

January 14, 2014

**REGULAR MEETING
FLOYD COUNTY BOARD OF COMMISSIONERS
January 14, 2014 2:00 P.M.**

PRESENT: Commissioners Irwin Bagwell, Garry Fricks, Larry Maxey, John Mayes, and Rhonda Wallace.

OTHERS

PRESENT: County Manager Jamie McCord, County Attorney Tommy Manning, Assistant County Manager Noah Simon, and County Clerk Kathy Arp.

CALL TO

ORDER: County Attorney Manning called the meeting to order.

INVOCATION: Commissioner Maxey led the Invocation.

PLEDGE OF

ALLEGIANCE: Commissioner Fricks led the Pledge of Allegiance.

APPOINTMENT OF CHAIRMAN

AND VICE-CHAIRMAN:

County Attorney Manning stated the Commission has before them the issue of the appointment of a Chairman and a Vice-Chairman for the Floyd County Board of Commissioners. He called for a motion to appoint a Chairman.

Commissioner Fricks made a MOTION to appoint Commissioner Irwin Bagwell as Chairman. SECOND by Commissioner Maxey.

Commissioner Wallace made a MOTION to amend the pending motion, so as to appoint Commissioner John Mayes as Chairman. She stated Commissioner Mayes has been on the Board a long time, and has shown great leadership. SECOND by Commissioner Mayes.

Commissioner Fricks asked if an amendment like that could be made to a motion. County Attorney Manning stated a motion to amend a pending motion can be made, but it has to be seconded, and then it would have to be approved for the amendment to be effective. He stated they have a motion to amend and a second to amend the original motion. He stated the amended motion is to nominate Commissioner John Mayes as Chairman. He clarified that the vote being taken would not be to appoint John Mayes as Chairman. He stated the vote would be to amend the original motion with the substitution language. VOTING on Amending the Original Motion:

YES

NO

Commissioner
Bagwell

" Fricks
" Maxey

Commissioner Mayes
" Wallace

Motion Failed

County Attorney Manning asked if there is any further discussion regarding the original MOTION by Commissioner Fricks and SECOND by Commissioner Maxey to appoint Commissioner Irwin Bagwell as Chairman.

Commissioner Mayes stated that he appreciates Commissioner Wallace's confidence in him. He stated they had a good year last year, but he feels that they should go with other leadership. He stated he believes that they should have a leader in the Chairman's position that would lead without being a micro-manager, which is his reason behind not supporting Commissioner Irwin Bagwell as Chairman in 2014. VOTING on Original Motion:

YES

NO

Commissioner Bagwell
" Fricks
" Maxey

Commissioner Mayes
"
Wallace

Motion Carried

County Attorney Manning turned the meeting over to Chairman Bagwell. Chairman Bagwell made a MOTION to appoint Commissioner Maxey as Vice-Chairman. SECOND by Commissioner Fricks. VOTING:

YES

NO

Commissioner Fricks
" Maxey

Commissioner Mayes

Commissioner Wallace
Chairman Bagwell

Motion Carried

**ADOPTION OF
MINUTES:**

Chairman Bagwell asked County Attorney Tommy Manning if the minutes were in order. Mr. Manning stated the minutes had been reviewed and were in order. Commissioner Maxey made a MOTION to adopt the minutes of the Caucus and Regular Meeting of December 10, 2013 and Called Meeting of December 13, 2013. SECOND by Commissioner Fricks. VOTING:

YES

NO

Commissioner Fricks
" Maxey
" Mayes
" Wallace
Chairman Bagwell

Motion Carried

PROCLAMATIONS:

**ENTER INTO MINUTES
ASSOCIATION COUNTY
COMMISSIONERS OF GEORGIA
(ACCG) CENTENNIAL OCCASION:**

Chairman Bagwell stated this Proclamation recognizes the Association County Commissioners of Georgia (ACCG) on the occasion its centennial anniversary. Commissioner Wallace read the Proclamation into the minutes.

(Proclamation/Resolution Book, Page 38)

RESOLUTIONS:

**1. ADOPT RESOLUTION REGARDING
MATTERS RELATED TO THE
COLLECTION OF TAXES:**

Chairman Bagwell called for a motion. Commissioner Maxey made a MOTION to Adopt the Resolution regarding Matters Related to the Collection of Taxes for the year 2014. SECOND by Commissioner Wallace. VOTING:

YES

NO

Commissioner Fricks

" Maxey
" Mayes
" Wallace
Chairman Bagwell

Motion Carried

2. HIRING RESOLUTIONS:

a. COUNTY MANAGER

Chairman Bagwell called for a motion. Commissioner Mayes made a MOTION to Adopt the Hiring Resolution appointing Jamie McCord as Floyd County Manager for the year 2014. SECOND by Commissioner Wallace. VOTING:

	YES	NO
Commissioner Fricks		
" Maxey		
" Mayes		
" Wallace		
Chairman Bagwell		

Motion Carried

b. COUNTY AUDITOR

Chairman Bagwell called for a motion. Commissioner Wallace made a MOTION to Adopt the Hiring Resolution appointing Mauldin & Jenkins, LLC, as County Auditor for the year 2014. SECOND by Commissioner Maxey. VOTING:

	YES	NO
Commissioner Fricks		
" Maxey		
" Mayes		
" Wallace		
Chairman Bagwell		

Motion Carried

**3. ADOPT RESOLUTION REGARDING
DESIGNATION OF DEPOSITORIES
OF FLOYD COUNTY:**

Chairman Bagwell called for a motion. Commissioner Maxey made a MOTION to Adopt the Resolution Designating the Depositories of Floyd County for the year 2014. SECOND by Mayes. VOTING:

