

**STATE OF GEORGIA
COUNTY OF HENRY**

The Henry County Board of Commissioners held a Regular Public Meeting *in-person* on Tuesday, February 21, 2023, 6:30 p.m., at the Henry County Administration Building (Community Room), 140 Henry Parkway, McDonough GA. HenryTV also streamed this live online at its website, as well as Charter/Spectrum Channel 180 and Facebook Live.

Carlotta Harrell, Chair
Johnny Wilson, District 1 Commissioner
Dee Clemmons, District 2 Commissioner (not present)
Dee Anglyn III, District 3 Commissioner (via teleconference)
Vivian Thomas, District 4 Commissioner
Kevin J. Lewis, Vice Chair/District 5 Commissioner

Also in attendance: Cheri Hobson-Matthews, County Manager; Nancy Rowan, County Attorney; Stephanie Braun, Clerk, Henry County and Jasmin Head, Deputy County Clerk

HENRY COUNTY CODE OF CONDUCT

(Sec. 2-2-128: Conduct during public meetings)

INVOCATION

The Invocation was given.

PLEDGE OF ALLEGIANCE

The Pledge was recited.

CALL TO ORDER

Carlotta Harrell, Chair, called the Regular Meeting of the Henry County Board of Commissioners for Tuesday, February 21, 2023 at 6:30 p.m. to order.

County Manager – House Bill 189

Chair Harrell, announced that there is a walk-on item regarding an objection to proposed legislation, House Bill 189

Cheri Hobson-Matthews, County Manager, presented the House Bill which would authorize an increase in truck size or weight to travel upon Georgia public roads. She stated that there was a lot of activity going on with this at the State level; a Resolution opposing this legislation is being presented before the Board this evening. She noted that it is critical to note that the increase would allow for heavier or lower trucks on the National Highway System which would threaten the safety of the traveling public. This would also increase wear and tear on systems such as brakes, steering and tires on trucks with a potential of increasing crash severity. There are approximately 25% of the bridges within the State of Georgia that are in dire need of repair, being traveled upon by these trucks as they are presently. She asks that the Board support the opposition to this bill which could increase degradation in the public roads system and cause unsafe driving conditions and greater costs for road repair/maintenance. Once this is

done, the County Clerk will deliver same to the delegation and it would bear the signature of all the Commissioners upon same.

Chair Harrell remarked that the Association County Commissioners of Georgia (ACCG) and Georgia Municipal Association (GMA) are opposed to this legislation.

Kevin J. Lewis, Vice Chair/District 5 Commissioner moved to approve; **Vivian Thomas, District 4 Commissioner**, seconded the motion. Motion carried (5-0-0).

Resolution #23-94

CONSENT AGENDA

Cheri Hobson-Matthews, County Manager, read the Consent Agenda as follows:

ACCG Grant Awards – Re: Internships

- A. Resolution approving 2023 ACCG Georgia Civic Affairs Foundation Grant Awards for Internships for the following Henry County Departments: Planning & Zoning; Transportation Planning; SPLOST; Stormwater; and Parks & Recreation. (Presenters: Toussaint Kirk, Sam Baker, Roque Romero-Muniz, and Jonathon Penn) (Exhibit 1) *Resolution #23-78*

Animal Control

- A. Resolution approving purchase of three (3) Chevrolet Silverados with SWAB Animal Body AR-95 for the Animal Care and Control Department from Hardy Chevrolet Buick GMC in Dallas, Georgia for the amount of 213,282.69 utilizing RedSpeed Funds. (Presenter: Captain Michael Hobgood, HCPD) (Exhibit 2) *Resolution #23-79*

Capital Project (*Moved to Regular Agenda*)

- A. Resolution approving a contract for Architectural Design Services, through Sourcewell EZIQC Contract #GA-ST02-040820-PCI for the renovation of a building recently purchased for use by the Probate Court & Staff and District Attorney's Office, with Prime Contractors, Inc. in the amount of \$381,382.57 using ARPA Funds. (Presenter: Lynn Planchon, Capital Projects Director) (Exhibit 3)

