The Henry County Board of Commissioners held a Regular Public Meeting at 9:00 a.m. on Monday, August 20, 2012, in the Community Room, County Administration Building, 140 Henry Parkway, McDonough, Georgia. Notice of this meeting was posted in the entrance foyer of the County Administration Building. The Daily Herald was notified of this meeting. Those present were:

Elizabeth “BJ” Mathis, Chairman  
Randy Stamey, Vice-Chairman, District III Commissioner  
Warren E. Holder, District I Commissioner  
Brian Preston, District II Commissioner  
Reid A. Bowman, District IV Commissioner  
Bruce Holmes, District V Commissioner

Also attending were Shay Mathis, County Clerk; LaTonya Wiley, County Attorney; Fred Auletta, Deputy County Manager; Michael Harris, Planning and Zoning Division Director; Terry McMickle, Public Works Division Director; and others.

Chairman Mathis called the meeting to order and called for acceptance of the agenda. Commissioner Bowman made the motion to approve the agenda; Commissioner Stamey seconded. The motion carried 5-0-0.

**Execution of Settlement Closing Statements**

Terry McMickle, Public Works Division Directors presented the agenda item to the Board. Settlement Closing Statements (HUD-1) are required in the acquisition of right-of-way and easements for DOT (Department of Transportation) projects. Authorizing the Public Works Division Director to sign the statements would expedite the closings. The request is for authorization for the Public Works Division Directors and the County Attorney to execute the Settlement Closing Statements.

Commissioner Bowman made the motion to amend the Resolution to remove the Department of Transportation Director and replace with the Public Works Division Director; Commissioner Preston seconded. The motion carried 5-0-0 approving Resolution 12-164.

**Budget amendment regarding the Fairview Road Phase I project**

Terry McMickle, Public Works Division Directors presented the agenda item to the Board. The District Commissioner requested that the Fairview/Austin/Swan Lake Road project be put on hold and the remaining funds be transferred to the Fairview Road Phase I project. This project would realign West Panola Road to intersect with Fairview Road west of Danner Road. SPLOST funds would be used for construction within the Fairview Road footprint. The remainder of the project would be funded using the $877,000 that will be transferred from the Fairview/Austin/Swan Lake Road project.

Commissioner Holmes state he felt it was important to move the moves when it was discussed that there wouldn’t be enough funds to complete the West Panola portion of the Fairview Road project. There were funds in the District V DOT budget to allocate towards West
Panola Road. The reason West Panola Road is important to Henry County is because of a project coming to the county. The entrance to the project will be the new West Panola Road.

Chairman Mathis asked what is the timing on the Fairview project and this project are they being synchronized to happen at the same time. Mr. McMickle stated the Fairview Road project is a SPLOST project, this projects funds are Capital Funds. DOT was going to give their funds for the project to SPLOST. Rouque Romero, Director of SPLOST Transportation stated phase one of the West Panola project should be let for bid in October or the first of November. All of the right-of-way has been obtained for this project. Regarding the Fairview Road project approximately 1/3 of the right-of-way has been acquired. The goal is to obtain all of the right-of-way by the end of the year. If that happens the project can be let for bid in January and construction can start in February. It everything works out, both projects should be under construction at the same time. West Panola has been designed as a two-lane road with a median. In the future if the road has to be widened it can be done on the outside of the road.

Chairman Mathis asked how long it would take to complete the Fairview Road project. Mr. Romero stated it would take approximately two and half to three years.

Commissioner Bowman asked how the project fits with the construction schedule for the proposed Exigence project. Commissioner Holmes responded that the Fairview Road project would take two and a half years but the West Panola Road is a different scenario. It should take approximately eight months to complete the West Panola Road project. Once Exigence is operational citizens will be able to get to the project.

