

**HARRIS COUNTY BOARD OF COMMISSIONERS
REGULAR SESSION**

February 7, 2012

7:00 P.M.

Commissioners Present: J. Harry Lange, Joey M. Loudermilk, Becky Langston, Jim Woods, Charles Wyatt. 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 January 17, 2012, Regular Session was made by Commissioner Loudermilk, seconded by Commissioner Langston, and passed unanimously.
3. **APPEARANCE OF CITIZENS**
 - A. **John Rodgers: Definition of Civic, Social and Fraternal.** John Rodgers, citizen, appeared before the Board and said that he is still looking for a definition as to the meaning of "civic, social and fraternal", which appears in the matrix of the County's Zoning Ordinance. Chairman Lange, in response, said that while he understands the Zoning Ordinance does refer to "civic, social and fraternal", but goes no further; that if the issue has to do with the ballfields, ballfields fall under CORD zoning; that regarding a definition, it is not in the Ordinance; that he understood Mr. Rodgers and his attorney were to get with Danny Bridges, County Manager, which was not done. Mr. Rodgers said that he is not talking about the ballfields, but what the property can be used for, that it should not be difficult to come up with a definition of "civic, social and fraternal" and if not, remove it from the matrix. Chairman Lange suggested that Mr. Rodgers contact or meet with Mr. Bridges and/or Becky Gray, Planning Tech, with any plans he may have or regarding the definition; and that the Board can't come up with a definition at this meeting but would be able to once something is drafted for review.

Mr. Rodgers then asked how a building can be zoned since he was advised that the building on his property could be used for a Moose Lodge, but not the property; and that he can't come up with a plan because he can't find where a building is zoned different from property. Commissioner Wyatt said that the December 6 minutes show that the term "civic, social or fraternal" is in reference to the actual building, not the activities, which must meet zoning requirements." Chairman Lange said that the zoning of property carries certain restrictions as to what can or cannot be done on property. Commissioner Wyatt asked that a written explanation of "civic, social and fraternal" be prepared by the next meeting. Danny Bridges, County Manager, said that staff will come up with suggestions and ideas for the Board to review regarding such definition.
4. **NEW BUSINESS**
 - A. **Ross King of ACCG: Georgia County Government Magazine.** Chairman Lange introduced Ross King, Executive Director of the Association County Commissioners of Georgia (ACCG), explained a little about ACCG, and said that Mr. King is present to discuss a County recognition. Mr. King thanked the Board for the opportunity to come before the Board regarding the County being recognized and highlighted in the January/February edition of the Georgia County Government Magazine; and said that the magazine is available on-line at accg.org; and that as a result of the article, there is international interest in the magazine and Harris County.
 - B. **Requests for Tax Refunds.** Chairman Lange read the Requests for Tax Refunds as follows:
 - (1) **Baker, James C. & Rebecca H. (2011).** Refund amount of \$1,890.00 due to house fire that occurred on December 24, 2010, making the home unlivable on January 1, 2011. Both the Tax Commissioner and the Board of Tax Assessors agree with the request. The motion to approve this request for a refund of \$1,890.00 was made by Commissioner Loudermilk, seconded by Commissioner Langston, and passed unanimously.
 - (2) **Culpepper, Jeff (2011).** Refund amount of \$733.44 due to tractor having been sold December 1, 2009. The Tax Commissioner disagrees with the request on the grounds that State law says a return shall be made for real and personal property each year before April 1. The motion to approve this request for a refund of \$733.44 was made by Commissioner Wyatt, seconded by Commissioner Loudermilk, and passed unanimously.
 - (3) **Turner, Marty (2011).** Refund amount of \$745.38 due to house fire on April 29, 2011 and for 246 days at \$3.03/day through December 31, 2011. Both the Tax Commission and Board of Tax Assessors disagree with the request because

Georgia Code states that the levy date is January 1 for real property; therefore the total amount was due December 20, 2011; and the State does not pro-rate taxes by the day. The motion to disapprove this request was made by Commissioner Loudermilk, seconded by Commissioner Woods, and passed by a vote of four in favor (Loudermilk, Woods, Lange, Langston) and one opposed (Wyatt).

- C. **Board of Elections and Registrations: Appointment/Reappointments.** Chairman Lange said this matter had been inadvertently omitted from the appointments and reappointments made in January; that the terms of John Adams and Pam Jackson expired December 31, 2011; and that both have consented to reappointment. The motion to reappoint Mr. Adams and Ms. Jackson to new terms ending December 31, 2015, was made by Commissioner Wyatt, seconded by Commissioner Langston, and passed unanimously.