County Attorney

- A. Resolution to Authorize the Acquisition of 3,807.00 Square Feet of Right of Way, and 16,069.40 Square Feet of Permanent Easement, More or Less, in Land Lot 4 of the 12th District, Henry County, Georgia, by Negotiated Contract or Condemnation Pursuant to Provisions of O.C.G.A. Section 32-3-4 Through Section 32-3-19 (Rock Quarry Road Parcel 27) (Presenter: Nancy Rowan, County Attorney) (Exhibit 4) *Resolution #23-81*
- B. Resolution to Authorize the Acquisition of 1,336.21 Square Feet of Right of Way, and 674.18 Square Feet of Permanent Easement, More or Less, in Land Lot 29 of the 12th District, Henry County, Georgia, by Negotiated Contract or Condemnation (Rock Quarry Road Parcel 37) (Presenter: Nancy Rowan, County Attorney) (Exhibit 5) *Resolution #23-82*

- C. Resolution approving Memorandum of Agreement between Henry County and the City of McDonough in order for the County to conduct the Inspections, Permitting and Plan Review for 12 N Zack Hinton Parkway which are within City Limits of McDonough (Presenter: Nancy Rowan, County Attorney) (Exhibit 6) *Resolution #23-83*

Courts

- A. Juvenile Court: Resolution allowing Juvenile Court to apply for a grant from the Criminal Justice Coordinating Council (CJCC) to continue the coordination of the Juvenile Mental Health Court in FY 24 (Presenters: Angela Craig, Director of Court Services; and Monyato Tolbert, Deputy Director of Court Services)(Exhibit 7) *Resolution #23-84*
- B. Adult Felony Drug Court: Resolution allowing Henry County Adult Felony Drug Court to apply for a grant from the Criminal Justice Coordinating Council (CJCC) to continue the coordination of the Adult Felony Drug Court in FY 24 (Presenter: Craig Ogilvie, Director of Accountability Court)(Exhibit 8) *Resolution #23-85*
- C. Resource Court: Resolution allowing Henry County Resource Court to apply for a grant from the Criminal Justice Coordinating Council (CJCC) to continue the coordination of the Resource Court in FY 24 (Presenter: Craig Ogilvie, Director of Accountability Court)(Exhibit 9) *Resolution #23-86*
- D. Veterans Court: Resolution allowing Henry County Veterans Treatment Court to apply for a grant from the Criminal Justice Coordinating Council (CJCC) to continue the coordination of the Veterans Treatment Court in FY 24 (Presenter: Craig Ogilvie, Director of Accountability Court)(Exhibit 10) *Resolution #23-87*
- E. DUI Court: Resolution of the Board of Commissioners granting approval for the Henry County DUI/Drug Court to apply for a grant from the State of Georgia Office of the Governor/Criminal Justice Coordinating Council (CJCC) for FY24 (Presenter: Lisa King/Court Coordinator)(Exhibit 11) *Resolution #23-88*

Senior Services

- A. Resolution of the Henry County Board of Commissioners to authorize American Disability Act (ADA) Upgrades to include parts and labor at the four (4) senior centers to Gordian EZIQC contract utilizing Prime Contractors, Inc. (Sourcewell Contract) in the amount of \$155,971.13, using Capital Funds. (Presenter: Shawn Norris, Senior Service Director) (Exhibit 12) *Resolution #23-89*

This ends the Consent Agenda

Johnny Wilson, District 1 Commissioner, asked that the Consent Agenda item A under Capital Project be moved to the Regular Agenda for discussion.

There being no further questions or comments, **Commissioner Thomas** moved to approve the Consent Agenda, with the requested item removed to be placed on the Regular Agenda; **Commissioner Lewis** seconded the motion. Motion carried (5-0-0).

REGULAR AGENDA

Capital Project (*Moved to Regular Agenda*)

- A. Resolution approving a contract for Architectural Design Services, through Sourcewell EZIQC Contract #GA-ST02-040820-PCI for the renovation of a building recently purchased for use by the Probate Court & Staff and District Attorney's Office, with Prime Contractors, Inc. in the amount of \$381,382.57 using ARPA Funds. (Presenter: Lynn Planchon, Capital Projects Director) (Exhibit 3)

Commissioner Wilson asked to hear the presentation unless the Chair wanted him to make comment now on this.

