MINUTES OF THE REGULAR MEETING OF THE BOARD OF COMMISSIONERS OF CHATHAM COUNTY, GEORGIA, HELD ON FRIDAY, SEPTEMBER 27, 2002, IN THE COMMISSION MEETING ROOM ON THE SECOND FLOOR OF THE CHATHAM COUNTY COURTHOUSE, LEGISLATIVE AND ADMINISTRATIVE BUILDING, 124 BULL STREET, SAVANNAH, GEORGIA.

I. CALL TO ORDER

Chairman Billy Hair called the meeting to order at 9:00 a.m., Friday, September 27, 2002.

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II. INVOCATION

Mr. Van Johnson gave the invocation.

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III. PLEDGE OF ALLEGIANCE

All pledged allegiance to the flag of the United States of America.

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IV. ROLL CALL

The Clerk called the roll.

PRESENT:
Dr. Billy B. Hair, Chairman
Dr. Priscilla D. Thomas, Vice Chairman, District Eight
Frank G. Murray, Chairman Pro Tem, District Four
Jeffrey D. Rayno, District One
Joe Murray Rivers, District Two
John J. McMasters, District Three
Harris Odell, Jr., District Five
David M. Gellatly, District Six
B. Dean Kicklighter, District Seven

IN ATTENDANCE:
R. E. Abolt, County Manager
R. Jonathan Hart, County Attorney
Sybil E. Tillman, County Clerk

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YOUTH COMMISSIONERS

Chairman Hair introduced the following Youth Commissioners who were in attendance: Matthew Greenberg, Parliamentarian, a Senior, representing the Jewish Educational Alliance; Patrick Callahan, Executive Member, a Junior, Windsor Forest High School; and Rebecca Childs, Executive Member, a Junior, Savannah Country Day.

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V. PROCLAMATIONS AND SPECIAL PRESENTATIONS

1. PROCLAMATION DECLARING OCTOBER AS "DOMESTIC VIOLENCE AWARENESS MONTH" - CHERYL BRANCH OF THE SAFE SHELTER OUTREACH WILL ACCEPT THE PROCLAMATION.

Chairman Hair read the following proclamation into the record:

WHEREAS, domestic violence affects millions of Americans, crossing all economic, racial and social barriers and causing emotional damage, physical harm or death to members of the family; and

WHEREAS, in 2001, the Savannah Area Family Emergency (SAFE) Shelter provided services for 8,490 individuals; sheltered 492 victims and their children; received 1,767 crisis calls; and

WHEREAS, in Chatham County, the Chatham County Police Department responded to 2,058 domestic disturbance calls, wrote 1,320 domestic violence reports and there were 162 domestic violence-related assaults in 2001 and one domestic violence-related homicide; and

WHEREAS, in an effort to promote support for the shelters and programs designed to protect battered women and their families and to reduce domestic violence, the Georgia Network Against Domestic Violence is sponsoring special activities during the month of October 2002; and

WHEREAS, the SAFE Shelter Outreach Program has partnered with the Chatham County Youth Commission and Chatham County government to provide information and training in recognizing and reporting domestic violence; and

WHEREAS, domestic violence has ended lives, destroyed families, harmed children and has entered the work places, churches and schools of this community; and

WHEREAS, Chatham County government recognizes the marked increase in domestic violence incidents in this community last year, we hereby condemn domestic violence in all of its forms and support the efforts of SAFE SHELTER and the SAFE SHELTER OUTREACH PROGRAM to make the home a safe place for all the citizens of Chatham County.

NOW THEREFORE, I, Dr. Billy B. Hair, Chairman, on behalf of the Chatham County Commission, do hereby proclaim the month of October 2002 as:

"DOMESTIC VIOLENCE AWARENESS MONTH"

in Chatham County, Georgia, and encourage all citizens to be good neighbors in identifying and promptly reporting incidences of domestic violence.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of Chatham County, Georgia, to be affixed, this 27th day of September, 2002.

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Dr. Billy B. Hair, Chairman

Attest: _____
Sybil E. Tillman, Clerk

Ms. Cheryl Branch said, thank you very much, and I would like to –, very quickly I need to recognize Van Johnson and all of his efforts. I know that I can always all Van when it gets close to October and he's very supportive in helping us with our activities in October. And very quickly I'd like to introduce Bob Whitmarsh. He is President of our SAFE Shelter Board.

Mr. Whitmarsh said, I just want to thank the Chatham County Commission for your support in the past and hopefully in the future and the great facility that's the envy of the State of Georgia and the citizens of this County. Thank you again.

Chairman Hair said, thank you.

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2. PROCLAMATION DECLARING WEEK OF OCTOBER 8-14, 2002, AS "MIGHTY EIGHTH AIR FORCE WEEK" - KEN HODDINOTT WILL ACCEPT THE PROCLAMATION.

Chairman Hair read the following proclamation into the record:

WHEREAS, the Eighth Air Force was formed and dispatched to England in 1942 to become the largest military unit in World War I, and the largest bomber force of all time. Over 350,000 served in Europe; and

WHEREAS, the Eighth Air Force has continued as an operational combat unit to this day with over one million serving the country in war and peace. It is the Eighth Air Force that is now conducting strategic bombing over Afghanistan; and

WHEREAS, no Mighty Eighth mission as ever turned back due to enemy action. The cost was 26,000 killed and missing in action, and over 28,000 prisoners of war. The number of wounded has never been counted; and

WHEREAS, in a one-week period of October 8 - 14, 1943, the Eighth Air Force lost over 150 heavy bombers to enemy action in the skies over Europe, and despite heavy losses, many feel that this was the turning point for daytime strategic bombing; and

WHEREAS, the Eighth Air Force Historical Society, the largest single military unit veterans group in history, holds its annual reunions in the month of October. This year they rendevous in Norfolk, Virginia; and

WHEREAS, today Eighth Air Force Historical Society members are seeking to inform later generations of the contributions and sacrifices made to perpetuate our freedom and way of life; and

WHEREAS, every year during the week of October 8-14 all Eighth Air Force Veterans and friends of the Eighth are asked to wear and display items identifying them with The Mighty Eighth to honor and remember our comrades and especially those who made the supreme sacrifice.

NOW, THEREFORE, I, Dr. Billy B. Hair, Chairman, on behalf of the Chatham County Board of Commissioners, do hereby proclaim October 8 through 14, 2002, as:

MIGHTY EIGHTH AIR FORCE WEEK IN CHATHAM COUNTY

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Seal of Chatham County, Georgia, to be affixed on this, the 27th day of September, 2002.

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Dr. Billy B. Hair, Chairman

Attest: _____
Sybil E. Tillman, Clerk

Mr. Ken Hoddinott said, on behalf of the 26,000 air crewmen that were killed in that 1942-1945 period, we accept this. Thank you very much. Chairman Hair said, thank you.

Youth Commissioner Matthew Greenberg said, just speaking on behalf of the Youth Commission as a whole, we would just like to, you know, express gratitude and, you know, how much we feel the Mighty Eighth Air Force is special to our Commission and to us as a whole. I mean, the Commission does not ask for –, to make donations for anybody to really, you know, reach out their hand to us, and yet the Mighty Eighth Air Force has displayed, you know, the type of friendship that we feel is long lasting and something that we are very proud of. We would just like to tell you that.

Chairman Hair said, thank you, Mr. Greenberg. We appreciate those comments very much.

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ORDER OF BUSINESS

At the request of Commissioner Murray and by consensus of the Board, Item VII-1 was taken out of order and was heard at this point on the agenda.

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EXECUTIVE SESSION

Upon motion being made by Commissioner Rivers, seconded by Commissioner Odell and unanimously approved, the Board recessed at 9:12 a.m., to go into Executive Session for the purpose of discussing personnel.

Following adjournment of the Executive Session, the meeting of the Board of Commissioners was reconvened at 10:29 a.m.

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VI. CHAIRMAN'S ITEMS

1. SETTING ANOTHER DATE FOR MEETING WITH STATE LEGISLATIVE DELEGATION.

Chairman Hair said, we need to move the date for the State Legislative Delegation. We set it for November 13th at the last meeting and we found out from the Delegation that that's not a good week for them, so we were requested to set it for the –, same Wednesday, but just one week later, the 20th. Any object –, anybody object to that? Commissioner Thomas asked, when was that? Chairman Hair said, November 20th, move it from November –, same time, 12 o'clock here in this room –. Commissioner Thomas asked, what was that date? Chairman Hair said, from –, move it from November 13th to November 20th. Chairman Hair recognized County Manager Abolt.

County Manager Abolt said, Mr. Chairman, also I appreciate that decision. We have looked at your budget and it's your choice if you wish to exercise it to employ the services of a Legislative Liaison. Is that your wish, and if that is your wish, do you wish the continuation of the services of the previous Legislative Liaison or do you wish to, in effect, advertise for one. Chairman Hair asked, did he not indicate that he might not be interested in doing it another year? County Manager Abolt said, we did not until you made your decision make any attempt to make the overture to him. It is your choice from scratch.

Chairman Hair said, I certainly think we need representation, you know, to look after our interest, and I would suggest to the Board that we first offer it to Mr. McAlister and, if he's not interested, that we advertise. Is there any objection to that? Okay, that's the –. County Manager Abolt said, Pat [Monahan] is telling me he's talked to him and he [McAlister] said yes, he would –. Chairman Hair said, he will do it, okay. So the wish of the Commission is to continue that service. Okay.

County Manager Abolt said, and the final thing, sir. This is purely housekeeping. Would you wish any type of preparatory meeting prior to your 20th of November meeting? Chairman Hair said, I think we need something. We could do it –, y'all want to, we could do it prior to the regular meeting. If you'll just put that on the agenda, an item and discuss it. I think that rather than have a separate meeting –, does anybody object to that? Okay, we'll just do it –, don't put it on the next agenda. Probably put it on maybe –. County Manager Abolt asked, last one in October? Chairman Hair said, yes, the last one in October.

ACTION OF THE BOARD:

By a consensus of the Board, the meeting with the Legislative Delegation was changed from November 13, 2002, to Wednesday, November 20, 2002, at 12:00 Noon in the Commission Meeting Room.

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ORDER OF BUSINESS

At the request of Commissioner McMasters and by consensus of the Board, Item VII-4 was taken out of order and was heard at this point on the agenda.

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VII. COMMISSIONERS' ITEMS

1. JACKIE JOHNSON, HOMESTEAD EXEMPTION (COMMISSIONER MURRAY).

Chairman Hair recognized Commissioner Murray.

Commissioner Murray said, I got a phone call about a week and a half ago from Jackie Johnson, who had the same problem that we address probably a month ago with another lady in the Islands area where they had homestead exemption, but the records indicated they did not have homestead exemption. Mr. Johnson's case is a little bit different whereas he has been reimbursed for the three years back already, but we did do the interest accrued over the time frame with the last one, and I feel like we need to do the same thing for this. You know, there were some comments made at the last meeting when this came back up about the first person that had requested it that they do not see their bill and everybody said, well, everybody gets a bill. Well, everybody doesn't get a bill. If you have a mortgage and it's paid through your escrow account, in most cases the mortgage company does not send you a copy of it. So these people don't see it. The way Mr. Johnson caught his was that he refinanced because the interest rates were down, and he's now paying his taxes himself rather than going through the escrow with the mortgage company, and that's when he saw it, and it goes back to, I believe, 1997 if I'm not mistaken. He's here today and can address that if necessary. He does have an appeal in place. The other issue was that he had –, it's on a concrete slab and they had him listed as a off-ground construction with wood sub-floor, which increased the value of the home. So there are a lot of factors out there that need to be addressed and dealt with. We can only address whether we're going to do the interest or not, and I would like to move that we do reimburse him for the interest, as we did on the previous one that came up. Mr. Johnson, if you'd like to say anything, you're certainly welcome to. Commissioner Kicklighter said, second.

Chairman Hair said, we have a second. Any discussion among the Commissioners?

Commissioner Murray asked, would you like to make any comments or –, if you would, that's fine.

Mr. Jackie Johnson said, thank you, Mr. Murray. I would just like to say that had I not refinanced my home, possibly the 30-year mortgage would have went the term and I'd have never ever been given any credit for the Stephens-Day bill. As a result, I got $967 back for the three years, which I greatly appreciate that. Had it went 30 years, it could have well been 12, 14, $15,000. That was my main concern.

Chairman Hair said, yes, sir. Thank you. We have a motion and a second. Any further discussion? All those in favor vote yes, opposed vote no. The motion carried unanimously. Chairman Hair said, the motion passes. Thank you.

Commissioner Murray asked, Russ [Abolt], which office will reimburse him on that? [No audible response was given.] Commissioner Murray said, oh, Danny [Powers] will. Okay.

ACTION OF THE BOARD:

Commissioner Murray moved that Mr. Jackie Johnson be reimbursed for interest on the amount of homestead exemption which he was billed in error and paid. Commissioner Kicklighter seconded the motion and it carried unanimously.

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2. SID NUTTING, SOUTHEAST CORRIDOR STUDY (COMMISSIONER MCMASTERS).

Chairman Hair recognized Commissioner McMasters.

Commissioner McMasters said, okay. Thank you, Mr. Chairman. This is more properly the Southeast Land Plan Study that Mr. Nutting heads up, and I've asked him to expand on that a little bit and really –, where we're going to be headed through these three additional Commissioner items. Ten days ago –, this is background –, ten days ago seven of nine Commissioners went to the MPC to ask them to allow us a little more time to finish up some work that we had initiated in the meeting of the 13th that we were unable, I think, to satisfactorily resolve, and at their request –, and our request was granted and things that all three of these presentations will be addressing will be that the MPC would like the answers from the Commission on zoning ordinances and various clarifications and, I think you'll see very shortly that Mr. Nutting's project and insight will help us and guide us and make the best possible decisions for the citizens of Chatham County. Commissioner McMasters recognized Mr. Nutting.

Mr. Sid Nutting said, thank you, Dr. Thomas and gentlemen. For the record, my name is Sid Nutting. I come before you as Chairman of the Southeast Land Use Planning Committee of the MPC. I thank you for this brief time to present some of the recommendations growing out of my committee's work and the MPC's work and your deliberations on the future planning for this community. On the 23rd I sent you all some background and subsequent recommendations for your consideration as part of the pause you requested the MPC to take in their work so that you and they could more carefully consider some legal public welfare and technical issues now before you all. These issues have been identified by various citizens and professionals working on the State-mandated comprehensive plan and the re-write of the zoning required to protect that plan. Everyone agrees, and you and the City fathers have funded this expensive effort. Related issues were also highlighted by the circumstances of the current especially large proposed project in the small home and small business Sandfly community. It is good that you are taking time to get it right. I hope you had an opportunity to look at this material, but I know some of you have been meeting out of town. I will, therefore, summarize some of the most –, the four of the most urgent requests for your action. The urgency is imposed by the MPC's procedure requiring they act on a plan approval within 30 days. However, you, the Chatham County Commission, can for reasons you consider sufficient extend that time. You did just that just a few months ago so that all the citizens committee, the developers, the MPC and you could do a better job on the Islands Area Land Use Plan. That plan is now the first element of the

required Countywide comprehensive plan. The Southeast Chatham Land Use Planning Committee started five or six years ago and has been brainstorming, doing neighborhood surveys, drafting and refining revisions, statements, goals, objectives, reflecting that community's desires as to how their community should be managed in the foreseeable future.

Mr. Nutting said, we keep having to take time out to defend some of our members in situations that come along that are counter to the planning that we are doing. There's a group here today that are interested in development on Ferguson in that regard. However, the plan is shaping up well with the staff and professional input. The last meeting to complete the draft for presentation to the State required public hearings will be on October 10th. Completion of the whole plan for your review will depend on the priority and staff you apply to that process. Certainly, by year's end, approximately 90 days or shortly thereafter should be sufficient. During that time you will also be getting interim reports from others, including outside expertise working on the longer term overall plan. You can, of course, ask any specific advice without their view of how to make solutions to current issues mesh into the future plan. Your staff and the MPC deserves your ongoing guidance during this transition period.

Mr. Nutting said, so, our first recommendation and the request is that you get the extended time with a recess for 90 days so that we can get it all right. The second recommendation and request is to give priority support to completion of the Southeast Plan. That would give time for proper input necessary for the eastern unincorporated parts of the County. We also strongly urge, and in the interest of completing the whole, that a similar plan be expedited for the Westside where new roads, large undeveloped tracts still offer opportunity to develop what others have shown is smart growth of great benefit to all. The third recommendation and request is that without trying to decide who is right and who is wrong on the so-called guidelines versus standards arguments, that you decide what you want the law of this land to be. I see that Commissioner McMasters will cover this more later. I'll be glad to add anything to it, but I think you can understand how important your guidance is to the land use planning and comprehensive plan work. The staff, developers and the public need written laws to communicate what it is and isn't that's suitable and allowed. The three categories provided by the current PUD structure until the recent case with Target where it was decided that in this case only we could give judgment to the MPC to solve the problem regardless of the way it is written. Furthermore, they provide a procedure for changing calling –, called for a read –, the writers of the zoning provided a procedure for change called rezoning should size and use need change or suitability in the community require it. They recognized change would be needed, but they knew the Georgia Constitution only allows elected officials to make or change laws, and they require public hearings again to make the right decisions. Mr. Hart and I have agreed several times in the past to disagree on this issue. He is a lawyer, I am not. Only one of you is a lawyer, but you were not elected to be lawyers, engineers, or even land use planners. You were elected to bring your intellect, integrity and judgment to the management and protection of your constituents' interest. We submit that even if Mr. Hart's ruling on this subject is based on some twist of law, that you have the duty and judgment to see that the section of the Code indexed as standards and the paragraph proceeding the three part table says standards shall be: – twice, in fact –, that the table is intended as near a set of standards as the writers could come without giving the law making and law changing to a non-elected board, the MPC.

Mr. Nutting said, the appropriateness of such large projects in the small home, small business Sandfly community is certainly in question, but at least with a rezoning you could do your duty to decide rather than require the MPC to remake law by avoiding the written code provisions. If you decide to let this issue stand, you can expect to hear from all others who were held to the standard. Their's, I think you would agree, would be a good case. Also, if you decide to take that route, leaving the –, that ruling, then you wouldn't need the comprehensive plan or the associated zoning. That might help the budget, but it would be poor policy. Finally, you can solve many current and future problems by defining your intentions regarding changes in the circumstances of a designed –, a defined zoning. Zoning is ruled on for a given set of size and use conditions and the community surrounding it. When those change, the rezoning is called for. Recently tracts zoned for one set of conditions are allowed to claim phased use, which is not then or when the next phase is developed the same as when the initial classification was done. That is wrong and also why the paragraph 11.3 that I see you will discuss later is so important. We are aware of the pressures and even threats you feel dealing with some of these issues, but we submit you will better off correcting them and defending the fact and purpose of the law as written, than trying to find a less straight forward effort around past practice and logical written law.

Mr. Nutting said, so, in summary, please provide time to do our jobs right, all of us, and smart; declare the code as written is the intended law or define what is; (3) declare changes in size, use and adjacent neighborhoods of a zoned property requires a rezoning review as conditions change; and (4) re-enforce 11.3 to keep zoning current as an appropriate tool for planning and keeping things modern. Questions?

Commissioner Murray said, Mr. Nutting, I appreciate your comments and my question, I guess, maybe explanation is you'd mentioned the Islands Land Use Plan, which we adopted a little over a year ago, and I think what you were speaking of when we delayed it for 90 days was the moratorium that we put in place just on the land involved in that land use plan. Now, through a process though it was done for a specific reason, for a specific time, and it also stated that any development that had already gone to the MPC would be exempt from that moratorium, so if in fact that suggestion is to keep this Walmart area property from moving forward, the moratorium would not work for that piece of property. However, it would work to create a moratorium on the balance of the property within that area that's being looked at for the land use plan, and I would support that, just as I did for the Islands. But I don't want somebody out there to think if we implement a moratorium right now that it's going to stop a Walmart from being built, because it is not.

