

**MINUTES**  
**REGULAR MEETING OF THE**  
**COLQUITT COUNTY BOARD OF COMMISSIONERS**  
February 18, 2008  
7:00 P.M.

**CALL TO ORDER:** The meeting was called to order at 7:00 p.m. by Chairman John B. Alderman.

**INVOCATION AND PLEDGE OF ALLEGIANCE:** The invocation was given by Commissioner Johnny Hardin followed by the Pledge of Allegiance.

**PRESENT:** Those present were Commissioners Luke Strong, Rebecca Whitaker, Terry Clark, Billy Herndon, Ray Saunders, Johnny Hardin, and Chairman John B. Alderman. Also present were County Administrator Jack D. Byrd, Jr., County Attorney Lester Castellow and Administrative Specialist Rene Hawkins acting in the absence of County Clerk Deborah Cox.

**APPROVAL OF MINUTES OF MEETING HELD FEBRUARY 5, 2008:** Commissioner Whitaker made a motion to approve the Minutes as presented for the meeting held on February 5, 2008. Commissioner Hardin made a second. The motion carried unanimously.

**APPROVAL OF LIST OF UNPAID INVOICES:** Commissioner Strong made a motion to approve payment of the list of unpaid invoices. Commissioner Clark made a second. The motion carried unanimously.

**PRESENTATION OF 10-YEAR PLAQUES TO E911 EMPLOYEES:** Chairman Alderman presented 10-Year Plaques to four employees of the E911 Center who began work on January 5, 1998 to implement the E911 system in Colquitt County and who have maintained their employment and devoted over 10 years of service to our emergency communication system. The employees recognized were: Virginia Payne, Mary Pipkin, Kay Sain, and Theresa Warburg.

**APPROVAL OF REQUEST TO BEGIN ROAD ABANDONMENT PROCEDURES FOR A PORTION OF MELLOWOOD LANE:** Commissioner Whitaker made a motion to begin road abandonment procedures on a portion of Mellowood Lane. Commissioner Strong made a second. The motion carried unanimously.

**APPROVAL OF BID FOR PURCHASE OF A MOTORGRADER:** Commissioner Whitaker made a motion to approve the low bid from Flint Equipment Company for the purchase of a new motorgrader for the Roads

and Bridges Department. The cost is \$183,500; less a trade-in of \$65,000; less a 5-year buy back of \$107,500; for a bottom-line cost of \$11,000.00. Commissioners Hardin and Clark made a second. The motion carried unanimously.

### PUBLIC HEARINGS

ADULT ENTERTAINMENT ORDINANCE: County Attorney Lester Castellow reviewed a handout he presented titled “Evidence of Harmful Secondary Effects of Adult Entertainment Establishments.” Mr. Castellow stated that the Supreme Court requires the governing authority to consider any evidence of any harmful effects and to determine whether or not to adopt an ordinance to regulate the time, place, and manner of Adult Entertainment establishments. He cited two cases being the City of Daytona Beach, Florida and Gwinnett County, Georgia. (The information presented is hereby made a part of the Minutes by reference thereto.)

ABANDONMENT OF A PORTION OF HOLLY CIRCLE ROAD: Chairman Alderman called the Public Hearing to order. The public hearing was duly called and advertised and proper notice was served to all adjacent property owners. The purpose of the hearing was to hear objections to the County abandoning a portion of Holly Circle. Janis Duggan Norris, a property owner on this road, requested that the Board approve the closure.

ZONING ORDINANCE AMENDMENTS: Chairman Alderman called the Public Hearing to order. The public hearing was duly called and advertised. Chairman Alderman reviewed the proposed amendments.

There being no objections or comments made to any of the above proposals, Chairman Alderman called the Public Hearing to a close.

### END OF PUBLIC HEARING

APPROVAL OF ADULT ENTERTAINMENT ORDINANCE: Commissioner Whitaker made a motion to approve an Adult Entertainment Ordinance for Colquitt County. Commissioner Herndon made a second. The motion carried unanimously. (Ordinance Number 2008-ORD-1 is hereby made a part of the Minutes by reference thereto.)

ROAD ABANDONMENT FOR A PORTION OF HOLLY CIRCLE: Commissioner Clark made a motion to approve the abandonment of a portion of Holly Circle. Commissioner Saunders made a second. The motion carried unanimously.

