

After Agenda

**Board of Commissioners of Spalding County
Work Session
Monday, May 4, 2015
9:00 A.M.
Meeting Room 108, Courthouse Annex**

The Spalding County Board of Commissioners held a Work Session in Room 108 of the Spalding County Courthouse Annex, Monday, May 4, 2015, beginning at 9:00 a.m. with Chairman Rita Johnson presiding. Commissioners Bart Miller, Raymond Ray and Donald F. Hawbaker were present. Commissioner Gwen Flowers-Taylor was absent. Also present were County Manager, William P. Wilson Jr., Assistant County Manager, Eric Mosley, Zoning Attorney, Newton Galloway, County Attorney, Jim Fortune, Magistrate Court Judge, Rita Cavanaugh, Community Development Director, Chad Jacobs Michael Heath, Code Enforcement, James Green, Code Enforcement and Kathy Gibson, Executive Secretary to record the minutes.

A. OPENING (CALL TO ORDER) by Chairperson Rita Johnson.

B. INVOCATION led by Chairperson Rita Johnson.

C. PLEDGE TO FLAG led by Commissioner Bart.

D. AGENDA ITEMS

1. Discussion of enforcement of the substandard housing ordinance adopted by the Board on January 5, 2015.

Chad Jacobs, Community Development Director, gave an overview of Residential demolition permits in Spalding County broken down by year and housing type since 2011. Mr. Jacobs stated that the Grand Total of 146 may be a little deceiving in that it represents the number of demolition permits issued from 2011 to the current date in 2015. However, the number may not reflect the number of housing units. Mr. Jacobs stated that if an owner wishes to demolish more than one structure on a single piece of property, one permit can cover the demolition of multiple structures if they are all being demolished at the same time and the inspector is only required to visit the property one time.

Mr. Jacobs advised that out of the 114 Manufactured Homes demolished since 2011, 94 of these were substandard and had to either tracked or managed by the Community Development Department in that capacity. He also stated that out of the 92 Single Family Homes demolished to date, 24 were In Rem properties. Currently there are 7 properties remaining that have been through some form of the In Rem process and are yet to be demolished.

Mr. Jacobs stated that out of the 206 residential properties demolished since

2011, Community Development has played a direct role in removal of 118+ of these structures.

Mr. Jacobs stated that he had spoken to Yusuf Ali, Manager of American Logistics International, Inc. who handle the asbestos abatement for the City of Griffin. According to Mr. Ali, the average for price for cost analysis is \$350-400 per house just to have an analysis done. Mr. Jacobs stated that for each home to be demolished we are looking at an additional \$300-\$400 for an analysis then depending on the degree of asbestos, the cost to abate can range from approximately \$350 to \$3500 abatement based on the properties he has already analyzed for the City of Griffin.

Mr. Jacobs advised that moving forward things that Community Development will have to deal with and form some type of strategy to handle:

- Funding
- Asbestos Abatement
- Search Warrants?
- Begin Targeting Dense Neighborhoods/Areas of Blight
- Leveraging of Resources:
 - Griffin Spalding Housing Authority
 - Urban Redevelopment Plans.

Chairperson Johnson asked if the Commissioners could get a list by District of the homes currently needing demolition.

Mr. Jacobs advised that he would get with Brian Haynes with the City of Griffin who handles the County's GIS system and pull together a map by District.

Mr. Jacobs advised that Community Development is doing everything possible to maximize the taxpayer dollars and get as many demolitions as they can for the amount of money allotted for demolitions.

Newton Galloway, Zoning Attorney, advised that if the Land Bank has an equitable position in a property it facilitates transfer and demolition of the property making it easier and less expensive. Mr. Galloway stated that Land Bank is the only entity under state law that can basically convey a piece of property and extinguish an existing lien. Which means that a prospective purchaser can pay a reasonable price and make an economic decision to acquire and use the property.

Commissioner Ray asked if asked if the Board should consider requesting funding for demolition of substandard housing in the 2015 SPLOST. He added that we are talking \$600-\$800,000 for the 50 to 60 homes currently in need of demolition that will be coming out of the operating budget. If we can add \$1-2M to the SPLOST for this activity, it would reduce the expense on the budget.

Mr. Wilson advised that on the 2014 SPLOST the City of Griffin included \$3M for demolition of substandard housing. However, this would have to be a pay-as-you go project because we couldn't stop all of the other projects to channel the funds for a demolition, so the demolitions would have to occur as the funding becomes available.

Mr. Galloway advised that Planning & Zoning had given authorization to look at coming forward with a Foreclosure Registry that is pursuant to the State statute. He stated that would be a mechanism which would list the foreclosed properties and give the County some authority to impose some maintenance responsibilities on the lender who is holding the property.

