

WHITE COUNTY BOARD OF COMMISSIONERS

MINUTES FROM REGULAR MEETING HELD

OCTOBER 2, 2007, AT 4:30 P.M.

The White County Board of Commissioners met in a regular session at 4:30 P.M. in the Grand Jury Room of the White County Courthouse, Cleveland, Georgia. Present were: Chairman Chris R. Nonnemaker, Post 1 Commissioner Joe R. Campbell, Post 2 Commissioner Craig Bryant, Chief Financial Officer Vickie Neikirk, and County Clerk Jean Welborn.

Chairman Nonnemaker called the meeting to order. After the pledge to the flag, Dean Dyer brought the invocation.

Upon motion made by Commissioner Bryant, seconded by Commissioner Campbell, the minutes from the Regular Meeting held September 4, 2007 and the Called Meeting held September 24, 2007 were unanimously adopted.

The Board of Commissioners recognized Melisa A. Fincher, R. N. with District 2 Public Health, upon her receipt of the prestigious “**Maggie Kline Award.**”

The Board of Commissioners declared the week of October 21, 2007 as “**Red Ribbon Week in White County.**”

The Board of Commissioners declared the week of October 7 through October 13 as “**DECA Club Week in White County.**”

Under the Consent Agenda, and upon motion made by Commissioner Campbell, seconded by Commissioner Bryant, the execution of the proposed Joint Use Agreement with Sautee Nacoochee Community Association for use of its facilities was unanimously adopted.

Commissioner Bryant reported on the Bean Creek Water Project. Commissioner Bryant stated that the contract for laying the lines was for 120 days; that the completion date was supposed to be MLK, Jr. Day in January, 2008; that they had a petition circulating in the Bean Creek Community to determine who would want the water meters; that there were some who did not want to tie into the water lines.

Vickie Neikirk, White County Chief Financial Officer, gave the monthly financial report (see copy attached). Upon motion made by Commissioner Campbell, seconded by Commissioner Bryant, the report was unanimously accepted.

Concerning the awarding of a bid on the replacement of ceiling tiles in a portion of the lower level of the Allen Mauney Community Center; the awarding of the bid on the cleaning of a portion of the duct work in the lower level of the Allen Mauney Community

Center; and the awarding of a bid on the replacement of carpet in a portion of the lower level of the Allen Mauney Community Center, Chairman Nonnemaker stated that they did not have bids on these things at this time; that they had received a status report by email; that Sherrill Dockery's office was complete as of this afternoon; that the dry wall had been completed; that the room had been painted and the carpet had been replaced; that the Fire Department's office was next; that all the ceiling tiles were going to be done by Simco; that it all should be done by next week; that the duct cleaning was going to be about \$1500; that everything was going well over there. Vickie Neikirk asked from where these expenditures would be funded. Chairman Nonnemaker responded that it would have to be from contingency because it was not something that was planned. Vickie Neikirk asked if she should go ahead with a budget amendment or wait until all the amounts were determined. Chairman Nonnemaker stated that they could wait until the project was finished.

Upon motion made by Commissioner Campbell, seconded by Commissioner Bryant, the required publications and public hearings on proposed abandonment of a portion of Poplar Stump Road on Forest Service Property and Tray Mountain Road from Chimney Mountain Road to the end of County Maintenance were unanimously authorized.

Upon motion made by Commissioner Bryant, seconded by Commissioner Campbell, the following Resolution was unanimously adopted:

“WHITE COUNTY BOARD OF COMMISSIONERS

RESOLUTION NO. 2007-33

A RESOLUTION TO AMEND THE OFFICIAL CODE OF WHITE COUNTY, GEORGIA, CHAPTER 10, ARTICLE IV, DOGS; ARTICLE V, DANGEROUS DOG CONTROL; ARTICLE VI, COUNTY ANIMAL PROTECTION CODE; ARTICLE VII, HUMANE CARE OF EQUINES, ARTICLE VIII, STERILIZATION OF DOGS AND CATS IN SHELTERS, ARTICLE X, PENALTIES; ARTICLE XI, VICIOUS DOGS; AND ADDING ARTICLE XII, ATTACK OR GUARD DOGS

WHEREAS, the White County Board of Commissioners wishes to revise a portion of the Official Code of White County as it relates to animals as hereinafter set out;

NOW THEREFORE, BE IT RESOLVED by the County Commissioners of White County, and it is hereby resolved by authority of the same, that the regulations be revised as follows:

CHAPTER 10, ARTICLE IV, DOGS, SECTION 10-47(b) AND SECTION 10-47(c), are hereby revised by deleting them in their entirety and substituting in lieu thereof the following:

“(b) A person commits the offense of cruelty to animals by causing death or unjustifiable physical pain or suffering to an animal by an act, an omission or willful neglect. A person committing this offense may be cited pursuant to state law and be guilty of a misdemeanor if convicted, or may be cited for a County ordinance violation, and subject to the penalties as provided hereinafter. Any person convicted of a violation of this subsection shall be punished as hereinafter set out in Section 10-101 (Penalties) provided, however, that:

- 1. A person who is convicted of a second violation of this section shall be punished as hereinafter set out in Section 10-101 (Penalties); and*
- 2. A person convicted of a third or subsequent violation of this section, or a violation which results in the death of an animal, shall be punished as hereinafter set out in Section 10-101 (Penalties).*

(c) A person commits the offense of aggravated cruelty to animals when knowingly and maliciously causes death or physical harm to an animal by rendering a part of such animal’s body useless or by seriously disfiguring such animal. A person convicted of the offense of aggravated cruelty to animals shall be punished as hereinafter set out in section 10-101 (penalties).”

CHAPTER 10, ARTICLE V, DANGEROUS DOG CONTROL, SECTION 10-53(b)

is hereby revised by deleting it in its entirety and substituting in lieu thereof the following:

“Sec. 10-53 (b) When an animal control officer classifies a dog as a dangerous dog or reclassifies a potentially dangerous dog as a dangerous dog, the animal control officer shall contact the dog’s owner in writing by personal service of the notice by the animal control officer or by the White County Sheriff’s Department, or by certified mail, return receipt requested, to the owner’s last known address, of such classification or reclassification. If the owner cannot be located, or if the certified letter is refused or the return receipt is returned unsigned for any reason, or if the owner is avoiding service of the notice, then the animal control officer may give notice of the classification or reclassification to the dog’s owner by way of publication.”

CHAPTER 10, ARTICLE V, DANGEROUS DOG CONTROL, SECTION 10-55(c)(1) AND SECTION 10-55(c)(2), are hereby revised by deleting them in their

entirety and substituting in lieu thereof the following:

“(1) A policy for insurance in the amount of at least \$500,000.00 with a maximum deductible of \$100.00 issued by an insurer authorized and approved by the Georgia Insurance Commissioner to transact business in the State of Georgia that insures the owner of the dangerous dog against liability for any personal injuries including but not limited to death, and property damage inflicted by the dangerous dog. A dangerous dog has the potential of deadly force, and for this reason liability insurance policies that unduly restrict coverage as to any personal injuries and property damage as

determined by the animal control officer shall be deemed to not meet the insurance requirements of this subsection. The determination of the animal control officer as to whether the exclusion unduly restricts the liability coverage will be based upon the following facts:

- (a) A dangerous dog is capable of deadly force;*
- (b) The intent of this subsection is that there be liability coverage for any personal injuries including death and any property damage inflicted by the dangerous dog;*
- (c) The nature of the exclusions contained within the policy; and*
- (d) Any other reasonable factor that may be considered in achieving the intent of this subsection that there be liability insurance coverage for any personal injuries including death and any property damage inflicted by the dangerous dog; or*

(2) A surety bond in the amount of at least \$500,000.00 issued by a surety company authorized to transact business in the State of Georgia, and with the bond issued to the dog's owner providing that it is payable to any person or persons that have suffered any personal injuries including but not limited to death and property damage inflicted by the dangerous dog. A dangerous dog has the potential of deadly force, and for this reason surety bonds that unduly restrict coverage as to any personal injuries and property damage as determined by the animal control officer shall be deemed to not meet the liability bond requirements of this subsection. The determination of the animal control officer as to whether the exclusion unduly restricts the liability bond coverage will be based upon the following facts:

- (a) A dangerous dog is capable of deadly force;*
- (b) The intent of this subsection is that there be liability bond coverage for any personal injuries and any property damage inflicted by the dangerous dog;*
- (c) The nature of the exclusions contained within the bond; and*
- (d) Any other reasonable factor that may be considered in achieving the intent of this subsection that there be liability bond coverage for any personal injuries and any property damage inflicted by the dangerous dog; and”*

CHAPTER 10, ARTICLE V, DANGEROUS DOG CONTROL, SECTION 10-55(c)(3) is hereby added:

“(3) A copy of the policy (and not the insurance binder) or surety bond for approval. Insurance coverage provided by a surplus line insurance carrier, shall be accompanied by a certification by the office of the Georgia Insurance Commissioner that the specific surplus line insurance carrier, including but not limited to any specific group or subgroup of Lloyd’s of London, is on the approved list for surplus line insurance carriers maintained by the Georgia Insurance Commissioner pursuant to O. C. G. A. § 33-5-25.”

