

August 12, 2008

**REGULAR MEETING
FLOYD COUNTY BOARD OF COMMISSIONERS
August 12, 2008 2:00 P.M.**

PRESENT: Chairman Jerry Jennings, Commissioners Garry Fricks, Eddie Lumsden, and Chad Whitefield

OTHERS

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

ABSENT: Commissioner John Mayes.

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

INVOCATION: Commissioner Lumsden led the Invocation.

PLEDGE OF

ALLEGIANCE: The Pledge of Allegiance was led by Assistant Manager Williams.

**ADOPTION OF
MINUTES:**

Chairman Jennings asked if the minutes were in order. County Attorney Tommy Manning stated the minutes had been reviewed and were in order. Commissioner Whitefield made a MOTION to adopt the minutes of the Called Meeting of July 22, 2008, Regular Meeting of July 22, 2008, and Called Meeting of July 29, 2008. SECOND by Commissioner Lumsden. VOTING:

YES

NO

Commissioner Fricks
" Lumsden
" Whitefield
Chairman Jennings

Motion Carried

FOCUS ON FLOYD:

ANIMAL CONTROL:

Jason Broome, Animal Control Director, made a power point presentation describing an overview of Animal Control's operations and functions.

PUBLIC INFORMATION OFFICE:

Joy Peterson, Public Information Officer, made a power point presentation describing an overview of the Public Information Office's operations and functions.

FIRST READINGS

(PUBLIC HEARINGS TO BE HELD

AUGUST 26, 2008 AT 6:00 P.M.)

- 1. FILE #82-2008Z, REQUEST REZONING FROM S-R (SUBURBAN RESIDENTIAL) TO D-R (DUPLEX RESIDENTIAL) TO CONSTRUCT DUPLEX DWELLINGS ON PROPERTY LOCATED ON OLD CEDARTOWN HIGHWAY. ZONING MAP I17Z – PARCEL 024. (PLANNING COMMISSION RECOMMENDATION: DENY. [VOTE: 9-0]).**
- 2. FILE #84-2008SUP, REQUEST SPECIAL USE PERMIT FOR MANUFACTURED HOME ON SUBDIVISION LOT IN THE S-R (SUBURBAN RESIDENTIAL) DISTRICT ON PROPERTY LOCATED AT LOT #7A EAST 2ND STREET, LINDALE. ZONING MAP J17X – PARCEL 211A. (PLANNING COMMISSION RECOMMENDATION: APPROVE. [VOTE: 9-0]).**
- 3. FILE #85-2008Z, REQUEST REZONING FROM S-R (SUBURBAN RESIDENTIAL) TO H-C (HEAVY COMMERCIAL) FOR EXISTING COMMERCIAL BOARDING AND BREEDING KENNEL ON PROPERTY LOCATED AT 7609 NEW CALHOUN ROAD. ZONING MAP N09 – PARCEL 110A. (PLANNING COMMISSION RECOMMENDATION: APPROVE WITH CONDITION THAT ONLY A KENNEL WILL BE ON THE PROPERTY. [VOTE: 5-4]).**
- 4. FILE #88-2008SUP, REQUEST SPECIAL USE PERMIT FOR INSTALLATION OF ELECTRIC UTILITY SUBSTATION IN THE A-R (AGRICULTURE RESIDENTIAL) ZONING DISTRICT ON PROPERTY LOCATED ON NEW ROSEDALE ROAD. ZONING MAP J08 – PARCEL 125. (PLANNING COMMISSION RECOMMENDATION: DENY. [VOTE: 6-3]).**
- 5. FILE #89-2008SUP, REQUEST SPECIAL USE PERMIT FOR MANUFACTURED HOME ON SUBDIVISION LOT IN THE S-R (SUBURBAN RESIDENTIAL) DISTRICT ON PROPERTY LOCATED ON EAST 2ND STREET, LINDALE. ZONING MAP J17X – PARCEL 211B. (PLANNING COMMISSION RECOMMENDATION: APPROVE. [VOTE: 6-3]).**