Commissioner Hawbaker mentioned that Macon Bibb County is doing demolition to substandard housing through a CDBG grant. He asked if Mr. Jacobs had heard anything with regard to a CDBG grant.

Mr. Jacobs advised that those grants are usually tied to an Urban Redevelopment Plan. He stated that a boundary for an area can be established and you can apply for what is called a "Housing Block Grant". The problem with this is that you have to identify areas that have a lot of "Fee Simple" ownership if there are rental properties this doesn't work.

Mr. Jacobs stated that you have to identify an area with a lot of Fee Simple ownership and work with the community to designate it as deteriorating or dilapidated and then you note that on the boundary area. These properties then qualify for a low interest loan to rehab the home.

Mr. Jacobs stated that the County could put a development plan together and put the plan in place whether or not we decide to go for a CDBG the plan could be in place. That way we could go after a grant when the time is right. The URP would be tied to a certain area of the County. Mr. Jacobs stated that he would pull together an area for a URP and present it to the Board at a future workshop for consideration.

Mr. Wilson advised that Mr. Galloway had sent the Board a case regarding search warrants and substandard housing. He stated that the need for search warrants was one of the major questions before the Board this morning.

Mr. Galloway stated that Mr. Jacobs had asked him address the question of Search Warrants and to provide the Board with a procedure to obtain a Search Warrant in the context of a housing or code violation. He stated that he did not know the purpose of the request, but what he has provided is a U.S. Supreme Court's case regarding this issue. He advised that this case would tie in with the County's designation of a specific code area.

Mr. Galloway advised that the Supreme Court held in the context of a code violation, a substandard housing code inspection, is a search and seizure under the fourth amendment for which either consent by the property owner or an emergency

condition exists or a warrant is required. However, it also says that the process for this is not as complex as in a true criminal case, the standard is not as stringent or probable cause as in a true criminal case and that is because of the County's public safety, health and welfare interests in insuring that it's property is maintained to code. This case actually sets out a requirement: *"if a valid public interest justifies the intrusion contemplated then there is probable cause to issue a suitably restricted search warrant. Such an approach neither endangers time-honored doctrines applicable to criminal investigations nor makes a nullity of a probable cause requirement in this area. It merely gives full recognition to the competing public and private interests here at state and, in so doing, best fulfills the historic purpose behind the constitutional right to be free from unreasonable government invasions of privacy."* He continued: *"Since our holding emphasizes the controlling standard of reasonableness, nothing we say today is intended to foreclose prompt inspections, even without a warrant that the law has traditionally upheld in emergency situations."* Further the ruling stated *"...it seems likely that warrants should normally be sought only after entry is refused unless there has been a citizen complaint or there is other satisfactory reason for securing immediate entry. Similarly, the requirement of a warrant procedure does not suggest any change in what seems to be the prevailing local policy, in most situations, of authorizing entry, but not entry by force, to inspect."*

Mr. Galloway stated that the record in this particular case showed that when someone was called in the County for purposes of Code Enforcement as a general rule they cooperated. Once they consented that abates the requirement of law. However, if Code Enforcement feels that a structure does not meet minimum housing codes, but the owner objects to having it inspected to make sure that it complies with our substandard housing code, then after making that inquiry, it would be appropriate for someone in Community Development to approach the Magistrate Court to get a warrant based on County policy and the interest of making sure that it's housing stock is up-to-code have the warrant issued to go do the inspection.

Mr. Galloway stated that when the Spalding County Ordinance was drafted it was based on the City of Atlanta Housing Code because that was determined to be the most objective code that we could find. The code had very specific criteria to distinguish between whether a property was a nuisance or was unsuitable for habitation. The current ordinance does not have a provision for a warrant or a search procedure. We have investigated and researched and made the determination that we need to add this to the code.

Mr. Galloway stated that there is a warrant process requirement if the owner doesn't consent or if it is not an emergency, but it is not as stringent a standard to show probable cause for Code Enforcement as if you go and report someone stealing a car.

Judge Rita Cavanaugh, Spalding County Magistrate Court, expressed her concern over whether there wasn't some confusion regarding search warrant and inspection warrants.

Both Mr. Galloway and Jim Fortune, Spalding County Attorney, stated that once you enter a home against the inhabitant's will, no matter what you call it, it is a search and it has to have judicial overview.

Judge Cavanaugh added that under Georgia Law only a Certified Law Enforcement Officer can take a search warrant. When you read Georgia Law and Procedure it plainly states that only a Certified Law Enforcement Officer can take out a search warrant, based on probable cause that a crime has been committed or is being committed.

Mr. Jacobs stated that his intention is to put in place a policy in case the need should arise and a search warrant needs to be acquired.