CHAPTER 10, ARTICLE V, DANGEROUS DOG CONTROL, SECTION 10-58 (VIOLATIONS; PENALTIES), is hereby revised by deleting it in its entirety and substituting in lieu thereof the following:

“(a) The owner of a dangerous dog who violates the applicable provisions of Section 10-55 or Section 10-56 or whose dangerous dog is subject to confiscation under subsection (a) of Section 10-57 shall be punished as hereinafter set out in Section 10-101 (Penalties) or in the alternative may be cited pursuant to state law and if convicted shall be subject to the penalties for misdemeanors of a high and aggravated nature. In addition to any confinement that might be imposed for a conviction under this subsection, a second conviction shall require the mandatory penalties as hereinafter set out in Section 10-101 (Penalties), and a third or subsequent conviction shall require the mandatory penalties hereinafter set out in Section 10-101 (Penalties).

(b) The owner of a potentially dangerous dog who violates the applicable provisions of Section 10-55 or Section 10-56 or whose potentially dangerous dog is subject to confiscation under subsection (b) of Section 57 shall be punished as hereinafter set out in Section 10-101 (Penalties) or in the alternative may be cited to state law and if convicted shall be subject to the penalties for a misdemeanor. In addition to any confinement that might be imposed for a conviction under this subsection, a second conviction shall require the mandatory penalties as hereinafter set out in Section 10-101 (Penalties), and for a third or subsequent conviction shall require the mandatory penalties as hereinafter set out in Section 10-101 (Penalties).

(c) If an owner who has a previous conviction for a violation of this chapter knowingly and willfully fails to comply with the provisions of this chapter, such owner shall be guilty of a felony under state law, and may be cited pursuant to state law if the owner's dangerous dog attacks or bites a human being under circumstances constituting another violation of this chapter. In the discretion of the animal control officer or any duly certified law enforcement officer, in the alternative, the owner of the dangerous dog may be cited for an ordinance violation and may be punished as hereinafter set out in Section 10-101 (Penalties).

(d) An owner who knowingly and willfully fails to comply with the provisions of this chapter shall be guilty of a felony under state law, and in the discretion of the animal control officer or any duly certified law enforcement officer, may be cited pursuant to state law if the owner's dangerous dog aggressively attacks and causes severe injury or death of a human being under circumstances constituting a violation of this chapter. In the alternative, and in the discretion of the animal control officer, the animal control officer may cite the owner of a dangerous dog for a violation of this ordinance subsection, and the owner of the dangerous dog shall be punished as hereinafter set out in Section 10-101 (Penalties).

(e) In addition to the penalties for violations under subsection (c) or (d) of this section, the dangerous dog involved shall be immediately confiscated by the animal control officer and placed in quarantine. Thereafter, the dangerous dog shall be destroyed in an expeditious and humane manner.”

CHAPTER 10, ARTICLE VI, COUNTY ANIMAL PROTECTION CODE, SECTION 10-70 (PENALTIES), is hereby revised by deleting it in its entirety and substituting in lieu thereof the following:

“A person violating the provisions of this chapter shall be punished as hereinafter set out in Section 10-101 (Penalties). In the alternative, and in the discretion of the animal control officer, the person may be cited with a violation of state law, and be guilty of a misdemeanor if convicted.

(a) Each violation of this article shall constitute a separate offense.”

CHAPTER 10, ARTICLE VII, HUMANE CARE OF EQUINES, SECTION 10-77 (PENALTY FOR VIOLATION OF CHAPTER, is hereby revised by deleting it in its entirety and substituting in lieu thereof the following:

“A person, partnership, firm, corporation or other entity violating any of the provisions of this chapter shall be punished as hereinafter set out in Section 10-101 (Penalties). In the alternative, and in the discretion of the animal control officer, the person may be cited with a violation of state law, and be guilty of a misdemeanor if convicted.”

CHAPTER 10, ARTICLE VIII, STERILIZATION OF DOGS AND CATS IN SHELTERS, SECTION 10-83 (PENALTY FOR NONCOMPLIANCE), is hereby revised by deleting it in its entirety and substituting in lieu thereof the following:

“A person, partnership, firm, corporation or other entity violating any of the requirements of this chapter shall be subject to the penalties as hereinafter set out in Section 10-101 (Penalties). In the alternative, and in the discretion of the animal control officer, the person may be cited with a violation of state law, and be guilty of a misdemeanor if convicted.”

CHAPTER 10, ARTICLE X, PENALTIES, SECTION 10-101 (PENALTY), is hereby revised by deleting it in its entirety and substituting in lieu thereof the following:

- “(a) Any person(s) found guilty of any violation in Chapter 10 Animals and cited pursuant to state law, and with the matter referred to the White County Superior Court or White County State Court, is subject to punishment as provided in the Official Code of Georgia, and as determined by the White County Superior Court or White County State Court.*

- (b) Any person(s) found guilty of any initial violation of Chapter 10 Animals returnable to the White County Magistrate’s Court is subject to a fine of \$1,000.00 or six months’ imprisonment, or both, provided that the Magistrate Judge shall probate not less than 120 days of any sentence imposed. In the event a sentence is revoked, a defendant shall not serve more than sixty days in a County jail. The trial court may suspend the service of the sentence imposed in the case upon terms and conditions as it may prescribe for the payment of the fine, for performance of community service in lieu of a fine or incarceration, for the payment of restitution to a victim, or other condition relating to the underlying offense. Service of the sentence, when so suspended, shall not begin unless and until ordered by the Court having jurisdiction thereof, after a hearing as in cases of revocation of probated sentences, because of the failure or refusal of the defendant to comply with the terms and conditions upon which service of a sentence was suspended. Service of all or any part of any sentence suspended upon such conditions may be ordered to commence by the trial court any time before the expiration of one year from the date of the sentence after a hearing and a finding by the Court that the defendant has failed or refused to comply with the terms and conditions upon which service of the sentence was suspended.*

- (c) *Any person(s) found guilty of a second violation of Chapter 10 Animals returnable to the White County Magistrate's Court shall have a minimum fine of \$750.00, and may have a fine as much as \$1,000.00, and minimum imprisonment in a County jail of 30 days, and up to six months' imprisonment in the discretion of the White County Magistrate's Judge, provided that the White County Magistrate's Judge shall probate not less than 120 days of any sentence imposed for six months. In the event a sentence is revoked, a defendant shall not serve more than sixty days in a County jail. The trial court may suspend the service of the sentence imposed in the case upon such terms and conditions as it may prescribe for the payment of the fine, or performance of community service in lieu of a fine or incarceration, for the payment of restitution to a victim, or other condition relating to the underlying offense. Service of the sentence, when so suspended, shall not begin unless and until ordered by the court having jurisdiction thereof, after a hearing as in cases of revocation of probated sentences, because of the failure or refusal of the defendant to comply with the terms and conditions upon which service of a sentence was suspended. Service of all or any part of any sentence suspended upon such conditions may be ordered to commence by the trial court any time before the expiration of one year from the date of the sentence after a hearing and a finding by the court that the defendant has failed or refused to comply with the terms and conditions upon which service of the sentence was suspended.*
- (d) *Any person(s) found guilty of a third or subsequent violation of Chapter 10 Animals, or a violation including the death or serious injury to a human being or a violation involving the death of an animal, returnable to the White County Magistrate's Court shall have a minimum fine of \$1,000.00, and minimum imprisonment in a County jail of 60 days, and up to four months' community service in the discretion of the White County Magistrate's Judge. In the event a sentence is revoked, a defendant shall not serve more than sixty days in a County jail. The trial court may suspend the service of the sentence imposed in the case upon such terms and conditions as it may prescribe for the payment of the fine, or performance of community service in lieu of a fine or incarceration, for the payment of restitution to a victim, or other condition relating to the underlying offense. Service of the sentence, when so suspended, shall not begin unless and until ordered by the court having jurisdiction thereof, after a hearing as in cases of revocation of probated sentences, because of the failure or refusal of the defendant to comply with the terms and conditions upon which service of a sentence was suspended. Service of all or any part of any sentence suspended upon such conditions may be ordered to commence by the trial court any time before the expiration of one year from the date of the sentence after a hearing and a finding by the court that the defendant has failed or refused to comply with the terms and conditions upon which service of the sentence was suspended.*