**APPROVAL OF AN ORDINANCE FOR THE PROPOSED ZONING AMENDMENTS:**

- (1) Article II, Section 2.01 – Commissioner Herndon made the motion; Commissioner Hardin made the second.
- (2) Article VII, Section 7.04 – Commissioner Whitaker made the motion; Commissioner Clark made the second.
- (3) Article XIV, Sections 14.02, 14.03, 14.04, and 14.05 – Commissioner Herndon made the motion; Commissioner Hardin made the second.
- (4) Article XV, Section 15.03 – Commissioner Herndon made the motion; Commissioner Whitaker made the second.
- (5) Article XXII and Article XXIII, in its entirety – Commissioner Herndon made the motion; Commissioner Whitaker made the second.

All of the motions carried unanimously. (Ordinance Number 2008-ORD-2 is hereby made a part of the Minutes by reference thereto.)

**CONTRACT WITH FIRST VEHICLE SERVICES FOR VEHICLE AND EQUIPMENT MAINTENANCE:** Dr. Byrd stated that the county had a proposal for management of the Colquitt County vehicles and equipment fleet from First Vehicle Services; however, we will solicit bids from other vendors for proposals in accordance with the Colquitt County Code of Ordinances.

**COUNTY ADMINISTRATOR – JACK D. BYRD, JR.:** Dr. Byrd presented an agreement from the Georgia Department of Labor for the Southwest Georgia Workforce Investment Board. Chuck Fields, Executive Director, addressed the Board about this program and the need for the County's participation. After Mr. Field's presentation, Commissioner Strong made a motion to authorize the Chairman to sign the agreement on behalf of the County. Commissioner Clark made a second. The motion carried unanimously.

**PUBLIC COMMENTS:** (None)

There being no further business to come before the Board, the meeting was adjourned at 7:33 p.m.

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Respectfully submitted,

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John B. Alderman  
Chairman

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Rene Hawkins  
Administrative Specialist,  
Acting in the absence of  
Deborah Cox, County Clerk

Approved:

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Evidence of Harmful Secondary Effects  
Of Adult Entertainment Establishments

Daytona Grand, Inc. vs. City of Daytona Beach, Florida, 490 F.3d 860 (11th Cir., 2007)

Gerald Langston, the City's Director of Planning and Redevelopment and a key participant in formulating the zoning ordinances, testified in that case as an expert in urban planning and about the legislative process that led to their enactment. Langston said that, before enacting the zoning ordinances, the City had conducted a local study of urban blight and decay that identified two blighted areas: the old downtown and the beachside. Langston explained that the identification of these areas as blighted was based on characteristics such as: "a significant percentage of deteriorating structures; a large number of small ... lots, which did not allow cars; [\*864] a notable parking problem; a high incidence of crime, particularly, on the beachside; and a large percentage of antiquated, underground utility systems, such as drainage, water and sewer systems." Id. at 547. Langston testified that the blight deterred investment -- hotel development ceased in 1975, and in the late 1970's, Daytona Beach was denominated the "City of Sleaze." Id.

Langston explained that the City of Daytona Beach then created a Redevelopment Design and Review Board to deal with the blight problem. Id. Langston [\*\*6] worked with the Board and testified that it "considered studies of blight in Boston and Detroit by the American Society of Planning Officials in 1979-1980. These studies show strong evidence that the central location of adult uses, like the 'Combat Zone' in Boston, causes the blighted area to grow and creates blight in fringe areas." Id. Langston also opined, "[based] upon his education, experience, knowledge of blight in Daytona Beach and his participation in drafting the subject ordinance," that live nude and seminude entertainment businesses "promote and perpetuate urban decay" and that "adult businesses have impacted on crime in the area surrounding Daytona Beach." Id.

David Smith, an assistant state attorney who had prosecuted drug and prostitution offenses in Daytona Beach, also testified that "'most definitely' there were more drug and prostitution offenses in topless bars than in other bars." Id. at 548.

Zibtluda, LLC v. Gwinnett County, Georgia, 411 F.3d 1278 (11th Circuit, 2007).

Preamble of Gwinnett County ordinance:

Based on the experiences of other counties and municipalities, including, but not limited to, Austin, Texas and Garden Grove, California, which experiences are found to be relevant to the problems faced by Gwinnett County, Georgia; and based on the documentary evidence and oral testimony presented by a law enforcement professional and an expert in economic development, both of whom are familiar with conditions resulting in other localities, at the board of commissioners' hearing on July 17, 2001; and based on the evidence and testimony of persons who have appeared before members of the county board of commissioners on other occasions including the public hearing conducted on May 26, 1998 and on documentary evidence submitted to the board of commissioners, the county board of commissioners takes note of the well-known and self-evident conditions and secondary effects attendant to the commercial exploitation of human sexuality,

which do not vary greatly among the various communities within our country. It is the finding of the board of commissioners of the county that public nudity (either partial or total) under certain circumstances, particularly circumstances related to the sale and consumption of alcoholic beverages in establishments offering live nude entertainment or "adult entertainment," (whether such alcoholic beverages are sold on the premises or not) begets criminal behavior and tends to create undesirable community conditions. In the same manner, establishments offering cinematographic or videographic adult entertainment have the same deleterious effects on the community.

