufacturing jobs so they may continue to diversify the economy. They have been very fortunate here of late following some plant closings that they experienced so they need this property to further pursue manufacturing jobs. One of the most important needs for them is this land and land that is owned by public entity and properly zoned. They are in a very competitive situation with other communities, not only in Georgia, not only in the southeast but the United States and the world and the more they are prepared the better chance they will have of landing manufacturing jobs. He stated manufacturers tend to pay more than other sectors and they offer fringe benefits of health insurance and pension plans. Today under community public inventory, they have about 170 acres in their inventory, which their economic development professionals can market to perspective industries or to existing industries that may need to expand. He stated the Development Authority's interest, along with other community leaders, is to create the opportunity for jobs for this and the next generation. They want their children and grandchildren to have a choice to stay in Rome and Floyd County with a choice of jobs. He stated that Ms. Hiller mentioned that they have done a pretty good job of recruiting clean industries. He would like to underscore that the industries that are now in the Floyd County Industrial Park are relatively clean industries. They do not have any smoke stacks down there and they do not have any large polluters down there. They all meet very tough air laws and emission laws that are in place in the county and in the state. They live here and they feel like they have done a good job with their stewardship and would like to continue that and they need this property rezoned for heavy industry to pursue more manufacturing jobs.

**Oppose: Nedra Jett, 7737 New Calhoun Road,** stated the lady across the street that died owns the property that she lives on which is 30 acres on the other side of Highway 53 and she does not really care if they approve it or not but the point is she wants to save the Indian mounds that is on her property. She has tried and she has got all kinds of code sections and everything. She has Indian mounds right there by the power lines on her side. She has had several Trail of Tears people come up there and check it out. The archeologists, which no one will give her his name, came out and held up Georgia Power for three and half months or more. They had to auger underneath eight feet below in order to put the pipe to put their cable through. They would not let them do that. She stated it is Indian mounds and she just wants to protect those. She has been there 14 years. The house is 200 years old. It is falling down and she will have to move if they sell it. She stated she has been told, and in the paper, that the side of Highway 53 that she is on, that triangle piece backed up to

Woodard Creek, it is not even worth industrial because it has too many underground springs. Part of the house has fell down because of the underground springs are there. She stated she has some federal protected bird life up there that it is going to tear them up and she wants those burial grounds left there Vice-Chairman Jennings asked if he is understanding that she is saying that this site is not on the subject property, it is across the street from the subject property. Ms. Jett stated it is on the property that she rents and she was renting it out there for very cheap just to watch it. She has run off poachers and everything trying to dig up those Indian mounds. Ms. Jett stated yes, it is it is on the other side of Highway 53, there is a triangle there. She stated that triangle there that they are trying to sell is where the Indian mounds are. Right there on the power line, and there is a burial ground there. She stated Ms. Anne Nix that owned it, she is in that cemetery and she would not want Pirelli Tire next door to her either. She stated it is going to ruin all of those beautiful homes down in there, but she wants to protect the Indian mounds is her part. She stated Georgia Power will not tell her who their archeologist is, but it has been surveyed and there are Indian mounds back there. She stated there is a black slave building left there. There are Indians and black slaves across the street from them that have been buried in there also with the owners. She stated four generations have had that land and she just wanted to protect the Indians because they are her descendents. She stated she just wants it on the record that she wants the mounds protected. She stated she does not want them removed, she wants it posted there that there is a historical marker there because there was one down at the end where the Coffee residence was and it was Lee or somebody camped there where they found that one Indian grave. She stated they camped there before they went up north and surrendered, so it is part of the Trail of Tears. The chairman for the Trail of Tears in Arkansas said it was and she just wants that protected.

**Oppose: Leah Gentry, 4404 Adairsville Road,** stated she sent a letter to Ms. Hiller. She stated she was unable to attend the Planning Commission meeting, but she lives across the road from the golf course there on Highway 140. Within this area, about a two-mile radius there, they have about four generations of her family and about thirteen households within a twelve-mile radius. She some of them have moved away and they have moved back, so obviously they like the area for the way it is now. They do not want to see any more industry in there. She stated she likes the property the way it is. They are going to have to live with the widening of Highway 140, which she is not too happy with that but again that is progress and she understands that the need for industry in the community with plants and stuff have shut down. She stated her husband has been a recent sufferer of that so she understands that but they also want to preserve their way of life. She asked how far do people have to move out now to get away from industry. That is why they moved there is for the rural area. It just keeps moving out further and further and further. She stated if it is rezoned, she would just like to know what buffers are going to be there. She works in heavy industry and she is very familiar with EPD air permits, water permits, waste permits so she does not want to see that come in across the road from her home but if it is, she would like to know what buffers are going to be available. She stated there is lots of traffic there already. She knows that there is good access to

I-75 but again, that is their homes. She does not think anybody would like that across the road from their home. Vice-Chairman Jennings thanked Ms. Gentry.

**Oppose: Kay Whatley, 383 Plainville Road,** stated she would like to commend them first thing for not rezoning that other property on Highway 140 on speculation but now they are being asked to do the very same thing for this property on speculation and without knowing whether what is coming in would be toxic or non-toxic, or affect any of them adversely. She stated the thing she is most concerned about is Woodard Creek goes right through that property. She stated they just finished spending over a million dollars getting the water treatment plant ready to take water out of Woodard Creek. Anything that spills, or any toxic waste that comes out of anything they put in there goes directly into Woodard Creek. She stated the other property they rezoned, 100 acres, also drains into Woodard Creek. They are putting a whole water system at risk, because even if the Shannon Plant does not pull out any toxins, Woodard Creek goes into the Oostanaula River above the main Rome intake of water so there is a very great environmental concern with this property and what goes in there. She stated they are being asked to take it on trust that they will take care of all this, but trust is a little bit hard to come by out in Shannon lately because they have not been treated like they really exists out there or that what they think is important. She stated they would like for them to table this zoning until some of these issues can be straightened out. She stated until they can get assurances that anything that is going out there will not spill and get into their water. They want them to keep their power, as well as the responsibility, so that they can protect them and the environment of this county and the water everybody in this county drinks. She thanked the Board.

