

**GORDON COUNTY BOARD OF COMMISSIONERS
WORK SESSION MINUTES
FEBRUARY 21, 2017**

The Gordon County Board of Commissioners held a Work Session Tuesday, February 21, 2017 at 5:30 p.m. in the conference room of the Administration Building.

MEMBERS PRESENT

**BECKY HOOD, COMMISSIONER
CHAD STEWARD, COMMISSIONER
NORRIS SEXTON, COMMISSIONER
KEVIN CUNNINGHAM, COMMISSIONER
M. L. BUD OWENS, COMMISSIONER**

OTHERS PRESENT

**JOHN KING, COUNTY ADMINISTRATOR
JIM LEDBETTER, COUNTY ATTORNEY
ANNETTE BERRY, COUNTY CLERK
MEDIA
26 GUESTS**

Chairman Hood called the meeting to order.

The Board discussed each item on the agenda for the Regular Meeting and made no changes; one item was added to the Regular Meeting agenda later in the meeting.

County Attorney Jim Ledbetter explained the zoning applications and informed the Board that the item for Application #Z16-14 Con-onaula Farms' request has been taken off the agenda. Mr. Brumlow, the attorney representing the applicant has advised that this is not a viable application.

Mr. Pat Rasbury, Magistrate Court Judge, came before the Board to request that the Board of Commissioners consider passing an ordinance that would make the parents of school students responsible for getting their children to attend school. He has been working with a Truancy Team that is looking into the problem. Their recommendation is to get the City Council and the School Board on board with this by drawing up an ordinance and a contract with the City so that the Magistrate Court could handle this. Judge Rasbury handed out sample ordinances and contracts from other counties and asked the Board to look at those and come up with some for Gordon County. There was a consensus of the Board to move forward with this.

Mr. Doug Jones came before the Board to speak about the growth of mega chicken houses in Sugar Valley. Mr. Jones advised that he wanted to re-emphasize that this problem is not just about Sugar Valley, it is about Gordon County. The growth of mega chicken houses is happening all over the South, and there is an article in a Chattanooga paper about a class action lawsuit in the area. People visiting in Gordon County and stopping at the outlet mall or downtown, when they get out, they can smell chicken houses. Gordon County is issuing more permits for chicken houses than any other county in the State. That industry around Highway 136 area is not just agricultural, they are using industrial amounts of water, industrial waste, industrial feed – that's a chicken park.

Ms. Debbie Vance, E-911 Director, came before the Board to make the Board aware of some new technology at our E-911 Center before it goes out publicly. Gordon County wireless customers will be able to send a short message service text message to 911 for emergency help when unable to make a 911 voice call. Only wireless cell phones with contracts will be able to text 911. Ms. Vance advised how these voice calls will be handled and dispatched. This is not the best way to contact 911 but it is an alternative to those who cannot do it by voice, or are in a situation where it is too dangerous to do it by voice.

Commissioner Sexton made a motion to adjourn the Work Session. Commissioner Steward seconded the motion and all voted aye.

There being no further business, the Work Session adjourned at 6:00 p.m.

Becky Hood, Chairman

Annette Berry, County Clerk

**GORDON COUNTY BOARD OF COMMISSIONERS
REGULAR MEETING MINUTES
FEBRUARY 21, 2017**

The Gordon County Board of Commissioners held their Regular Meeting on Tuesday, February 21, 2017, at 6:00 p.m. in the conference room of the Administration Building.

MEMBERS PRESENT

**BECKY HOOD, CHAIRMAN
CHAD STEWARD, VICE CHAIRMAN
KEVIN CUNNINGHAM, COMMISSIONER
NORRIS SEXTON, COMMISSIONER
M. L. BUD OWENS, COMMISSIONER**

OTHERS PRESENT

**JOHN KING, COUNTY ADMINISTRATOR
JIM LEDBETTER, COUNTY ATTORNEY
ANNETTE BERRY, COUNTY CLERK
MEDIA
18 GUESTS**

Chairman Hood called the meeting to order.

INVOCATION AND PLEDGE OF ALLEGIANCE

Invocation was led by Rev. John Allen. The pledge of allegiance was led by Chairman Hood.

APPROVAL OF MINUTES

Chairman Hood asked if there are any additions, omissions, or deletions to the Minutes for the Work Session February 7, 2017, and the Regular Meeting February 7, 2017. Commissioner Cunningham made a motion to approve the minutes. Commissioner Owens seconded the motion and Commissioners Cunningham, Sexton, Owens and Steward voted aye. Motion approved.

