



Spalding County online

Board of Commissioners

**Spalding County Board of Commissioners
Extraordinary Session
December 20, 2004
6:00 p.m.
Room 108, Spalding County Courthouse Annex**

The Extraordinary Session of the Spalding County Board of Commissioners was held in Room 108 in the Courthouse Annex, Monday, December 20, 2004 beginning at 6:00 o'clock p.m. with Commissioners Michael Kendall, Cecil Davis, Eddie Goss, Johnie McDaniel and Dick Morrow present. Also present were County Manager William Wilson, Community Development Director Chuck Taylor, County Attorney Jim Fortune and Executive Secretary Teresa Watson.

AGENDA

I. OPENING (CALL TO ORDER) – Chairman Michael Kendall

II. INVOCATION - Rev. Reginald Jacobs

III. PLEDGE TO FLAG

IV. PRESENTATIONS/PROCLAMATIONS/RECOGNITION

1. Representatives from the Griffin-Spalding County Development Authority to make a presentation to the Board of Commissioners.

Mr. Don King, on behalf of the Griffin-Spalding County Development Authority, addressed the Board. As a result of the 1997 SPLOST, which produced \$7,364,750 in revenue, Green Valley was developed, 880 jobs were created, and 924,000 developed square feet in the park itself was realized. The total capital investment was \$90,000,000 and approximate taxes paid through 2003 was \$2,800,000. The park is now paying approximately \$1,000,000 per year in taxes. The SPLOST projects came in about \$152,000 under budget, and the Development Authority tonight was proudly presenting a check for \$100,000 back to citizens of Spalding County. Chairman Michael Kendall, on behalf of the Spalding County Board of Commissioners, accepted the check from Messrs. Don King and David Luckie.

2. Vice-Chairman Cecil Davis to make presentations.

Vice-Chairman Cecil Davis thanked Chairman Michael Kendall and Commissioner Dick Morrow for their efforts and their dedication to making Spalding County a better place in which to live and work. He presented Commissioner Kendall with an engraved gavel plaque in appreciation of his service as Chairman of the Spalding County Board of Commissioners for 2004 and thanked him for his twelve years of service as a Commissioner. He presented Commissioner Morrow with a framed numbered print of the Spalding County Courthouse in appreciation of his four years' service as a Spalding County Commissioner.

V. PRESENTATION OF FINANCIAL STATEMENTS

1. Consider approval of Financial Statement for five months ended November 30, 2004.

Ms. Garrison noted that audited statements for FY 2004 will be available in June 2005. Commissioner Morrow commended Ms. Garrison for her exemplary performance.

On a motion by Commissioner Morrow and a second by Commissioner Davis, the Financial Statement for the five months ended November 30, 2004 was approved by a unanimous vote of 5-0.

VI. CITIZENS COMMENTS – N/A

VII. PUBLIC COMMENT

Ms. Gail Dean, 1250 Teamon Road, Griffin, GA 30223

Ms. Dean said she had addressed the Board of Commissioners quite a few times in 2000-2001, and she wanted to revisit an issue raised previously. The group had to drop its lawsuit concerning the Cherokee Rose shooting range after their lawyer advised they would be at risk if they proceeded. After a judgment from the Georgia State Supreme Court in the case in Jenkins County where they had no noise ordinance, they threw out the results of the jury trial that had the gun range closing on Sundays. The group here, on their attorney's advice, withdrew since Spalding County does have a noise ordinance and the group would be in jeopardy if they tried to go to court and a citation had, in fact, been issued.

She spoke with Mr. Sabine and he stated that the Board of Commissioners had not planned to pursue changing the zoning, but rather the plan was they would do something to restrict further expansion of shooting ranges and stations since such expansion would make the ranges larger and more noisy. Consistent reports over the past few months have led neighbors to believe plans to expand are being actively considered. She wanted to determine if the County had done anything to prevent such expansion. She wondered if permits had been issued and urged commissioners to prevent additional ranges that would contribute to the noise level. She could return next month if she need to do so. She worried more about the oversight of operations from a noise safety standpoint, particularly with the area growing with new developments. Most patrons of the gun range, she felt, did not reside in the County. It's these patrons who state there are plans in the work to expand the facility.

Mr. Taylor said he was not aware of any plans to expand; they have applied for no permits, such as would be required for electrical upgrades, improvements to the property, etc. or anything requiring inspections. He was also not aware of any restrictions imposed by the County with regard to future expansion of the facility.

Ms. Dean said she was concerned more with safety issues than monetary matters. Her property joins that of Cherokee Rose in several locations. Cherokee Rose personnel have parked their equipment on her property, and she has experienced shotfall and damage to her property from shotfall. Ms. Dean had been told by personnel in the state environmental department that the shotfall did not pose a health hazard simply lying on the ground, but it could not be buried or moved around into the dirt without a special permit. She had pictures of Cherokee Rose moving dirt around with a scraper, and they were not following any special procedures or using any special treatment which EPD had stated they need to do to deal with aspects of contamination. They were simply grading. She had put up a new property line indicator with caution tape to designate her boundary line. Ms. Dean was worried about soil and runoff contamination.

Commissioner Goss assured Ms. Dean the Board of Commissioners would explore the issue.

Commissioner McDaniel wanted to locate the minutes of the last meeting at which Cherokee Rose addressed the Board. He asked if Staff could provide those to the Board of Commissioners.

Arthur English, Public Defender's Office, 845 Memorial Drive, Griffin, Georgia.

Mr. English presented a distribution check from the former Georgia Indigent Defense Counsel, now the Georgia Public Defender's Standards Counsel for \$23,900. This constitutes grant money that remained from 2004.

VIII. MINUTES

1. Consider approval of the minutes of the December 6, 2004 Regular Monthly Meeting.

On a motion by Commissioner Morrow to approve, seconded by Commissioner Davis, the motion passed by a unanimous vote of 5-0.

2. Consider approval of the minutes of the December 16, 2004 Zoning Public Hearing.

On a motion by Commissioner Morrow to approve, seconded by Commissioner Davis, the motion passed by a unanimous vote of 5-0.