**Oppose: Steve Vasil, 252 Plainville Road,** stated this land is a big project. He stated \$15 million both to purchase and to run the utilities to the land. He thinks it might be reasonable to table this and let it go with the SPLOST vote. He stated if the people of Floyd County want this to happen let them vote for it. He stated let them finance it because they are going to have to pay for it out of the SPLOST revenues. He stated at that Planning Commission meeting they had at the Sam King Room, he believes it was Sue Hiller that said they had no idea what impact industries would have, especially since Woodard Creek does run through there. He stated as far as he is concerned, they should have some idea of what impact that is going to have before they approve this zoning.

**Oppose: Alice Culpepper, 4938 Adairsville Road,** stated what she said at the Planning Commission meeting before about holy ground, she wants to explain what she meant about that. She stated her husband's father was a World War I veteran. He got shot in his leg when he was overseas in the war. He came home and found a wife, found a little bit of land up on Highway 140, bought it, and built him a home. Had three wonderful children and his wife died when the last child was a few weeks old. She stated he struggled with housekeepers and babysitters for several years raising his family. She stated her husband had to help take over the farm when he was just a little boy, barely tall enough to reach the plow handles. When he was in

high school, he could not stay for football practice he had to come home to work on the farm. Therefore, one of his dreams, privileges was taken away from him. After they married in 1948, that has been their home ever since. She stated that ground is holy ground to them. This creek that they have been talking about, they have springs on this land. It feeds what used to be the Price Creek. She stated the head of this creek is just above their house. They have springs there where it is good, nice, clear water that is running into this creek that goes into the Woodard Creek. She thinks it would be a shame if they let this industrial park come to ruin their beautiful land. To ruin their creeks. To ruin the water system that will be drawn from that creek. She stated by the way, Mr. Pierre North says that they are in the boondocks and she resents that. They do not live in the boondocks. They have good neighbors. They have got good churches. They have got everything that they need. She stated they have a bank coming to Shannon, they have grocery stores, service stations and they have educated people in their community. They are not a bunch of dummies. She stated his editorial in Sunday and Monday's paper tried to make them look like they were just a bunch of dummies and it does not matter what comes to their community. She stated it does matter because they love their farm, they love their home and they have tried for 58 years nearly that she has been married and they have worked on this farm and they have almost worked their fingers to the bone to save and preserve this land for their three wonderful children. They love the land as well as they do, and they wanted to be able to enjoy this land with a clean air atmosphere. They do not want the noise. They do not want the dust. They do not want the traffic. And they do not want anything to interfere with their home and their land. This land borders their pasture. It is fixing to ruin their tax base and a lot of other things and they do not want this mess in their community. She stated she just wanted to explain the feeling they have in their heart for their land, they love every inch of it and they plan to keep it as long as they can.

**Oppose: Veronica Cochran, 8115 New Calhoun Road,** stated her property is the property across the street basically. They are at the corner of Autry Road and Highway 53. She stated her grandparents bought this farm in 1956 and they bought it as a legacy for their children and their grandchildren. They have fought long and hard to keep this land and for someone to come in and try to change the landscape around where they are without it being a choice that they want to make for themselves is just not right for them. She does have another comment, she agrees with Ms. Culpepper wholeheartedly. She has watched her grandparents work the farm until they were tired and what not and it is just the thought of losing their homes is devastating to every one of them. If it is rezoned, there are a lot of people that will not want to live there. They will not want to see tractor-trailers coming in at all hours of the night. It is already busy enough as it is. She stated her house is up on the hill and she definitely does not want to look down and see all of this because buffers are not going to do anything for her. She will still be able to see it. She stated she does have a couple of comments for Mr. Freeman. He said that they were trying to replenish manufacturing jobs that had been lost. She stated her question is, why do they not redevelop these businesses that are sitting there empty? The buildings that are just dilapidated, they are falling down, why can they not redevelop these areas instead of taking land that is not for that use. Also, he made a comment that companies pay

taxes in Floyd County, but the homeowner's pay taxes in Floyd County as well, Mr. Freeman and she thinks that needs to be noted as well.

**Rebuttal:** Mr. Freeman stated the acreage that Ms. Jett is talking about, the triangle up there, has a power line running right through the middle of it. He stated they do not have any plans for that piece of property. He stated that is included in this rezoning request. Mr. Freeman stated they do not have any plans for that piece of property and would entertain removing it from the rezoning request. It is too small for their use anyway and particularly with the power line going through it. He stated he believed it was Ms. Gentry that talked about or asked a question about was there going to be one or more industries on this piece of property. If they had an industry that came along and needed all of the property they could sell it to that one industry. The plans are though, that there will be multiple industries on this piece of property and that it would be developed as an industrial park, meeting the guidelines that Ms. Hiller has spoken about and outlined. He stated Ms. Whatley talked about the environmental part of it. As he stated before, these industries will meet all federal, state and local guidelines regarding the environment and the emissions in these plants. He stated Mr. Vasil suggested that they wait and let the SPLOST vote decide. Mr. Freeman stated there is no guarantee that their request will be on the SPLOST vote. They are asking but they are, as they know, competing with a lot of other requests and needs in the county so they do not have any idea and no guarantee that it will be on the SPLOST. If it is not, then they will have to seek another route of financing on this property. Ms. Culpepper talked about it will ruin the tax base if he heard her correctly. He stated he begs to differ with that. Industries, usually the rule of thumb is residential customers, residential folks require about a dollar and twenty something cents of services from the government for every dollar of taxes they pay. Whereas, industries require like thirty-seven cents of a dollar tax revenue to support industries. So industries carry the burden of the tax bills in not only Floyd County but any county. He stated the last lady talked about redevelopment and taxes. He stated he is well aware, he is a residential homeowner and he pays taxes, but he would revert back to what he said about the amount that residential versus industrial pays and the tax requirements that these folks have. They would like to redevelop some of these sites but usually private owners come in and by those sites before they can move on it so it is taken out of their mix.

Commissioner Fricks stated he had a question, that triangle that he is talking about, the thirty acres, is that within their option that they are purchasing. Mr. Freeman stated yes, they had to take it all. It was an all or none deal, but it is not suitable for their use with the power line going through it, it makes it null and void for them.

Vice-Chairman Jennings called for a motion to close the Public Hearing. Commissioner Hufstetler made a MOTION to close the Public Hearing. SECOND by Commissioner Fricks. VOTING:

YES

NO

Commissioner Fricks  
" Hufstetler  
" Bennett  
Vice-Chairman Jennings

Chairman Mayes Abstained

Motion Carried

Vice-Chairman Jennings called for a motion. Commissioner Fricks made a MOTION to approve the rezoning as proposed. SECOND by Commissioner Bennett.