Commissioner Holder commented that it was stated that SPLOST funds and Capital funds or General funds or DOT funds would be comingled. The law is very specific about com mingled funds. Commissioner Holder stated that these two projects can be separated that nobody can imply that funds were comingled to do Fairview Road project or the Fairview/Austin/Swan Lake project which realigns the road. Mr. Mickle stated funds are being transferred from the Fairview/Austin/Swan Lake project to the Fairview Road phase I project. A cost estimate was done on everything that’s outside of the Fairview Road Widening SPLOST project. Anything that would have been inside that project originally will be done by SPLOST. Commissioner Holder stated it’s the Commissioner’s discretion if he would like to transfer funds from one project to another as far as local funding is concerned. The SPLOST funding has been designated for that project and it will proceed. Mr. McMickle stated that was correct. Funds could not have been taken from SPLOST and applied to the West Panola project. Mr. Romero stated the Board passed a Resolution to include West Panola as part of Fairview. If it had not been included as part of the Fairview project there would be problems with the signals at East Atlanta, West Panola and Fairview. The Board approved the allocation of funds for the design of West Panola. What staff is attempting to do is expedite the process by using Capital/DOT funds. That’s why it’s being emphasized where the funds will be spent. Incorporating the funds will help complete the entire project.

Commissioner Holder asked if the $877,000 minus $10,000 will be enough to complete the project. Mr. Romero stated the estimated cost was approximately $840,000.

Commissioner Holder asked if the $877,000 that was unencumbered specified for District V. Mr. McMickle stated he wouldn’t say they were for District V; it came from a 2006 Resolution. The amount of $900,000 was originally designated for the Fairview/Swan Lake/Austin project and the project is in District V.
Commissioner Holder asked the County Attorney, after reviewing this request did she see any legal concerns with the way this is being done. LaTonya Wiley, County Attorney stated no based upon the fact that early last year the Board approved a Resolution including the West Panola Road as part of the Fairview Road SPLOST widening project. At that time the Board was advised that the engineering design mandated or required this extra road to be included to make the Fairview Road project work from a traffic standpoint. What’s being posed is to have additional funds to supplement a SPLOST project. As stated previously, the reverse could not happen but there is nothing to suggest, legally or otherwise that the County could not use non-SPLOST funds to aid and supplement a SPLOST project.

Commissioner Holmes made the motion to approve the request; Commissioner Holder seconded. The motion carried 5-0-0 approving Resolution 12-165.

**Authorization to purchase fire turnout gear for recruit class**

Chief Bill Lacy, Fire Department presented the agenda item to the Board. The request is to approve purchase requisition #82299 in the amount of $26,421 for the purchase of turnout gear for the recruit class. The purchase of fifteen (15) Lion V Force Turnout Jackets and fifteen (15) Lion Apparel Turnout Trousers are needed for the current recruit class. Currently there is a contract with Nafeco which expires June 30, 2013 for this equipment.

Chairman Mathis asked if this was an operational budgeted item for this Fiscal year. Chief Lacy responded yes.

Commissioner Stamey made the **motion** to approve the request; Commissioner Bowman seconded. The motion carried 5-0-0 approving Resolution 12-166.

Commissioner Holder commented that it’s been said that the Board has been laying off and in the last year laid off 15 public safety employees. He asked the Fire Chief and Police Chief to respond. Chief Lacy stated there were no firefighter’s laid off this past year. Chief Nichols stated no police officers were laid off.

Commissioner Holder stated this can be misleading, there were approximately fifteen (15) positions that were not filled within public safety.

Chief Nichols stated he gave up six (6) civilian positions last year and the prior year gave up five (5) uniform positions to support a pay plan. Commissioner Holder asked if the department received the increase in the pay plan. Chief Nichols responded no.

Chief Lacy stated two positions were laid off last year and lost a position but did not lay off any firefighter positions.

Commissioner Holder asked Chief Nichols if any officers were taken out of a car because of the cut backs that would jeopardize the safety of the citizens. Chief Nichols stated he did not take any officers out of a car. Several years ago the department was authorized for 249 uniform positions and today the department is authorized for 229 positions.

Chief Lacy stated the fire department was authorized for 305 positions and is currently at 282. Part of that was positions that were never filled in 2007. The fifteen recruits are not new positions.

**Lease for property at 613 Spraggins Memorial Parkway, Stockbridge**
Major Mark Ammerman, Police Department presented the agenda item to the Board. The request is for approval to rent the property at 613 Spraggins Memorial Parkway to a police officer. It’s a standard rental agreement for one year. The officer will pay $200 per month and will provide security services for the park.

Commissioner Holmes made the motion to approve the lease; Commissioner Bowman seconded. The motion carried 5-0-0 approving Resolution 12-168.

**Approval to retire a canine and enter a lease with the handler**

Lieutenant Scott Gray, Police Department presented the agenda item to the Board. The request is for approval to lease canine Rex to his handler, Jason Hart. Canine Rex has served the department for seven (7) years and he’s a ten (10) year old Belgian Malinois. He has developed medical issues that have caused him to have to retire.