ULDC TEXT AMENDMENTS:

- 1. REVISE OR DELETE ARTICLE 3, 4, 6 AND ARTICLE 8 REGARDING THE DEFINITION OF A RETIREMENT COMMUNITY. (PLANNING COMMISSION RECOMMENDATION: APPROVE WITH CONDITIONS [VOTE: 9-0]).**
- 2. REVISE OR DELETE ARTICLE 3 REGARDING USES PERMITTED BY RIGHT IN THE NOC (NEIGHBORHOOD OFFICE COMMERCIAL) DISTRICT. (PLANNING COMMISSION RECOMMENDATION: APPROVE. [VOTE: 8-1]).**

PUBLIC HEARINGS:

(FIRST READINGS HELD JULY 22, 2008)

- 1. FILE #74-2008Z, REQUEST REZONING FROM H-TR HIGH DENSITY TRADITIONAL RESIDENTIAL TO C-C (COMMUNITY COMMERCIAL) TO MARKET PROPERTY LOCATED AT 3132 MAPLE STREET. ZONING MAP J16X – PARCEL 280. (PLANNING COMMISSION RECOMMENDATION: APPROVE. [VOTE: 8-0]):**

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

YES

NO

Commissioner Fricks

" Lumsden

" Whitefield

Chairman Jennings

Motion Carried

Chairman Jennings reviewed the procedures for Public Hearings. He asked Ms. Sue Hiller, Planning Department Director, to give a brief overview of the request. Ms. Hiller stated the subject property is currently zoned H-TR (High Density Traditional Residential). She stated to the west and to the south is property that is zoned C-C (Community Commercial) and developed with commercial uses that include such things as restaurant, clinic, various retail, and service businesses. She stated to the east is property zoned S-R (Single-family Residential). Some of that is residential use, but one of the lots is developed with a convenient store. She stated the ariel photo shows the convenient store, the bank property, the medical clinic, and the shopping center.

The property was developed as a bank building and parking lot in 1977 according to the tax records. She stated nevertheless in 2001 when the ULDC was adopted it was rezoned to H-TR. At this time, the bank wishes to market the property, and they want the zoning to match the use to make it a more marketable proposition. She stated this would not be a spot-zone. There is C-C zoning on two sides of the property now, and it in fact lies within a commercial node. She stated some of the commercial uses that are permitted by C-C zoning could be more intense than bank operation is, and could operate for longer hours, more days a week than a bank typically does, but again because it is within an established community commercial node continued commercial use would have less impact than it would otherwise. She stated staff recommended approval, and the Planning Commission voted 8 – 0 to recommend approval of this request.

Chairman Jennings asked if there is anyone who wishes to speak in favor or opposition of this rezoning request. Seeing none, Commissioner Whitefield made a MOTION to close the Public Hearing. SECOND by Commissioner Lumsden. VOTING:

YES

NO

Commissioner Fricks

" Lumsden

" Whitefield

Chairman Jennings

Motion Carried

Chairman Jennings stated basically what they are talking about is a piece of property that was misdiagnosed back when zoning was instituted in 1998. He stated it has only come to light in the time that the property has been marketed.

Commissioner Whitefield made a MOTION to approve the rezoning request. SECOND by Commissioner Lumsden. VOTING:

YES

NO

Commissioner Fricks

" Lumsden

" Whitefield

Chairman Jennings

Motion Carried

CHAIRMAN'S REPORT:

1. Appointments:

a. Board of Elections & Registration

Commissioner Whitefield made a MOTION to appoint Lynwood Belvin to fill the unexpired term of Donna Bojo, who has resigned after commendable years of service, to serve on the Board of Elections & Registration, term expiring December 31, 2008 due to the Local Legislation to Stagger Terms passed recently. SECOND by Commissioner Lumsden.

