

HARRIS COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION
September 2, 2008
7:00 PM

Commissioners Present: J. Harry Lange, Charles Wyatt, Joey M. Loudermillk, Joe F. Manning, Patrick Whearley. Staff Present: Daniel B. Bridges, County Manager; John M. Taylor, County Attorney, Nancy D. McMichael, County Clerk.

1. **CALL TO ORDER.** Chairman Lange called the Regular Session to order.
2. **MINUTES.**
 - A. **Appeal Hearing of Kenneth Childs of August 19, 2008.** The motion to approve the minutes of the August 19 Appeal Hearing of Kenneth Childs was made by Commissioner Loudermillk, seconded by Commissioner Whearley, and passed unanimously.
 - B. **Regular Session of August 19, 2008.** The motion to approve the minutes of the August 19 Regular Session was made by Commissioner Loudermillk, seconded by Commissioner Whearley, and passed unanimously.
 - C. **Called Session of August 22, 2008.** The motion to approve the minutes of the August 22 Called Session was made by Commissioner Loudermillk, seconded by Commissioner Wyatt, and passed with three in favor (Loudermillk, Wyatt, Lange) no opposition, and two abstentions (Manning, Whearley).
3. **OLD BUSINESS**
 - A. **Ordinance to Amend Section 3.5-3(b) of Article I, Chapter 3.5 of the Code of Ordinances to Prohibit Smoking and Tobacco Products in County Public Parks and/or Recreation Areas.** Chairman Lange said that two public hearings had been held and that action had again been tabled until this meeting in order to determine if there were better locations within the recreation areas for smoking and tobacco use. Danny Bridges, County Manager, said that he and John Magazu, Recreation Director, had met regarding the issue and had visited the parks, and that the places highlighted in yellow on the park maps included in the packet are areas where people generally do not walk going to and from the ballfields. Following discussion, Chairman Lange said that the motion to approve had been made on August 5 by Commissioner Whearley and seconded by himself. Commissioner Loudermillk said that he would like to see the motion withdrawn, but Commissioner Whearley said that he was not withdrawing his motion. Chairman Lange asked for a vote on the motion to prohibit smoking and tobacco products in the County's parks and recreation areas. The motion passed with three in favor (Whearley, Lange, Wyatt) and two opposed (Loudermillk, Manning).
 - B. **Resolution: Cable Franchise Fee Increase.** Chairman Lange said that he had tabled action on this resolution in order to find out if cable companies are charging the 5% statewide franchise fee to customers but remitting 2%, thus profiting the 3% balance. He said that he contacted Media Com about his bill and was eventually told that they charge 5% to Harris County customers, and Danny Bridges, County Manager, said that his son's Media Com bill reflected a charge of a little over 2%. Chairman Lange tabled action on this Resolution until such time as the answer to the actual statewide franchise charge and remittance could be determined.
 - C. **Morgan Copeland Road.** Chairman Lange said that Commissioner Wyatt had requested this matter to be on the agenda. Commissioner Wyatt made the motion to give the administrative staff 30 days to get signatures of the property owners on the right-of-way deeds needed to proceed with the Morgan Copeland Road project, and signatures that can't be obtained, for the County to proceed with the condemnation process regarding those property owners who will not sign the document. The motion was seconded by Commissioner Whearley. Following discussion, to include whether or not property owners lived on or off the subject properties, the motion passed with four in favor (Wyatt, Whearley, Lange, Loudermillk) and one opposed (Manning). [Note: the property owners who have not yet signed are: Chambless, Elaine W.; Crye, Henry T., Jr.; Foote, Tyre & Joy; Gattis, Frand & Tara; Hall, Mary Copeland & Willie R. Copeland; Hixon, Annie Mae; Hixon, Lee Thomas; Hixson, Rose, Joe, James & Robert & Greene, Catherine; Stafford, Donte & Keisha; and Thomas, Gregory.]

4. **NEW BUSINESS**

- A. **Error & Release Request: Carolyn Wood**. Chairman Lange said that this Error & Release was to change the total on the Digest from \$1,400 to zero because the mobile home burned. The motion to approve this Error & Release request was made by Commissioner Wyatt, seconded by Commissioner Loudermilk, and passed unanimously.