- (e) *An owner of a dangerous dog that is convicted of Section 10-58(c) or Section 10-58(d) in the White County Magistrate's Court shall be subject to the penalties set out and provided by Section 10-101 (d).*
- (f) *Payment of any fine or service of a jail sentence shall not relieve any person from resolution of the problem resulting in the violation. In addition, the applicable court may order reimbursement for the County's cost involved in prosecuting the case (including but not limited to attorney fees, impound charges and the hourly cost to the County of the time of the animal control officer) as a part of the court costs imposed by the Court."*

CHAPTER 10, ARTICLE XI, VICIOUS DOGS, SECTION 10-114 (PENALTIES),

is hereby revised by deleting it in its entirety and substituting in lieu thereof the following:

- "(a) Any person(s) found guilty of any violation in this chapter and cited pursuant to state law, and with the matter referred to the White County Superior Court or White County State Court, is subject to punishment as provided in the Official Code of Georgia, and as determined by the White County Superior Court or White County State Court.*
- (b) *Any person(s) found guilty of any initial violation of this chapter returnable to the White County Magistrate's Court is subject to a fine of \$1,000.00 or six months' imprisonment, or both, provided that the Magistrate Judge shall not probate not less than 120 days of any sentence imposed. In the event a sentence is revoked, a defendant shall not serve more than sixty days in a County jail. The trial court may suspend the service of the sentence imposed in the case upon terms and conditions as it may prescribe for the payment of the fine, for performance of community service in lieu of a fine or incarceration, for the payment of restitution to a victim, or other condition relating to the underlying offense. Service of the sentence, when so suspended, shall not begin unless and until ordered by the Court having jurisdiction thereof, after a hearing as in cases of revocation of probated sentences, because of the failure or refusal of the defendant to comply with the terms and conditions upon which service of a sentence was suspended. Service of all or any part of any sentence suspended upon such conditions may be ordered to commence by the trial court any time before the expiration of one year from the date of the sentence after a hearing and a finding by the Court that the defendant has failed or refused to comply with the terms and conditions upon which service of the sentence was suspended.*

- (c) *Any person(s) found guilty of a second violation of this chapter returnable to the White County Magistrate's Court shall have a minimum fine of \$750.00, and may have a fine as much as \$1,000.00, and minimum imprisonment in a County jail of 30 days, and up to six months' imprisonment in the discretion of the White County Magistrate's Judge, provided that the White County Magistrate's Judge shall probate not less than 120 days of any sentence imposed. In the event a sentence is revoked, a defendant shall not serve more than sixty days in a County jail. The trial court may suspend the service of the sentence imposed in the case upon such terms and conditions as it may prescribe for the payment of the fine, or performance of community service in lieu of a fine or incarceration, for the payment of restitution to a victim, or other condition relating to the underlying offense. Service of the sentence, when so suspended, shall not begin unless and until ordered by the court having jurisdiction thereof, after a hearing as in cases of revocation of probated sentences, because of the failure or refusal of the defendant to comply with the terms and conditions upon which service of a sentence was suspended. Service of all or any part of any sentence suspended upon such conditions may be ordered to commence by the trial court any time before the expiration of one year from the date of the sentence after a hearing and a finding by the court that the defendant has failed or refused to comply with the terms and conditions upon which service of the sentence was suspended.*
- (d) *Any person(s) found guilty of a third or subsequent violation of this chapter returnable to the White County Magistrate's Court shall have a minimum fine of \$1,000.00, and minimum imprisonment in a County jail of 60 days, and up to four months' community service in the discretion of the White County Magistrate's Judge. In the event a sentence is revoked, a defendant shall not serve more than sixty days in a County jail. The trial court may suspend the service of the sentence imposed in the case upon such terms and conditions as it may prescribe for the payment of the fine, or performance of community service in lieu of a fine or incarceration, for the payment of restitution to a victim, or other condition relating to the underlying offense. Service of the sentence, when so suspended, shall not begin unless and until ordered by the court having jurisdiction thereof, after a hearing as in cases of revocation of probated sentences, because of the failure or refusal of the defendant to comply with the terms and conditions upon which service of a sentence was suspended. Service of all or any part of any sentence suspended upon such conditions may be ordered to commence by the trial court any time before the expiration of one year from the date of the sentence after a hearing and a finding by the court that the defendant has failed or refused to comply with the terms and conditions upon which service of the sentence was suspended.*

- (e) *Payment of any fine or service of a jail sentence shall not relieve any person from resolution of the problem resulting in the violation. In addition, the applicable court may order reimbursement for the County's cost involved in prosecuting the case (including but not limited to attorney fees, impound charges, and the hourly cost to the County of the time of the animal control officer) as a part of the court cost imposed by the Court."*

CHAPTER 10, ANIMALS, is hereby revised by adding Article XII, Attack or Guard Dogs as follows:

"Article XII, Attack or Guard Dogs

Section 10-121 Definition:

Attack dog or guard dog means any dog trained to attack persons or other animals independently or upon verbal command and any dog which, while not so trained, is expected to perform as a guardian of the property upon and within which the animal is located.

Section 10-122 Notice to the public of attack dogs or guard dogs

a. It shall be the duty of each owner, tenant or custodian of an enclosure, residential or commercial property within which an attack dog or guard dog is located to post a notice in a prominent and conspicuous location on the outside of the enclosure or building.

b. Said notice shall have six-inch red letters on a white background and shall contain the words:

"WARNING: GUARD DOG" or

"WARNING: ATTACK DOG" or

"WARNING: BEWARE OF DOG."

c. Such letters shall be not less than one (1) inch in width and six (6) inches in height.

d. If an attack dog or guard dog is confined within a fenced area or in a building, such notice shall be posted at a distance not greater than fifty (50) feet apart as well as upon each entrance and exit.

e. In the case of apartments, condominiums or businesses located within a larger building, such notice shall be posted on or about every doorway.

Section 10-123 Requirements for possessing an attack dog or guard dog

a. It is unlawful for an owner to have or possess an attack dog or guard dog without a Certificate of Registration.

b. The White County Animal Control Officer shall issue a Certificate of Registration to the owner of such attack dog or guard dog if the owner presents to the Animal Control Officer or the Animal Control Officer otherwise finds sufficient evidence of:

- 1. A proper enclosure to confine the attack dog or guard dog; and***
- 2. The owner of a attack dog or guard dog shall notify the Animal Control Officer within twenty four (24) hours if the dog is on the loose, is unconfined, has attacked a human, has died or has been sold or donated. If the dog is sold or donated, the owner shall also provide the Animal Control Officer with the name, address and telephone number of the new owner of the dog.***
- 3. The owner of an attack dog or guard dog shall notify the Animal Control Officer if the owner is moving from the Animal Control Officer's jurisdiction.***
- 4. The owner of an attack dog or guard dog who is a new resident of White County shall register the dog as required in this Article within ten (10) days after becoming a resident.***
- 5. The Animal Control Officer is authorized to make whatever inquiry deemed necessary to ensure compliance with the provisions of this Article.***
- 6. Law enforcement agencies located in White County are authorized to cooperate with Animal Control Officers in enforcing the provisions of this Article.***
- 7. The Animal Control Officer may charge an annual fee to register an attack dog or guard dog as required in this Article.***
- 8. Certificates of Registration shall be renewed on an annual basis.***
- 9. At the time of renewal of a Certificate of Registration, the Animal Control Officer shall require evidence from the owner or make such investigation as may be necessary to verify that the attack dog or guard dog is confined in a proper enclosure and that the owner is continuing to comply with other provisions of this Article.***
- 10. The issuance or renewal of a Certificate of Registration does not warrant or guarantee that the requirements specified in this Article are maintained on a continuous basis following the date of the issuance of the initial Certificate of Registration or following the date of any annual renewal of such Certificate.***

Section 10-124 Financial responsibility:

a. Insurance Policy:

1. The owner must obtain an insurance policy for a minimum of fifty thousand dollars (\$50,000.00) with a maximum deductible of one hundred dollars (\$100.00) issued by an insurer authorized and approved by the Georgia Insurance Commissioner to transact business in the State of Georgia. Such policy shall insure the owner of the attack dog or guard dog against liability for any personal injuries including but not limited to death and property damage inflicted by the attack dog or guard dog.

2. An attack dog or guard dog has the potential of deadly force. Therefore, a liability insurance policy that unduly restricts coverage as to any personal injuries and property damage shall not meet the insurance requirements of this subsection. The determination as to whether the exclusion unduly restricts the liability coverage shall be based upon the following facts:

A. An attack dog or guard dog is capable of deadly force; and

B. The intent of this subsection is that there is liability coverage for any personal injuries including death and any property damage inflicted by the attack dog or guard dog; and

C. The nature of the exclusions contained within the policy; and

D. Any other reasonable factor that may be considered in achieving the intent of this subsection that there be liability insurance coverage for any personal injuries including death and any property damage inflicted by the attack dog or guard dog.

