

HARRIS COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION
November 17, 2009
7:00 PM

Commissioners Present: J. Harry Lange, Charles Wyatt, Joey M. Loudermilk, 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.** The motion to approve the minutes of the November 3, 2009, Regular Session was made by Commissioner Loudermilk, seconded by Commissioner Whearley, and passed unanimously.
3. **OLD BUSINESS**
 - A. **Tax Refund Requests (3): T. J. Bugg et al.** Chairman Lange said that this matter had been tabled from the November 3 meeting pending additional information, and at this time, the information is still needed. He then tabled the matter until the December 1 meeting.
 - B. **Comprehensive Plan: Final Issues and Opportunities Draft.** Chairman Lange said that during the November 3 meeting there was a brief discussion regarding this section of the Comprehensive Plan wherein there were some concerns as to its content. Rick Morris, of the River Valley Regional Commission, was present to respond to or discuss changes. During discussion, the following changes were made: Population - Issues: delete last item; Economic Development - Issues: change "secondary" to "post-secondary" in third item; Housing - Issues: delete second item; Natural & Cultural Resources - Issues: delete last sentence in fourth item and delete last four items; Intergovernmental - Issues: delete second and third items; Transportation - Issues - delete last three items; Land Use - Issues: delete third, fourth, and seventh items. Mr. Morris is to make these adjustments to the Final Issues & Opportunities Draft section of the Comprehensive Plan.
4. **NEW BUSINESS**
 - A. **Error & Release Requests.** Chairman Lange read the Error & Release requests as follows:
 - (1) DWT, Inc., c/o Lifeshape: Digest total of \$7,430 corrected to zero (duplicate account)
 - (2) O'Brien, Dennis C. & Hedwig (for 2009, 2008 & 2007): Digest total of \$73,560 remains unchanged (received homestead exemption in another County; remove homestead for Harris County and send corrected bills)

The motion to approve these two Error & Release requests was made by Commissioner Manning, seconded by Commissioner Wyatt, and passed unanimously.
 - B. **Financial Statement: August 2009.** The motion to approve the August 2009 financial statement was made by Commissioner Wyatt, seconded by Chairman Lange, and passed unanimously.
 - C. **Application to Amend Alcohol License Due to Addition to Premises: Carriage & Horses.** Chairman Lange said that an application had been made by Carriage & Horses Restaurant to amend its license; that the required scaled drawing is attached to the application; that currently only the restaurant is licensed to have alcoholic beverages within same; that the amendment would allow what is shown (on the drawing) as the "dining room", a building located within a fence area attached to the restaurant, to have beer and wine brought into same; and that if approved, the sale of alcoholic beverages can only take place in the restaurant and that alcoholic beverages will not be permitted within the addition to the premises when the restaurant is not open to the public for business. The motion to approve the amendment for Carriage & Horses was made by Commissioner Manning, seconded by Commissioner Whearley, and passed unanimously.
 - D. **Homestead Legislation.** Commissioner Wyatt said that he would like to send our soon-to-be-elected representative a resolution requesting legislation to allow Harris County to increase or decrease its homestead exemption annually depending on the County's Fund Balance, but not to exceed \$20,000 nor go below \$4,000. Following discussion, Commissioner Wyatt made the motion for the County Attorney to draft a

resolution, as stated above, to be brought before the Board for consideration and action. The motion was seconded by Commissioner Whearley and passed by a vote of four in favor (Wyatt, Whearley, Loudermilk, Manning) and one opposed (Lange).

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

- A. **Explanation of Public Hearing Procedures.** Chairman Lange explained the procedures regarding the Public Hearing.
- B. **Conflict of Interest Forms.** The Conflict of Interest forms were completed at the request of Chairman Lange.
- C. **Application of Ronnie Reeves and Bryan Becker for Special Use Permit for Deer Processing and Taxidermy on .5 acres zoned C-4 and located at 9040 Georgia Highway 208, Waverly Hall.** Prior to calling the Public Hearing to order, Chairman Lange said that because Deer Processing is permitted in A-1, M-1 and M-2 with a Special Use Permit and Taxidermy is only permitted in C-1, C-3 and C-4 the decision regarding this application would be tabled to the December 1 meeting and be made after the Public Hearings scheduled for that meeting to amend the Zoning Ordinance to change Taxidermy to A-1, M-1 and M-2 with a Special Use Permit and to rezone this property to A-1. He then called the Public Hearing to order and asked the applicants for any comments. Ronnie Reeves and Bryan Becker, applicants, appeared before the Board. Mr. Becker said that Deer Processing and Taxidermy should be permitted in the same zoning district; that having both would be convenient for the citizens in dropping off dead animals for either processing or taxidermy; and asked that the Board consider approval of their application. Chairman Lange asked if anyone wished to speak in favor of or in opposition to this Special Use Permit application. There being none, he asked if the Commissioners had any comments or questions. Following a brief discussion as to whether or not the Taxidermy use could be permitted at this time and then changing it if the rezoning is approved on December 1, Chairman Lange closed the Public Hearing.