Lynn Planchon, Capital Projects Director, summarized the Resolution for the Board, clarifying that this is for Probate Court and staff, and the District Attorney's Office and staff.

Commissioner Wilson mentioned that this purchase was done several months ago and asked how much it cost; **Ms. Planchon** guessed it to be \$2 million dollars. **Ms. Matthews** affirmed that it was \$2 million and reminded that Board that when it was brought to the BOC, part of the presentation through Facilities Maintenance was that work would have to be done inside the building as it had been dormant for a long time. She also reminded that two (2) particular courts are moving in – Probate Court and the District Attorney's Office – and they have specific needs to be addressed as well. The building needs to be up to Code, meet ADA regulations and ensure that the employees are moving to a building that is structurally safe.

Commissioner Thomas remarked that there is not a scope of work outlined as of yet; **Ms. Planchon** assured the Commissioner that there is a scope of work but none of the original plans for the building are available, so staff will have to document every square inch of all three floors inside the building. The Commissioner asked if this price is to design and build; Ms. Planchon clarified that this is for design-only.

Commissioner Wilson asked that this be brought out and when this was voted upon, he voted against this purchase of the building and wanted this on the regular agenda for a vote as well.

Commissioner Thomas moved to approve; **Commissioner Lewis** seconded the motion. Motion carried (4-1-0).

(Chair Harrell, Commissioners Thomas, Dee Anglyn III, District 3 Commissioner, and Lewis voted in favor; Commissioner Wilson voted in opposition)

Resolution #23-80

Chair Harrell advised that **ULDC-AM-22-08** regarding vineyards was tabled to a date-specific, being February 21, 2023. Staff is still working on these conditions for that request and, therefore, it is not on this Agenda for tonight but will be placed at a future meeting date and will be duly advertised.

PLANNING & ZONING

RZ-22-03 (Public Hearing)

JTG Holdings, LLC of Atlanta, GA requests a rezoning from RA (Residential-Agricultural) to R-3 (Single-Family Residence) for property located north of Walker Drive and east of Strickland Road in Land Lot 241 of the 3rd District. The property consists of 93.61+/- acres, and the request is for a single-family residential subdivision. District 5 (Presenter: Kenta Lanham, Planner II)(Exhibit 13)

Kenta Lanham, Planner II, presented this request for the Board. The property is located across from Luella High School and request is to rezone to Single-Family Residential (R-3). The property indicates 113 single-family lots which meet the standards of the R-3 zoning district, with a Net Density of 1.63 dwelling units per net acre, in compliance with the Future Land Use Map (FLUM). Associated renderings and departmental comments were presented for the Board as well. On March 12, 2022 Zoning Advisory Board recommended approval of this request with staff conditions. Since that meeting, staff recommended changes to the conditions (some last minute), as follows:

9. *Each permitted home in the development shall be compatible with existing homes, as determined by the Planning & Zoning Department. The Planning & Zoning Department is authorized to require the heated square footage to be increased and/or the architectural style to be modified in instances where incompatibility is determined. All homes shall be a minimum of 2,200 square feet of heated floor space.*
14. *All homes shall consist of 3 sides brick or stone with a maximum of 20% accent material which may include cement fiberboard except where otherwise conditioned. Cement fiberboard shall be used in the soffits and eaves. All gabled and hip roofs shall have eaves of at least one (1') foot in depth. The developer/builder shall be responsible for noting the percentage breakdown of materials on each building plan submitted for review and will be verified by the Building & Plan Review Department.*
15. *All homes where adjacent or backing into Walker Drive shall consist of 4 sides brick or stone, with a maximum 20% accent materials which may include cement fiberboard except where otherwise conditioned. Cement fiberboard shall be used in soffits and eaves. All gabled and hip roofs shall have eaves at least one (1') foot in depth. The developer/builder shall be responsible for noting the percentage breakdown of materials on each building plan submitted for review and will be verified by the Building & Plan Review Department.*

Mr. Lanham explained that the total number of recommended conditions is twenty-three (23).

