

**After
Agenda**

**Board of Commissioners of Spalding County
Special Called Meeting
Monday, August 3, 2020
3:10 PM
Room 108, Annex Building**

The Spalding County Board of Commissioners held a Special Called Meeting in Room 108 of the Spalding County Annex on Monday, August 3, 2020, beginning at 3:10 p.m. with Chairperson Gwen Flowers-Taylor presiding. Commissioners James Dutton, Rita Johnson and Bart Miller were present for the meeting. Commissioner Donald Hawbaker was absent from the meeting. Also present were County Manager, William P. Wilson, Jr., Assistant County Manager, Michelle Irizarry, County Attorney, Stephanie Windham and Executive Secretary, Kathy Gibson, to record the minutes.

I. OPENING (CALL TO ORDER) by Chairperson Gwen Flowers-Taylor.

PLEASE SILENCE YOUR CELL PHONES AND ALL OTHER ELECTRONIC DEVICES.

II. INVOCATION

Commissioner Dutton, District #2 delivered the Invocation.

III. PLEDGE TO FLAG

Commissioner Johnson, District #3, led the pledge to the flag.

IV. AGENDA ITEMS

Pursuant to the Spalding Code of Ordinances, Part II Government and Administration, Chapter 12, Section 2-1204(b), the Spalding County Board of Commissioners to review alleged violations of the Spalding County Code of Ethics.

Stephanie Windham advised that in accordance with the Open Meetings Law the Board of Commissioners shall review all complaints alleging violations of the Ethics Ordinance. A complaint has been made for the Board's review and the remaining members of the Board of Commissioners must review the allegations and if three commissioners agree that a prima facie violation of the Ethics Ordinance has been presented, then the Board of Commissioners shall convene the Ethics Review Board to hear the complaint. The purpose of the Review Board is to make a factual determination as to whether or not a violation has actually occurred.

This is not a public hearing and it is not a hearing for rebuttal, it is the meeting for the Board to make a decision as to if, in your opinion, a prima facie violation of the Ethics Ordinance has been presented to you. You are not being asked to opine or make any determination of whether a violation occurred, you are to decided if on it's face the complaint presents a prima facie violation of the ordinance.

If you decide this complaint does present a prima facie violation of the Ethics Ordinance, the Review Board would convene an ethics review hearing at a later date. She then advised that Black's Law Dictionary defines "prima facie" as sufficient to

establish a fact or raise a presumption unless disproved or rebutted. So, you have Dr. Solomon's complaint and that is yours to review and make that determination.

Chairperson Flowers-Taylor then asked if everyone had, had a chance to review the allegations in the Solomon's complaint.

Commissioner Dutton then advised that he would like to have the minutes and any attachments to the minutes be included in the minutes for this meeting. Below is an excerpt from the May 28, 2020 Minutes regarding this Complaint. A copy of the full minutes is available on the Spalding County website (<https://spaldingcounty.novusagenda.com/agendapublic/>).

Excerpt from Minutes of May 28, 2020 Zoning Public Hearing, New Business, Item #1:

1. **Application #20-04Z: Lift from the table** - William A.B. Solomon & Janice M. Solomon, Owners - 3870 West Ellis Road (30 acres, more or less, located in Land Lot(s) 22 & 23 of the 4th Land District) - requesting a rezoning from AR-1, Agricultural and Residential, to R-4, Single Family Residential.

Spoke in favor of the zoning request:

William Solomon, 215 Woodcreek Lane, Fayetteville, Ga.
Alexandra Solomon, 117 Barberry Lane, Peachtree City, Ga.
Alicia Solomon, 13 Hampton Place, Newnan, Ga.
Amber Solomon, 215 Woodcreek Lane, Fayetteville, Ga.

Spoke against the rezoning:

Angela Stalaus, 170 Crabtree Road, Griffin, Ga.
Craig French, 170 Crabtree Road, Griffin, Ga.
Tom Moyer, 106 Woolman Lane, Griffin, Ga.

Newton Galloway, Zoning Attorney, stated that they have worked on this extensively since it came before the Board in March. The discussions with Dr. & Mrs. Solomon are documented in the revised staff report. Additionally, Dr. Solomon's response to these meetings is included in the back up documentation for this agenda item.

Mr. Galloway stated that staff does not question anything that Dr. Solomon has presented as his intent for the property and the goal in discussions with the Solomon's was to find a way to allow them to do what they want to do with the least impact on other properties and with the least impact on the precedent set in area on zoning policy.

Mr. Galloway then stated that staff had gone back to the original application to review what was requested and they looked at the actions undertaken at the Planning Commission in February and the recommendation this evening is tied to the original application.