Mr. Nutting said, that is your right at this point to decide. There are certainly conditions in this case that are different from the other one that you must challenge that it was not rezoned and the past 12 years this owner has –. Commissioner Murray said, that's different than a moratorium though. Mr. Nutting said, well, but it –, the question of moving forward with it when there are circumstances, 11.3 being one of them, and the time element and the opportunity to do what is called for in the code has gone by. It –, there's no dirt moved and no nothing under way, and certainly you are the people who decide whether this County is going to follow the written law, which you –. Commissioner Murray said, I agree with that. Mr. Nutting said, – while that's in question, and I submit that since that was not followed, you could interpret that as being that the previous efforts to put an even bigger project on the same property and the fact that they are splitting into phase development something that was zoned under past conditions that were specified and now have changed –. Commissioner Murray said, I understand, but the only thing I was addressing was the moratorium aspects of it, and that is a little more specific than the rest of the stuff that will be addressed a little bit later.

Chairman Hair said, Commissioner McMasters and then Commissioner Rayno.

Mr. Nutting asked, any other questions? Commissioner McMasters said, yes, Mr. Nutting. Are you familiar with the study, the community opinion survey of September 10th that Dr. Barbara Bart [phonetic] crafted? Mr. Nutting said, uh huh. Commissioner McMasters said, you are. Would you agree that the study objectives were to measure overall community opinion about land use zoning, economic development, the actual and historic resources? Mr. Nutting said, I think that was their –, their mission. Commissioner McMasters said, yes. Indulge me here, I'm reading off of Dr. Bart's mandate. That it was to provide direction to the planning consultants and experts who would be working on the plan. Mr. Nutting said, yes, by all means. [Inaudible] resource, if you can understand statistics. Commissioner McMasters said, well, actually they've given both a bar chart with statistics as well as a narrative assessment. For the people in the audience and the people who are watching, this is a study that was funded, I believe, both by –, by both the City and the County to try to get a handle on the explosion of growth and a remedy to the 30 or 40 year old outdated zoning book that we currently have; 404 people randomly selected in the study, so it's a fairly high respondent number. Relative, Mr. Nutting, to the analysis that was done in the study on the public awareness of planning and zoning, do you agree that 66.4% of the respondents believe that rezoning requests are approved too easily? Mr. Nutting said, that's what they found, and I believe they have given –, if you go to an MPC meeting over a series of days, you will –. Commissioner McMasters said, well, let me ask you, in your expert opinion as head of the Southeast Land Planning Project, would you concur with that fact of finding from the general public? Mr. Nutting said, yes. I think it's previous obvious, as I say, by going to the meetings. Commissioner McMasters said, okay, and also on design standards as asked in the survey, are you aware that 82.8% of the 404 respondents are in favor of design standards for commercial development? Mr. Nutting said, I heard that yesterday. That was the first time we were given that book by the staff. Commissioner McMasters said, okay. And, lastly, on key issues to be addressed that are –, this is the culmination of the public's perception of the key issues, the most important issues facing this County, are traffic congestion, unplanned growth and loss of character. Mr. Nutting said, all of which are –. Commissioner McMasters asked, you concur? Mr. Nutting said, very element –, elementary to any land use plan.

Commissioner McMasters said, okay, so, to review, relative to your Southeast Land Plan Project, which really is a –, an extension of a prior very successful Islands Use Plan that was put in place and for a wonderful group, you're suggesting that we extend some time for you to complete your plan and that you'd like us to direct MPC to sort of move your concerns up in the hierarchy of the work load so that you can complete that, and you'd like further clarification on PUD structure in terms of definitions, and, lastly, you would like to have 11.3 as a tool to help and assist you in your study. Mr. Nutting said, over time. Commissioner McMasters said, right. Thank you.

Chairman Hair recognized Commissioner Rayno.

Commissioner Rayno said, Commissioner Murray and Commissioner McMasters addressed many of my concerns. I was wondering if you were aware of any examples of PUD-B-C's which exceeded the so-called guidelines or standards, with the exception of the Kroger's project, which is in Marshpoint? Mr. Nutting said, no, I am not, not to say that stranger things have happened, but it certainly is not –, literally not the standard process followed, and the exception that's been made in this case really stands out by comparison. Certainly, those people who in the past have been told no, you must follow the standards, certainly have a good case to come back, and if this stands, to come back and say how come I got treated wrong? Commissioner Rayno said, thank you. Thank you for your comments. I had a question of Helen Stone, since she's here and she's heard all of your comments, Mr. Nutting, if that's okay, but I'll yield some time to John [McMasters] since he wants to ask a follow-up question, and if I can have my time back after that I'd appreciate it. Thank you.

Commissioner McMasters asked, Mr. Nutting, do you agree with –, well, this was Attorney Blackburn from the City of Savannah's opening comments at the Tri-Centennial presentation that zoning laws philosophically, fundamentally serve three interests in our organized society, one of the land owner, two of the surrounding neighbors and, three, the greater community at large? Is that your understanding? Mr. Nutting said, I think that's right. Commissioner McMasters said, okay. Mr. Nutting said, that's typical of almost all others. I think the experts that you have here now have good experience in how others have managed to handle that and still get really good modern thinking kind of planning on the books. Ours, as we have tried our best to work with it, might have been okay at one point, but it's been modified, modified and modified and a lot of other circumstances have changed, the world has changed in a lot of ways, but it is definitely way out of date. We are struggling all the time as we try to anticipate the future with all these exceptions. How do you write a plan for which there is a law now you are reasonably sure won't stand in the light of a better day? So it makes it –. Commissioner McMasters said, thank you. Mr. Nutting said, – a little harder.

Chairman Hair said, thank you, Mr. Nutting. Commissioner Rayno has a question for Ms. Stone.

Commissioner Rayno said, I just had a couple of questions. Thank you, Mr. Nutting. Good morning. Ms. Helen Stone said, good morning. Commissioner Rayno said, you've heard Mr. Nutting's comments about kind of asking for a moratorium similar to what was done out on the Islands area. What are your feelings on something like that if we did a corridor study and had more time, say 90 days, to look at that particular area, which is kind of going through an upheaval right now with developers wanting to develop things at the expense of the surrounding communities? Ms. Stone said, Commissioner Rayno, I can only speak as Helen Stone. I'm not here to represent the MPC, and we have not discussed this as a board, so I'm at a little bit of a disadvantage. I will tell you that obviously the MPC has recognized the existing problems in the ordinance –, ordinances and are striving with this Tri-Centennial Plan with the consultants that we've hired to improve the ordinances so that they are easier to follow, they are clearer and that possibly these questions of what if won't occur in the ordinances. I do think we're on the right track. Personally, I wish this had been done 15, 20 years ago, but we're here and we're doing the best we can. In light of a pending petition, that being of Walmart, I'm not at liberty to discuss that. Commissioner Rayno said, thank you. Ms. Stone said, you're welcome.

Chairman Hair recognized Commissioner McMasters.

Commissioner McMasters asked, Ms. Stone? Chairman Hair said, Ms. Stone, Commissioner McMasters has a question. Commissioner McMasters said, just as a –, I don't know if this is answerable as a MPC Chairman or not, and I –. Ms. Stone said, I'll try. Commissioner McMasters said, – [inaudible] this because it does not –, it's a generic question, and if Mr. –, is Mr. Newton here? Ms. Stone said, no. Commissioner McMasters asked, no? Okay. Would you agree with Attorney Blackburn's basic assessment that zoning laws, being both constitutional and locally organized and enforced under the police power of the State and the County, that zoning law theoretically and fundamentally serve three interests, that of the land owner, the neighbors and the community at large? Ms. Stone said, yes. Commissioner McMasters said, thank you.

Chairman Hair said, thank you.

ACTION OF THE BOARD:

Received as information.

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3. DON STACK, ZONING ORDINANCE 11.3 (COMMISSIONER MCMASTERS).

Chairman Hair recognized Commissioner McMasters.

Commissioner McMasters said, thank you, Mr. Chairman. We had –, welcome, Mr. Stack. Mr. Don Stack said, good morning, Mr. McMasters. Commissioner McMasters said, I wanted to let everyone know that we had in our last meeting some legal questions put to us, rightfully so, and that we asked that you meet with the County Attorney, Mr. Hart, to share thoughts and thinking on these specific questions. Have you and Mr. Hart had a chance to do that? Mr. Stack said, yes, sir, we have. Commissioner McMasters said, okay. Jon [Hart], I never got anything from you on the outcome of that meeting, and I'm not trying to catch you cold here, but can you talk about that meeting as well?

County Attorney Hart said, sure. We met the morning of the last MPC meeting for what, about two hours I guess it was. Stack came in and met with us. I asked Emily Garrard to attend that meeting. We had pretty direct forthright discussions about any number of issues. They kind of ranged the gambit of as many different issues as you could talk about in regards to, you know, the current plan or whatever is over there insofar as the current status plan and the zoning laws. We sort of took a philosophical law school approach to the issue and having a wide range of discussions as each issue came up what one party or either for or against or modestly for or modestly against might say in regards to the statute. I think there were a couple of cases which Mr. Stack was –, asked me to give him copies of, which I went over to the MPC meeting that day and delivered him copies of that. I don't think there were any glaring differences in regard to the understanding of positions. There were questions about some procedural issues as to whether they would be accepted or wouldn't be accepted or how an issue might come up, and that primarily deals with whether it comes up at the MPC or comes up at the Commission or may end up –, and how it would come up if either party sued in Superior Court, depending on whether it was a developer issue or whether it was a land/surrounding neighbor issue. But I think that fairly well summarizes what came out of that meeting.

Commissioner McMasters said, let me ask, Jon [Hart], do you agree that –, do you agree with Blackburn's assessment on zoning law is both constitutional and locally originated and enforced and that it is designed to protect three interests: the land owner, the neighbors and the community. County Attorney Hart said, I wasn't there for Mr. Blackburn's statements so I don't know whether they're in context with something else or out of context, but just a general rule, there's no question that land zoning is generally considered within the confines of the Fourth Amendment of the U. S. Constitution –, Fifth Amendment of the U. S. Constitution, Fourteenth Amendment of the Constitution, and Article 9 of the Georgia Constitution to be considered a local matter subject to the Zoning Procedures Act. That does not say –, and that that power derives out of the police power of local government to write a statute in accordance with the health, safety,

welfare benefits of the community, yes. Commissioner McMasters asked, so it is community –, part and parcel, community written and directed and logically applied? County Attorney Hart said, as long as the statute is –, this body, this governing body writes the Zoning Ordinance and the Zoning Ordinance is your ordinance, and you can write the Zoning Ordinance however you wish to write it as long as you write it in a manner that is constitutional and meets the Zoning Procedures Act in the confines of the Georgia Constitution, and at the same time this body, once it writes that or delegates that responsibility or forms some type of commission to administer that act, is also duty bound to follow whatever the act says in regard to that.

Commissioner McMasters said, just to be clear, because I struggled with this myself, but an ordinance is synonymous with a law. Is that a fair statement? That is, it has the effect of law, Jon [Hart]? County Attorney Hart said, yeah, on a local level. Commissioner McMasters said, on a local level. County Attorney Hart said, you get into an issue of whether, you know, the local law can contravene a general law, the statutes or a special law of the statutes, you can get into all those issues, but as a general rule –. Commissioner McMasters said, no, but just generally speaking, an ordinance is a law. Okay. Commissioner McMasters recognized Mr. Stack.

Mr. Stack said, thank you, Mr. McMasters, Chairman Hair, Dr. Thomas, Commissioners. On September 19th of this year the MPC received a memo from Milton Newton, which I think summarizes this very well. He says, "Unfortunately, a great amount of heat and very little light has been forthcoming regarding the status of Section 11.3 of the County Zoning Ordinance." I think no truer words have ever been spoken. By way of background, and I know some of you know me and some of you do not. Let me just take a moment to tell you who I am so you can evaluate the –, I guess, the basis upon which to consider my remarks. I'm an attorney; I have two offices, one here in Savannah where I live and also one in Atlanta. I've been practicing law for 17 years. We have eight lawyers in our firm. Our specialty, our exclusive niche, our exclusive practice relates to environmental and land use law. That is all we do. We are literally throughout the State, from Blairsville to Valdosta, from Augusta to Albany. We represent both home owners groups and developers, and so I take great pride in trying to address things very objectively, and what I want to do here today is to provide you with what I believe is an objective opinion as to what the status of the law is.

Mr. Stack said, the issue of 11.3, while it's been on the books for years, has been recently –, and I say recently –, raised, as of April 2001 by a local citizen, Gwen McKee, who asked about 11.3 in the context, as you all know, about the elephant in the corner, the Target –, the Target process. Mr. Hart, in a memo dated May 23, 2001, to the County Manager, said very specifically if Section 11-3 is to remain in the Zoning Ordinance, it should be followed. He didn't equivocate on that. Y'all subsequently made a determination –, the request was about whether it needed to be deleted or whether it was appropriately deleted –, we've had those discussions previously. We've established that that code provision is, in fact, still on the books and has been on the books for about 14 to 15 years. Mr. Hart has indicated to Mr. McMasters he met with me on September 17th, and I think his characterization was very accurate. We had a very frank, candid discussion about the various issues that may be presented to you as a board in trying to determine what do you do about 11.3 because you have before you a provision of the Zoning Ordinance –, a law, as Mr. McMasters acknowledges –, that has been on the books and through oversight has not been enforced as it needs to be and as required to be. And again I would remind you that this is not a discretionary act. Okay? This code section itself is replete with mandatory provisions that say you shall do this. This is the process that shall occur. Mr. Hart very appropriately, as counsel to the Commissioners, raised a number of very legitimate questions about what happens if you now attempt to enforce the ordinance when you have not in the past. Let me take a few minutes, and what you have in front of you is my attempt to very objectively address each of those concerns. Jon [Hart], I think –. You have about an eight-page memorandum of law, and it is a memo, and for lawyers, and Mr. Odell understands the distinction there, it is treated as an objective recitation, not a brief, which is supposed to advocate a position. So I tell you in this memo the good, the bad and the ugly. I tell you why you have the authority and the requirement to enforce the law. I also tell you what the pitfalls will be. Okay?

Mr. Stack said, Mr. Hart raised a number of legitimate concerns that are including some terms called laches, l-a-c-h-e-s, estoppel, selective prosecution or selective enforcement, and equal protection. I'd like to take a few minutes and address each of those. Laches basically in layman's terms means you waited too long to enforce a provision or to raise your point of view, your cause of action. Okay? While that may be true for private owners when they attempt to enforce a private remedy, the law is very clear that county governments, municipal governments cannot, cannot be held to a laches argument. In other words, it does not matter that it has taken this many years for the County to address the concerns. The law has understood and realized that there may be a whole host of reasons why that could occur, some of which are intention, others which are unintentional. It matters not. Laches is not a bar to your taking an enforcement or taking action that you are required to do. There's also been a question raised about whether it would publicly –, and not by Mr. Hart, but by others –, about whether it would publicly embarrass the municipality to now start to enforce this law when it has not been. Again, the case law is very clear –, and that would be on the first page, Section I, that municipalities, acting in both the governmental and priority capacity, and estoppel or laches cannot be asserted if such will embarrass the municipality in its capacity as a governing body or operate to prevent it from exercising its police power. That's why the very fundamental underpinning of what zoning is, about the enforcement of police powers, is critical to your roles as Commissioners.

Mr. Stack said, a related issue relates to estoppel, and maybe Mr. Odell can explain the difference to me. I'm not sure I've ever been able to figure out the difference between laches and estoppel in a meaningful basis, but in effect estoppel says sort of the same thing, that, okay, we haven't been doing, now we can no longer, we're estopped from enforcing the law. The point that you all need to recognize is that to this day you have been acting illegally. This is not a discretionary act. You've been acting illegally in failing to enforce a mandatory provision. Therefore, what you have been

doing is an ultra vires act. It's outside the scope of your authority. Therefore, you cannot be held to be estopped from now taking the action that you should have taken earlier. In other words, you are going to stop the ultra vires act and now act within the purview of your Zoning Ordinance.

Commissioner Odell asked, may I ask a question, Mr. Stack? Mr. Stack said, yes, sir. Commissioner Odell asked, would that be based upon the detrimental reliance? In an estoppel, the detrimental reliance would be there's a code section or an ordinance that says A and we've been doing B, so there would be no detrimental reliance in that we've not followed the code section. Mr. Stack said, and that's a very good question, Commissioner, and the answer, in short, is that all members of the community, whether it's a private land owner, including myself, the community citizens or a developer, is presumed to know the law and to expect the Commission to rely on that. The –, I guess, it's not a great analogy, but the best analogy I can give you is if I go speeding down I-16 and I exceed that speed limit every Friday when I come home and the policeman sees me and he does nothing about that, okay, at that point in time one day he stops me and gives me a ticket, and I say, wait a minute, you can't do that, I have relied on the fact that you have allowed me to speed through this zone a hundred times before, and the answer is no. He is to enforce the law. I cannot detrimentally rely on the fact that I have continued to break the law in speeding and, therefore, it's not a defense that's available to me. Commissioner Odell asked, and neither would selective enforcement also. Is that –? Mr. Stack said, correct, and in fact that would be the next one I was going to address. But most importantly, and a related issue to that, Commissioner Odell, is the question, the argument you are going to hear is a variation of that which says I have invested a considerable amount of money in the permitting process, I have already gone through these plans, I've done all that and, therefore, I have a "vested right." The memo also sets out for you that by definition there can be no vested rights when an action is based upon an illegal activity. So here illegal activity, failing to enforce 11.3, gives no third party a vested right to have a permit, to have their plans approved, to have any sort of reliance upon the illegal activity. Otherwise, a municipality such as yourself would never be able to stop violating the law once you have been made aware of it, either through your own resources or through a court order earning anything of the sort. So at that point in time, you would say, well, wait, how do we do this because of all these vested rights that are out there? An action that is ultra vires does not, cannot, will not give rise to a vested right.

Commissioner Odell said, I agree with your conclusion, but a point of clarification. The government that's the recipient of the expenses incurred by the builder or by the individual, how would you explain that as far as unjust enrichment? Mr. Stack said, I think that's a very good question. Commissioner Odell said, if the act was beyond –, when we say ultra vires, basically the term legally is we've acted beyond our scope of responsibility. Mr. Stack said, correct. Commissioner Odell asked, if the action is beyond the scope of responsibility, my question is if there have been costs to flow from that, then how would you analyze the theory of unjust enrichment as it relates to a person who's gone through the procedure, relying upon our knowing what the law is? Mr. Stack said, and I understand that and I think it's somewhat circular, but the rationale that the courts have given it, it's set forth in the Corey Outdoor case and others that I cite here, would be –. Commissioner Odell asked, what page is that on? Mr. Stack said, four, page four. It would be that by definition there –, y'all must presupposing a reliance that's not proper. In other words, an outside third party cannot rely and then come to you and say, wait, I've expended all of these funds based upon my belief that you wanted to continue to violate the law. So the courts would say there was no unjust enrichment because they expended those funds knowing at any point in time the municipality could begin to enforce the law and should have enforced the law. Commissioner Odell asked, so the theory of each citizen understanding what the law is, all of the laws, that theory would also apply to the government understanding the law in applying the law? Mr. Stack said, that would apply to the government and it would also apply to the third party, and, i.e., again the elephant from the corner of the room, the developer, who says I should know the law and I should expect and act in accordance with that law and that I should not take steps or make expenditures based upon what I know to be an ultra vires act.

