

HABERSHAM COUNTY BOARD OF COMMISSIONERS MEETING
6:00 P.M., MONDAY, APRIL 19, 2021
HABERSHAM COUNTY COURTHOUSE
JURY ASSEMBLY ROOM
295 LLEWELLYN STREET
CLARKESVILLE, GA 30523

A meeting of the Habersham County Board of Commissioners was held on Monday, April 19, 2021 at 6:00 p.m. in the Jury Assembly Room of the Habersham County Courthouse in Clarkesville, Georgia.

Present: Chairman Dustin Mealor; Vice-Chairman Tim Stamey; Commissioner Bruce Palmer; Commissioner Bruce Harkness; Commissioner Jimmy Tench; County Attorney Donnie Hunt; County Manager Phil Sutton; County Clerk Lindsay Underwood; County Department Directors; Individuals from the Media and Public.

Chairman Mealor called the meeting to order at 6:02 p.m.

Commissioner Tench led the Invocation.

Commissioner Stamey led the Pledge of Allegiance.

ADOPTION OF AGENDA

Motion by Chairman Mealor, seconded by Commissioner Stamey, and voted unanimously to amend the agenda to add an executive session to discuss personnel.

Motion by Commissioner Harkness, seconded by Commissioner Stamey, and voted unanimously to adopt the agenda as amended.

PRESENTATIONS/ANNOUNCEMENTS:

- a. Recognition of Habersham County Mock Trial Team
- b. Habersham County's Fiscal Year 2021 Budget has received a Distinguished Budget Presentation Award from the Government Finance Officers Association. This is the fourth year in a row that the County has received this award.

BOARD OF APPEALS:

Motion by Chairman Mealor, seconded by Commissioner Stamey, and voted unanimously to go into session as Board of Appeals (6:07 p.m.).

Motion by Commissioner Stamey, seconded by Commissioner Harkness, and voted unanimously to adopt the following agenda:

- 1. Opening remarks
- 2. Executive Session for the Purpose of Litigation
- 3. Hearing on Appeal from Planning Commission on Application of Verizon Wireless for placement of a cellular tower
- 4. Adjourn and re-convene in regular session of the Board of Commissioners.

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1. Opening remarks

Chairman Mealor stated that CellCo Partnership, doing business as Verizon Wireless, made application for a 195-foot-tall cell tower to be located at 493 Antique Alley in Habersham County. On January 5, 2021, the Planning Commission for Habersham County approved the application. A group of neighbors appealed that decision to the Habersham County Board of Commissioners, sitting as the Habersham County Board of Appeals. That appeal was heard by the Board of Appeals on February 15, 2021. The Board of Appeals approved the appeal and thereby denied the application for the cell tower. By letter from Verizon Wireless' legal counsel (the law firm of Baker Donelson) dated February 24, 2021, the County was put on notice of impending litigation in federal court over its denial of the application of Verizon Wireless. Their basis for the proposed litigation was that the County had violated the Wireless Telecommunications Act of 1996 by denying the application (and granting the appeal) as the Board of Appeals had: (1) Improperly considered environmental effects of radio frequency emissions when there was no evidence that the radio frequency emissions were not in compliance with FCC regulations and when such consideration had been pre-empted by the Telecommunications Act; and (2) Failing to find significant "aesthetic damage" in a written opinion. The Board of Commissioners then re-convened as the Board of Appeals on March 15, 2021, being on notice of the impending federal litigation, and voted to rescind its decision of February 15, 2021 and re-schedule the appeal for an additional hearing on April 19, 2021. Suit was filed against Habersham County and the Habersham County Board of Commissioners on March 17, 2021 seeking equitable relief, declaratory judgment, and a request for expedited review. I now ask for a motion to go into executive session for the purpose of the discussion of pending litigation on a roll call vote.

2. Executive Session for the Purpose of Litigation

Motion by Chairman Mealor, seconded by Commissioner Stamey, and voted unanimously to enter into executive session to discuss Litigation (6:10 p.m.)

ROLL CALL VOTE

Commissioner Harkness-yea
Commissioner Tench-yea
Chairman Mealor-yea
Commissioner Stamey-yea
Commissioner Palmer-yea

MOTION PASSES

Present: Chairman Dustin Mealor; Commissioners Tim Stamey, Bruce Harkness, Bruce Palmer, and Jimmy Tench; County Attorney Donnie Hunt; County Manager Phil Sutton; County Clerk Lindsay Underwood

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Motion by Commissioner Stamey, seconded by Commissioner Harkness, and voted unanimously to come out of closed session. (6:26 p.m.)