Chairman Lange said that the third position on the Board of Elections and Registrations is vacant due to the resignation of Portis "Buddy" Walker, and that an appointment is necessary. Nancy McMichael, County Clerk, said that the Board of Elections and Registration had submitted a nominee to fill the position, but that she had inadvertently left it at her desk. Chairman Lange said that the matter will be on the February 21 agenda and asked that Mrs. McMichael notify the Board of the name of the nominee on which the Board will take action, unless another nomination is made.

- D. **Budget (FY 12/13) Schedule.** The motion to approve the Budget Schedule for FY 2012/2013 was made by Commissioner Langston, seconded by Commissioner Woods, and passed unanimously.

5. **COUNTY MANAGER**

- A. **Error & Release Requests and NODs.** Danny Bridges, County Manager, said that State law gives the Board of Tax Assessors the authority to adjust the Tax Digest for Error & Release requests and Not on Digest requests (NODs), and for that reason, the Board will no longer be approving or disapproving such requests, but will receive a periodic report regarding such Digest changes.

- B. **Surplus Property: Vehicles.** Danny Bridges, County Manager, said that the Board had been provided a list of vehicles that are no longer of any use to the County and that permission is being requested to declare the vehicles, with the exception of vehicle #15, surplus for the purpose of selling same; and that the vehicles will be advertised in the County's legal organ (the Harris County Journal) for sale by sealed bids. The motion to declare vehicles #1 through #14 as surplus and to sell such vehicles as described was made by Commissioner Wyatt, seconded by Commissioner Woods, and passed unanimously.

- C. **Bid Award: South Progress Parkway Extension Phase I and Phase II & Creek Crossing.** Danny Bridges, County Manager, said that bids had been received for the work on South Progress Parkway in the Northwest Harris Business Park, as follows:

COMPANY	BID PHASE I	BID PHASE II & CREEK CROSSING	TOTAL BID
Alexander Contracting	\$ 572,365.54	\$ 506,860.03	\$ 1,079,225.57
CW Matthews	\$ 481,740.46	\$ 694,851.22	\$ 1,176,591.68
McMath-Turner	\$ 581,314.66	\$ 568,989.66	\$ 1,150,304.32
Robinson Paving	\$ 518,919.55	\$ 586,487.55	\$ 1,105,407.10
Southeastern Site Development	\$ 614,174.55	\$ 553,278.73	\$ 1,167,453.28
United Consolidated	\$ 745,154.00	\$ 991,490.00	\$ 1,736,644.00

Mr. Bridges said that it is recommended that Alexander Contracting be awarded both bids, for the low total bid of \$1,079,225.57. He also said that in addition to the bid, there are other costs of approximately \$304,992.72 that include the engineering services, geotechnical wetland services, archaeological survey, survey, mitigation, geotechnical testing, and contingency, all of which are necessary. He said that the total with the additional expenses is \$1,384,218.29, and reminded the Board that funding will come from OneGeorgia, Georgia Department of Transportation, JCI, and SPLOST. The motion to award the bid to Alexander Contracting for the low combined bid of \$1,079,225.27 was made by Commissioner Wyatt, seconded by Commissioner Loudermilk, and passed unanimously.

- D. **Bid Award: Courthouse HVAC Control Retrofit.** Danny Bridges, County Manager, said that bids were received for the retrofit of the Courthouse HVAC Control system, as follows:

COMPANY	Comfort Systems	Johnson Controls, Inc.	Trane
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BID AMOUNT	\$	59,733.00	\$	75,402.67	\$	86,711.70
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Mr. Bridges said that it is recommended that the bid be awarded to Comfort Systems USA for the low bid of \$59,733. The motion to award the bid as recommended was made by Commissioner Loudermilk, seconded by Commissioner Langston, and passed unanimously. Mr. Bridges reminded that Board that the funding for this project would come from fund balance.