5. **PUBLIC HEARINGS @ 7:30 PM**

- A. **Explanation of Procedures**. Chairman Lange explained the Public Hearing procedures.
- B. **Conflict of Interest Forms**. At the request of Chairman Lange, the Conflict of Interest forms were completed.
- C. **Application of Matthew Lewis and Southeastern Facility Management to rezone 33.780 acres of Land District 22, Land Lot 186, Parcels 005, 005A, 006 & 0106A, Map 94, from A-1 to RR; present use residential and agricultural; proposed use residential; property located at 16431 Georgia Highway 85, Shiloh**. Chairman Lange called the Public Hearing to order, read the specifics of the application, and said that the Planning Commission had recommended approval with no conditions [note: there was a condition to clear only the property needed for the houses, driveways, and roads.] Matthew Lewis, applicant, and Ben Moon and Grady Vinson, of Moon, Meeks, Mason & Vinson, appeared before the Board. Mr. Lewis said that the property will be divided into 12 lots, each have two or more acres; that he and one of his children already live on the property and his other two children will each be given a lot, with the remaining lots to be sold. Mr. Moon said that they have met with DOT and there are no problems with the proposed road, existing driveway, and new driveway accessing Georgia Highway 85; that the water will be from Talbot County but Harris County will master meter same; and that while Mr. Lewis currently lives on the property, he will be moving to lot #2. Chairman Lange asked if anyone in attendance wished to speak in favor of or in opposition to this rezoning application. There being none, he asked if there were questions or comments from the Board. In response to questions from the Board, Mr. Moon said that the existing driveway is really part of lot #2 and has the required road frontage; that a new driveway will be put in for lot #1; and that the remaining lots will be served from the new road that will access Georgia Highway 85. There being no further questions or comments, the motion to approve this rezoning application with no conditions was made by Commissioner Wyatt, seconded by Commissioner Manning, and passed unanimously.
- D. **Application of Harris County Commissioners to Amend the Text of the Zoning Ordinance, Article II, Article IV, Section 1, items 1.2, 1.7, 1.8, and 1.9, Section 2, item 128, and Article V to allow for Live-Work Units in A-1, C-1, C-3 and C-4 Zoning Districts**. Chairman Lange called the Public Hearing to order, read the specifics of the application, said that the Planning Commission had recommended approval of the text amendment, and asked Danny Bridges, County Manager, to explain the need for the amendment. Mr. Bridges said that the ability for one to live and work in the same building is becoming more popular around the country; that Harris County does not currently permit same; that it would only be permitted in A-1, C-1, C-3 and C-4 Zoning Districts with Special Use Permits; that the two sections would be physically connected, with each having a separate entrance; that the residential area cannot be rented out; and that the amendment included other rules/regulations regarding the unit. In response to questions from the Board, Mr. Bridges said that the parking is recommended to be one parking space per 300 square feet of work area and that the two areas must be in the same building and cannot be separate buildings on the same property. There being no further comments or questions from the Board, Chairman Lange asked if anyone wished to speak in favor of or in opposition to this amendment. There being none, he closed the Public Hearing and asked for a motion. The motion to approve this text amendment was made by Commissioner Manning, seconded by Commissioner Whearley, and passed unanimously.
- E. **Application of Harris County Commissioners to Amend the Text of the Zoning Ordinance, Article II to allow catering on-site in Special Event Facility without the need for rezoning**. Chairman Lange called the Public Hearing to order, read the specifics of the application, said that the Planning Commission had recommended approval of the text amendment, and asked Danny Bridges, County Manager, to explain the need for the amendment. Mr. Bridges said that currently, an establishment having a Special Event Facility permit cannot do the catering for

the event taking place; that the amendment would permit catering to be done on-site for the function taking place; and that the Health Department must inspect such and issue a food permit before catering could actually be done. There being no comments or questions from the Board, Chairman Lange asked if anyone wished to speak in favor of or in opposition to this amendment. Ronnie Roberts, citizen, asked if the amendment had anything to do with alcoholic beverages, and Chairman Lange replied that it did not. There being no other comments or questions, Chairman Lange closed the Public Hearing and asked for a motion. The motion to approve this text amendment was made by Commissioner Manning, seconded by Commissioner Wyatt, and passed unanimously.

6. **OLD BUSINESS (CONTINUED)**

- D. **NACO Prescription Cards**. Chairman Lange asked John Taylor, County Attorney, for comments regarding the agreement with NACO for the prescription cards. Mr. Taylor said that it appears that participants would receive a 22% discount on certain prescriptions; that the prescription cards are through CareMark; there is a 90 day termination clause; that there is mention of Exhibit A, but it is not included; that while it includes that the County shall indemnify and hold harmless Caremark, he can't think of a situation where same would be needed; and that there is no cost to the County for the cards. The motion to approve the agreement, to obtain Exhibit A and to strike the first sentence of paragraph 6.3 regarding indemnity was made by Commissioner Loudermilk, seconded by Commissioner Wyatt, and passed unanimously. (Document can be found in "Contracts & Agreements" file as C&A #08-41.)