**Discussion:** Vice-Chairman Jennings stated he is wondering, they have some staff recommendations from the Planning Commission staff as far as buffers and buildings and he thinks they also have had this request to remove the acreage that is across from... Commissioner Fricks stated actually it is not in on the map. Commissioner Bennett stated it is not shown on the part that is requested to be rezoned. He asked is that Agricultural Residential now, this parcel that they are talking about. Assistant Manager Rich stated it is S-R (Suburban Residential). Vice-Chairman Jennings asked Ms. Hiller if that is correct, that that acreage across the Calhoun Highway is not part of this request. Ms. Hiller stated she does not believe that it is. Commissioner Hufstetler asked is there six parcels up there then, is that what that is? He stated they might just want to put it on the record that that is not part of the rezoning request and make sure it is clarified. Vice-Chairman Jennings stated so he is asking that the motion and second, would they agree to read into that the staff recommendation as far as buildings and buffers and loading docks. Commissioner Fricks stated he thinks that is one of the safety valves of heavy commercial. He stated he has read through and he thinks they have a pretty extensive buffer and setbacks in there compared to light industrial or any of the other comparisons. He stated one factor he assumes and he is making assumptions because he cannot say that he does know but he would assume that is going to be broken up into various parcels and sold to different industries. He stated that is a large industry that they are talking about there so probably each individual lot then would have to reflect its own buffers and setbacks and requirements as they develop individual lots, so he thinks they will see a lot more buffer in there than they actually would if they dealt with it as a single piece of property. Vice-Chairman Jennings stated and he believes the creek buffers are in place within the code also. Commissioner Bennett stated this is one of the heavier regulated zoning portions of their code and it is done that way purposely to try not to be an obnoxious neighbor to the other people who are there. Commissioner Fricks stated if they go in there on the indications of the zoning on their ULDC, most requirements of heavy commercial that actually produce any emissions are going to require them to come back for a special use permit on that particular piece of property anyway. Assistant Manager Rich stated he would point out that the setback requirements are 100-feet on the front and on the side and rear it is 200-feet where it

is adjacent to residential property so it is the most restrictive setback requirements they do have. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Bennett  
Vice-Chairman Jennings

Chairman Mayes abstained.

Chairman Mayes stated his reason for abstention was due to owning property in close proximity.

Motion Carried

**Chairman Mayes called for a five-minute recess.**

**7. AN ORDINANCE ESTABLISHING LICENSING REQUIREMENTS AND REGULATIONS FOR SEXUALLY ORIENTED BUSINESSES WITHIN FLOYD COUNTY:**

Chairman Mayes called for a motion to open the Public Hearing. Commissioner Hufstetler made a MOTION to open the Public Hearing. SECOND by Commissioner Bennett. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

County Attorney Manning stated before they have actual public comments similar to what they do in the zoning hearings as they have just had, he would recommend that they receive a staff report. He stated the Commission has retained the services of a Chattanooga attorney, Scott Bergthold, who is going to make a presentation regarding some legislative history and the rationale and reasoning for the adoption of this ordinance, if it were to pass tonight. He stated he will now call on Mr. Bergthold to speak to the Commission.

Mr. Scott Bergthold stated tonight he is going to try to be brief but yet as comprehensive as necessary to address the negative secondary affects of sexually oriented businesses, which is the legislative rationale for this ordinance. He stated the Supreme Court of the United States has made it clear that a community is not allowed generally to ban sexually oriented businesses but they can regulate the time, the place and the manner of their operation. The basis of that is not opposition, moral or otherwise, to the content of the material or the performances that are offered at these types of establishments but based on the negative secondary effects that are associated with these land uses. He stated that is what the power point presentation is about. He stated they have each received a hand out that is just four pages that summarizes this power point presentation and have what is on the screen behind them as far as slides. They have also received, some weeks ago, a number of negative secondary effect land use studies, crime reports, affidavits, reports of adverse impacts in other communities and a number of cases that document these negative secondary effects, validate, and uphold the local community's reliance on these reports. He stated there are basically five major types of secondary effects information just by categories of information or data. First, and maybe the most familiar, are the land use studies that have been done with varying degrees of rigor from 1972 to 2006. The crime reports include police reports and affidavits documenting criminal activities. The U.S. Supreme Court in their seminal case on this issue, which is called Renton vs. Playtime Theatres, says that a community does not have to wait for the negative secondary effects to occur in their town or their county before they adopt regulations to address the types of impacts that these land uses can gender. In that case in particular, at the Supreme Court a small town of about 30,000 in Renton Washington, had adopted an ordinance based on data compiled in Seattle, which is a very different type of community and much larger metropolitan area. The Supreme Court said that the town of Renton, that did not have any pre-existing businesses, could rely on the experiences in Seattle. In fact, the court upheld the Renton regulation even though it was quite different than the Seattle regulation. The Seattle regulation kind of concentrated all these uses in one part of the downtown, whereas Renton adopted the opposite approach. A dispersal statute which is the most common way that counties and cities deal with this but the court said that they could rely on that and they can rely on what was reported in the judicial opinions about the Seattle material. He stated number four of the antidotal data, would be testimony of citizens documenting run ins with patrons of the adult establishment, reports of litter, all types of adverse impacts on surrounding properties and persons and then media reports. He stated in Atlanta in the last month, there have been two fatal shootings outside of strip clubs in North Atlanta. He stated in one of them three people were shot, and in another one other people were shot and it is just kind of a problem for violence in that context but there is also media reports.

He stated on the next slide they talked about what are these studies and these reports generally discuss and number one would be the adverse impacts on surrounding properties. This extends from adverse impacts on property values, but not necessarily just values. There are certain adverse impacts on surrounding

properties that may not be reflected in property values like the decreased enjoyment of property by neighbors because of noise and things like that even if the property values in the area are going up, there are still a potential for adverse impacts on the surrounding areas. He stated number two would be personal and property crimes and the public safety risks that go along with that. He stated three is the lewdness and public indecency and often illicit sexual activity that congregates or tends to be attracted to sexually oriented adult uses with some of that, there is a potential spread of disease. He stated one case out of Chattanooga, Tennessee, for example, that was reported by the U.S. Court of Appeals for the Sixth Circuit talked about the types of activities in some of these adult entertainment establishments and how they portend the risk or spread of disease. He stated number four would be illicit drug use and trafficking. There is a pretty famous case that is cited in the ordinance. It is out of Warner Robbins, Georgia where they were able to get twenty-three convictions for narcotics trafficking and use in this one adult establishment. He stated this was about three years ago and then number five would be the aesthetic impacts and the blight on the surrounding neighborhood that they have talked about.