IX. CONSENT AGENDA – N/A

X. OLD BUSINESS – N/A

XI. NEW BUSINESS

1. Consider Indigent Defense Services Agreement with the Griffin Judicial Circuit Public Defender's Office.

County Manager William Wilson said, as he had indicated earlier, there was a change to the agenda on this item. On Friday, the Public Defender recommended adoption of a Memorandum of Agreement (MOA), consisting of three pages with attachments A, B and C, rather than the original multi-page contract with attachments. This MOA is slightly more favorable on the County's side as opposed to the contract. Staff recommends approval of this Memorandum of Agreement.

Arthur English said since the Administrative Office of Courts was setting up payroll for 618 new State employees, they obviously needed something in writing from all 159 counties in the State before they met on January 15, 2005. This MOA was easier to execute from a time constraint standpoint and would suit everyone's needs quite nicely. The budget figures are what were approved by the Board of Commissioners earlier this year; the \$140,000 fiscal request for 2005 covers the period from January through June.

Commissioner Morrow made a motion to approve the Memorandum of Agreement for the Public Defender's Office as presented, in lieu of the originally proposed Contract, and Commissioner Davis seconded. The motion passed by a unanimous vote of 5-0.

Public Defender English responded his office was ready to get started. They will have thirteen lawyers circuit-wide, four investigators, six secretaries and three offices. The main office will be here in Griffin where he and his chief assistant will be located. Computers are installed, phones are in place, and facilities are established in all four counties (offices are actually in three counties; Pike County will be served from the Upson County office).

2. Consider Interlocal Cooperation Agreement to establish the Griffin-Spalding County Land Bank Authority.

County Manager Wilson said this appeared on the City's agenda last week, and they approved it in concept with a future meeting to be held by City Staff, County Staff, and School Board Staff to work out the particulars. Those involved with the effort are asking the same consideration from the County Board of Commissioners tonight.

Rev. Clay Padgett and Dr. Aaron Rocquemore addressed the Board.

Dr. Rocquemore said they were all with the Griffin-Spalding Community Housing Development Agency. He presented a handout to Commissioners summarizing the Land Bank Authority Agreement, a local agreement between the City and County. The amount of property in the City of Griffin that is substandard and/or tax delinquent is a great concern. Some are scheduled for demolition. One of the only allowable mechanisms in the State to address these type concerns is establishment of a Land Bank, which would be a local agreement between the City, County and School Board. This vehicle is a mechanism by which the City, County and School Board can effectively deal with turning these properties into income-producing properties. The three entities are required because this mechanism will, in effect, forgive taxes for certain properties so they can be placed in the Land Bank Authority and then be developed into tax-producing properties. The City did, in fact, approve it in concept at their Board meeting last week. This is an endorsement to go forward with studying the feasibility of the project.

Rev. Padgett said the handout regarding uncollected taxes showed many properties are owned by absentee landlords, and some taxes are more than the properties are worth. Auctions are not successful sometimes for properties such as these. Property values in the areas are also low which deters even rental property owners from purchasing them at auction. Currently there are 279 properties in the City over three years' past due in taxes

for a total of \$181,000. There are 409 for \$284,000 over two years' past due, and there are 902 over one year past due for a total of \$644,000. These past due amounts range from \$1.09 to \$44,767.00, with an average tax of \$715 per property. The School Board actually has requested that someone come into these areas and rehab existing homes and/or build new homes that will fit with the community to provide affordable housing, probably from \$85,000 to \$100,000. This is a good price range for a single teacher, for instance, or other public service employees who make in the \$30,000 to \$50,000. They would like to be able to rehab homes at existing dwellings and build new homes where dwellings have been demolished. This will provide homeowner options for those who have previously been renters. Some areas on the north side have 80% rental rates, and this is much higher than the national average of 44%. The target home ownership rate is 66% minimum, but they would like to improve on that rate if possible.

Homeowners have more pride and areas are safer and better kept than rental properties. Yards stay cleaner and neighborhoods actually stay safer. Landlords who currently own rental property will benefit, as well, since property values will increase. The City and County tax coffers will see increased property values and tax base, rather than declining and uncollected taxes. After rehabilitation of an existing home, there is an average potential base price of \$85,000, and the taxes on such a home total \$1409.00, which is about double what is received in taxes on the current properties. Most properties being discussed have been demolished or are scheduled to be as soon as monies become available at the City. Taxes can never be collected as the situation currently stands; they could only hope to collect whatever the property might go for on the Courthouse steps. Since auctions have proven unsuccessful, this group is asking for approval in concept to create a Land Bank Authority so these properties can be added back to the tax base.

Chairman Kendall asked for a summary of how the Land Bank actually would work.

Rev. Padgett said the Authority would be comprised of two representatives from the County Board of Commissioners and two from the City Board of Commissioners. These designees would work together to arrange for these properties to be forgiven of their taxes by the City, County and School Board and place them in a Land Bank, where they can be redeveloped by non-profit organizations or for-profit organizations. There would be a concise plan to bring all these factions together so that ultimately we are rebuilding neighborhoods and not just individual homes.

Karen Mathews, a community development specialist, says Land Bank Authorities are not new; it has been done successfully in Bibb County, Fulton County and Dalton. Conveyance to the County can occur through several means. The Land Bank Authority could obtain title of property through donation from owner, purchase from the owner, bidding process at tax sale, or through a request for judicial tax foreclosure on property, which takes about 12 months and results in an auction on courthouse steps. The Authority would seek grants for affordable housing development and use these monies to actually purchase and improve properties. Grant monies for the program can be obtained from agencies such as HUD, for example, and can be used to improve properties through for-profit or not-for-profit companies. These developers would make a presentation to the Land Bank Authority Board, explaining the nature of their proposal exactly. The cost of the housing has to be affordable for lower income families. Then they would bid on the properties from The Land Bank Authority. The Land Bank Authority would set up regulations, policies and procedures for the acquisition, sale and development of qualifying properties. Money from the sale of properties is reinvested in properties.

Commissioner Morrow said key is that the Authority can forgive taxes, making renovation of the properties more feasible. The program is very successful in some places. The pitfall is that in some cases groups set expectations that are too low and end up with more slum properties. There is a fine line between building affordable housing and additional slums. These properties could be sold at higher prices depending on the Board and the nature of the areas surrounding the properties.