Motion by Chairman Mealor, seconded by Commissioner Stamey, and voted unanimously to amend the agenda to add an item of business before the Hearing on the Appeal to read as follows: Consider, approve, and execute the joint motion for entry of consent order and final judgment as well as the consent order and final judgment.

3. Hearing on Appeal from Planning Commission on Application of Verizon Wireless for placement of a cellular tower (removed during motion to amend the agenda). Consider, approve, and execute the joint motion for entry of consent order and final judgment as well as the consent order and final judgment (added during motion to amend the agenda).

Motion by Chairman Mealor, seconded by Commissioner Stamey, and voted unanimously to approve and execute the joint motion for entry of consent order and final judgment as well as the consent order and final judgment.

Chairman Mealor stated that the Board of Appeals has voted to settle the litigation with Verizon Wireless via a consent judgment whereby a federal judge will issue an order requiring Habersham County to issue a permit for the cell tower. After consulting with the County Attorney and review of our previous action and hearing, it was apparent that the federal legislation known as the Telecommunications Act of 1996 spells out what little the County can do. It is clear that unless there was evidence that the emissions from this tower would violate FCC regulations, it could not be a factor that could be considered by the Board of Appeals. Similarly, the issue of "aesthetic damage" has substantially been pre-empted by the federal legislation. The Board of Appeals could rely on "aesthetic damage" only if it could and did find in a written opinion significant damage. The Board of Appeals is of the opinion that there is not significant "aesthetic damage" due to the existence of the water tower within six degrees of the view of the cell tower as a matter of fact and law since no findings of fact of such were made previously by the Board of Appeals. As a result, the County would not likely prevail in the federal litigation. Since we have consented to the Court's order, there is no need for the additional hearing on this matter and the County will abide by the proposed consent order and final judgment of the United States District Court for the Northern District of Georgia.

Chairman Mealor asked if those that were in favor of the appeal wished to appoint a representative to speak since the public hearing was removed. Ray Stratton spoke on behalf of members of the community who were not in favor of the cell tower being constructed. There was no one present to speak against the appeal (in favor of the cell tower being constructed).

4. Adjourn and re-convene in regular session of the Board of Commissioners.

Motion by Chairman Mealor, seconded by Commissioner Stamey, and voted unanimously to adjourn the Board of Appeals and re-convene in regular session as the Board of Commissioners (6:37 p.m.)

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PUBLIC HEARINGS:

By permitting opponents or speakers to present public comment to the county, the county does not acquiesce or waive its ability to challenge to the legal standing of the speaker(s) in the event of litigation.

1. CU-21-02 Hector Sanchez-Fabian is seeking a Conditional Use to grant them permission to hold a wedding on their property. The event will have food as well as a live band for music. The tract is located at 1789 Alto Mud Creek Road and is further identified as Map 053 Parcel 013.

Mike Beecham, Planning and Development Director, addressed the Board. CU-21-02 is a request from Hector Sanchez-Fabian to grant them permission to hold a wedding on their property. The event will have food as well as a live band for music. The tract is located at 1789 Alto Mud Creek Road and is further identified as Map 053 Parcel 013. The Planning Commission heard this at their April 6, 2021 meeting. Mr. Sanchez-Fabian has 9.92 acres and wishes to hold a wedding on the property on July 3, 2021. The wedding will be for a member of his family and will have approximately 200 guests. There will be live music and a reception to follow the wedding, the original request was for the wedding to begin at 1 p.m. and end at 2 a.m., however, the applicant had stated they would abide by any time restrictions placed on the event. Three or four years ago, the Planning Department received numerous complaints regarding noise and numerous events held on this property. The Code Enforcement Officer had to visit during an event and threaten to issue citations. Given that history, staff recommends against the approval of the wedding, due to concerns that allowing the property owner to hold an event would invite them to hold other events with noise that would bother neighbors. There were a couple of citizens at the Planning Commission meeting that spoke against the conditional use, their concerns were loud music in the area and drinking with 200 guests on the property, and a guess of approximately 100 cars leaving the site. The Planning Commission recommended denial of this conditional use, they originally made a motion to approve with special conditions, however, it was voted down which results in a denial. The conditions were as follows: 1) this must be a one-time event held on July 3, 2021; 2) event will only be held from 1 p.m.-9 p.m.; 3) no music will be played after 9 p.m.; 4) all guests must be gone by 10 p.m.; 5) a POST certified peace officer, familiar with Habersham County's noise ordinance, must be present the entire time to monitor the event. If the Board of Commissioners decides to approve the conditional use, staff recommends these conditions be approved as well.