Commissioner Bowman made the motion to approve the request; Commissioner Preston seconded. The motion carried 5-0-0 approving Resolution 12-167.

**Lease for property at 873 Fairview Road, Stockbridge**

Major Mark Ammerman, Police Department presented the agenda item to the Board. The request is for approval to renew an agreement with Officer Brayboy to lease property at 873 Fairview Road, Stockbridge.

Commissioner Holmes made the motion to approve the request; Commissioner Stamey seconded. The motion carried 5-0-0 approving Resolution 12-169.

**Performance Partnership Agreement with Georgia Emergency Management Agency**

Don Ash, Director of Emergency Management presented the agenda item. This is an annual agreement where the department receives funding for the operation of the Emergency Management Agency for Henry County. The amount increased due to the Census numbers. The funds go directly to the operation of the Emergency Management Agency.

Commissioner Bowman made the motion to approve the request; Commissioner Stamey seconded. The motion carried 5-0-0 approving Resolution 12-170.

**Purchase information sharing, presentation and conference software**

Don Ash, Director of Emergency Management presented the agenda item to the Board. This part of the technology grant that was received through Congressman David Scott’s office. The purchase is for Vue Too which is a product that will be used with emergency operations that help merge information as well as conferencing during a disaster. The total cost is $26,901.15. The total grant amount was $175,000.

Commissioner Holder made the motion to approve the request; Commissioner Bowman seconded. The motion carried 5-0-0 approving Resolution 12-171.

**Renewal of an agreement with Harris Corporation for software maintenance**

Don Ash, Director of Emergency Management presented the agenda item to the Board. The software and maintenance agreement is for the 800 mhz public radio system. There is a reduction from last year due to the fact that there was a system upgrade and there will be no enhancements this year. Last year it was $50,000 and this year it’s $30,000. The funding is part of the annual budget.
Commissioner Bowman made the motion to approve the request; Commissioner Preston seconded. The motion carried 4-0-0 approving Resolution 12-177 (Commissioner Stamey was not present for this item).

**Renewal of an agreement with Harris Corporation for the radio system maintenance**

Don Ash, Director of Emergency Management presented the agenda item to the Board. This is the annual maintenance contract for the public safety and county-wide radio system. There are some reductions due to the system upgrade. The funding source is included in the annual budget. The total cost is $508,983.79.

Commissioner Holmes made the motion to approve the request adding the funding source to the Resolution; Commissioner Bowman seconded. The motion carried 4-0-0 approving Resolution 12-178 (Commissioner Stamey was not present for this item).

**Memorandum of Agreement with the Georgia Department of Public Safety for use of property for antenna/receiver space**

Don Ash, Director of Emergency Management presented the agenda item to the Board. This is a renewal of a lease where space is provided for public safety for the State radio system. The space is located on Old Jackson Road and the lease is in the amount of $1.00.

Chairman Mathis asked if the Georgia Department of Public Safety was responsible for their repairs and maintenance. Mr. Ash stated yes.

Commissioner Preston made the motion to approve the request adding the funding source to the Resolution; Commissioner Holmes seconded. The motion carried 5-0-0 approving Resolution 12-172.

**Memorandum of Agreement with the Georgia Forestry for use of communications tower space**

Don Ash, Director of Emergency Management presented the agenda item to the Board. This is a renewal of a lease for use of a tower located at Station 1 for use by the Georgia Forestry in the amount of $1.00.

Commissioner Holder made the motion to approve request adding the lease amount to the Resolution; Commissioner Stamey seconded. The motion carried 5-0-0 approving Resolution 12-173.

**Statewide Mutual Aid Agreement with GEMA**

Don Ash, Director of Emergency Management presented the agenda item to the Board. This agreement is shared throughout all of Georgia’s emergency management that in the event of a disaster, resources can be deployed as well as received through the State operations center and surrounding jurisdictions.

Commissioner Holder made the motion to approve the request; Commissioner Bowman seconded. The motion carried 5-0-0 approving Resolution 12-174.

**Award of a Proposal for Consulting Services for the Hazard Mitigation Plan**

Don Ash, Director of Emergency Management presented the agenda item to the Board. The Hazard Mitigation Plan has to be revised every five (5) years. Grant funds have been
received from Georgia Emergency Management to do the plan. Proposals were received from four (4) vendors. A committee was developed to review the projects. From the proposals received the vendors were narrowed down to two (2). They were brought in for a second interview staff recommended the bid be awarded to Atkins North America, Inc. in the amount of $24,633.