YES

NO

Commissioner Fricks
" Maxey
" Mayes
" Wallace
Chairman Bagwell

Motion Carried

**FIRST READING:
(PUBLIC HEARING TO BE HELD
JANUARY 28, 2014 AT 6:00 P.M.)**

REQUESTS FOR REZONING & SPECIAL USE PERMITS

- 1. FILE #02-2014 SUP. REQUESTS REZONING FROM SUBURBAN RESIDENTIAL (S-R) TO AGRICULTURAL RESIDENTIAL (A-R) WITH A SPECIAL USE PERMIT FOR KEEPING PIGS ON PROPERTY LOCATED ON GENTRY ROAD. TAX MAP M13, PARCEL 196. (PLANNING COMMISSION RECOMMENDATION: APPROVE CONDITIONED ON KEEPING ENCLOSURES AND STRUCTURE FOR LIVESTOCK A MINIMUM OF 50' FROM PROPERTY LINES AND ON THE NUMBER AND TYPE OF ANIMALS KEPT ON THE PROPERTY NOT EXCEEDING 12 CHICKENS, 2 COWS, 2 PIGS, AND 1 GOAT. [VOTE: 7-0].)**

Chairman Bagwell stated the Public Hearings on this item would be held on January 28, 2014 at 6:00 p.m.

**PUBLIC HEARING:
(FIRST READING HELD
DECEMBER 10, 2013)**

Chairman Bagwell reviewed the procedures for Public Hearings.

REQUESTS FOR REZONING & SPECIAL USE PERMITS

- 1. FILE #121-2013SUP. REQUEST SPECIAL USE**

**PERMIT TO CONSTRUCT A COMMUNICATION
(CELLULAR) TOWER IN A SUBURBAN
RESIDENTIAL (S-R) ZONE ON PROPERTY
LOCATED ON CHRISTIAN WAY.
TAX MAP H17, PARCELS 075A AND 080.
(PLANNING COMMISSION RECOMMENDATION:
DENY WITHOUT PREJUDICE. [VOTE: 8-0].)**

Chairman Bagwell asked Ms. Sue Hiller, Planning Department Director, to provide an overview of the request for a special use permit. Ms. Hiller stated that the subject property is actually three lots. She stated the request communicates that, if approved, the cell tower would be located roughly in the middle of one of the three lots shown. She stated that mostly suburban residential zoning surrounds the property, with some multi-family residential. She stated there is a former abandoned manufactured home park, and a subdivision to the north, but most of the land that is in the area is rural and residential. She stated that the site plan shows that the tower location is over 200 feet from the rear property line, approximately 168 feet from the front property line, and well over 300 feet in both directions from the side property lines. She stated there was a great deal of discussion on this at the Planning Commission meeting. She believes that the Planning Commissioners felt that they did not have enough information concerning the need for the tower in order to approve it. Therefore, the vote was to recommend denial without prejudice so that the applicant would have the opportunity to come back within six months.

Chairman Bagwell declared the Public Hearing open, and asked if there is anyone to speak in support or opposition.

Support: Bryan Johnson, 711 Broad Street, stated he is an attorney with Cox, Byington, Brumlow & Twyman, LLP. He stated Matt Bates, a representative from Wireless Properties Towers, LLC, is with him today. He stated that Wireless Properties Towers, LLC, is the applicant seeking the special use permit for the proposed tower. Mr. Johnson stated that they are going to divide their time, and hopefully save some time for rebuttal. He stated he would like to briefly address some of the concerns that the Planning Commission had when they voted against the request. He stated that in his opinion, they got into some emotional concerns at the Planning Commission meeting that are outside the role that the Planning Commission and County Commission play in deciding whether or not to grant the requested special use permit. He stated that certainly the Board is familiar with their ordinances and requirements. He stated that the only requirement specific to a cellular tower is the setback requirement that he believes Mr. Bates and his company meet. He stated he would like to remind the Board that in addition to their local approval, the special use permit, and the telecom permit that this body has to grant, they (*the applicant*) also have to comply with the National Environmental Policy Act, the National Historic Preservation Act, the Federal Aviation Administration (FAA), and the Federal Communications Commission (FCC). He stated it may not be within this Board's grasp for them to address historic concerns and environmental concerns. He stated there might be other

checks and balances on those concerns. Furthermore, he would like to remind the Board that all of their actions here today are subject to the Federal Telecommunications Act of 1996. He stated President Clinton signed that act into law in the 1990s when they deregulated some of the long distance carriers and cell phones first started showing up, which was meant to encourage competition to keep cellular rates low for everyone. He stated there are two things in that act that they should keep in mind. He stated in SEC. 253. [47 U.S.C. 253], the act very clearly states “no state or local statute or regulation, or other state or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service.” He stated it goes on to say that, while the state can impose on a competitively neutral basis, requirements necessary to preserve and advance universal service, to protect public safety and welfare, it has to be done to ensure the quality of telecommunication services, and safeguard the rights of consumers.

He stated getting to the real meat in this act, which is located in SEC. 332 [47 U.S.C. 332], federal law says ‘except as provided in this paragraph, nothing in this act shall limit or affect the authority of a state or local government or instrumentality thereof over decisions regarding the placement, construction, and modification of personal wireless service facilities.’ He stated by definition, Wireless Properties is a personal wireless service facility. He stated the first part of the act says that the Board can legislate over it, but then it goes on to pretty much give them a ton of exceptions into what they can do. He stated the first exception is that the Board cannot unreasonably discriminate among providers of functionally equivalent services. He stated if there are other companies providing services for a certain area, then they have to let all of the providers have the ability to provide service to that area. He stated the second exception, the federal government says that they cannot prohibit, nor have the effect of prohibiting, the provision of personal wireless services. He stated if a certain service provider does not have appropriate bandwidth, or does not have appropriate service in a certain area, this Board, by federal law, could not restrict someone from coming in and providing that service. He stated it has to be for all service providers because they are nondiscriminatory. He stated the law also says that the Board would have to make a decision on their request in a reasonable amount of time. He stated the Federal Communications Commission (FCC) entered a decision that says a decision has to be made on a new tower installation within 150 days of seeking approval. He stated he understands that the Planning Commission wanted them to come back in six months, but they really cannot do that. He stated the federal law goes on to say in that section that the Board cannot consider environmental and health effects. He stated if the tower is going to comply with the Federal Communications Commission (FCC) environmental and health requirements, then the Board cannot impose additional requirements. He stated it also states that if the Board is going to deny the request, it has to be in writing, and they have to provide the applicant with substantial evidence in a written record on why they were denied. He stated if they do not abide by that, the applicant has the option of taking them to federal court within thirty days. He stated when this law was passed, it was interesting that the first case was BellSouth Mobility, Inc. against Gwinnett County. He stated the case was decided in the northern district of Georgia. He stated the ordinance was very similar to what they have here. He stated