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

- A. **Explanation of Public Hearing Procedures.** Chairman Lange explained the procedures involved with the Public Hearing.
- B. **Conflict of Interest Forms.** The Conflict of Interest forms were completed at the request of Chairman Lange.
- C. **Application of Grady Davis to rezone 3.1 acres of a 44.49 acre parcel in Land Lots 188, 197 & 198, Land District 21, Map 58, Parcel 067B, located on O Street, Pine Mountain Valley, from A-1 (Agricultural Forestry) to PUD (Planned Unit Development) in order to combine the 3.1 acres with an existing 2.6 acre parcel in Mountain Shadows Subdivision.** Chairman Lange called the Public Hearing to order, read the specifications of the application, and said that the Planning Commission had recommended approval of the rezoning. Grady Davis, applicant, appeared before the Board and said that he wants to increase the size of the lot in Mountain Shadows subdivision so that the new lot would have “water frontage” on the lake; that his home in Alabama is for sale and if it sells, he will build on the Mountain Shadows lot, but if that lot with the additional acreage sells, he will build on the larger adjacent parcel, which has access from O Street where there is a 50 foot access; that the new lot will be for one house; that the roads in Mountain Shadows are private; and that the rezoning has no bearing on the property off O Street.

Chairman Lange asked if anyone wished to speak in favor of the rezoning application. There being none, he asked if anyone wished to speak in opposition.

David Schmidt, citizen who lives at 194 Savior Lane in Mountain Shadows Subdivision, appeared before the Commission and said that he would like to present a petition of opposition signed by property owners in Mountain Shadows; that the property owners are concerned about the future of Mountain Shadows, which is a private community with private roads; that they like things the way they are and want to keep it that way; that Mr. Davis is advertising his property at 299 Savior Lane as being 47 acres, which would be the 44.49 parcel and the 2.1 acre parcel, with paved roads; that the larger lots is accessed from O Street and the lot in Mountain Shadows is accessed from within Mountain Shadows; that Mr. Davis does not have the right to extend a road from the cul-de-sac going to the larger parcel, which Mr. Davis also has for sale and which could also be rezoned for development at some point. Commissioner Wyatt commented that he understands that whoever owns the majority of the property within the PUD development owns the PUD; that Mr. Davis can never access the larger piece of property from Mountain Shadows without the PUD owner’s permission; that Mr. Davis cannot construct a driveway from Mountain Shadows to the larger adjacent property, which is accessed from O Street by a 50 foot easement; and that to put in a public road for that property, he would have to have 60 feet abutting O Street.

Mr. Schmidt continued by saying that Dan Hodge had responded to the rezoning request as the Architectural Committee, which concerns the property owners. Commissioner Wyatt said that was partially his fault; that he knew Mr. Hodge and his partner were building the log homes in the PUD; and that he advised Mr. Davis to contact Mr. Hodge to see if he (Hodge) owned the PUD.

Mr. Schmidt said that in terms of the Homeowners Association (HOA), it is their understanding the covenants are in effect until 2025, but at the last meeting (Planning Commission), a statement had been made that there was no HOA, which is wrong because there is an HOA, and while nothing has been enforced, the HOA does exist. John Taylor, County Attorney, said that the County has no authority to enforce covenants. Commissioner Wyatt asked if the hearing should be held with action tabled until such time as a determination can be made as to ownership of the PUD if the covenants indicate the property owners must agree to the proposed expansion. Mr. Taylor said that this rezoning application appears to add 3.6 acres to the existing PUD, which requires rezoning; that to add this property to the PUD, because it is to be rezoned PUD, whether or not there is a conflict or whether or not there is an issue as to expanding the PUD, is a totally separate issue. Discussion included that the ownership of the undeveloped property may be in question until more research can be performed; that the individual property owners own the PUD; and that it is probably better to go

through the hearing and not make a decision until a determination can be made as to ownership, as to who owns the controlling interest, and as to the expansion of the PUD; that once that is determined, the BOC can then make its decision on the rezoning request; and that while the County does not enforce covenants, but if Mountain Shadows' covenants detail or dictate how property may or may not be added, that may be something the Board should consider in its decision.

Mr. Schmidt said that the property owners in the PUD would like to have a ruling tonight, but if that is not possible, they can provide whatever is needed to see that the community does not change. Chairman Lange explained that the Public Hearing will continue, but once all comments are made and Mr. Davis has made his rebuttal tonight and the Public Hearing is closed, no further comments will be received from the public or Mr. Davis regarding this matter. Mr. Taylor said the only way this can go forward is if the property is added to the existing PUD, and that depends on the issues regarding ownership that have been discussed.