ADMINISTRATOR'S REPORT

County Administrator King read the report (copy attached).

COMMISSIONERS' REPORT

Commissioner Owens reported that he attended the Leadership Gordon County at the Capitol, the Northwest Georgia Regional Commission meeting, and the College and Career Academy. Commissioner Sexton commented that he attended the Northwest Georgia Regional Commission meeting and the Council of Chief Elected Officials meeting.

PUBLIC HEARING FOR ZONING

Commissioner Cunningham made a motion to open the public hearing for zoning. Commissioner Sexton seconded the motion and Commissioners Cunningham, Owens, Sexton, and Steward voted aye.

County Attorney Ledbetter had announced in the Work Session that Application #Z16-14 had been taken off the agenda. The attorney for the applicant has notified that this is no longer a viable application.

APPLICATION #Z17-01 KIRK SCHUEMAN'S REQUEST TO REZONE FROM A-1 TO CH

County Attorney Ledbetter read application #Z17-01 Kirk Schueman's request to rezone from A-1 to CH, and incorporates the entirety of the information sheets and the requests and

findings of the Planning Commission. This comes to the Board of Commissioners from the Planning Commission with their recommendations for approval with the stipulation that the business will remain within the acreage rezoned and shall strictly follow the standards for a vehicle repair shop including but not limited to the installation of an opaque fence or adequate evergreen trees. No one signed to speak for or against the rezoning request.

Commissioner Cunningham made a motion to approve rezoning application #Z17-01 including the stipulation as read by the County Attorney. Commissioner Owens seconded the motion and Commissioners Sexton, Owens, Cunningham, and Steward voted aye. Motion passed.

APPLICATION #Z17-02 MIKE MASLEY'S REQUEST TO REZONE FROM A-1 TO I-1

County Attorney Ledbetter read application #Z17-02 Mike Masley's request to rezone from A-1 to I-1, and incorporates the entirety of the information sheets and the requests and findings of the Planning Commission. This comes to the Board of Commissioners from the Planning Commission with their recommendations for approval. No one signed to speak for or against the rezoning request.

Commissioner Owens made a motion to approve rezoning application #Z17-02. Commissioner Steward seconded the motion and Commissioners Owens, Steward, Cunningham, and Sexton voted aye. Motion passed.

APPLICATION #Z17-03 MIKE MASLEY'S REQUEST TO REZONE FROM A-1 TO RA-1

County Attorney Ledbetter read application #Z17-03 Mike Masley's request to rezone from A-1 to RA-1, and incorporates the entirety of the information sheets and the requests and findings of the Planning Commission. This comes to the Board of Commissioners from the Planning Commission with their recommendations for approval. No one signed to speak for or against the rezoning request.

Commissioner Steward made a motion to approve rezoning application #Z17-03. Commissioner Cunningham seconded the motion and Commissioners Steward, Cunningham, Sexton, and Owens voted aye. Motion passed.

Commissioner Owens made a motion to close the public hearing. Commissioner Steward seconded the motion and Commissioners Cunningham, Sexton, Steward, and Owens voted aye.

PUBLIC HEARING FOR MALT BEVERAGE LICENSE APPLICATIONS

Commissioner Owens made a motion to open the public hearing for malt beverage license applications. Commissioner Cunningham seconded the motion and Commissioners Owens, Cunningham, Sexton, and Steward voted aye.

BP FOODMART FOR ZAHID RASHID

County Attorney Ledbetter advised the Board that this is an application from Zahid Rashid, RNR Calhoun, Inc. for a malt beverage license for BP Foodmart at 110 Shope Lake Road. This

application includes all the material and paperwork included with the application. Attorney Ledbetter announced that Mr. Bobby Hall has signed up to speak at this public hearing.

Mr. Bobby Hall, 490 Hunts Gin Road, Calhoun, spoke to the Board of Commissioners and advised that he is currently on the Board of Education, and is speaking on his knowledge of his close to twenty years of being on the Gordon County Board of Education. The kids at Sonoraville Middle School and High School use the facilities at the Gordon County Recreation Department. That facility is not one thousand feet away and our kids are using it during the day and afterwards doing their extracurricular activities such as baseball. I would ask that you look at this in that light. How is that to do with safety?, well they are so close to the highway, you never know if someone has made several trips and when coming back, lose control of their car and run over our children. As far away as we can have those stores would be pleasing to me because I'm for the safety of the children and ask that you take a close look at that. If you decrease that thousand foot buffer, then they are going to be closer and closer to our children. Our children have to come first.