Mr. Stack said, the third part and the third issue that Mr. Hart raised, and you referred to, Commissioner Odell, is to selective enforcement. Selective enforcement basically says that I have singled out one entity and gone after that one entity, and again that's an over-simplification, but for the purpose of this discussion I think that's accurate enough. And the question again, let's refer to the elephant in the corner, which would be what about this particular project, and I'm not here to talk about this particular project that's the issue here, but I am to tell you that that will be the challenge that you receive. Selective enforcement is not an issue as long as you apply the ordinance across the board, which is in fact what you have been doing since 2001. You have recently begun this process that you have been obligated to follow since about, I guess, August of 2002. But, more importantly, since 2000, MPC has had the software permitting it to track the changes that you all are having to address because another issue has been raised as, oh, my God, how many of these are there out there? Well, (a) that's an improper analysis first. In other words, you don't ask that question and then decide whether you're going to enforce it. You enforce it regardless of whether –, how many there are out there, but from a practical standpoint, the number is minimum –, minimal, and that's demonstrated by the reviews that have already been provided to you in which for a six-month period there were three text amendments that fall –, fell within this provision. So it's not going to be a significant expenditure of time, effort and money on behalf of the MPC or the Zoning Administrator to go back and do that which you should have done. But again, selective enforcement, as long as you apply it across the board to all properties, then that is not an issue.

Mr. Stack said, the fourth issue that was raised is that of equal protection. A variation of that, but actually speaking, equal protection relates to whether or not you have singled out someone for an unconstitutional basis. The equal protection, as Mr. Hart acknowledged, the Fifth and Fourteenth Amendments apply. It is only for protected classes of citizens. That is, based upon race, gender, national origin. A protected class, as far as I know, does not extend as far as developers. So, therefore, equal protection is not an issue here.

Mr. Stack said, the last thing I'd like to address is Commissioner Murray's concerns regarding the moratorium that was raised, or the issue of the moratorium, and said –, in which he opined that it would not apply to the Walmart site. And with all due respect, Commissioner, I would disagree with you on that for the very reasons that I have set forth thus far, that with actions that have been taken that are ultra vires, there can be no reliance on those actions. Okay? Additionally, what I've raised before the MPC is the fact that at the time this application was submitted, you had before you an application –, an ordinance, 4.63, that said the entire site has to be addressed. You subsequently in June of this year deleted that provision. June 14, 2002, you amended the ordinance and deleted that section. Okay? However, the same way that you, as a Commission, cannot make the rules more stringent during the process, the citizens of the County have a expectation, a right to have you not make the rules less stringent, and therefore, by the applicant's own assertion that this is a modification, a revision to the prior application, that he is bound to have you and the MPC evaluate the plan under 4.63, which required an evaluation of the entire site, not just a concept plan.

Chairman Hair said, Mr. Stack, I have a question for you. Mr. Stack said, yes, sir. Chairman Hair said, I believe you stated earlier that you also represent developers, did you not? Mr. Stack said, yes, sir. Chairman Hair asked, if this developer came to you, as a professional lawyer, and said we think we've been wronged because the Commission has not enforced something for two years and all of a sudden they started with me, would you take that case? Mr. Stack said, there's a couple of fact scenarios that are not appropriate. (a) They have not started with me, meaning this developer. You already have started the renewal process. Secondly, –. Chairman Hair said, you missed my question. You missed my question. The question was if we enforce 11.3 on this project, it will be the first time we've enforced on anybody. Okay? And my question to you is, if you were the developer –, if a developer came to you as the lawyer and said we want to hire you because the Chatham County Commission has not enforced this 11.3 for years and years and years and years, and all of a sudden they enforce it on me, would you take the case? Mr. Stack said, and, sir, I'm sorry to not be able to answer that yes or not, but let me tell you an issue there. Chairman Hair said, I mean, would you or would you not? I mean, it's –, I'm just asking the question. I'm not trying to embarrass you, I'm just trying to ask you a very legitimate question. Mr. Stack said, and I think the answer would be I would take that case and then the question that you are asking is what would I do with that case, and the answer of what I would do with that case is at that point I would establish whether or not any of the arguments that I have just raised have any merit. Okay? I would then evaluate what the County has done. I would then evaluate whether they have acted illegally. I would then evaluate whether or not I have another basis to pursue. If I do, I haven't yet identified what that is, so I'd have to say this developer would not, but most importantly, Dr. Hair, is you say if we choose to enforce it against this developer. There is nothing here that are you are being asked to do that you have not been asked to do for 15 years. Nobody is saying you have to rezone this property. All they are saying is what you do is you instruct, you reaffirm to the Zoning Administrator that he has the obligation to provide those reports to you for those properties that have not been addressed in the prior years. At that point in time, you get a recommendation as to the current use of the property, whether it's appropriately rezoned, then you go through that process and you focus and you look at all those issues that include public notice, opportunity for comment, you have your staff evaluate each of those, and then at the end of the day, you know what, you may come back and say we believe that this property is properly zoned. Or you may say, no, it's not properly zoned and, therefore, you act as the applicant for a rezoning, and at that point you make the determination, which is within your constitutional right and authority how or whether to rezone the property. Chairman Hair said, that's more information than I needed, but Commissioner Odell and then Commissioner Murray and then Commissioner McMasters.

Commissioner Odell said, Mr. Stack, as an attorney, I read your memo and, I'll be absolutely honest. When I read a memo and it's written well, it creates a certain feeling of pleasure. Kind of like someone who enjoys art looking at a portrait. This is a well written memo. I've not had a chance to Shepardize all the cases that you've listed, but your memorandum of law is excellently written, and I'm not saying that to bolster your position with your client, but just as an old attorney, I take a lot of pleasure in seeing well written legal documents. Mr. Stack said, thank you, sir. I greatly appreciate it.

Chairman Hair recognized Commissioner Murray.

Commissioner Murray said, yeah, just –, and I assume it was your legal opinion, because we were given a legal opinion when we did the moratorium on the Islands Land Use Plan that we could not include those developments that had already started the process through the MPC. Now, has something changed since the time we did that versus this particular situation? Mr. Stack said, I think in the general theory that's correct, Commissioner Murray. What I would say though is that if it has –, one of those properties had not been evaluated pursuant to 11.3, those two provisions are not mutually –. Commissioner Murray said, that is the reason that you're saying that we could include that property in the moratorium because the 11.3 has not been enforced. Mr. Stack said, exactly and then all you –. Commissioner Murray said, not to do with what we did on the Islands Land Use Plan because you've got all those people out there getting ready to start calling me saying we did it wrong. Mr. Stack said, I honestly don't know which properties and whether any of those properties were subject to 11.3, and so I can't render an opinion as to those. But what I can do is to tell you prospectively I feel very comfortable that you could, in fact, include the property in question on Montgomery Crossroad within the moratorium. Commissioner Murray asked, but you are not saying that we did the moratorium wrong with the Islands Land Use Plan? Mr. Stack said, I am not saying that. Commissioner Murray said, okay. I just wanted to clarify that.

Chairman Hair said, Commissioner McMasters and then Commissioner Kicklighter.

Commissioner McMasters said, and I know, Mr. Stack, you have not have a chance to conclude, and you'll have that chance, but some of these questions have cropped up. You know, I've received a number of calls about 11.3, and they are from people involved in real estate. I'm involved in real estate. And the concern seems to be that what about this property that I bought years ago and I speculated on? What has become of my ability to speculate? And, quite frankly, and I don't know if this is your opinion or not, but my view, and I'm going to go back to the Blackburn adage, which is fundamental to zoning law, and that is that it serves the land owner, the neighbors and the community, and the fact of zoning, I think, is that when someone buys a piece of property, the vast majority of the time, particularly in an urban environment, is they intend to do something with the property. They intend to build a home, they intend to build a business, they intend to build a mini-storage, they intend to do something, and 11.3, as I understand it, is an excellent tool so that when someone acquires something and doesn't do anything with it, that if changes occur, what 11.3 calls for is really not necessarily any action. It's a review to safeguard the other two equally valid and relevant issues within the core zoning law. So, I gave the example to the man that called me that if –, in the subdivision that he lives, I said, if you drove home this evening through the various homes and walked into the house to greet your wife and your kids and your wife told you, honey, you know that three-quarters of an acre that's backed up to our property that was here before they built the homes, the zoning never changed on it and they want to put a refinery there, how would you feel. That is you would probably say, hey, that should not occur in my neighborhood. The argument here is that the speculator wants to maintain that his rights are protected indefinitely for that use, and is it your legal opinion that that's a mutation and a distortion of zoning law? Mr. Stack said, I believe it is, Commissioner, because I think the very –, rather than taking the heat for 11.3, y'all should be appreciative of that tool. There are many, many ordinances that do not have that provision that allow you the opportunity to reevaluate and actually adjust with changing conditions. I mean, here you have had the opportunity, you've had a prime tool at your disposal that allows you to meaningfully address the changes in the community as a whole that gives you the flexibility to respond in a more timely fashion than the Tri-Centennial Commission. You've had that tool at your disposal and I would submit to you, you have that tool now, and I would say that that is the tool you should be utilizing between now and the completion of the Tri-Centennial Review process. That I think you can make those mesh together and you ought to make those mesh together and say, "How do we get a grip on the changes that are occurring in this County," and you then actually implement the powers that you have, which are to protect the health, safety and welfare of the populace, and that is in fact your task, your mandate as the Commission. Commissioner McMasters said, thank you.

Vice Chairman Thomas recognized Commissioner Kicklighter.

Commissioner Kicklighter said, I just want to say that, first of all, I admire your work. I think you do a great job, and I mean no offense by what I'm about to say. If I needed an attorney, I'd hire you. Mr. Stack said, I'm ready. Commissioner Kicklighter said, I believe, you know, most of us we know that you could go out and you could hire five different attorneys, if you have a special interest, and get five different opinions to defend or pursue whatever goal or objective that group wants. You could find someone to take it to court or whatever you're trying to accomplish. As far as the County Attorney goes here, he's hired just basically to render –, to give us a legal opinion, and it's clear to me that he's not giving the legal opinion that the majority of this Board would probably like to hear. Now, I believe this is pretty clear, there's probably enough votes up here as far as personal feelings that they would like to fall on, jump on, change whatever, do whatever, but at our last meeting, and I don't know if things have changed, we'll have to talk about that maybe in Executive Session, but we were advised to not act on it whatsoever by our County Attorney here, and, you know, I have great respect for the staff here. I said that with the Accounting Department. That's why we pay them is to provide us with the right numbers. We pay this County Attorney to provide us with a accurate legal opinion, and, you know, once –, I guess my fear is anything straying from our paid legal attorney here, from his opinion, really worries me because I do believe that he's a honest, sincere man that to the best of his knowledge is providing the best legal opinion he can, and I know he does the research also, and I believe you believe in what you're saying also, so I'm not talking that. I'm just saying who I believe we are supposed to follow as far as legal advice. From what I've seen so far, I think we basically have a couple of options now, or a few options, and one would be to, what y'all stated, enforce the building moratorium, and from what I've heard from our attorney is that the County will get sued and basically we'll lose.

County Attorney Hart said, you have the right, should you so select, if you follow the procedure very similar to the procedure you did out for the Islands Land Use Plan, to put a moratorium in there as long as you've got a focus and a goal of why you're putting that moratorium in there for a geographic or corridor district that's well defined within that area and for a reasonable period of time. Ninety days would probably suffice to be a reasonable period of time. But ultimately you've got to deal with the issue of what you do with the pending applications for people who are properly zoned. I was not shared with a copy of this memo until Mr. Stack began to speak so there's 40-some cases cited in that memo that I haven't had the opportunity to review. Some of the issues that were addressed in this memo we did talk about. One of the issues that is not addressed in this memo, which is one of primary concern to the County Attorney's office, is the concept of vested rights and vested rights in a properly zoned property because there's never been an issue that the property in question was not properly zoned with a PUD-B-C classification, and the question arises there is if they have a pending application under the Georgia law and the various cases that follow the Gilmore Hill Company case, which I shared at the MPC with Mr. Stack, about the ability of a planning commission, zoning commission or the Commission to come in after the fact while a pending application is –, and change the rules of the road. And, you know, there's a bunch of cases that follow that case. Now there's been a number of cases cited in this brief, one or two of which I'm familiar with –, I haven't read all of them –, that says, well, you don't have to worry about that because it's an illegal act. Commissioner Kicklighter asked, can I stop you and ask you something? County Attorney Hart said, but there's no illegal act here.

Commissioner Kicklighter asked, can I stop you and ask you a question here please? In your opinion, because of the lawsuits coming in both directions, no matter what this Board does, wouldn't this be a matter to protect the financial interest of Chatham County? County Attorney Hart said, I don't make those policy decisions. Commissioner Kicklighter said, well, I'm asking a legal opinion. Should this be part be discussed behind closed doors is what I'm asking on this? Commissioner Murray said, no. Commissioner Kicklighter said, because of the lawsuit, that part of it. County Attorney Hart said, you could go into Executive Session, if you chose. That's up to you. Commissioner Kicklighter said, well, let me –. I need him to finish him legal opinion then since things have changed since last week.

County Attorney Hart said, if you want to do a moratorium of some specifically designed situation, that would include a fairly broad geographic area of that part of town, and if you were to do it for a reasonable period of time, and if you excluded pending applications from that. I think that if it's properly drawn, with proper evidence you could probably withstand a challenge, and that was what we did out there with the Islands Land Use Plan. The only difference in where we are today than where we were then, is at that time there was a split in the Court of Appeals on whether to do a moratorium you had to comply with all the requirements of the Zoning Procedures Act, which we did in that case. We had a bunch of hearings and we had to advertise and all that. There's been a case since then that doesn't seem to require counties to be quite as detailed on that procedural end. But other than that, I don't think the law on pending applications has changed, and it's not addressed in this memo and I disagree with that. Commissioner Kicklighter asked, so in your opinion we would still have to exclude that particular piece of property? County Attorney Hart said, exclude pending applications, whatever that –. Commissioner Kicklighter said, okay, that's what I was –, okay.

Commissioner Rayno said, describe a pending application. County Attorney Hart said, a pending application is when somebody has properly zoned a piece of property that has gone through the zoning process insofar as getting the use rights where the Commission has agreed to the zoning and then has filed either a general development plan or a specific development plan. The other issue that has not been addressed here is even under 11.3, this same property within the last 24 months had approved general development plan and had a specific development plan approved with many conditions, so the issue become there or would be raised there as to whether they're in violation of that 11.3. And, you know, you could make an argument, yeah, they are, no, they're not. We'll know when somebody tells us. Commissioner Rayno asked, what if you have a developer that's planning to go before the MPC in October with an application to get their general development plan, they would not be included as a pending application because it's prior to getting approval from the MPC? County Attorney Hart said, they're getting ready to go for the general development plan? Commissioner Rayno said, uh huh. County Attorney Hart said, that's one of those ones that you've got your nose right up against the pane. Probably you could make an argument that if you passed a motion or resolution today to –, of an intent to adopt a moratorium at some date, you would have to come back and approve the moratorium language. I mean, I just couldn't sit down and whip out a moratorium for you without giving it some thought today. You might be able to stop that, but it would be close to the line.

Chairman Hair recognized Commissioner McMasters.

Commissioner McMasters said, okay. You know, the way I see this, we have abdicated our responsibility to the citizens of Chatham County by failure to protect their interests. We're here protecting the interests of the developer, and 11.3 is very clear. It has not been enforced, and I'd like Russ Abolt to tell us a little bit historically how we failed. County Manager Abolt said, well, using the term failed –. Commissioner Odell said, I don't understand the question. What's the question? Commissioner McMasters said, my question is I'd like to know –. Chairman Hair said, just deal with the enforcement of 11.3. Commissioner McMasters said, yes, yes it does. 11.3 has been a viable ordinance or law since 1984. Precious few properties, I believe, are left that are germane and pertinent to 11.3. I'd like to know why it took us from 1984, and I know that Russ [Abolt] isn't board here until 1988, and he can only speak from '88 forward, but I'd like to know, I think the citizens deserve to know why we did not look after their interests from at least the point which the County Manager came on board in terms of the wiring diagram which is the zoning –, look at 11.3, Zoning Administrator shall –, not might, not maybe –, shall. Chairman Hair said, well, let's let him answer the question. Commissioner McMasters said, okay. Chairman Hair asked, do you understand the question? Commissioner McMasters asked, does that clarify it for you, Harris [Odell]? Chairman Hair said, let's let him –. Commissioner Odell said, I think the question is presumptuous in that it makes a conclusion that it is his sole responsibility –. Commissioner McMasters said, no, no, no, no. Commissioner Odell said, and, you know, we had a beautiful meeting which Dr. Thomas about how we talk to and treat staff, and my personal opinion is that if you've got a question for Mr. Abolt, and I don't control how you ask Mr. Abolt a question, I can be offended by it. Ask him a question why did we not enforce this since –. Commissioner McMasters said, Harris [Odell], with all due respect, I called Russ [Abolt] yesterday and asked him if he would be kind enough and to please be prepared to give us a little history so that everyone –, citizens, Commissioners, people in the gallery –, can understand how the apple cart tipped over. Chairman Hair said, he'll be happy to answer it if we just give him the opportunity. Just get it out there and answer the question. [Inaudible comments when several Commissioners began speaking at the same time.]

Commissioner Odell said, John [McMasters] is asking a question and, Billy [Hair], you're creating dialogue with other Commissioners, and you're one vote and we're one vote. I'd like to be able, if a fellow Commissioner has a question, to respond to that if it's in order, and I think it's in order. But, John [McMasters], understand these things to be true. If we drag this out much longer, you are going to lose a significant vote.

Commissioner McMasters said, okay, well, then may I should just make a motion, but –, let me do that. Let's not belabor this. Let's –, let me make a motion that relative to 11.3 that we instruct staff to go back and give us their –, the best work they can on how many properties are currently floating out there that may be accessible or under 11.3, and

I would ask that if there –, that the MPC, if they have anything currently before them that happens to be one of those properties, that we get with them and decide how to move forward. County Attorney Hart said, just a point of clarification for the Board. 11.3 is a zoning provision that talks about this 24-month rule that everybody keeps stumbling over. I just want the Board to understand something. You guys have the power to rezone property any time you've chosen to in the last 20 years. This Commission has the right to decide the zoning in Chatham County, and whether you have –, 11.3 sets up a review process to review these things, but y'all have had the power to rezone whatever property you've wanted to rezone for as long as you've been here. The only issue is you can't –, you can't rezone a person's property in the middle of the application process. So, if you're –, if you want the MPC to go back and look at all the property for the last 20 years that's been rezoned, subject to their ability to pull those up by records, they could go back and look at that and if y'all wanted to rezone it, you could do –, you could rezone every one of them, but you've got to do it pursuant to a comprehensive plan. That's –, y'all have that power.

Commissioner McMasters said, well, that's fine, but I want all properties that aren't currently –, that do not currently have a building permit and are under construction –. County Attorney Hart said, okay. Commissioner McMasters asked, okay? That do not have a building permit or under construction as per 11.3 to be part of that purview. County Attorney Hart said, great.

Commissioner Rivers said, Mr. Chairman. Chairman Hair recognized Commissioner Rivers. Commissioner Rivers said, I just have a couple of questions, and a statement. I'm not an attorney. I got this today. I looked at it, it's well written. I understand your explanation of laches and estoppel, but, you know, I would appreciate if I could get legal documents so that I can dissect them and I can make a good effort in making a decision knowing the material beforehand, and I assume that that has been provided to some and not to others. So, you know, I have a problem with that. Secondly, we brought up this 11.3, and I want to know now, since we have become cognizant of it, is this being enforced now? Are we beginning to do this? Has the Administrator begun to look at that? And that would be a big concern there.

Mr. Stack said, Commissioner Rivers, if I can respond to that. Twofold, (a) is that I provided a –, an outline of my thoughts previously, but I can tell you, as I stand here, that this document was finished about five minutes before I was able to walk in here today, and that's why –, ordinarily I would not ask the Board to digest, you know, an eight-page memo, in fact, I miscounted and that's why Mr. Hart didn't get a copy. It was not anything nefarious at all, by all means. Secondly, that my understanding through an Open Records Act request that the County did, in fact, comply with that. You have, in fact, begun the process and are addressing 11.3.