6. **COUNTY MANAGER**

- A. **Resolution: Rails to Trails Grant Application.** Danny Bridges, County Manager, said that this Resolution is to authorize the River Valley Regional Commission (RVRC) to write the grant application; that the Resolution is also part of the application; and that the application must be in by November 30. Mr. Bridges also said that Julio Portillo, of the RVRC, and two engineers from Farner Barley are in attendance. The motion to approve the Resolution was made by Commissioner Wyatt, seconded by Chairman Lange, and passed unanimously.
- B. **Audit FY 08/09.** Jay Pease, of Robinson, Grimes & Co., was in attendance and reviewed the 08/09 audit and responded to questions from the BOC. Following discussion, the motion to approve the Audit for FYE June 30, 2009, was made by Commissioner Wyatt, seconded by Commissioner Loudermilk, and passed unanimously.
- C. **Expenditure Request: Development Authority.** Danny Bridges, County Manager, said that during the last Development Authority meeting there was discussion regarding spending approximately \$1,900 for an aerial map with contours and road overlay of the Hamilton Business Park, and that the Authority would like to request that the County pay for the map or approve the expenditure of the Authority's funds for same. The motion to approve the expenditure of approximately \$1,900 of the Authority's funds as explained was made by Commissioner Loudermilk, seconded by Commissioner Manning, and passed unanimously.
- D. **Caterpillar/Yancey Equipment Purchase Analysis.** Danny Bridges, County Manager, said that the analysis of the purchase of equipment from Caterpillar/Yancey shows, after allowing for the buy-backs of the current equipment, a net total cost of \$281,219 to the County, and rather than financing the purchase, he recommends using the Fund Balance to purchase the equipment. He also said that one of the companies from whom he had received a quote (provided to the Board at the last meeting) contacted him again today with a reduced quote on two pieces of equipment, and that another company contacted him complaining that they had not had the opportunity to quote, but that company never responded to any of the phone calls made in an effort to obtain a quote. Following a brief discussion, the motion to authorize the County Manager to execute documents related to the equipment purchase of seven pieces of road equipment and to take the money from Fund Balance was made by Commissioner Manning, seconded by Commissioner Wyatt, and passed unanimously.
- E. **Jail/Sheriff's Office Roof.** Danny Bridges, County Manager, advised the Board that the roof of the Jail/Sheriff's Office is leaking in several places, and probably needs to be

replaced, for which we will have to obtain bids.

- F. **CDBG Projects.** Danny Bridges, County Manager, advised the Board that the next round of CDBG applications will start after the first of the year; that the County will be eligible to apply in 2010; and asked that the Commissioners think about possible projects for which the County could apply. He reminded the Board that the County's most recent CDBG project was the recent Health Department renovation.

7. **COUNTY ATTORNEY**

- A. **Request for Executive Session.** John Taylor, County Attorney, said that an Executive Session is needed for the discussion of real estate acquisition, and suggested that it be held following the Hearing concerning the alcohol license of Billy Bob's Too.

8. **ALCOHOL LICENSE HEARING: Lisa Clossen, owner of Billy Bob's Too, 14215 Georgia Highway 116, Pine Mountain Valley, Beer & Wine Off-Premises.** Chairman Lange called the Hearing to order and asked John Taylor, County Attorney, to conduct same. Mr. Taylor, along with Lisa Clossen, owner of Billy Bob's too, and Ron Iddins, attorney for Mrs. Clossen, appeared before the Board. Commissioner Whearley said that under the advisement of the County Attorney, he will be abstaining from participating in and voting on this matter due to the fact that he does business with Mrs. Clossen and Billy Bob's.

Mr. Taylor said that this hearing is the result of a violation of the County's Alcohol Ordinance and the Board is to make a determination as to the revocation or suspension of the On-Premises alcohol license of Billy Bob's Too. He then submitted, for the record, certified copies of the following documents: (1) Report from Sheriff Mike Jolley; (2) 2009 Alcoholic Beverage License for Beer & Wine Off Premises; (3) Notice of the Hearing and the Return of Service showing Mrs. Clossen was served with the Notice of the Hearing; and (4) Excerpts of the Alcohol Ordinance, Sections 6-58, 6-66 and 6-67. Mr. Iddins had no objections to the submission of the documents.

