

Ms. Avarita L. Hanson, Clerk, presented an excerpt from a memorandum dated May 26, 1992, from Ms. Nancy J. Leathers, Director, Planning & Economic Development:

TO: Avarita L. Hanson, Clerk to the Commission
FROM: Nancy J. Leathers, Director, Planning & Economic Development
SUBJECT: Petitions to Extend Vesting Period of Conditional Zonings June 3, 1992, Board of Commissioners Meeting

Below is the Planning Staff's recommendation on petitions requesting extensions of the period within which certain mandatory permits or certificates must be issued in order to vest conditional zoning pursuant to Section 6 of Article XXVIII of the Fulton County Zoning Resolution.

Petition No_	Location	Owner	Hardship	Recommendation	Zoning
XZ89-040	NFC	Roswell	R.H.	Non-availability Approval	C-1
XU89-015	NFC	Road	Cording	of Financing	
XU89-016	NFC		& et.al		
XU89-017	NFC				

Ms. Upshaw - "The Petition is for non-availability financing. Staff recommends approval."

Commissioner Hightower made the **motion to approve**, which was seconded by Commissioner King. The vote was 7-0-0.

92-RM-223 COMMISSIONERS' ITEMS - DISCUSSION OF FULTON COUNTY BOARD OF ETHICS WITH JOHN CHANDLER CHAIR (LOMAX) (HOLD FOR A PERIOD NOT TO EXCEED 60 DAYS)

Mr. John Chandler, Chairman of Ethics Board - "Thank you Mr. Chairman and Commissioners. I appreciate you working me in, and I know that it is out of order. I'm here as Chairman of the Fulton County Board of Ethics to talk with the Commissioners about two problems that has arisen in connection with the Ordinance that created the Board of Ethics and the Ethics Code for Fulton County. I'd like to give you just a very brief background then ask you to arrange whatever questions you might have."

"This Commission adopted the Ethics Ordinance about four years ago. The Ethics Ordinance sets forth the Code of Ethics for Fulton County; it also creates the Ethics Board. I have been Chair of the Ethics Board for four years now. The Ethics Board has asked me to come before you to ask you to amend the Ordinance to do two things: One, is not particularly controversial and that is to have the power to administer oath to people who come and testify before the Board of Ethics. That is not specifically in the Ordinance. Frankly, we've taken care of it as a practical matter when people come before the Board we'll ask them if they will agree to take an oath and I don't believe anybody have ever refused to do so.

"The other is the more difficult issue, which is to give the Ethics Board the power to issue subpoenas to compel people to appear before it in connection with specific issues. Where you created the Ethics Board, you gave the Ethics Board the responsibility for doing a couple of things. Two of the things that you gave the Ethics Board the responsibility for doing are impacted by the subpoena issue. One is to hear complaints. The Ethics Board has complaints brought before it. It does not have the power to make witnesses come before it. There are concerns by anybody who's involved in the process that the Ethics Board may be used for political purposes. It has in the past from my perception been used for political purposes."

Chairman Lomax - "Please state that a little clearer?"

Mr. Chandler - "We have an up-swing in the number of ethical complaints that are filed, during an election year. It is not terribly difficult for someone who is opposing a Commissioner to find a friend to bring an ethics complaint. When an ethics complaint is filed in writing with the Ethics Board we schedule it, we send out a notice to whoever it is directed toward. And, there have been ethics complaints directed toward present Commissioners and several former Commissioners. We ask people to come and explain what the issues are. We've never had a complaint involving a Commissioner or Commissioners' Staff person that the Commissioner or the Commissioners' Staff person didn't come. You always come.

"Occasionally there are issues involved, however, and charges are made by someone in which we need to hear from somebody else. We have power currently to send them a letter and ask them to come. We have had a number of occasions in which those people have simply refused to come, and we have no power to determine whether there are any facts that support the complaint or frankly, support your position if you are the subject of it.

And, let me make it also clear, that there have been ethics complaints involving other than Commissioners. We've had ethics complaints involving other Fulton County Employees as the Code is meant to do. I believe that the subpoena power for the Board of Ethics is something that would help you, frankly, when people use this for political purposes. You could compel those who have made charges to come before the Board of Ethics be sworn and provide any evidence, if evidence is there to support the ethics complaint.