Commissioner Bowman made the motion to approve the request; Commissioner Holmes seconded. The motion carried 5-0-0 approving Resolution 12-175.

Public Hearing: Ordinance amendment to Chapter 2, Section 2.04.01 Parking and Storage of Major Recreational Equipment in accordance with Sections 12.02.11 and 12.03.00 of the ULDC

Jeremy Gilbert, Planning and Zoning presented the agenda item to the Board. Currently the Unified Land Development Code regulates where major recreational equipment can be parked or stored on any residential lot. It further states that on a corner lot it can’t be parked in the side yard on a street side. Staff reviewed Ordinances from surrounding jurisdictions; Gwinnett County, Cobb County, Dekalb County, Douglas County and Coweta County. It was found that none of these jurisdictions regulated a corner lot any different than it regulated a standard lot. The request was presented to the Zoning Advisory Board (ZAB) on July 12th and they recommended approval changing taking out corner lot on the street side to allow someone to park their RV in the side yard as it would on a regular lot. Upon further review after the ZAB recommendation, staff added additional language that clarifies that the vehicle being parked on the street side wouldn’t impede any site distance. It would still have to meet the requirements in Chapter 8. Also where the Ordinance allows temporary living that can be approved by the administrator in an RV they would also have to have services that would facilitate the temporary habitation including the solid waste disposal.

Chairman Mathis called for public comments from anyone wishing to speak regarding this agenda item. Speaking was:

1. John Steere – 363 Arbor Ridge Parkway – Mr. Steere stated permission was given to him by his Homeowners Association to park his RV on his property and later found out about the Ordinance. He is asking the Board to approve the Ordinance amendment.

LaTonoya Wiley, County Attorney stated the Homeowners Association would have the right to file suit against anyone within the subdivision that violates a covenant that prohibits this type of vehicle. That would be a private contractual matter between the homeowner and the Homeowners Association to enforce the covenants. The County’s Ordinance amendment would not do anything to impair that particular restraint based upon the private covenant.

Chairman Mathis asked if the County Ordinance is more restrictive than the neighborhood covenant, which would prevail. Ms. Wiley stated in this case the Homeowners Association’s rules the covenants that run with those lands and would be a matter of private enforcement between those individuals. The County’s Ordinance could not impair the covenants that run with that land. Chairman Mathis stated if the homeowner received permission, even though the County Ordinance says one thing, if the Homeowners Association granted permission that was contrary to the County Ordinance, he would be allowed to go with what the homeowner’s association has stated. Ms. Wiley stated yes. If the Homeowner’s Association
relaxed its rules or changed its covenants and the County Ordinance also allowed this type of activity to occur then it would be her opinion that the vehicle could be placed in the subdivision.

Chairman Mathis commented that it had also been discussed about people who use RV’s if their homes were being repaired or if they were doing home improvements which would necessitate them to have one of these vehicles on site. There was a concern that the Ordinance prohibited that and that’s being addressed also.

Mr. Gilbert commented that this amendment to the Ordinance would apply to the entire county not just one specific development. If this is approved and allowed and a Homeowner’s Association doesn’t allow it, their rule will overrule the Ordinance and it would become a civil matter at that point.

Commissioner Stamey asked if there was this exact same scenario on an acre and a half in a RA subdivision with the same road frontage on both sides, how would it be addressed. Mr. Gilbert state currently the way the Ordinance reads even on a corner lot in a RA subdivision the current Ordinance would not allow it to be parked in the side yard regardless of the lot size it can’t be on the side yard with a road side. That’s what is being alleviated; to look at all lots the same.

Commissioner Stamey asked Mr. Steere when he received approval from his Homeowners Association, did they require a pad in place. Mr. Steere stated they required that the driveway be extended to park the RV. Commissioner Stamey asked if a pad would be required in the Ordinance or would crash-an-run be allowed. Mr. Gilbert responded that the Ordinance doesn’t specify whether it has to be paved or not. Language could be added that if it’s within a subdivision that has paved driveways that it would be required to have a paved pad.

Commissioner Holder made the motion to approve the amendment; Commissioner Preston seconded. The motion carried 4-0-0 approving Ordinance 12-13 (Commissioner Bowman was not present for the vote).