Mr. Taylor called and administered the oath to Glen Presley, Investigator with the Harris County Sheriff's Office. In response to questions from Mr. Taylor, Mr. Presley stated his name and said that he works for the Sheriff's Office; that he is an investigator; that he had received information from a confidential source that Billy Bob's Too was operating electronic slot-type machines, using the games for gambling, and that alcohol was permitted to be consumed in and around the premises; that an undercover deputy, Ericka Strickland, was sent in; that Deputy Strickland played the gambling devices, purchased two 24-ounce Coors Light Beers on October 29 and 30, and after asking if she could consume the beer on-premises and told that she could, she opened the beer, pretended to be drinking same while playing the machines; that after the purchase of and consumption on premises on the 30th, a search warrant was obtained for the premises, a search was conducted, three gambling machines, the alcohol license, and an amount of cash were seized; that there is an outside shed under which a picnic table where it has been reported that individuals consume beer there; that there were several beer containers in all of the garbage cans on the property; and that the trash also included food containers and other trash in addition to the beer cans. He reviewed and identified various photos of food containers and the trash within each, and the shed adjacent to Billy Bob's Too. In continuation, Investigator Presley said that on the 30th he did not notice anyone consuming beer under the shed or outside the business. Mr. Taylor submitted the photographs to the Board. He then continued questioning Investigator Presley, who said that when Corporal Strickland purchased the beer, she obtained receipts, and as a result of being permitted to consume the beer on-premises, a charge was made for violating the County's ordinance of allowing on-premises consumption with an off-premises license, and that is pending in Magistrate Court. Mr. Taylor showed Investigator Presley additional photographs and he identified the beers that were purchased by Deputy Strickland on the 29th and 30th of October, as well as interior photographs of Billy Bob's Too showing the gambling machines.

Mr. Taylor submitted the photographs to the Board. Mr. Taylor asked Mr. Iddins if he had any questions for Investigator Presley.

In response to questions from Mr. Iddins, Investigator Presley said that Corporal Strickland was present tonight; that she relayed to him what he testified to today, but he did not go into the premises since he is known at the business and could not work in an undercover capacity there. Mr. Iddins said that the Notice of the Hearing allegation only included October 30, so the activities of October 29 were not included. Investigator Presley said that the case was made based on what occurred the 29th and 30th of October. He then reviewed a copy of the Notice of the Hearing and verified that it only referred to October 30.

In response to other questions from Mr. Iddins, Investigator Presley confirmed that it was his handwriting on page containing the receipts and not that of Corporal Strickland because she provided the evidence to him as the Case Lead and all evidence, for the most part, was recorded by him.

Mr. Taylor showed Investigator Presley additional photographs, and he confirmed the photos of the receipts of October 29 and 30 in the amount of \$1.49 each plus tax for one of the two Coors Light Beers purchased each day, and that it was his handwriting at the bottom of the receipts.

Mr. Iddins objected to any evidence related to October 29 because the Notice of the Hearing did not include any reference to that date. Mr. Taylor said that October 29 could be used to show a pattern of conduct.

Mr. Taylor then called and administered the oath to Ericka Strickland, Corporal with the Harris County Sheriff's Office. In response to questions from Mr. Taylor, Corporal Strickland stated her name and said that she works for the Sheriff's Office; that she is a Deputy Sheriff, is POST certified and has worked for the Sheriff's Office for six years; that she was directed by Investigator Presley to go undercover at Billy Bob's Too, purchase alcohol, consume it on the premises, play the gambling machines and obtain cash for any winnings; and that she did go to Billy Bob's Too on October 29. At this point, Mr. Iddins again objected to anything that occurred on October 29, and Mr. Taylor said that this shows a pattern of consumption on premises. Mr. Iddins said that the process requires that they be given notice of any infraction or violation and the Notice clearly indicates the only incident of violation happened on October 30, not the 29th. Mr. Taylor said that while there is no basis for not proceeding to revoke the license for October 29, we will not proceed under that other than to lay a pattern of conduct, and Mr. Iddins said that in light of the fact that the Notice says October 30 that we deal with that alcohol issue, not the gambling and not the machines, but simply what has been given as the reason for the hearing.