County Attorney Ledbetter advised the Board that the convenience store itself is more than one thousand feet from the property of the Gordon County School district. Portions of the Gordon County Recreation facility used by Gordon County School District children on a regular basis are within one thousand feet of this convenience store.

Attorney Ledbetter commented that he wants to review our ordinance requirements in part. The law, our legislature, says it specifically, the United States Supreme Court even has ruled upon how Boards of Commissioners and other governing authorities regulate the sale of certain alcoholic beverages. You have discretion to issue or deny a permit to sell malt beverage, your discretion can't be arbitrary, it has to be based upon some kind of enunciated factors. Our code of ordinances outlines those factors in many pages, the ones I consider to be the relevant one:

-When you are considering a license, in determining whether any license applied hereunder shall be granted, in addition to all other provisions of this article, the following shall be considered in the public interest and welfare: The applicant's reputation, character, and mental capacity to conduct this business, and so forth.

The background check has come back ok, I'm not aware of any revocations of license or anything for the applicant.

- The Board of Commissioners shall also give consideration to such other factors as may affect the health and general welfare of the unincorporated areas of the county, to include the type of license applied for, the effect that license will have on schools, public parks, and churches in the area, the effect the granting of the license will have on existing land uses in the area, the character of the area and its particular suitability for the particular use sought, and the congestion of roads and streets. These items shall receive reasonable consideration with a general view of promoting desirable living conditions, and sustaining the stability of neighborhood property values.

With regard to specific building location requirements

- No license shall be issued for a location not suitable, in the judgment and discretion of the commission, because of traffic congestion, general character of the neighborhood, or because the

effect such an establishment would have on adjacent and surrounding properties and neighborhoods. No license shall issue within an area where, in the judgment and discretion of the commission, the number of alcohol licenses already granted makes it contrary to the public interest, where it would violate zoning. No license shall issue for a location where the nearest point of the main structure of the business is located within one thousand feet of the nearest point of the main structure of any school or church as measured in a straight line between the closest points of the two structures. It goes on to say, the word "school" shall include kindergartens, primary and secondary schools, colleges and other educational institutions, whether public or private. As used in this section, a school shall mean any instructional premises including, but not limited to main school buildings, auditoriums, gymnasiums, shops laboratories, temporary mobile classrooms, outdoor classrooms, and recreational facilities, such as playgrounds, ball fields, and similarly used areas. "School" or "church" shall also mean the campus or grounds surrounding the school or church which constitute a part of the properties. "School" or "church" shall also mean real property which has been purchases by a school or church and is to be used for that purpose.

In this instance the Board of Commissioners are sitting and determining in your discretion whether or not this location would be appropriate for the sale of malt beverage. I would request that whichever way the vote goes, you will cite specific reasons to justify your decision.

Commissioner Owens asked Attorney Ledbetter to clarify about the distances. Attorney Ledbetter advised that the ordinance states that it is one thousand feet from structure to structure. Commissioner Owens commented that he also read about ball fields and campus. The second part of the ordinance was added in 2012 to clarify that, in addition to structures, we would consider that a ball field or the whole campus would be part of the school. Commissioner Steward commented that the decision is whether the Recreation complex would be part of that school campus. They utilize the facilities and the tennis courts by agreement with the school. Attorney Ledbetter commented that the tennis courts may exceed a thousand feet from this property; the gymnasium at the Recreation is within a thousand feet.

Chairman Hood asked for a motion for the application from the BP Foodmart located at 110 Shope Lake Road. Commissioner Steward made a motion to decline the application. Commissioner Cunningham seconded the motion. Commissioner Sexton commented that his concerns are for safety because he felt that this would increase the traffic in that area going in and out. Many probably do not wait to consume and that puts us all in danger, and some may already be intoxicated when they go to buy more, which is a safety hazard especially around a school area. It is not a good precedent for the young minds around there.

Chairman Hood announced that there is a motion on the table to deny the application. Commissioner Steward, Cunningham, Sexton, and Owens voted aye to deny the application. Motion passed.

REDBUD GROCERY & TOBACCO FOR BABUBHAI PATEL

County Attorney Ledbetter announced that this is an application for a malt beverage license for Redbud Grocery & Tobacco at 3952 Redbud Road for Mr. Babubhai Patel . Mr. Patel's attorney, Mr. Michael McNeill, is signed up to speak and Mr. Bobby Hall.