Approval of the minutes

Commissioner Holmes made the motion to the May 15th regular meeting minutes and the May 21st and 30th called meeting minutes and the June 4th regular meeting minutes; Commissioner Preston seconded. The motion carried 4-0-0 (Commissioner Bowman was not present for the vote).

Commissioner Holder made the motion to amend the agenda to move the public comments portion of the agenda; Commissioner Stamey seconded. The motion carried 4-0-0 (Commissioner Bowman was not present for the vote).

Public Comments

Speaking during public comments was:

1. Michael Lunsford – 198 Rowan Drive - Mr. Lunsford spoke regarding the proposed road improvements to Rowan Drive. He had a petition from six of the eight homes along Rowan Drive and they don’t want any improvements to the road. The road is used as a cut through and if it’s improved it would basically become a drag strip.

Commissioner Bowman asked the Public Works Division Director to stop the project.
2. Doug McClure – 310 Laney Court – Mr. McClure spoke regarding the soccer fields. There is a need for more soccer fields in the county. The only soccer fields in the county are locked all time and can’t be used.

Commissioner Holmes asked if the soccer fields the only park in Henry County that is locked and why is it locked. Mr. McClure commented that the soccer field is the only fields that have ten foot fences in the State. Other counties have made comments about the gates being locked.

Commissioner Preston commented that the park is open. There is a lease with the soccer association. They put some fences around the fields to protect their improvements is what was presented.

Appeal hearing regarding wrecker services – Corner Lot Towing, LLC

CHAIRMAN MATHIS: Alright. We’re going to move back up in the agenda to focus on an appeal hearing regarding wrecker services, Corner Lot Towing, LLC. That’s Exhibit #17 in your book. Since we don’t do these very often, just to give you an idea of how the hearing will be held, Corner Lot has appealed their removal from the rotation to the Board of Commissioners. We will allow each side to present their case, 15 minutes for each side, and then a time for questions and answers; at which time, the Board can make a decision on whether or not they are going to uphold the revocation of Corner Lot Towing, whether they’re going to reverse the decision, or whether we’re going to remand the case back to the Wrecker Service Committee with conditions and directions.

COMMISSIONER HOLDER: Madam Chair?

CHAIRMAN MATHIS: Mr. Holder?

COMMISSIONER HOLDER: Before the hearing starts, I want clarification. When Corner Lot first applied, emails started to surface to probably every Board member and to various departments within the county, that I should not have been allowed to take part in that decision because of my involvement with Corner Lot. I want the attorney to pay close attention to what I’m about to say because it’s going to determine whether or not I’m qualified to hear this or not. The only involvement, if you want to call it an involvement, is the fact that I do lease the property adjacent to the property that Corner Lot has their business, in Locust Grove. The property is owned by my father-in-law. I lease the property from my father-in-law, as well as do Corner Lot. The secretary in my place, in my store, accepts the rent from Corner Lot and gives it directly to my father-in-law. Now if that constitutes a conflict, I’m in conflict. In September of last year, there was another hearing on the wrecker service. I have missed one meeting in 16 years on this Board of Commissioners. My wife was having surgery that day. Emails started to fly that they didn’t have a representative that I should have been there to take a stand. I’m sorry; I could not be here that day. I don’t apologize for it, either. But the point is, am I in conflict or am I not? If I have a conflict of interest, I will leave before the hearing starts. If I’m not, I will sit here.
MS. WILEY: Thank you, Commissioner Holder. I think there could be an appearance of a conflict of interest in that to whatever extent Corner Lot leases from your father-in-law as a result of attempting to be in compliance with the county’s wrecker ordinance, which requires you to have a physical location here in the county; and assuming the outcome of this hearing revokes that status, then arguably Corner Lot would terminate its lease with your father-in-law, which would render him – not him – losing a tenant, or if this body upholds the decision of the Wrecker Committee, then one could argue that your participation influenced the continuation of the lease agreement so that it could benefit your father-in-law financially. I think, in light of the fact that your father-in-law has a financial interest with the entity coming before you today would pose the appearance of a conflict, and I will recommend that you recuse yourself from hearing, or acting upon this particular matter.

COMMISSIONER HOLDER: That being the advice of the attorney, then I recuse myself.

COMMISSIONER STAMEY: Madam Chair, can I have a comment, too?