Mr. Galloway then advised that staff is recommending approval of the application not to R4, but to R2 which would require a 1750 square foot minimum, which is consistent with the application received that stated the houses would range from 1800 square feet to 2900 square feet. Staff

recommends that the rezoning to R-2 be conditioned to limit the number of lots to 4 as shown on the proposed development plan that Dr. Solomon has presented and that the development plan also be a condition of rezoning.

Mr. Galloway stated that the conditions would suggest establishing restrictions for the 26-acre parcel if somebody wanted to come in and purchase that property to develop a subdivision. They would not have the ability to do it as a matter of right, they would have to come to the Board and make an application to have that condition changed in order to allow for 1 acre lot density.

Mr. Galloway stated that for the clarification of the neighbors, this is not a multi-family development class. It is a single-family class with a minimum lot size of roughly one acre if you have public water. This zoning would be limited to 4 lots and then anybody who purchased them at a subsequent time and may want to develop a subdivision would have to come back to the Board and that would be analyzed with the development trends that are in place in that area at that time.

Mr. Galloway stated that they had discovered an error in the earlier staff report. Both the R-2 District and the R-4 District both require a minimum lot width at the building line of 125', the plat shows 110' both in road frontage and at the building line. This was staffs' error and it will require a variance, but staff would ask if the board moves to approve the rezoning that it additionally be conditioned upon granting a variance on the lot width requirement in the R-2 district from 125' to 110' and since it is the County's error staff asks that the Board direct that the variance be processed with a waiver of the variance application fee.

Chairperson Flowers-Taylor stated that the original request to the board from the Solomon's was for R-4 and the recommendation was for R-4. She is confused by the amended paperwork recommending an R-2 designation. The next thing she is concerned about is the applicant advised that the information on the plat is incorrect.

Mr. Galloway then advised that the road frontage, cumulatively is accurate on the plat is consistent with what has been stated. The minimum road frontage in both R-4 and R-2 is 75', but the minimum lot width is measured at the building line, which is at the setback and that requires 125'. So, you can have a lot that is smaller on the road frontage and could flare out somewhat to meet the 125' at the building line and it would be fine.

Mr. Galloway then stated that the lots, as laid out makes sense for what they want to do and as a general rule a variance of 10-15' is not controversial and it would make these lots comply as shown on the plat. Mr. Galloway stated that the Board could condition the approval with direction to Dr. and Mrs. Solomon to come back with a plat that is consistent with the requirements, or we could send them through for a variance for the 15' on the three front lots.

Mr. Galloway stated that staff viewed the variance application as a "clean-up" to allow Dr. Solomon's plat, as presented, to go through as initially proposed and that can be done without having to go have a new plat developed and can be completed in the next 30-45 days. Dr. Solomon has stated that they hope to

be building by the summer and this can be approved within that period of time.

Mr. Galloway stated that staff is trying to take what he wanted to do in the original application and get that approved. Mr. Galloway stated that staff views Dr. Solomon's current design as being better, it is a coherent design that makes everything equal for the three lots involved and staff recommends approval as presented and offers a sincere apology that this was not caught. Dr. Solomon is better served to have the lots that are shown on this plat approved by means of a variance and then the design that was tendered with the original application is approved. The lots would be legal and there would be no risk that a permit would be subject to challenge because the lots did not meet a certain criteria of the zoning ordinance.

Mr. Galloway then advised that the original request presented by Dr. Solomon was for houses in the 1800 – 2900 square foot range. He discussed with Chad Jacobs the need to change the designation to R-2 due to the house size being proposed. He further stated that at the Planning Commission meeting, the designation of R-2 was discussed and the Planning Commission and Dr. Solomon agreed at that time the designation could be changed to R-2 because of the house size. That is why R-2 is being recommended in the current staff report. If you review the minutes from the Planning and Zoning Commission meeting at March, it indicates that a designation of R-2 was agreeable with everyone.

Mr. Galloway stated that the only difference between an R-2 zoning and an R-4 zoning is the minimum square footage for a home is 1500 square foot for R-4 versus 1750 square foot for R-2. Mr. Galloway then advised if the Board wishes to rezone the property to R-4, that they take the staff recommendations and change the R-2 designation to R-4. Mr. Galloway then stated that R-2 is consistent with the elevations of the houses that were presented and is consistent with the other houses in the area which are tending to be R-2 or greater in square footage.

Mr. Galloway then advised that the condition that ties the rezoning to Dr. Solomon's site plan, would require anybody who wanted to look at this property for a speculative subdivision to come back and explain to the Board why the character of the neighborhood is consistent with one acre lots and that size of square footage house. He further stated that the better protection for the neighborhood is tied to the lot restriction, rather than the size of the house.