He stated on the next slide they lay out the rationale and this is actually in the text of the ordinance in Section 1 B. He stated it is important to lay out the rationale first of all to establish that the purpose of the ordinance is not to prohibit anybody from showing a particular book or displaying a particular film. This is not an obscenity ordinance, it does not do that, rather it is targeted at the adverse secondary effects that are associated with this category of establishments. He stated they are listed there and then right below it in the second paragraph it states that Floyd County has a substantial government interest in regulating to prevent these secondary effects. He stated independent of any comparative analysis between adult and non-adult businesses or sexually oriented and non-sexually oriented businesses. He stated that means that if there are problems with bars, there are problems with bars that may be addressed through liquor regulations. He stated that does not increase or decrease the justification for regulated adult entertainment establishments because they have their own secondary effects that need to be treated a little bit more carefully because of the first amendment issues involved. In Fulton County, Georgia for example, was a case where there were police calls for service that were measured between six nude entertainment clubs and six regular bars. He stated both had alcohol. The difference was one had nude entertainment with the alcohol. There was no comparison of the size of the establishments, the square footage, the number of patrons they receive on a weekend or the sales or any of those types of things. He stated there was just the straight out calls from the police service measuring saying look at the regular bars there were more calls for police service than there were at the adult bars or the nude entertainment bars. Based on that the plaintiffs argued they cannot regulate them because they do not have secondary effects. He stated what this rationale does is it says look, if there are 600 calls for police service at the adult entertainment bars versus 1000 at the regular bars in a given 18 month period in the mid '90's, does not mean that one category of establishments does not deserve regulation. It does not mean that there is no justification for regulating the businesses that had the lower number of calls for service. He stated in other words, the justification, the secondary

effects rationale applies independent of this comparison because they want to address the problem with each category of land use.

Mr. Bergthold stated the Supreme Court has mentioned on a couple of different occasions that data does not have to be scientific or consist of comparative empirical studies. Some of the material in their packets, a number of the studies are empirical. A number of them are comparative, but that is not a requirement. He stated for example, in the City of Erie case, the Supreme Court upheld an ordinance prohibiting nude dancing based on the city's reliance on a previous U.S. Supreme Court upholding this similar law and talking about the secondary effects associated with nude dancing establishments. He stated the standard in the legislative context like this is any evidence reasonably believed to be relevant to the problem that the county is addressing. There are several cases cited and he has already given the explanation for why they do that. The most recent one was a case in which he was involved in and it is called City of Littleton vs. ZJ Gifts. It is a 2004 U.S. Supreme Court case in which their firm did the briefs, but the up shot was a 9-0 decision from the Supreme Court upholding licensing regulations for adult entertainment establishments. He stated as long as they follow the proper procedures, and the procedural protections in this ordinance before them does that, they can require them to obtain a license. He stated there are some relevant Georgia statutes that they may or may not be familiar with dealing with obscene devices, dealing with locations of adult entertainment establishments and those are also for their review. This slide addresses one of the issues that seems to be a hot button issue in litigation and the adult entertainment context and that is regulating adult bookstores that are sexually oriented retail uses. He stated a lot of businesses have said these are different than nude dancing establishments. They do not have the secondary effects and they cannot regulate them. There are several studies mentioned in the ordinance, and there are even more that they received a couple of weeks ago. They also received a summary of those key reports that is about twenty something pages that summarizes the negative secondary effects. But the thread that runs so true in these studies is even though they were done in different geographic areas, some very large cities like Indianapolis, other more suburban communities like Garden Grove, California is that there is a consistency of finding the negative secondary effects associated with adult entertainment in a wide variety of circumstances over a long period time. He stated the Saint Cloud Study was in 1994, the Indianapolis Study was ten years before that and some of the studies in their materials were done in 2003, but the fact that the finding of secondary effects is so robust over these long periods of time supports the legitimacy of the finding. The next slide talks about some more of these same studies, he apologizes, he repeated the Indianapolis Study. What they have in their packet includes #11 and #12 and some exhibits from that real recent Federal Court of Appeals case called World Wide Video vs. Spoken Arcade. It was one of these retail only cases, and before the Planning Commission and before the city council, people testified about the negative impacts of these stores on their neighborhood and their surrounding land uses. They have compiled that same data. It is part of this legislative record. It is the same legislative record that the Federal Court of Appeals said this was a constitutional regulation. He stated number twelve are a couple of expert witness

reports. These are the reports from Garden Grove, California. There is one from Greensboro, North Carolina. There is also one from Kennedale, Texas. He stated they all address the issue of negative secondary effects and the last two address in detail, the retail only adverse impacts.

The last slide deals with the findings of expert witnesses in these areas. Number one, that although the studies are a varying degree of methodological rigor, they do not have to all be scientific the Supreme Court has said. He stated the finding is robust. Number two is that a lot of these opposing opinions in this regard are the industry-funded studies, as they may commonly be referred to, rely upon unreliable data such as calls for police service. He asked why does he say that. Number one, criminologists recognize and understand that calls for police service do not measure crime or the public safety risk associated with crime. They measure police resource allocation. He stated if he gets into a brawl with somebody at a bar and he gets his jaw busted open or broken and he goes to the hospital, he may call 911 after he has been treated and the geo-coding of the 911 calls for police service system is going to treat the hospital as the location of the crime although the hospital had nothing to do with the assault that occurred. He stated these types of errors and biases, and lack of validity for measuring crime with CFS, are well documented in the criminological literature. He stated out of 245 or so articles in the last five years from the five leading criminology journals, less than five of them used calls for police service. He stated he thinks one of them used calls for police service and even then did not use it as a sole measure of crime risk.