3. Insurance coverage provided by a surplus line insurance carrier shall be accompanied by a certification from the Georgia Insurance Commissioner stating that the specific surplus line insurance carrier, including but not limited to any specific group or subgroup of Lloyd's of London, is on the approved list for surplus line insurance carriers pursuant to O. C. G. A. § 33-5-25.

b. In lieu of an insurance policy:

1. The owner may obtain a surety bond in the minimum amount of fifty thousand dollars (\$50,000.00) issued by a surety company authorized to transact business in the State of Georgia. The bond shall be issued to the attack dog or guard dog's owner and shall be payable to any person or persons that have suffered any personal injuries including but not limited to death and property damage inflicted by the attack dog or guard dog.

2. An attack dog or guard dog has the potential of deadly force. Therefore, surety bonds that unduly restrict coverage as to personal injuries and property damage shall be deemed to not meet the liability bond requirements of this subsection. The determination as to whether the exclusion unduly restricts the liability bond coverage shall be based upon the following facts:

A. An attack dog or guard dog is capable of deadly force; and

B. The intent of this subsection that there be liability bond coverage for any personal injuries and any property damage inflicted by the attack dog or guard dog; and

C. The nature of the exclusions contained within the bond; and

D. Any other reasonable factor that may be considered in achieving the intent of this subsection that there be liability bond coverage for any personal injuries and any property damage inflicted by the attack dog or guard dog; and

c. A copy of the surety bond or insurance policy and not a binder must be received prior to approval.

d. Dogs owned by or used by law enforcement agencies are exempt from the provisions of this Article.

Section 10-125 Restraint and confinement:

a. No owner of an attack dog or guard dog shall allow such animal to be at large; and

b. No owner of an attack dog or guard dog shall fail to exercise proper care and control of such animal to prevent the same from becoming a public nuisance animal; and

c. Every owner of an attack dog or guard dog shall keep such dog confined in a building, compartment or other enclosure. Any such enclosure shall be surrounded by a fence at least six (6) feet in height topped with an anti-climbing device constructed of angle metal braces with at least three (3) strands of equally separated barbed wire stretched between them. All anti-climbing devices shall extend inward at an angle of not less than forty-five (45) degrees or more than ninety-(90) degrees when measured from the perpendicular.

d. The areas of confinement shall have all gates and entrances thereto securely closed and locked with all fences properly maintained and escape proof.

e. Every attack dog or guard dog in heat shall be confined in a building or other enclosure in such a manner that the animal cannot come into contact with another

animal except for planned breeding purposes as allowed by either Georgia state law or rules and regulations promulgated by the Georgia Department of Agriculture.

f. When off the owner's premises, an attack dog or guard dog shall be caged or securely muzzled and restrained with a chain having a minimum tensile strength of three hundred (300) pounds and not more than three (3) feet in length.

g. Every person harboring an attack dog or guard dog is charged with an affirmative duty to confine the animal in such a way that children do not have access to such animal.

Section 10-126. Confiscation of dogs; grounds; disposition

a. An attack dog or guard dog shall be immediately confiscated by the Animal Control Officer if the:

- 1. Owner of the attack dog or guard dog does not secure the liability insurance or bond required by this Article; or*
- 2. Attack dog or guard dog has not been issued a Certificate of Registration; or*
- 3. Attack dog or guard dog is not maintained in a proper enclosure; or*
- 4. Attack dog or guard dog is outside a proper enclosure.*

b. An attack dog or guard dog that has been confiscated under the provisions of subsection (a) of this section shall be returned to its owner upon the owner's compliance with the provisions of this article and upon the payment of reasonable confiscation costs. In the event the owner has not complied with the provisions of this article within ten (10) days of the date the attack dog or guard dog was confiscated, said attack dog or guard dog shall be destroyed in an expeditious and humane manner.

Section 10-127 Penalties

a. A person, partnership, firm, corporation or other entity violating any of the provisions of this Article shall be subject to the penalties as hereinafter set out in Section 10-101 (Penalties). In the alternative, and in the discretion of the Animal Control Officer, the person may be cited with a violation of state law and if convicted shall be subject to the penalties for a misdemeanor.

b. Upon a second conviction for a violation of this Article such owner shall be guilty of a felony under state law and may be cited pursuant to state law if the owner's attack or guard dog attacks or bites a human being under circumstances constituting violation of this Article."

The effective date of this amendment shall be October 2, 2007.

RESOLVED, this 2nd day of October, 2007.

**WHITE COUNTY BOARD OF
COMMISSIONERS**

s/Chris R. Nonnemaker

Chris R. Nonnemaker, Chairman

s/Joe Campbell

Joe Campbell, Post 1

s/Craig Bryant

Craig Bryant, Post 2

ATTEST:

s/Jean Welborn

Jean Welborn, County Clerk”

Upon motion made Commissioner Campbell, seconded by Commissioner Bryant, the following Resolution was unanimously adopted:

“WHITE COUNTY BOARD OF COMMISSIONERS

RESOLUTION NO. 2007 -34

**A RESOLUTION TO AMEND THE OFFICIAL CODE OF WHITE COUNTY,
GEORGIA, CHAPTER 54, ROADS, BY ADDING ARTICLE VI,
RIGHT-OF-WAY ENCROACHMENTS AND EASEMENTS**

WHEREAS, the White County Board of Commissioners wishes to amend the Official Code of White County, Chapter 54, Roads, by adding Article VI as hereinafter set out;

NOW THEREFORE, BE IT RESOLVED by the County Commissioners of White County, and it is hereby resolved by authority of the same, that the Official Code of White County be revised as follows:

CHAPTER 54, ARTICLE VI, RIGHT-OF-WAY ENCROACHMENTS AND EASEMENTS is hereby added in its entirety.

“Division 1 General

Sec. 54-163, Definitions.

The following words, terms and phrases when used in this article shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- *Encroachment means any natural or manmade feature that intrudes on the County right-of-way and advances beyond private property. This term includes placement of posters, signs, and advertisements in violation of O.C.G.A. § 32-6-51 which are considered encroachments if placed within the County right-of-way.*
- *Mailbox means any freestanding or detached structure, container or receptacle for the delivery of United States Postal Service Mail or other documents including, but not limited to, newspapers.*
- *Masonry means brick, stone, concrete, and all other substances or materials having like properties of weight and/or immovability.*
- *Obstruction means any natural or manmade feature that is on the County right-of-way and could cause injury or limit sight distance to public travelers on the County right-of-way. Obstructions include but are not limited to any masonry structure, entranceway, sign, post, vehicle, tree or bush exceeding standards as stated in County codes.*
- *Private utility or private utilities means those individuals, corporations, associations, cooperatives and political subdivisions of the state which are not in the business of furnishing utilities to the general public but who furnish utilities solely to themselves.*
- *Public utility or public utilities means those individuals, partnerships, corporations, associations, cooperatives and political subdivisions of the state which are in the business of furnishing utilities to the general public.*

Division 2 Mail Boxes

Sec. 54-164, Location of mailboxes

Mailboxes shall be located to comply with the rules and regulations of the United States Postmaster General. On the County maintained roadways without a curb, mailboxes shall be set back from the traveled edge of the roadway to the break

point of the shoulder to prevent the interference of the mailbox with the safe use of the County roadway. Ideal location would allow the mail carrier to pull the postal delivery vehicle to the maximum available distance off the travel lanes of the County roadway to deliver mail. Where shoulder width does not allow for such distance, the mailbox shall be set back so that no portion of the mailbox or supporting structure extends into the traveled area of County maintained roadway. Under no circumstances may the location of the mailbox interfere with the safe use of a County roadway by the traveling public. Any mailbox that fails to conform to the location requirements as provided in this section shall be unlawful and deemed a public nuisance. The Public Works Director will determine if a mailbox is inappropriate in structure or placement based upon the criteria in this section.

Sec. 54-165, Construction and composition of mailboxes

(a) It shall be unlawful to construct and/or maintain a mailbox within the County right-of-way that fails to meet the construction specifications enumerated in subsection (b) of this section.

(b) In order to safeguard the health and welfare of the traveling public, ensure uniform standards of function and beautification of the County highway system, residents shall construct mailboxes as follows:

(1) Masonry material or of any other material, which will not readily yield upon impact with a vehicle shall not be used to construct the support structure, post, encasement or housing for the mailbox.