Discussion: Chairman Jennings stated as a point of discussion, they had a number of persons who indicated an interest to serve on this board, and he thinks that is commendable for our community to have so many persons willing to volunteer for a pretty difficult job. He stated Dr. Belvin has considerable computer expertise, and in this computer age, he thinks he is going to be a definite benefit to that board. VOTING:

YES

NO

Commissioner Fricks

" Lumsden

" Whitefield

Chairman Jennings

Motion Carried

2. Consider nominations to fill vacancies on the Hospital Authority of Floyd County.

No action.

COMMISSIONER'S REPORT:

1. Administrative/Finance Committee – Commissioner Whitefield, Chairman

No Report.

2. Public Safety Committee – Commissioner Lumsden, Chairman

No Report.

3. Public Works Committee – Commissioner Mayes, Chairman

No Report.

4. Water Committee – Commissioner Fricks, Chairman

No Report.

5. Judicial Services Committee – Commissioner Jennings, Chairman

No Report.

6. Special Committee Reports

- a. SPLOST Committee (Lumsden)
- b. Work Release Committee (Lumsden, Mayes)
- c. Fire Overview Committee (Lumsden, Whitefield)
- d. Joint Services Committee (Jennings, Whitefield)
- e. Joint Development Oversight Committee (Mayes, Whitefield)
- f. Transportation Committee (Whitefield)
- g. Special Public Safety Committee (Jennings, Lumsden)

No Special Committee Reports.

CLERK’S REPORT:

Consent Agenda

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

YES

NO

Commissioner Fricks

" Lumsden

" Whitefield

Chairman Jennings

Motion Carried

1. Tax Refunds:

- a. Milton Inc., 1675 Alderbrook Road, Atlanta, \$42.62

2. **Temporary Malt Beverage License, (495 Minshew Road, September 20, 2008) Ayet Eddie Hasko, Bella Roma Italian Restaurant, 3403 Martha Berry Highway. (Beer and Wine)**
3. **Malt Beverage Application, Mumtaz Hassain/FIT DBA Citgo Fuel Center, 5646 Alabama Highway. (Ownership Change) (Beer)**
4. **Self-Service Fuel Application, Mumtaz Hassain/FIT DBA Citgo Fuel Center, 5646 Alabama Highway. (Ownership Change)**
5. **Self-Service Fuel Application, Viral Patel, Lindale Food & Tobacco, 3021 Maple Street, Lindale, GA. (New)**
6. **Authorize execution of Hangar Lease Agreement between Robert Stevens and Floyd County Georgia for Hangar #65 at Richard B. Russell Regional Airport.**
7. **Authorize execution of Memorandum of Understanding (MOU) for Transportation Enhancement (TE) Grant Trails Project.**
8. **Approve Change Order #1 to contract between Floyd County and Berry Construction Company Inc., for the new Public Works Facility Project to reduce contract by \$18,489.00. (2006 SPLOST)**
9. **Authorize Execution of Option Agreements for Parcels #K15Y-150 (Plan #54) and K15Y-150A (Plan #60) related to Chulio Road right-of-way. (2003 SPLOST)**

MANAGER'S REPORT:

1. CONSIDER REQUEST FOR SALARY SUPPLEMENT FOR BRAD WALKER, MASTER MECHANIC, PUBLIC WORKS DEPARTMENT:

County Manager stated they have a memo from Michael Skeen, Public Works Director, related to request for special salary stipend for Brad Walker, Master Mechanic. He stated Brad Walker filled in for a number of months for Tommy Eaves, Chief Master Mechanic, who was out with back surgery. He stated unfortunately Mr. Eaves had to end up going out on early retirement, but in these special conditions, they like to give employees a salary stipend if they stepped up and took on additional responsibilities. He stated they are recommending a special salary stipend of \$1,116.16, which is equivalent to a 5% increase of his normal pay.

Commissioner Lumsden made a MOTION to approve the salary supplement for Brad Walker, Master Mechanic, Public Works Department. SECOND by Commissioner Whitefield. VOTING:

YES

NO

Commissioner Fricks
" Lumsden
" Whitefield
Chairman Jennings

Motion Carried

**2. AWARD OF BID FOR HVAC AT FLOYD COUNTY
HEALTH DEPARTMENT:**

Defer.