Chairman Meador turned the meeting over to County Attorney Donnie Hunt to conduct the public hearing.

County Attorney Hunt asked for those in favor of the conditional use application, there was no one present to speak in favor of the conditional use application. Neither the applicant, nor their agent, was present to speak in favor of the conditional use application.

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County Attorney Hunt asked for those in opposition of the conditional use application. Mike Roberts and Melinda Dyer spoke in opposition of the conditional use application.

Motion by Commissioner Stamey, seconded by Commissioner Harkness, and voted unanimously to deny Hector Sanchez-Fabian's Conditional Use application to grant them permission to hold a wedding on their property located at 1789 Alto Mud Creek Road, and further identified as Map 053 Parcel 013.

PUBLIC COMMENTS:

During this time, members of the public are invited to address the Commission on any Agenda item other than those listed as Public Hearing. If you signed up to speak at the meeting tonight, you will have three minutes. If your name is listed on the Agenda, you will have five minutes.

1. Joey Terrell: Deputy Raises
2. Douglas McDonald: Mr. McDonald opted not to speak so long as the Commissioners invited him to speak in executive session at the end of the meeting.

CONSENT AGENDA:

Motion by Commissioner Stamey, seconded by Commissioner Harkness, and voted unanimously to adopt the Consent Agenda as follows:

- a. Consider/Approve the Minutes of the March 15, 2021 Work Session
- b. Consider/Approve the Minutes of the March 15, 2021 Commission Meeting
- c. Consider/Approve the Minutes of the March 15, 2021 Executive Sessions (of the Board of Appeals and Board of Commissioners)
- d. Consider/Approve Resolution to Revise the Service Delivery Strategy (SDS)
- e. Consider/Approve Board of Tax Assessors Affidavit 2020-14
- f. Consider/Approve Board of Tax Assessors Affidavit 2020-15
- g. Consider/Approve FY2021 Addendum #2 Contract between the Legacy Link, Inc., and the Habersham County Board of Commissioners for Nutrition Program Service
- h. Consider/Approve Facility Usage Agreement with Habersham County Youth Baseball Softball League (HCYBSL)

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- i. Consider/Approve Facility Usage Agreement with Habersham County Church League (HCCL)
- j. Consider/Approve LMIG Safety Action Plan (SAP) 2021 Application

REPORTS:

- a. Fiscal Status: Tim Sims
- b. Manager's Report: Phil Sutton
- c. Recreation Board Report: Kurt Cooper and Andrew Gailey

APPOINTMENTS:

BOARD OF TAX ASSESSORS

- 1. Phil Neeley (Term Expiration)- Commissioner Tench- 3-year term will expire 12/31/2023.
**Note: This item was tabled until the March 15, 2021 Commission meeting, at which time an appointment was not made by majority vote of the BOC. This is still a vacancy that needs to be filled, consequently, the matter was, in effect, continued to the April 19, 2021 meeting.*

Commissioner Tench asked Commissioners Mealor, Stamey, and Palmer why they did not feel Joan Church was a valid candidate for the Board of Assessors. All three of them agreed that while it is legal to appoint Mrs. Church to the Board of Assessors, they feel it is a conflict of interest because the Board of Assessors is supposed to provide oversight for the Chief Appraiser, and if the Chief Appraiser were to be on the Board, it would be a conflict of interest. Discussion ensued.

Motion by Commissioner Tench to appoint Joan Church to the Board of Tax Assessors. The motion failed due to lack of a second. This item will automatically be tabled until the next Commission meeting.

- 2. Deborah Densmore (Resignation)- Commissioner Harkness-To serve the remainder of a 3-year term to expire 12/31/2021.

Motion by Commissioner Harkness, seconded by Commissioner Palmer, and voted unanimously to appoint Mariah Holbrooks to the Board of Tax Assessors.