BellSouth Mobility applied for a tall structure permit in Gwinnett County. He stated the ordinance very broadly stated that they could talk about the welfare of the community, aesthetic concerns, and so on like that. He stated a man by the name of Mr. Nelson spoke on behalf of that community, he raised all types of emotional concerns, which are dear to all of their hearts, and the Commission decided to deny the permit. The Gwinnett County Commission ended up in federal court with the judge telling them that they cannot deny the permit. He stated the court issued a mandamus that directed the Commission to grant the permit. He stated that Mr. Bates would like to address a few technical things about why this project would be good for the community. He stated hopefully that would help outweigh some of the emotional concerns that all of them have about towers being erected around their community. He asked the Board to please keep in mind, federal law does put some healthy restrictions on what they can and cannot do.

Mr. Matt Bates, 707 Republic Center, Chattanooga, TN, stated he is the Senior Vice-President of Wireless Properties. He thanked the Board for their time. He stated that he understands that these projects are often controversial, and often difficult to understand. He stated he would like to offer a simple explanation of what their plans are for the project, and how they are attempting to be conscientious to the community. He stated they are proposing a 180-foot monopole located at 65 Christian Way. He stated 180 feet in regards to tower heights and structures are probably, in relation to many of the towers that are around the county, on the smaller end of the scope as far as how tall the structure is going to be. He stated the tower would not have any guide wires to support it, or artificial light during the day or night. He stated the tower would be designed with break points so that if there were a catastrophic tornado or event, it would crumble and fall almost entirely within their compound. He stated not only do they meet the setbacks of the property, they have taken an additional step to make sure that if there was a problem, the tower could fall upon itself and not be a danger to the property owner or any surrounding owners. He stated they have proposed landscaping to help try to buffer the views to any of the equipment around the base of the tower. He stated that on recommendations and discussions with Ms. Hiller, even at the last meeting, there was a question brought up if they would consider moving some of that landscaping closer to the property lines to border some of the residences that may be closer. He stated they are willing to do some of that as a condition upon an approval to help minimize the impact.

He stated the reason for this tower, and what they are seeing with these wireless networks, is due to the increase of devices, and the use of those devices across the nation. He stated these wireless networks were originally designed for one or two people of a household to have a phone. He stated that as they are all aware, almost everyone in a household has their own wireless devices now. He stated these days, even though it was designed for each person to have a device, most people have two devices. He stated they may have a tablet, wireless computer, and any other devices that drain the capacity of the existing networks. He stated that is just going to continue. He stated we are seeing colleges and communities move away from traditional books in the schools. He stated they are moving to tablets and wireless devices. He stated that

machine communication is increasing. He stated there is going to be communication from wireless phones to vehicles, to home thermostats, to cut the lights on and off at home, and so on. Everything is migrating toward wireless. He stated wired line systems are on the decline. People are doing away with their home phones. He stated that as these devices are used in the home, it creates the need to move the cell sites closer to population. He stated these cell tower sites are not created from the need of the wireless companies, but from the need of the people using those devices. He stated the benefit of this tower site, although there are always aesthetic concerns, would increase options and choices for the community. He stated it would increase reliability of service, and the additional income would be a tax revenue for the county. He stated the project would create jobs for the local contractors that they would use to build the site. He stated as Georgia Highlands expands and grows, the service there could be reliable, but with 18,000 cars a day in a growing community, these cell sites drive the need for themselves. He stated again, their understanding is that they meet all of the setbacks and requirements for the special use permits. He stated he hopes that they have enough time remaining for rebuttal.

Opposition: Glenda Almand, 7 College View Drive, stated if the Board would note on the information that they received, there is only one entrance to College Park Drive and College View Drive. She stated those are adjacent with cul-de-sacs on either end. She stated if they look at the map, they will find that the proposed tower would be surrounded by houses except on one side, which would be the pasture at the lower end. She stated they have concerns about whether this tower is being built for speculation purposes, or if it is being built because there is an established need. She stated there are seven current towers in position within 3.59 miles of the proposed tower. She stated there is still plenty of room for co-locators to go on any one of those seven poles. She stated that in fact, one of them is so advanced that there is a laser attached. She stated some of these towers within a very short distance of Georgia Highlands currently meet their needs, and probably will progressively for some time. She stated there is presently another tower being built off the Cedartown Highway, which would still fall within the four-mile radius. She stated the tower would be quite tall because it will be above some forest area. She stated they feel that with these significant towers already present, what would be the established need for a tower to go into their community. She stated their community feels that they are one for all and all for one. She stated they are also concerned that the value of their properties would decrease. She stated that they live in a community of nineteen homes. She stated half of those nineteen households work, and the other half either are retired, or disabled, which explains why some are not present today. She stated if they compare the proximity of the tower to Christian Way versus the proximity of the tower to College Park Drive, they would find that the tower access is closer to College Park Drive than to Christian Way. She stated there is one home with a pool in the backyard, and the proposed tower would be approximately 70 yards from their pool. She stated the community is located on a vein line from Stone Mountain. She stated they were afraid that they were going to have to blast in order to get eight foot down to build their pool. She stated they have concerns that there may be a need for blasting in the area to get the depth necessary for this tower. She stated they are hoping that the Board would

consider the needs of the community as well as the needs of the company wanting to build. She stated there are now seven registered towers with an additional tower being built, and five other unregistered towers, so they feel that there is no established need to build one in their community.