In continuation of responses to questions from Mr. Taylor, Corporal Strickland said that she did go to the business on October 29, was not in uniform but in an undercover capacity, did not identify herself, but was able to purchase alcohol from an Asian female who was not Mrs. Clossen; that the next day, October 30, she went back to Billy Bob's Too, purchased a Coors Light beer from the same Asian female as the previous day, asked for and received permission to consume the beer while in the gaming area, and asked for and received two bags to cover the beer can, opened the beer can, took a sip and pretended to consume the beer while playing the gambling machines; that after a while, she bought another beer from the same Asian female, again asked for and received permission to consume the beer while in the gaming area, again asked for and received bags to cover the beer can, opened the beer can, took a sip and pretended to consume the beer while playing the machines; and that on the 30th, the game repairman was present and Mrs. Clossen was talking with him and could see the beer can sitting on top of the machine. Corporal Strickland then verified a photo of the receipt for one of the beers purchased on October 30 from Billy Bob's Too, a photo of the gaming area showing the machines she played. Continuing the questioning, Corporal Strickland said that she briefly spoke with Mrs. Clossen while she was receiving her cash earnings from the gambling machine and Mrs. Clossen asked her if she worked at Cagle's to which she responded she did work at Cagle's. Mr. Taylor asked Mr. Iddins if he had any questions from Corporal Strickland.

In response to questions from Mr. Iddins, Corporal Strickland said that she obtained a receipt for one beer but not the second beer; that she asked for and received a bag from the clerk; that she concludes Mrs. Clossen saw the beer can on the machine; that the beer can wasn't completely covered by the bag; that Mrs. Clossen asked if she worked at Cagle's, to which she said yes, and that was the only conversation she had with Mrs. Clossen; that she does not know the clerk who sold her the beer; that the clerk has not been charged with anything; that she pretended to drink the beer in a manner in which it appeared to be real; and that she did taste the beer because the beer touched her mouth.

Mr. Iddins called and administered the oath to Lisa Clossen, owner of Billy Bob's Too. In response to questions from Mr. Iddins, Mrs. Clossen stated her name, and said that her sister helps her in the store, but can speak only a few words of English, and if she was asked if about drinking beer in the store, she would not know what was being said; verified that she did have a conversation with Corporal Strickland on October 30 about working at Cagle's, but did not know what was purchased; that she does not allow the consumption of alcohol on premises; that if her alcohol license is or is not returned, she is fine, but she is not going to beg; that they have black bags and white bags; and that her husband ran the business for 10 years, and the license has been in her name for the past year. In response to questions from Mr. Taylor, Mrs. Clossen said she was talking to the game repairman; that she doesn't remember Corporal Strickland playing the machine or drinking beer; that it was on a Friday at 6:PM and there were many people in the business; that regarding the beer cans in the trash cans, people just put cans in the trash; and that her cook collects and recycles beer cans.

Commissioner Loudermilk asked Corporal Strickland if she saw anyone else drinking beer while she was in Billy Bob's Too on the 29th or 30th, and Corporal Strickland responded that

she saw no one else drinking alcohol on the premises either day, that she was the only one.

Commissioner Wyatt said he has been in the store and has noticed a video camera system. He asked if there were tapes available. Mr. Taylor administered the oath to James Price, deputy with the Sheriff's Office. In response to questions from Mr. Taylor, Mr. Price said that he did try to obtain a copy of any video evidence; that Mrs. Clossen's son said that he would download it on a flash drive so that the camera system would not have to be taken; that when they tried the flash drive, it was blank, and when they went back to try to retrieve it, they were informed it (the tape) was gone.

In closing, Mr. Iddins said that Mrs. Clossen is alleged to have allowed the consumption of alcohol beverages on October 30; that Corporal Strickland bought the beer in an undercover capacity on Friday, October 30, and put same into a bag; that the business was full of people coming from Cagle's in order to cash checks and buy items; that it was a busy time of day; that the only person drinking alcohol on premises was Corporal Strickland; that in light of the fact that Mrs. Clossen's sister cannot converse in English and was asked for a bag and accommodated same not realizing what she was doing, and Mrs. Clossen's statement that she was not aware of what Corporal Strickland was doing at the time, it seems to be an insufficient reason to pull the license of an establishment that has been in the Pine Mountain Valley area for almost a dozen years; and that revoking the license is entirely unwarranted and that a short period of suspension would be adequate under the circumstances.

