

**MINUTES OF PUBLIC HEARING/COMPREHENSIVE PLAN
COBB COUNTY BOARD OF COMMISSIONERS
JANUARY 21, 2025
9:00 A.M.**

The Board of Commissioners' *2025 Comprehensive Plan and Future Land Use Amendments Public Hearing* was held on Tuesday, January 21, 2025, at 9:00 a.m. in the second-floor public meeting room of the David Hankerson Building, Marietta, Georgia. Present and comprising a quorum of the Commission were:

Chairwoman Lisa Cupid
Commissioner Keli Gambrill
Commissioner Jerica Richardson
Commissioner Monique Sheffield

Commissioner JoAnn Birrell – not present

CHAIRWOMAN CUPID – CALL TO ORDER

Chairwoman Cupid called the hearing to order at 9:02 a.m.

**CONDUCT THE PUBLIC HEARING REGARDING THE 2025
COMPREHENSIVE PLAN AND FUTURE LAND USE AMENDMENTS –
COMMUNITY DEVELOPMENT**

Mr. Phillip Westbrook, Community Development Senior Planner, explained the procedures regarding the public hearing and provided information regarding the 2025 Comprehensive Plan and Future Land Use Amendments. The following documents are on file in the Office of the County Clerk:

- *2025 Comprehensive Plan and Future Land Use Amendments*
- Memo from Mr. Phillip Westbrook dated January 8, 2025, *which contains the recommendations made by the Planning Commission at their public hearing held on January 7, 2025, for the proposed amendments.*

Commissioner Gambrill asked that the following statement she submitted at the 1/14/2025, Board of Commissioners' meeting be attached to each vote taken at today's hearing (attached and made a part of these minutes).

Welcome to Cobb County's J6!

Considering laws in totality means analyzing and interpreting a set of laws as a whole, taking into account how different laws interact and affect each other, rather than looking at them individually; it essentially involves evaluating the cumulative impact of all relevant legal provisions on a particular situation or issue.

With no vote of the Board or judicial determination, the County Attorney's office has taken the position that one commissioner is now considered "de-facto" and can continue to serve until their successor is elected – if they so choose to do so. There are no Georgia laws that govern de-facto status but has only been awarded by judges based on legal challenges. While the county attorney's office contends there is case law to support

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Commissioner Gambrill's statement (cont.)

a commissioner continuing to serve until a successor is elected, they continue to violate the equitable estoppel doctrine which prevents one from asserting a claim or right that contradicts what one has said or done before, or what has been legally established as true.

The Home Rule Resolution precipitated an illegal action through the act of three Commissioners and has been ruled Unconstitutional multiple times. Two former commissioners, with good intentions, are seated here today, even though their terms have expired, and the State of Georgia no longer recognizes them as qualified, elected officials.

The Home Rule Resolution enabled the Board to avoid violating our State Enabling Legislation and allow a commissioner to serve while not residing within the district. This set off two years of legal challenges and ended with the primary election being invalidated due to an unconstitutional map used for qualifying and voting – yet the very commissioner this Resolution was set in place to protect, did not re-qualify to serve in this position, claiming higher aspirations. In a recent hearing, which is now being appealed, it was argued that the Georgia Legislature violated a constitutional procedure - then why was a legal challenge not taken against the State and Georgia General Assembly? Why did the county have to expend an unknown amount of taxpayer dollars to placate a novel concept that just removed an unqualified commissioner later than anticipated – all thanks to the county attorney's office fight to defend an individual commissioner – not an office. OCGA 16-10-4 addresses this.

OCGA 1-3-11 "No office to which a person has been elected shall be abolished nor the term of the office shortened or lengthened by local or special act during the term for which such person was elected...." Because of the unconstitutional Home Rule Resolution, the Chair of the Board of Commissioners is now extending the term of commissioners, compensating them with taxpayer dollars which could be considered a gratuities violation as the Board of Commissioners has not voted to approve such members to serve, and the State does not recognize them as qualified, elected officials to serve in this capacity.

The Chair is refusing to enact Sec. 2-31 Voting when vacancy exists in two or more posts. And while the county did seek the opinion of an outside attorney as to carry over, this opinion is currently being challenged in Federal Court, and last year, the Georgia Legislature modified the term of the Public Service Commissioners to coincide with the newly ordered election. Maybe this is because OCGA 45-2-1 Eligibility and Qualifications for Office, (8) All persons who are constitutionally disqualified for any cause. No legislative action has been taken to enable these commissioners to extend their terms beyond the legislated four years.