Chairman Kendall asked what would prohibit the properties from becoming slum rentals.

Ms. Mathews explained that The Land Bank Authority, when it sets up its guidelines, could utilize mechanisms such as programs for first-time homebuyers, or stipulations that the homeowner must reside on the property three to five years, etc. as a means to restrict

properties and keep investors from developing undesirable rental properties. Board members can, in the way they set up their policies and procedures, exercise control in these areas.

Commissioner Morrow said land bank authorities are only as good as the astuteness of the board members who control them. Several potential problems exist, and these authorities can be run more as charities than businesses, but that fine line can be negotiated by a conscientious and knowledgeable Board.

Commissioner McDaniel said such Authorities can assemble tracts for public properties such as parks, etc. and can convey property to individuals, neighborhoods, non-profit entities or governmental agencies which would effectively utilize the property to promote commercial ventures, as well, especially those that would create new jobs. Atlanta specializes in mixed use communities. They will incorporate a mixture of incomes, including low income, along with top dollar development with these properties. Atlanta feels that communities should reflect mixed income use and they aim higher. Griffin-Spalding areas would lean more toward what was affordable since that is the target market that actually needs housing.

Commissioner Morrow made a motion to approve the concept of the Interlocal Cooperation Agreement to establish the Griffin-Spalding County Land Bank Authority, seconded by Commissioner Davis.

Ms. Mathews responded to Commissioner Goss that three major counties in Georgia currently have land bank authorities. Commissioner Morrow noted that Huntsville, Alabama had a very effective large authority, as well. He urged Ms. Mathews not to shoot too low in her expectations to avoid the problem of developing more slum areas. That is not the purpose of the program, but rather to better the community.

Ms. Mathews said once the agreement has been approved by all in concept, then they will proceed with discussions on logistics, procedures that need to be put in place, guidelines, long-range planning, etc.

Ms. Mathews reiterated for Commissioner Goss that the City would have two appointees and the County two, and confirmed that the unit must be an authority to function legally.

Rev. Padgett summarized that the Authority is only as good as those appointed to it, and he felt there were good, qualified people who exemplified his and his colleagues' sentiment: They want to make a difference ... not a killing.

The motion carried by a unanimous vote of 5-0.

3. Consider ordinance amending the FY 2005 budget ordinance to provide for additional revenues from the LEOP Grant for emergency management services and ordinance amending the FY 2005 budget ordinance to appropriate the balance of unspent funds from the FY 2004 budget.

Commissioner Morrow made a motion to approve, seconded by McDaniel, and the vote to approve the motion was unanimous at 5-0.

4. Consider approval of Griffin-Spalding County Hospital Authority grant allocations for 2005.

Commissioner McDaniel made a motion to approve the allocations for 2005 as presented, seconded by Commissioner Davis, and the motion carried by a unanimous 5-0 vote.

5. Consider recommendations from Parks and Recreation Advisory Commission for:
 - A. Addition to the Playground Section of the Design Guide Manual.

County Manager Wilson said this would add a rock climbing wall that is 8' x 8' for recreation.

On a motion by Commissioner Davis, seconded by Commissioner McDaniel, the vote to approve was unanimous at 5-0.

Commissioner McDaniel said one will be erected at Wyomia Tyus Park at good price from the vendor.

B. Potential land donation.

Commissioner Morrow prefaced his comments with the declaration that he was being careful to speak in philosophical terms and not necessarily about this specific piece of property, because Mr. Mobley wanted to donate this piece of land to the County and he didn't want to give the appearance of any conflict. Commissioner Morrow said he couldn't understand the reasoning behind the Parks and Recreation Advisory Commission not accepting donated land, since even if there was no clear and present need, there could obviously be potential use for the land at a later date. He wondered why they would turn down property with park potential that not only was being donated, but also came with a declared intent to install playground equipment and pavilion, and to make improvements to the property.

Commissioner McDaniel said the donation did not fit into the master plan. It was basically positioned across from AMBUCS Park, and they felt there was no need to have a community park and a neighborhood park across the street from each other. The Commissioner was cognizant of the fact that declination might be construed as a blanket endorsement of not accepting donated property, which is not the case. He had not seen the plan but understood it would be a different type of park, inside the subdivision.

Commissioner Morrow responded the park was not inside; the plan shows the development in the back and the park along the road.

Community Development Director Chuck Taylor said Chad Jacobs had reviewed the property.

Senior Planner Chad Jacobs said the property was off High Falls Road, with one entrance to the east of the subdivision entrance, comprised of 17.7 acres, on the south side of the power line and north side of High Falls Road. He responded to Commissioner Goss that it was closer to the hardwood area than the deep gully.

Commissioner Morrow said he wanted to make sure the property was properly identified without becoming too involved in the discussion. He was speaking neither for nor against the subdivision. This subdivision is an urban proximity area with streets and the developer thought the County would like the hardwood area up front as a nice potential park rather than see it reforested. He was sure the developer could find a buyer who would utilize it in some other way.

County Manager Wilson said the Board's decision tonight on whether or not to accept the property will have a direct bearing on how the developer designs his subdivision. Essentially, with the recent donation of AMBUS Park to Spalding County, over half of which is undeveloped, there was not a need shown in the Parks and Recreation Master Plan. Since a community park may be good for the subdivision, perhaps there should be a homeowners association incorporated into the subdivision and not have the County bear any responsibility.

Commissioner Davis said he had mixed emotions over the issue. It is not often the County has an opportunity to acquire land at no cost even if there is no immediate need for the property and assuming the property is usable with no ulterior motive involved in the donation. He stated he would like to postpone any decision until he had an opportunity to take a look at the property.

Commissioner Davis made a motion to table Item #5B until the second meeting in January 2005, seconded by Chairman Kendall. The motion carried by a vote 4-0-1 with Commissioner Morrow abstaining.

6. Consider adoption of the 2025 Spalding County Comprehensive Plan.

Mr. Taylor said Staff recommends approval of the resolution to adopt the 2025 Spalding County Comprehensive Plan. Jordan, Jones and Goulding, the consulting firm for the project, has held final printing of the document subject to any changes the Board may wish to make to the final draft. He outlined the four most recent changes to the plan, as outlined in his December 20, 2004 memo to Commissioners. He asked, also, that he be allowed to make final adjustments for grammar and spelling.