CHAIRMAN MATHIS: Mr. Stamey.

COMMISSIONER STAMEY: Brian and I talked earlier. The last time we had a wrecker hearing has been several months ago with another wrecker service and my wife served on the board with somebody on that particular committee, at that particular wrecker service and to put myself back in the decision here to be biased one way or the other towards somebody’s decision, do you recommend I recuse myself from this vote, too?

MS. WILEY: Just for clarity’s sake, your wife has a relationship with someone who owns another wrecker company that’s not here today who does business with Accounting. That particular wrecker company is not involved directly with the matter before you today, or in Corner Lot, there is no indication in the record that that wrecker service has anything to do with the matter before you today, with Corner Lot. I don’t believe that there is a conflict of interest such that you should recuse yourself just because your wife has a relationship with someone else who also operates a wrecker service in the county.

COMMISSIONER STAMEY: I agree with that comment. The area of gray for me is can that person benefit based upon this decision with the wrecker service if their territory would actually expand one way or the other? That’s the gray area for me.

MS. WILEY: I think it has to be something that’s substantial. I guess, stretching it out, you could argue that. If you voted to uphold the decision to revoke, then perhaps another wrecker company could gain business. That’s so remote that it does not qualify as a conflict of interest. I think it would have to really stretch. There’s no indication that the wrecker company with whom your wife has a relationship, not a business relationship, I understand.

COMMISSIONER STAMEY: Correct.
MS. WILEY: It’s more of a social relationship. There’s no correlation that the wrecker service would receive any extra benefit, financial or otherwise, as a result of this decision. It’s too remote. I thank you for asking the question; that’s a good question to ask.

COMMISSIONER STAMEY: I just wanted to be exposed on it; thank you.

CHAIRMAN MATHIS: Anyone else that may have a perceived conflict?

COMMISSIONER STAMEY: Reid, you got something?

CHAIRMAN MATHIS: I want to make sure we give everybody an opportunity.

COMMISSIONER BOWMAN: Not today.

CHAIRMAN MATHIS: I was concerned we might not have a Board for the hearing at the rate we were going. At this time, we have the Wrecker Committee, which will make their presentation, 15 minutes. We can take questions and answers from the Board, and then Corner Lot and their representatives will have the same amount of time for their presentation and questions and answers. Good morning.

MR. ASH: Good morning, Board. Again, I represent the Wrecker Service Committee that consists of Chief Keith Nichols, Chief Bill Lacy, Captain David McCard and myself, Don Ash, whom you made 911 Director. On May 11th, at the Henry County Administration’s offices, we had a due cause hearing in reference to Corner Lot Towing and Recovery. The due cause hearing was in reference to violation of Henry County Wrecker Ordinance Section 3-4-332. The Wrecker Service Committee had received information referencing the owner of Corner Lot Towing owned a separate business, which was an auto salvage business. Reference Butts County Business License 3901. The Butts County Business License was registered to Bobby House as the owner and operator, who is also the owner and operator of Corner Lot Towing. During the hearing, Mr. House did indicate that he does own several businesses which include a used car dealership, an auto salvage and a title pawn business. If you look at the screen in reference to the application that was submitted to Henry County, the section that covers “other businesses” was omitted. During our hearing, we will able to question, as well as our County Attorney, questioned Corner Lot in reference to the omission on that application. At the time they advised that they were not aware of who had completed the application that was submitted. At the close of the hearing, Mr. Wangerin*, the attorney for Corner Lot, requested some additional information from the Wrecker Service Committee. All information had been submitted to him via an email that afternoon. The Wrecker Service closed the due cause hearing and the Corner Lot counsel, representing Corner Lot, wanted to review the information and submit some additional information that could be considered. On June 18th of 2012, we received a request from the attorney counsel for Corner Lot to provide some specific information that he and Corner Lot would like to submit additionally to the Committee to be considered in
decision. We did request them to expedite their decision so we could close out this hearing. On July 3rd, the counsel for Corner Lot submitted a request for a 20-day extension in submitting a response to the Wrecker Service Committee. The Committee did agree and received a written response. On July 20, 2012, the Committee received a written response to the due cause hearing. It was reviewed by legal counsel and reviewed by the Committee. On August 6th of 2012, the Wrecker Service Committee agreed that Corner Lot Towing should be removed from the approved list of towing services for Henry County. The Committee found that Corner Lot has ownership in businesses that are listed in our Wrecker Service Ordinances, the 3-4-332(a). Upon full review of the application which was submitted by Corner Lot, the Committee that found the omissions was pertinent questions in the initial application that should have been given to the Committee for review and consideration from approval. We’ll take any questions.