Commissioner Rivers said, in response and reply to you, I would say that I would think that if the County Attorney and yourself were in consultation on these issues and at least –, at least you should have given it back to him so that he would have adequate time. I would –, you know, I would do it for you and I would ask you to do that for me if we were involved, so I can't –, I'd be remiss if I didn't ask the same thing for him. So, you know, it's just that, for me, I like to scrutinize everything and dissect it, spit it out, swallow it, get another opinion other than Mr. Hart's, other than yours, I do that, okay. So, relative to these and some decisions making it today, I'm remiss because of that.

Mr. Stack said, let me –, because I really, and I want to also go back to Mr. Kicklighter, which he said that we could go out and y'all could find, you know, anybody who –, five attorneys who'd be giving you an opinion. I have one thing going for me throughout this State and that's my integrity and my credibility, and what I have here is to be able to tell you as nearly as I am able to, understanding that of course I come from a certain point of view, that I was trying to give this Board a true unbiased opinion. So on that part of the equation, Part B of the equation is that I was in trial until 9:30 last night in Atlanta. That is why Mr. Hart and the Commissioners have not received the response prior to this time.

Commissioner Rivers said, and I'm not trying to hop on you about that. I'm only talking from my perspective. I've got an attorney in ACCG that I consult with on a regular basis on issues that are statewide. We've got other attorneys that we consult with that may be knowledgeable in this area, and I like to do that, and that's just me. Mr. Stack said, and that's precisely why I think it would be appropriate for this Board to evaluate. Don't take my opinion for it. I would suggest that you consult with other attorneys and you get an analysis. I understand Mr. Kicklighter indicated that his comfort –, and I'm not disagreeing with Mr. Hart on much of his analysis. What I'm saying is this memo attempts to go beyond that and address some of his concerns.

Chairman Hair recognized Commissioner Murray.

Commissioner Murray said, yeah, not to keep this thing rolling, but let's go back a little bit of history about the 11.3. Back a year and a half, almost two years ago, when the Target was an issue on this same site that seems to be an issue today with the Walmart, we went through a long process, and that part was over with and a citizen, Gwen McKee, did call me and told me about this ordinance that she had found, 11.3. I then called staff, staff researched it and found the ordinance, and said, yes, we do have it, it's never been enforced, we've never done anything with it, we didn't even know we had it. We've told them to go ahead and implement it and start enforcing it. Then it came back with a recommendation to delete that out of the ordinance. This Commission voted seven to one, if I'm not mistaken, to leave it in the ordinance to keep 11.3. After that, there was a memo sent to MPC stating that it was deleted. Then there was another memo sent to MPC stating that that was in error, it is not deleted. I don't have the dates on all that, but I think it was probably close to a year ago when we voted on that, and at that time when we voted seven to one to keep it in, we were –, instructed staff to enforce and do whatever was necessary to enforce 11.3. Now, 11.3 does not say that just because the Zoning Administrator brings back a piece of property that has not been developed in two years after the rezoning that we would change it back to its original zoning. It just says that we have an opportunity to look at that

and we have the power to change it, if necessary, for whatever reasons. But this 11.3, we keep getting all these mixed stories about what took place. That is what took place, and I don't understand why it has taken so long to come up with the list if, in fact, the MPC has the software. The Zoning Administrator is aware of it and staff is aware of it, why it's taking so long to at least know what these properties are.

Chairman Hair recognized Commissioner Kicklighter.

Commissioner Kicklighter said, Mr. Stack, I want to apologize if you thought I was questioning your integrity. I'm not whatsoever. I'm just pretty much a realist and I realize that if you do not stand there and make the case against this commercial development, that you would be replaced by an attorney that would. That's all I'm stating. So, I'm sorry if you took that personally. Mr. Stack said, I'm not even going to respond, Mr. Kicklighter. That's the most backhanded –.

Chairman Hair said, okay, restate the motion. Commissioner McMasters said, okay. My motion is that we resolve for all time the 11.3 ordinance and that we ask staff to go back and give us a list of all property that falls under the structure of 11.3 and that if property is currently non-permitted, that is, there are no building permits and construction has not begun, that those properties, too, shall fall under the purview of 11.3. That's the motion. Commissioner Rayno said, second.

Chairman Hair said, Mr. Hart –, okay, we have a motion and a second. Is that motion in legal form? I just want to make sure it's in legal form. County Attorney Hart said, well, the motion is whatever the Commissioners so desires to put it in there. The language of 11.3 is it says for any zoning map amendment for which the Board of Commissioners is not the applicant and upon which the property –, upon which the property no development permit, building permit or certificate of occupancy has been issued within 24 months from the date of approval, the Zoning Administrator shall review and go forward. So, I think the motion covered building permit, certificate of occupancy. It did not state development permit, and that's –. Commissioner McMasters said, it says has been issued, so I'll go totally by the language of 11.3, and that is upon which property no development permit, building permit or certificate of occupancy has been issued. Is that good? Okay. Commissioner Rayno said, accept the change in second.

Chairman Hair said, okay. Does the motion just get a list of the ones –, is that all the motion does, John [McMasters]? Commissioner McMasters said, no. Chairman Hair asked, what does it say? Commissioner McMasters said, Dr. Hair –. Chairman Hair asked, is there any enforcement in this? Commissioner McMasters said, yes, I'm saying that this County must –, this County should follow the law, so we begin by establishing a list of properties that fall under this law, and then we go ahead and start the process, and if it comes back to us, we can take no action. We have total authority here. It does not seal anyone's fate. It only protects the interests of everyone involved in the zoning triad. Chairman Hair said, okay, we have a motion and a second.

Commissioner Kicklighter said, let me ask Hart –. Chairman Hair said, okay, Commissioner Odell and then Commissioner Kicklighter.

Commissioner Odell asked, John [McMasters], beyond making this list, does this freeze the status quo for a period of time, and, if so –? Commissioner McMasters said, no, there's no moratorium in this, Harris [Odell]. This is to provide us a list of properties that fall under the language of 11.3, and my understanding of it is that the Zoning Administrator will then upon receipt of that list come back to us and say this parcel I recommend leaving it along, this parcel needs to be zoned up, this one needs to be zoned down, these three do nothing to. It's merely a list for this Commission to then make more decisions about. This is following the law. Commissioner Odell said, okay. Is there a time period for the Zoning Administrator to return that to us? Commissioner McMasters said, well, I would hope that since the software's in place and I've been told that it's a relatively small number of properties, that I would hope to have this by our next meeting. Commissioner Odell said, okay.

Chairman Hair asked, is that part of your motion that we will have it by next meeting? Commissioner McMasters said, yes. Chairman Hair said, okay. Commissioner McMasters said, I'll do that as a amendment and I need another second. Commissioner Rayno said, I agree to the change as the second.

Commissioner Odell said, I'm not finished. I'm trying to understand the motion, and the reason I'm trying to understand the motion is that I sincerely am concerned and care about the folks in Sandfly, and I guess my concerns are that does this in any way prevent the new owner from proceeding on that questioned piece of property? Commissioner McMasters said, my understanding, Harris [Odell], at this point in time, no.

Commissioner Kicklighter asked, would it bring that property back in front of us for review? Commissioner McMasters said, it may. County Attorney Hart said, under 11.3 probably the information is going to have to come from the MPC because they'll probably be able to gather it the quickest, but then it goes to the Zoning Administrator under 11.3 for him to send back to you, is the way the procedure works. Commissioner Kicklighter asked, and then we approve? Commissioner McMasters said, yes. County Attorney Hart said, then you look at it and say, you know, we think these changes are great, these need to be changed or we recommend –, whatever you so desire there insofar as –.

Chairman Hair said, Commissioner Kicklighter and then Commissioner Murray.

Commissioner Kicklighter said, yeah, I just want to understand it a little better, so if the Administrator came back and said, just following the new –, if this is approved, he came back and said that piece of property in question that he recommended it be zoned agricultural for this group to vote on –. Commissioner McMasters said, correct. County Attorney Hart said, well, now you raise a good question, and that's one of the questions that I raised back last year in a memo on October 15th to you, is if you start, you know, and it was more of an –, that part of the memo dealt more with an application process. If you've got a use on the property and it hasn't been used within the 24 months under any of those standards and the Zoning Administrator looks at it, does he just send it back to you as is or does he make a recommendation for a use change, or do you decide a use change, and those are really policy decisions. Ultimately, you would have to decide the use change. Commissioner Kicklighter said, I just want to say, I wouldn't have a problem supporting this if it excluded properties already in the permitting process. Based on your legal opinion, if we go messing with the zoning –, something already in that permitted permitting process, we're in trouble.

Commissioner McMasters said, we're changing the law. The law is very clear under 11.3. Commissioner Kicklighter said, I'm listening to the law –, our lawyer. Commissioner McMasters said, but he read it to you. We were in agreement. County Attorney Hart said, okay, there's two issues floating around here. One issue is a moratorium issue –. Chairman Hair said, that's not in that motion. County Attorney Hart asked, that's not part? Okay, but what you're saying right now, the way I understand the motion is all you've done is direct staff to collect a bunch of information on things that fit within the description of what 11.3 defines, send it –, get it from the MPC, get it to the Zoning Administrator, get the Zoning Administrator to put it in some kind of shape and bring it back to you. Am I –, is that a correct statement? Commissioner McMasters said, that's exactly the intent, and that's the intent of 11.3. I'd like to follow it and we're not bound by anything that MPC or the Zoning Administrator sends back, if I understand 11.3 correctly.

Commissioner Kicklighter said, my question is at that point that the Zoning Administrator brings back under this current proposal a recommendation to this body to zone that currently permitted or for one in the permitting process, could he bring back something suggesting to us that we zone it totally different? County Attorney Hart said, in theory he could do that or he may in fact do that, and that would raise a multitude of issues.

Chairman Hair recognized Commissioner Murray. Commissioner Murray said, Russ [Abolt] –. Chairman Hair said, I don't know if it's appropriate to comment on the motion. Now, if you want to comment on something, I don't think it's appropriate for him to comment on the motion.

Mr. Stack said, I was just going to clarify for Mr. Kicklighter and the Board that the law simply says that the Zoning Administrator will report the status to the Board of Commissioners. It does not even take that next step that says he or she or the MPC will provide a recommendation. It simply says the Zoning Administrator shall report the status, period. And that –, my suggestion would be that that's the narrow focus of this motion.

Chairman Hair recognized Commissioner Murray.

Commissioner Murray said, Russ [Abolt], y'all have already started that process, is that correct? County Manager Abolt said, yes, sir. We tried to –, we documented that for you in the past. I am not as confident as others might be as to the accuracy of what MPC has, based on what Mr. Newton is telling me, but we will give you the very best that we do have within two weeks, sir.

Chairman Hair said, all those in favor of the motion vote yes, opposed vote no. Commissioners Rayno, Rivers, McMasters, Murray, Odell, Gellatly and Thomas voted in favor of the motion. Chairman Hair and Commissioner Kicklighter voted in opposition. The motion carried by a vote of seven to two. Chairman Hair said, the motion passes.

ACTION OF THE BOARD:

Commissioner McMasters moved that the Board resolve for all time the 11.3 Zoning Ordinance and that we ask staff to go back and give us at the next meeting a list of all properties that fall under the structure of 11.3, and that if property is currently non-permitted, that is, upon which property no development permit, building permit or certificate of occupancy has been issued, that those properties, too, shall fall under the purview of 11.3. Commissioner Rayno seconded the motion. Commissioners Rayno, Rivers, McMasters, Murray, Odell, Gellatly and Thomas voted in favor of the motion. Chairman Hair and Commissioner Kicklighter voted in opposition. The motion carried by a vote of seven to two.

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ORDER OF BUSINESS

At the request of Commissioner Murray and by consensus of the Board, Item XII-1 was taken out of order and was heard at this point on the agenda.

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VII. COMMISSIONERS' ITEMS (Continued)

4. RESOLUTION APPOINTING ZONING BOARD OF APPEALS MEMBERS FOR THEIR PARTICIPATION IN THE TRI-CENTENNIAL PLAN (COMMISSIONER MCMASTERS).

Chairman Hair recognized Commissioner McMasters.

Commissioner McMasters said, thank you, Mr. Chairman. In our meeting of the 13th we reported to you the meeting that Steve Day, who is the head of the Chatham County Zoning Board of Appeals, the meeting that Steve Day, Commissioner Murray and myself had with Jon Hart and Emily Garrard, and we realized in the discussion of that meeting that some of the issues that were of concern to the Zoning Board of Appeals could not be addressed adequately now, but would perhaps be best addressed through the ongoing effort of the Tri-Centennial Plan, and l parties agreed. This was reported to everyone at the last meeting. Well, Steve Day called and asked me if we would formalize by way of a motion our decision, and our decision was to have two members of the Zoning Board of Appeals participate at the table in the process of the Tri-Centennial Plan. So to formalize that, I think we were all in agreement that was a good idea to formalize that, and I'd like to make a motion that two members of the Zoning Board of Appeals represent their larger board in the ongoing process known as the Tri-Centennial Plan.

Chairman Hair said, Commissioner McMasters, just a clarification of your motion. Do you –, are you –, do you want the Commission to name which two or do you want to leave that up to them, or what –? Commissioner McMasters said, no, I believe Mr. Day would like to leave that up to his board. Chairman Hair recognized Commissioner Murray.

Commissioner Murray said, yeah. I'll second that for discussion. I thought we did this and, as a matter of fact, I thought that what we agreed at the last meeting that it would be not designating a member of the Zoning Board of Appeals, but allowing the Zoning Board of Appeals to give a name or put a name on that, a nominated person for that, whether they served on that board or didn't serve on that board, and the reason for that was they've got a person rolling off that they would like to serve on that committee. Commissioner McMasters said, well, I think that's within the purview, and I don't think this Commission would have any problems with –. Chairman Hair said, the motion is for two members –. Commissioner Murray said, yeah, but the motion is for two of their members. Chairman Hair said, not one. That's what Commissioner Murray had a question about. Commissioner Murray said, what I wanted to clarify, because the County Clerk called me about the minutes for the last meeting, and I misunderstood it then because I thought with the discussion that it was for one member or one person and that board would have the option of either nominating a board member or someone else that they thought would –.

Commissioner McMasters said, well, Steve Day had volunteered two people, and I think the part of –, from his board and part of his thinking was that if one of the members was unable to participate in some meeting or planning session involving the Tri-Centennial, that that other person could attend and report back to the Zoning Board of Appeals. Commissioner Murray said, I don't have a problem with that, but I'd like for Sybil [Tillman] to tell us –, I think we've already done one person. The Clerk said, we did one person at the last meeting. Commissioner Murray said, that was approved at the last meeting.

Chairman Hair said, so we need –, this motion is to approve an additional –. Do you want to modify your motion, John [McMasters] to approve an additional person?

Commissioner McMasters said, okay, yes. I'd like to modify –. Chairman Hair asked, do you accept that as the second? Commissioner Murray said, because we've already got one that was approved at the last meeting. Commissioner McMasters said, but, Frank [Murray], I don't think we did it as a formal motion. We did it as –. The Clerk said, you did a formal motion. Commissioner McMasters asked, we did it as a formal motion? Commissioner Murray said, because she called me to clarify. Commissioner McMasters said, well, then let me make this as a modification then to the motion that passed in the meeting of the 13th that an additional member from the Zoning Board of Appeals may participate in the ongoing program known as the Tri-Centennial Plan.

Chairman Hair said, without objection –. All those in favor vote yes, opposed vote no. The motion carried unanimously. [NOTE: Commissioner Odell was not present.] Chairman Hair said, the motion passes.

ACTION OF THE BOARD:

Commissioner McMasters moved that the Board, as a modification of the motion which was approved on September 13, 2002, approve that the Zoning Board of Appeals may appoint an additional member of the Zoning Board of Appeals to participate in the ongoing program known as the Tri-Centennial Plan. Commissioner Murray seconded the motion and it carried unanimously. [NOTE: Commissioner Odell was not present.]

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ORDER OF BUSINESS

Commissioner Kicklighter made a motion that Item VIII-1 be taken out of order and heard next on the agenda. Commissioner Odell seconded the motion. Chairman Hair and Commissioners Rivers, Odell, Kicklighter and Thomas voted in favor of the motion. Commissioners Rayno, McMasters, Murray and Gellatly voted in opposition. The motion carried by a vote of five to four.

NOTE: Item VIII-1 was taken out of order and was heard at this point on the agenda.

Chairman Hair said, before I call on the next item and for the record, I have to go make a presentation at 12:30 and I'll be back at 1:15. It's been on my calendar for three months. I want to make sure that's in the record.

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5. ZONING PUDS, STANDARDS VS. GUIDELINES (COMMISSIONER MCMASTERS).

Chairman Hair recognized Commissioner McMasters.

Commissioner McMasters said, thank you, Mr. Chairman. Mr. Nutting, could I ask you a couple of questions? Chairman Hair said, Commissioner McMasters. Commissioner McMasters said, yes. Mr. Nutting, you provided the Commission with a September 23rd report, and one of the things that I see consistently coming back to the surface is within the scope of the –, of your project, the Southeast Land Use Study, and the larger on-going Tricentennial Study, consistent grappling with another law, zoning law, as on page 156 of the Zoning Ordinance Manual, and it has to do with the three classifications of PUD. Would you like to briefly explain to us your frustrations, as head of this Southeast Land Plan Study, how the three permutations of PUD have become flexible as opposed to standards.

Mr. Sid Nutting said, okay. Obviously, we are trying to come up with a land use plan, quickly behind which will come zoning, and here we have a law that we maintain has a reason to be in the book in the form it's in, so the question is do we feel like that that serves the land use plan in its currently being –, as it's currently being used or ignored, and it puts us in the dilemma as to what is the law we're trying to expect will protect the land use plan. We believe that the writers of that code at one point tried to describe three separate categories that they wanted to utilize when they talk about a zoning where the circumstances on one end of the scale are one thing and on the other end of the scale is another, and so they grappled with –, obviously grappled with this and came up with these three categories that are currently in the book. When you go to the index in the book, it says the standards are on page, whatever that is, 156, and when you get to that, the paragraph above said the use shall be, and that's shall appears twice, and then below that is this guidelines question. Now if they had not intended that there be three categories, why did they put three in there, each of which is the description of a certain set of circumstances that they wanted to provide zoning for. How would you at this point describe PUD-B-C if you don't have to read those words? I mean, you can't say PUD-B-C is –, refer to the MPC, you can't say that PUD-R is refer to the MPC. You've described –, that is the name by which they call those sets of circumstances.

Commissioner McMasters asked, Mr. Nutting, can I interrupt you for a minute? Would you –, so that my fellow Commissioners understand that, within the scope of the Tricentennial Plan, these three classifications will be addressed at, more than likely, the conclusion of the Tricentennial Plan as to their practicality. Mr. Nutting said, I would hope that it gets there before because how you're going to administer certainly is part of the Tricentennial Plan. Commissioner McMasters said, well, you're anticipating my question very well. What I'm asking you is if these were standards, as written –. Mr. Nutting said, right. Commissioner McMasters said, and as structured with, I'm sure, great study, wisdom and forethought, do you find it a frustration and a disadvantage to have them mutate into guidelines between now and this exhaustive study and your study as well? Is that a challenge for you to have them –. Mr. Nutting said, sure, it is. Commissioner McMasters asked, all enforced? Mr. Nutting said, it's a confusion factor that, if nothing else, makes discussing it a very difficult matter. Commissioner McMasters said, okay, just by way of analogy, would it be fair to say that a standard, for instance, in the –, in the Natural Resources fishing guidelines it says that a flounder has to be 16 inches long to be a legal catch. Do you consider that a standard or a guideline? Mr. Nutting said, that's a standard. Commissioner McMasters said, I thought you'd agree with that. And what we've really done here is we have allowed an awful lot of elasticity, and I think created an awful lot of frustration and challenge not only for your project, but for the Metropolitan Planning Commission on a go-forward basis, and since there is a huge concern and effort under way to straighten this out into a better blueprint that we can all be proud of 10, 20, 30, 40 years down the road, I know that your will and your wish is that we give you the guidance that these be standards and so interpreted right down to the Metropolitan Planning Commission. Is that a reasonable thing for us to do? Mr. Nutting said, I certainly think it is and, on top of that, it is of current use. The MPC is sitting out there with words that say one thing and this ruling, which for the first time, and supposedly for this case only, have been altered to make it flexible that the MPC –.