Chair Harrell opened the floor for Public Hearing. Persons wishing to speak in favor of the request, including the applicant, will have a collective total of ten (10) minutes to address the Board. Anyone wishing to speak in favor of this request is to come forward and state their name.

In Favor

Michele Battle, Battle Law, 3562 Habersham @ Northlake, Tucker GA 30084, approached in representation of the applicant to make comments in favor of this request. She pointed out that these will be 18,000 minimum square foot lots with 113 total number of units proposed which is less than the required Net Density. There would not be an excessive number of school children coming into this particular community, upon determination of demographic factors for this community. She highlighted the amenity area, as listed in Condition #19. A mandatory Homeowners' Association will be formed within this community, with no more than 10% of the homes rented or lease purchased at any one time.

Chair Harrell asked if the detention ponds will have fencing; **Mr. Lanham** stated that Condition #16 specifies a 5'-high fence and screen from view of streets and building lots will be placed and meeting standards of the ULDC.

Chair Harrell then called for persons wishing to speak in opposition of the request, to be given a collective total of ten (10) minutes to address the Board. Anyone wishing to speak in opposition of this request is to come forward and state their name.

No one came forward and the Public Hearing was closed.

Commissioner Lewis expressed his appreciation for the adherence to the conditions for this project.

Commissioner Wilson referenced the Site Plan and asked if there will be buffers on the internal lots to separate them; **Mr. Lanham** responded that there is no current condition which requires a buffer between the individual internal lots. If the Board wishes to add a condition, it can. **Ms. Battle** added that if some landscaping could be added along the rear property line, that could be done. Mr. Lanham recalled that in the past there was a condition that called for a 20' landscape strip along the rear property lines of lots that back up into each other and that strip can be on the lots. Staff has that language existing and can be added if the Board could do that; Ms. Battle asked if it could be a landscape strip as opposed to a buffer in case there would be any grading issues there. Mr. Lanham suggested "undisturbed" or "enhanced" buffer to be added. **Chair Harrell** called for the developer/builder to respond.

Greg Storm, JTG Holdings, approached and explained that the concern would be grading and getting stormwater runoff if undisturbed and that putting in a buffer could adversely affect the homeowner from putting up a fence on their lot.

Chair Harrell stated that an option would be to table this item until an agreement could be reached between the parties. **Mr. Lanham** stated that the language could read "enhanced buffer" to allow for grading of the site and where disturbed, the vegetation would be enhanced via planting. **Ms. Battle** added that anything which was removed from there would have to be replanted.

Toussaint Kirk, Planning & Zoning Director, stated that with the condition it would be as approved by Planning & Zoning and would have to be on the plans. **Ms. Battle** specified it would be 10' on each side, for a total of 20', so that the homes have a visual buffer in the rear yard. **Chair Harrell** asked that it be included in the conditions. **Mr. Lanham** stated a miscellaneous category will add Condition #24 that there shall be a 20' enhanced landscape strip along the rear building lots that back up to each other and that the landscape strip may be 10' on each side and that they will be included in the plans; with the enhanced buffer at the rear yard of all of the interior lots and included on the plans to be submitted for review.

Commissioner Lewis moved to approve with the above-stated addition of Condition #24 as well as the staff changes proposed today; **Commissioner Thomas** seconded the motion. Motion carried (5-0-0).

Resolution #23-90

RZ-22-04 (Public Hearing)

The Reservoir Group, LLC of Madison, GA requests a rezoning from RA (Residential-Agricultural) to R-2 (Single-Family Residence) (Sewer) for property located at 1500 Chambers Road in Land Lot 116 of the 6th district. The property consists of 40.288+/- acres, and the request is for a single-family residential subdivision. District 5 (Presenter: Kamau As-Salaam, Interim Assistant Director)(Exhibit 14)

Kamau As-Salaam, Planner III, presented this request for the Board. The applicant requests a rezoning to Single-Family Residential with Sewer (R-2S). The plan is to have 42 lots with flood plain covering most of the southern portion of the property and a proposed Conservation Subdivision to run concurrently with zoning request CU-22-02, approved on May 12, 2022 by Zoning Advisory Board. FLUM designation is Medium Density and is supported by this property. Staff recommends approval with 17 conditions included in the packet and Resolution. Staff recommends that the ranch-house style lots be constructed with 4 sides brick or stone and the Craftsman-style homes will be constructed with a little more flexibility for variety, which will have to go through architectural review with staff to ensure that the homes are in character.