"Let me tell you real briefly how the Ethics Board is made up because I'm sure some of you don't recall or wasn't on the Board when it was created. The Ethics Board is composed of seven people. They're all volunteers. Nobody's paid a penny. The Ethics Board is appointed by six different organizations and you appoint the chairman. The organizations that are represented: there is a member of the Gate City Bar Association whose appointed by that organization, a lawyer; as a member of the Atlanta Bar Association, whose appointed by that association, a lawyer; there is a member of the Employees Association of Fulton County; there is a member appointed by the Personnel Board; there is a member appointed by The Atlanta Chamber of Commerce; there is a member appointed by the Atlanta Business League. That's six folks, and then, the Commissioners select the Chairman for a three year term. Those are the folks, nobody does it for any reason except the same things that you're interested in, which is good government.

"We don't make any money out of it, we don't even get our parking paid when we come down and park across the street. But, these are the people. The Ethics Board, I think, has been a very responsible organization during the time that it's been in existence. We are concerned. And the Board of Ethics voted unanimously to ask me to come here and ask you to consider amending the Ordinance to make it possible for the Ethics Board to do two of those things that you charged it to do. I think I only mentioned one. One is, to consider complaints. The other is, one of the purposes in the Ordinances is to investigate ethics complaints. We have decided as a Board that we will only do that if somebody ask us to. We're not going to go out on a witch hunt. But, if somebody files a complaint to investigate, you really got to have the power to ask somebody to come before you and answer some questions.

"The Ethics Board formally asked this Commission in November of 1990 to amend the Ordinance to provide for subpoena power. It was in the course of a decision that we sent to the Commissioners copies with a covering letter. We didn't do much

to follow it up and it may as well gone unnoticed. But in the November 1990 decision, part of the Ordinance said that the Ethics Board is to come to the Commission with suggestions for amendments to the Ordinance, part of our charge. In that decision we came to you and asked you to amend the Ordinance for subpoena power. We're back again, formally, asking you to consider that. That's what we're here for. The Board asked me to do it, unanimously. Here I am and I'm prepared to answer any questions that you got."

Chairman Lomax - "John, thank you very much for being here, first of all, and I want to commend you and your colleagues for their service on the Board of Ethics. As one who voted for and was an initiator of the original legislation. I want you to understand that I take very seriously your appearance here today, and the request that we would extend the powers of authorities of the Board of Ethics. I do consider this, however, to be the first formal appearance and there was some delay about when you will actually do this, but the 1990 that does not fall within my recollection.

"I am deeply concerned that this matter be given full thought and careful consideration prior to a determination about issuing, extending the authority of the Board. Toward that end I would like to recommend first, that there would be a meeting of the two Boards. We've had this conversation with you, but I would like to have further dialogue with the entire membership of the Board of Ethics to hear some of their views about why this additional authority should be granted. I would like to have a full and thorough explanation of the limits of the subpoena power. The way it's been represented here today it would be to require individuals to be present. I want to know what those limits would be, documents, and records, papers are also potentially assessable to subpoena, as well. The compelling to appear, is one issue, investigative, how are we defining investigative? I don't want that today, but I think that is something that is a concern for me.

"I have a final concern and that is that as the Board of Ethics moves more and more toward this quasi almost judicial functions. How are those who have accusations made, how are they to be represented? That is a substantial concern for me. I have had to use personal resources in the thousands of dollars to assure that I have appropriate representation to respond to what have appeared to be complaints that have been rejected by the Board of Ethics. I happen to have those resources available to me, I didn't like using them, but if this is potentially abused, how will others who don't have those resources be assured of

representation? And if a complaint is not frivolous, is political, is rejected, how do I get compensated for having used those resources?

"So, I think there are a number of questions, I want to consider fully. I would like, however, I don't want there to be the impression that this is evasion of reaching a decision, so, I would like to set a time certain by which we will vote on this matter 'yea or nay', and I would like to say that time certainly is not more than sixty (60) days. But, I would encourage the Board to one, have a session with the Board of Ethics, do that immediately, to raise at that time any other questions to get from our County Attorney responses to questions and then place this matter back before the Board for a vote.

Commissioner Hightower - "Mr. Chairman, I would concur with what you have outlined as a starting process. I would like to add one item to that. One, I also want to concur and commend the persons of giving of their time in finding parking spaces and kind of juggling personal and professional responsibilities with an extension of public service. I want to add, Mr. Chairman, that as we look at involving, I think dialogue is appropriate, that we also have Ms. Forsling involved as the Board sees fit. Other persons on her legal staff who may have a deeper level of expertise in this and that is in no way ... of our thoughts on her.