7. **NEW BUSINESS (CONTINUED)**

- B. **Request for Tax Refund: Robert & Judy McCrory**. Chairman Lange said that Robert and Judy McCrory are requesting refunds for 2005, 2006 and 2007 because the mobile home that had been on their property when they were building their home in 1987 was sold and removed from the property several years ago; and that because State law allows claims for the past three years, the Tax Assessor's office has determined that the total refund would be \$242.00. The motion to approve the refund of \$242.00 was made by Chairman Lange, seconded by Commissioner Wyatt, and passed unanimously.
- C. **Insolvent Tax List (July 2008)**. Chairman Lange said that the Tax Commissioners' Office had submitted a list of property to be deleted for various reasons. The motion to approve the complete list was made by Commissioner Wyatt, seconded by Commissioner Loudermilk, and passed unanimously.
- D. **First Reading: Application of Abba Dagher for Beer & Wine On Premises at Club D, located at 609 Butts Mill Road**. Chairman Lange read the specifics of the application and said that it has been recommended for approval by the Sheriff's Office based on no criminal history, for disapproval by the Health Department based on there being no kitchen in the building (required for on-premise alcohol licenses), and for disapproval by the Community Development Department based there being no room for and not marked for 20 parking spaces, the distance of 160 feet to a residence, no kitchen, and the business license for same not being in Abba Dagher's name. Nancy McMichael, County Clerk, said that there is no kitchen in the building. Danny Bridges, County Manager, said that the applicant's son was advised to make application in order to determine whether or not the location qualifies for an on-premise alcohol license before the investing in kitchen equipment. Bechara Dagher, the son of Abba Dagher, appeared before the Board and said that he runs the Carriage and Horses Restaurant and that Club D would be an extension of the restaurant to accommodate receptions or dance club; that there is no house within 160 feet; that the restaurant has been in business for 8 years and has had no trouble; and that the restaurant caters mainly to those 50 years and up. There being no questions from the Board, Chairman Lange asked if anyone wished to speak in favor of this application.

Harry Boyd, citizen and local businessman, appeared before the Board and said that the building is just a short distance from the Carriage and Horses Restaurant; that he doesn't see the need for a license; and that the restaurant is a very reputable business.

There being no further comments in favor, Chairman Lange asked if anyone wished to speak in opposition.

Ronnie Roberts, citizen and local businessman, appeared before the Board and said that his daughter runs a program for abused girls, incorporated as a church and is a

501c corporation; that there is no restaurant in the subject building, but there is one in the current restaurant (Carriage and Horses); that the restaurant is sometimes taken outside, is a nuisance and is loud, but is not all the time; that a night club is not needed in a residential community or the County; that the restaurant in the subject building was an after-thought, which has been advertised and promoted as a night club; and that if he (Mr. Dagher) is allowed to get a foot in the door, the situation will be abused; that there is a beer and wine license for the restaurant and it should remain in the restaurant and not moved to another building, to the pool, or outside.

Leigh Ellen Ertle, citizen and daughter of Mr. Roberts, said that her program for abused girls is nearby and has a working facility for kids to work with horses; that such an establishment is not a good influence for the kids; that she has animals nearby and people tend to stop, go into the pasture, and pet or sit on the horses and a neighbor serving alcohol puts an additional liability on her that she doesn't need.

Mary Ellen Roberts, citizen and wife of Mr. Roberts, said when she first heard of the plans for the subject property, she contacted the County and was told that night clubs are not permitted; and that the subject building is close to their property line.

Dan Ertle, citizen and husband of Mrs. Ertle, asked about presenting a petition to stop the approval of this application. Chairman Lange said that this is the first reading of the application and the opportunity to present a petition would be during the second reading at the next meeting.

There being no further comments in opposition, Chairman Lange asked if there were any questions from the Board.

Commissioner Wyatt asked why the application was being heard if there is no kitchen in the subject building, and Danny Bridges, County Manager, said that he had advised Mr. Dagher that an application should be made to determine if an alcohol license would be permitted for the subject location before money was spent to build a kitchen, and that if the application is approved, it would be subject to meeting all the required regulations. Nancy McMichael, County Clerk, said that the Alcohol Ordinance permits applications to be made prior to the appropriate facilities being in place.