Commissioner McMasters said, well, I don't want to get into specific projects. I'm looking at this at the broader view. I'd like to make a motion that we instruct MPC to –, until the completion, and this will be addressed in the Tri-Centennial Plan, but the motion is to instruct MPC staff in all planning projects that are underway, as is Mr. Nutting's, that the definition of standards, that is, from X to Z, be enforced and utilized on a go-forward basis. Commissioner Rayno asked, does that include the moratorium? Commissioner McMasters said, no, this is just clear –. Commissioner Rayno said, I second that motion. Vice Chairman Thomas asked, any discussion?

County Attorney Hart asked, is this just a motion and not an amendment to your ordinance? Commissioner McMasters said, well, Jon [Hart], maybe you can give us some legal advise. I'd just like the MPC to not have to grapple and challenge –, what does it require? County Attorney Hart said, you've got that little box there that has been the subject of all the controversy from whoever side you want to look at this thing. You can amend your ordinance to clearly define that the shopping center guidelines, as that box is labeled, will be deleted and be amended to become standards, but it you're going to do that, I would ask that you defer it to the Planning Commission for purposes of working on the definition of the characteristics of the description of neighborhood center, community center and regional center, and my reason for that is that when you read those descriptions, they don't match any of the use provisions in the Zoning Code, which has been the problem all along, which something I talked about last year. That would give you a definitional section of those three types of items that would match up with the use provisions and you could also say they're standards and it would be much easier to deal with. But the only other thing that –, the only other thing that isn't in this PUD ordinance that needs to be there is that anytime we have always talked about, and I'm going to take it out of this context and move it into another, that we've talked about density, and density is where we talk about how much on an area of land, we have always dealt with that on a per acre basis, okay. This situation is on leasable space, which is one part of the equation, but doesn't relate to the size of the lot you're putting it on. So if you're –, if you want to say not more than 20,000 square feet, that may be totally reasonable on a one-acre lot, but totally unreasonable on a hundred-acre lot. Commissioner McMasters said, well, and Jon [Hart], I think we're beginning to micro-manage here, and we do appoint the MPC to help and give us the guidance. I'm only trying in this motion to help the MPC in the essence of size of square footage permitted, as outlined in this, and I –, they are standards, in my opinion. They're not guidelines. The MPC warrants clarification. It's –. Commissioner Rayno said, but, John [McMasters], his point is if you have up to 45,000 square feet, you can put that on 10 acres, and if you put 45,000 square feet one right next to each other, and then –. County Attorney Hart said, it's just half the equation. I mean, the problem with leasable square footage is other than the PUD code, it's always been used for a parking requirement and it stuck in there and nobody gave thought to the fact when it got stuck in there, you've got to relate it to some size lot. If I own a hundred-acre lot, I ought to be able to put a bigger building on it than I could on a one-acre lot, and all I'm saying is if you're going to instruct these things to be standards, let's fix the problem.

Commissioner McMasters said, well, that did bring some clarity –, I'm sorry. Vice Chairman Thomas said, I was about to ask, do you wish to withdraw that motion and then restate it? Commissioner McMasters said, yes. Vice Chairman Thomas asked, and who made the second? Commissioner Rayno said, I did. Vice Chairman Thomas asked, do you wish to do that? Commissioner Rayno said, that's fine. Vice Chairman Thomas asked, okay, then would you do that? Commissioner McMasters said, sure. Help me out a little bit here. Commissioner Rayno said, yes. Try to understand what he's saying to you because it is important that you tie square footage to the amount of property you're talking about. Vice Chairman Thomas said, right, exactly. Commissioner Rayno said, because that's the total picture that you're looking at. County Attorney Hart said, you've got control then, and it's almost like density. You can say seven apartments per acre, and then you go look at the acreage and you say, well, they've got eight, so you know where you are. Here you've got 45,000 square feet or 50,000 square feet, but it's not tied to any sized building, and at some point you don't have control over that. I mean, it isn't a big deal to put a hundred –, to put the Walmart Center out on a hundred acres or two hundred acres. That would be unreasonable to do that –, not to do that. If you wanted to put a 50,000 square foot building on a one-acre lot, you know, that would be a problem. And traditionally speaking, the size of the lot, because of the parking requirement, has defined the size of the building because normally if you get a five-acre tract of land and you go to put a building on there of size, because of the formula for parking, it's sort of defines the building size because you've got to have so many parking places that eventually the building can't get any bigger, but when you're dealing with a pretty large tract of land, you've got to have some kind of formula to make that leasable square footage be truly meaningful in the planning context. That's all I'm saying.

Commissioner McMasters said, Jon [Hart], help me out here. This says that planned business center shall be established according to the following standards. Does that not presuppose that there is a correlation between the three classifications and the ground area? County Attorney Hart said, it doesn't say anything in that –, in the whole act about that, Mr. McMasters, and that's the problem is that if you look at the –, if you look at the leasable square footage, other than that little block that has been so troublesome, it has been historically used for one purpose, and that is to drive the equation for parking that's needed for a particular use. For example, Mr. Nutting was very adverse to a project involving a Kroger, and there was a question in the calculation of the square footage of that building, and ultimately we had to come up with a way to do that to which Mr. Nutting at that point agreed that we had a definable better technique for doing that leasable square footage. But the issue there was how big a building can you put on a place and still meet this formula for parking because it's –. Commissioner McMasters asked, who currently defines that missing part of the equation, in the current paradigm? County Attorney Hart said, right now you're asking your MPC to take these guidelines and say in 45,000 and apply them and –. Commissioner McMasters asked, to any given parcel? County Attorney Hart said, to a parcel as long as they meet the parking requirements and the other plan requirements and –. Commissioner McMasters said, so that's in place, that's already in place. County Attorney Hart said, yes, but it isn't tied to any size lot. Commissioner Rayno said, you want to close up the loophole that's there. County Attorney Hart said, that's all I'm saying. I mean, I'll be glad to –. Commissioner McMasters said, but my understanding is that there is no specificity that we can include into the motion. Can you give me some language? County Attorney Hart said, well, you could amend your ordinance. Commissioner McMasters asked, to –? County Attorney Hart said, you could draft an ordinance and amend the ordinance. Commissioner Rayno said, yeah, and have a first reading and a second reading and call it a day. County Attorney Hart said, reading and pass the ordinance. Now, you know, that's the traditional way that this Commission works through its Zoning Ordinance. Commissioner Murray said, do it right. Vice Chairman Thomas said, let's make sure we get it right. County Attorney Hart said, but you're going to have to –. Commissioner McMasters asked, why don't you give me –? You know what my intent is here, I respect your observations and comments. How

about helping me with the appropriate language for this motion? County Attorney Hart said, I will be glad to try to do that, but one of the reasons this –, Mr. Nutting has indicated he knows what the intent of this box was, and I'll be quite honest, we have exhaustively looked at the history of this thing trying to ascertain the intent. Commissioner McMasters said, this is not tough –. County Attorney Hart said, but I'm just saying that these language things of neighborhood center, community center needs some work because they were put in there about the time that the strip shopping center went out and the malls were being created, and you've got a lot of different land uses now that these things don't match up against. So they need some work. That characteristics part needs work. Commissioner McMasters said, okay, I'm trying to cease creating interpretation and ultimate flexibility on the third block of this chart, which has to do with size, because that's what's causing our problems. The Tri-Centennial Plan and the ongoing studies will hopefully ultimately resolve that. I'd like a little structure and standard within this between now and then so that we're not off in a tangent doing all sorts of crazy approvals in buildings. So what would you recommend? County Attorney Hart said, I would recommend redefining to decide where the neighborhood center, community center and regional center insofar as the characteristics, as they're defined in here, need to be worked with to meet what our current zoning problems are in zoning uses; that direction be given that that block be deleted and reinserted, if this is the Commission's desire, to call it clearly a standard and then come up with a size equation on a square footage basis, with a defined leasable space definition that ties it to some size mechanism for a lot.

Commissioner McMasters said, I'm just a little bit lost here because somebody out there with a lot more knowledge than me is already interpreting this in light of some existing piece of land. So, the only part of this that seems to be causing great consternation is the guidance that was given to the MPC that these are guidelines with ultimate flexibility and that causes problems for the MPC. Now, I'm seeking to give them –. County Attorney Hart asked, and you're telling me now that what you are directing staff to do is to take away the flexibility from the MPC in regarding the plans and write a standard definition there that is a standard, and I'll do that. Commissioner Rayno said, if you take away their flexibility, it gives them a strict standard to go by so that they're –. County Attorney Hart said, and that's fine. Commissioner Rayno said, there's no grey area whatsoever anymore. They know exactly what the laws.

Vice Chairman Thomas said, I'm going to call on Commissioner Kicklighter –, Commissioner Rayno just spoke, and Commissioner Murray in that order. Vice Chairman Thomas recognized Commissioner Kicklighter.

Commissioner Kicklighter said, Mr. Hart –. County Attorney Hart said, yes. Commissioner Kicklighter asked, is this something that is possibly too complicated to just kind of word and do right this second that you may be able to get with John [McMasters] and –? County Attorney Hart said, yes, I'll be happy to –. Commissioner Kicklighter said, and have something ready for us at the next meeting. County Attorney Hart said, I would not want to do this without sitting down with MPC staff and working on the language so I'd avoid the concept of unintended consequences that you're drawing from one purpose, but you manage to mess up three other things in the process.

Vice Chairman Thomas recognized Commissioner Murray.

Commissioner Murray said, yeah, this is not the first time this subject's come up, and the last time it came up I still feel like those are standards and not guidelines. I understand that you've got to be able to put the density and stuff in place with it too that's not spelled out in here, but there's no other reason why you would have three different categories in an ordinance of leasable square footage and say that somebody can come out there and use any of them they want to and it's not consistent with a rezoning. To me, it's in there because if you go from one category to the next, it is a rezoning process, and I think that's what Commissioner McMasters is getting at right now that he wants something in there that the MPC will have the guidelines –, not guidelines –, the standards to go by on this particular zoning. Now, I don't know what it's going to take us to get there, but there's no way that anybody will ever convince me, and you and I have talked about it in the past, too, from the last time, that those what you're calling guidelines and I'm calling standards are standards and it should be a rezoning process to go from one square footage to the next. And I will always feel that way regardless of how the thing's written.

Vice Chairman Thomas recognized Commissioner McMasters.

Commissioner McMasters said, Mr. Nutting, I think you're patiently waiting to tell us something, and I'd like to hear it.

Mr. Nutting said, yes. I wanted to respond to Mr. Hart's comment about the leasable square footage battle. Commissioner McMasters said, please. Mr. Nutting said, that came up in the case of the Kroger at Marshpoint. There were –, that piece of property was zoned by the Commissioners back in the early 80's to be a PUD-B –, what's the lowest –? Vice Chairman Thomas said, N. Mr. Nutting said, right. And that was the condition that it was promised to the community and was described by this code. The original lessor from the land –, of the land from Bethesda put several buildings on it that fit the description that was –, signaled at the time that this was going to be a small community service center. Along comes, first, Food Lion and then the Kroger proposal. We had a big battle with the –, I guess he's the Zoning Administrator, who said aisles don't count, and we wound up –. Commissioner McMasters said, I'm sorry, what doesn't count? Commissioner Murray said, the aisles don't count as square footage. Mr. Nutting said, the aisles don't count in leasable square feet. Now, Mr. Hart did correct that finally, and although the only thing that matters when you build a building is how much ground it covers in total, the leasable part I never have been satisfied that anybody knows why that should be even used. But, in any event, then that brought on the second problem that we asked you this morning to address, and that is that the lessor came to the MPC and said, oh, well, we had the Food Lion question on the table and we got a preliminary plan approved for that –, well, that one was wrong (a) because it then exceeded the square footage that it was zoned for in the beginning, so they began to call it phase two. Well, the MPC

staff caught that and they made them quit talking about it as phase two, and we wound up there with 54,000 feet on a 45,000 square foot zoned site, and what that caused was that the building is so big that they had to –, they arbitrarily decided not to follow the code regarding the five-foot setback so that the owner of a tract can work on his fence from the opposite side, the outside, that was waived. The book calls for 20-foot parking spaces. There ain't a single one on that lot. The building is so close that they had to put the road around it in the setback inside the fence, and these big tractor-trailers are blowing over on those poor people that live in the mobile homes. My point is that to subdivide something that was zoned under one condition as described –, the only definition there is, which is that table –, should be rezoned and come before you if the uses are changed and a subdivision of the property is proposed. I don't disagree with Mr. Hart that there probably needs to be a relationship between the –, and I say gross square feet put on a piece of property that –, so that it fills the neighborhood or gets too close to its neighbors, and so forth, and you could zone –, I believe, you could zone so that a big building on a small lot would have a percentage, let's say, a percentage under roof restriction, but then if you add onto the building, by God, you need to come back to you all and to get a rezoning under the new circumstances and not just simply, as is going on now with this case that we've been arguing about, where they are coming back and saying, well, we're going to use part of it and then in the future we'll have another part.

Commissioner McMasters said, Mr. Nutting, I understand completely, and to add a little illumination there, is it your belief that when a zoning is established for a particular property that's identified as –, on the tax records as one PIN, property identification number, that the zoning applies to that entire site? Mr. Nutting said, right. Surely. Commissioner McMasters asked, that [inaudible], correct? County Attorney Hart said, that is not correct. That is totally incorrect. The PIN number has –. Commissioner McMasters said, zoning is granted to some –. County Attorney Hart said, the PIN number has absolutely nothing to do with zoning. Zero. Commissioner McMasters said, as an identification system –. County Attorney Hart said, it is just identified –. Commissioner McMasters said, that identifies properties in this County. County Attorney Hart said, that's all it does. Commissioner McMasters said, that's fine. But when an applicant comes in, does he not say, this particular property I'm recusing a zoning variance or change to? Commissioner Rayno asked, how are areas defined if not by the PIN number? Vice Chairman Thomas said, excuse me please. Commissioner Rayno said, sorry. County Attorney Hart said, the PIN number has nothing to do with zoning. The PIN number is just a device that was created for the County to keep up on a tax map with the parcels that it has. We have a number of properties –, you just changed the line on one today that has a single PIN number that had two zoning classifications. It's a situation that Mr. Murray recognized down there that needed to be corrected. You had the potential for a T-B zoning and a R-1-A zoning on the same lot that had one PIN number. There's another piece of property down there on Wilmington Island that we talked about yesterday concerning some road traffic studies that had dual-mixed zoning classification on a five-acre tract; it has one PIN number. Commissioner McMasters asked, is that the –? County Attorney Hart said, and that's my only point to say that the PIN number and the zoning classification is tied together. They're two separate things.

Vice Chairman Thomas said, okay, Commissioner Rivers was next, Commissioner Murray and then Commissioner McMasters, and do you wish to speak. Commissioner Rayno said, I was after Commissioner McMasters actually. Vice Chairman Thomas said, okay.

Commissioner Rayno said, thank you. I'm sorry, Joe [Rivers]. Commissioner Rivers said, I'll yield. Vice Chairman Thomas said, you were next after Commissioner McMasters, but you just spoke prior to so you lost your turn there. Commissioner Rayno asked, I got a penalty? Vice Chairman Thomas said, you lost your turn, but I'll put you back in.

Commissioner Rivers said, Madam Chair, all I wanted to say is whatever this rule issue here that we're discussing, little or big, that it's complex and neither does anyone understand and they're going back and forth trying to get some understanding to this, then this needs to be taken into a forum where we can get everybody's thoughts down, let Jon [Hart] write back what Mr. McMasters needs and him interpret to Jon [Hart] what he thinks he needs, let MPC get in on the fray, let Mr. Nutting get in and make sure that everything is clear and bring that back. We can be here all day going back and forth and vacillating over this whether this is right, what I mean, what he means. It all boils down to not making any sense at all. So if we can get a procedure where we can get this thing into some context so we'll all be on one page, I'd appreciate it.

Vice Chairman Thomas said, okay, Commissioner Murray and then Commissioner McMasters.

Commissioner Murray said, first of all, I think it's pretty simple as far as what we need to do. It's not simple as far as writing it. I think, Jon [Hart], you know what we are asking for and I think the simplest thing to do is take it back to MPC and work with them and do it. The other side that I wanted to point out is in reference –, you were referencing properties that were zoned with two different zonings on them. Now, if you've got one lot, regardless of how size –, large that one lot is and somebody comes in there, the only way they can zone other than that total would be to subdivide it. Is that not right? County Attorney Hart said, technically under our rule, they could –, you could have a zoning use –, two different zoning uses in the same property –. Commissioner Murray said, but it's the same zoning though. County Attorney Hart said, when you start –, yeah. But when you start to develop the property, as a –, in 99% of the cases, you're going to run up against the subdivision ordinance or the minor subdivision ordinance that's going to end up making you do some type of subdivision. When we use the subdivision terms, we normally think of the residential subdivision, but even in a commercial situation, you'll end up –, that sort of triggers another mechanism that the person seeking the permit or the development permit must meet all the standards under that.

Commissioner Murray said, I don't know whether this would be the right motion to make or not, I'm going to make it. If it's not, I don't guess I'll get a second, but I'm going to try it. I would move that the County Attorney, Commissioner

McMasters, Mr. Nutting, get together with the MPC staff and write this like it needs to be to protect what we are trying to protect, and make these standards and make it plain where we all understand it –. Commissioner Rivers said, I'll second that. Commissioner Murray said, and bring it back to us. Commissioner Rivers said, I'll second that, but did we have a motion on the floor? Commissioner Murray said, as soon as possible. Vice Chairman Thomas said, I think he's just making it now. They withdrew the original one. Commissioner Murray said, now, if you want some discussion, is that what you're asking for basically? Commissioner McMasters said, yeah, I'd like to discuss that. Vice Chairman Thomas said, okay, discussion. Commissioner McMasters and then Commissioner Rayno.

Commissioner McMasters said, that will require some time and it's not out of the question, but I think it's really a little –, I think we can make a simpler motion that –, and let me just float this out. I'm not making it, I'm just testing it. That the –, if we were to instruct the MPC to, on page 156 of the Chatham County Zoning Ordinance book relative to shopping centers, that they interpret them as standards relative to the square footage, we could certainly improve upon that through study and time, but I think that both Mr. Nutting, the Tri-Centennial Plan, the MPC, applicants, everyone would like some tightening up of this page 156 graph where the great debate has been, well, is column three simply a guideline or a standard so all –, if we can just give direction to MPC that this Board considers them standards and that we will continue to research with more clarity the effective standards for them and the use of standards, we would be happy to do so. But I think it's –. Commissioner Murray said, let me ask a question. Commissioner McMasters said, sure. Commissioner Murray said, if I could. Commissioner McMasters said, sure.

Commissioner Murray said, if the second will accept it, I'd like to amend the motion to include that in there, that that be done along with this motion. Vice Chairman Thomas asked, who made the second? Commissioner Rivers said, I made the second. I'll accept. Commissioner Murray said, okay. Vice Chairman Thomas said, okay. There is still a question?