**3. AWARD OF BID FOR NORTH FLOYD PARK 2006
SPLOST PROJECT:**

County Manager Poe stated this is a 2006 SPLOST project, and it is to award bid for North Floyd Park Community Center. He recommended the bid be awarded to Davidson Southern Company in the amount of \$2,443,000.00.

Commissioner Whitefield made a MOTION to approve the bid for North Floyd Park to Davidson Southern. SECOND by Commissioner Lumsden. VOTING:

YES

NO

Commissioner Fricks
" Lumsden
" Whitefield
Chairman Jennings

Motion Carried

**4. AWARD OF BID FOR SHANNON PARK 2006 SPLOST
PROJECT:**

County Manager Poe stated this award of bid is for Shannon Park Community Center, which is also a 2006 SPLOST project. He recommended awarding the bid to Randy Early Construction. He stated we are going to take the base bid minus alternate #2, and the total amount will be \$821,000.00.

Commissioner Lumsden made a MOTION to award the bid for Shannon Park Community Center to Randy Early Construction. SECOND by Commissioner Whitefield.

Discussion: County Manager Poe stated he should mention on both of these we are going to continue to negotiate with the low bidder to see if there is any additional work that maybe the county can do to help keep the cost down. Chairman Jennings stated we appreciate County Manager Poe getting both of these projects going, and especially when worrying about building, so any way that we can shave off some of that cost we would definitely like to do that. He stated we know it is a tight budget, but it is a good investment in our community. VOTING:

YES

NO

Commissioner Fricks

" Lumsden

" Whitefield

Chairman Jennings

Motion Carried

5. DISCUSS REQUEST FROM WILBUR SMITH ASSOCIATES FOR CHANGE IN THE SCOPE OF SERVICES (SUPPLEMENTAL AGREEMENT NO. 3) IN THE CURRENT CONTRACT FOR ENGINEERING WORK ON THE ARMUCHEE CONNECTOR PROJECT: (2006 SPLOST)

County Manager Poe stated they have a Change in the Scope of Services with Wilbur Smith Associates for engineering work on the Armuchee Connector project. He stated we need to do some additional engineering on the design of the Armuchee Connector project. He recommended approving Supplemental Agreement No.3 at a cost of \$64,912.00.

Commissioner Lumsden made a MOTION to accept the Manager's recommendation as submitted. SECOND by Commissioner Whitefield. VOTING:

YES

NO

Commissioner Fricks

" Lumsden

" Whitefield

Chairman Jennings

Motion Carried

6. AUTHORIZE EXECUTION OF JOINT FUNDING AGREEMENT (JFA) BETWEEN US DEPARTMENT OF INTERIOR AND FLOYD COUNTY FOR CONTINUED MONITORING OF STREAMGAGE STATION NUMBER 02388350 ARMUCHEE CREEK AT OLD DALTON ROAD FOR THE PERIOD JANUARY 1, 2009 TO DECEMBER 31, 2009:

County Manager Poe stated this deals with the monitoring of a streamgage station on Armuchee Creek. He stated going back a couple of years ago, the county decided to pick up funding for the monitoring and maintenance of Armuchee Creek Streamgage Station Number 02388350 at Old Dalton Road. He stated at the time the Department of Interiors was looking at doing some cross cutting measures, and the only way to keep that operation going was if the county committed to funding that. He stated we decided the information that we collect at that point would be beneficial to welfare and planning. He recommended that the county continue to pick up the cost of that, and this would be for another calendar year in the amount of \$13,600.00.