"Secondly, I want to say that there is perhaps no greater issue today in government throughout the country regarding the old ethical questions of public officials. And, I think this issue without doubt is one that we must to take seriously. I think that is important. I also think that its important that we don't act on the drop of a dime and do something that we have to amend or change. I'm very hard on making decisions. Once you make a decision let's stick with it. I have problems when we amend things, but we have years to come.

"And, that provides the distrust from the public regarding this whole topic and others that relate to this issue. So, I don't want us to dance for a day and have to be miserable forever. And, that goes both for the public who we serve, as well as, the public officials, as well as the staff, as well as the Board, one that you serve on. I think it is a great importance, I'm quite sure this Board does, as we have discussed during last week at our session as we were together last week as we talked about various issues. And this is one of those issues that we felt that was extremely high on all of our agendas. But, I want

to add that, Mr. Chairman, that we involve the County Attorneys Office, but also, other persons who work under her direction who can assist us as we move forward and as we make this a priority item. I would concur, Mr. Chairman, at the time table that you set for as a point of departure for a time schedule."

Commissioner Darnell - "Oh well, I was just thinking about this. I wanted to say that because of the seriousness and urgency of the matter I would hope that while we would have sixty days, perhaps, we could conclude this matter within thirty days. I also in our discussions would hope that we would be able not to confine ourselves necessarily to the whole issue of subpoenas, but to look at the entire issue as it pertains to due process, and, therefore, include the whole question about anonymous complaints. I believe that some of the information that I need on that, I perhaps, can receive from you in writing, and I agree with my colleague, Commissioner Boxill, I do need to read a little bit on this before the meeting. So, if you could expand the agenda, Mr. Chairman, to include, not only the appropriateness of the subpoena power, but the whole issue of due process. And, I'd agree with Mr. Hightower, that perhaps it would be helpful to have the County Attorney present, specifically, to give, so far as I'm concerned, a direction with respect to that particular issue."

Commissioner Lowe - "I'd like to ask, I don't even know who I'm looking around who can answer my question. What year did we initiate the present ethics legislation?"

Ms. Forsling - "May of 1988, Commissioner Lowe."

Commissioner Lowe - "How about the one before that? About 1986, I guess it was, I wrote letters to, I remember some of the best ones may have come out of Phoenix Arizona. I got ten ethics packages from around the country with some of the best. From those the legal staff helped me they did it, I didn't do anything. I just had them to do it. But, we prepared ethics legislation for this Board. I'm guessing it was 1986 or 1985 I can't remember the year, that's why I was asking for some guidelines. I've dropped that in the harper and it was almost, certainly, I wouldn't speak for the Chairman of this Board, but, it was almost universally rejected by the then Board of Commissioners. That legislation that I had prepared at that time was tight, and it was rough, and it stated exactly what were illegal acts by this Board and employees of this County. It was so tough we couldn't get four votes for it."

"Now, one thing we might do, you know if you get parted in a direction and just keep going in that direction you never look back or look to the side, one thing we ought to do, I think it's been a change in thinking since those days I think the public is more attentive to these issues, and, I think that this Board is more in tune with the times of today. I'd like to pull that previous legislation that I introduced, sometimes between 1985 and 1987. I'd like to see that we all get a copy of that, because a change in our ethics legislation may resolve a lot of these things. It was very very very detailed and drafted from the best in the country. And, if I could get that and take a look at it at the same time. I'd like to suggest that we might want to reintroduce a revised ethics package and that might straighten out some of these present requests and problems."

Commissioner Boxill - "I have a request, as well, in preparation for the meeting. It is not clear to me how policies and procedures are to be set for the execution of the business of the Ethics Board. What I'm trying to say is that I am a bit confused as to which body, by which method determines for instance whether or not anonymous complaints will be heard, if they will be heard, how they will be heard. As we come to that meeting I need to know what the options and limitations of each body or in creating a policy. And, I'm anxious to see Commissioner Lowe's previous suggested legislation, because I do have a sense that if there was something that were missing we would not have to struggle with little pieces of the puzzle."

Commissioner Lowe - "Tell me again, what is the makeup of the present Ethics Board?"

Chairman Lomax - "Seven members."

Commissioner Lowe - "But, where do they come from?"

Chairman Lomax - "Personnel Board, Employees Association, Gate City Bar, The Atlanta Bar, The Atlanta Chamber, and the Atlanta Business League. And, we appoint the Chairman."