Among the acts of criminal behavior found to be associated with the commercial combination of live nudity and alcohol, live commercial nudity in general, and cinematographic or videographic adult entertainment are disorderly conduct, prostitution, public solicitation, public indecency, drug use and drug trafficking. Among the undesirable community conditions identified in other communities with the commercial combination of live nudity and alcohol, commercial nudity in general, and cinematographic or videographic adult entertainment are depression of property values and acceleration of community blight in the surrounding neighborhood, increased allocation of and expenditure for law enforcement personnel to preserve law and order, and increased burden on the judicial system as a consequence of the criminal behavior hereinabove described. The board of commissioners finds it is reasonable to believe that some or all of these undesirable community conditions will result in the county, as well.

Furthermore, it is the finding of the county board of commissioners that other forms of adult entertainment including, but not limited to, adult book stores, adult novelty shops, adult video stores, peep shows, adult theaters, and massage parlors have an adverse effect upon the quality of life in surrounding communities. The board of commissioners finds that the negative secondary effects of adult entertainment establishments upon the county are similar whether the adult entertainment establishment features live nude dancing or sells video tapes depicting sexual activities.

## ORDINANCE

**BE IT ORDAINED** that the Code of Ordinances, Colquitt County, Georgia Appendix “A,” entitled “Zoning Ordinance” **BE AND IS HEREBY AMENDED AS FOLLOWS:**

1.

Article II, Section 2.01; Article VII, Section 7.04; Article XIV, Sections 14.02, 14.03, 14.04, 14.05; Article XV, Section 15.03; Article XXII in its entirety; and, Article XXIII in its entirety are **hereby amended, added, and changed** as shown on Exhibit “A” attached hereto and incorporated by reference herein, the amendments and changes to each section being shown under each section as “Change,” “Delete”, and/or “Add.”

2.

All ordinances and parts or ordinances in conflict with this Ordinance **are hereby deleted and repealed.**

3.

Except as amended and modified herein, the terms of the Zoning Ordinance, as amended, shall remain in full force and effect.

**ORDINANCE** adopted this 18<sup>th</sup> day of February, 2008.

COLQUITT COUNTY BOARD  
OF COMMISSIONERS

BY: /s/ \_\_\_\_\_  
John B. Alderman, Chairman

VOTE:   7   FOR  
  0   AGAINST

ATTEST: /s/ \_\_\_\_\_  
Deborah Cox, County Clerk

# Exhibit "A"

## ARTICLE II. DEFINITIONS

Section 2.01. Generally.

*Variances (hardship):* The ~~delete: zoning board of appeals~~ *add: Board of Commissioners* may grant variances from the literal requirements of these ordinances in cases where the size, shape, or topography of a parcel prevents it from being designed to conform with these ordinances.

Such variances may be granted in such cases of unnecessary hardship on a finding that:

- a. There may be extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography; and
- b. The application of the ordinance to this particular piece of property would create an unnecessary hardship; and
- c. Such conditions are peculiar to the particular piece of property involved; and
- d. Relief, if granted, would not cause substantial detriment to the public interest or impair the purposes and intent of this ordinance.

If the ~~delete: zoning board of appeals~~ *add: Board of Commissioners* grants a variance, the reason for such variances must be put forth clearly in the minutes of the meeting at which the variance was granted.

## ARTICLE VII. R-1 AND R-1 R-1MH. SINGLE-FAMILY RESIDENTIAL DISTRICTS

Section 7.04. Design standards.