(2) All posts shall have a maximum width of four (4) inches by four (4) inches or, if round; the post shall have no greater than a four (4) inch diameter. Metal posts shall be hollow.

Division 3 Easements, encroachments and obstructions

Sec. 54-166, Public Works Department

The Public Works Department shall not allow obstructions or encroachments on County road rights-of-way that endanger the public, limit sight distance, cause nuisance to maintenance of road rights-of-way or adversely affect the beautification of the County.

Sec. 54-167, Utility Permit

(a) Any person or entity desiring to utilize County road rights-of-way for placement of pipes, mains, conduits, cables, wires, poles, towers or any utility in, on, along, over or under the public road right-of-way of the County shall obtain a license permit from the White County Public Works Department.

(b) The application for a license permit shall meet right-of-way policies for installing lines as required by the development regulations, County codes and other requirements including, but not limited to, soil erosion and sedimentation control, compaction of disturbed soil, driveway repair, land disturbance permits and utility easements.

(c) Repairs necessitated by the cutting of improperly located cable/lines by County work crews is the responsibility of the person or entity owning or maintaining the cable/lines.

Sec. 54-168, Other easements

Any person or entity desiring to utilize County road rights-of-way for placement of any items other than utilities, as stated in section 54-167, must first obtain a license permit from the White County Public Works Dept.

Sec. 54-169, Utility obstruction

a. A written notice shall be directed to the utility company giving at least sixty (60) days' notice for removal or relocation when the Public Works Department determines a pipe, main, conduit, cable, wire, pole or tower (hereinafter "lines") located in, on, along, over or under a County maintained road has become an obstruction or interferes with the use or operation of the County maintained road. Obstruction or interference with the use or operation of a County maintained road shall include but not be limited to paving, widening, relocating, or any other improvement to the County maintained road.

b. If the utility does not thereafter begin removal within a reasonable time sufficient to allow for engineering and other procedures reasonably necessary for the removal and relocation of the utility facility, the Public Works Department shall give the utility a final notice directing that such removal shall commence within ten (10) days from receipt of such notice. If not complete within forty-five (45) days thereof, the Public Works Department may remove or relocate the same with its own employees, by contracted labor or other necessary services needed to accomplish the removal or relocation and the expense charged to the utility. The County Attorney shall proceed with suit against the utility unless there is payment or arrangements to pay within sixty-(60) days.

Division 4 Public Utilities

Sec. 54-170 Public utilities; use of right-of-way

All public utilities in the business of furnishing utilities to the public are granted the nonexclusive license to construct, install and maintain utility facilities on any paved or gravel County maintained road rights-of-way in the unincorporated areas of the County, but subject to the permitting requirements as provided herein, and subject to the utility relocating lines at the utility's cost due to road construction or improvement of any nature.

Sec. 54-171 Public utilities; application for installation permit

a. Before installing any utility facilities, including service connections, which may involve the cutting of any gravel or paved County maintained road or right of way, a public utility shall be required to apply for and obtain written permission from the County. Utility lines shall not be located within the roadbed of any County maintained road except due to exceptional justifying circumstances, and expressly permitted by the Public Works Department.

b. The application shall be in writing addressed to the Public Works Department and must contain the following:

- 1. Name and address of the applicant; and***
- 2. Name and address of the contractor, if different from applicant; and***
- 3. Name of the road and general location of the same; and***
- 4. A schematic drawing of the construction plans of the utility facility; and***
- 5. A plat or map showing the location of the utility facility in relation to the existing roadway, pavement or curve; and***
- 6. A drawing showing the location(s) of pre-existing utilities relational to the construction plan for new utilities; and***
- 7. The date on which construction or installation is scheduled to begin.***

Sec. 54-172 Public utilities; issuance of installation permit

a. An application by a public utility shall be processed as follows:

- 1. Upon approval of an application, the Public Works Department shall issue a permit.***

2. If the Public Works Department disapproves the application, the applicant shall have the right to confer with the County Manager. The County Manager has the authority to reverse the decision of the Director Public Works Department if justifying circumstances warrant such action.

3. If the County Manager does not reverse the decision of the Director of Public Works Department, the applicant shall have the right to appeal before the Board of Commissioners.

4. The Board of Commissioners shall have the discretion and right to instruct the Director of Public Works to issue a permit irrespective of any provision in this article if the Board thinks it is in the best interest of the citizens of the County.

Sec. 54-173 Public utilities; Time Limit for Initiating Construction

A permit issued to a public utility shall expire and be invalid unless the initiation of construction as allowed by the permit begins within one (1) year of the issuance of the permit.

Sec. 54-174 Public utilities; deviations from construction requirements

All public utilities installing and constructing utility facilities, including underground service connections, which cannot comply with requirements for construction and installation of section 54-176 and wish to deviate from the requirements of section 54-176 must obtain a written permit from the Public Works Department authorizing such deviations. Applicants shall submit Applications for permits with deviations in the same manner and shall require the same information as is set forth in section 54-171, except that the deviation or deviations shall be set forth separately together with a statement of the reason for such deviation or deviations.

Sec. 54-175 Public utilities; emergency exemptions from construction requirements

a. In the event any emergency arises, which affects the welfare and safety of the citizens of the County due to loss of utilities, there shall be no need for a public utility to get a permit for the repair of a line necessitated by an emergency.

b. The utility company shall return to the site and make needed repairs to the right of way or road necessary to restore it to its original condition prior to the event of emergency. The public utility shall contact the Director of Public Works as soon as possible to let him know the location of the emergency. The Director of Public Works shall do a follow-up inspection to ensure that the emergency work completed by the public utility complies with the construction standards set forth in Sec. 54-176.

Sec. 54-176 Public utilities; construction standards

a. The following requirements shall be complied with in the construction of public utility lines and service lines:

1. All lines underneath the ground shall be buried to a depth of at least three (3) feet without disturbing the surface and must be a minimum of two (2) feet from any other utility line; and

2. The Public Works Director may request that water, sewer and gas lines considered collectively be kept a minimum distance of four (4) feet from electrical or communications lines if road width, right-of-way width, and configuration of already installed lines allows.

3. When an underground line crosses a paved, curbed or guttered roadway each shall NOT be open cut for line installation, with each proposed method of crossing of the roadway to be approved in advance by the Director of Public Works; and

4. All lines above the ground shall be a minimum of sixteen and one-half (16 1/2) feet above ground level; and

5. All lines or parts thereof fixed at or above ground level shall be a minimum of ten (10) feet from the paved or unpaved road surface or behind the ditch line, whichever is greater; and

6. All excavations shall be filled, compacted to adjacent undisturbed soil's density and smoothed immediately; and

7. All debris and waste shall be removed immediately and deposited in an authorized facility; and

8. All ground areas shall be grassed immediately following work; and

9. The Public Works Department shall inspect the location depth before the line is backfilled and a final inspection will be done to insure that all construction debris has been removed and all soil erosion controls are in place prior to authorizing the utility to utilize the facility. Upon authorization to use the facility by the Public Works Department, the public utility shall provide three sets of "as built" plans regarding the lines and /or facility to the Public Works Dept. to be kept on file.

b. The Public Works Department with concurrence of the County Manager may vary construction standards in this article for sound engineering reasons following an on-site inspection.

Division 5 Private Utilities

Sec. 54-177 Private utilities; use of right-of-way

A private utility may be granted the non-exclusive license to construct, install and maintain utility facilities on, in or above County maintained road rights-of-way in the unincorporated areas of the County. All private utilities in the business of furnishing utilities to the public or private parties are granted the non-exclusive license to construct, install and maintain utility facilities on any paved or graveled County maintained road rights-of-way in the unincorporated areas of the County, but subject to the permitting requirements as provided herein, subject to the installation and construction requirements as provided herein, and subject to the utility relocating lines at the utility's cost due to road construction or improvement of any nature.

Sec. 54-178 Private utilities; application for installation permit

- (a) Before installing any utility facilities, a private utility shall be required to apply for and obtain a permit for the requested installation from the Public Works Department. Utility lines shall not be located within the roadbed of any County maintained road except due to exceptional justifying circumstances, and expressly permitted by the Public Works Department.***
- (b) The application must include the following:***
- 1. Name and address of the applicant; and***
 - 2. Name and address of the contractor, if any; and***
 - 3. Name of the road and general location of the same; and***
 - 4. A schematic drawing of the construction plans of the utility facility; and***
 - 5. A plat or map showing the location of the utility facility in relation to the existing roadway, pavement, or curb; and***
 - 6. The date on which construction or installation is scheduled to begin.***
- (c) Upon approval by the Public Works Director the Public Works Department shall issue a permit.***

Sec. 54-179 Private utilities; time limit for completing construction

A permit issued to a private utility shall expire and be invalid unless the construction or installation permitted is complete within ninety-(90) days of the issuance of the permit.