Mr. Bobby Hall came before the Board with his concerns about this application. Mr. Hall's main concern is for protecting children and children's safety, making sure school campuses are a safe haven for the children. School facilities include any facility, such as Redbud School has a football field close to the intersection at Redbud, and students can be out on that field at any time of the day. Mr. Hall also commented that Redbud Middle School is going to have an 8th grade there next school year, so that means that all their facilities will be used for extracurricular work, which means there will be more kids there who are involved in that football field and close to that intersection. I want to make sure that children are not influenced by this, when you visit our schools you will find a sign that says "Alcohol and Tobacco Free Campuses". We try to teach our children the effects of it, but they are still children and they are still influenced by it. Younger adults will sometimes go out and buy something for kids when they are out close by the school, they could very well be influenced to do that. That's why I came to speak against it, I want our kids to get a good education and I want them to live. Mr. Hall said there will be 800 students at Redbud Middle School this next year. The Elementary School has a little over 500 students there. There will be a lot of traffic with parents coming in the morning and after school. Mr. Ledbetter asked Mr. Hall how close are the children when participating in activities there at the corner of Hunts Gin Road and Redbud Road. Mr. Hall said that it is a football field, they practice and they also use it for soccer and there is a baseball field there also.

Mr. Michael McNeill, representing the applicant, came before the Board and spoke for his client Mr. Patel. Mr. McNeill commented that first and foremost this comes down to that his client meets the requirements, the distance requirements both in Georgia law and the County code. The Georgia law says 100 yards from school property. Redbud Elementary School is about 1,800 feet from this store, so we do meet the distance requirements for both State and Local. Granting this license would be good for the community for a few reasons. First of all, Mr. Patel owns two stores already in Dalton and you can see by his background check and application, there is no problem with those; he has never had any alcohol violations for selling to minors or anything like that. We anticipate about \$400 to \$500 per day in beer revenues. These revenues would insure that the store would be able to operate in the long term. If this license is granted, based on the beer sales at the stores in Dalton, we expect that the excise taxes alone on the beer sales would generate about \$9,000 a year for the county, the license fee would generate about \$1,000 a year, and the sales taxes would be about \$7,000 a year. So that's \$17,000 per year to the county, the store has a lease right now that goes through 2022, that will be \$85,000 over the next five years. With this revenue that they would generate from selling alcohol they would be able to hire several employees. Just to give you a little information about this area. If you go two miles to the east, you have Allen's Market, they already have a beer license. If you go two miles to the west, you have Hi-Tech Fuels, they have a beer license. It's not a situation where nobody that wants beer can get beer in the area, it is also not a situation where there is already a bunch of stores selling it, it's some but it not overcrowded with beer vendors. And so this is a good fit for that area. As far as the concerns Mr. Hall raised, I would mention that a lot of the issues like selling alcohol to already intoxicated persons or if an eighth grader sneaks off campus, crosses the street and goes and tries to buy beer, there is no way that these gentlemen are going to sell them any beer at all. They have a tobacco license already and there are not any issues with children trying to buy cigarettes or cigars and they are not going to have any issue with children trying to buy alcohol. They also know that they are not allowed to sell to people that are already intoxicated. So, these are basic things that are already protected by the law and that they comply with. Also, in general the dangers that relate to alcohol in schools, they are already addressed within the law. This is a fair compromise, you can have alcohol if you are within the

same neighborhood as a school, it just cannot be within a thousand feet of the school.

Commissioner Owens asked Mr. McNeill about when he stated that its within the distance requirements, according to the information that we have in front of us, it is not within the distance requirements, based on the property of the school board it is within one thousand feet, based on the property of the church its under one thousand feet. Mr. McNeill responded that as to the school property, from lot line to lot line, from the school lot line to the store it is 346 ft. So that's outside of the State law. The local law, it is very clear, the standard is structure to structure, and it goes so far as to specify that for a school, that is a main structure, and that's what you use to measure by. So the closest structure of the school on that lot is beyond, that's about 1,500 ft away. The school itself, which is where the administration offices are, that's about 1,800 ft. away. So, based on the standard where it clearly says structure to structure, the ordinance is very clear, it identifies as main structure. And so on that school lot, one structure is the main structure and that's where our differences are, a difference in interpretation.

Attorney Ledbetter asked Mr. McNeill if the applicant is Sharee Baps Corporation or is it Mr. Patel. Mr. McNeill said that Sharee Baps Corporation is the operator of the building, Mr. Patel is the sole owner of Sharee Baps Corporation. Attorney Ledbetter stated that Sharee Baps Corporation has been administratively dissolved as of December 2016 according to the Secretary of State website. Does that have an impact on your client? Mr. McNeill stated that his understanding is that its an automatic process, so that will be attended to immediately and that won't have any impact.