Commissioner Thomas asked why staff recommends approval of these homes but was assured that these homes would be on sewer and not septic tanks.

Chair Harrell opened the floor for Public Hearing. Persons wishing to speak in favor of the request, including the applicant, will have a collective total of ten (10) minutes to address the Board. Anyone wishing to speak in favor of this request is to come forward and state their name.

In Favor

Steve Moore, Moore Bass Consulting, 1350 Keys Ferry Ct., McDonough GA, appeared on behalf of the applicant in this request. He presented the yield plan presented to the Zoning Advisory Board when applying for the Conditional Use on the Conservation Subdivisions showing 42 lots on R-2S. He also presented the current request with half of the number of lots. The required buffers are to be placed as stated. The number of lots have been shrunk and the open space has been doubled and will be buffered well.

Commissioner Lewis asked if one of the conditions was that every 3rd home is to be a different floor plan; **Mr. As-Salaam** affirmed it is stated in Condition #7:

7. *...and agrees as such no lot shall be permitted to have the same house plan replicated within 3 lots on either side of public or private street. The developer/builder shall provide a Site Plan indicating both commenced and proposed house plans for each respective lot in a 6-lot vicinity for the purpose of review at the time of permit application. The location change of the garage from one side of the plan to the other, commonly referred to as "reversing the plan" or the change of a garage from front-entry to side-entry or vice-versa shall not be deemed to satisfy this requirement.*

Chair Harrell then called for persons wishing to speak in opposition of the request, to be given a collective total of ten (10) minutes to address the Board. Anyone wishing to speak in opposition of this request is to come forward and state their name.

In Opposition

Angie Collins spoke of her concerns such as whether the homes will be 3 or 4 sides brick. She noted that a huge gap is in the building of these homes which allow for squirrels and other creatures to get in; she asked that the builders close their gap. She also pointed out that in the newer homes the higher quality materials are not being used interiorly. She also addressed whether or not there has been a traffic impact study done in the area, as this will be a concern as well. She also addressed that the signage to the community should be attractive and in character with what is already in the area.

Michelle Usher remarked that Chambers Road cannot accommodate any more traffic if this subdivision is built and crashes will increase more than they already are and that school buses are already late; they will be even later if this subdivision is built.

Brooke Winfrey is concerned about the flood plain in the area and wanted to make sure it is protected along the watershed in Walnut Creek and the surrounding area.

Monica Harrison is concerned about 2-3 other subdivisions going up along Chambers Road and the traffic is already heavy. She asked what the average square feet of the homes are and that the appearance will be in keeping with what is already there.

Jamaal Avery asked that the overall number of lots be further reduced from 21 to ensure that the wetlands are protected.

No one else approached; the Public Hearing was closed.

Chair Harrell called the applicant's representative forward and asked the heated square feet and price point of these homes would be; **Mr. Moore** responded that the minimum square footage is 2,000 with a starting price point in the low-to-mid \$400,000. The developer has developed several communities – one on 155 North called Salem Oaks, which is a new gated community. This is intended to be high quality.

Chair Harrell asked about a traffic study and **Mr. As-Salaam** stated that a study is not required by DOT or SPLOST.

Commissioner Thomas asked about interior finishes and the limits to that end. **Mr. As-Salaam** deferred to the applicant for response. The Commissioner wanted to explain that the Board does not have the authority to require certain aspects of the interior of the home. The developers that she has worked with in her district have been consistent in meeting development requests. She hopes that they will do the same in the homes on all levels. She asked if this developer is committed to building these homes or if it is to be used for "flipping." **Mr. Moore** clarified that this the developer and not the builder but he has a list of builders he deals with that have been in business and built in Henry County for a long time with a very good reputation. She suggested that the District 5 Commissioner get some form of agreement of these issues in writing from the builder. **Mr. Moore** stated that once a builder is selected and if those finishes in the interiors are requested, it will drive the price point up. He presented a representative photograph of the entrance sign to Salem Oaks for comparison purposes.