Jim Birdsong, 66 Samuel Mountain Road, stated his home is in direct proximity of the proposed tower. He stated he has lived there for thirty-five years, since 1978. He stated he sees that the opposition has already lawyered up, read the Board the riot act on what is legal, and what they can and cannot do. He stated he is not going to be ridden roughshod by any law, or anything else. He stated they have a historic property. He stated this was brought up before, and he is going to give them some information. He stated the Board has his letters, including the letters to Mr. Bates. He stated he has a new letter from the Georgia Trust for Historic Preservation Society that he would like to give them as well. He stated there is nothing emotional about this. He stated this is history dated back to 1833. He thanked the Board for allowing them to speak, but ten minutes is not an ample amount of time to defend a property that he has called home for thirty-five years. He stated Floyd County has a vested interest in this too, whether they realize it or not. He stated they just spent over \$20 million on the 911 system. He stated he hopes that somebody will watch this, and not let towers be put up on every corner, much less every residence. He stated he is not a radio frequency engineer, but sooner or later it would conflict with the 911 system that they are all so proud of, and that is working so well. He stated their vested interest is not only in this location, but also in other locations throughout the county. He stated we also have a vested interest in property values. He stated the property that he lives on is a farm. He would be looking right at the tower. He stated there is a historic house there that his mother and father restored, along with a cemetery. He stated his family is buried there, as well as the Ford family who erected this house in 1833. He stated they would roll over in their graves if the Board allows this to happen. He stated he does not mean to be emotional, as they say, he is just mad. He stated home values and property values are going to drop. He stated no one would want to buy a house right next to a cell tower. He stated a rock quarry and an asphalt plant have moved in on them that they were against, and did not want. He stated now rather than breathing in fresh air when it blows from west to east, they are breathing in stinking asphalt. He stated the Board has the pictures he provided, and the book that his dad wrote on this particular property. He stated this is no joke. He stated there is nothing emotional about this. He does not take this history lightly. He stated the law that they are referring to states that there has to be a specific need. He stated they have to prove that there are dead spots. He stated there are plenty of towers with plenty of available locations. He stated if anyone has looked at the company's website, they would see that they take pride in setting up in lower residential areas. He stated they do that because they do not want to pony up. He stated let them pony up, pick out a spot at the industrial park, erect their tower, pay their property taxes, take their full liability, and carry their own burden. He stated they have no right to set up anywhere around their community in a historic residential neighborhood. He stated he is speaking for the Ford's that built the house, the Gibbon's, his dad, and everyone in the cemetery marked and unmarked. He stated that they should have some respect. He stated it is not only a historic site, but also a historic cemetery.

He stated Autumn Dubois with the Department of Natural Resources would be coming out tomorrow to photograph the house and the cemetery. They have the other letter from the Georgia Historic Trust. He stated they not deserve this. (*Documents presented are on file in the Clerk's Office.*)

Carol Harrelson, 17 College View Drive, stated when they attended that Planning Commission meeting, one of the things that was brought up was the number of devices that any one member may have in their home, and that there is no established need for the college and for the people on 411. She stated they exceed technology usage in her home. She stated they had eight cell phones, three gaming systems, five iPads, and two to three laptops running at one time during Christmas. She stated they would have three to four teenagers in the house at one time streaming games, watching YouTube, and talking to friends all at the same time. She stated not one time in the seven years that they have lived there have they lost any usage, dropped any calls, or not been able to access the internet. She stated they have not seen the data, or the facts to prove that there is a need for another tower when they have so many others nearby.

Brent Erb, 13 College View Drive, stated he is a neighbor there. He stated they just moved in a couple of weeks ago. He stated he appreciates his neighbors' passion about this project. He stated he would like to express his opposition, and his wife's opposition to this tower, for the record.

Rebuttal: Mr. Johnson stated he would just like to remind the Commission that growth is painful. He stated it can always be painful, which is evidenced by the people here speaking in opposition. He stated when they talk about needs, this Board is supposed to recognize and anticipate growth, as well as additional needs. He stated they do not wait until people build houses to run water and sewer to them. They run the water and sewer, and then build the house. He stated technology is increasing expeditiously. He stated that every time we turn around there are new devices. He stated he understands that people today say that they are not having any issues with the devices that they have, but this is the thing to remember, federal law states that they cannot discriminate between service providers.

Chairman Bagwell declared the Public Hearing closed.

Discussion: Commissioner Maxey asked Mr. Bates if the proposed tower meets the fall protection requirements of the Unified Land Development Code (ULDC) in that it would fall on the land that the wireless company owns. Mr. Bates stated that they have leased a 100-foot-by-100-foot square area. He stated the tower would have a 150-foot fall radius, and would be in the middle of that area. He stated that in addition to that, the property is fairly large. He stated it would be almost 200-feet to each of the property lines. He stated he believes one of the property lines would be 185 feet or so. Commissioner Maxey asked if they have ingress and egress ability from a paved county road. Mr. Bates stated yes, their ingress and egress would be off Christian Way, which may also be known as Booze Mountain Road. He stated they accessed the property

from Christian Way so they would not actually be going through the subdivision with any vehicles.