Sec. 54-180 Private utilities; Deviations from construction requirements

All private utilities installing and constructing utility facilities, including underground service connections, which cannot comply with the requirements for construction and installation of section 54-176 and wish to deviate from the requirements of section 54-176, must obtain a written permit from the County authorizing such deviations. Applicants shall submit Applications for Permits with Deviations in the same manner and shall require the same information as is set forth in section 54-178, except that the deviation or deviations shall be set forth separately together with a statement of the reason for such deviation or deviations.

Sec. 54-181 Private utilities; emergency exemptions from construction requirements

a. In the event any emergency arises, which affects the welfare and safety of the citizens of the County due to loss of utilities, there shall be no need for a private utility to get a permit for the repair of a line necessitated by an emergency.

b. The private utility company shall return to the site and make needed repairs to the right of way or road necessary to restore it to original condition existing prior to the event. The public utility shall contact the Director of Public Works as soon as possible to let him know the location of the emergency. The Director of Public Works shall do a follow-up inspection to ensure that the emergency work completed by the public utility complies with the construction standards set forth in Sec. 54-176.

Sec. 54-182 Private utilities; construction standards

a. The construction requirements for private utilities shall be the same as for public utilities as set forth in Section 54-176

1. All lines underneath the ground shall be buried to a depth of at least three (3) feet and must be a minimum of two (2) feet from any other utility line; and

2. All private utility facilities must be constructed a minimum of six (6) feet from the pavement edge and outside the existing ditch line back slope except at such point where a private utility facility must cross a right-of-way in order to reach the property of the private utility; and

- 3. When an underground line crosses a paved, curbed or guttered roadway, each shall NOT be open cut for line installation, with each proposed method of crossing a roadway to be approved in advance by the Public Works Director; and*
 - 4. All lines above the ground shall be a minimum of sixteen and one-half (16 1/2) feet above ground level; and*
 - 5. All lines or parts thereof fixed at or above ground level shall be a minimum of ten (10) feet from the paved or unpaved road surface or behind the ditch line, whichever is greater; and*
 - 6. All excavations shall be filled, compacted to adjacent undisturbed soil's density and smoothed immediately; and*
 - 7. All debris and waste shall be removed immediately and deposited in an approved facility; and*
 - 8. All ground areas shall be grassed immediately following work; and*
 - 9. The Public Works Department shall inspect for location prior to construction, for correct depth before the line is backfilled and conduct a final inspection to insure that all construction debris has been removed and all soil erosion controls are in place prior to authorizing the private utility to utilize the facility.*
- b. The Public Works Department with concurrence of the County Manager may vary the construction standards in this article for sound engineering reasons following an on-site inspection.*

Sec. 54-183 Private utilities; construction and maintenance bond

A private utility shall be required to post a bond payable to the County or pay a sum of money into an escrow account to assure the proper construction, installation and maintenance of any private utility facility permitted pursuant to this article. Upon approval of the permit, the Public Works Director shall determine the amount and terms of the bond or escrow account and the permit shall not issue until the applicant submits proof of the bond or escrow account.

Division 6 Additional Permit Requirements

Sec. 54-184, Road boring

(a) Cutting or boring a County maintained road shall require a permit.

(b) Borings must be a minimum of three (3) feet below the ditch line and must utilize steel casings extending to the ditch line.

Sec. 54-185, Indemnification agreement

Prior to the issuance of any permits or commencement of any work, the person or entity desiring to utilize County road rights-of-way shall file with the Public Works Department an indemnification agreement, indemnifying the County against any and all claims and liability arising out of that person or entity's utilization of such County road right-of-way.

Sec. 54-186 Right of County to require repair or relocation of utilities

a. If, in the opinion of the Public Works Department the facility constitutes interference with the safe use of the right-of-way or will interfere with road construction or improvement, the County reserves the right to require a public and/or private utility to remove, relocate or repair any utility located in, on or above a County maintained road right-of-way.

b. The expense involved in removing, relocating or repairing any utility is the responsibility of the public and/or private utility.

c. Should the public and/or private utility fail to remove, relocate or repair its facilities, upon due notice from the County, the public and/or private utility shall be liable for any extraordinary costs or damages incurred by the County as a result thereof.

Sec. 54-187 Indemnification of County.

a. The public and/or private utility shall indemnify and hold harmless the County and all officers, employees or agents of the County:

1. Against any and all claims, damages, demands, actions, causes of action, costs and expenses which may result from any injury to or the death of any persons when such injury or death, loss or damage arises out of the construction, operation, maintenance, repair, removal or relocation of facilities pursuant to a license permit issued under this article; and

2. Against any and all claims, damages, demands, actions, causes of action, costs and expense which may result from the loss or damage to property of any kind or nature, when such loss or damage arises out of the construction, operation, maintenance, repair, removal or relocation of facilities pursuant to a license permit issued under this article.

Sec. 54-188 Liability for damages to utility facilities

The County, its engineers, officers or employees shall not be held responsible or liable for injury or damage that may occur to facilities covered by a permit issued under this article or to any connection or connections thereto, by reasons of road maintenance and construction activities or road contractors' or public and/or private utilities' operations. The County's contractor shall not be held liable for any damage that may occur to utility facilities if the public and/or private utility has been notified of a construction project and given reasonable time to mark or relocate its facilities and has failed to do so.

Sec. 54-189 Maintenance of signaling and safety devices

During the initial installation or construction of facilities by a public and/or private utility or during any future repair, removal or relocation thereof or any miscellaneous operations, the applicant shall maintain flagmen, signs, lights, flares, barricades and other safety devices as may be necessary to properly protect traffic upon the road and to warn and safeguard the public against injury or damage.

Sec. 54-190 Verification of right-of-way limits

It is the responsibility of the public and/or private utility to verify the limits of public right-of-way for location of the utility facilities authorized by a permit issued under this article. Approval of the permit does not constitute approval of design or construction details for the proposed facilities. The public and/or private utility is responsible for compliance with all applicable governmental codes and regulations.

Sec. 54-191 Rights of abutting property owners

Permits issued under this chapter shall not affect any inherent or retained right or privilege of any abutting property owner, nor will the County be responsible for any claim, which may develop between the public and/or private utility and any property owner concerning use of the right-of-way. The public and/or private utility is responsible for maintaining reasonable access to private driveways during installation of its facilities and for restoration of driveways to the owner's reasonable satisfaction.

Sec. 54-192 Limitations on rights granted by permit

The issuance of a permit under this article is a license for a permissive use only and does not give the grantee any permanent right or exclusive license. A permit issued under this article shall only authorize that installation specifically shown in the application, and the installation shall be in strict compliance with the plans submitted with the application, unless the Public Works Department has granted an exception.

Division 7 Penalties

Sec. 54-193 Violations; penalty; authority to stop work

a. If any provision of this chapter is violated the County may cause all work to be stopped, removal of the underground utility line and the roadway to be repaired to its original condition.

b. Any person, firm, corporation, association or partnership violating any provision of this article shall be punished according to the general penalty described in Section 1-19, General Penalty, continuing violations; authority granted to court. Any alleged violation shall be amenable to the process of the Magistrate or State Court of White County, and upon conviction, shall be punished as provided by Section 1-19 as referenced hereinabove. Each day a violation continues shall be a separate offense, but the alleged violator shall be cited for each separate violation.

Sec. 54-194 Remedial nature; no warranty

(a) All permits issued and inspections conducted are remedial and construed to secure the beneficial interests and purposes, which are public safety, health and general welfare, through roadway and right-of-way integrity and safety to life and property from hazards attributable to:

(1) obstacles or encroachments in road rights-of-way; and

(2) the regulation of the installation and construction of any structure within road rights-of-way.

(b) The courts shall not construe the inspection or permitting of any structure or obstacle under the requirements of this article as a warranty of the physical condition thereof or its adequacy. Neither the Public Works Department, Board of Commissioners nor any County official or employee shall be liable for damages for any defect or hazardous or illegal condition or inadequacy of such structure or obstacle, nor any failure of any component of such, which may occur subsequent to such inspection or permitting.”

The effective date of this amendment shall be October 2, 2007.

RESOLVED, this 2nd day of October, 2007.

**WHITE COUNTY BOARD OF
COMMISSIONERS**

s/Chris R. Nonnemaker
Chris R. Nonnemaker, Chairman

s/Joe Campbell
Joe Campbell, Post 1

s/Craig Bryant
Craig Bryant, Post 2

ATTEST:

s/Jean Welborn
Jean Welborn, County Clerk”

The Board of Commissioners set a tentative time to tour the Wastewater Plant in Cherokee County for Monday, November 19, 2007, leaving around 8:00 A.M. Tom O’Bryant was appointed to check on this date.