Commissioner Whitefield made a MOTION to Authorize Execution of the Joint Funding Agreement (JFA) between US Department of Interior and Floyd County. SECOND by Commissioner Lumsden. VOTING:

YES

NO

Commissioner Fricks

" Lumsden

" Whitefield

Chairman Jennings

Motion Carried

**7. AUTHORIZE EXECUTION OF CONTRACT OF EMPLOYMENT
BETWEEN FLOYD COUNTY AND BRUCE S. IVEY AS FLOYD
COUNTY ENGINEER:**

County Manager Poe stated this is a proposed Contract of Employment between Floyd County and Bruce S. Ivey as Floyd County Engineer. He stated Matt Denton left us to take a position in Polk County as Assistant County Manager. He stated Michael Skeen has interviewed and is recommending Bruce Ivey, who is a professional engineer to take the job. He stated his compensation will be set at \$58,000.00 per year starting pay, which is slightly less than what they were paying Matt Denton. He stated the terms of the contract are similar to what they have with all other department heads who are at will employees to the county manager. He recommended approval of the contract as submitted.

Commissioner Lumsden made a MOTION to Authorize Execution of Contract of Employment between Floyd County and Bruce S. Ivey as Floyd County Engineer. SECOND by Commissioner Whitefield. VOTING:

YES

NO

Commissioner Fricks

" Lumsden

" Whitefield

Chairman Jennings

Motion Carried

4/4 VOTE REQUIRED TO ADD ITEM # 8 and #9

County Manager Poe requested that items #8 and #9 under the Manager's Report be added to the agenda.

Commissioner Whitefield made a MOTION to add items #8 and #9 under the Manager's Report to the agenda. SECOND by Commissioner Lumsden. VOTING:

YES

NO

Commissioner Fricks

" Lumsden

" Whitefield

Chairman Jennings

Motion Carried

**8. SELECT RIGHT-OF-WAY CONSULTANTS FOR
HIGHWAY 411 AND HUFFAKER ROAD PROJECTS:
(2006 SPLOST)**

County Manager Poe stated this has to deal with the acquisition of right-of-way for Highway 411 and Huffaker Road projects. He stated he received requests for proposals from six different companies to provide those services. He recommended that we split it up between two companies. He recommended the Huffaker Road project go to Buck Cooper Inc. He stated that will be 51 parcels that will be negotiated at a cost of \$1,200.00 per parcel. He recommended the Highway 411 project be awarded to L. David & Associates. He stated there are 18 parcels involved there at a cost of \$715.00 per parcel, plus \$7,500.00 to do the preliminary cost estimate data book that we use as a basis for our negotiations.

Commissioner Whitefield made a MOTION to approve the Manager's recommendations for right-of-way consultants for Highway 411 and Huffaker Road. SECOND by Commissioner Lumsden. VOTING:

YES

NO

Commissioner Fricks

" Lumsden

" Whitefield

Chairman Jennings

Motion Carried

Discussion: County Manager Poe stated he gave an update at the last SPLOST meeting, but all of the right-of-way documents, once he gives these people notice to proceed, they will do their work to determine what the county will be offering for the right-of-way. He stated that should be done in the next few weeks, so in the month of September we will be working on those projects moving as fast as possible to complete those.

**9. FINALIZE CONTRACT WITH R. J. GRIFFIN COMPANY
FOR COURTHOUSE PARKING LOT PROJECT:
(2006 SPLOST)**

County Manager Poe stated in working with R.J. Griffin, we have selected them to be the construction manager for three projects: the parking deck, the Towne Green project, and the courthouse-parking project. He stated we have the parking deck project designed and under way with a guaranteed maximum price determined on that. He stated to keep the project moving, and for us to take advantage of the economy as a scale in dealing with multiple projects, we would like to go ahead and formalize a contract with R.J. Griffin to do the courthouse parking lot project. He stated we pretty much know what the design is going to be like. Of course, it is the design build type project under construction manager contract, so they will go ahead and move forward with completing the design. He stated we will go ahead and put in a budget amount. He stated \$600,000 will be the initial GMP that we will have for that project, but as they finalize the design, hopefully we will be able to whittle that project down a little bit more. We will come back to formalize the GMP when we have 100% of the design documents, but for R.J. Griffin to go ahead and move forward to make their financial commitments, we need to enter into a formal contract with them.

