

March 23, 2010

**REGULAR MEETING
FLOYD COUNTY BOARD OF COMMISSIONERS
March 23, 2010 6:00 P.M.**

PRESENT: Chairman Eddie Lumsden, Commissioners Irwin Bagwell, Garry Fricks, John Mayes, and Chad Whitefield.

OTHERS

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

CALL TO

ORDER: Chairman Lumsden called the meeting to order.

INVOCATION: Commissioner Mayes led the Invocation.

PLEDGE OF

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

PUBLIC PARTICIPATION:

Lila Guerra, Rome/Floyd County Complete Census Count Committee Chairperson, presented information regarding the 2010 Census. Ms. Guerra stated there are several locations throughout Rome and Floyd County that have Census representatives available to assist citizens who have questions. Ms. Guerra encouraged everyone to complete the census questionnaire and return it as soon as possible.

ADOPTION OF

MINUTES:

Chairman Lumsden asked County Attorney Tommy Manning if the minutes were in order. Mr. Manning stated the minutes had been reviewed and were in order. Commissioner Bagwell made a MOTION to adopt the minutes of the Regular Meeting of March 09, 2010. SECOND by Commissioner Fricks. VOTING:

YES

NO

Commissioner Bagwell

" Fricks

" Mayes

" Whitefield

Chairman Lumsden

Motion Carried

PROCLAMATIONS:

CONFEDERATE HISTORY AND HERITAGE MONTH:

Commissioner Bagwell presented Mr. Ben Terry with a Proclamation recognizing April as Confederate History and Heritage Month. Mr. Terry encouraged everyone to visit the Rome Area History Museum and the library's Special Collections room where there are tons of books on the history of Floyd County.

(Proclamation/Resolution Book, Page 158-)

RECOGNIZE 2009 RETIREES:

Commissioners recognized the following employees for their years of service to Floyd County:

Virginia F. Thurman, E-911, 36 years, 3 months (September 3, 1973 – December 26, 2009)
Connie Baker, E-911, 11 years, 1 month (February 16, 1998 – March 31, 2009)
Carolyn Langston, Prison, 12 years, 8 months (April 21, 1997 – December 26, 2009)
Hershel B. Johnson, Sheriff's Department, 5 years, 2 months (December 15, 2003 – March 1, 2009)
Edward Proctor, Sheriff's Department, 9 years, 7 months (January 3, 1999 – August 14, 2009)
Kenneth Lackey, Tax Assessor's Office, 28 years, 7 months (May 18, 1981 – December 25, 2009)
Billy Staney, Public Works, 19 years 5 months (July 2, 1990 – December 10, 2009)

**PUBLIC HEARINGS:
(FIRST READINGS HELD
ON MARCH 09, 2010)**

- 1. FILE #31-2010SUP, REQUESTS SPECIAL USE PERMIT FOR LAWN AND GARDEN SERVICE BUSINESS IN SUBURBAN RESIDENTIAL (S-R) ZONING DISTRICT ON PROPERTY LOCATED ON THOMAS ROAD. ZONING MAP L12Y – PARCEL 069. (PLANNING COMMISSION RECOMMENDATION: APPROVE WITH CONDITION THAT SETBACKS, BUFFERS, AND LANDSCAPING ARE IN COMPLIANCE WITH THE ULDC. [VOTE: 10-0]):**

Chairman Lumsden declared the Public Hearing open. He asked Ms. Sue Hiller, Planning Department Director, to give a brief overview of this item. Ms. Hiller