On January 10, 2023, I was wrongfully removed from this Dias for not saying a word, only abstaining from voting as the Board was acting in an unconstitutional manner – to which the courts have now concurred. Interesting enough, the County Attorney stated to the Chair I had to be removed from the meeting, however, the law states from just that agenda item. Here we sit today, the county attorney refusing to provide direction that is not in conflict and a Chair who is allowing this to continue. While I am being expected to

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Commissioner Gambrill's statement (cont.)

participate in a potentially illegal meeting as if nothing unconstitutional occurred, now with individuals serving beyond their legal power or authority, also known as ultra vires, I would like the clerk to record this statement with each and every vote going forward starting January 13, 2025, so as not to be in violation of OCGA 45-11-10.

OCGA 16-10-4 (b) Any officer or employee of a political subdivision who asks for or receives anything of value to which he or she is not entitled in return for an agreement to procure or attempt to procure the passage or defeat the passage of any legislation by the legislative body of the political subdivision of which he or she is an officer or employee shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than \$100,000.00 or by imprisonment for not less than one nor more than five years, or both.

Amended by 2010 Ga. Laws 680, § 24, eff. 1/10/2011.

OCGA 1-3-11 No office to which a person has been elected shall be abolished nor the term of the office shortened or lengthened by local or special Act during the term for which such person was elected unless the same shall be approved by the people of the jurisdiction affected in a referendum on the question.

Sec. 2-31. - Voting when vacancy exists in two or more posts. *Notwithstanding any other provisions of law to the contrary, in the event of a vacancy in two or more of the commissioner posts, a majority vote of the members present at the meeting shall be sufficient for the commission to take official action, provided that the chairman or the acting chairman has declared that an emergency exists or that there exist exigent circumstances requiring emergency action by the remaining members. (1992 Ga. Laws (Act No. 694), page 5180, § 1)*

OCGA 45-2-1 The following persons are ineligible to hold any civil office; and the existence of any of the following facts shall be a sufficient reason for vacating any office held by such person; but the acts of such person, while holding a commission, shall be valid as the acts of an officer de facto, namely: (8) All persons who are constitutionally disqualified for any cause. All officers are eligible for reelection and reappointment and to hold other offices, unless expressly declared to the contrary by the Constitution or laws of Georgia.

OCGA 45-11-10 - Coercion of other officer or employee to give anything of value for political purposes.(a) It shall be unlawful for any officer or employee of this state to coerce or attempt to coerce or command directly or indirectly any other state officer or employee to pay, lend, or contribute any part of his salary or to kick back any sum of money or anything else of value to any party, committee, organization, agency, or person for political purposes.(b) It shall be unlawful for any officer or employee of any county, municipal corporation, school district, or other political subdivision to coerce or attempt to coerce or command directly or indirectly any other officer or employee of such political subdivision to pay, lend, or contribute any part of his salary or to kick back any sum of money or anything else of value to any party, committee, organization, agency, or person for political purposes.(c) Any person who violates any provision of this Code section shall be guilty of a misdemeanor. OCGA § 45-11-10

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ZONING DECISIONS (ZDs)

Mr. Westbrook read all the *proposed* Zoning Decision (ZDs) amendments into the record. Of the *proposed* ZDs, the following amendments were considered and voted on concurrently as there were no public comments or commissioner concerns brought forward. Thereafter, the following motion was made:

MOTION: Motion by Cupid, second by Richardson, to **approve** ZD-1 through ZD-5, *as presented*:

- ZD-1** (Z-38 of 2023) request from LDR to MDR for property located on the west side of Spring Hill Road and on the south side of Simpson Road. (Commission District: 2)
- ZD-2** (Z-1 of 2024) request from NAC and LDR to NAC for property located on the east side of Mableton Parkway and on the north side of Community Road. (Commission District: 4)
- ZD-3** (Z-12 of 2024) request from MTC-MDR to MTC-NAC for property located on the east side of Floyd Road and on the south side of Ayres Road. (Commission District: 4)
- ZD-4** (Z-13 of 2024) request from MDR to PI for property located at the west side of Cooper Lake Road, north of Daniel Street. (Commission District: 2)
- ZD-5** (Z-36 of 2024) request from RAC-rs to RAC-hdr for property located on the southeast side of Lodge Road, east of Greers Chapel Road. (Commission District: 2)

VOTE: **ADOPTED** 3-1, Gambrill opposed and Birrell not present (*Statement previously submitted by Commissioner Gambrill is attached and made a part of these minutes.*)

Mr. Westbrook read ZD-6 back into the record as it was pulled for discussion by Commissioner Richardson and voted on separately.