Commissioner Kicklighter said, yeah, I'd like to ask, does that include or does that enforce the standards on the entry applicants or for pending applications also in that motion? Commissioner McMasters asked, are you asking us? Commissioner Kicklighter said, yeah, it's your motion. Commissioner McMasters said, I would think anything that is in process that I would hope the MPC would be consistent with the law. Commissioner Kicklighter said, so it would include pending –? Commissioner Murray said, yes. Commissioner McMasters said, yes.

Vice Chairman Thomas asked, Commissioner Rayno, did you want to ask a question on that?

Commissioner Rayno said, I just think, John [McMasters], it always needs to be in a legal context simply for –, if you don't do that through ordinances, you're going to find a lawyer that's going to come along and find that loophole and you'll be right back where you started from. Commissioner McMasters said, well, Jeff [Rayno], this motion has –. Commissioner Rayno said, I know, I just –. Commissioner McMasters said, immediate effect and then a comprehensive. Commissioner Rayno said, you changed it and that's good. Always keep that in mind. The other thing I would ask is that we remove the term guidelines from the situation and get rid of that word guidelines because that's something a lawyer can drive a truck through when they get a hold of it, and the other thing that I would ask is the fact that we were always –, I'll bet you there's not a person up here that wasn't under the assumption that zoning was attached to PIN numbers. That needs to be rectified because that's another loophole in the making. We need to decide if you've got a property out there, the PIN number is what you're talking about because that's what everybody's assumed all along. What we're being told today is different. So as part of your changes in the ordinance, I would suggest strongly that you start attaching PIN numbers to properties in question and use that as a legal definition of the property that you're talking about.

Commissioner Rivers said, Madam Chair. Vice Chairman Thomas said, Commissioner Kicklighter, Commissioner McMasters, Commissioner Rivers. Commissioner Rayno said, Madam Chair, Mr. Nutting would like to make a direct comment to something I said, if that's okay. Vice Chairman Thomas said, okay, you'll yield to –.

Mr. Nutting said, I would ask you, I think you're wrestling with the right question here, but when someone comes before you and wants to zone or rezone a piece of property, he describes why he wants it that way, you look at the circumstances around it, and then you on the basis of that call it something. Now, we see a big problem that if when something changes, he makes it smaller, he wants to cut it in half, he wants to put a different use on it, that ought to trigger automatically a rezoning, because it is not what was there when you zoned it, and –, you know, so you have been led to believe one thing and then he goes off and later does something else, that has broken the faith that was put out when you zoned it. Commissioner Rayno said, so attaching it to the PIN number would solve that problem. Mr. Nutting said, oh, yes, I think like that would be a big help in describing it, but a piece of property that is subdivided certainly isn't the same piece of property that you zoned in the first place, and certainly if the use is in the area involved is different, that ought to come back to you because you may –, there may be a lots of things that changed that you want to reconsider. Today that doesn't happen. They simply say, well, it was zoned for X-use and I'm going to put something else on it, and it just goes that way.

Commissioner McMasters said, Ms. Stone, you're still in the audience. Do you –, can you shed any light on this since you're with the MPC?

Ms. Helen Stone said, I think that you all are definitely on the right track. I would prefer that something be done before we wait until the Tri-Centennial Plan is complete. I think it does put us all at a disadvantage when it's difficult to interpret the ordinance. My only request is that you've got Mr. Nutting and the MPC staff and Commissioner McMasters and I think Commissioner Rayno, that the MPC Chairman be included in that meeting as well because it is oftentimes, and Mr.

Hart has to come over and help interpret these ordinances, and I think that the ordinances should be able to be interpreted by the average person.

Commissioner Kicklighter said, I've got a question for Ms. Stone. If this current proposal passes, would that reduce the size of this proposed Walmart? Ms. Stone said, I don't know. Commissioner Kicklighter asked, Attorney, do you know –, do you know that answer? County Attorney Hart said, I don't know. Commissioner Kicklighter asked, John [McMasters], do you know that answer because, I mean, I'm just trying to avoid a future lawsuit, and, I mean, I need to know that answer before we –. Commissioner Murray said, I don't know because I don't where they're asking for. Commissioner Kicklighter said, this gentleman may have that answer.

Vice Chairman Thomas said, please state your name.

Mr. David Johnson said, my name is David Johnson, and I'm an attorney with McCorkle, Pedigo and Johnson. My partner, Phillip McCorkle, is usually here in behalf of the owners of this piece of property that has been indicated. We're not talking about it, but in fact obviously we have been throughout the day, and I just want to make clear in behalf of the owners our position in regard to any retroactive application of this motion that's been proposed today. This application is pending. The MPC has in the past construed, rightly or wrongly, this ordinance provision to set out a guideline. The Kroger is there, the Kroger was approved. The prior general development plan on this piece of property that my clients own was approved. This has been construed as a guideline. My understanding is that that has been the County Attorney's advice to the County, and the County has taken that position in litigation. We have acted on the basis of that interpretation. My clients have expended great amounts of resources and funds in reliance on that interpretation. To alter that interpretation –, and I believe when you first made your motion, Mr. McMasters, you said, going forward, and I stayed in the back. When it becomes a matter of the question Mr. Kicklighter asked of you will that apply to this pending application and the answer is yes, that's why I came forward. My clients, as a result of their expenditures, their reliance upon the prior constructions upon the ordinance as it presently exists with the word guidelines in the box, have vested rights, they have applied for a permit that complies completely with the current zoning and have vested rights, and I just want to say to the Commission, Mr. Kicklighter has mentioned on a number of occasions a lawsuit. Nobody wants lawsuits except for –, I'm a litigator, that's why I'm not usually up here. Phil McCorkle is usually up here because he's not. The lawyers like lawsuits, nobody else does, but if this Commission intends to apply retroactively changes that it makes to the Zoning Ordinance, or to the interpretations that have historically been give to the Zoning Ordinance, then that will unquestionably be, with all due respect to Mr. Stack and his legal opinions, that will unquestionably be a violation of the owners' vested rights in this property and to the use of this property.

Commissioner McMasters said, okay, I just want to point out, since you so eloquently pointed out that it does say guidelines, I'm sure you and your clients will notice that prior to saying guidelines, three times in advance of that it says standards. So if you're going to see only one word, I think you need to see them all. Mr. Johnson said, and if I can respond to that, I don't take issue and I don't think anybody takes issue with the fact that there could be some improvement, and I agree with Ms. Stone when she says you're on the right track to try to do something to improve that ordinance, but to try to retroactively improve the ordinance is a violation of my clients' rights under the Georgia Constitution, the Federal Constitution and Georgia case law that provides for vesting of rights in exactly, exactly this type of situation. Commissioner McMasters asked, can I ask a question of the County Attorney relative to this? Vice Chairman Thomas said, okay, and then we'll go to Commissioner Murray.

Commissioner McMasters said, Jon [Hart], can we give this instruction to the Metropolitan Planning Commission as we outlined it, that is, these are standards, not guidelines, and let them make their decisions, or on your advice whether or not to make that relative to anything that's in process or anything in the future? County Attorney Hart said, there is no question that given the status of case law in Georgia that any time you deal with a zoning issue on a pretty long range of subjects, you're always going to run somewhere along the line into the vested rights issue. Okay? And I could disagree with Mr. Johnson, I could disagree with Mr. Stack. You know, it's kind of like the speed limit. I'm doing 56, I'm doing 57, when do the vested rights apply, and we could argue about what the speed limit is –. Commissioner McMasters asked, but could we go forward on that basis letting them decide? County Attorney Hart said, but as a general rule, most legislative bodies, in order to avoid that vested rights issue exclude pending applications, because it is extremely difficult for somebody after the policy has been in place when they do not have a pending application and they come in and say, well, I've been zoned this way and these are the rules we've been going by and to now apply them to that person, they're pretty safe –. Commissioner McMasters said, but the question relative, since we're going to talk about site specific here, the applicant has a specific site plan for 28 acres, is that approximately? County Attorney Hart said, yeah, but I say –. Commissioner McMasters said, and nothing specific for the remaining acres, or –, is your advice here on a go-forward basis that this would apply to his specific plan and not to the general plan, because the general plan is not defunct? County Attorney Hart said, okay, it is my understanding, and correct me if I'm wrong about this, Mr. Johnson, that currently pending before the MPC is approximately a 50-acre parcel for which they are seeking a general development plan that outlines basically no structures on approximately 20 acres and then about a 30-acre tract that involves a very detailed layout of a store and some parking. In regard to that application, they are asking for the approval of an overall general development plan and a specific development plan. The specific development plan would be as to the store and parking lot, and they're going to meet the requirements of the MPC on both of those. If they wanted to come back, and let's assume –, and this is total assumption because it's pending –, if the general development plan were approved and the specific development plan were approved or approved with conditions, or however it may come out, it would be my position or the County's position that if the developer wanted to come back on those other 29 acres, that basically the way they have the development plan designated now, it's vacant property and they would be required to submit a specific development plan as to that property, and those issues would be for another day. I mean,

they've got to meet all the requirements of the specific development plan because right now all they're doing is telling us we're reserving this property and it's blank. If you wanted to put an outhouse on that property, you would have to come in with a specific development plan for that.

Mr. Johnson said, I don't disagree with that at all. I would like to point out that the ordinance specifically provides for submission of general development plans in phases. County Attorney Hart said, and that was –, the only reason I make that statement was we went through a partial rewrite of the PUD ordinance last –, last year, Helen [Stone]? Ms. Stone said, this year. County Attorney Hart asked, this year? And that provision is in that PUD ordinance. That's my only statement.

Commissioner McMasters said, if I modify my motion to –, on this particular project that the specific site plan is excluded from any instruction to MPC on standards versus guidelines question and that the remaining acreage MPC should employ standards as opposed to guidelines in any determinations or future applications relative to that remaining property. The Clerk said, excuse me, I thought you withdrew your motion and we were going with Commissioner Murray's motion. Commissioner McMasters said, okay, then it's an amendment to Commissioner Murray's motion. I apologize. Commissioner Murray said, I accept it. Vice Chairman Thomas said, it is as amended. Commissioner McMasters said, I stand corrected. Commissioner Rivers said, and the second accepts. Commissioner McMasters said, okay.

Commissioner Kicklighter said, and also to safeguard ourselves, that's great. Do we have any other pending applications that this would affect that we need to just say to exclude all other pending applications? We probably do so –. County Attorney Hart said, it would be better to say all pending applications, and if you want to make that distinction between the general development plan and specific, I have no problem with that –. Commissioner McMasters said, okay. County Attorney Hart said, but to talk about this property is not in a class area would not be in the best interest of –. Commissioner McMasters said, I appreciate that.

Commissioner Murray said, keep in mind, too, the only thing we're discussing right now is the PUD, not all zonings. Commissioner McMasters said, so that's –. Vice Chairman Thomas said, as amended. Commissioner McMasters said, as amended, yes. Vice Chairman Thomas said, we have a motion on the floor. Commissioner Murray asked, Sybil [Tillman], do you understand that motion? Do you have it down? The Clerk said, oh, sure. Commissioner Murray said, good.

Vice Chairman Thomas asked, any further discussion on the motion as amended? Please vote. The motion carried unanimously. [NOTE: Chairman Hair and Commissioner Odell were not present.] Vice Chairman Thomas said, the motion is carried. Thank you.

Commissioner McMasters said, I'm sorry, I wanted to –. Is Mr. Nutting still here? I'd like to make a motion that we assist the Southeast Land Plan process, in light of all the motions and actions that we have taken today, which is going to take time to settle in and get solid, I'd like to afford Mr. Nutting and his planning group a very brief 90-day building moratorium until all of these amendments and motions are settled into place and everybody's clear on a go-forward basis. Commissioner Rayno said, I'd like to second that with the amendment that we add the corridor study that the MPC is currently conducting as well. The Clerk said, I'm sorry, I didn't hear you. Commissioner Rayno said, amend it, but to include also the corridor study which the MPC is currently doing that includes the greater Sandfly area. Commissioner McMasters asked, is the MPC, Mr. Nutting, working in conjunction with you on a corridor study? Mr. Nutting said, I am not aware what you're speaking of. The Southeast Chatham Plan does include everything south of Montgomery Crossroad –. Commissioner Rayno said, okay. Mr. Nutting said, and so it does include that. Commissioner McMasters asked, do you want to withdraw that? Commissioner Rayno said, I'll withdraw the amendment and second it.

Commissioner Murray said, the corridor study was something we discussed at the last meeting that's supposed to be in the works was your recommendation, if I'm not mistaken. County Attorney Hart said, I'm sorry, I was –. Commissioner Murray said, the corridor study is something that's in the works that was your recommendation at the last meeting. County Attorney Hart said, yes, sir, they'd be tied to –. This really needs to be done in a first and second reading ordinance setting to have the teeth that y'all intend, and that will give me time to draw something that's going to be scrutinized. Commissioner Murray asked, well, we'll have the first reading at the next meeting? County Attorney Hart said, yes, sir, if that's your instruction. Commissioner McMasters said, then please prepare after the vote, if necessary, please prepare the documents. County Attorney Hart said, and the moratorium general language is 90-day moratorium to adopt the corridor study or plan –. Commissioner Rayno said, which is already in motion.

Commissioner Kicklighter said, again, I need clarification. Does this exclude pending applications? County Attorney Hart said, pending applications. That's your issue. Commissioner McMasters said, sure. Commissioner Kicklighter asked, it excludes pending applications? Commissioner Rayno said, that's similar to what we did with the Islands Land Use Plan. Commissioner Kicklighter said, yeah, I mean, it's great, I just need to –. Commissioner McMasters said, I was just trying to pattern it after the Islands because we've done a lot of things here that I think are good things, but did not firm up and get in place and everybody has to be up to speed on, and I think with Mr. Nutting's efforts, that that should happen. Commissioner Kicklighter said, I think it's great excluding pending. Commissioner McMasters said, this would exclude pending applications.

Commissioner Rayno said, and just for clarification, if somebody hasn't made it to the MPC yet, then they would be, like you said, their nose up against a window. It could go either way.

Commissioner Murray said, well, let me ask a question. Vice Chairman Thomas recognized Commissioner Murray. Commissioner Murray asked, if you've got someone that is on the agenda for the MPC meeting Tuesday, would that be a pending application? Vice Chairman Thomas said, yes. County Attorney Hart said, yes, it's already been filed.

Vice Chairman Thomas recognized County Manager Abolt.

County Manager Abolt said, y'all have some due process considerations. That's the purpose of the ordinance. So nothing you're doing now other than giving staff directions to prepare the ordinance would have any specter to come into plan on anything now before the MPC. That's a discussion we had with Commissioner Murray a couple of years ago. This is not something that can be done in one simple motion because you have the due process consideration that must be protected.

Commissioner Kicklighter said, y'all are to draw up the paperwork –. County Manager Abolt said, yes, sir. Commissioner Kicklighter said, – to do the moratorium. County Manager Abolt said, that's correct.

Commissioner Murray asked, well, Jon [Hart], what about the changes that you said are taking place with this since the one that we implemented in the Islands? There were some changes and I thought those changes did not mean we had to go through a first and second reading. County Attorney Hart said, well, you caught me cold. I didn't know a moratorium was coming up today, but –. Commissioner Murray said, well, I didn't either, but it did. County Attorney Hart said, the difference was that at the time we did the Islands Land Use, there was a real concern out there that if you were going to try to adopt a moratorium whether that constituted a –, the adoption of the moratorium constituted a zoning decision and, if it was, you had to jump all hoops for the Zoning Procedures Act, which included the advertising, hearing, recommendation from the plan, public hearing. A lot of that stuff –, since then there's been a case that says, no, it's not a zoning decision, and some of that stuff has been deleted, so I don't think we've got as many hoops to jump through, but I am concerned about whether we need to do it in an ordinance form, and if we can do it by resolution, we'll have it ready at the next meeting, but if it needs to be by ordinance, then I'm just going to come back in and do it that way. Commissioner Murray said, that answered my question.

Commissioner Kicklighter asked, Commissioner McMasters, is there any way in this moratorium we could exclude single-family houses or –? Commissioner McMasters said, no, if they –. Commissioner Kicklighter said, I mean, the total –. Commissioner McMasters said, if they're in the process –, it's only 90 days. I mean, if they're in the process–. Commissioner Kicklighter said, that's fine, I just wanted to know what your thinking –. Commissioner McMasters said, no, it's all –. Commissioner Kicklighter said, okay.

Commissioner Rivers said, call the question, Madam Chair. Vice Chairman Thomas said, if there's no further discussion, all in favor of the motion. The motion carried unanimously. [NOTE: Chairman Hair and Commissioner Odell were not present.] Vice Chairman Thomas said, the motion is carried. Thank you.

Commissioner McMasters said, thank you, Mr. Nutting.

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Commissioner Murray said, just for clarification, Helen Stone would be included in that PUD –. County Attorney Hart said, I'm sorry, I wasn't –. Commissioner Murray said, Helen Stone, as Chairman of the MPC, would be included in the PUD study or whatever y'all can work out? County Attorney Hart said, yes. Commissioner McMasters said, that was the intent. She thought that she wasn't included, but –. County Attorney Hart said, I've also had a couple of people out here in the audience today that expressed an interest in participating in those meetings and, as far as I know, those meetings are going to be quasi-public meetings so if they want to show up, there's not any reason they can't attend.

Commissioner McMasters said, well, I just wanted clarification that the intent of that motion [inaudible] that not only our attorney and staff of the MPC, but the appointed people of MPC be included. Vice Chairman Thomas said, yes, that was –, it was stated. Commissioner McMasters said, okay.

ACTION OF THE BOARD:

1. Commissioner Murray moved that the County Attorney, Commissioner McMasters, Mr. Nutting, get together with the MPC staff and Helen Stone and write the PUD Ordinance like it needs to be to protect what we are trying to protect, and make these standards, eliminating the word "guidelines," based on the foregoing discussion, and make it plain where we all understand it and bring it back to us as soon as possible, and that in the interim that MPC be given instruction that relative to the square footage on page 156 of the Chatham County Zoning Ordinance Manual, except on all pending PUD applications, they are to be considered as standards. Commissioner Rivers seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioner Odell were not present.]

2. Commissioner McMasters moved that we assist the Southeast Land Plan process, in light of all the motions and actions that the Board has taken today, which are going to take time to settle in and get solid, and adopt a 90-day building moratorium until all of these amendments and motions are settled into place and everybody's clear on a go-forward basis. Commissioner Rayno seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioner Odell were not present.]

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VIII. TABLED/POSTPONED ITEMS

Unless action is contemplated at today's meeting, staff report and file material has not been duplicated in your agenda packet. The files are available from the Clerk. Those on which staff is requesting action are indicated by asterisk (*).

1. DISCUSSION OF LOST NEGOTIATIONS (CHAIRMAN HAIR).
• At meeting of September 13, 2002, Commissioner Rivers requested reconsideration at next meeting.

Chairman Hair said, okay, Commissioner Rivers, you asked for reconsideration at the last meeting.

Commissioner Rivers said, yes, and the reconsideration should have came up at the first of the agenda anyway. Well, we're taking items off. Commissioner Rivers said, I'm going to withdraw that reconsideration, Mr. Chairman.

Chairman Hair said, okay, we have withdrawal of the reconsideration, so the previous motion stands. You have in front of you something that was sent over to the office late yesterday afternoon from the Mayors suggesting a second five years with the following changes. The percentage would go from 17.6 to 17.8 and the jail per diem would go from $30 to $35. If the Commission wishes to act on that today, they can. If the Commission wishes, they don't have to act. Chairman Hair recognized Commissioner Murray.