Commissioner Morrow made motion to approve adoption of the 2025 Spalding County Comprehensive Plan with the four changes as presented in Chapters VII and VIII as presented by Mr. Taylor and to further authorize corrections to spelling and grammar by the office of Community Development. Commissioner McDaniel seconded the motion, which passed by a 4-1 vote, with Commissioner Goss voting in opposition.

Commissioner Morrow stated the year plus expended on the development of this plan with a great deal of public participation was time well spent. He felt it was an excellent plan and hoped future Boards would adhere to the Comprehensive Plan.

7. Consider declaring as surplus several pieces of equipment from the Parks and Recreation Department.

Commissioner Davis made motion to declare the equipment surplus with an amendment that only sealed bids be accepted and that County employees be excluded from participation. Commissioner McDaniel seconded the motion, and it carried by a unanimous vote of 5-0.

8. Conduct Hearing to consider renewal of alcoholic beverage retail sales license for Cole's Corner.

Chairman Kendall adjourned for a five-minute recess.

Chairman Kendall declared the hearing convened.

Chairman Kendall stated the purpose of the hearing and County Attorney Jim Fortune presented a brief statement to Commissioners regarding the matter. Mr. Bill Johnston, of Shepherd, Johnston and Owen, LLP, was in attendance as counsel to Mr. Patel.

Mr. Fortune gave a brief history of violations and the status of disposition of cases with regard to Cole's Corner in order to determine how to handle renewal of his alcoholic retail sales license for 2005 since his current license expires on December 31, 2004.

He continued that there have been three violations at this location in roughly the past year. Commissioners, in an effort to address the question of renewal of the alcoholic retail sales license for Cole's Corner, asked for all pertinent information regarding the disposition of the existing cases. A letter was sent to Mr. Pyush Patel, the owner of the establishment, telling him that with three violations since October 2003, it would be the Board's intent not to renew his 2005 alcoholic retail sales license and that he was entitled to a hearing if he so desired. He has been provided with the various documents that Mr. Fortune intended to present at the hearing tonight.

Mr. Fortune said his only witness was Investigator Tony Ranieri, who had made all three of the cases at this location. He has personal knowledge regarding all three incidents.

Chairman Kendall noted to Mr. Johnston that Spalding County Code made no stipulations as to how this hearing should take place. Therefore, the Board of Commissioners will begin with Investigator Ranieri's testimony regarding the details and background and then allow Mr. Johnston to present his case and/or rebut any statements made.

Mr. Johnston stated that procedure would be agreeable.

Mr. Fortune swore in, collectively, the five participants who would be testifying.

Tony Ranieri, investigator with the Spalding County Sheriff's Department, stated he was a sworn law enforcement officer for 20 years, 19 of those at Spalding County. He confirmed that part of his duty is to investigate reports of the sale of alcohol to minors. Mr. Ranieri said he handles all alcohol violations in City and County with a total of 35 businesses that are checked during each operation. In his investigative procedures, he utilizes persons under the age of 21 for alcohol violations and under the age of 18 for tobacco product violations.

Officer Ranieri was familiar with Cole's Corner at 751 Newnan Road, just off Highway 16 West in Brooks. This establishment has had three violations since October 15, 2003. Officer Ranieri was present at all of these organized police operations to check for underage sales. The same informant was used in all the operations. On October 15, he entered the store and purchased beer. Ms. Brenda Williams, the cashier, sold him alcohol without checking his identification. This case has been disposed of in the State Court of Spalding County.

Mr. Fortune asked Officer Ranieri to identify document #SR2511, and Officer Ranieri responded it was Ms. Williams' plea agreement as far as her affidavit showing she pled guilty to the charge and was sentenced to a fine and probation on June 8, 2004.

Mr. Fortune asked how Officer Ranieri could know that an informant might not be carrying a fake ID that would indicate he was over 21. Officer Ranieri stated the informant, who actually works for the Georgia Bureau of Investigation at the State Crime Lab, surrenders all his personal effects. He's given \$50.00 as informant funds, and his driver's license. His person and vehicle are checked to make sure that no fake ID's or alcohol are present.

Officer Ranieri stated the next alleged offense at which he was present was on March 17, 2004, and utilized the same informant. The same clerk again sold beer to the informant. This case has been disposed of in the State Court of Spalding County, as well. Officer Ranieri identified document# ST3794 as the affidavit of Brenda Williams and stated she pled guilty and was sentenced to a fine and probation on October 5, 2004. In both these cases the charge was the underage sale of alcohol to minors.

The most recent case, stated Officer Ranieri, was only two weeks ago. It involved the same informant and Officer Ranieri was present, but a different clerk was involved. When the informant tried to make his purchase, the clerk asked to look at his ID, which clearly showed his date of birth in September of 1985. The clerk sold the alcohol anyway and was arrested that night and transported to the Spalding County Jail. A warrant was issued for him on December 2, 2004, and this case is now pending in the State Court of Spalding County. Officer Ranieri confirmed a document as the criminal arrest warrant that was issued for the clerk.

Officer Ranieri was then examined by Mr. William Johnston, Attorney for Mr. Patel.

Mr. Johnston asked if Officer Ranieri was called upon to testify in the fall of 2003 with regard to renewal of Mr. Patel's application after the first arrest in October.

Officer Ranieri said no and stated the procedure was that he initiated a background check on the applications, and this report is provided to County Manager William Wilson. In November of 2003 the report indicated Mr. Patel had one violation, and this past year the report indicated he had a second violation and that is why this hearing is being held today.

Mr. Johnston said there was no guilty plea in effect during the fall of last year because the guilty plea was entered on June 8, 2004. So, there was no guilty plea that impacted the issuance of the license last year. Officer Ranieri said not as far as he knew.

Mr. Johnston asked if Officer Ranieri was aware Mr. Patel also owned Spalding Beverages on Everee Inn Road. Officer Ranieri said he could not say with certainty as he did not keep track of who owned which establishments. He simply randomly selects 35 businesses when they are conducting an operation. Officer Ranieri responded he possibly could have checked Spalding Beverages at some point(s) during the past 15 years, but he did not have his records present with him. Officer Ranieri responded he

was not sure if he had ever had an arrest and conviction for a violation at Spalding Beverages.