Mr. Schmidt said that he had been elected to speak on behalf of the property owners, and he started going through a list of questions, most of which related back to enforcement of the covenants. In response to questions, he said that when someone builds a home in Mountain Shadows, they are automatically a member of the HOA, but there is not a formal dues system in place. Commissioner Wyatt said that while the County does not enforce covenants, the HOA has the legal right to enforce the covenants. In response to a question, Mr. Schmidt said that in conformance with covenants, all the homes must be log homes and only one home can be built on a lot. Commissioner Wyatt said Mr. Davis owns 2.6 acres in Mountain Shadows, which does not touch the lake and that he doesn't see the difference with the 5.7 acres (combined), which will hide the house even more. Mr. Schmidt then presented the petition to the County Clerk for the record.

George Moore, citizen who lives at 41 Savior Lane in Mountain Shadows Subdivision, appeared before the Board, and said that the rezoning concerns the 3.1 acres, but the real estate ad refers to 47.10 acres, which is the larger adjacent parcel of 44.49 acres plus the 3.1 acres; that the rezoning is to get to the lake; that there is nothing to stop Mr. Davis from walking to the lake or onto the larger adjacent parcel that he owns; that the property does not need to be rezoned because his (Davis) intentions aren't what he has made them out to be; and that he is opposed to the rezoning.

Susan Lancaster, citizen who lives at 500 Mountain Shadows Road, appeared before the Board and read her letter in opposition to the rezoning. Upon conclusion, she presented her letter to the County Clerk for the record.

Penny Goodnoe, citizen who lives at 1125 O Street, appeared before the Board and said that she is not opposed to the building of a single-family home, but to the fact that Mr. Davis has his property for sale, which includes the property on O Street, and what can happen when a developer enters the picture; and that it is the unknown as to what can be done on the property on O Street. Discussion among the Board included that the large adjacent tract could only be developed if a public road, of 60 feet, is constructed or if additional property was purchased to provide each lot a 50 foot access to O Street, regardless of the zoning.

Jenna Stein, citizen who lives at 149 Savior Lane, appeared before the Board and said along with the advertisement of the property for sale, a call was made to the realtor who indicated that it is the intention of Mr. Davis to have four 10-acre parcels to build a number of homes; that Mr. Davis has different intentions than what he has told the Board; and that she is totally in opposition to the rezoning.

There being no further comments in opposition, Chairman Lange asked Mr. Davis for rebuttal.

Mr. Davis, in rebuttal, said that all the comments made are just comments; there can only be what Commissioner Wyatt says - one house on the lot in Mountain Shadows with one driveway to it; that he doesn't see the rezoning of the 3.1 acres as an addition to Mountain Shadows subdivision; that because he physically owns both pieces of property (the 2.6 and the 45 acres) he can walk from one to the other; and that he is just asking to change 3.1 acres from A-1 to PUD so that it can be sold with the lot in Mountain Shadows. Chairman Lange said that while the 3.1 acres does belong to Mr. Davis, it is outside the original Mountain Shadows property that was zoned PUD, so the 3.1 acres would be an addition (expansion) to Mountain Shadows. Discussion included that because there is no public road frontage, the 3.1 acres has to be zoned PUD and combined with the 2.6 acre parcel in Mountain Shadows; and that most of the 3.1 acres is wetland, which will result in only about one acre of usable land. Commissioner Wyatt said that he understands the concern of the property owners in Mountain Shadows

because the property lots go to the center of the road, but at the same time, Mr. Davis cannot build more than one house and cannot access the larger adjacent property from Mountain Shadows because the roads are private and owned by the property owners. Mr. Bridges said that if the rezoning of the 3.1 acres is approved, the 3.1 acres will have to be surveyed and combined with the 2.6 acre lot because the 3.1 acre lot would not be permitted to be recorded as a separate lot due to lack of public road frontage.

There being no further comments or questions, Chairman Lange closed the Public Hearing and said that issues have been raised that need to be checked on so that the Board can make the best decision regarding this rezoning request, and the decision regarding same is tabled until the February 21 meeting. He reminded those in attendance that with the closure of the Public Hearing, no further comments will be received from the citizens or Mr. Davis. Commissioner Wyatt asked Mr. Schmidt to provide the County Clerk, within the next two weeks, any pertinent information related to the issues raised tonight (covenants, who owns the majority of the property, etc.). Chairman Lange said that in some covenants, the developer retains the right of ownership of undeveloped property and gets more than one vote per lot when it comes to development issues, and anything that will help the issue will be welcomed.