Judge Cavanaugh stated that we have provisions in place for inspections warrants and we have issued inspection warrants. A Magistrate Court can issue an inspection warrant to the Department of Agriculture for an animal violation to the Commissioner or the Commissioner's designee. We can issue inspection warrants for fire violations to the Fire Inspector or Marshall. We can issue inspection warrants for violations of game and fish to a game and fish officer. However, with regard to health violations, an inspection warrant can only be issued by a Superior Court Judge.

Mr. Galloway stated that he had not researched who can issue the warrant under Georgia Law, but the standard applicable that we have to meet under the U.S. Constitution says that you have got to get approval if you do not have consent or evidence of an emergency.

Mr. Fortune stated that he would research and come back to the Board with who can serve under Georgia Law.

Chairperson Johnson recessed the meeting at 10:35 a.m. for five minutes.

Chairperson Johnson reconvened at the meeting 10:40 a.m.

2. Discussion of draft truck parking ordinance.

Mr. Jacobs advised that a draft ordinance had been prepared at the request of the Board after receiving complaints of large tractor trailer type vehicles being parked in residential areas.

Mr. Galloway stated that the Ordinance is drafted to be divisible should the Board decide to adopt only sections of the Ordinance. He stated that they looked at the

current code to see where truck parking was addressed. What you have before you is a new section to address parking of tractor trailer rigs in either residential zoned or residentially used property.

Mr. Galloway then stated that in paragraph 1 of the proposed Ordinance it states:

“No person, firm or corporation shall park, deposit, store, keep or permit to be parked, deposited, stored or kept in the open a truck or delivery vehicle having more than six (6) wheels or having an over-all length in excess of thirty (30) feet on any parcel which is zoned for residential and/or agricultural use under the Spalding County Zoning Ordinance or residentially used irrespective of the zoning district applied to the parcel under the Spalding County Zoning Ordinance.”

He further stated that paragraph 2 mirrors the Junk Car Ordinance already in place for the County which states:

“Any truck or delivery vehicle having more than six (6) wheels or having an over-all length in excess of thirty (30) feet which is parked, deposited, stored or kept on any parcel which is zoned for residential and/or agricultural use under the Spalding County Zoning Ordinance or residentially used irrespective of the zoning district applied to the parcel under the Spalding County Zoning Ordinance shall be located in the rear yard (as defined in Section 202(WWW) of the Spalding County Zoning Ordinance) of the residence located on the parcel and fully and completely enclosed to prevent it from being seen from any public street or from any other private property owned by anyone other than the parcel’s owner.”

Mr. Galloway stated that this would apply in an AR zone and irrespective of size of tract. His concern is if you have a large acre tract, should you be prohibited from having a truck on it. If you have a farm operation, that could be part of a farm operation. There is no easy way to determine the enforcement of the Ordinance, the bottom line as stated is if you park a truck over 6 wheels or having an overall length of 30 feet this ordinance says it is illegal unless you build an enclosure.

Mr. Jacobs expressed his concern over a homeowner in Spalding County who runs a business out of his home not being able to park his business vehicle at his home because of the restrictions of the Home Occupation License. However, a neighbor who works for a company performing the same service is allowed to park his vehicle in the neighborhood unrestricted because he is working for someone else.

Commissioner Miller stated that he only has a problem with trucks being parked in the front yard of a residence. If the property owner has acreage and can put the truck in the back yard then he has no problem with the resident parking the truck on his property enclosed or not enclosed, but it needs to be placed in the back yard of the residence.

Mr. Jacobs then asked if we need to look at the Home Occupation license which specifically states that only passenger vehicles can be used in a Home Occupation type business. If we are going to allow trucks in residential neighborhoods we are going to have to address this issue under the Home Occupation licensing as well.

Mr. Fortune stated that the Board is going to have to give parameters on how far they want to go with this ordinance.

Commissioner Miller advised that he could not tell a citizen who has been parking his truck on his property for years that he can't park it on his property any longer. He stated that he is willing to tell him that he has to move it to the back of the property and out of the front yard, but it's not right to tell him that he can't park it on his own property.

Commissioner Ray stated that he doesn't have a problem with the Ordinance, but in doing this if the citizen can facilitate parking in the back of their home or further back on the property they should be allowed to do so. He further stated that on smaller acreage this would not be appropriate but if the property is 3 acres or more then the truck should be parked on the back side of the house. Limit all vehicles to the back yard. Less than 3 acres will have to have an enclosure.

Mr. Jacobs stated that this only solves part of the problem, if you drive for a company, you can park your truck in the back yard; however, if you have a home occupation, you are prohibited from doing so. We need to have some direction on this situation. Home Occupation states that you cannot have anything tied to the business that is larger than a passenger vehicle.

Mr. Galloway stated that he would redraft the ordinance based on the discussion during the meeting today.

E. ADJOURNMENT

***Motion/Second by Miller/Ray to adjourn the meeting at 11:02 a.m.
Motion carried unanimously by all.***