Officer Ranieri confirmed that the arrest for December 1, 2004 is just that. This case will not be presented to State Court until next month. There is no way to predict what the outcome of that case will be.

Officer Ranieri stated he did not talk to the owner after any of the arrests. He did not check to see if they had a Point-of-Sale machine to document the sale since he watched the transaction himself and did not need to check anything.

Mr. Johnston said this hearing was not to determine the guilt or innocence of anyone, but rather to determine if a policy is in place for the sale of alcohol to minors. His question to Officer Ranieri was whether or not he did anything further to see if they have Point-of-Sale machines there at Cole's Corner.

Officer Ranieri said he had nothing to do with whatever their policy might be.

Chairman Kendall asked if Ms. Williams was present, and Mr. Johnston responded yes.

Chairman Kendall asked who the clerk on duty was at the time of the third violation. Officer Ranieri responded Mr. Mohammed Ali Igeal, who was also in attendance.

Chairman Kendall asked, and Officer Ranieri confirmed, that Ms. Williams had pled guilty to both charges and the cases had already been adjudicated.

Mr. Johnston responded to Chairman Kendall that the owner was present and would speak.

Officer Ranieri responded to Chairman Kendall that he did not know the owner, nor had he spoken to him after any of the operations. The State Department of Revenue had contacted Mr. Patel. Officer Ranieri stated his paperwork when completed goes to County Manager Wilson and then it goes to the State Department of Revenue. There have been two revenue hearings but he pled guilty at both hearings and paid his state fines there. Now, Mr. Patel is about to be served again.

Ms. Brenda Williams, whose address was 2462 Highway 36, Milner, Georgia at the time she was employed at Cole's Corner and currently is 1908 Ridge Street, Griffin, Georgia, testified next. She stated she quit after the second offense. Cole's Corner does have a Point-of-Sale machine (a register) which requires that after you enter the sale you respond to prompts which would identify anyone under the legal age. Ms. Williams stated she did not know the individual who purchased on both occasions and stated she had freely and voluntarily pled guilty. Ms. Williams acknowledged Cole's Corner did have a policy regarding the checking of identification for sales of alcohol in force and stated she violated that policy. At the time Ms. Williams pled guilty to the first two violations, she was not represented by an attorney.

Ms. Williams responded to Mr. Fortune that she violated the store's policy because she was very busy at the time of the sale. She was trying to complete a food sale (pizza), wait on a lottery customer and ring up the alcohol sale at the same time... on an evening when she was minding the store alone. She was rushed and stressed and had only been there about two months at that time. Her boss did not pay the fine which came about after she had quit. He did not lend her the money; nor did he make arrangements to somehow pay the money for her. She assured Mr. Fortune Mr. Patel had no involvement at all.

Ms. Williams continued that on the second offense, she did ask for ID but had left her glasses, which she needs for reading, at home. She did look at the identification, but evidently misread the date, which she considered to be an accident. She responded to Mr. Fortune that she had not had any conversations with Mr. Patel since she quit.

Ms. Annette Redding, 460 Mask Road, Brooks, Georgia

Ms. Redding said she had worked for 3-1/2 years at Cole's Corner. Mr. Patel's policy stresses to check ID for lottery, alcohol and tobacco. There is also a display that shows

the date of birth for qualifying a customer's age. Additionally, the Point-of-Sale register input captures whether or not the customer is old enough to purchase with a "Yes" or "No" prompt that the cashier must respond to in order to proceed. She was confident Mr. Patel has policies in place for clerks to follow. Some customers do get belligerent when told they cannot purchase, and Brooks is in a rural part of the county which attracts a great many youngsters who think they can get away with purchasing cigarettes or alcohol. They really try to test the cashiers.

Mr. Pyush Patel, 128 Stillwater Trace, Griffin, Georgia

In response to questions from Mr. Johnston, Mr. Patel stated Cole's Corner is actually owned by a corporation, of which he is a principal owner. He confirmed he had one alcohol license in the County, Cole's Corner, and one in the City, Spalding Beverages. After Brenda's first call saying she had been arrested, Mr. Patel said he had to get someone to cover since law enforcement officials wanted to take her away immediately. Mr. Patel said he conversed with her, after the fact, and showed her how to make sure she followed the procedures and policies in place. To disregard those policies put him at great risk because he had more to lose. He made sure they ordered the date calendars every year and keep an updated version in both stores. There have been no arrests of any employees at Spalding Beverages during the 13 years of operation. They also own Jones Petro where they sell tobacco and have experienced undercover operations there on several occasions with no resulting violations.

On the second arrest of Ms. Williams on March 14, 2004, they would have terminated her had she not quit. They had no contact with her after that, and Mr. Patel confirmed he had not paid any of her fines.

With regard to the last citation, Mr. Johnston instructed Mr. Patel not to divulge anything the clerk might have told him since he still had a criminal case pending, but rather just confirm if Mr. Patel had talked to him and explained the situation regarding his arrest. Mr. Patel affirmed he had, in fact, done that.

Mr. Patel said they have a contract with the gas company, BP Oil, and they supply the registers for the gas tanks that incorporates the system where a prompt is provided if the button for a cigarette or alcohol sale is depressed. You then enter the date of birth, and the machine won't let you go forward until this is completed.

Every time there is an arrest, the Department of Revenue becomes involved. Mr. Patel said he had not been served on this last violation yet but he was certain he would be. Mr. Johnston asked, in light of the two arrests with convictions, one this year and one the year before, what Mr. Patel could convey to the Board regarding actions he could take to ensure alcohol did not get into the hands of minors at his store.

Mr. Patel said they would send them for training and more closely make sure they follow the rules. Each employee would go through a training session. Mr. Patel said even then the problem might not be completely alleviated. To check everyone's ID would slow the cashiering process considerably, and delays in checking out irritates most everyone. This would be bothersome to regular customers. Some discussion followed regarding the actual procedure on the register for checking identification. Because of how the register responds to the prompt, Mr. Patel concurred with Mr. Fortune and Chairman Kendall that Ms. Williams had to have actually put in a wrong date of birth, one sufficient to not flag the purchaser as underage.