Commissioner Wilson referenced Condition #4 and noted that there is a difference in the item condition previously approved and this one regarding cement fiberboard. **Mr. As-Salaam** assured the Commissioner that the language is the same and that the cement fiberboard product is only permitted in the soffits, eaves and fascia. The District 1 Commissioner asked that "vinyl based products" be stricken and not permitted. The same issue exists with the rear lots needing some type of buffer in the back, with a

requirement to have a buffer as matched in the previous zoning request for those 5 rear lots. Mr. As-Salaam stated that there is concern on that as these lots will be smaller than the previous rezoning request and it may be more difficult with the setbacks to have another buffer on top of it. **Commissioner Lewis** noted that he had a meeting the other day and asked to make the hallways wider especially on the ranch style homes as well as other modifications to be ADA compliant.

Commissioner Lewis moved to approve with staff recommended conditions; **Commissioner Anglyn** seconded the motion. Motion carried (5-0-0).

Resolution #23-91

AP-22-04 (Public Hearing)

Ronald Albert Nash, of McDonough, GA requests an administrative appeal for property located at 3667 Jodeco Road in Land Lot 109 of the 6th District. The property consists of 0.628+/- acres, and the request is for the appeal of an administrative interpretation regarding the prohibited uses within the Highway Corridor Overlay District. District 4 (Presenter: Toussaint Kirk, Cluster Leader)(Exhibit 15)

Nancy Rowan, County Attorney, approached and explained that the purpose is to appeal some interpretations regarding prohibited uses within the Highway Corridor Overlay District. She called Mr. Nash forward but he was absent and his absence has decided to go forward with this matter anyway. This will not be a Public Hearing but only a hearing on the actual appeal wherein the applicant can present his case and the Planning & Zoning Department would present its reason for the interpretation. In light of Mr. Nash's absence, Ms. Rowan presented the items he wished to appeal – denial of a business license, 2 zoning verification letters – stating that they are improper.

Mr. Kirk presented the case for the Board using illustrations for clarification. **Ms. Rowan** cited that ULDC §12-040 allows the Board of Commissioners to hear appeals wherein an error in approval or denial was alleged regarding interpretation or decision made by the Zoning Advisory Board, Planning & Zoning, Building & Plan Review or Environmental Compliance. She went through the points of the objection for denial. She stated that Mr. Nash owns a lawnmower repair shop and would like a business license for an automotive repair shop. The property is zoned C-2 and is in the Overlay District which does not allow for automotive repair shops.

Mr. Kirk affirmed same as automotive repair shop is a prohibited use within the Highway Corridor Overlay District. If the applicant wanted to continue the existing use, there is no problem but changing the use to a more intense use is denied. He displayed the permitted uses for C-2 for the Board and then showed the prohibited uses. **Ms. Rowan** also clarified that the Highway Corridor Overlay District statute was passed while this property was operating as a lawn service business; had it been an automotive business, it would have been grandfathered in. Because it is not, it is therefore not entitled to be an automotive business under the constitution. Mr. Kirk explained that staff made its recommendation based off of the presented information. Ms. Rowan asks the Board to uphold the denial based on the information presented.

Commissioner Thomas moved to uphold the denial; **Commissioner Anglyn** seconded the motion. Motion carried (5-0-0).

Resolution #23-92

AP-23-01 (Not a Public Hearing)

Halpern East Lake, LLC of Atlanta, GA requests an appeal to Ordinance 23-2 for property located at 5855-5905 East Lake Parkway and 38 Oak Valley Road in Land Lot 6 of the 7th District. The property consists of 20.26+/- acres, and the request is for relief from the constraints of the multi-family moratorium. District 4 (Presenter: Kenta Lanham, Planner II)(Exhibit 16)

Mr. Lanham presented this appeal for the Board. This is a claim for vested rights to a recently rezoned property in an active multi-family development moratorium. The property was rezoned on November 29, 2022 to Mixed Use (MU) for a mixed commercial and townhome development. The moratorium is part of Ordinance #23-2, approved on January 4, 2023, preventing the acceptance of new permit applications for these developments, whether rezoning or permits.