He stated number two and this is a little more common sense but it is also an important point, that calls for police service are not produced by many of the vice crimes, or so called victimless crimes, associated with adult entertainment establishments. He stated public indecency, drugs, and prostitution. People do not call 911 for that type of crime. Those types of crimes are usually discovered through very expensive investigations over a long period of time like the one that his client in the City of Louisville did in a number of adult establishments. It took \$70,000 and about eighteen months but they uncovered a pretty robust prostitution ring run in several different establishments in that city and netted about thirty-one arrests for prostitution and so forth. He stated those are some of their flaws in the industry-funded stuff. He stated number three is Floyd County has a substantial government interest in regulating adult businesses to prevent each affect. What does that mean? It means there is a lot of different secondary effects and only one is necessary to justify a particular regulation. He stated an establishment that has peep shows, like the ones in Chattanooga for example, have historically been associated with illicit sexual behavior inside the peep shows. If they do not have peep shows, they may not have illicit behavior inside the peep shows, they may have it in the parking lot, or they may have it elsewhere or they may not have a particular kind of secondary effect but each secondary effect has a sufficient justification for regulations of this type. He stated number four they have talked about the comparative analysis not being necessary. He stated all he wants to address now are the materials that they were given previously. He stated all of them really assume that they have to prove the adult businesses are worse than everything else to justify a regulation. Whether it be a land use regulation,

or a licensing, or an hours of operation, that is not the case. He stated this rationale and the rationale for regulating these establishments does not turn on that. He stated most of them are funded by one or two people in the industry. He stated one is Dr. Linz, who is a researcher in communications, not in crime or statistics, but he is a researcher in communications from the University of California and his opinions have been rejected in at least ten cases as insufficient to cast out on the legislative record. What has been provided for them is the Fulton County Study that he talked to them about. He stated a lot of that is really irrelevant here because there is not a twenty year or fifty year history of adult entertainment establishments and the court in the Fulton County case that was given to them said they can not take data from other jurisdictions when they have got this long history of data in their jurisdictions that allegedly does not support their regulation. He stated obviously that is not the case in Floyd County but even if it were as he mentioned at the outset the calls for police service are inherently flawed and that is all they had in that particular case. They relied solely on calls for police service. He stated then there is a couple of articles and studies. One from San Diego and one from Charlotte, North Carolina. The materials that are in their packets and the conclusion he will ask to be made part of this official presentation and the meetings and the legislative record for this ordinance address those studies in detail. He stated the Charlotte study and the San Diego study show how either the designs were specifically biased in favor of a null finding or worse when the data that was supplied by the government was properly reanalyzed showed a substantively large and statistically significant secondary effect. He stated all this to say that the findings of secondary effects both from the expert studies and that is why they were including the materials given to them by the industries because they wanted all the material to be before this body as they vote on this ordinance to know that there is a concise and straight forward answer to much of this industry funded material but it also pales in consideration to the great weight of authority and research that has been done over the years on this issue.

County Attorney Manning stated he would now suggest to the Chairman that he ask if there is anyone who desires to speak for or against the proposed ordinance that they have in their packet. Mr. Bergthold stated before they launch into that, can he give this to the clerk and it maybe appropriate for a motion and it may not be necessary but he will let the record reflect and the minutes reflect that all the studies that were before the commission including the material from the other side was provided as part of the legislative record. County Attorney Manning stated do that and he thinks because they have opened the Public Hearing that after they close it they will make a motion to adopt this legislative record and these legislative findings. Chairman Mayes asked if there is anyone here that would like to speak in support or opposition of this ordinance.

**Support: Teresa Watson, 6 Vasser Drive,** stated she appreciates their presentation so much. She just wanted to add another secondary effect, at least in regards to Mr. Craton and his businesses. Chairman Mayes asked she is actually speaking against. Ms. Watson stated she is speaking for the ordinance that will be applied retroactively. She stated if they go and research records at the Floyd County

Courthouse, they will find that there are quite a few businesses that have suits that are outstanding against Mr. Craton or his businesses. She stated she thinks his wife is included in some of those, and he will buy goods supposedly to sell or he will buy different artifacts, or whatever to use for his businesses and then he does not pay for the goods. So just the whole sexual thing aside, he is not a good element business wise for their community but she supposes that translates into a secondary effect of sexual businesses or sexually oriented businesses. They also have a situation at Coosa Valley Technical College where they have the business incubator, the small business start up facility, and Mr. Craton was a tenant out there and she is not sure what kind of business he had but he left owing Coosa Valley Tech money. She stated that is state money, that is county money. He still owes Coosa Valley Tech that money and she just does not see how they can allow that kind of businessman to continue to operate if they have the ability to stop it.

**Oppose: Serpentfoot, 324 Forsyth Street, NE,** stated she is opposed to any business licensing in the county and why should they make an exception to sex. She was talking about do the decent thing earlier today. She stated decency, character, morals is not defined by sex or nudity. It is being honest and doing what is honest and right in the way of treating people the way they want to be treated. She stated she knows they tend to look to Christian ideals themselves, and Christians love to supervise everybody else's sex life. That is their main activity, but they cannot legislate morals and she hopes they will resist this thing of appeasing these people that have no self-control. They want them to legislate sex here. She stated Rome, they need to remember, had the only city owned whorehouse in the country at one time. Who put them out of business? The people in this country cannot practice what they preach, they are going to have whatever. She stated the fact is that there was so much free sex here in Floyd County that it put Mable's and Peggy's out of business. That is what put them out of business and they do not have to worry about this either. She stated very few people will be shopping there, it is just people who do not have a normal sex life or opportunity for it, or want it, but there is so much sex on their streets that it is going to put them out of business. They cannot legislate morals.

**Oppose: Paula Graves, 4 Boxwood Court,** stated she has come here today to express her concerns about the sexually oriented business ordinance. The main problem with the proposal is that it is based on what Dr. Daniel Lentz of the University of California called the legal myth of negative secondary effects. She stated study after study has shown that these effects exist only in the fevered imaginations of those who hate the message of erotic speech. Today she will provide for the Board's consideration three studies conducted by Dr. Lentz and his associates on the topic of secondary effects. Unlike the so-called evidence cited in the ordinance these studies were published in scholarly peer reviewed journals. She stated in the first of these papers Dr. Lentz's team assesses the scientific merits of ten commonly cited studies that are used to support negative secondary effects. These include five, which are cited in the text of the proposed law. They are Indianapolis, Indiana, Phoenix, Los Angeles, Austin and Amarillo. She stated the Commission can read the report for itself but here is the sample of the methodological flaws found in these five