Under Citizen Participation, Teresa Stansel stated that she was asked by someone to ask about the sidewalk construction on Highway 75. Ms. Stansel stated that there was a segment of land between the curb of the highway and the sidewalk and asked if that would be the State’s responsibility to keep that cut and clean. Commissioner Campbell stated that the State would have everything within its 100-foot right-of-way.

Ms. Stansel stated that there was a letter to the Editor by Jere Westmoreland in last week’s paper; that she would like for everyone to read the letter that concerned mismanagement in the forest and catastrophic fire/public endangerment. Commissioner Campbell stated that he agreed with that but doing something about it was something else. Ms. Stansel stated that the Forest Service had a new manager to be on board in two weeks; that he did advocate controlled burns; that the forest team had also copies of the letter; that she felt that they would get some progress there; that they would like the Board of Commissioners to continue to consider promoting the emergency resolution to take over control of the national resources to clean up the public endangerment and fire situations; that they had a petition circulating asking for this consideration.

Barry Davidson and Stanley McDougald addressed the Board of Commissioners. Mr. Davidson stated that they had received a letter from the Health Department regarding a law that had gone into effect in January and asked who made the law and why the letter had not gone out until August. Mr. Davidson asked who had the authority to tell them where they had to drill a well. Chairman Nonnemaker stated that the Health Department

Board Chairman Nadine Wardinga, the Environmental Health Inspector Sean Sullivan, and the Health Department Area Supervisor were present to discuss this issue. Chairman Nonnemaker stated that he did some digging after he received the copy of the letter; that the Health Department did need to make a change concerning this. Chairman Nonnemaker stated that the Board of Health, upon which he represented the Board of Commissioners, was charged with making sure that the public health was adhered to within the county; that there had been a law in the books about getting permits for drilling wells. Mr. Davidson stated that they did not have a problem with getting a permit. Chairman Nonnemaker stated that they had had an issue with that; that the well permitting requirement was not new; that they had had an issue with some of the well drillers who drilled a well without a permit; that it was probably not intentional; that they had had a case a couple of months ago when a person stated that he did not know about the law and had to be cited; that the Health Board asked Sean Sullivan to generate a letter to all the well drillers, stating that they needed to get a permit; that if they failed to get a permit and they drilled anyway, there would be a fine of \$500.00 for the well driller and the property owner would get fined \$500.00; that the man who was cited was given a variance because the law was relatively new; that the well drillers claimed they did not know about the law.

Mr. Davidson stated that it was August 9 when he received the letter. Chairman Nonnemaker stated that they wanted to give notice as a courtesy; that ignorance of the law was not an excuse; that they wanted to take an extra step to make sure the well drillers knew; that after talking to Mr. Sullivan that morning, according to the way the law was written, Mr. Sullivan was to determine where to put the well; that it should state that Mr. Sullivan would determine where not to put the well. Mr. Davidson stated that that was correct; that if they were not within 100 feet of the drain lines or within 150 feet of the septic tank, they should have some decision in where the well would be situated.

Chairman Nonnemaker stated that if someone had a plat showing the house, the boundaries, the street, etc, Mr. Sullivan should probably be putting a red area in those areas where you could not drill a well; that they did not care where they put the well as long as it was not in those areas that affect public health. Mr. Davidson stated that that was not what the letter stated. Chairman Nonnemaker stated that he knew.

Commissioner Bryant stated that they were going to have to clean up the letter. Chairman Nonnemaker stated that sometimes things go out that are not clear and that they wanted public comment on this; that they needed to change the letter; that he sent out an email and that they would address the correction right away. Chairman Nonnemaker responded to Mr. Davidson that they did not want Mr. Sullivan to tell them where to drill because the ones in the business would know where the water was. Mr. Davidson stated that no one knew for sure where it was.

Mr. Davidson stated that well drillers had to go to classes and be certified and be bonded in order to drill a well; that they knew they had to stay 100 feet from the drain lines and 150 feet from the septic tank. Ms. Wardenga stated that their concern was for those who did not get permits; that they needed to make sure that the water supply was protected. Commissioner Campbell asked if there was some miscommunication in the letter; that

they understood that Sean Sullivan had to come out and spot where the well was to be located. Mr. Sullivan stated that they pretty much determined where the well could go; that he would tell the homeowner or whoever was there at the time that when he sited a well, he could not tell them that they would hit water; that his entire purpose was to make sure that it was 100 feet away from the drain lines and 150 feet from the septic tank just the set backs; that there were numerous times when he had put multiple well sites. Commissioner Campbell asked if the property owner had to wait until Mr. Sullivan could come out there and locate the sites; that they knew that if they did it in the wrong place, they would be fined. Mr. Sullivan stated that they would typically apply for a permit; that they would go out there partially for reason that there was a difference in the fee; that if a person applied for a well permit at the same time as a septic permit, the fee was \$25.00; that if they applied for a well permit only, the fee was \$50.00; that the fee was cheaper if the permit was applied for at the same time as the septic permit because they had to make a trip out there already when they had a septic permit.

Mr. Davidson stated that the case they had the day before, they went out to drill at the site that Mr. Sullivan had marked and it turned out to be a bad hole; that in that case, you have to move and try again; that they just had to pack up and leave; that he knew they were 100 feet from all the septic systems and that they could have gone way up the hill to try again; that they felt, from the information in the letter, that if they had drilled in another location than the one sited by Mr. Sullivan, they, as well as the owner, would be facing a \$500.00 fine. Mr. Sullivan stated that that particular permit was from 2003; that he felt that they also needed to address; that a lot could happen in 4 years; that septic tank permits expired after one year; that they might want to consider doing the same with well permits.

Chairman Nonnemaker stated that they did not want Mr. Sullivan telling the well drillers where to drill; that they wanted him to say "don't drill here." Chairman Nonnemaker stated that it would help the well drillers to know where the set backs were. Mr. Davidson stated that it did. Commissioner Campbell stated that he felt that the Health Department should give the well drillers guidelines as to where they should not drill the wells; that he did not see why the Health Department would need to site the well. Mr. Sullivan stated that they did not; that they visited the site and located existing and proposed septic systems on the property and adjoining property; that they would locate the area in which the well would have to be located; that that was the reason that the letter was worded to state, "within the area as set forth on the well permit." Mr. Sullivan stated that the Health Department's intention was to tell them where they could not put the well.

Chairman Nonnemaker stated that at the next meeting of the Health Board they would try to clarify the Health Department's position on the well permits. Mr. Davidson asked for clarification if they drilled at one site and was not successful, could they move to another site as long as they knew that the second site was outside the setbacks for septic systems and tanks. Mr. Sullivan stated that that would probably have to be the guidelines until the Health Board could change it. Chairman Nonnemaker stated that common sense had to prevail; that he would roll with what made common sense; that if the Health Board had to tweak the regulations, they could; that in the meantime, the Health Board would not hold

them up. It was stated that the Health Inspector should draw a line or area to be avoided for the well and let the well drillers decide where to locate the well outside that area.

Mr. Sullivan also stated that sometimes if a farm ran out of water, the drilling of a well was necessitated on the weekend without waiting for a permit. Chairman Nonnemaker stated that if it was an emergency situation, they needed to figure out a way to allow it; that these well drillers were certified in doing this.

Chairman Nonnemaker stated that he had invited George Hvalenka to the meeting. Chairman Nonnemaker stated that Mr. Hvalenka hit him up every time they were at Rotary Club about enclosing the sides of the Courthouse. Mr. Hvalenka stated that he had called and left one message. Chairman Nonnemaker asked the Board of Commissioners where they wanted to go with enclosing these sides; that today was a prime example of the need to expedite the enclosing of these side; that he knew that money at this time was tight. Commissioner Bryant stated that he thought they had already agreed. Commissioner Campbell stated that he thought they had also. Chairman Nonnemaker stated that that was why he wanted to talk to them; that they had not said that they were using Mr. Hvalenka. Chairman Nonnemaker asked Mr. Hvalenka to give his background.

Mr. Hvalenka stated that he was presently practicing architecture in Sautee and had been for the past six years; that before that he had a partnership in Gainesville; that his partner was N. A. Jacobs who designed the present courthouse; that when he was in partnership with Mr. Jacobs, he also worked with him on the high school here in White County; that he was experienced architecturally and certainly capable of helping out with anything they might need for the courthouse; that he had access to the drawings and engineering on the present courthouse.