- ZD-6** (Z-15 of 2023 – Approved in 2024) request from CAC to HDR for property located on the southside of Chastain Road, on the west side of Chastain Meadows Parkway. (Commission District: 2)

Discussion ensued and the following motion was made:

MOTION: Motion by Richardson, second by Sheffield, to **deny** ZD-6.

VOTE: **ADOPTED** 4-0, Birrell not present (*Statement previously submitted by Commissioner Gambrill is attached and made a part of these minutes.*)

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COMMISSIONER PROPOSALS (CPs)

Mr. Westbrook read all the *proposed* Commissioner Proposals (CPs) amendments into the record. Of the *proposed* CPs, the following amendments were considered and voted on concurrently as there were no public comments or commissioner concerns brought forward. Thereafter, the following motion was made:

MOTION: Motion by Cupid, second by Richardson, to **approve** CP-1-1A through CP-4-2, *as presented*:

- CP-1-1A** Request from LDR to PI for property located on the west side of Campus Loop Road, north of Chastain Road. (Commission District: 1)
- CP-1-1B** Request from RAC-rs and RAC-off to RAC-pi for property located on the west side of Busbee Drive, north of Big Shanty Road. (Commission District: 1)
- CP-1-1C** Request from PIA to PI for property located on the east and west sides of Chastain Road, west of Town Point Drive and south of Big Shanty Road. (Commission District: 1)
- CP-1-1D** Request from NAC to PI for property located on the east side of Campus Loop Road and north of Big Shanty Road. (Commission District: 1)
- CP-1-2** Request from RAC-rs to CAC for property located on the west side of Greers Chapel Road, south of Ernest Barrett Parkway. (Commission District: 1)
- CP-1-3** Request from PIA to PRC for property located on the west side of Barrett Lakes Boulevard, north of Cobb Place Boulevard. (Commission District: 1)
- CP-1-4** Request from LDR to PI for property located on the west side of Powder Springs Road, south of County Services Parkway. (Commission District: 1)
- CP-3-1** Request from MDR to LDR for property located on the east side of Alabama Road, north of Lindsey Way. (Commission District: 3)
- CP-3-2** Request from NAC w/SAPG to NAC for property located on the west side of Johnson Ferry Road, north of Paper Mill Road. (Commission District: 3)
- CP-4-1** Request from NAC to LDR for property located on the south side of Perkerson Mill Road, west of Austell Road. (Commission District: 4)

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COMMISSIONER PROPOSALS (CPs) (CONT.)

CP-4-2 Request from NAC to LDR for property located on the north and south sides of Evergreen Drive and Warren Drive, west of Austell Road. (Commission District: 4)

VOTE: **ADOPTED** 4-0, Birrell not present (*Statement previously submitted by Commissioner Gambrill is attached and made a part of these minutes.*)

Mr. Westbrook read CP-4-3 back into the record as it was pulled for discussion and voted on separately.

CP-4-3 Request from MDR to LDR for property located on the west side of Cooper Lake Road, north of Veterans Memorial Highway. (Commission District: 4)

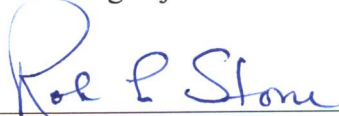
The public hearing was opened, and James Rosich addressed the Board. Thereafter, the following motion was made:

MOTION: Motion by Cupid, second by Sheffield, to **approve** CP-4-3, as presented.

VOTE: **ADOPTED** 4-0, Birrell not present (*Statement previously submitted by Commissioner Gambrill is attached and made a part of these minutes.*)

ADJOURNMENT:

The hearing adjourned at 9:42 a.m.



Robin L. Stone, Deputy County Clerk
Cobb County Board of Commissioners