Steve West appeared with Mr. Hecht, his attorney, and explained that the project may be an unintended consequence from the moratorium for which this appeal is made. He explained that the Site Plan had 28 written conditions which were accepted and that it is not in the part of the county for purposes of why the moratorium would exist. The units would be owner-occupied and not rentals. The commercial portions would be allowed to continue at the time the moratorium was enacted but this would not work in their case, as indicated in the exhibit that was presented to the Board. The project has moved forward since approval of rezoning in November up to the stopping of the project in January 2023 for which they appear today to appeal. If this is upheld, agreements that they have made with end-users will be in default and result in catastrophic financial loss for the developer, in an amount over \$10 million dollars.

Greg Hecht, Attorney at Law, appeared on behalf of the applicant and advised that a Constitutional Notice has been submitted and expressed concern about property rights loss and vested rights loss.

Ms. Rowan explained that Planning & Zoning and staff recommended that applicant be allowed to obtain the license. She explained that the moratorium for the Board, Ordinance #23-2, which was passed on January 4, 2023. The Ordinance required during the 12-month moratorium period, no zoning applications for any development permits, variances or license or other permits including occupational tax licenses shall be accepted by Henry County or any of its departments pertaining to multi-family housing developments to be located or operating on any property within the unincorporated area of Henry County. Staff recommended that the applicant go forward because the Ordinance requires that they not accept any applications and this is why it is presented before the Board. She further stated that according to Georgia case law, a property owner prior to the adoption of this Ordinance may have required de-facto vesting and the owner shall submit written verification and supporting documentation and facts to request review by the Board of Commissioners at a scheduled meeting to which the applicant feels would substantiate a claim for vesting and to grant the exception. Ms. Rowan explained that there was an application submitted for a permit, but there was also an approved development plan. She went through the parameters of an informal approval dating back to the November 29, 2022 rezoning approval.

Mr. Lanham explained that the property was rezoned to MU on November 29, 2022 for the purpose of commercial and townhome development. On January 4, 2023 the Board of Commissioners enacted a moratorium by Ordinance #23-02 on all applications for a 12-month period regarding multi-family developments. During this time, no associated applications could be submitted. Property owner could submit a claim of vested right and this appeal was submitted on January 20, 2023. The moratorium would not affect the commercial portion of this property; however, the applicant claimed that the Mixed Use development would require that coordinated grading and infrastructure plan to balance the site and complete the required offsite improvements, taking dirt from one portion of the site and filling in to the

other site. Staff does recommend that the BOC complete the appeal by affirming the validity of the vested rights claim, allowing the applicant to proceed with the permitting process for mixed commercial and townhome development.

Ms. Rowan explained that the applicant was to submit an affidavit outlining the reason why his rights were vested. *While copies were not available to the Commissioners, Ms. Rowan proceeded with the details of the case.* Staff had recommended that the Board find that the applicant was vested and to proceed; afterward, it was to be determined if this was within the boundaries of the law. She pointed out that the approval in November 2022 could be considered “formal”. The conditions required that the development had to be similar to the rendering of the conceptual plan and that approval took specific conditions into consideration including architectural design, buffers and different approvals from Planning & Zoning. She went through the other “prongs” of the case in establishing vested right to proceed. Ms. Rowan did not agree that the applicant’s potential financial loss would not be as great as they claim, she did present the affidavit which included expected services to be performed prior to the stopping of this due to the moratorium. Also referring to the affidavit, Ms. Rowan pointed out the costs to exceed the project’s budget, but is unsure if the economic liability would be as great as the applicant alleges; however, the earth work for all of the property could possibly present that amount of liability to satisfy one of the “prongs”. On the separate agreements made, Ms. Rowan stated she has not seen documentation of any such agreements and asked applicant to view them; however, applicant responded that they were proprietary. An affidavit in lieu of the agreements was instead requested; at the present time, she does not have that either.