Dr. Solomon stated he wanted to clarify a few things with the dimension of the lots, they will not need a variance by any means. Again, the plat that was submitted was a preliminary plat, because each time you go back to the surveyor for a minor tweak, it costs, so Mr. Jacobs asked that they submit a preliminary plat of 110' and after the Board has decided, then they could make the final changes. He stated that there is enough road frontage to changes the lots to 125' feet and meet the requirements without a variance.

Motion/Second by Dutton/Johnson to approve Application #20-04Z: William and Janice M. Solomon, Owners-3870 West Ellis Road (30 acres, more or less located in Land Lot(s) 22 & 23 of the

4th Land District) requesting a rezoning from AR-1 Agricultural and Residential to R-2 as recommended by staff with the conditions as recommended by staff.

Commissioner Dutton stated that this would give the Solomons' the opportunity to develop their compound as they are proposing and alleviate the concerns of the community.

Motion failed for lack of a majority.

Motion/Second by Johnson/Flowers-Taylor to approve Application #20-04Z: William and Janice M. Solomon, Owners-3870 West Ellis Road (30 acres, more or less located in Land Lot(s) 22 & 23 of the 4th Land District) requesting a rezoning from AR-1 Agricultural and Residential to R-4 as originally requested by the applicant with staff condition: "That the rezoning of the Subject property in R-4 be conditioned to limit the number of lots to four (4). Applicant is to submit a new plat that meets current specifications for R-4. Motion carried 3-1 (Dutton)

Commissioner Dutton stated that he feels zoning in this area to R-4 sets a bad precedent for the surrounding neighborhoods, surrounding land and surrounding landowners.

End of excerpt from the May 28th, 2020 Minutes the attachments for this Agenda Item can be accessed through the Spalding County Agenda link at <https://spaldingcounty.novusagenda.com/agendapublic/>.

Commissioner Johnson stated that she has had a chance to review the complaint, but she wanted to look at it again. Regarding, the basis of their argument and the basis of their complaint against Commissioner Dutton. She advised that she has her own questions and concerns, but she wanted to let Commissioner Miller speak before she commented on the allegations. She went on to state that the allegations include a Facebook post, which should not be considered as part of the violation, but she wanted to hear from Commissioner Miller before making any further comment.

Chairperson Flowers-Taylor then advised that we would not be making a decision on anything this evening, she has been involved in this type of complaint and from talking with the people who filed the complaints against her, they simply wanted to be heard. She further stated that what is being asked of the Board today is to look at the allegations and if we feel there is any justification in this complaint that would be akin to behavior unbecoming and if it is worth investigating. That is basically what we are asking, is it worth investigating.

Ms. Windham advised that this is not a forum for anyone to be heard. This is a forum for the Board to review the complaint and if you feel the complaint sufficiently alleges a violation, then you would send it to the Review Board.

Commissioner Dutton stated that the complaint alleges that he had certain intention and there is nothing in the complaint to back up why they feel his intent was one way and not another way. There is however, in the Minutes, ample proof that states he had every intention of giving them everything that they wanted. When he specifically

asked the Zoning Attorney “hey, if I make a motion to approve this, will they get everything they wanted?” and he said “Yes.”

Chairperson Flowers-Taylor then advised that this is not a time for argument....

Commissioner Dutton then stated that the Board had agreed the Minutes could be made part of the meeting and he wants to discuss the Minutes.

Chairperson Flowers-Taylor stated the a copy of the Minutes are not available to everyone this evening and just to clear this up, the Minutes cannot show intent. The Minutes does not show anything they simply record how the meeting went.

Commissioner Dutton then stated that the complaint alleges that he personally didn't want them to get what they wanted and he made a motion to give them what they wanted. It was his motion and he voted to give them exactly what they wanted, after asking the attorney, “If I make this motion, will they get exactly what they wanted?” and the attorney said “yes”. He made a motion to give them exactly what they wanted, now they are saying that he didn't like them personally and didn't want them to have it. These are the facts that are before us today that we are looking at which establish that I did not have a personal consideration against them. That is in the record and that pertains to what we are talking about today. It only pertains if I lied on the attachments to the Minutes where I signed where I didn't have any kind of personal stake. That I don't have any sort of financial claim where my family is going to make any money off the transaction somehow. I made a motion to give them what they wanted and now they are mad that he voted against a subsequent motion. Saying I was against them personally. How could that be correct, if I motioned to give them what they wanted and indeed voted for it.