*Add: R-1/R-1MH (Mixed Use)*

1. *Minimum lot area: 22,000 square feet.*
2. *Minimum lot width: 150 feet.*
3. *In construction of a subdivision, see subdivision regulations, appendix B, Article IV, design standards.*
4. *Minimum yard setbacks:*
  - a. *Front: 50 feet.*
  - b. *Rear: 30 feet.*
  - c. *Side: Ten feet.*
5. *Minimum floor area per dwelling unit: 900 square feet for a site built home or manufactured home.*
6. *Maximum lot coverage: 30 percent.*
7. *All homes must conform to the current building codes as adopted by the county.*

8. *Manufactured homes must be compliant with all HUD (housing and Urban Development) or DCA (Department of Community Affairs) regulations, requirements and certifications.*

#### ARTICLE XIV. C-2, GENERAL BUSINESS DISTRICT

*Add:*

*Section 14.02 (1-60)*

61. *Adult Entertainment Establishments in accordance with the Adult Entertainment Ordinance, Chapter 14, Article III, of the Code of Ordinance of Colquitt County, Georgia.*

*Delete:*

~~Section 14.03. Protective Screening.~~

~~Protective screening for C-2 districts adjacent to or near residential districts shall be in compliance with the regulations set forth in section 4.30.~~

~~Section 14.04. Design standards.~~

~~The following design standards shall apply in a C-2 district:~~

- ~~1. *Minimum lot width:* 60 feet.~~
- ~~2. *Maximum height of building:* Three stories (30 feet).~~
- ~~3. *Minimum yard setbacks:*
  - ~~a. *Front:* 15 feet.~~
  - ~~b. *Rear:* 15 feet.~~
  - ~~c. *Side:* Ten feet.~~~~

~~Side yard restrictions may be waived to allow for party wall construction subject to approval of the planning commission and county commission, provided that a platted alley adjoins the rear of the property and provided that continuous building development shall not exceed 500 feet.~~

*Add:*

*Section 14.03. Uses permitted after special approval of the planning commission and county commission.*

1. *Adult Entertainment establishments as permitted by Colquitt County Ordinance.*

*Section 14.03. Protective Screening.*

*Protective screening for C-2 districts adjacent to or near residential districts shall be in compliance with the regulations set forth in section 4.30.*

*Section 14.04. Design standards.*

*The following design standards shall apply in a C-2 district:*

*4. Minimum lot width: 60 feet.*

*5. Maximum height of building: Three stories (30 feet).*

*6. Minimum yard setbacks:*

*a. Front: 15 feet.*

*b. Rear: 15 feet.*

*c. Side: Ten feet.*

*Side yard restrictions may be waived to allow for party wall construction subject to approval of the planning commission and county commission, provided that a platted alley adjoins the rear of the property and provided that continuous building development shall not exceed 500 feet.*

ARTICLE XV. C-3, COMMERCIAL DISTRICT

Section 15.03. Uses permitted after special approval of the planning commission and county commission.

1. Wrecked motor vehicle compound.

2. Salvage yard, junkyard, used auto parts yard.

*Add:*

3. *Adult Entertainment establishments as permitted by Colquitt County Ordinance.*

*Delete and Add:*

*ARTICLE XXII. ADMINISTRATION OF THE ZONING ORDINANCE and ARTICLE XXIII. BOARD OF ZONING APPEALS are hereby amended by repealing Article XXII and Article XXIII in their entirety and by substituting in their place, the following:*

ARTICLE XXII. ADMINISTRATION OF THE ZONING ORDINANCE

Section 22.01. Administration.

The provisions of these regulations shall be administered by the zoning

administrator. (Ord. No. 2006-5, § 1, 10-24-06)

#### Section 22.02. Establishment of the zoning ordinance and zoning map.

Before enacting the zoning ordinance the governing body shall hold a public hearing thereon, at least 15 but not more than 45 days notice of which shall be published in the legal county organ, which said notice shall state the time, place and purpose of the hearing. No change in, or departure from the text or maps, as certified by the planning commission, shall be made unless such change or departure be first submitted to the planning commission for review and recommendation. The planning commission shall have 30 days within which to submit its report. If the planning commission fails to submit a report within the 30-day period, the governing body may proceed without the recommendation of the planning commission. (Ord. No. 2006-5, § 1, 10-24-06)

#### Section 22.03. Amendments.

1. *Role of the planning commission.* The zoning ordinance and the zoning maps may be amended by the governing body from time to time. No amendment shall become effective unless it shall have been proposed by, or shall have been submitted to, the planning commission for review or recommendation. The planning commission shall have 30 days within which to submit its report, said 30 days being measured from the date of the public hearing before the governing body. The recommendation of the planning commission shall be submitted by the secretary of the planning commission to the governing body. If the planning commission fails to submit a report within the 30-day period, the governing body may proceed without the recommendation of the planning commission.
2. *Public hearings.* A public hearing shall be conducted on all applications to amend the text of this zoning ordinance or the zoning classification of property. Notice of the public hearing shall be advertised in the legal county organ at least 15 but no more than 45 days prior to the date of the public hearing stating the date, time, place, and purpose of the hearing. Additionally, the notice shall include the location of the property, the present zoning classification of the property, the proposed zoning classification of the property, and the name and address of the applicant, if the rezoning is initiated by a party other than the governing body. A sign containing the same information set forth in the notice shall be placed in a conspicuous location on the property not less than 15 days prior to the date of the hearing.
3. *Fees.* The established fee for the submittal of an application to change the zoning classification of property shall be collected by the building official's department in advance of the legal advertisement of the application for rezoning. The amount of the fees for submittal of applications for rezoning shall be established by the governing body.