AIRPORT COMMISSION- 3-year term

- 1. Ken Schubring (Term Expiration)- Commissioner Tench's Appointment
**Note: Tabled at the March 15, 2021 Commission Meeting until the April 19, 2021 Commission Meeting.*

Commissioner Tench stated that County Manager Phil Sutton appointed Ken Schubring as the Airport Commission Chairman at the last Airport Commission meeting without talking to him about it. Mr. Sutton clarified that, since there was no Chairman on the Airport Commission due to Franklin Brown not being reappointed, he opened the floor for nominations for Chairman just as the County Attorney often does. The Airport Commission then elected Mr. Schubring as Chairman. Commissioner Tench asked if the County Attorney was present at the Airport Commission meeting, Mr. Sutton responded

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that their associate, Megan DiNatalie, was present at the meeting. Chairman Mealor clarified that even though Mr. Schubring was elected Chairman of the Airport Commission, his term is still expired, and Commissioner Tench must either reappoint him, or appoint another candidate from the slate of names.

Motion by Chairman Mealor, seconded by Commissioner Stamey, and voted unanimously to table this appointment until the May 17, 2021 Commission meeting.

BOARD OF ELECTIONS AND REGISTRATION

1. Sylvia Prescott (Resignation)- At-Large- To serve the remainder of a 4-year term to expire 09/30/2021.

Motion by Commissioner Harkness, seconded by Chairman Mealor, to appoint Kathy Nicholson to the Board of Elections and Registration.

VOTE

Commissioner Harkness-yea
Commissioner Tench-nay
Chairman Mealor-yea
Commissioner Stamey-yea
Commissioner Palmer-nay

MOTION PASSES 3-2

ETHICS PANEL- 2-year term

1. Virginia Webb & Reggie Coley (Term Expiration)- Commissioner Tench

Motion by Commissioner Tench, seconded by Commissioner Stamey, to reappoint Virginia Webb and Reggie Coley to the Ethics Panel.

County Clerk Lindsay Underwood clarified that she could not confirm whether Ms. Webb was still interested in appointment, and that Mr. Coley said he was not interested in reappointment. Commissioner Harkness said he had spoken with Ms. Webb and confirmed her interest. Chairman Mealor asked if one individual could be appointed, then the other seat tabled until the next meeting so that Commissioner Tench could determine who he wants to appoint.

Motion by Chairman Mealor, seconded by Commissioner Stamey, and voted unanimously to reappoint Virginia Webb to the Ethics Panel and table Commissioner Tench's other appointment to the Ethics Panel until the May 17, 2021 Commission meeting.

2. Patrick Ledford & Michael Day (Term Expiration)- Commissioner Mealor

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Motion by Chairman Mealor, seconded by Commissioner Stamey, and voted unanimously to reappoint Patrick Ledford and Michael Day to the Ethics Panel.

3. Darrin Johnston & Jack Foster (Term Expiration)- Commissioner Stamey

Motion by Commissioner Stamey, seconded by Commissioner Palmer, and voted unanimously to reappoint Darrin Johnston and appoint Bill Miles to the Ethics Panel.

4. Phil DeMore & Stephanie Almagno (Term Expiration)- Commissioner Harkness

Motion by Commissioner Harkness, seconded by Commissioner Stamey, and voted unanimously to reappoint Phil DeMore and Stephanie Almagno to the Ethics Panel.

5. Charles Ladd & Matt Paul (Term Expiration)- Commissioner Palmer

Motion by Commissioner Palmer, seconded by Commissioner Stamey, and voted unanimously to reappoint Charles Ladd and appoint Fran Blackburn to the Ethics Panel.

Commissioner Harkness asked County Clerk Lindsay Underwood to clarify the purpose of the Ethics Panel because some of the members he contacted had expressed that they felt underutilized and had not met for the last couple of years. Mrs. Underwood clarified that they have not met because there had not been any ethics complaints filed against the County. Commissioner Harkness stated that was a good thing and that he would relay that information.

UNFINISHED BUSINESS: NONE

NEW BUSINESS:

- a. Consider/Approve \$10,000 Allocation to the Superior Court Budget to Fund Senior Judge Expenses Through the End of the 2021 Calendar Year**

County Manager Phil Sutton addressed the Board. The judges have requested \$10,000 be allocated so they can fund 5-6 days of senior judge time for the remainder of the calendar year to allow the senior judges to hear civil cases while Judge Caudell and Smith focus on the criminal trial calendar. Surprisingly, the state cut funding for senior judges, therefore, our superior court judges are requesting this funding from all three counties in the circuit.

Motion by Commissioner Harkness, seconded by Commissioner Stamey, and voted unanimously to approve \$10,000 Allocation to the Superior Court Budget to Fund Senior Judge Expenses Through the End of the 2021 Calendar Year.