Ms. Williams said they system had changed; all one had to do now was simply respond to a yes or no prompt as to whether the purchaser is of legal age. It was not necessary to enter a date of birth. Mr. Patel said you could enter the date of birth if you so desired, but it was not necessary. You can bypass that option with a yes or no response.

Mr. Johnston asked if Mr. Patel was given any notice, or any provisions outlining what would happen, by the County as to what type of sanction occurs after one offense, two offenses, three offenses and so forth. Mr. Patel responded no.

Mr. Patel responded that the third incident only a couple of weeks earlier also involved a new employee. He stated it was hard to get good employees to work in that area,

especially at night, particularly since a female employee was locked up in the restroom by a man who then robbed the store.

Mr. Patel responded to Chairman Kendall that normally during busy hours there were two people in the store. After 7:00 p.m. there is only one person there since that is after the lottery drawing. Store traffic greatly subsides after that.

Mr. Patel told Chairman Kendall that his policy was to terminate an employee on the second infraction of these type violations. They give the employee a chance after the first violation. It's hard to find and keep honest, hard-working employees who are conscientious and can handle the responsibility.

Mr. Patel replied to Commissioner Goss that alcohol and tobacco sales comprise 50% of his total retail sales. New employees can go to training offered quarterly at Philip Morris to show employees how to use the Point-of-Sale, recognize tricks and ploys used to circumvent the age requirement, and handle customers when questioned about identification. Most customers who are underage run when their ID is questioned. If the person remains and they determine the ID is not genuine, law enforcement is called.

Mr. Johnston urged the Board to consider a couple of things. The arrest last year resulted in a fine by both the Department of Revenue and the State Court, for the person who committed the violation. The Department of Revenue and State Court will fine again this time and may very well pull the license, but they have definite standards as to what they have to ascertain in order to do that. What is done here at the County is still contingent on the Department of Revenue. They will come in and hold an administrative hearing to determine whether or not Cole's Corner can continue to sell alcoholic beverages. Mr. Johnston responded to Commissioner Morrow that they stipulate definite penalties and Officer Ranieri said there was a \$500 fine and license probation for a period of twelve months for the first offense. For the second offense, there is a \$1000 fine, possibly higher depending on the amount of time lapsed, or the lack of lapsed time, since the probation period from the first offense. The third offense carries a \$1500 fine and the license will be on probation for two years. After the next infraction, the fourth violation, the State will take their license within two years.

Commissioner Morrow said, given that scenario, Mr. Patel could possibly have his license revoked if the third citation is adjudicated guilty. Officer Ranieri said in administrative hearings for the State, the State did not take adjudication into consideration in their determination. There is a violation and the State doesn't wait for the outcome of any court proceedings.

Mr. Johnston said in an administrative proceeding, the burden of proof is less than in a court of law. They responded to Commissioner Morrow that the license would be automatically revoked after the fourth violation, and this constituted the third citation.

Mr. Johnston reiterated that OCGA3-3S2 is the statute that outlines what Spalding County can do as far as establishing its Ordinance. The case of Harris vs. Herron, which is a 1985 Camden case, involves a very similar ordinance that stated ... "The Board shall have a full and sole authority and absolute discretion to determine whether the applicant for a license under the provision of this Ordinance is a fit and proper person to operate the type of business involved." The Board, through its Ordinance, made itself the sole discretion but did not outline any ascertainable standards to meet that discretion. The Board in this case refused to issue an application, but Mr. Johnston did not know if that refusal came after one, two or three violations as in this case. The Supreme Court has said, "Local municipal governing authorities may no longer deny liquor licenses without justification merely by labeling an alcoholic beverage license a privilege and not a right. While states and local governments have a right to regulate sales of intoxicating beverages as a valid exercise of police power, the power to regulate the activity does not exempt the State from the operation of the Fourteenth Amendment. Absolute and uncontrolled discretion by governing authorities to issue licenses invites abuse and exercise of discretion by states and local governments must be tempered with ascertainable standards by which an applicant can intelligently seek and qualify for license."

Mr. Johnston maintained that here in the Spalding County ordinance, there are no objective standards. All the Ordinance here states is, "The discretionary authority and power as to granting, refusing or revoking of any of such license or permit is conferred by law upon the governing authority of the County and it shall be within the sole discretion of the Board to issue or to refuse to issue a license upon any such application and, likewise, it shall be within the sole discretion of the Board to revoke any such license which is being issued hereunder." This was the exact same language in the Camden County Ordinance, which the Supreme Court threw out.

Subsequent to the Camden County case, there was a Richmond County case. In this case, the local governing authority does have sole discretionary authority, as well, but there are ascertainable standards in their Ordinance, which are specifically outlined. None of these are in the Spalding County Ordinance. He has concerns about whether or not this Ordinance in Spalding County would stand up to a constitutional challenge given there are no ascertainable standards contained therein. Rather than argue this point, however, what he was requesting was the opportunity to allow Mr. Patel to continue selling alcoholic beverages at this location. He has established a track record of twelve years of selling liquor as well as malt beverages and wine on Everee Inn Road at Spalding Beverages with no infractions at all. The incidents at Cole's Corner have been unfortunate setbacks, and only the two cases adjudicated should be considered. The third instance has been an arrest only with nothing resulting from that arrest yet. Mr. Johnston asked that everything be contingent upon any action by the State. If the State should want to revoke Mr. Patel's license, there is nothing the County can do in the matter anyway. Therefore, Mr. Johnston urged, grant Mr. Patel his renewal of the alcoholic beverage retail sales license for 2005 and let him have the opportunity of going to the State for his hearing to see if they might revoke.

Mr. Fortune said he felt Spalding County's Ordinance did, in fact, state an ascertainable standard with, "The County, through its Commissioners, hereby reserves the right to revoke or suspend any license which has been granted hereunder upon conviction of the license holder or the license holder's employee active within the scope of his employment." This is a very ascertainable standard, and in this scenario, there are two instances where an employee has pled guilty of her own free will. Even though there may not be enumerated standards, i.e. 1, 2, 3 etc., he felt this standard was ascertainable and certainly enough to hang the County's hat on as it currently reads.