studies. In the Indianapolis study, no attempt was made to match study areas on population size, zoning mix and property value. In the Los Angeles study, the city increased police surveillance in the study area thus invalidating the crime statistics. Finally, in the Phoenix study, no measurement of crime levels was taken prior to the existence of adult businesses. She stated if these five studies show serious flaws in method then surely the others and the text of the law are suspect. But even more damning than the quality of the cited studies is the existence of other studies that indicate that there is no cause or relationship between the presence of adult business and negative secondary effects. She stated she provided to the commission with two studies by Dr. Lentz. One done in Charlotte and one done in San Diego. They found no correlation between adult businesses and increased crime. In addition to Dr. Lentz's work, there have been a number of studies done in association with first amendment court cases. Two important cases that the commission should review are Flanagan's Entertainment vs. Fulton County and Peek a Boo Lounge vs. Manatee County. She stated significantly, it was the results of original research that caused the court to rule against the county in both of these cases. In the Fulton County case it was the county's own study that found that there was no evidence of secondary effects and she has provided the commission with copies of the court's findings for both of these cases.

**Oppose: Scott Graves, 4 Boxwood Court**, stated he is in opposition of this wrong headed and potentially costly ordinance. He stated they are not children that they do not understand the real purpose of this law, which is to legislate the sectarian worldview of the fundamentalist Christian majority. Instead of presenting it for what it is, they have clothed this violence against their civil liberties in the absurd legal theory of secondary effects. He stated in fact, the commission is so concerned about having this ordinance exposed for what it is; they have hired a legal consultant. This so-called consultant specializes in writing legislation that tramples free speech in a way that is currently palatable to the courts. But since when has a law standing up in courts been a measure of its justice. He stated even if the consultant is correct and the courts will for now tolerate this form of tierney, history reminds them that the taste of the courts are fickle. There was a time when segregation was enshrined in American juror's prudence. In fact, segregation is an excellent analogy for what the commission is trying to do today. He stated in those days the racist legislatures of the deep south skirted the 13<sup>th</sup> and 14<sup>th</sup> amendments using a similar legal principal. In Plessey vs. Ferguson, Justice Billing Brown said the specific authority should have a large discretion to protect the established uses, customs, and traditions of the people and preserve the public peace and good order. He stated like in Plessey, this proposed law cites the prerogative of the county to protect the people. Just like in Plessey, the law plays lip service to the glitter of the constitution while violating it in spirit. They all know what happened to segregation and it does not take a high priced legal consultant to know why. He stated it was overturned because it was wrong. The legislators who passed it knew it was wrong, the courts that upheld it knew it was wrong and the police that enforced it knew it was wrong. They understand the spirit of the Constitution but they allowed their own narrow prejudices to guide them. He stated like the equality of all men, one of the deepest principals of American culture is that

people have the right to express themselves in any way they see fit regardless of the taste of the majority. If a citizen wants to express themselves with nudity or hear the message that pornography conveys, that is a private matter. He stated he has no right to silence him anymore than he has the right to close his church because he does not like his theology. He stated that is the spirit of the freedom of expression. Despite these simple excuses of secondary effects, the commission knows that this law is wrong. The religious community that supports it knows that its purpose is to stop speech that it finds offensive. He stated the people of the county are not deceived. This law is motivated by an unreasoning and religiously prejudice hatred for the content of erotic speech. It implies that those that do not accept the puritanical worldview of fundamental Christianity are inferior and are not entitled to equal protection under the law. He stated, Commissioners, will you deprive them of their freedom of expression today in the interest of peace and good order and the customs and traditions of the people of Floyd County. He stated will they sell their civil rights to soothe the tender sensibility of their religious community. If you do so, the history will likely judge them no better than Justice Brown. He asked is that how they want to be remembered by their great-grandchildren or do they want to be remembered as a person of principal who stood up for freedom even if that meant losing their seat in the next election. He stated seats on the County Commission are temporary but political courage is something that they can be proud of for the rest of their life.

County Clerk Kathy Arp stated she has a petition that was submitted by Pastor Tony Cargle from the New Antioch Baptist Church. Mr. Cargle could not be here tonight, but he did want her to get into the minutes that they do have petitions that have been signed in opposition to the business. County Attorney Manning stated before they close the Public Record, he would just ask Mr. Bergthold if he has any other comments that he would like to make.

**Rebuttal:** Mr. Bergthold stated they can scour this document. There is no religious anything in it. He stated the closest thing is the protection for a house of worship of any variety or a church of any variety that is protected as their sensitive uses like residences and schools and he thinks public parks. Secondly, he wanted to address some of these materials that were submitted and then expounded upon a little bit more. He stated in particular the Indianapolis study. In that study 75% of the respondents to a national real estate appraisal survey said that an adult business would have a negative impact on their property within a couple of blocks. He stated the Los Angeles study that was denigrated that was supposedly so inherently flawed, in 2002 the United States Supreme Court in the City of Los Angeles vs. Almena Books said that it was a valid study and that the City of Los Angeles could rely on it for their zoning regulations. He stated particularly the crime aspect of the report showed that from 1972 to 1977 there was an increase from eleven adult businesses to eighty-eight adult businesses in the Hollywood section of Los Angeles. He stated during that same time it was correlated with a 377% increase in prostitution as well as an increase in other property and violent crimes. The Supreme Court of the United States said that is valid basis for this type of regulation. He stated he thinks this body could accept that as well. Finally, the study that was done on Phoenix said that in the areas that had

adult businesses there were five times, 506% more sex related crimes in that vicinity than in the control areas that did not have sexually oriented businesses. Even if they rejected the whole study they could just read the reported decision of the United States Court of Appeals for the ninth circuit in L. West Ariel Theatre vs. Winner that the parties stipulated. This is in the text of the opinion, that in eleven adult bookstores over a two-year period in Phoenix there were 783 arrests for sex related crimes so the facts are there. He stated people may want to disagree about the inferences that they draw from the facts but that is the prerogative of this body, in their legislative capacity to see if that is reasonable evidence. He stated the courts have said that it is and he would concur with those. The other comments are addressed in detail in their legislative record or in his private comments.