Commissioner Wallace asked County Attorney Manning to explain to the Commission, or give some guidance to the Commission on what their role would be in this situation. County Attorney Manning stated this body's role is to make decisions regarding special use permits, and they are to look to the criteria outlined in the Unified Land Development Code (ULDC). He stated the attorney for the applicant is correct that the Telecommunications Act of 1996 does apply here, and the matter would receive greater scrutiny than an ordinary denial of a special use permit with no cell tower involved, and no federal laws implicated. He stated the main items that the federal law applies to this matter would be that there cannot be unreasonable discrimination among providers, they cannot unreasonably prohibit personal wireless service, and they have to act in a reasonable period of time. He stated if the special use permit were to be denied, the denial would have to be supported by substantial evidence, which is the term that the federal law uses. He stated this would be a greater amount of evidence than an ordinary special use permit situation would require. He stated the Board could not limit the placement of wireless facilities based upon environmental effects of radio frequency emissions if they otherwise qualify, according to the Federal Communications Commission (FCC) and the like. He stated those are the main reasons. He stated the Board would have to look to the criteria of the Unified Land Development Code (ULDC), and apply those additional rules that are before them based on the fact that there are federal laws implicated.

Commissioner Fricks asked what the staff recommendation to the Planning Commission was on this project. Ms. Hiller stated that the Planning Commission specifically asked what the staff recommendation was. She stated she told the Planning Commission that the staff recommendation would be to approve, and that they generally felt that cell tower locators do their due diligence before they come in and choose a location based on that. She stated that on the other hand, a special use permit does not really address that. She stated it addresses what the intent of the Unified Land Development Code (ULDC) is, and what the potential measurable impact might be on the surrounding properties. Commissioner Fricks asked so the recommendation was approval on the zoning change, but not the special use permit. Ms. Hiller stated yes, based on the criteria for special use permits. Commissioner Fricks stated he would assume that they would try to mirror the same grounds of denial, if they were to deny the special use permit. He asked what the Planning Commission's grounds for denial were. Ms. Hiller stated she believes the Planning Commission based their denial partly on what they felt was a lack of information on the need for a cell tower in the location. She stated clearly, after listening to all of the testimonies from the neighborhood, they did have some concerns about what the impact on adjacent landowners would be.

Chairman Bagwell stated the Board does have the option to table the request until the next meeting. Commissioner Mayes stated there was mention of a period of time. He asked County Attorney Manning how that factors in. County Attorney Manning stated the law states that the Commission must act on the request within a

reasonable period. He stated that does not mean that the matter could not be tabled, but he thinks that this body should act on the request in relatively short order.

Mr. Johnson asked to address the Board. He stated that this is a two-step process in that they would need to obtain their communications permit after the special use permit, which is a separate application. He stated both stages are considered a request to construct under the Federal Telecommunications Act. He stated it would be his opinion, and his client's opinion, that both would need to be completed within the 150-day guideline established by the Federal Communications Division decision.

Chairman Bagwell reminded everyone that this is not the time to get back into the Public Hearing unless a Commissioner has a question. Commissioner Mayes stated he would like to hear what Mr. Birdsong has to say. (*Mr. Birdsong's comments were inaudible.*)

Commissioner Wallace asked County Attorney Manning to reread the wording regarding the denial as it relates to the circumstances. What is reasonable, and what they have to provide. She stated Mr. Birdsong has brought the historical pictures, and they understand the importance of those homes, but would that fit into that category. County Attorney Manning stated there was a case held in federal court that was in the northern district of Georgia. He stated that when there is a denial and these matters are appealed, that unlike other zoning cases, these most often take place in federal court. He stated that other zoning cases usually take place in Superior Court because the Telecommunications Act of 1996 is not implicated. He stated they may be familiar with the Tate house. He stated the case that he was referring to arose out of the historic district in Tate, Georgia. He stated there were objections based on historic grounds. The aesthetics related to that matter. He stated there were historic permits that had to be received before they could move forward. He stated the applicant was able to receive those permits that allowed the cell tower to be built in that historic district. He stated the matter went before the sole Commissioner of that area, and he denied the permit based upon historic grounds. He stated their equivalent of the Unified Land Development Code (ULDC) contained language that said aesthetics was a reasonable ground to make a decision. He stated the matter was litigated upon denial, in which the cell tower company lost the appeal and the decision of the Commissioner was upheld. He stated he has reviewed the Unified Land Development Code (ULDC) carefully in relation to the special use permit request before them. He stated unlike the Tate Case, the Unified Land Development Code (ULDC) does not contain language that includes aesthetics as criteria for making a decision on the granting of a special use permit. He stated the law makes it very tough to make a decision based on aesthetics because that criterion does not currently exist in the Unified Land Development Code (ULDC).

Commissioner Fricks stated he may be speaking out of turn, and if he is someone stop him. He stated he thinks that what it comes down to is that they would like to deny the request, but he is not sure if they can. He stated they are trying to be good stewards, and make sure that they have good grounds to uphold denial of the request should they decide to do that. He asked would it be out of order to go into Executive Session since denial of the request could possibly result in pending litigation.

County Attorney Manning stated he does think that would be wise. He stated he believes that they need to make their decision based on the criteria in the Unified Land Development Code (ULDC), and the evidence presented. He stated there also needs to be substantial evidence to support a denial should they choose to deny. Commissioner Fricks stated from a legal standpoint, County Attorney Manning would be given the task of writing the notification of denial. He stated that he hates to ask him publicly if they could deny the request because he cannot really answer, which is why he was asking if they could go into Executive Session to discuss it. Commissioner Wallace stated especially with this being in a historical area. Commissioner Fricks stated they would not want to deny the request only to have the decision reversed six months and twenty thousand dollars later. He stated the Board would just be speculating, which is what they are trying to avoid. He stated his questions are would their position be strong in denial? Do they have grounds for denial, and if they do have grounds, could County Attorney Manning support that position in writing. He stated he understands that County Attorney Manning does not need to answer, but that would be the basis for his decision. He stated he would not want to give these people false hope that they are going to be able to stop this by denying the request, to turn around and have the decision reversed thirty days from now. He stated he would rather make the correct decision right now. County Attorney Manning stated the basis for going into Executive Session would be pending or threatened litigation. He stated that he would be concerned about going into Executive Session, where they do not even know which party would win, so to speak, on this motion right now. He stated he would not recommend that, and he thinks the answer they need to hear from a legal standpoint is that the decision on this matter should be based on the criteria in the Unified Land Development Code (ULDC), and that there needs to be substantial evidence in the record to support a denial. He stated otherwise, the challenge of a denial would be an uphill battle. He stated he completely understands where they are coming from. He stated his duty to the Board is to give them the correct legal analysis, which is what he is trying to do.