Mr. Taylor said that the County's ordinance provides that it is unlawful for any person to consume any alcohol on the premises of any establishment licensed for beer and wine off premises consumption; that it is unlawful for any licensee to permit that to take place; that the license issued to Billy Bob's Too is an off-premises beer and wine consumption license and to allow consumption on premises is a violation of 6-58 of the County's ordinance; that the evidence is clear that on October 30 an undercover agent went to the business because of a complaint from a confidential source regarding illegal operation of gaming machines, check cashing, and alcohol consumption on premises; that the undercover agent went in the business, purchased beer, asked if she could consume it on premises and the employee of the store who is bound by the same facts as the licensee permitted the consumption on premises; that it is the responsibility of the licensee to make sure everyone understands the regulations; that the undercover agent purchased one beer, got a receipt, went back and bought a second beer, and after both times asking to consume the beer on premises and was told she could, she did so, which is a violation of section 6-58 of the County's alcohol ordinance; that it appears consumption also takes place right outside the door based on the beer cans in the trash cans; that the licensee is responsible as to what goes on in the store; that based on all the facts, there is more than sufficient evidence for the Board to warrant taking action regarding the suspension or revocation of the license; and he urged the Board to revoke the license.

Chairman Lange closed the Public Hearing and asked if there were any questions. In response to a question from Commissioner Loudermilk, Mr. Taylor said that the standard of evidence for this matter is preponderance. In response to questions from Commissioner Wyatt, Mr. Taylor said that no arrests were made regarding the consumption violation, but the individuals were cited and will be heard in Magistrate Court; that is the alcohol license is revoked the owner will not be charged with another offense, other than what will be heard in Magistrate Court.

Commissioner Loudermilk said that the County's ordinance reads that the lack of knowledge on the part of the licensee or the lack of authorization for such act or omission or violation shall be no defense; that under the preponderance of evidence standards, there has been a violation; and that under the circumstances, it would be more appropriate for a suspension rather than a revocation. He then made the motion to suspend the beer and wine off-premises license of Billy Bob's Too for the remainder of calendar year 2009, and Commissioner Manning seconded the motion.

Discussion included that the matter before the Board is separate from that going before the Magistrate Court; that a conviction in Magistrate Court would result in fines; that the fact the clerk can't speak English is not a defense and it is the responsibility of the licensee that the employees uphold and understand the law; that alcohol was consumed in an off-premises location; that the suspension should be for six months; that there was not much of a case because the beer cans in the trash cans could have been put there by anyone; and that everything else is the result of a sting, which worked. There was also discussion as to whether consideration of this violation or any other conviction is given toward the renewal of the alcohol license, and Mr. Taylor indicated that it could be considered.

Chairman Lange called for a vote on the motion to suspend the license until the end of 2009. The motion passed with three in favor (Loudermilk, Manning, Wyatt), one opposition (Lange), and one abstention (Whearley). (Note: All documents/photographs submitted in

connection with this Hearing can be found in the "Miscellaneous Documents" file as MD #09-14.)

9. **RECESS FOR EXECUTIVE SESSION**. The motion to go into Executive Session for the purpose of discussing real estate acquisition was made at 9:07 PM by Commissioner Wyatt, seconded by Chairman Lange, and passed unanimously.
10. **RESUME REGULAR SESSION**. The motion to go back into Regular Session was made by Commissioner Loudermilk, seconded by Commissioner Whearley, and passed unanimously.
11. **REAL ESTATE ACQUISITION**. The motion to enter into a contract agreement with MeadWestvaco to purchase 179 acres, more or less, on Ridgeway Road for the price of \$4,000 per acre was made by Commissioner Wyatt, seconded by Commissioner Loudermilk, and passed unanimously.
12. **OTHER**
 - A. **RENEWAL MAILINGS**. In response to questions from Commissioner Whearley, Nancy McMichael, County Clerk, said that alcohol license renewals are sent by certified mail because there have been so many complaints about licensees not receiving renewal notices, that occupational tax renewals are sent by the Community Development office, and that a third mailing, a verification affidavit of U.S. citizenship, was due to a requirement from the Federal Government. Danny Bridges, County Manager, said that the certified mailing renewals will be discontinued if the Board will back up the fact that not getting the renewal notice is no excuse for not renewing licenses. There was a brief discussion, but no consensus or vote was made. [Note: Upon checking with Community Development, the occupational tax renewal notices and the verification affidavit were not mailed by certified mail but were mailed by regular first class mail at \$.44 per letter.]
 - B. **AUDIT RESULT VERIFICATION**. In response to a question from Commissioner Whearley, Danny Bridges, County Manager, said that \$4.8 million was budgeted for the Northwest Harris Business Park.
13. **ADJOURNMENT**. There being no further business to discuss, the motion to adjourn was made by Commissioner Whearley, seconded by Commissioner Loudermilk, and passed unanimously.

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Attest:

Charles Wyatt, Vice-Chairman

Nancy D. McMichael, County Clerk