stated the subject property is located on the southwest side of Thomas Road, and is approximately 1.2 acres in size. She stated it is currently developed with a single-family dwelling. She stated a lawn and garden service is allowed in an S-R district with a special use permit. Some of the other uses that are associated with a lawn and garden service, such as tree removal or landscape contractor, are not allowed. She stated such use in a suburban residential zoning district does have to meet the setback, landscaping and buffer requirements of the ULDC. The subdivision is residentially developed, but very sparsely. There is a mix of commercial, residential, and light industrial uses. She stated to the west, along Calhoun Avenue, is a mix of stores and residences. To the east is a power substation, residences, and a vacant warehouse type building. To the north are residences, and a utility company warehouse, and the land to the south is mostly undeveloped. Access to the property is via Thomas Road, which is a local road. She stated services and utilities are available with the exception of sewer. There are no mapped wetlands or floodplains in this area. She stated granting the request would allow encroachment by a commercial use into a residential area, away from the nearby transportation corridor along Calhoun Avenue. However, the encroachment is into a neighborhood where mixed uses have coexisted for some time. She stated the fact that heavy equipment would not be stored at the property, and that nursery stock would not be sold, would keep the intensity of use relatively low. Typically, the use of utilities, such as sewer, are lower for a business like this where the employees tend to be out on site during the day. She stated staff recommendation was to approve the request conditioned on provisions of setbacks, buffers, and landscaping, which would mitigate any impacts on the residential uses. Staff also recommended that those conditions be applied to any new development in the area.

Commissioner Fricks asked Ms. Hiller are those conditions not already in place by the ULDC. Ms. Hiller stated all of those development standards can be varied before the Board of Adjustments unless they are the conditions of the special use permit or the rezoning. She stated that is why the Planning Commission sometimes recommends making a condition in a situation like this where it is really critical to the surrounding residential uses that those developments are entering. Commissioner Fricks asked so there can be no consideration of variances at all. Ms. Hiller stated not for setbacks, buffers, and landscaping if conditioned by the decision of this Board.

Chairman Lumsden asked if there is anyone who wishes to speak in support of or in opposition of this request. Seeing none, he declared the Public Hearing closed, and called for a motion.

Commissioner Mayes made a MOTION to approve the special use permit with the conditions that setbacks, buffers, and landscaping are in compliance with the ULDC, as recommended by the Planning Commission. SECOND by Commissioner Whitefield. VOTING:

YES

NO

Commissioner Bagwell

" Fricks
" Mayes
" Whitefield
Chairman Lumsden

Motion Carried

2. FILE #32-2010Z, REQUESTS REZONING FROM AGRICULTURE RESIDENTIAL (A-R) TO COMMUNITY COMMERCIAL (C-C) FOR MARKETING PURPOSES OF PROPERTY LOCATED ON HIGHWAY 27 SOUTH AT BOOZE MOUNTAIN ROAD. ZONING MAP 117X – PARCELS 044, 049 AND ZONING MAP H17– PARCELS 064A, 064B. (PLANNING COMMISSION RECOMMENDATION: DENY WITHOUT PREJUDICE. [VOTE: 10-0]):

Chairman Lumsden declared the Public Hearing open. He asked Ms. Sue Hiller, Planning Department Director, to give a brief overview of this item. Ms. Hiller stated the subject property consists of four platted lots that total approximately 12 acres. She stated the land is undeveloped. To the north is the right-of-way of the southeast bypass, which is under construction and beyond that the campus of Georgia Highlands College, an industrial park, and some undeveloped land. She stated to the south is a cemetery, residences, and agricultural land. To the west is undeveloped land zoned C-C (Community Commercial). She stated this is an area where services and utilities are available except sewer. She said it should be stipulated that water, although available in the area, would have to be extended by a developer in order to serve all those sites. She stated the property is not within a floodplain and there are no mapped wetlands. Both Highway 27 and the future bypass segment will be classified as arterials. She stated the future land use map shows a mix of uses for this property. This site is within the rural character area, but it is also within the rural commercial corridor along Highway 27. She stated within rural commercial corridors, the comprehensive plan stipulates that the intersection of major roads can become a commercial or mixed-use node that provides those services in more remote rural areas, particularly if access and services and utilities are available. She stated that the location of this property, with the industrial park, the university, and the other commercial land, does have the potential to become a commercial node along that corridor. She stated in the past, staff would caution the Planning Commission about speculative rezoning, but in this case, it is a little different because the comprehensive plan does support some kind of use here other than the agriculture residential use. That provides guidance in making zoning uses or zoning decisions.

