

WHITE COUNTY BOARD OF COMMISSIONERS

MINUTES OF THE CALLED MEETING HELD

WEDNESDAY, DECEMBER 1, 2010 AT 1:00 P.M.

On Wednesday, December 1, 2010 at 1:00 p.m. the White County Board of Commissioners held a Called Meeting in Courtroom Two of the White County Courthouse. Present at the meeting were: Chairman Travis Turner, Commissioner Craig Bryant, County Manager Carol Jackson, County Attorney David Syfan, and County Clerk Shanda Smallwood. Commissioner Joe Campbell was not in attendance.

Chairman Turner called the meeting to order.

Chairman Turner stated the Board of Commissioners would be holding a dangerous dog classification hearing as initiated by White County Animal Control and requested by Scott Summerhour.

Chairman Turner asked Pat Cooper, Animal Control Supervisor, to provide a summary of the case before the Board of Commissioners.

Ms. Cooper stated the case was in reference to an 85 lbs. pit bull named "Duke" which is owned by Scott Summerhour. She explained that the animal is very aggressive and had, on two occasions in the past 18 months had gone onto neighboring property, attacked other property owners' animals, and had bitten neighbors. She stated she spoke with Mr. Summerhour following the first incident; however Mr. Summerhour could not maintain control of his animal. Ms. Cooper presented the Board with copies of the neighbor's hospital bills, veterinary bills for the treatment of the animal Duke had attacked, and photographs of the injuries.

Ms. Cooper stated that her recommendation was for the animal (Duke) to be declared a dangerous dog under the White County Code; thereby forcing Mr. Summerhour to comply with the requirements of the ordinance.

Chairman Turner asked Mr. Scott Summerhour to come forward to present any information which he had as to why the animal in question should not be declared dangerous.

Mr. Summerhour stated his name and address for the record – with his current address being 141 Roxy Drive Cornelia, GA. Mr. Summerhour stated the dog had died approximately three (3) weeks ago and presented photographs to the Board of Commissioners accordingly.

Chairman Turner asked that Pat Cooper visit the property where the dog is buried in White County to confirm this information – he summarized stating that if the animal is deceased that the matter is a moot point; however if the animal is ever located in White County at a future date that the guidelines of the ordinance are to be followed, with Animal Control confiscating the animal for euthanization.

Chairman Turner opened the floor for the next item on the agenda – being an appeal filed by Keck's Yonah Brews, LLC relative to the denial of a retail package license by the White County Alcohol Beverage Commission on September 24, 2010.

Chairman Turner asked Attorney Jim Weidner to present the appeal information to the Board.

Mr. Weidner stated he was representing K&M Endeavors, LLC – the current correct legal name of the company- as a matter of this appeal. He provided a certificate of the name change of the organization to the Board of Commissioners. He reviewed the appeal documents submitted to the Board of Commissioners and stated he would be reviewing the three reasons which were the basis of the denial of the license: the establishment not being considered a retail establishment, issues with the driveway, and questions regarding training of employees. Mr. Weidner stated that the ordinance details many things an establishment cannot be – however there are no guidelines for what an establishment can be and his client's plan was to open beer & wine store along with the automotive repair shop that had already been in operation for a number of years. He presented an email from the Georgia Department of Transportation stating that there were no issues with the driveway at the establishment – which enters off of State Highway 75 – as well as a training affidavit signed by his client at the time of application to the ABC. Mr. Weidner presented a first amendment to the appeal, which was filed on October 25, 2010, as a result of the minutes of the September 24, 2010 being amended, the name change of the LLC from

Keck's Yonah Brews to K&M Endeavors, LLC, and the revised occupational license issued as a result of the revised LLC structure. Mr. Weidner concluded that all issues noted in regards to the denial of the license were either not an issue to begin with (i.e. driveway) or had been corrected since the time of the decision.

County Attorney David Syfan stated that he would be presenting supplemental information for the record for the Board of Commissioners consideration as allowed by the alcohol ordinance. Mr. Syfan asked to call Mr. Peter Keck for cross examination in the matter of the appeal. Following the swearing of Mr. Keck Mr. Syfan proceeded with the cross examination by confirming the following exhibits as these were submitted for the record:

1. The application for retail dealer package license as submitted on behalf of Keck's Yonah Brews LLC on August 31, 2010;
2. White County, Occupational License issued July 16, 2010 (start date August 15, 2010) to Keck's Yonah Brews, LLC for retail beer & wine;
3. A copy of the lease for the property location of the business between Barbara Westmoreland, Executor of the Estate of Jere Westmoreland, and Nelson Mark Keck and Peter Thomas Keck;
4. A newspaper article from the September 30, 2010 edition of the White County News regarding the denial of the license and in which Mr. Peter Keck stated he had not been aware of the required 60/40 sales ratio stated in the alcohol ordinance;
5. A reference provided for Mr. Peter Keck by Mr. Jeff Zerby;
6. A reference provided for Mr. Peter Keck by Ms. Monda Dodge;
7. A reference provided for Mr. Peter Keck by Mr. Ralph Hofer;
8. State of Georgia, Certificate of Organization of Yonah Brews LLC dated March 31, 2010;
9. State of Georgia, Certificate of Amendment of Keck's Yonah Brews LLC dated June 17, 2010;
10. State of Georgia, Certificate of Amendment of K&M Endeavors LLC dated October 6, 2010;
11. White County, Occupational License issued October 22, 2010 (start date February 3, 1997) for K&M Endeavors LLC;
12. State of Georgia, Sales Tax Certificate of Registration for Keck's Yonah Brews LLC with the NAICS listed as Beer, Wine, Liquor and no secondary code listed;
13. A photograph of the exterior of the business location;
14. Sign permit application filed by Peter Keck for Keck's Yonah Brews dated August 30, 2010;
15. Sign permit application filed by Nelson Keck for Keck's Auto Repair dated October 13, 2010;
and
16. The White County Alcoholic Beverage Ordinance as amended October 4, 2010.

During cross examination Mr. Peter Keck reviewed each exhibit and confirmed the content – only noting the September 30, 2010 newspaper article contained quotes which were in error and that some changes had been made to the exterior of the building since the photograph which was submitted by Mr. Syfan. Mr. Keck in turn submitted a photograph of the current exterior.

Mr. Weidner reemphasized his initial statement that if there were errors made along the way by Mr. Keck in the organization and submission of his application to the ABC – these have been corrected and if the establishment did not meet the required 60/40 sales ratio the Board of Commissioners has the authority to revoke the alcohol license.

Commissioner Bryant asked Mr. Peter Keck to confirm that one of the garage bays was being omitted on the building to open up additional retail space and there would be a dividing wall between the retail space and the auto repair area. Mr. Keck confirmed this to be correct. Commissioner Bryant further asked if Mr. Keck truly believed that the auto repair (retail sale of parts, not including labor) business could sustain the 60% of required sales. Mr. Keck said he was not certain, however he was hopeful. Chairman Turner asked if the license was not granted, would Mr. Keck continue to pursue the development of the business. Mr. Keck stated that he would like to continue pursuing this regardless of whether the license was issued or not.

Chairman Turner asked Ringo McCollum, Chief Building Official, if the staff had verified the distances from the surrounding residences met the ordinance requires. Mr. McCollum confirmed this had been done and the requirements were met.

David Syfan highlighted the portions of the ordinance submitted to the record, which applied to the appeal – page 8, definition of retail – page 9, section 6-32, page 10, and section 6-41(b), page 29, section 6-105.

Mr. Syfan submitted to the Board of Commissioners that the evidence which was submitted into the record demonstrated misstatements, possibly false statements were made in the filing of the application – which would be grounds for the denial of the license.

Mr. Syfan made a recommendation to the Board of Commissioners that the Board entertain a motion to deny K&M Endeavors appeal for a retail package dealer license based on the application not being in conformance with the Alcohol Ordinance, misstatements made within the application filed, applicant demonstrating an attempt not to meet the required 60/40 sales ratio, and the location would be contrary to the public interest and welfare of the community.

Mr. Weidner stated for the record that he believe the Alcohol Ordinance submitted for the record was inapplicable based on revisions being made after the application was filed.

Mr. Syfan stated that if Mr. Weidner was asking for revisions made by K&M Endeavors LLC f/k/a Keck's Yonah Brews after the application was submitted to be considered by the Board of Commissioners, this action opens the door for the Board of Commissioners to apply the ordinance as revised on October 4, 2010. Further, Mr. Syfan stated the October 4, 2010 amendment did not change the substance of the ordinance – it merely clarified the intent of the ordinance.

Norma Miller, Peter Keck's grandmother, stated she had invested a great deal of money in this business project in an effort to help her family during difficult economic times and if the Board of Commissioners did not choose to grant the requested license that this action would be devastating to her an her family. She requested that the Board of Commissioners grant the appeal and if the requirements of the ordinance were not met – that the license would be revoked. Ms. Miller further stated that any mistakes made in the process were not intended to be dishonest; however were mistakes made unknowingly. Ms. Miller stated there was also an educational consulting business which was part of K&M Endeavors – however she understood that would not be considered in the sales ration since it is not retail sales.

Mr. Weidner stated the Board of Commissioners may need to take some time to review all the information provided to them and that his client was in understanding if that was the case.

Upon a motion made by Commissioner Bryant, seconded by Chairman Turner there was a unanimous vote to postpone the decision regarding the appeal until the next scheduled meeting on Monday, December 6, 2010.

Upon a motion made by Commissioner Bryant, seconded by Chairman Turner there was a unanimous vote to adjourn the Called Meeting.

The minutes of the December 1, 2010 Called Meeting of the White County Board of Commissioners are hereby approved as stated this the 6th day of December 2010.

WHITE COUNTY BOARD OF COMMISSIONERS

s/Travis C. Turner
Travis C. Turner, Chairman

s/Joe R. Campbell
Joe R. Campbell, Post 1

s/Craig Bryant
Craig Bryant, Post 2

s/Shanda Smallwood
Shanda Smallwood, County Clerk