In rebuttal, Mr. Dagher said that he lives on the property; that he feels like he is being insulted; that he has not had any problems during the 8 years he has been in business; that the barn (subject property) is no longer used for horses; that he said that he has never disturbed anyone; that he hired an architect to make sure the renovations were done right; that the Health Department has said they don't need a kitchen for a food permit, but the County requires a kitchen for alcohol permits; that Callaway Gardens prepares food in one location and takes it to another; that the Revenue Department has indicated a permit is not needed; that he can also submit a petition from people who can vouch for him; that he has never done anything wrong or disrespected his neighbors; that he is very proud of his place (restaurant); that his kids play in the pool and friends drop by and have drinks with him, which is not a big deal; that the horse shows (at Big Bear) disturbs him more with the sound system, but he has never said anything, so they need to let other people do what they want. Commissioner Wyatt asked whose house is within 160 feet, and Mr. Dagher said that it is his house and he uses it for his business.

Discussion included that a drawing should be included for the next reading showing the buildings and property lines; that it might also be wise for the applicant to show what is planned for the kitchen; that the Health Department has indicated a kitchen is not needed for food purposes, but as far as a food permit goes, food can be prepared elsewhere and taken to another location, but that the Alcohol Ordinance requires a kitchen for a on-premises licensing; that even though the State has indicated they don't need to issue a license for the subject building, the County's Ordinance requires a separate license for the subject building even though another building on the property has a license; that licenses are not issued for drinking establishments, but restaurants are licensed to sell alcohol as part of the restaurant operation and there are very distinct rules regarding same; and that the residence is a separate building and entity, it would not be grandfathered under Carriage and Horses, the distance requirements apply. Chairman Lange said that the Second Reading of this application will be on September 16.

8. COUNTY MANAGER

- A. Agreement: GEC Proposal for Subsurface Evaluation for Phase II of Roadway and Detention Pond in Northwest Harris Business Park. Danny Bridges,

County Manager, reminded the Board that rock had been hit on the Daehan Site and said that we are almost ready to go out on bid for building the road and suggested that the County contract with GEC to do drilling along the roadway to determine if we have rock, where it is, and to what extent, so that if we need to move the road because of the rock, we can do so before we go much further; that the cost would be \$4,700 versus going out on bid with a rock clause in the contract. The motion to approve this agreement was made by Commissioner Loudermilk, seconded by Commissioner Manning, and passed unanimously. (Document can be found in "Contracts & Agreements" file as C&A #08-42.)

- B. **Budget Amendment #4 (FY 07/08).** Danny Bridges, County Manager, reminded the Board that one department was over budget by a little over \$400 and under State law no department can be over budget; that the reason for going over budget was due to having the air conditioning fixed and the amendment is needed so that the department will not be over budget; that the amendment is higher than what is actually needed and is to make sure there are funds to cover anything that may be found during the audit; and that the \$1,000 amendment will be taken from Contingency. The motion to approve the amendment was made by Commissioner Wyatt, seconded by Commissioner Whearley, and passed unanimously.
- C. **Bid Award: Health Department Renovation Construction Project (CDBG).** Danny Bridges, County Manager, said that bids were received for adding to and renovating the Health Department, for which the County received a \$500,000 grant, as follows:

BIDDER	Base Bid	Deduct	Add Alt #1	Add Alt #2	Add Alt #3	TOTAL
Carlisle Services, Pine Mountain, GA	\$398,639.17	\$ 0.00	\$ 17,138.00	\$ 3,009.54	\$ 2,006.18	\$ 420,792.89
Daniel Construction, LaGrange, GA	\$373,534.00	\$ 0.00	\$ 16,977.00	\$ 5,497.00	\$ 3,100.00	\$ 399,108.00
Denson Construction, Columbus, GA	\$398,853.00	\$ (14,500.00)	\$ 24,700.00	\$ 3,600.00	\$ 2,650.00	\$ 415,303.00
Gordy Construction, Columbus, GA	\$299,000.00	\$ 0.00	\$ 24,000.00	\$ 4,200.00	\$ 3,800.00	\$ 331,000.00
Holley Construction, Columbus, GA	\$449,900.00	\$ 0.00	\$ 18,650.00	\$ 2,500.00	\$ 2,500.00	\$ 473,550.00
Lisle Company, Phenix City, AL	\$433,026.00	\$ 0.00	\$ 20,000.00	\$ 7,600.00	\$ 6,150.00	\$ 466,776.00
Weber Construction, Buena Vista, GA	\$352,870.00	\$ (14,000.00)	\$ 15,000.00	\$ 4,000.00	\$ 2,500.00	\$ 360,370.00