7. **COUNTY MANAGER (CONTINUED)**

- E. **Audit Extension: Robinson Grimes.** Danny Bridges, County Manager, reminded the Board he had been given authorization to request a proposal from our current auditors, Robinson Grimes, regarding the extension of their contract; that a proposal had been received with an extension choice of one, two or three years; that the first year increases 4.5%, then 2.2%, then 3.2%, which is in line with the last agreement; and that it is recommended the extension be for three years. The motion to approve the extension of the Robinson Grimes contract for three years was made by Commissioner Loudermilk, seconded by Commissioner Langston, and passed unanimously. (Document can be found in "Contracts & Agreements" file as C&A #12-01.)
- F. **LOST Renegotiations.** Danny Bridges, County Manager, said that it is time to start the negotiation process regarding the Local Option Sales Tax (LOST), which has to be done every 10 years following the census; that the last time, he believes two Commissioners met with the appropriate municipal representatives; and that he will provide the Board with suggestions and guidelines, possibly at the next meeting, so that a decision can be made as to how to proceed.
- G. **GEMA Agreement: Statewide Mutual Aid & Assistance.** Danny Bridges, County Manager, said that this document is to renew the recently expired GEMA agreement, and needs to be in place so that we have the necessary resources available when storms, like the ones we have had in recent months, occur. The motion to approve this agreement was made by Commissioners Langston, seconded by Commissioner Woods, and passed unanimously. (Document can be found in "Contracts & Agreements" file as C&A #12-02.)
- H. **Airport Update and Committee Report.** Danny Bridges, County Manager, said that a Work Session has been scheduled for February 21 (starting at 6:00) to bring the Board up to date on Airport improvements and to discuss the recommendations of the Airport Committee (a committee of the Harris County Chamber of Commerce). [Note: Work Session cancelled and postponed until a future date yet to be determined.]
- I. **Request for Executive Session.** Danny Bridges, County Manager, requested an Executive Session for the purposes of discussing a personnel issue and real estate acquisition.

8. **COUNTY ATTORNEY**

- A. **Annexation to Pine Mountain (51.45 acres).** John Taylor, County Attorney, said that the County had been served with notice of annexation by the Town of Pine Mountain regarding 51.45 acres on Highway 354; that a response was made that the notice did not meet the minimum legal requirements; that the Town resent a notice to the County that now meets the minimum legal requirements; that the Town has been notified there are no County utilities on the subject property; that the annexation process was revised by the State Legislature to reflect that should the County object to the annexation, the matter goes to the Department of Community Affairs who will appoint an arbitration panel; that arbitration is mandatory as a result of any objection; that the County would have to pay 75% of the costs involved with arbitration; and that if the arbitration panel finds the grounds for objection were frivolous, the County could end up paying the other 25% of the cost. He said that he had provided the annexation process and the grounds for objection, both of which had been included in the meeting packets; and that the subject property is currently A-1 and is scheduled to be rezoned to PUD by the Town of

Pine Mountain. Discussion included that the annexation is necessary to expand the campus of Impact 360 and in order to be able to tie into Pine Mountain's water and sewer system. The motion to approve the annexation of the 51.45 acres to the Town of Pine Mountain and to notify Pine Mountain of same was made by Commissioner Woods, seconded by Commissioner Wyatt, and passed unanimously.

9. **RECESS FOR EXECUTIVE SESSION**. The motion to go into Executive Session for the purposes of discussing a personnel issue and real estate acquisition was made at 8:40 PM by Chairman Lange, seconded by Commissioner Loudermilk, and passed unanimously.
10. **RECONVENE REGULAR SESSION**. Following the Executive Session, the motion to go back into Regular Session was made by Commissioner Wyatt, seconded by Chairman Lange, and passed unanimously.
11. **OTHER**
 - A. **Bonus for Employees**. Commissioner Wyatt said that it has been brought to his attention that it may be a conflict of interest for him to make a motion to give employees a bonus, so he again made the motion to give employees, with the exception of his wife, a \$300 bonus. Again, the motion died for lack of a second.
12. **ADJOURNMENT**. There being no further business to discuss, the motion to adjourn was made by Commissioner Loudermilk, seconded by Chairman Lange, and passed unanimously.

J. Harry Lange, Chairman

Attest:

Nancy D. McMichael, County Clerk