Commissioner Murray said, Mr. Chairman, I really don't think we should act on the second part of that right now. I think the motion that we were approving, if I'm not mistaken, was for five years. Is that correct? Chairman Hair said, that has already past. Commissioner Rivers –. Commissioner Murray said, that's right, but it was for five years. Chairman Hair said, that's correct. That is correct. Commissioner Murray said, and it was 17.6 and $30 a day. Chairman Hair said, that is correct. Commissioner Murray said, well, if –, the second five years they want to talk about, is that what you're saying that they sent this letter over for? Chairman Hair said, they sent it over –, it was on my desk this morning, 17.8 and from $30 to $35 on the second five. Commissioner Murray said, well, I think if they want to do that, then that needs to be negotiated. I don't think we just need to approve that today. So –, but since the first five years is in place now, that's fine, but if they want to do something for the next five years, then let's negotiate the next five years.

Chairman Hair recognized Commissioner McMasters.

Commissioner McMasters said, Mayor Adams called me and wanted to meet with Frank [Murray] and myself, and due to our schedules, we weren't able to do that yesterday. This is the first I've received this, and in light of that request I would like to ask that we –, that Frank and I have the opportunity to meet with Mayor Adams and hear his thoughts on this personally because there may be additional information and substantive facts that are outside of this that I think that improve a better understanding on behalf of the County.

Chairman Hair said, I'll entertain any motion. Commissioner Murray said, I don't think we really need a motion, do we? Chairman Hair said, okay.

Commissioner Kicklighter said, I'll make a motion to approve the years six through ten with the same exact –, under this agreement with the understanding that the drainage is still included in this. Chairman Hair said, we have a motion. Do we have a second? Do we have a second? Well, let's get –. We don't have a second? Commissioner Odell said, I'll second. Chairman Hair said, okay, we have a second. Chairman Hair recognized Commissioner Murray.

Commissioner Murray said, so, in other words, because it's going to protect a few municipalities on the Westside, then we're just supposed to jump on board and say we're going to keep all the drainage in process and we're just going to increase the fees by that small amount. We don't have any idea what the cost is going to be in that jail in five years and we're sitting here and are going to make a decision on that today when we just approved something for five years now on the present negotiations. It doesn't make sense.

Commissioner Rayno asked, you can't wait to see what the future is? Commissioner Murray said, I mean, you don't even want to allow anybody time to sit down and talk about it.

Commissioner Kicklighter said, the thing is on this, is I believe that the Chairman reviewed this pretty good and others also –. Commissioner Murray asked, when? When was it reviewed? Commissioner Kicklighter said, probably when your group was eating breakfast together discussing your plans. Commissioner Murray said, I just saw this today. Commissioner Kicklighter said, and, you know, and that's just the way it's been going on this negotiation. It's nothing personal. I mean, there's obviously four people that agreed to try to get more money and then there was five that agreed to try to come to some kind of compromise here, and I believe there's five people that believes that this is a fair compromise for the cities and the County. Commissioner Murray said, we did that for the first five years. The first five years are over. That's a done deal. Why do we need to even address the last –, five more years right now?

Commissioner McMasters asked, do you think that we could have discussed it at our meeting last week what was received today? Would that be clairvoyant? Commissioner Kicklighter said, I think that in our discussions with the Mayors of all the other municipalities, they absolutely will not accept a five-year deal and LOST will go down the drain and the taxpayers in all the municipalities, as well as the unincorporated area, taxes will go up, and this is a fair compromise.

Chairman Hair recognized Commissioner Odell. Commissioner Rivers said, I don't see anything that says drainage. Commissioner Murray said, I don't see anything in there that says drainage either. Chairman Hair said, let's [inaudible]. Chairman Hair recognized Commissioner Odell.

Commissioner Odell said, what I'm looking for is some common ground, and the common ground is we've approved the first five years. There is some concern by those who are clustered with municipalities that it will –, that they're not going to approve it. What would be the problem if we allowed our negotiating team within a reasonable period of time to go back, meet on the second five years, but let's finalize this within –. Can you all do that within two weeks? Can we come to some either we're going to go with this, we're not going to go with this, and we act as a full body rather than a who-got-the-fifth-person this week is the big dog at the table. Commissioner Kicklighter said, we can all go to breakfast together. Commissioner Odell said, we can all go to breakfast. I just want to know, Frank [Murray], in your response if you can tell me if we can do this within a reasonable or a foreseeable period of time?

Chairman Hair recognized Commissioner Odell. Commissioner Odell said, I'm finished. Chairman Hair said, okay. Chairman Hair recognized Commissioner Murray.

Commissioner Murray said, I was called by Commissioner McMasters, who was called by Mayor Adams wanting to meet. He could not meet yesterday, when we tried to meet. It's obvious to me the votes are there to go for another five years, but whoever's serving those next five years are the ones that are going to pay the price for it, so I hope you understand that. It's going to cost this County a fortune, and I think we need to look at it from the standpoint of what the jail costs are going to go up and the rest of the things on there, and you're wanting to keep all the drainage in part of that, we want to keep CNT as part of that –. Commissioner Kicklighter said, no, it's not a part –, CNT is not a part of it. Commissioner Murray said, well, CNT is a part of the first five years. Commissioner Kicklighter said, no, it's not. Commissioner Murray said, yeah, it is. Commissioner Kicklighter said, no, it's not. Commissioner Murray said, CNT is not even –. Commissioner Kicklighter said, CNT is not mentioned. Chairman Hair said, it's not. Commissioner Kicklighter said, so it's not a part of the LOST. Commissioner Murray said, in what they sent us over here, do you want to adopt what they sent us? Drainage isn't mentioned either. Commissioner Kicklighter said, yes, but that's –. Commissioner Murray said, yeah, that's different. Commissioner Kicklighter said, that was in the first. It's worded in there. Commissioner Murray said, so we still pay the premium for that –. Commissioner Kicklighter said, it's worded in the motion.

Chairman Hair said, Commissioner Murray has the floor. Let's let him finish and then Commissioner McMasters.

Commissioner Murray said, I don't see how this can continue to change like that. I don't know whether it will take two weeks or not. If y'all want to go ahead and vote on it today and you've got the votes to do it, do it and I don't want to hear any more about going to a breakfast with four different people when you've been involved in breakfasts yourself. Commissioner Kicklighter said, that's what I'm saying. I know.

Chairman Hair said, Commissioner McMasters and then Dr. Thomas. Chairman Hair recognized Commissioner McMasters.

Commissioner McMasters said, I'd just like to –, like to abdicate a little bit of calm and clear thinking here. Commissioner Odell asked, regarding the breakfast? Commissioner Murray said, I didn't eat anything. Commissioner Odell said, yes, you did. Commissioner Murray said, I just drank coffee. Chairman Hair said, I don't even get invited, so, you know. All right, Commissioner McMasters.

Commissioner McMasters said, I take personal satisfaction in the fact that I meet with my fellow Commissioners, both collectively and individually. I don't think that's anything out of line. As a matter of fact, I think my constituents would endorse that and I think yours would, too. You've been to those breakfasts, and now because you're not on board with this, there's no point to invite you. Commissioner Kicklighter said, exactly. Commissioner McMasters said, so don't get your nose out of sort over it. The point is, with all seriousness, we have –, we have – okay. We have buried this County financially in the last –, and, Dr. Hair, I know you didn't negotiate that deal. This does not have anything to do with –, it was the prior Chairman, I think. Chairman Hair said, I don't take it personally. Commissioner McMasters said, okay. This County has been strapped financially. We have not been able to do the things that we need to do for services to the taxpayers and employees of this County by virtue of the last LOST agreement. We've been swimming upstream as fast as possible trying to keep the County afloat and doing the right things, and if you can predict jail costs, insurance costs, fuel costs, COLA's, and all the other things that are associated in the second five years of this, I'd love to know them because if you can tell me those costs, I can compare them against what I just received this morning and I can make a better decision. But I personally cannot support moving with breakneck speed into crippling this County for ten years. I think that's incredibly dangerous. I think it will come home to haunt anyone that votes for this in the next election cycle because it is extremely volatile and dangerous to the welfare of this County, employees, taxpayers and elected officials.

Chairman Hair said, Dr. Thomas and then Commissioner Kicklighter and Commissioner Odell. Chairman Hair recognized Commissioner Thomas.

Commissioner Thomas said, thank you, Mr. Chairman, members of the Commission. A lot of things are volatile and if we don't watch it, we're going to keep going down that path. Instead of us debating each other and getting the rages that we're now getting into, I don't like it, and I think that if we are going to proceed further in terms of the two negotiators to meet with Mayor Adams, then it would be my suggestion –, I can't see where maybe two weeks would be a difference, would make that much of a difference in terms of you [McMasters] and Commissioner Murray to meet with the Mayor and whomever, and then come back to this Commission. I would be willing to do that, but I am not willing to sit up here and see each of you, you know, lambast each other back and forth constantly. That's not good. So I think we need to either make a decision whether the two of you are going to go and to negotiate with the Mayor, come back to this Commission, then bring the information and then we'll be able to move forward with that because we can go on and on all day.

Chairman Hair recognized Commissioner Kicklighter.

Commissioner Kicklighter said, thank you, Mr. Chairman. I just want to state that I –, first I'll commend you, John [McMasters]. You got here –, or Commissioner McMasters. Sorry, I'm informal. Your energy, your enthusiasm, your determination, everything is great. I've put probably 15 pounds eating at all these breakfasts with you. I called and spoke with John, and the reason I even bring that up is because I'll let you know in the final –, hey, no offense. That's politics. You believe what you believe about LOST, do what you have to do to get your opinion passed, and I'll do what I have to do to get mine –, my opinion passed. And that's an understanding. That's the way politics works, but the reason I brought it up was everybody acts all excited and offended that this other opposing viewpoint came forward with a proposal, and that's why I mentioned, you know, that. I mean, I think it's great. That's politics. You have to do what you have to do and people –, whatever viewpoint any of us has, we have to do whatever we can do to get our viewpoint heard and passed, and I just want to state that I don't think anybody's done anything wrong. I just think that we have different opinions here. I think that when we talk about the County in ten years being in terrible financial shape, we're kind of forgetting that the municipalities are a part of the County and if we slam them, then our Chatham County taxpayers will be in bad shape as far as their taxes, and it really –, to me, if we cause the municipalities to raise their taxes, we have done the same thing as if we raised the taxes. So, you know, there's no difference. All I want is a fair compromise where, like I stated before, at the end if they're not extremely happy and we're not extremely happy, it's probably a fair deal. I will withdraw my motion if you two agree to go back and talk with them, but if y'all are not interested, I guess we can let it stand and we can vote on it.

Chairman Hair said, Commissioner Odell –, let's stay in order please. Commissioner Odell, Commissioner Rivers, Commissioner Murray and Commissioner McMasters.

Commissioner Odell said, just a couple of things. One is this threat of next election. That holds no water with me. I will not refuse to do what I think is in the best interest of all Chatham County just to be re-elected. That has no advantage to me. When you talk about it's for ten years, that's ridiculous. Well, it's based upon the census unless have started doing the census every five years, and the one of the main components is the census. So it's not ridiculous. When we talk about vote to go, the people in Savannah are my constituents, and this is not a cost reduction. This is not that –, we are taking a approximately $3,000,000 from the municipalities of the City of Savannah, Garden City, Thunderbolt, Tybee, and all of the other municipalities, who are still citizens of Chatham County. We have not reduced costs one penny. We say what are we going to do about the jail, how can we predict. Well, no one has a crystal ball, but we will not change whether or not Tybee is still part of Chatham County. Tybee will be part of Chatham County in ten years. They will be citizens of Chatham County, Garden City will be –, they will still be citizens of Chatham County, and it's our duty to take care of the citizens of Chatham County. We have made some financial mistakes here, and I blame no one and readily admit that I didn't have the votes to overcome it. We reduced our millage consistently to the point that we thought that we'd have an opportunity to increase it should we need it. It is unfair because of our financial decision for us because we have the municipalities in a position that we can break them, to break them. Billy Hair has negotiated a good deal for the first five years. They have increased it for the second five years. I've given this a lot of thought. I don't owe anyone up here any favors. Not one person up here do I owe a favor that I have to vote the way anyone tells me to vote. I vote the way I feel like it, and the way I feel like it is that I am unwilling to justify what we've done to force the City of Savannah to increase its taxes to my constituents, to have Garden City, to have Pooler, Tybee, and the other municipalities to do it, and so if you all get angry about that, that's something you're going to have to live with. We don't socialize or party together anyway, so I can live with your not being happy with me. I'm ready to vote. I think we do it for the second five years just as we did it for the budget, not even considering any other proposal. I'm ready to vote and I think we go ahead and vote, and I've never been invited to a breakfast, and I call the question.

Chairman Hair said, call for the question. Commissioner Murray asked, can I have an opportunity to speak. Chairman Hair said, well, he's called for the question. Unless he withdraws his call for the question –. Commissioner Odell said, I'm not willing to do that, Frank [Murray]. Chairman Hair said, all right, he's not willing. All those in favor of the motion vote yes, opposed vote no. Chairman Hair and Commissioners Rayno, Rivers, Odell, Kicklighter and Thomas voted in favor of the motion. Commissioners McMasters, Murray and Gellatly voted in opposition. The motion carried by a vote of six to three.

Commissioner Rayno said, I would like to ask for reconsideration. Chairman Hair said, Commissioner Murray, Commissioner Rivers –. Commissioner Rayno said, put it in the minutes I'm asking for reconsideration.

Chairman Hair said, motion to reconsider. That needs a second. Does it have a second? Commissioner McMasters said, second. Chairman Hair said, okay, fine. Commissioner Odell said, wait a minute. Does the motion for reconsideration –. Chairman Hair said, it doesn't require a second? County Attorney Hart said, no, it does not. Commissioner Odell said, doesn't require a second. County Attorney Hart said, but it can be called up at the next meeting. Commissioner Odell said, at the next meeting. County Attorney Hart said, yes. Commissioner Odell said, in fact, it has to be. Chairman Hair said, okay. County Attorney Hart said, that's one of the advantages of that motion. Chairman Hair said, so the motion passes and it's being reconsidered.

Commissioner Murray asked, may I make a comment? Chairman Hair said, certainly. Commissioner Murray said, my comment is, first of all, when I referred to those that are serving in the next term, I was not saying whether we could be re-elected or not. I was saying that those people would pay the price of whatever this negotiation of this commitment is. Secondly, I appreciate what you say, Commissioner Kicklighter. I hope you just remember that when certain ones vote differently for appointments as we have in the past and we don't get run through the media and everything else and downgraded because we voted our convictions. You know, it goes both ways. You can't have it all one way. Commissioner Kicklighter asked, what are you referring to. Commissioner Murray said, I'm referring to a past vote that was taken when you and several others got together and put everybody in a corner about a split vote, and I was the one to break the tie, and y'all put me through the media and everything else, and that's fine. I can deal with that, but what I'm saying is that works both ways. It's not just one way, and just keep that in mind.

Commissioner Murray said, the other thing I want to say, too, is I really don't want to go and negotiate with the Mayor or anybody else when it's obvious the votes are there to go ahead and adopt what's here, and so I don't see the sense in doing that when they know that, too. I mean, what are we doing wasting everybody's time if that's going to be the case? Chairman Hair said, well, that was the motion –, Commissioner Rayno made the –. Commissioner Murray said, I mean, it could be tabled for two weeks, and that's fine, but I don't see any sense in trying to negotiate.

Chairman Hair said, the motion's already passed. Commissioner Rayno has it reconsidered for the next meeting.

Commissioner Kicklighter said, Mr. Chairman, may I please respond briefly. Very briefly. Chairman Hair said, yes. Commissioner Kicklighter said, first, I just want to state that I honestly know what you were talking about about the vote that we split or whatever, but as far as the future goes, I'm going to, I guess, [inaudible] Commissioner Odell here, I don't ever vote on a specific issue because of the politics of it. Commissioner Murray said, I don't either. Commissioner Kicklighter said, I will politically maneuver to get what I believe is best for my district, period, and I will also vote what I believe is best for your district, and if that falls different than your opinion, then that's just going to be petty politics, but with –, you know, I'll take that back. I would not do that to your district. If something's best for your district, I will not slam 30,000 people on the Islands just to get Frank Murray. So I would hope you would vote the same thing –. Commissioner Murray said, let's move on. Commissioner Murray said, I've already said that, Dean [Kicklighter].

Chairman Hair said, all right, let's move on.

ACTION OF THE BOARD:

1. Commissioner Kicklighter moved to approve the proposal from the municipalities for the second five years of LOST to increase the percentage from 17.6% to 17.8% and increase the jail per diem from $30 to $35 up to 28 days. Commissioner Odell seconded the motion. Chairman Hair and Commissioners Rayno, Rivers, Odell, Kicklighter and Thomas voted in favor of the motion. Commissioners McMasters, Murray and Gellatly voted in opposition. The motion carried by a vote of six to three.

2. Commissioner Rayno moved that it be entered on the minutes for reconsideration at the next meeting. [NOTE: Although no second is required, Commissioner McMasters seconded the motion.]

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IX. ITEMS FOR INDIVIDUAL ACTION

(Unless the Board directs otherwise, adoption of an Action Item will mean approval of the respective County staff report and its recommended action.)

None.

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X. ACTION CALENDAR

(The Board can entertain one motion to adopt the below-listed calendar. Such motion would mean adoption of staff's recommendation. Any Board Member may choose to pull an item from the calendar and it would be considered separately.)

Vice Chairman Thomas asked, does anyone wish to pull anything from the Action Calendar? Commissioner Rayno said, yes, ma'am. Number 6, please. Vice Chairman Thomas said, number 6. Commissioner Rayno said, yes, ma'am. Commissioner Murray said, 3. Vice Chairman Thomas said, 3. Commissioner Rayno said, G please. Vice Chairman Thomas asked, G? Commissioner Rayno said, yes, ma'am. Commissioner Murray said, and C. Vice Chairman Thomas said, C. Okay, do we have a motion to adopt the balance?

Commissioner Murray said, I move we adopt the balance of the Calendar. Commissioner Rivers said, second. Vice Chairman Thomas asked, any discussion? Please vote. The motion carried unanimously. [NOTE: Chairman Hair and Commissioners McMasters and Odell were not present.] Vice Chairman Thomas said, the motion is carried.

ACTION OF THE BOARD:

Commissioner Murray moved that the Action Calendar be approved in its entirety with the exception of Items 3, 7, 12-C and 12-G. Commissioner Rivers seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioners McMasters and Odell were not present.]

[NOTE: ACTION OF THE BOARD IS SHOWN ON EACH ITEM AS THOUGH AN INDIVIDUAL MOTION WAS MADE THEREON.]

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1. APPROVAL OF THE MINUTES OF THE REGULAR MEETING ON SEPTEMBER 13, 2002, AS MAILED.

ACTION OF THE BOARD:

Commissioner Murray moved to approve the minutes of the regular meeting on September 13, 2002, as mailed. Commissioner Rivers seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioners McMasters and Odell were not present.]

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2. CLAIMS VS. CHATHAM COUNTY FOR THE PERIOD SEPTEMBER 4 THROUGH SEPTEMBER 17, 2002.

ACTION OF THE BOARD:

Commissioner Murray moved that the Finance Director is authorized to pay claims for the period September 4, 2002, through September 17, 2002, in the amount of $1,666,874. Commissioner Rivers seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioners McMasters and Odell were not present.]

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3. REQUEST BOARD APPROVAL OF INTERGOVERNMENTAL AGREEMENT WITH STATE FOR UNIFORM SYSTEM OF DIRECT ELECTRONIC VOTING EQUIPMENT. (Note: Item postponed from the August 23, 2002, and September 13, 2002, meetings at the request of Mr. Stillwell.)

County Manager Abolt said, this is back before you now, you can act.