Mr. Bridges said that the recommendation of the architect, Andras Allen Starr, is to award the bid to Gordy Construction for the total bid of \$331,000. Discussion included that the deducts were made by the bidder just before the bids were opened; that Alt #1 is to remove and dispose of shingles and underlayment on old section and reroof to match the new section; that Alt #2 is to substitute sheet vinyl flooring in the exam rooms; and that Alt #3 is to paint the exterior of the old section to match the new section; and that the deducts were made by the bidders just before the bids were opened and indicated on their bid envelopes. He also said that the bid specs allowed for the waiving of technicalities and reflected that all three alternates were to be acknowledged, but that Gordy Construction only acknowledged the first alternate and provided bids on the other two alternates, and from that we assume they received all three bids but failed to indicate such in their cover document. The motion to award the bid to Gordy Construction for the total bid of \$331,000 was made by Commissioner Wyatt, seconded by Commissioner Manning, and passed unanimously.

- D. **Woodland Hills: Bugle Court Repair.** Danny Bridges, County Manager, said that the streets in Woodland Hills are not owned by the County; that the County repaired a water service line on one of the streets (Bugle Court) over a year ago, and the street in the repaired area is beginning to sink; that County employees are not convinced that the repairs caused the street drop; that the cost to repair the street will be approximately \$5,000 to \$6,000; that the street has a slight dip, but the main issue for the citizens who live on the street is that the curb and gutter have dropped significantly on both sides; that the County, in replacing the water service line under the street, dug down on both sides of the street; and that the area which has sunk is the entire width of the road and about six feet length. Following discussion, consensus was for the County to make the repairs to the area which has sunk.
- E. **Roosevelt State Park.** Danny Bridges, County Manager, said that as a result of the State's budget, State departments are having to cut their budgets, and the Department of Natural Resources is proposing closing several state parks, but the actual parks to be closed has not been made public; and that if the Board has no objections, he would like to send a letter to the DNR Board to encourage them to keep Roosevelt State Park open because it brings people to Harris County and is a revenue producing park for the State. Lynda Dawson, of the Harris County Chamber of Commerce, said that Pine Mountain Tourism has sent in their letter of support for Roosevelt State Park and that she will be sending a letter on behalf of the Chamber. Following a brief discussion, there were no objections to sending a

letter.

- F. **Northwest Harris Business Park Expenditures.** Danny Bridges, County Manager, said that information had been distributed showing the expenses thus far and those anticipated in connection with the business park; that a retention pond is to be built between Xpress Materials and the Daehan site balancing the rock and dirt between the sites (the dirt dug for the pond will be used to level out the area where the rock is being blasted and the rock used for the bottom of the pond); and will complete the Daehan site and adjoining site with the retention pond for stormwater. The motion to approve the expenditures totaling \$789,000 (\$289,000 for blasting, \$350,000 for site work, and \$150,000 for erosion control) was made by Commissioner Manning, seconded by Commissioner Loudermilk, and passed unanimously.
- G. **Agreement: DOT Revised Right of Way Agreement regarding the Road in the Business Park.** Nancy McMichael, County Clerk, said that she failed to include the recently received right-of-way agreement from DOT regarding the road in the business park. Danny Bridges, County Manager, said that it is the standard right-of-way agreement and needs to be approved in order to proceed with the road. He asked that the agreement be approved, subject to review by John Taylor, County Attorney. The motion to approve the agreement, subject to review by the County Attorney, was made by Commissioner Wyatt, seconded by Commissioner Loudermilk, and approved unanimously. (Document can be found in "Contracts & Agreements" file as C&A #08-43.)
9. **RECESS FOR EXECUTIVE SESSION.** The motion to go into Executive Session for the purpose of discussing real estate acquisition was made at 8:37 PM by Chairman Lange, seconded by Commissioner Loudermilk, and passed unanimously.
10. **RESUME REGULAR SESSION.** The motion to go back into Regular Session was made by Chairman Lange, seconded by Commissioner Wyatt, and passed unanimously.
11. **ADJOURNMENT.** The motion to adjourn was made by Commissioner Manning, seconded by Commissioner Wyatt, and passed unanimously.

J. Harry Lange, Chairman

Attest:

Nancy D. McMichael, County Clerk