Commissioner Lowe - "The Chairman may confirm what I'm saying and he may not. I assumed we all voted for it because it was what we had and what we could get passed through the then existing Board. This Board that we're talking about was put into official action as a means of getting around the ethics. We control it with employees, we had enough employees, and people that we had some control over. It doesn't affect any With the Bar Association and the way it was appointed it

was too many from the County. I always felt that the County had too much control over this Board. The legislation that I had prepared as I remember it was so definite and so firm and I think referred directly to the State Court system."

Chairman Lomax - "It would be helpful to have something other than your recollection here. And, I'm disappointed to hear the suggestions that you're making. The Board of Ethics legislation which was created, which was initiated by this Board without any pressure from any other source, and it was because we felt the need to have such a Board of Ethics. Clearly, what is now before us is a mid-course adjustment and the point is to do this in a thoughtful careful manner so that what we have is without compromise. But, for you to suggest here today, that the Board of Ethics that we have is by its nature compromised, I find disturbing. I don't know how Mr. Chandler wants to respond to that."

Commissioner Lowe - "Well, we know how they're respond to it. The previous legislation had it referred directly to the State Court as I recall. Let them be the one to take the law that we have initiated and go from there and bring charges directly. Have the investigative wing all set up there in the court system, and that's what the members of this Board of Commissioners didn't like. They said 'no, they are going to have us all in jail.' I want to get that stuff out and you'll look at it and you'll see what I'm talking about."

Chairman Lomax - "I was afraid that this would be reduced to its lowest common denominator in this discussion. And, Mr. Lowe, unfortunately, you are doing that. I don't know why you're doing this. I'm disappointed by the comments, they're cheap, they're unnecessary and they depreciate and is unnecessary."

Commissioner Lowe - "Mr. Chairman, I got to respond. I am not bringing any despairing remarks against the Ethics Board or this Board except to say that the legislation which we original introduced was rejected hands down, because it was too strong and too powerful. And, I'm telling you, Mr. Chairman, I voted for it just like you did, it's the best we could get. I know that we wasn't going to get an ultra strong ethics package passed through the Board of Commissioners. We found that out, this was a compromised package and you may say it's a cheap shot. It's a cheap shot at myself that all of us on the Board at that time that we didn't do the right thing at that time. Which would be to have passed that first legislation. Yes, we should have done that. If that's a cheap shot, so be it. But,

I'm going to let it all hang out. I'll tell the truth. I'm telling you and you. We had plenty of discussions, me and you, we've always gotten along and there were plenty of discussions among the Board and this is what we could get passed at that time that everybody could agree to. It was a watering down of stronger legislation and that cannot be disputed."

Mr. Chandler - "Let me mention two or three things that Commissioners has mentioned. Number one, the meeting with the Commission, our Board is prepared to meet with the Commissioners at your convenience. If you give us a date and time we'll be here. We do have a scheduled meeting this Friday at 9:00 a.m., but I suspect your schedules are a whole lot harder than ours are. You give us a time and we'll be here. The Board of Ethics is most anxious to have the Commission to consider this. They would like for you to consider it thirty days certainly seems or sixty days make sense to me, and I don't think we could ask you to move more quickly than that.

"If anybody is under the impression that this Commission controls the Ethics Board I wish you would attend some Ethics Board Meetings other than sitting out there being subject to one. Let me tell you that the appointees from the Atlanta Bar Association, the Gate City Bar Association, The Atlanta Business League, and the Atlanta Chamber of Commerce aren't controlled by anybody. There is one employee who is appointed by the Employees Association and after four years of experience with her I tell you she is as independent, and as tough on ethics issues, and is outspoken as anybody on the Board. And, the same is true for the appointee from the Personnel Board.

"And, I'm a lawyer in private practice, who has no financial connection with Fulton County in any way. So, let me suggest to you that is not the case. Anonymous complaints are concerns of all of you. We have amended our rules so that anonymous complaints as such will no longer be considered. There is a mechanism where if somebody wants to file one and, I won't go into all the details. That is being taken care of, part of that answer to your question, Commissioner Boxill. You could amend the Ordinance to prohibit us from entertaining anonymous complaints. That was my suggestion. The rest of the Board thought that there ought to be some mechanism for protecting a County employee who might be subject to retribution and that's an issue for you to consider and worry about, and it's a real issue.