She stated there is not a site plan because this request is for marketing the property. The Planning Commission was unable to evaluate the potential for this development to have adverse impacts on adjacent land. She said one of the eight criteria of the ULDC is that the property be evaluated in rezoning decisions to determine the

impact that the proposed development will have on adjacent properties. She stated the Planning Commission unanimously recommended that the request be denied, but without prejudice. That allows the applicant to come back after six months. She stated that is an important distinction, because in a case like this the comprehensive plan appears to support some kind of commercial use in this location. That allows the applicant to firm up some plans and come back with more detail that would allow the Planning Commission to make a better determination of what impacts it might have. She stated both the rural character area, and the rural commercial character area, rely heavily on development standards because those affect how development is going to work and what the impacts are going to be on adjacent properties.

Chairman Lumsden reviewed the Public Hearing procedures, and asked if there is anyone who wishes to speak in favor of or in opposition of this request.

Support: Frank Jones, 315 West 1st Street, stated he is with the law firm Brinson, Askew, Berry. He stated he represents Nick Powers, NPP Properties, LLC. Mr. Powers owns the property located at the southeast interchange corner of Highway 27 and the Rome bypass. He stated the application was filed with the Planning Commission pursuant to Rule 2.22, and complied with all of the requirements of the ULDC. He stated a site plan is not required when the property is requested to be rezoned for marketing purposes pursuant to that rule. The property directly across Highway 27, as Ms. Hiller stated, is already zoned Community Commercial, as well as the property across from Georgia Highlands. He stated the properties there would consist of Hardees, and a convenience store. There are retail stores there at the intersection, and then of course, Floyd Industrial Park. He stated this property consists of approximately 13 plus acres that have already been subdivided into four separate properties. The utilities that serve the properties consist of a twelve-inch water line, which has been brought down and actually services the Floyd County Industrial Park. He stated the water line is brought to the northern most corner of what they see as tract #4. He has provided the Commissioners with ariel photographs that show the property. The photographs disclose and reflect the development of the Rome bypass. He stated tract #4 will actually be at one of the exit ramps, so this is an interchanged piece of property. In 2007, the Georgia Department of Transportation filed a condemnation action against all of the properties that they see listed on the plat that was prepared by Mr. Angel on March 1, 2001. He stated the Georgia Department of Transportation and its appraisers, and he in his representation of the property owners, tried to determine the fair market value of the property. In doing so, there are different methods that are used. He stated they first have to determine the highest and best use of the property. Both the appraisers for the Georgia Department of Transportation, and the appraisers for the landowners at that time, determined that the highest and best use of the property was commercial. He stated all cases were resolved based upon that concept.

He stated the property has road frontage of approximately 1,565 square feet, and it has access directly from Highway 27. The depth of the property ranges from 300 feet to 450 feet. He stated the owner/applicant, whoever that may be in the future, would have to apply for a permit to the Georgia Department of Transportation, as he is sure

accel and decel lanes would be required. However, that would be an issue for the developer. He stated the owner does not wish to present a site plan. He simply wishes to market the property as commercial. He stated there is protection in the ULDC for adjoining landowners. He would refer the Commissioners to Section 2.3 of the ULDC, of which he is sure they are familiar, and that is at any time there is a development proposed, before a permit can be issued, a site plan then has to be presented to the Planning (Department). The Planning Commission has the opportunity to review, and provide if they wish to buffer site plan protection for neighboring properties. At this time, his client only wishes to market the property, not develop it. He stated it is inappropriate to say present a plan for the developer when there are no intentions to develop other than to market the property as commercial, which is its highest and best use. This is obvious from the fact that it is at an interchange on a major highway and the Rome bypass. He stated the property was purchased by Mr. Powers from Mr. Kelly on November 20, 1984. Mr. Kelly had purchased the property from Mr. Cuzzourt. He stated Mr. Cuzzourt's property is directly across Highway 27, and is already zoned commercial. This property has never been part of what was referred to as the Powers property, as Mr. Nick Powers owned it separately.