Attorney Ledbetter asked if anyone had any more questions. He also mentioned that another factor that the Board can take into account under our ordinance is the fact that this property was rejected for a malt beverage license previously that resulted in litigation. The applicant, at that time, dropped the litigation after a good bit of work had been done. So the rejection of that application stood at that time. The other thing, while our ordinance says "no license shall issue for a location where the nearest point of the main structure of the business is located within one thousand feet of the nearest point of the main structure of any school as measured in a straight line", the part that was added "as used in this section, a school may mean, any instructional premises, including but not limited to, main school buildings, auditoriums, gymnasiums, shops, laboratories, temporary mobile classrooms, outdoor classrooms, and recreational facilities such as playgrounds, ball fields, and similarly used areas". You are also able to take into account the other specified factors of the ordinance that include an area where you take into account the traffic congestion, general character of the neighborhood, the effect on surrounding properties and, of course, the fact that there are school children around.

Attorney Ledbetter informed the Board that as he has read it, it says application of Sharee Baps Corporation dba/Redbud Grocery & Tobacco. They have been administratively dissolved and the most usual reason for that is that they fail to pay the fees to the Secretary of State. I would like for the Board to consider that as a factor, the Board needs to consider whether or not in it's discretion in looking at relevant factors, if this is appropriate. So I would ask for a motion to either approve or deny.

Chairman Hood asked for a motion on Redbud Food & Tobacco's application for a malt beverage license. Commissioner Steward made a motion to deny the application. Commissioner Cunningham seconded the motion. Attorney Ledbetter asked Commissioner Steward to

enumerate the reason for the motion. Commissioner Steward said that in lieu of the interpretation that we have from our ordinance, that was for the addition that included ball fields and things like that, and the proximity from the actual establishment, concern over the proximity of the location to the ball fields and so forth. Chairman Hood asked for a vote from all in favor of the motion and Commissioners Steward, Sexton, Cunningham, and Owens voted aye. Chairman Hood announced the application denied.

Commissioner Owens made a motion to close the public hearing. Commissioner Sexton seconded and Commissioners Owens, Sexton, Steward, and Cunningham voted aye.

CONSIDERATION OF UNFINISHED BUSINESS

None

CONSIDERATION OF NEW BUSINESS

BID AWARD FOR REPAIR TO THE BULLDOZER AT THE CHERT MINE

County Administrator advised that the Board discussed this item in the Work Session. Gordon County solicited bids for repair to the bulldozer at the Chert Mine. Three responses were received and after review of the acceptable bids, the lowest bid meeting all the requirements is the recommendation to award the bid to TEC in the amount of \$37,208.13.

Commissioner Sexton made a motion to approve awarding the bid to TEC. Commissioner Cunningham seconded the motion and Commissioners Steward, Cunningham, Owens and Sexton voted aye. Motion passed.

RESOLUTION FOR ENACTING A TEMPORARY 60-DAY EMERGENCY MORATORIUM ON THE ACCEPTANCE OF APPLICATIONS REGARDING NEW OR EXPANSION OF EXISTING COMMERCIAL POULTRY OPERATIONS

Commissioner Steward advised that he has had several discussions with our County Attorney over the last week and he would like Attorney Ledbetter to read a resolution that they have come up with as a results of their discussions. Commissioner Steward also advised that he would like to have a motion after that reading. County Attorney Ledbetter advised that the Board spent a lot of time on mega chicken house issues a couple of years ago and apparently there continues to be public concern issues with regards to these mega chicken houses. Commissioner Steward enlisted my assistance in helping to draft a resolution as follow. County Attorney Ledbetter read the resolution into the record (copy attached). Commissioner Steward advised that the reason that he would like to put a moratorium on the chicken houses is to take a look at the ordinance one more time. I believe there are some changes that still need to be made.

Commissioner Steward made a motion to approve the Resolution as read by Attorney Ledbetter. Commissioner Sexton seconded the motion. Commissioner Cunningham commented that we have heard from one side and we need to hear from the other side. Attorney Ledbetter advised that there would have to be at least one public hearing conducted before the ordinance would be amended and this moratorium will not affect anyone who has already filed their paperwork for a

permit. Chairman Hood advised that there is a motion on the table that was put forth and seconded to put a temporary moratorium for chicken houses. Commissioners Owens, Sexton, and Steward voted aye, Commissioner Cunningham opposed the motion. Motion passed.

ADJOURNMENT

Commissioner Sexton made a motion to adjourn the meeting. Commissioner Cunningham seconded the motion and all voted aye. There being no further business, the meeting was adjourned at 6:55 p.m.

Annette Berry, County Clerk

Becky Hood, Chairman