"But, you can control it, we've controlled it to some extent. Finally, every other Ethics Board in this area according to the lawyer from the Atlanta Bar Association said that he did a survey on this. The Atlanta Board of Ethics, the DeKalb County, Cobb County State Board of Ethics all have subpoena power. I believe we're the one without it, and so its not out of the mainstream to be asking for it. Thank you very much for your time."

Commissioner Hightower - "Mr. Chairman, I'd like to offer a motion, prior to doing that I want to make one comment. I want to say back in 1988, I guess that was the issue that brought about a little spirited love a few moments ago on the Board. But, I was not aware that at the time, that was the best thing that we could get passed. I think in reality what has happened over the past three or four years the issue of ethics and government has been a growing issue, and perhaps, the attention that was given to it, by not just Fulton County, but anybody, four years ago are different than it is going today. I think it was, at that point, it was a growing issue, and I think at this day it has grown tremendously.

"So, it is my view that it was appropriate at that time as far as I'm concerned, and I today I think its time to revisit the issue. I for one, Mr. Chairman, feel as if, as far as I'm concerned, as an individual Member of the Commission, feel that responsible actions were taken in 1988 and I think it's just time to review it. I want to suggest that Ms. Darnell mentioned a thirty day time period, and you mentioned a sixty day time period. I think within forty-five days we could kind of move this process along doing the things you have mentioned. And, including a review of some of these other jurisdictions, regarding some of the things they provide."

Chairman Lomax - "We can do it by a resolution. I think there is a clear directive; conference at the earliest possible date allowed, for all questions to be raised as a result of the dialogue of those responded to, and then come forward with the appropriate amendments to the resolution. I will tell you that I believe that this is a matter which deserves our urgent attention, but I also would tell you that I want to do it right, I don't want to be railroaded. I'm going to make thoughtful careful considerations on this if it takes me forty-five days or thirty days fine, if it takes me sixty days that's what its going to take. I hope that what we will have would be strong, appropriate, ethics legislation which allows the Board of Ethics to do absolutely the job which it is our intent that they should

do. And, we may not have all those issues, even before us today, I intend to find them all, because I don't want Mr. Chandler to be coming back in six months or twelve months saying we didn't fix it. Thank you very much for being here."

Commissioner Darnell - "Mr. Chairman, I think we do need to establish a time period here."

Chairman Lomax - "I said sixty days. If we could accomplish it in a shorter time frame fine. I would urge the Board to accept the sixty day period, I think given all the parties that have to be involved, any research that has to be done, any looking elsewhere that that is a reasonable period in which to accomplish it. And I would move for sixty days."

Commissioner Darnell - "Not to exceed?"

Chairman Lomax - "Not to exceed."

Chairman Lomax made the **motion to hold for a period not to exceed sixty days (60)**, which was seconded by Commissioner Hightower. The vote was 7-0-0.

92-RM-224 PUBLIC WORKS - REQUEST FOR APPROVAL OF ROAD RIDES FOR SOUTH FULTON COUNTY JUNE 10, 1992 AND NORTH FULTON COUNTY JUNE 8, 1992 (APPROVED)

Commissioner Hightower made the **motion to approve**, which was seconded by Commissioner Boxill. The vote was 7-0-0.

92-RM-225 COMMUNITY SERVICES AND JOB TRAINING - REQUEST FOR APPROVAL TO ESTABLISH TEMPORARY UNCLASSIFIED POSITIONS UNDER THE FULTON COUNTY 1992 SUPER SUMMER YOUTH PROGRAM COST: \$59,392 (APPROVED)

John Stanford, County Manager, presented the following fact sheet:

PURPOSE:

To authorize establishment of temporary unclassified positions under the Fulton County 1992 Super Summer Youth Program pursuant to direction by the County Personnel Director. The positions

Commissioner Hightower made the motion for **approval**. Vice Chairman King seconded the motion and the motion carried by a vote of 5-0-0. Commissioner Darnell did not vote. Commissioner Farris was not present.

CLERK'S NOTE: AMENDMENT #1 TO THE CONTRACT WITH ROBERTS & COLLINS ARCHITECTS APPROVED BY THE BOARD OF COMMISSIONERS IN THEIR RECESS MEETING HELD DECEMBER 16, 1992 IS IN THE SUPPLEMENT PORTION OF THIS MINUTE BOOK.

92-RM-579 COMMISSIONERS' ITEMS - REQUEST FOR APPROVAL OF AMENDMENTS TO CODE OF ETHICS (BOARD OF COMMISSIONERS)
- CROSS-REFERENCE 92-RM-223 HELD 12/2/92 (APPROVED)