He stated the failure to rezone the property would have devastating economic effects on Mr. Powers. He said he is sure the county attorney has explained the process of zoning in the many cases that have come before them. He stated in order to interfere with the unfettered right of a property owner to use his property as he desires, there has to be some substantial relationship to the public health, safety, morals, or welfare of the public or the community. In this situation, the property up and down Highway 27 is already commercial. He stated Mr. Powers just wishes to market the property as commercial. The opinion of the appraisers that negotiated the property with the Georgia Department of Transportation opines that the value of the property as Agriculture Residential would be approximately \$10,000 per acre. He stated the value of the property after the rezoning to Community Commercial would be \$50,000 per acre. It is their contention, not to rezone the property would be confiscatory, and would be a violation of the due process and rights of Mr. Powers in that it would amount to a violation of the U.S. and State of Georgia Constitution without just compensation. He stated they realize that there are people here who object to it. They do not wish to put anyone in the middle of a dispute, which may be personal. He stated this is simply, from their standpoint, a request to rezone the property. They realize that sometimes when people occupy positions where they make decisions, there are certain decisions that may not be easy, but in this case, it falls in their lap. He stated they request the application for rezoning to commercial be approved, as it is not only borne out by the evidence of the surrounding property, but by simply common sense that at an interchange they are going to have commercial development. He said he would like to reserve whatever time he may have left for rebuttal if necessary. He thanked the Board.

Opposition: Wilann Powers, 3787 Cedartown Highway, Lindale, stated her husband Nick Powers is deceased. She stated their farm lies past Georgia Highlands College on Highway 27. Their farm has always been agricultural. She stated recently she learned that her son has owned the property, which her husband bought from Mr.

Cuzzourt. She stated this was quite a shock to her as she had always been under the assumption that Mr. Cuzzourt owned the property. It seems that her husband was ill at the time that he purchased the property from Mr. Cuzzourt, and her son obviously was the recipient. Her husband was not in good health and did not tell her about this exchange. She stated she was surprised when she found that he had this property and wanted to turn it commercial. If they know anything about their farm, it is lovely and untouched, but if this should go through it would be an opening next to their family cemetery. She stated that back in the days of the 1880's, families that had the property had their own cemeteries. She has her own cemetery where her husband is buried, and where she hopes to be buried. She stated she has thoughts that this cannot be, because this will enhance nothing on her property. It will really be a detriment. She stated it will adjoin their family cemetery, and the right-of-way will be in front of their house. In other words, she does not want to see this go through. She stated she has loved her farm. Of course, the farm was handed down to her husband from his family, but they have worked hard for it and maintained it. She stated he has been gone for twelve years, but she has hung onto it for that length of time, and hopes to continue being the owner of a farm that is untouched by commercial. She thanked the Board for listening.

Will Young, 3787 Cedartown Highway, Lindale, stated he is the grandson of Wilann Powers, and the nephew of the applicant, Nick Powers. He stated he is here today because he grew up on this farm. People like his grandfather and his uncle said this should always remain in the family because it was a gift to them, and he should stand up to anyone who tries to do something like this. He stated in addition to that, there are other considerations that he feels should be addressed. On the lack of the site plan, they have not addressed the access. He stated he has had conversations with the DOT, and right now, it is unlikely to see an interchange within 1300 and some odd feet from where the off ramp is going to be. Additionally, the current access goes in front of his grandmother's house, the house he grew up in, which is approved on the south adjacent tract, and goes within 10-feet of the cemetery. He stated the graves date all the way back to the 1800's. This land has been in his family for seven generations. He stated he has a plat that was filed back in 2001 by his uncle, Nick Powers. The plat also shows that there were percolation and water table issues with this property. He stated their sole source of drinking water is well water. Without knowing the use or septic plan, it would be hard to say that it would not contaminate the water. He stated if there was a use such as a gas station, hotel, or mobile home park, there is no telling what could go into the soil. Those things should be thought of, and planned before just a blanket of commercial zoning.