- b. Consider/Approve Exit Interview Procedures and Policy Update**

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Vinitha Robinson, Human Resources Director, addressed the Board. She has prepared an exit interview policy and questionnaire per the Commission's request that would be completed electronically and treated confidentially so that employees would be encouraged to give honest responses. Information from the questionnaire would then be reported to the County Manager and Commissioners in a statistical format so that the identity of the employee is not revealed. Commissioner Palmer has also prepared a questionnaire that had similar questions but was in a different format to encourage thorough responses rather than just checking boxes to complete the form. Much discussion ensued regarding the two forms, the confidentiality of the forms, and the exit interview process as a whole. The Commissioners agreed the two forms should be combined and re-presented to them.

Motion by Chairman Mealor, seconded by Commissioner Stamey, and voted unanimously to table this item until the May 17, 2021 Commission Meeting.

- c. Consider/Approve the Joint Motion for Entry of Consent Order and Final Judgment as well as the Consent Order and Final Judgment (if necessary)

Donnie Hunt, County Attorney addressed the Board, stating that the Board of Appeals had approved this earlier. However, the Board of Commissioners, as the governing authority of the County, must approve it.

Motion by Commissioner Stamey, seconded by Commissioner Harkness, and voted unanimously to approve the Joint Motion for Entry of Consent Order and Final Judgment as well as the Consent Order and Final Judgment.

Chairman Mealor announced that the Commission would hold additional comments until the end of the meeting.

EXECUTIVE SESSION: Personnel (Added during Adoption of Agenda)

Motion by Commissioner Stamey, seconded by Chairman Mealor, and voted unanimously to enter into executive session to discuss Personnel (7:59 p.m.)

ROLL CALL VOTE

Commissioner Harkness-yea
Commissioner Tench-yea
Chairman Mealor-yea
Commissioner Stamey-yea
Commissioner Palmer-yea

MOTION PASSES

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Present: Chairman Dustin Mealor; Commissioners Tim Stamey, Bruce Harkness, Bruce Palmer, and Jimmy Tench; County Attorney Donnie Hunt; County Manager Phil Sutton; County Clerk Lindsay Underwood

Doug McDonald was invited into executive session at 8:11 p.m. and left at 8:44 p.m.

Motion by Chairman Mealor, seconded by Commissioner Stamey, and voted unanimously to come out of closed session (9:08 p.m.)

County Attorney Donnie Hunt reported that all matters discussed in Closed Session were limited to those matters allowed by the laws of the State of Georgia and asked for a motion authorizing the Chairman to make such a representation under oath on the affidavit.

Motion by Chairman Mealor, seconded by Commissioner Stamey, and voted unanimously to adopt the representation authorizing such affidavit as per the Attorney's recommendation.

ADDITIONAL COMMENTS:

Commissioner Stamey stated he had a heart attack on the February 22 and his heart is in terrible shape. He is going in next week for open-heart surgery where they are going to do multiple bypasses and replace his aortic valve. His doctor recommended he resign due to the stress being a Commissioner has placed on his heart. He stated that he takes everything to heart and stays awake at night coming up with solutions to problems, backup solutions, and emergency solutions, and can no longer deal with people walking up to him when he is with his family in public and yelling at him about the way he voted or who he appointed. His heart cannot take it. As a result, he is resigning his position as Commissioner. He said he would continue to be involved in the community.

Commissioner Palmer said that we all need to keep Tim in our thoughts and prayers, he said that he and Commissioner Stamey got off to a rocky start, but that they found common ground and were working well together.

Commissioner Harkness stated that he and Commissioner Stamey had been friends for 50 years and that he stepped in to fill a vacuum of leadership when it was needed. He said Commissioner Stamey was one of the finest individuals he had ever known, that he is a pillar of the community, and in Batesville, and is a true leader of this area and the County.

Commissioner Tench had no additional comments.

Chairman Mealor stated that Commissioner Stamey had been a mentor and was the first person he called when he had a question or a problem. He said he respects the heck out of Commissioner Stamey, and that Commissioner Stamey has a passion for the County that will be crazy missed on the Commission.

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ADJOURN 9:17 p.m.

Motion by Chairman Mealor, seconded by Commissioner Stamey, and voted unanimously to adjourn.

Respectfully submitted,

By: _____
Chairman Dustin Mealor

Attest: _____
County Clerk Lindsay Underwood