Chairman Bagwell reminded those in attendance that they could not entertain further public participation unless a Commissioner asks to allow it. Commissioner Wallace asked Chairman Bagwell if they could allow Mr. Birdsong and Ms. Tucker to ask their questions.

Deborah Tucker, 18 College Park Drive, stated she does not see that they are actually trying to discriminate against a wireless company, and they are not even discriminating against the tower. She stated they just do not want the tower right in the middle of their neighborhood. It could be placed over on the mountain, or in the middle of a field, but there are six or eight houses around that particular field. She stated it would be bordering all of those properties. This is not discrimination against AT&T, T-Mobile, or anyone. She stated they just do not feel that a cell tower belongs in the middle of a neighborhood.

Mr. Birdsong stated that as Ms. Tucker said, they are not trying to discriminate against them. He stated they have had the bypass come in on them and everything else. He stated there is all of this talk of being sued, and they are just telling

their side. Chairman Bagwell asked Commissioner Wallace if she had a question for Mr. Birdsong. Commissioner Wallace stated if Mr. Birdsong has a comment they would be glad to hear that, but they cannot go back to what they have already addressed. Mr. Birdsong asked if they could figure out a compromise that would benefit the wireless company and the landowners, as well as being beneficial to the county. He stated he would like to find a solution. He does not want to be dumped on, or discriminate against the company. He stated he wants this to be amicable for everyone.

Commissioner Mayes stated he would like to hear what Ms. Almand has to say. Ms. Almand stated she has a question for County Attorney Manning. She stated she thinks that they have lost sight of why they are here. She stated her question is if this is deemed to become commercial over what has been agricultural in the past, prior to that single-family residential, and prior to that multi-family residential. She asked could the Board not make a decision about whether or not they change a zoning from residential or agricultural to commercial without the Federal Communications Commission (FCC) having to be involved. She stated they are here for a hearing about whether a property is going to be deemed commercial, and they seem to have lost sight of all of that.

Commissioner Mayes asked County Attorney Manning if he could address Ms. Almand's question. County Attorney Manning stated he would try, and that Ms. Hiller may want to speak to this as well. Mr. Manning stated the way that the Unified Land Development Code (ULDC) is written, a cell tower is allowed in a suburban residential (S-R) zoning designation if a special use permit is obtained. He stated there are not a lot of teeth in the language of the criteria for approving and denying a special use permit as it relates to a cell tower in the Unified Land Development Code (ULDC) that allows for a denial beyond issues regarding health and safety. He stated there are concerns out there in studies about the effect of radio transmissions on people. However, because of the way that the federal law is written, it is more geared toward if the tower were to fall, would someone be injured and such. He stated that he wishes he had a better answer for them. He stated that he looked at the Tate case thinking that might be a way that this matter could be handled. Unfortunately, the aesthetics issue is not contained in the Unified Land Development Code (ULDC).

Chairman Bagwell called for a motion. Commissioner Maxey made a MOTION to Adopt the Ordinance to Approve the Special Use Permit to construct a communication (cellular) tower in a Suburban Residential (S-R) Zone on property located on Christian Way. SECOND by Commissioner Mayes. VOTING:

YES

NO

Commissioner Fricks
" Maxey
" Mayes
" Wallace
Chairman Bagwell

Motion Carried

**REQUEST TO CHANGE
ORDER OF AGENDA:**

Chairman Bagwell called for a motion to change the order of the agenda by moving the agenda items under the Chairman's Report, Citizen Appointments, up. Commissioner Mayes made a MOTION to move the Chairman's Report, Citizen Appointments. SECOND by Commissioner Maxey. VOTING:

YES

NO

Commissioner Wallace

" Fricks

" Mayes

" Maxey

Chairman Bagwell

Motion Carried

CHAIRMAN'S REPORT:

1. Citizen Appointments:

a. Northwest Georgia Region 1 Emergency Medical Services Coordinating Council.

Chairman Bagwell called for a motion. Commissioner Maxey made a MOTION to Reappoint Chad Taylor to the Northwest Georgia Region 1 Emergency Medical Services Coordinating Council for a 2-year term to expire January 15, 2016. SECOND by Commissioner Wallace. VOTING:

YES

NO

Commissioner Wallace

" Fricks

" Mayes

" Maxey

Chairman Bagwell

Motion Carried

b. Rome-Floyd County Planning Commission.

Commissioner Maxey made a MOTION to Appoint Brad Doyle to the Rome-Floyd County Planning Commission to fill the unexpired term of Joel

Holcombe, 5-year term to expire August 20, 2016. SECOND by Chairman Bagwell. VOTING:

YES

NO

Commissioner Wallace

" Fricks

" Mayes

" Maxey

Chairman Bagwell

Motion Carried

Commissioner Fricks left the meeting at this time.