He stated Mr. Cuzzourt's property is zoned commercial, but Mr. Cuzzourt even admitted to him that if his house burns right now, he could not rebuild. They have to wait on the DOT to find out if they are going to have access. He stated they feel that there are too many commercial uses that could harm the adjacent property and the family cemetery, which is 10-feet from the access road. That road is the only access his uncle has to this property. He stated no one has an issue with that, but they do not want their driveway being used for commercial purposes. He shared copies of surveys and plats that were filed in the courthouse. He stated one of them shows the proximity to

the cemetery and the residential development that is immediately south of where this is going to be. He agrees that the highest and best use could be commercial. That is definitely where the most money is, but until they know what kind of use, he hopes they would not write a blank check and say they can put whatever they want on the property. He thanked the Board.

Rebuttal: Mr. Jones stated he has provided them with deeds showing the chain of title, or ownership of the property going back to Mr. Cuzzourt. These documents reflect Mr. Cuzzourt selling the property to Mr. Kelley, and then Mr. Kelley selling the property to Mr. Nick Powers III. He stated nowhere in the chain of title was there any deed to Mr. Powers who is deceased. With regard to what seems to be the major issue and complaint, as he has stated, there is protection in Section 2.3 of the ULDC for developments such as this. He stated the section states any person wishing to develop the property for any purpose must (receive approval from the Planning Department), prior to the issuance of a development permit or initiation of any land disturbing or construction activities, and then it goes through the procedures. The application has to be submitted back to the Planning Commission. He stated it goes through all of those steps. If the Planning Commission then determines that buffers are needed, or the use is not appropriate, they have the power to deny that. He stated this protection is already in existence. They would urge the Commissioners to grant the rezoning request to commercial. He thanked the Board for their time.

Chairman Lumsden declared the Public Hearing closed, and called for a motion.

Commissioner Whitefield made a MOTION to approve the rezoning request with the requirement that all buffers be maintained within the scope of the ULDC. SECOND by Commissioner Mayes.

Discussion: Commissioner Fricks asked on the tract identified where the cemetery is located, is lot 396 in between those. (Ms. Hiller's response was inaudible.) Mr. Jones stated the property owner has no right to use the road that they are referring to. He stated their access has to be off Highway 27, so there would be no proximity issue with regard to the cemetery. The closest land involved would be the southernmost lot, and they are not anywhere within the setback or buffer required for a cemetery. He stated any access that the property owner would have would be from Highway 27.

Commissioner Bagwell requested a recess in order for the county attorney to review a point of law. Chairman Lumsden granted a recess.

Chairman Lumsden reconvened from the recess. He stated they have a motion and a second to approve the rezoning request. VOTING:

YES

NO

Commissioner Bagwell

" Fricks
" Mayes
" Whitefield
Chairman Lumsden

Motion Carried

(Copy of Plats, Maps and Deeds presented are on file in Clerk's Office)

CHAIRMAN'S REPORT:

No Report.

COMMISSIONER'S REPORT:

1. Administrative/Finance Committee – Commissioner Whitefield, Chairman

No Report.

2. Public Safety Committee – Commissioner Mayes, Chairman

No Report.

3. Public Works Committee – Commissioner Bagwell, Chairman

No Report.

4. Water Committee – Commissioner Fricks, Chairman

No Report.

5. Judicial Services Committee (CJIS) – Chairman Lumsden, Chairman

No Report.

6. Special Committee Reports

a. Fire Overview Committee

b. Joint Services Committee

c. Joint Development Oversight Committee

d. Joint Solid Waste Oversight Committee

There were no Special Committee reports.