Commissioner Lumsden made a MOTION to finalize the Contract with R.J. Griffin Company for the courthouse parking lot project. SECOND by Commissioner Whitefield. VOTING:

YES

NO

Commissioner Fricks
" Lumsden
" Whitefield
Chairman Jennings

Motion Carried

ATTORNEY'S REPORT:

**1. CONSIDER VOTE TO ENTER INTO CLOSED
SESSION TO DISCUSS PENDING LITIGATION:**

County Attorney Manning recommended the Commission consider going into Closed Session to discuss pending litigation.

Chairman Jennings called for a motion. Commissioner Whitefield made a MOTION to enter into Closed Session. SECOND by Commissioner Lumsden.
VOTING:

YES

NO

Commissioner Fricks

" Lumsden

" Whitefield

Chairman Jennings

Motion Carried

The Board entered into Closed Session at 3:08 p.m. The meeting reconvened at 3:29 p.m.

OTHER BUSINESS:

County Attorney Manning stated they have been given three proposed Settlement Agreements in connection with the pending litigation involving High Five Investments LLC, and the other Plaintiffs. He stated the first Settlement Agreement is entitled Settlement Agreement between Floyd County, High Five Investments LLC, and Shannon Video, Inc. The second Settlement Agreement is between Floyd County and Charles and Susan Crayton. He stated the third is a Settlement Agreement between Floyd County and Ken Gabler and Janet Gabler, all who have been involved in some way or the other in the business High Five Investments LLC and Shannon Video Inc. He stated those are before the Board to consider approving. If they do that, it would resolve and bring to an end the pending litigation that has been ongoing for sometime.

Chairman Jennings stated if he understands this agreement, Entice has agreed to dismiss their appeal within five days of the signing of this. They have agreed to remove Adult Superstore from their signage by October 15, 2008. They have agreed to modify their operations to no longer be an adult bookstore, or adult video store, which basically says that they reduce their explicit media inventory to below the 35% threshold, which is part of the Floyd County Ordinance. County Attorney Manning stated their sexually explicit media; that is correct. Chairman Jennings stated they are constitutionally protected to provide some of these materials, and they are provided in convenient stores around the county. County Attorney Manning stated that is correct by law as we have discussed, we cannot completely ban this type of material, but our ordinance does regulate it. He stated this Settlement Agreement means that they would abide by our ordinance. Chairman Jennings stated that is by December 31, 2008, and they have also agreed not to open another explicit media outlet in Floyd County. He stated he does not know if agreeing is the right word, but Judge Murphy's ruling on

their original suit upheld the constitutionality of our ordinance, so our ordinance has that backing from the judge's ruling. County Attorney Manning stated Judge Murphy's order upheld the state law, and the County Ordinance. He stated Judge Murphy's order was a complete victory for the county, and by entering into this Settlement Agreement, Entice has agreed to dismiss their appeal, which means that the county's victory in that case would remain the law of the case.

Chairman Jennings stated the Commission has stayed the course on this. He stated it has taken some time, and we have spent some money in doing so, but personally, he thinks it was important for them to do so for our community, and other businesses that might choose to operate in our community. He stated he thinks we have an ordinance that passes muster, and will help us in the future with any kind of explicit outlets that attempt to locate here.

Chairman Jennings called for a motion to approve these three Settlement Agreements. Commissioner Whitefield made a MOTION to approve the Settlement Agreements. SECOND by Commissioner Lumsden. VOTING:

YES

NO

Commissioner Fricks

" Lumsden

" Whitefield

Chairman Jennings

Motion Carried

ADJOURNMENT:

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

YES

NO

Commissioner Fricks

" Lumsden

" Whitefield

Chairman Jennings

Motion Carried

**FLOYD COUNTY BOARD OF
COMMISSIONERS**

JERRY JENNINGS, CHAIRMAN