REQUESTS FOR REZONING & SPECIAL USE PERMITS

- 2. FILE #122-2013Z. REQUEST REZONING FROM AGRICULTURE RESIDENTIAL (A-R) TO COMMUNITY COMMERCIAL (C-C) TO CONSTRUCT A GENERAL MERCHANDISE RETAIL STORE ON PROPERTY LOCATED ON HIGHWAY 156 AT OLD DALTON ROAD. TAX MAP L07, PART OF PARCEL 066. (PLANNING COMMISSION RECOMMENDATION: APPROVE WITH THE CONDITION THAT THE PLAT BE RECORDED. [VOTE: 6-1].)**

Chairman Bagwell asked Ms. Sue Hiller, Planning Department Director, to provide an overview of the rezoning request. Ms. Hiller stated this commercial node includes the commercial development in the Rosedale community. She stated there is a restaurant building, a church and a vacant commercial building to the north, a convenience store/gas station to the east, and mini-warehouses further to the east. She stated agriculture residential (A-R) zoning surrounds the subject property on all other sides. She stated the site plan submitted indicates that most, if not all, development standards such as landscaping, buffers, and setbacks could be provided. She stated there is less parking than the Unified Land Development Code (ULDC) requires, however they received a relief from that requirement from the Board of Adjustments. She stated the Board of Adjustments felt that the parking requirements were really based on higher traffic for urban areas than they were on low traffic rural areas such as this. She stated most of the property is indicated to be within a flood plain. She stated the applicant has been working with the Rome and Floyd County Community Flood Plain Coordinator. She stated that they have determined that the flood plain boundary is actually much further south on this property, therefore the development as proposed would not encroach into a flood hazard area. She stated this comes to the Board with a recommendation to approve with the condition that the plat be recorded. She stated that

the zoning lines have to follow lot lines. She stated they could not really draw that zoning in until there is a lot line for it to follow.

Chairman Bagwell declared the Public Hearing open, and asked if there is anyone to speak in support or opposition.

Support: Bobby Howard, 239 Park View Drive, Cartersville, stated there is not really much to add to what Ms. Hiller said. He stated the only other condition that he can think of is that they would need three acres of the six and half acre property to build proper detention, for the septic area, and provide for the requirements outlined. He stated that leaves three and half acres out of the total seven acres to the south. He stated they have contacted the neighbor next door, and have agreed to deed that land to her. He stated it is agricultural, it is in a flood plain, and they do not need it. He stated they could not build on it, or put septic on it, and it would be a problem because it is deep into the flood plain.

Chairman Bagwell asked if there was anyone to speak in opposition. Seeing none, he declared the Public Hearing closed, and called for a motion. Commissioner Maxey made a MOTION to Adopt the Ordinance to Approve the Rezoning from Agriculture Residential (A-R) to Community Commercial (C-C) to construct a general merchandise retail store on property located on Highway 156 at Old Dalton Road. SECOND by Commissioner Mayes. VOTING:

YES

NO

Commissioner Wallace

" Mayes

" Maxey

Chairman Bagwell

Motion Carried

PUBLIC HEARINGS

1. TO RECEIVE COMMENTS FROM ANY PERSONS WISHING TO BE HEARD ON THE FY2014 BUDGET.

Chairman Bagwell declared the Public Hearing open, and asked if there is anyone to speak regarding the FY2014 Budget.

Ansley Saville, 833 Horseleg Creek Road, stated she is the Vice-Chairman of the Sara Hightower Regional Library Board. She stated she is here to make a plea for all of them to work together to keep the funding that they currently have for the library. She stated the cut of \$75,000.00 last year really devastated the library. She stated she knows that there is talk of reaching into the library's reserves. She stated the

library does not really have any way of raising money like the Recreation Department. She stated they could look for grants and such. She stated she had mentioned in Caucus what a shining star the library is. How wonderful this place is, and how everyone that visits the library expresses how impressed they are. She stated there is a lady with her today, Sheila Shriver, that is fairly new to the community. Ms. Shriver moved here from Fairfax, Virginia. She stated that Ms. Shriver told her that the regional library in Fairfax, Virginia, which is one of the richest counties in Virginia, and the Sara Hightower Regional Library were about equal. She stated they really need the support of the citizens and the Commission to have a library like this, and it really concerns her to hear things like dipping into their reserves. She stated those rainy day funds are needed should something devastating happen. She stated the State is looking at cutting the talking books program, which aids the blind. She stated it enables the blind in this region to have access to books that they can hear. She stated that Polk County stayed the same on their funding to the library, and Rockmart increased their funding. She stated she is not asking the county to increase their funding. She is only asking that they stay the same. She asked them to remember that their funding was cut last year forcing them to have to close two days out of the week. She stated that is sort of like mud on the face of the community. She stated they did so well passing the SPLOST. She stated keep the momentum going to keep the library open, and hopefully restore those two days. She stated one thing she thinks she needs to point out is that the schools work in tandem with the library. She stated they also teach the children how to use the library facilities. She stated the working poor need it for internet service. She stated there are some of their staff members that do not have internet at home. She stated they are not particularly the highest paid people in town, and they have had to let it go because they could not afford it. She stated if their library employees cannot afford internet, that is just the tip of the iceberg with the other people in Floyd County that are not as fortunate as others may be. She stated she would like to recognize Delana Hickman, the Executive Director at the library, Betty Rayburn, and Mickey Sacks, whose husband was a real proponent in plugging the bond for the city to have the library built, for their attendance in support of the library. She stated Ruth Forrester, one of the Co-Presidents of the Friends of the Library, Shelia Shriver, an officer of the Friends of the Library, and library employee Dawn Hampton are also in attendance.