Commissioner Flowers-Taylor then stated that she understands Commissioner Dutton's argument; however, this is not the time to argue this. She is assuming that based on the tenor of Commissioner Dutton's voice that this is an argument, but we are not here to argue this. The Board is supposed to look at the information, if you don't have all the information that you need today, then we need to adjourn this meeting until everybody gets the information. This is not a date to argue, this is a date to come here having reviewed what we have before us and to make a decision as to whether or not this needs to go forward or it needs to stop right now.

Ms. Windham advised that this forum is for the Board to review documents, not argue them or even explain them further because we are asking whether or not you feel the complaint is sufficient to establish a prima facie violation. If you do or don't, that is all you are here to consider.

Commissioner Johnson then stated that it is very difficult to make the decision right now because a lot of why they made the complaint is not in the information before us.

Ms. Windham then stated that it would not be before the Board, the Board is not to have that information, it is information that would come before the Ethics Review Board, not the Board of Commissioners.

Commissioner Dutton then stated if we don't have enough in what is before us today that makes the prima facie case as a Board we have to deny this Ethic Complaint and we don't. Just as Commissioner Johnson just said.

Chairperson Flowers-Taylor then asked Commissioner Johnson if that is what she is stating.

Commissioner Johnson stated that she would like to hear what Commissioner Miller has to say.

Commissioner Miller advised that due to his surgery and recovery he had not had an opportunity to review the complaint or the minutes from the meeting so he would not be comfortable going forward at this time. All he know is there was to be a Special Called Hearing today a and he knows nothing about what is being considered.

Chairperson Flowers-Taylor stated that at this time we will entertain a motion to reschedule this meeting until everyone has all of the information necessary, but understanding that we need to all have gotten whatever concerns that we have, because this is not a trial, this is simply to decide whether or not the allegations this citizen has made warrants someone looking into it. That is what this meeting should have been about.

Ms. Windham stated that the decision should come from the complaint, it is not from seeking to speak with the complainants personally, it is based on the complaint.

Commissioner Dutton stated that we can only consider what we physically have in front of us today. If we don't have enough today, at this scheduled meeting that we voted to schedule today and hear today. If we as Commissioners feel that today we do not have enough, then you must vote not to continue this. That's how our rules work. If you want to change the rules then you can change them, but that is not how the current rules work. If at today's meeting, we don't have enough then we don't have enough and you must vote to say that we don't have enough. That is the only vote that we can take today.

Ms. Windham stated that if Commissioner Miller needs more time to review the document because he has not had the opportunity, that would be the only reason that you would be able to reschedule the meeting.

Commissioner Miller stated that right now he would not be able to make a decision one way or the other because he didn't know what it was about.

Ms. Windham advised that the decision must be based on is the complaint. The complaint that was filed and the information contained within that complaint.

Commissioner Miller stated that at this time he could not vote on the complaint.

Chairperson Flowers-Taylor stated that she read the complaint, she read what the ordinance said and she was here at the meeting. She can use what she saw happened at the meeting. That is how she can look at this and say this needs to be looked at or not. That is what she is doing. Commissioner Miller has had surgery and he has not had the opportunity to review the complaint and she is fine with rescheduling the meeting to allow Commissioner Miller the opportunity to review the complaint. She

stated it is obvious we are not going to be able to make a decision today and it is unfair to Commissioner Miller for him to not have all the information that he needs or having the time to review the complaint.

Motion/Second by Johnson/Miller to table consideration Pursuant to the Spalding Code of Ordinances, Part II Government and Administration, Chapter 12, Section 2-1204(b), the Spalding County Board of Commissioners to review alleged violations of the Spalding County Code of Ethics. Motion carried 3-1 (Dutton).

Motion/Second by Johnson/Miller to reschedule Pursuant to the Spalding Code of Ordinances, Part II Government and Administration, Chapter 12, Section 2-1204(b), the Spalding County Board of Commissioners to review alleged violations of the Spalding County Code of Ethics.

Commissioner Dutton advised that as a point of order the Board could not table then reschedule the Agenda Item while it is being discussed.

Motion/Second by Johnson/Miller to table the review of the alleged violation of the Spalding County Code of Ethics.

Commissioner Dutton then called a point of order as there can't be discussion on motions to table.

Motion carried 3-1 (Dutton).

Motion/Second by Johnson/Miller to reschedule the review of the alleged violation of the Spalding County Code of Ethics to Monday, August 17th, at 3:00 p.m. Motion carried 3-1 (Dutton).

V. ADJOURNMENT

Motion/Second by Johnson/Flowers-Taylor to adjourn the meeting at 3:30 p.m. Motion carried 3-1 (Dutton).