4. *Frequency of zoning applications.* An application to change the zoning classification of property may be withdrawn at any time at the discretion of the individual initiating such a request for rezoning, upon the receipt of formal written notice to the governing body. No action for a change in the zoning classification of the same parcel of land shall be initiated by any person more than once every 12 months. Additionally, if the zoning decision of the governing body is for the rezoning of property and the amendment to the zoning ordinance to accomplish the rezoning is defeated by the governing body, then the same property may not again be considered for rezoning until the expiration of at least 12 months immediately following the defeat of the rezoning by the governing body.
5. *Amendment of the rezoning application.* In acting on an application for a change in the zoning classification of property, neither the applicant nor the governing body shall alter either:
  1. The proposed new zoning district for the property; or
  2. The boundaries of the property proposed for rezoning. (Ord. No. 2006-5, § 1, 10-24-06)

#### Section 22.04 Variances

In hearing and acting upon applications, the governing body may also grant, in specific cases, such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will, in an individual case, result in unnecessary hardship so that the spirit of these regulations shall be observed, public safety and welfare secured, and substantial justice done. Such variance may be granted in such individual case of unnecessary hardship upon a finding by the governing body that:

1. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question and because of its size, shape, or topography; and,
2. The application of these regulations to this particular piece of property would create an unnecessary hardship; and,
3. Such conditions are peculiar to the particular piece of property involved; and,
4. Relief, if granted, would not cause substantial detriment to the public good or impair the purposes and intent of these regulations, provided, however, that no variance may be granted for a use of land or building or structure that is prohibited by this ordinance. In exercising the above powers, the governing body may, in conformity with the provisions of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirements,

decision, or determination, and to that end shall have all the powers of the officer from whom the appeal is taken in relation to this ordinance, and may issue or direct the issuance of a permit.

#### Section 22.05. Performance bonds.

Wherein the zoning ordinance there is delegated to the planning commission and county commission the function of establishing certain physical site improvements as a contingency to securing a zoning amendment, special use or variance, the planning commission or the county commission may, to insure strict compliance with any regulation contained herein or required as a condition of the issuance of a permit, require the permittee to furnish a performance or surety bond executed by a reputable surety company authorized to do business in the State of Georgia in an amount determined by the planning commission and county commission to be reasonably necessary to insure compliance hereunder; provided, however, that in fixing the amount of such performance or surety bond, the planning commission and county commission shall take into consideration the size and scope of the proposed improvement project, current prevailing cost of rehabilitating the premises upon default of the operator, estimated expenses to compel operator to comply to court decree, and such other factors and conditions as might be relevant in determining the sum reasonable in the light of all facts and circumstances surrounding such application. (Ord. No. 2006-5, § 1, 10-24-06)

#### Section 22.06. Standards governing exercise of zoning power.

In any zoning decision, the governing body shall always balance the interest in promoting the public health, safety, morality, or general welfare of the citizens of the county against the right to the unrestricted use of property. Specifically, the governing body shall use and apply the following standards governing any exercise of zoning power, which said standards are deemed to be relevant factors in the balancing process:

- a. Existing uses and zoning of nearby property;
- b. The extent to which property values are diminished by the particular zoning restrictions;
- c. The extent to which the destruction of property values, resulting from the existing or proposed zoning of parcels, promotes the health, safety, morals, or general welfare of the public;
- d. The relative gain to the public, as compared to the hardship imposed upon the individual property owner, by the proposed zoning classification;
- e. The suitability of the subject classification;
- f. The length of time that the property has been vacant as zoned,

considered in the context of land development in the vicinity of the property;

g. Conformity with or divergence from any land use plan in existence at the time.

(Ord. No. 2006-5, § 1, 10-24-06)

Section 22.07. Appeals

Any person who may have a substantial interest in any decision of the governing body may appeal any decision of the governing body to the Superior Court of Colquitt County, Georgia. The appeal to the superior court shall be by writ of certiorari. Such appeal may be filed within 30 days from the date of the decision of the governing authority, and upon failure to file the appeal within 30 days the decision of the governing authority shall be final.

ARTICLE XXIII.  
RESERVED

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