Commissioner Murray said, I don't have any problems with this, I just have some questions on it. Vice Chairman Thomas said, okay. Commissioner Murray asked, Russ [Abolt], I know the State's only given X-amount of machines. Is the State going to purchase our old machines or are we selling those old machines, what's happening with them, and also when Mr. Stillwell spoke about these machines and he brought us up to date on what was taking place, we were told that they still did not have enough machines with what the State was giving us, we would have to purchase more, and I thought we were going to the State to try to find out if they would put us back to the same amount that we have now basically? County Manager Abolt said, the only thing I can speak to, sir, is the reference to what the State might do as far as purchasing the old machines. At the time that I met with Mr. Stillwell several weeks ago, we did not choose to be overly optimistic as to what the State might do. That is that hope. I pushed the point with Mr. Stillwell to get some commitment, if he felt like he could make it, the State would definitely do it. At that point, he was not bullish on the idea, I guess. We will find the status for you, but right now my last impression was there was still some as to whether the State would pick up the cost. Commissioner Murray said, well, if the State's not, then I think we need to go ahead and put them out on the market and sell them and get the money back in because I don't think that the State mandated that we've got to change our voting system that we should have to pay for any of these machines that come in, and we need

more machines than what the State has given us. County Manager Abolt said, you'll remember at the time, I believe, Mr. Stillwell was talking about the possibility of using the machines in some sort of a technical counting thing that the State might see some benefit from. I'm also –, and as you questioned me, there are more –, I have one recall too from the meeting with Mr. Stillwell indicating that some time around the first of the year he would know for sure.

Commissioner Murray said, I move for approval. Commissioner Rivers said, second. Vice Chairman Thomas asked, discussion?

Commissioner Rayno said, Mr. Stillwell in a previous meeting had said that we would be using some of the optical scan machines for absentee balloting purposes and, if you read through the contract, on page three at 3.4, at the very bottom, it says: "Any existing optical scanner units in the possession of the County shall not be used to tabulate absentee and provisional ballots." So if we approve this today, then we're going to be forced to sell the optical scan units and then go out and buy new ones and not use the ones we have. That doesn't make any sense. I think we should try to lobby to get that changed before we go and sign this contract. Commissioner Murray said, say that again. Commissioner Rayno said, yeah, on page three at the very bottom, 3.4 in the contract that we're asked to sign, it says: "Any existing optical scanner units in the possession of the County shall not be used to tabulate absentee and provisional ballots." Now, if you remember, from a previous meeting Mr. Stillwell said that we'd be using some of those optical scanner units for the purpose of absentee ballots. So they're going to force us to sell what we have and then buy brand new ones from a State contract. It doesn't make sense.

Commissioner Kicklighter asked, can I ask a question. Commissioner Rayno said, those machines work perfectly well. Commissioner Kicklighter asked, but would they still let us use those machines that we have in a regular vote or can we –. Commissioner Rayno said, it says "shall not be used." That's very specific.

County Manager Abolt said, you're asking questions of substance which I'm not prepared to answer. I'd feel better if –. Commissioner Murray said, I'll move to table it until we can have –. County Manager Abolt said, Mr. Stillwell present.

Vice Chairman Thomas said, all in favor. The motion carried unanimously. [NOTE: Chairman Hair and Commissioner Odell were not present.]

ACTION OF THE BOARD:

Commissioner Murray moved to table to the next meeting the Intergovernmental Agreement with State of Georgia for Uniform System of Direct Electronic Voting Equipment. Commissioner Rivers seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioner Odell were not present.]

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4. REQUEST BOARD APPROVE A PROPOSAL FROM ANS LOGISTICS TO SHARE IN THE COST OF UPGRADING THE CONNECTOR ROAD BETWEEN GODLEY ROAD AND THE JIMMY DELOACH PARKWAY.
[DISTRICT 7.]

ACTION OF THE BOARD:

Commissioner Murray moved to approve a proposal from ANS Logistics to share in the cost of upgrading the connector road between Godley Road and the Jimmy DeLoach Parkway. Commissioner Rivers seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioners McMasters and Odell were not present.]

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5. REQUEST BOARD APPROVE A QUITCLAIM REQUEST FOR 0.269 ACRES OF COUNTY DRAINAGE RIGHT-OF-WAY ADJACENT TO U.S. 80 TO THE GEORGIA DEPARTMENT OF TRANSPORTATION FOR THE WIDENING OF U.S. 80 FROM BLOOMINGDALE ROAD TO SR 17 IN EFFINGHAM COUNTY AND TO DONATE THE RIGHT-OF-WAY TO THE DEPARTMENT.
[DISTRICT 7.]

ACTION OF THE BOARD:

Commissioner Murray moved to approve a quitclaim request for 0.269 acres of County drainage right-of-way adjacent to U. S. 80 to the Georgia Department of Transportation (GDOT) for widening of U. S. 80 from Bloomingdale Road to

S.R. 17 in Effingham County and to donate the right-of-way to the Department. Commissioner Rivers seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioners McMasters and Odell were not present.]

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6. REQUEST BOARD APPROVE A REQUEST FOR EARLY ACQUISITION FROM LERA WYNNE HODGES AT 1336 HALCYON DRIVE DUE TO THE WIDENING OF WHITFIELD AVENUE. [DISTRICT ~~6~~ 1.]

Commissioner Rayno said, I'm in favor of this, but unless redistricting did something so severe that I'm unaware of, it's still in District One and they still need to have a traffic light there, too. Commissioner Murray said, it used to be in Four. Commissioner Rayno said, yeah, I know, but it is District One, and I move for approval. Commissioner Kicklighter said, second.

Vice Chairman Thomas said, all in favor. Opposes? The motion carried unanimously. [NOTE: Chairman Hair and Commissioner Odell were not present.] Vice Chairman Thomas said, the motion carries.

ACTION OF THE BOARD:

Commissioner Rayno moved to approve the request of Lera Wynne Hodges for early acquisition of 1336 Halcyon Drive due to the widening of Whitfield Avenue. Commissioner Kicklighter seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioner Odell were not present.]

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7. REQUEST BOARD APPROVE A REQUEST FROM DAVID L. PRITT AND PRISCILLA ANN PRITT FOR THE COUNTY TO DECLARE A PORTION OF THE UNOPENED FORTY-FOOT RIGHT-OF-WAY OF SECOND STREET BETWEEN 6720 JOHNNY MERCER BOULEVARD AND 6802 JOHNNY MERCER BOULEVARD SURPLUS AND TO QUITCLAIM THE PROPERTY. [DISTRICT 4.]

ACTION OF THE BOARD:

Commissioner Murray moved to **deny** the request from David L. Pritt and Priscilla Ann Pritt for the County to declare as surplus a portion of the unopened forty (40) foot wide right-of-way of Second Street between 6720 Johnny Mercer Boulevard (PIN 1-0059-01-009) and 6802 Johnny Mercer Boulevard, owned by TLG Properties, LP (PIN 1-0059-01-012), and to **approve** retaining thirty (30) feet of said right-of-way for a possible future drainage outfall into the Harbor Creek Subdivision and declaring as surplus and quitclaiming five (5) feet on either side of said property to the adjacent property owners upon payment of the fair market value for the right-of-way to be determined by a professional appraisal and upon petitioners providing the necessary appraisals, deeds and plats at their expense. Commissioner Rivers seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioners McMasters and Odell were not present.]

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8. REQUEST FROM ENGINEER FOR THE DEVELOPER, GENESIS DESIGNER HOMES, TO RECORD CANTERBURY PARK, PHASE 1, AND ACCEPT THE FINANCIAL GUARANTEE. [DISTRICT 7.]

ACTION OF THE BOARD:

Commissioner Murray moved to approve the request from engineer for the developer, Genesis Designer Homes, to record Canterbury Park, Phase 1, and accept the financial guarantee. Commissioner Rivers seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioners McMasters and Odell were not present.]

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9. REQUEST BOARD APPROVE HAZARD MITIGATION GRANT PROGRAM, GRANTEE-SUBGRANTEE AGREEMENT.

ACTION OF THE BOARD:

Commissioner Murray moved to approve Hazard Mitigation Grant Program Grantee-Subgrantee Agreement. Commissioner Rivers seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioners McMasters and Odell were not present.]

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10. REQUEST BOARD APPROVAL OF A PLAN OF ACTION TO PROVIDE RESTROOMS AT TOM TRIPLETT PARK.
[DISTRICT 7.]

ACTION OF THE BOARD:

Commissioner Murray moved to approve a plan of action to provide restrooms at Tom Triplett Park, including the extension to sewer service under the following budget from the 1993-1998 SPLOST Fund, Tom Triplett Park, for restrooms and from the proceeds of the sale of adjoining property to the State of Georgia (in lieu of an easement through the property's planned use as a railway): $130,000 Sewer line extension/Direction bore U.S. 80; $27,500 Survey/Design/Engineering; $90,000 Restroom; $2,500 License agreement – Railroad; Total $250,000. Commissioner Rivers seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioners McMasters and Odell were not present.]

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11. REQUEST BOARD AUTHORIZE THE CHAIRMAN TO SIGN A GRANT APPLICATION TO THE GOVERNOR'S OFFICE OF HIGHWAY SAFETY FOR A PEDESTRIAN SAFETY ENFORCEMENT GRANT.

ACTION OF THE BOARD:

Commissioner Murray moved to authorize the Chairman to sign a grant application to the Governor's Office of Highway Safety for a Pedestrian Safety Enforcement Grant. Commissioner Rivers seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioners McMasters and Odell were not present.]

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12. REQUEST BOARD APPROVAL TO AWARD BIDS AS FOLLOWS: (Please note that new purchase thresholds of $10,000 or more have been enacted; however, contracts and change orders of a lesser amount still will appear.)

ITEM	DEPT.	SOURCE	AMOUNT	FUNDING
A. Terminate an annual contract and re-award a contract to provide uniforms and uniform accessories	•Police •Sheriff •Detention Center	**Terminate with:** •Faith 'N Begorrah **Award to:** •Frank's Uniforms •West Chatham Warning Devices	Varies by item	•SSD - Police •General Fund/M&O - Sheriff •General Fund/M&O - Detention Center
B. Terminate an annual contract and amend the contracts to provide uniforms and uniform accessories	•Police •Sheriff •Detention Center	**Terminate with:** •Uniforms by Patrick **Amend:** •Frank's Uniforms •West Chatham Warning Devices •Southeastern Public Safety •G.T. Distributors, Inc. •Uniforms 911	Varies by item	•SSD - Police •General Fund/M&O - Sheriff •General Fund/M&O - Detention Center

ITEM	DEPT.	SOURCE	AMOUNT	FUNDING
C. Amendment to the non-exclusive revenue generating lease for space on the roof of the Judicial Court-house for a cellular communications antenna to extend term of the lease and rate increase	Facilities Maintenance and Operations	Powertel, Inc.	Revenue varies by year	Revenue Producing
D. Main rotor head replacement	Mosquito Control	Heli-Mart, Inc.	$22,750	General Fund/M&O - Mosquito Control
E. Contract for the paving of Glade Street	SPLOST	A.D. Williams Construction	$126,730	SPLOST (1985-1993) - Glade Street
F. Contract for the HVAC upgrades for the Forest City and Pooler branch libraries	Library	Boaen Mechanical	$108,600	•General Fund/M&O - Library 50% •CEL Regional Library - 50%
G. Change Order No. 3 to the contract for the construction of the new Mosquito Control facility for the net amount of additive and deductive changes	Mosquito Control	R. L. Construction	$28,603.06	Receivables -Mosqui-to Control facility (to be reimbursed by the Savannah Airport Commission. **County then pays back over time.**)
H. Confirmation of emergency contract for software support	Assessor	The Tulley Group	$52.50 per hour	General Fund/M&O - Assessor

As to Items 12-A through 12-H, except 12-C and 12-G:

Commissioner Murray moved to approve Items 12-A through 12-H, except Items 12-C and 12-G. Commissioner Rivers seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioners McMasters and Odell were not present.]

As to Item 12-C:
Amendment to the non-exclusive revenue generating lease for space on the roof of the Judicial Courthouse for a cellular communications antenna to extend term of the lease and rate increase; Facilities Maintenance and Operations; Powertel, Inc.; Revenue varies by year; Revenue producing.

Commissioner Murray asked, what do they pay us on that and how long will it last? County Manager Abolt said, go ahead, Fred [Thompson], you can answer that, I believe, Mr. Thompson, but I believe it's also contained in the staff report on page five relative to the span of years. It will be the same provision for this vender as applied to Triton, if I'm pronouncing that correctly. Mr. Fred Thompson said, Triton, yes, sir. This was the original contract for cell phone antennas on the Courthouse. The five years is up. We're redoing it with a benchmark payment, which will bring about $7,000 more a year. Revenue generating is consistent with what the City of Savannah and other commercial people are getting for cell phone antenna locations. Commissioner Murray said, okay. Now, if in fact Powertel sells out to another company, that contract is still in place, is that right? Mr. Thompson said, yes, sir.

Commissioner Murray said, okay, I move approval. Vice Chairman Thomas asked, is there a second? Commissioner McMasters said, second. Vice Chairman Thomas said, all in favor of the motion. The motion carried unanimously. [NOTE: Chairman Hair and Commissioner Kicklighter were not present.] Vice Chairman Thomas said, the motion is carried.

As to Item 12-G:
Change Order No. 3 to the contract for the construction of the new Mosquito Control facility for the net amount of additive and deductive changes; Mosquito Control; R. L. Construction; $28,603.06; Receivables - Mosquito Control facility (to be reimbursed by the Savannah Airport Commission. County then pays back over time.)

Commissioner Rayno said, I just pulled this because I voted against the Mosquito Control facility being built out at the airport. I thought it was a bad deal for the taxpayers. It should have stayed on Eisenhower. We could have moved some of the facility across the street. To be consistent with my past votes I'm not going to vote for it, and if anybody would like to approve it, they're more than happy to.

Commissioner Odell said, move for approval. Commissioner Rivers said, second. Vice Chairman Thomas said, all in favor of the said motion. Vice Chairman Thomas and Commissioners Rivers, McMasters, Odell and Gellatly voted in favor of the motion. Commissioner Rayno voted in opposition. The motion carried by a vote of five to one. [NOTE:

Chairman Hair and Commissioners Murray and Kicklighter were not present.] Vice Chairman Thomas said, okay, the motion is carried.

ACTION OF THE BOARD:

1. Commissioner Murray moved to approve Items 12-A through 12-H, except Items 12-C and 12-G. Commissioner Rivers seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioners McMasters and Odell were not present.]

2. Commissioner Murray moved to approve Item 12-C. Commissioner McMasters seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioner Kicklighter were not present.]

3. Commissioner Odell moved to approve Item 12-G. Commissioner Rivers seconded the motion. Vice Chairman Thomas and Commissioners Rivers, McMasters, Odell and Gellatly voted in favor of the motion. Commissioner Rayno voted in opposition. The motion carried by a vote of five to one. [NOTE: Chairman Hair and Commissioners Murray and Kicklighter were not present.]

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XI. FIRST READINGS

Proposed changes to ordinances must be read or presented in written form at two meetings held not less than one week apart. A vote on the following listed matters will occur at the next regularly scheduled meeting.

Comments, discussion and debate from members of the public will be received only at the meeting at which a vote is to be taken on one of the following listed items.

None.

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XII. SECOND READINGS

1. REZONING OF ALL OR A PORTION OF 604 WILMINGTON ISLAND ROAD FROM T-B (TOURIST-BUSINESS) ZONING CLASSIFICATION TO AN R-1-A (ONE-FAMILY RESIDENTIAL) ZONING CLASSIFICATION. THE MPC RECOMMENDED APPROVAL. MPC FILE NO. Z-020808-60548-1 [DISTRICT 4.]

Chairman Hair recognized Commissioner Murray.

Commissioner Murray said, yeah, I would move that we approve this. Chairman Hair asked, second? Second readings, number one. It's in Commissioner Murray's district and moved that it be approved. Do we have a second to his motion? Commissioner Odell said, I'll second Commissioner Murray's motion. Chairman Hair said, all those in favor vote yes, opposed vote no. The motion carried unanimously. Chairman Hair said, the motion passes.

ACTION OF THE BOARD:

Commissioner Murray moved to approve the rezoning of all or a portion of 604 Wilmington Island Road (PIN 1-0109-01-009) from a T-B (Tourist-Business) zoning classification to an R-1-A (One-Family Residential) zoning classification. Commissioner Odell seconded the motion and it carried unanimously.

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2. AMENDMENT TO ARTICLE VII OF THE CHATHAM COUNTY TAXATION AND REVENUES ORDINANCE.

Commissioner Rayno asked, could I ask a question of the attorney on this please, Madam Chair? Vice Chairman Thomas said, yes. Commissioner Rayno said, the prior reading on that particular one it's stated in the zoning book that if there be a payment made, I think it was at the end of June and one in November, and now the revision that you're putting on it is to specifically ask for a half-payment to be made at the half-year. Currently, the way it is now, if I don't

pay my bill at the half-year, I'm not fined any fees or anything, I could wait until the end of the year and pay my bill –. County Attorney Hart said, correct. Commissioner Rayno said, – with no penalty whatsoever unless I go past the December deadline. Is what you're asking for approval for today a specific payment to be made half way through the year and, if not, then penalties would accrue? County Attorney Hart said, I don't think we would be entitled to charge the penalties, you know –. Commissioner Rayno asked, at the half-year? County Attorney Hart said, – at the half-year point. Commissioner Rayno said, so the only real significant change was the wording of the ad valorem taxes being payable in December? County Attorney Hart said, yes, and we also get a fair amount of volunteer payment during that, you know, half which helps out.

Commissioner Rayno said, motion to approve. Commissioner Rivers said, second. Vice Chairman Thomas said, all in favor. The motion carried unanimously. [NOTE: Chairman Hair and Commissioners Murray and Kicklighter were not present.]

ACTION OF THE BOARD:

Commissioner Rayno moved to approve an amendment to Article VII of the Chatham County Taxation and Revenue Ordinance. Commissioner Rivers seconded the motion and it carried unanimously. [NOTE: Chairman Hair and Commissioner Kicklighter were not present.]

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XIII. INFORMATION CALENDAR

1. PROGRESS REPORT ON GENERAL FUND CONTINGENCY ACCOUNT - M&O AND THE SPECIAL SERVICE DISTRICT (SEE ATTACHED).

ACTION OF THE BOARD:

Written report received as information.

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2. LIST OF PURCHASING ITEMS BETWEEN $2,500 AND $9,999 (SEE ATTACHED).

ACTION OF THE BOARD:

Written report received as information.

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3. ROADS AND DRAINAGE REPORTS.

ACTION OF THE BOARD:

Written reports received as information.

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SECOND EXECUTIVE SESSION

Upon motion being made by Commissioner Rivers, seconded by Commissioner Odell and unanimously approved, the Board recessed at 1:25 p.m., to go into a second Executive Session for the purpose of discussing litigation and personnel.

Following adjournment of the Executive Session, the meeting of the Board of Commissioners was reconvened at1:56 p.m.

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ITEMS FROM EXECUTIVE SESSION

1. REQUEST BOARD APPROVE A MOTION TO AUTHORIZE THE CHAIRMAN TO EXECUTE AN AFFIDAVIT THAT THE TWO EXECUTIVE SESSIONS WERE HELD IN COMPLIANCE WITH THE OPEN MEETINGS ACT.

ACTION OF THE BOARD:

Commissioner Kicklighter moved to authorize the Chairman to execute an affidavit that the Executive Sessions were held in compliance with the Open Meetings Law. Commissioner Thomas seconded the motion and it carried unanimously.

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ADJOURNMENT

There being no further business to be brought before the Board, Chairman Hair declared the meeting adjourned at 1:57 p.m.

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APPROVED: THIS _____ DAY OF _____, 2002

_____
DR. BILLY B. HAIR, CHAIRMAN, BOARD OF
COMMISSIONERS OF CHATHAM COUNTY, GEORGIA

_____
SYBIL E. TILLMAN, COUNTY CLERK