Mr. Johnston said his comparison of the cases in Richmond County and Camden County led him to believe, based on the rulings, that Spalding County's Ordinance would not meet constitutional muster.

Commissioner Morrow felt guidelines do need to be incorporated into the Ordinance. He stated he was as much against selling alcohol to minors as anyone, but he did understand errors and mistakes happen when people get too busy. He felt they should routinely grant these applications and let the State pull the license if they violate the rules or make Spalding County's regulations agree with those of the State.

Chairman Kendall said he did not agree with that philosophy, and he further did not believe the County should set a number. He felt that alcohol licenses posed a real problem in a great many places, and he was not willing to tolerate these problems personally. When license requests and/or renewals come before the Board, Chairman Kendall stated he always voted for them since this is a wet county. The people have declared their wishes that the County have alcohol sales, but the rules must be followed. If rules are followed he had no problem with license holders, but if not, he had a low tolerance.

Commissioner Morrow said he could count three votes against this issue on the Board already and suggested they move on with a vote.

Commissioner Goss said the only thing that bothered him was the fact this establishment had three violations that were known, and he wondered how many escaped detection and were not caught.

Commissioner Davis said his problem was that one employee committed 66% of these errors and she is no longer employed there. Mr. Patel's other business, after 12 years,

has no violations and convictions. Mr. Patel has paid some substantial fines and is obviously making an effort to not sell to minors. Commissioner Davis said he would like to see the State rule on the matter.

Commissioner McDaniel agreed that the Board struggles with decisions sometimes with few guidelines and needs verifiable standards, but regardless, someone has to take responsibility for trying to keep the community a safe place. What someone does in the privacy of his or her own home is his or her business, but when a sixteen year old gets on the highway with alcohol, then that becomes other people's business. He felt Commissioner Goss made a valid point when he said there were the caught and the uncaught. Everyone has been in a similar situation, such as exceeding the speed limit, where you speed until you get caught and then you slow down for a while until complacency sets in and you speed again. Commissioner McDaniel felt in this situation the establishment may be careful for a time until they get careless again because it becomes familiar. However, when you get caught for speeding and your excuse is that your mind was just a million miles away, chances are good that you will get a ticket. He knew this was this family's livelihood and wished there could be a County option for probationary provision, but someone has to maintain the standards. That maintenance, he felt, falls on the Board of Commissioners.

County Manager Wilson said if Mr. Patel's license lapses, a new application would have to be made for a license to sell alcoholic beverages retail, not only with the County but with state, as well. Since it would be treated as a brand new license, they would be made to jump through some additional hoops.

Mr. Johnston said the State license is a prerequisite to the County or municipality issuing a license. In other words, if the County declines to renew, the State cannot issue; if the County doesn't sanction with a local license, they cannot operate. They would, indeed, have to start all over with the State as well as the County if their license is allowed to lapse.

Officer Ranieri said Mr. Patel cannot apply to the State until this license expires, so that would be after January 1, 2005. Additionally, the State won't allow application if a Department of Revenue hearing is pending. They will not entertain the application until after the hearing officer has made a ruling on the pending case.

Chairman Kendall said his biggest problem with this case was that once the Board of Commissioners does this, they will be effectively making a law here tonight unless they do change the Ordinance. If three times doesn't result in a forfeiture of your license or disallows a renewal, everyone else who commits violations should be allowed three infractions because this would, essentially, set a standard. Violators would feel they were entitled to three violations because that is what was allowed in this case. To avoid this, the Ordinance will have to be amended.

Mr. Johnston said if the Supreme Court were to throw out the case, the Ordinance won't be any good anyway. Chairman Kendall countered that the Supreme Court was not a practical solution for Mr. Patel, since that process will take too long. Mr. Johnston felt, though, that the Superior Court would follow what the Supreme Court has said and, in all likelihood, throw it out.

Commissioner Goss made a motion to deny application for renewal of alcohol retail sales license for Cole's Corner, seconded by Chairman Kendall for purposes of further discussion.

Commissioner Morrow asked for clarification about the probationary periods and whether or not the license could be pulled if the second violation occurred within the probationary period imposed after the first. Officer Ranieri stated the Department of Revenue won't take the State license and suspend it permanently until after the third violation. This is the third violation, so Cole's Corner would have one more opportunity and the license would be permanently pulled from this owner after the next violation by the State. The revocation would be in effect permanently as long as the same person owns the business.

Officer Ranieri responded to Commissioner McDaniel that Mr. Patel will not be able to do anything at all with regard to a new license application until the Department of Revenue hearing on the most recent charge is held. Then, depending on that happens at that meeting, Mr. Patel could apply for another license and will come back through the Sheriff's Department again. The Sheriff's Department would send Officer Ranieri back over probably at that time to argue why Mr. Patel should be given another license with three violations. This same Board would entertain the issue.

The same thing occurred with this same Board for Tony's One-Stop in Sunny Side and his license was taken after three violations. Commissioner McDaniel said the State actually pulled his license.

Officer Ranieri said this most recent charge, in December 2004, won't appear in State Court until probably February 2005. If it is not disposed of in February, then it would be the next year before it is processed. This is their third violation, though, which would not result in a revoked license by the State. In the case of Tony Levell cited earlier, everyone agreed that the County and State would probably take the license, so he surrendered it voluntarily.

Chairman Kendall said if this store were in his district and there had been three documented cases of selling to the same underage undercover agent, he would have severe reservations. He asked if Mr. Patel could shift any of the good employees he obviously had working at Spalding Beverages in the City out to Cole's Corner in the County. To have a third violation so close on the heels of the others looks bad and implies that he perhaps cannot get a handle on his problems.

The motion to deny renewal of Mr. Patel's license for 2005 for alcoholic beverage retail sales passed by a vote of 3-2, with Commissioners Morrow and Davis voting in opposition.

XII. REPORT OF COUNTY MANAGER

County Manager Wilson said an LLEBG Grant public hearing was scheduled for Monday, January 3, 2005 at 5:45 p.m.

Additionally, the first public hearing on impact fees is scheduled for Monday, January 3, during the 6 p.m. meeting. The second public hearing on impact fees is scheduled for the second January meeting, which falls on a County holiday, January 17, and will probably be rescheduled.