Delana Hickman, Sara Hightower Regional Library Director, stated she is here this afternoon to ask the Board to reconsider the proposed \$100,000.00 budget cut to the Rome-Floyd County Library. She stated the library's budget has been cut to the extent that a \$100,000.00 budget reduction would bring further cuts to the services and programs that they now offer the community. She would like to share a few facts for the Board to consider. She stated since 2010, budget cuts and reductions of their general fund has been a loss of \$1,111,000.00 to the Rome-Floyd County library. She stated their hours of operation have been reduced from seven days a week to five days a week. She stated they currently have twelve frozen full-time positions. She stated the 2012 budget resulted in the layoff of ten (10) part-time employees. In 2013, they had 280,000 people use the Rome-Floyd County library. She stated patrons checked out 380,000 books and DVDs in 2013. She stated that 10,600 Floyd County children benefitted from their children's programs last year, with 3,513 of the counties children

signing up and participating in the 2013 Summer Reading Program. She stated 141,000 residents used the library's computers and internet in 2013 for jobs, school, and gaining general information. She stated the library's Channel 4 produced, and aired 111 local programs, which included the Rome City Commission and Floyd County Commission meetings. She stated 13,400 residents used the library's meeting rooms in 2013. She stated they had 79,424 questions that were answered by their reference desk. She stated these statistics are not merely numbers. The numbers represent the community's use of their public library, which keep in mind, are also the Board's constituents. She stated it represents how the library's services and programs help our community. She stated if the current proposed budget goes through, there is that much less help for people in their county. She stated in order for the library to do this work, they need the Board's support and commitment to their community's library. She thanked the Board for their time and consideration.

Pat Millican stated she works at the library in the Heritage Department, where local history and genealogy is researched. She stated in the last year to year and a half, people from Alabama, Arkansas, Mississippi, Louisiana, Texas, California, Washington State, Oregon, Ohio, Iowa, Missouri, South Carolina, North Carolina, Tennessee, Kentucky, Indiana, Virginia, New York, Maryland, Florida, and Illinois have visited this county and their library. She stated they have stayed in our hotels, set up at our camping spots, shopped at our stores, and eaten at our restaurants. She stated that brings taxes and revenue to this county. She stated she has been told many times that people have come to spend the weekend to visit the library only to find that they are closed on Fridays. She stated they end up going to a library in Atlanta instead. She stated they lose a lot of revenue because they are closed. She stated these people spend hundreds, and sometimes thousands of dollars during their visits. Their visits may only be a day, maybe two days, but sometimes they spend a week here in Floyd County just to do research in our library due to the reputation that the Heritage Department has. She stated they are contacted from all over the United States, and even from foreign countries, but it is hard for them to be contacted if they are closed.

Shelia Shriver stated she has been living here approximately nine years. She stated she moved here from Fairfax, Virginia. She stated Fairfax County is the second richest county in the United States. She stated the regional library here definitely compares to that. She stated having been a teacher, and the fact that they put a great deal of pride in the education of their students in Floyd County, they have to realize that the education of their students and the library go hand in hand. She stated students are taught how to use the library, and what is available to them in the library. She stated that she taught for a short time in one of the schools in this area and found that many students do not have access to all of the things within their homes that the library provides.

Chairman Bagwell declared the Public Hearing closed.

2. TO RECEIVE INPUT ON A PROPOSED RESOLUTION TO EXEMPT A CERTAIN

COUNTY-OWNED VEHICLE (2010 FORD ESCAPE, VIN #1FMCU4K3XAKD01585) FROM THE STATE LAW REQUIRING THE PLACEMENT OF A DECAL OR SEAL IDENTIFYING THE COUNTY ON SAID VEHICLE.

Chairman Bagwell asked if there was anyone wishing to speak on this matter. Seeing none, he stated that action on this Resolution would be taken at the January 28, 2014 meeting.

COMMISSIONER'S REPORT:

1. Administrative/Finance Committee

No Report.

2. Public Safety Committee

No Report.

3. Public Works Committee

No Report.

4. Water Committee

No Report.

5. Judicial Services Committee (CJIS)

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**
- e. SPLOST Committee**

There were no Special Committee Reports.

CLERK’S REPORT:

Consent Agenda

**Adopt Resolution to Approve and Authorize Execution Of
Items Submitted Under the Clerk’s Consent Agenda:**

County Clerk Kathy Arp stated there is one item on the Clerk’s Consent Agenda, which has been reviewed, and is submitted for approval.

Chairman Bagwell called for a motion. Commissioner Wallace made a MOTION to Adopt the Resolution to Approve and Authorize Execution of items submitted under the Clerk’s Consent, as presented by the County Clerk. SECOND by Commissioner Maxey. VOTING:

YES NO

Commissioner Wallace
" Mayes
" Maxey
Chairman Bagwell

Motion Carried

- 1. Enter into Minutes Final Agreement between Floyd County, Sheriff Tim Burkhalter, and Roberds Consulting Engineers, Ltd., for Professional Service Regarding the Development and Completion of an Electronic Security Systems Retrofit at the Floyd County Jail.**

OTHER BUSINESS:

Chairman Bagwell recognized Leadership Rome participants in attendance.

ADJOURNMENT:

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

YES NO

Commissioner Wallace
" Mayes
" Maxey
Chairman Bagwell

Motion Carried

**FLOYD COUNTY BOARD OF
COMMISSIONERS**

IRWIN BAGWELL, CHAIRMAN

**FLOYD COUNTY BOARD OF COMMISSIONERS
CAUCUS**

January 14, 2014 1:00 PM

Present: Chairman Irwin Bagwell, Vice-Chairman Larry Maxey, Commissioners Garry Fricks, John Mayes and Rhonda Wallace, County Manager Jamie McCord, Assistant County Manager Noah Simon, County Clerk Kathy Arp, County Attorney Tommy Manning, and Comptroller/Finance Director Gary Burkhalter.

Mr. Wayne Smithson, Star House Executive Director and Ms. Ansley Saville, Rome-Floyd County Library Board member, addressed proposed budget cuts for 2014.

Commissioners and staff reviewed items on the agenda for the meeting of January 14, 2014.

**FLOYD COUNTY BOARD OF
COMMISSIONERS**

IRWIN BAGWELL, CHAIRMAN