**Charles Craton, 3128 Horseleg Creek Road**, stated he is here tonight really just to witness this. He stated he had no intentions to speak but the only person who spoke for the ordinances took their time to make it a personal attack on him and he feels like he needs to respond to that for the record. He stated he was born and raised in this town. He lived most of his life growing up here. A product of the educational system in this town. He moved to Atlanta in 1981 and moved back to Rome in 2001. He stated since he has been back he has invested millions of dollars in this community. He has been very active in a number of different businesses in this town. He stated Ms. Watson, who stood up and spoke, represents Ira Levy who is running for political office and who is in a legal dispute with him right now, so it is obvious to him what she is trying to do there. Also, he would like to say that with respect to Coosa Valley Technical College, they just recently made massive payment to them. He stated he still occupies space there and when the dust settles that situation will be cleared up. He stated so just for the record he wants to make sure that the other side of the story is given on his personal behalf. He thanked the Board.

Having no one else wishing to speak, County Attorney Manning suggested they close the Public Hearing. Commissioner Hufstetler made a MOTION to close the Public Hearing. SECOND by Commissioner Bennett. VOTING:

YES	NO
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Commissioner Fricks	
" Hufstetler	
" Jennings	
" Bennett	
Chairman Mayes	

Motion Carried

County Attorney Manning stated before he suggests a proper motion that the Commission may consider he believes Ms. Arp said she may have some corrections. County Clerk Kathy Arp stated she thinks everyone understood, but when she brought up the New Antioch Baptist Church petition she wanted to clarify

that it is in favor of the proposed ordinance. County Attorney Manning stated the Commission may want to consider a motion to have the clerk retain in the record as part of the legislative record the following:

- 1) A copy of the material from the power point presentation made by Mr. Bergthold here today,
- 2) A copy of all the material provided to the clerk and to each commissioner the titles of which are shown on a document that the clerk has entitled Studies Regarding Secondary Effects Associated with Adult Entertainment and that document that shows those titles should also be a part of the record,
- 3) The materials that he thinks someone speaking in opposition referenced which are five ring bound pieces of material, two of which he thinks were studies and two of which were court cases and then one of which is entitled Communication Law and Policy and also the petition that Ms. Arp referenced from Mr. Cargle and the New Antioch Baptist Church just so it will be in the record.

Commissioner Hufstetler made a MOTION to accept the Attorney's recommendation and place these materials into the Public Record. SECOND by Commissioner Bennett. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

County Attorney Manning stated they have before them, members of the Commission, a proposed Ordinance Establishing Licensing Requirements and Regulations for Sexually Oriented Businesses within Floyd County for their consideration. Commissioner Jennings made a MOTION to approve the ordinance as presented in their material here, Ordinance Establishing Licensing Requirements and Regulations for Sexually Oriented Businesses within Floyd County. SECOND by Commissioner Bennett. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett

Chairman Mayes

Motion Carried

**ULDC REVISIONS:**

- 1. REVISE OR DELETE ARTICLE 3 CONCERNING THE LOCATION OF MINI-WAREHOUSES AS AN ADAPTIVE RE-USE OF EXISTING BUILDINGS. (PLANNING COMMISSION RECOMMENDATION: APPROVE [VOTE: 7 – 0 – 1 ABSTAINED]):**

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

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

Chairman Mayes stated the Public Hearing is open and asked Sue Hiller, Planning Department Director, to give a brief presentation. Ms. Hiller stated this ordinance would essentially allow people to take an existing building that is empty, and adaptively reuse it as climate controlled mini-warehouse units by dropping the units in or building them inside the structure. She stated it would require an amendment to Table 3.2 of the ULDC that deals with commercial and industrial uses that would allow it as an adaptive reuse of an existing building, so it would be footnoted that way. She stated they would have an open circle and a diamond in the column for the C-C (Community Commercial), H-C (Heavy Commercial) and L-I (Light Industrial) zoning districts and the diamond indicates that there is a limitation, so in the column for limitations the number 4.1.30. Those limitations shall be all units shall be accessed from the interior of the building. No outdoor storage shall be permitted. Then in Article 6 under the section that describes parking for various uses they would add mini-warehouses. One space for every twenty-five units plus one space for every 200 square feet for every gross floor area devoted to office use. She stated again, this is not intended to open more land up to construction of the typical mini-warehouse units. This is meant to be an adaptive reuse of buildings that are sitting empty such as empty grocery stores, empty discount stores, big box type things. She stated other communities have done this and in some communities, Indianapolis for example, they even do this in historic downtown buildings because the outside of the building does not change. She stated they simply construct these storage units inside and people access their stuff from inside, and it does allow them

to be climate controlled because most of these buildings already have HVAC systems. Ms. Hiller stated the request originated from a particular businessperson who knew that this was done in some other communities and suggested that it might be an appropriate use of buildings in Rome and Floyd County. He actually went through the Rome City Commission to get it on the Planning Commission agenda because there is a property that he may be interested in and it is within the city limits. She stated many of these will be within the city limits but in Floyd County, they have urbanized areas so there may be applications in the county as well. Commissioner Bennett stated this is basically to conform with something the city has already approved, is that right? She stated the city has indeed already approved this amendment for the city. This would approve it for the county if they choose to do so.

Chairman Mayes asked if there was anyone here to speak in support or opposition of this proposal. Seeing none, Commissioner Fricks made a MOTION to close the Public Hearing. SECOND by Commissioner Hufstetler. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

Commissioner Hufstetler made a MOTION to approve the revising or deleting of Article 3 of the ULDC concerning the location of mini-warehouses as an adaptive re-use of existing buildings. SECOND by Commissioner Bennett. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

## **CHAIRMAN'S REPORT:**

### **1. Appointments**

- a. Airport Commission, 4-year term expires June 30, 2006 (currently held by C. F. Callahan).**

- b. Department of Family & Children Services Board, 5-year term expires June 30, 2006 (currently held by Callie Martin).**
- c. Tallatoona CAP Board of Directors, 4-year term expires December 31, 2006 (currently vacant).**

Chairman Mayes stated recommendations for appointments are as follows:

Reappoint C. F. Callahan to the Airport Commission for a 4-year term expiring June 30, 2010.

Appoint Marion Johnson to the Department of Family and Children Services Board for a 5-year term expiring June 30, 2011.

Appoint William Underwood to fill the currently vacant term on the Tallatoona CAP Board of Directors (current term expires December 31, 2006).

Commissioner Fricks made a MOTION to make all appointments at one time. SECOND by Commissioner Hufstetler. VOTING:

YES                      NO

Commissioner Fricks  
                   "       Hufstetler  
                   "       Jennings  
                   "       Bennett  
 Chairman Mayes

Motion Carried

**COMMISSIONER’S REPORT:**

**1. Administrative/Finance Committee – Commissioner Fricks, Chairman**

No Report.