Homeland Security grants are available again and the public safety agencies will be exploring the possibility of obtaining grant monies for initiating an 800 MHz radio system or at least getting the main component unit, which totals about \$1,000,000 for this system. We will also be looking at other financing sources for the remainder of the system.

The County website has been totally redesigned and is currently on-line. He urged the Commissioners to view the changes.

The City has requested a utility permit for the water main for new water treatment plant in Pike County which will come across Spalding County. Public Works and the Water Department have reviewed the plans, and we will bring the request to the Board since plans are to cut across several roads in the County.

County Manager Wilson said he had a meeting with representatives from Heron Bay regarding animal restraint districts. They were concerned since they wanted to be, and thought Heron Bay would automatically be, declared an animal restraint district. On review of the Ordinance, it states that any dense subdivision or cluster development shall automatically be declared an animal restraint by the Board of Commissioners by the Ordinance. Since the Ordinance was adopted in 1991, several subdivisions have been developed that will possibly be affected. Deer Creek comes to mind as one that should have been declared based on the wording of the Ordinance. He stated he needed to have the Board of Commissioners declare it was their intent to have Heron Bay be declared an animal restraint district. He felt this was the case since they were working at the same time on Spring Lake and part of the requirements in the rezoning for Spring Lake was that it be

declared an animal restraint district. Heron Bay evidently just slipped through the system without this declaration. Commissioners affirmed they did, in fact, intend Heron Bay to be declared an animal restraint district.

Mr. Wilson said he would get with Community Development to identify all the subdivisions that have been developed since 1991 that might qualify as animal restraint districts based on the Ordinance but were not so designated. He will bring the complete listing of subdivisions back to the Board of Commissioners in 2005 for a decision on how to handle this matter. In the future, the matter will be addressed in all zoning meetings so the stipulation will be in the zoning certification.

County Manager Wilson said he was pleased to have worked with outgoing Commissioners Kendall and Morrow. He thanked them for their service. He welcomed the two newly elected Commissioners, Eddie Freeman and Gwen Flowers-Taylor.

XIII. REPORT OF COMMISSIONERS

Commissioner Morrow stated the Task Force met this past Friday morning. General rules for a new sign ordinance have been developed. Community Development Director Chuck Taylor and Senior Planner Chad Jacobs will write the ordinance and in early January return to have the Task Force review and comment on the new sign ordinance. He wanted to advertise this review process and set it for a Friday morning so they could increase the amount of input received. He concluded that it has been his pleasure to serve the past four years. He has enjoyed working with previous and current Commissioners and he thanked them for their friendship and assistance.

Commissioner Goss had no comments.

Commissioner Davis was glad to see the demolition work on the old Hill's Tire Store building was progressing. He hoped all parties are happy with it and expressed his appreciation for a good job.

Commissioner McDaniel said he had been speaking with Fire Chief Chipper Gardner regarding the rapid spread of fire in high density developments. Construction standards need to be developed, along with development standards, making fire retardant materials mandatory. They have made some vain attempts at getting these standards off the drawing board, but he wanted the Board of Commissioners to consider implementing mandatory standards for fire-retardant materials in high density developments. Experts will have to provide guidance in the development of these standards.

Commissioner McDaniel noted that the Governmental Affairs Committee and the role the Chamber plays in it was discussed at the recent Chamber retreat. He thought it would be a good idea to hold a forum with the newly elected Commissioners to get them introduced and obtain feedback, as well. He concluded that he had very much enjoyed the working relationships and friendships he had developed with Mr. Kendall and Mr. Morrow.

Chairman Kendall wished everyone a Merry Christmas. He stated it has been his pleasure to have been here working for past 12 years. Chairman Kendall noted the atmosphere was better on his leaving than when he came. Much progress has been made in the twelve years he has served, and he noted how much he had enjoyed his tenure. He wished the best and pledged his support to Ms. Flowers-Taylor in her endeavors as she filled his seat on this Board.

XIV. CLOSED MEETING

1. County Attorney requests a Closed Meeting to discuss acquisition of real estate and pending litigation.

Commissioner McDaniel made a motion to enter into Closed Meeting, seconded by Commissioner Davis, and the vote was unanimous at 5-0 to enter Closed Meeting at 8:20 p.m.

CLOSED MEETING AFFIDAVIT

[A copy of the affidavit must be filed with the minutes of the meeting]

STATE OF GEORGIA
COUNTY OF SPALDING

AFFIDAVIT OF CHAIRMAN

Members of the Spalding County Board of Commissioners, being duly sworn, states under oath that the following is true and accurate to the best of his/her knowledge and belief:

1.

The Spalding County Board of Commissioners met in a duly advertised meeting on December 20, 2004.

2.

During such meeting, the Board voted to go into closed session.

3.

The executive session was called to order at 8:20 p.m.

4.

The subject matter of the closed portion of the meeting was devoted to the following matter(s) within the exceptions provided in the open meetings law:

Yes Consultation with the county attorney, or other legal counsel, to discuss pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the county or any officer or employee or in which the county or any officer or employee may be directly involved as provided in O.C.G.A. § 50-14-2(1);

No Discussion of tax matters made confidential by state law as provided by O.C.G.A. § 50-14-2(2) and _____(insert citation to the legal authority making the tax matter confidential);

Yes Discussion of the future acquisition of real estate as provided by O.C.G.A. § 50-14-3(4);

No Discussion or deliberation on the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a county officer or employee as provided in O.C.G.A. § 50-14-3(6);

No Other (describe the exemption to the open meetings law): _____ as provided in _____(insert the citation to the legal authority exempting the topic).

This the 20th day of December, 2004.

Commissioners
Sworn to and subscribed
Before me this 20th day of December, 2004.

Notary Public -- Teresa A. Watson
My commission expires March 3, 2007

Spalding County Board of

Michael Kendall
Johnie McDaniel
Cecil Davis
Eddie Goss
Dick Morrow

On a motion by Commissioner Davis, seconded by Commissioner McDaniel, the vote was unanimous at 5-0 to come out of Closed Meeting at 8:29 p.m.

XV. ADJOURNMENT

On a motion by Commissioner Davis and a second by Commissioner McDaniel, the motion to adjourn passed by a unanimous 5-0 vote.

County Clerk

Chairman

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