Ms. Rowan stated that based upon the above information, this would fall within the parameter of the law to say that applicant has vested rights and would support the Planning & Zoning recommendation to let applicant proceed forward. By comparison, there are very few other owners who would fall into this category to the degree that the applicant is at this time. If the Board does approve this, it will not open up to others making this same appeal.

Mr. Lanham had nothing further to add.

Ms. Rowan asked that this be voted upon, whether or not the applicant does indeed have vested rights in this to pursue their land disturbance permit.

Commissioner Anglyn commented that he opposed this development but it is important to note that this developer does have vested rights along with zoning entitlement.

Commissioner Thomas noted that this is a District 4 project and staff has done a magnificent job in looking at the vested rights and economic impact; and that this would not open up to others making the same claim as this applicant.

Commissioner Thomas moved to approve based on staff’s recommendation; **Commissioner Anglyn** seconded the motion.

Commissioner Lewis thanked the County Attorney that this would not open any floodgates if this is approved and understands the legal ramifications of denying this appeal. He is in favor of the moratorium of apartments and townhomes so that the infrastructure can be improved upon.

Motion carried (4-1-0). *(Chair Harrell, Commissioners Anglyn, Thomas and Lewis voted in favor; Commissioner Wilson voted in opposition)*

Resolution #23-93

PUBLIC COMMENTS

We welcome citizens to voice their county-related concerns and opinions regarding items which are listed on this agenda or on the previous regular meeting agenda. All persons wishing to speak during Public Comment must pre-register with the County Clerk in writing or via email: sbraun@co.henry.ga.us no later than 12:00 p.m. on the day immediately prior to the meeting. Each speaker will have three (3) minutes to speak. No member of the public shall be permitted to make personal, impertinent, slanderous or profane remarks to any member of the board, staff or general public. Any person who makes such remarks, or who utters loud, threatening, personal or abusive language, or engages in any other disorderly conduct which disrupts, disturbs or otherwise impedes the orderly conduct of any board meeting shall, at the discretion of the chair or a majority of the council, be barred from further audience before the board during that meeting.

Reginal Jackson, Banasha Shine and Margaret Brown all gave comments.

APPROVAL OF MINUTES

Commissioner Anglyn moved to approve the Minutes from the *December 8, 2022 (Legislative Breakfast), January 4, 2023 (Regular Meeting), January 17, 2023 (Regular Meeting), 2022 Regular BOC Meeting*; **Commissioner Lewis** seconded the motion. Motion carried (5-0-0).

UPCOMING MEETINGS AND EVENTS

- A. Tuesday, March 7, 2023 at 9:00 a.m. is a regularly scheduled BOC Meeting
- B. Thursday and Friday, March 9-10, 2023 BOC Retreat in Douglasville, GA
- C. Tuesday, March 21, 2023 at 6:30 p.m. is a regularly scheduled BOC Meeting

EXECUTIVE SESSION

Chair Harrell called for Executive Session regarding personnel matters. **Commissioner Wilson** made a motion to convene into Executive Session; **Commissioner Anglyn** seconded the motion. Motion carried (5-0-0).

EXECUTIVE SESSION (8:28 p.m.)

RECONVENE FROM EXECUTIVE SESSION

Chair Harrell announced that litigation was also discussed during Executive Session. She called for motion to Reconvene. **Commissioner Wilson** made a motion to reconvene into Public Session; **Commissioner Lewis** seconded the motion. Motion carried (4-0-1) (*Commissioner Anglyn was not present*)

AFFIDAVIT & RESOLUTION

Commissioner Wilson made a motion to approve the Affidavit & Resolution pertaining to Executive Session; **Commissioner Thomas** seconded. Motion carried (4-0-1). (*Commissioner Anglyn was not present*)

ADJOURNMENT

There being no further business to come before the Henry County Board of Commissioners at this time **Chair Harrell** adjourned the meeting. *Meeting adjourned at 10:21 p.m.*

Carlotta Harrell, Chair

Stephanie Braun, County Clerk