**2. Public Safety Committee – Commissioner Bennett, Chairman**

No Report.

**3. Public Works Committee – Commissioner Mayes, Chairman**

No Report.

**4. Water Committee – Commissioner Jennings, Chairman**

No Report.

**5. Special Committee Reports**

**a. Consolidation Task Force (Fricks/Hufstetler)**

No Report.

**b. Parking Committee (Fricks/Bennett)**

No Report.

**c. SPLOST Committee (Jennings)**

No Report.

**d. Alternative Sentencing Committee (Jennings, Fricks, Mayes)**

No Report.

**e. Fire Overview Committee (Bennett, Mayes)**

No Report.

**CLERK'S REPORT:  
Consent Agenda**

County Clerk Kathy Arp stated there are two items on the Clerk's Consent Agenda, which have been reviewed and are submitted for approval. Commissioner Hufstetler made a MOTION to approve the Clerk's Consent Agenda as presented. SECOND by Commissioner Fricks. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

**1. Tax Refunds.**

- a. Chuck Rogers, 421 Boulder Rd, Kingston, \$18.94
- b. Chuck Rogers, 421 Boulder Rd, Kingston, \$18.45
- c. Lily B. Magness, 1350 Radio Springs Rd, \$38.45
- d. James F. and Betty Whitlock, 3003 Garden Lakes Blvd., \$8.09

- e. Bonney Dyer Kelly, 2077 Blacks Bluff Road, \$27.23
- f. Jimmy Lee Selman, Sr., 1300 Rush Chapel Rd, \$3.65

**2. Malt Beverage Application for Jason Watson, Miller Mtn Foods, Inc., dba Schroeder's New Deli, 3170 Martha Berry Hwy. (Beer – Ownership Change).**

**MANAGER'S REPORT**

**1. MODIFICATION TO AGREEMENT BETWEEN FLOYD COUNTY AND COOSA VALLEY REGIONAL DEVELOPMENT CENTER, AREA AGENCY ON AGING FOR TRANSPORTATION FOR THE ELDERLY. (DEFERRED MAY 9, 2006):**

County Manager Kevin Poe recommended approval of the Modification Agreement for Transportation of the Elderly between Coosa Valley RDC and Floyd County as presented. Commissioner Jennings made a MOTION to approve the Manager's recommendation. SECOND by Commissioner Fricks. VOTING:

YES NO

Commissioner Fricks  
 " Hufstetler  
 " Jennings  
 " Bennett  
 Chairman Mayes

Motion Carried

**2. APPROVE REVISION TO EDUCATIONAL INCENTIVE POLICY:**

County Manager Kevin Poe recommended approval of the proposed revision to the Educational Incentive Pay as outlined in the memo from Larry Johnson, Human Resource Director, to County Manager Poe, date March 10, 2006. Commissioner Bennett made a MOTION to approve the Manager's recommendation. SECOND by Commissioner Fricks. VOTING:

YES NO

Commissioner Fricks  
 " Hufstetler  
 " Jennings  
 " Bennett  
 Chairman Mayes

Motion Carried

**3. DISCUSS UPCOMING EMPLOYEE PAY RAISES:**

No action required.

**4. DISCUSS NEW ACCESS ROAD TO PEPPERELL HIGH SCHOOL:**

No action taken.

**5. APPROVE CHANGE ORDER NO. 2 WITH PINSON'S GENERAL CONTRACTORS FOR WORK AT JUDICIAL CENTER/COURTHOUSE. (2003 SPLOST):**

County Manager Kevin Poe recommended approval of Change Order No. 2 with Pinson's General Contractors for work at the Judicial Center/Courthouse in the amount of \$4,162. Commissioner Bennett made a MOTION to approve the Manager's recommendation to approve Change Order No. 2 with Pinson's General Contractor's as presented.. SECOND by Commissioner Jennings. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

**6. APPROVE AWARD OF BID FOR TIER II LANDFILL GAS EVALUATION AT WALKER MOUNTAIN LANDFILL TO ATLANTIC COAST CONSULTING, INC., IN THE AMOUNT OF \$14,300 AND AUTHORIZE CHAIRMAN TO EXECUTE AGREEMENT FOR CONSULTING SERVICES:**

County Manager Kevin Poe recommended approval of the Agreement between the City of Rome and Floyd County and Atlantic Coast Consulting, Inc. for consulting services regarding Tier II testing of landfill gases at Walker Mountain Landfill in the amount of \$14,300. Commissioner Jennings made a MOTION to approve the Manager's recommendation. SECOND by Commissioner Fricks. VOTING:

YES NO

Commissioner Fricks

" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

**7. AWARD OF BID FOR MAILING MACHINE:**

County Manager Kevin Poe recommended accepting the recommendation from Kathy Arp, County Clerk to award the bid to Pitney Bowes, Inc., for the new mailing machine and authorize revision of the budget to purchase this machine. Commissioner Jennings made a MOTION to approve the Manager's recommendation. SECOND by Commissioner Bennett. VOTING:

	YES	NO
Commissioner Fricks		
" Hufstetler		
" Jennings		
" Bennett		
Chairman Mayes		

Motion Carried

**ATTORNEY'S REPORT:**

No Report.

**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 Fricks		
" Hufstetler		
" Jennings		
" Bennett		
Chairman Mayes		

Motion Carried

**COMMISSIONERS**

**FLOYD COUNTY BOARD OF**

**JOHN MAYES, CHAIRMAN**

**May 23, 2006 -- executive session**

**EXECUTIVE SESSION  
FLOYD COUNTY BOARD OF COMMISSIONERS  
May 23, 2006 5:40 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.

**MOTION TO GO INTO  
EXECUTIVE SESSION:**

Commissioner Hufstetler made a MOTION to go into Executive Session  
for the purpose of discussing an Ordinance Establishing Licensing Requirements and  
Regulations for Sexually Oriented Businesses within Floyd County. SECOND by Commissioner  
Bennett. VOTING:

YES NO

Commissioner Fricks  
" Hufstetler  
" Jennings  
" Bennett  
Chairman Mayes

Motion Carried

**COMMISSIONERS**

**FLOYD COUNTY BOARD OF**

**JOHN MAYES, CHAIRMAN**