Commissioner Campbell stated to Mr. Hvalenka that he had talked with Judge Garrison Baker about the South side of the Courthouse; that they had wanted him to get in touch with Mr. Hvalenka and have him discuss this with them; that Mr. Hvalenka should talk with Judge Baker about his needs in that area; that the balance of the South side would be made into a court room; that concerning the North area, he should get in touch with Clerk of Superior Court Dena Adams; that they needed to make the records area handicap accessible; that Ms. Adams wanted to use part of that area to create that area; that there was 1800 square feet in each of those areas. Judge David Barrett stated that he had been trying to figure out how to get three Superior Court Judges, a Juvenile Judge, a Magistrate Judge and a Probate Judge to meet everyday, along with Grand Jury, etc.; that he had spent Saturday afternoon and part of Sunday trying to figure this out; that there would be days that they just stack them in there and pray that they have civil cases completed so that they would have a place to put people; that if the Grand Jury did not finish and civil cases go on, with non-jury matters to be handled on Friday, they would have to put them in the hallway. Chairman Nonnemaker stated that they were very close to having the Board of Commissioners' in the hallway for this meeting.

Commissioner Campbell stated that the schedule that Judge Barrett described seldom happened; that he did not want to spend \$14 million for a new courthouse. Judge Barrett stated that he was not saying that they needed to build a \$14 million courthouse; that there was going to be a lot of days where, with the extra Judge, and with a full-time Juvenile Judge, that this was going to be a problem. Commissioner Campbell stated that that was why they wanted to put a courtroom on the South side of the Courthouse and a small courtroom on the North side. Judge Barrett stated that they would not be able to use a jury room like they do at Union County where they have two jury courtrooms that he could run two sets of jury courts at the same time; that if they had two jury courtrooms, they could do that here and save a lot of money and have those judges in 2009 to run two courtrooms out of two juries from the same pool, which would save the county from buying other jurors twice.

Chairman Nonnemaker asked the Board of Commissioners where they wanted to go. Chairman Nonnemaker asked if they wanted to have Mr. Hvalenka, who has the experience and records of the courthouse, to go ahead and get with Judge Baker and get a design going on the South side and with Dena Adams on the North side. Commissioner Campbell stated that the Sheriff also needed to be involved. Sheriff Walden stated that he needed to be involved with the access for the prisoners. Judge Barrett stated that he would like to get his two cents worth in concerning the court rooms. Chairman Nonnemaker stated that maybe they could get a meeting together with Judge Barrett, Dena Adams, Sheriff Walden, Chief Magistrate Joy Parks, Judge Alderman, and Judge Garrison Baker. Judge Barrett stated that they all needed to get together and see where they needed to go. Chairman Nonnemaker asked who was going to organize the group. Judge Barrett stated that he would organize it. Chairman Nonnemaker stated that Judge Barrett would be the chairperson of the remodel-the-courthouse committee.

Judy Lovell addressed the Board of Commissioners, stating that she was not against any of the plans, however, she had been sitting on the Grand Jury and the question had been asked if the Board of Commissioners, before they could get an architect to start the work, did not have to advertise for bids for the job. Chairman Nonnemaker stated that the Grand Jury had just asked him all of this; that what they had always done with professional services (attorneys, architects, etc.), something that was not a general purchase, they have used somebody who was familiar with what they were trying to do, was local, and could get the job done at a reasonable fee. Chairman Nonnemaker stated that by having Mr. Hvalenka, who had access to the building plans and the person who actually designed this building, you would not be getting someone who was starting from scratch; that they could go through a Request for Qualifications instead of a bid; that they usually did the RFQ for designs; that they purchased a car last year for the county; that they got bids; that Alan Vigil Ford was \$800 cheaper than Jacky Jones; that right or wrong, they awarded the bid to Jacky Jones because he was a business man in the county and did business in the county; that if they could invest back into the community, they would be doing a better job.

Ms. Lovell stated that she understood all that; however, the Grand Jury had questioned this and it needed to be clarified so that everybody understood; that if it were clarified,

they would not have individuals coming to the Grand Jury saying that the Grand Jury needed to do something about this because these (bids) were not open. Chairman Nonnemaker stated that about Pond, the Board of Commissioners did put out an RFQ and received several responses. Commissioner Bryant stated that they had ten companies to come in for interviews. Ms. Lovell stated that the general public did not know it evidently or they would not be asking the Grand Jury to look into it. Chairman Nonnemaker stated that it was all in public meetings; however, they talk about it here and there and it grows; that it was done openly; that the press was there when they did this.

Dwayne Turner stated that the challenge was that according to the specifications and guidelines that the Board of Commissioners was supposed to be operating under was not being followed; that those guidelines specify that any services over \$1500 had to be bid; that over \$15,000 had to be bid with sealed bids; that the Board of Commissioners was not operating under those specifications. Chairman Nonnemaker stated that they did that; they did that with the engineering. Mr. Turner stated that they were just talking about commissioning someone to do work and paying them for their work but yet it was not going to go out for a bid; that they did not know what it was going to cost the county; that that was the challenge that the public had with the Board of Commissioners not meeting their own specifications and guidelines by putting work out to services or products or purchases; that it did not matter if it was a professional service or a non-professional service. Chairman Nonnemaker stated that they had always worked under the pretense (even before he became a Commissioner) that professional services did not have to be bid out. Mr. Turner stated that they should change the guidelines and let the public know what the guidelines were, rather than going against their own guidelines. Chairman Nonnemaker stated that concerning Pond, it was all bid out; that they had received RFQ's from all sorts of companies.

Judy Lovell stated that she felt that clarification was important. Chairman Nonnemaker stated that they had been tweaking a purchasing policy since the one from 2001 but had not adopted one; that it was hard to remember whether or not the proposals had been adopted.

Chairman Nonnemaker stated that there were a lot of people who did a lot of good things for this community and there were others who were always wanting to find fault with everything that went on. Mr. Turner asked Chairman Nonnemaker if he was insinuating that that was what he was doing. Chairman Nonnemaker stated no; that he was not talking about Mr. Turner; that it was not against him at all. Mr. Turner stated that his intentions were to make sure that if they had guidelines that they wanted to go by, and they were their guidelines, then they should be held accountable for following those guidelines. Chairman Nonnemaker stated that they were held accountable; that he did not see where they did not follow the guidelines with the Pond situation. Mr. Turner stated that the Board of Commissioners was fixing to do it now. Chairman Nonnemaker stated that they were not; that they were having the committee get together with Mr. Hvalenka to look and design the needs; that there was not even an exchange of monies.

Chairman Nonnemaker stated that there were some preliminaries that had already been sketched out for this room, as well as a final draft of the proposed new courthouse; that even for this courthouse there were some minor sketch work done that he thought Alton Brown had.

Judge Barrett stated that what he was trying to do was to get something together; that Judge Baker had talked about things; Dena Adams had talked about things; that the Board of Commissioners had talked about things; that at some point they could get to the point of bid or no bid or whatever the Board of Commissioners wanted to do; that they needed to have these people come to the table to get a plan. Chairman Nonnemaker stated that it was trying to get an idea first before they could even bid out design; that they needed to get an idea of where they wanted to go; that they did not want to spend money on design until they knew about what everybody wanted; that they could then pay the money for design; that design was the architectural stuff, electrical, heating, air.

Commissioner Campbell asked Mr. Hvalenka what his costs would be in meeting with this committee and getting the thoughts and ideas together. Mr. Hvalenka stated that the first step was always to establish a list of needs for a program before his work could be done; that before his work could be done, a program would have to be established by the client; that once the program was established, he would review and charge for that; that he would review their program; that once he knew the extent of the program, he could establish a proposal for costs for services; that it would be up to the Board of Commissioners to review and accept or not.

Chairman Nonnemaker stated that he had toured the detention center last week with the Sheriff. Sheriff Walden stated that they needed storage, office space, and inmate space; that some of the storage could be in violation of fire codes; that they needed to do a face lift on the inside of the jail as far as painting; that the building was twelve years old; that they had kept it up but there were some things that they could not keep up with daily maintenance. Chairman Nonnemaker stated that there were some things that were literally falling apart; that some of the storage was unreal; that they had Ron Cantrell come by because it was after Rotary and take a look at the situation; that it would be costly to make these improvements.

Ms. Lovell thanked the Board of Commissioners for their support in the Sesquicentennial celebration. The Board of Commissioners expressed their appreciation to all involved in the successful celebration.

Chairman Nonnemaker announced the next work session for Monday, October 29, 2007, beginning at 9:00 A.M. Chairman Nonnemaker also announced the next regular meeting for November 6, 2007, at 4:30 P.M.

Upon motion made by Commissioner Bryant, seconded by Commissioner Campbell, the meeting was adjourned.

Chris R. Nonnemaker, Chairman

Joe Campbell, Post 1

Craig Bryant, Post 2

Jean Welborn, County Clerk