CLERK'S REPORT:

Consent Agenda

4/5 Vote Required to Add Items #2, #3, and #4

County Clerk Kathy Arp stated there is one item on the Clerk's Consent Agenda, and a request for a 4/5 vote to add items #2, #3, and #4. Commissioner Whitefield made a MOTION to add these items to the agenda. SECOND by Commissioner Mayes. VOTING:

YES

NO

Commissioner Bagwell

" Fricks

" Mayes

" Whitefield

Chairman Lumsden

Motion Carried

County Clerk

Kathy Arp

stated there are four items on the Clerk's Consent Agenda that have been reviewed, and are submitted for approval. Commissioner Bagwell made a MOTION to approve the Clerk's Consent Agenda as presented. SECOND by Commissioner Fricks. VOTING:

YES

NO

Commissioner Bagwell

" Fricks

" Mayes

" Whitefield

Chairman Lumsden

Motion Carried

1. Tax Refunds:

- a. Amy Christine Swindle, 1755 Old River Road SW, \$89.10
- b. American Tire Distributors, Inc., P.O. Box 3145, Huntersville, NC, \$54.03

2. Anchor Institutions Letter for Appalachian Valley Fiber Network Grant Project.

3. **Resolution and Option Agreement for Purchase of Property Adjacent to Airport.**
4. **Authorize Chairman to Execute Partner Sign-up for Clean Air Campaign.**

MANAGER'S REPORT:

1. AUTHORIZE EXECUTION OF SECOND AMENDMENT TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN FLOYD COUNTY AND THE SECRETARY OF STATE RELATED TO REPAIR/DISPOSAL OF VOTING MACHINES:

County Manager Poe recommended authorizing execution of this Amendment to the Intergovernmental Agreement between Floyd County and the Secretary of State related to repair/disposal of voting machines. He stated the agreement has already been signed by the Secretary of State.

Commissioner Whitefield made a MOTION to Authorize Execution of the Second Amendment to the Intergovernmental Agreement between Floyd County and the Secretary of State. SECOND by Commissioner Mayes. VOTING:

YES

NO

Commissioner Bagwell

" Fricks

" Mayes

" Whitefield

Chairman Lumsden

Motion Carried

2. CONSIDER RECOMMENDATION FROM ROME-FLOYD PARKS & RECREATION FOR LEASE OF TWO (2) MOWERS FOR ROME-FLOYD PARKS & RECREATION AUTHORITY:

County Manager Poe stated the Rome-Floyd Parks & Recreation Authority recently took sealed bids for the lease of two (2) 2010 John Deere 7700 Fairway Mowers. He recommended accepting the Parks & Recreation Authority recommendation to approve the lease of the mowers as presented. He said the annual payment will be \$16,823.98, which is actually \$891.62 less than the amount for the mowers leased in the previous year.

Commissioner Bagwell made a MOTION to approve the Manager's recommendation as presented. SECOND by Commissioner Fricks. VOTING:

YES

NO

Commissioner Bagwell

" Fricks

" Mayes

" Whitefield

Chairman Lumsden

Motion Carried

**3. DISCUSS QUIT CLAIM OF PROPERTY
LOCATED AT 103 EUCLID AVENUE:**

County Manager Poe stated they have a Quit Claim Deed for partial release related to a piece of property at 103 Euclid Avenue. He stated this is to clear up a situation where this piece of property was initially supposed to be set aside as two different tracts of property, with two Habitat for Humanity houses being built on them. They have asked them approve this Quit Claim Deed for partial release. He stated both of these houses were built by Habitat for Humanity, and are part of their Down Payment Assistance Program. He recommended approval of the Quit Claim Deed as submitted.

Commissioner Whitefield made a MOTION to Approve the Quit Claim Deed per the Manager's recommendation. SECOND by Commissioner Bagwell. VOTING:

YES

NO

Commissioner Bagwell

" Fricks

" Mayes

" Whitefield

Chairman Lumsden

Motion Carried

ATTORNEY'S REPORT:

No Report.

OTHER BUSINESS:

Chairman Lumsden recognized Leadership Rome participants in attendance.

ADJOURNMENT:

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

YES

NO

Commissioner Bagwell

" Fricks

" Mayes

" Whitefield

Chairman Lumsden

Motion Carried

**FLOYD COUNTY BOARD OF
COMMISSIONERS**

EDDIE LUMSDEN, CHAIRMAN