CHAIRMAN MATHIS: Just to make sure that we break this down in as simple terms as possible. The application that was submitted by the representative of Corner Lot failed to disclose that they also owned a used car dealership, auto salvage and a title pawn business which should have been on the application and they did not do that?

MR. ASH: That’s correct.

CHAIRMAN MATHIS: And under our ordinance, do we allow wrecker services in the rotation if they have these types of additional businesses associated with them? Are we going just on the fact that they did not disclose that on their application?

MR. ASH: There are some questions in our ordinance that specifically speaks to the ownership of auto salvages and those types of businesses, and that’s what we question them about, in the hearing. Specifically, auto salvaging and the used car dealerships.

MS. WILEY: Madam Chair? That question goes to the eligibility of the applicant, of the person applying. You have to meet some threshold eligibility standards and the Committee discussed that during the hearing, that the ownership that was disclosed later would have, perhaps, rendered the applicant ineligible, based on those ownership interests.

CHAIRMAN MATHIS: Does any Board member have a question for the Wrecker Service Committee? If not, at this time, did you have anything else that any of you wanted to add to what Don has presented? At this time, I would like to ask if the representative for Corner Lot would come forward. If you could please state your name, and you have 15 minutes for your presentation. Good morning.

MR. WANGERIN: Thank you, Madam Chairman. My name is Kevin Wangerin. I’m here on behalf of Corner Lot Towing, LLC. I want to thank the commissioners this morning for your time. Corner Lot Towing has been an approved wrecker service for Henry County. They’ve been towing for approximately a year now. During that time, they have had no customer complaints concerning their services or their fees. I would point to the ordinance in this case because this ordinance was adopted, and the intent of that ordinance was to provide reputable
wrecker services to serve Henry County for the protection of the public and for the offering of wrecker services at reasonable rates. The application that was submitted was submitted by Corner Lot Towing. Corner Lot Towing is a limited liability company. It is registered with the State of Georgia. It has a distinct legal existence. It is a person. It is a legal person that is the applicant in this case, to be listed on the wrecker towing service. Were you provided with a copy of the appeal letter that was submitted? Okay. That is made reference to in our appeal, that Corner Lot Towing, LLC, is the applicant. It is a legal person. It does not own any other businesses. It does not own any salvage business, it does not own a title pawn business, and it is strictly a towing company. On the application, it was asked whether the applicant – whether you have any other businesses under any other name. Corner Lot Towing does not have any other businesses. It is a sole business. Mr. House, who is the owner of Corner Lot Towing, LLC, has been forthright with the Wrecker Service Committee from the beginning; saying yes, me personally, individually, I own other businesses. But Corner Lot Towing, LLC, does not own other businesses. If you look at the actual charge that was brought against Corner Lot Towing, what was alleged by the Wrecker Service Committee was that we had violated, or Corner Lot Towing violated Ordinance 3-4-332(a)(9). That ordinance specifically provides: Certification, given under oath, that applicant does not, nor does any member of the applicant's staff, own or have interest in or receive any compensation from a body shop or any vehicle repair business or automobile parts provider. The decision of the Wrecker Service Committee in this case that was issued on August 6, 2012 does not find that Corner Lot Towing, LLC, owns any of those businesses. What the decision says is that Mr. House stated that he did, in fact, own a salvage yard and used car dealership currently being operated in Butts County. That finding, we would like this Board to overturn. First, Mr. House is not the applicant that’s serving Henry County. It’s Corner Lot Towing, LLC that is the applicant that’s approved on the license. Secondly, on the face of the decision, they found that Mr. House owned a salvage yard and used car dealership, neither of which is a body shop, a vehicle repair business or an automobile parts provider. If you look at the letter I sent in, there is a specific definition under Georgia law for auto salvage businesses, or auto graveyard businesses, that define it and does not include that as an automobile parts provider. Therefore, we think on the face of the Wrecker Service’s decision, it does not fall within the ordinance or does not show a violation of the ordinance. The other thing that we would bring for the Commissioners’ consideration, and this was discussed with the Wrecker Service Committee, is that this requirement under the Ordinance, number 9 of the Ordinance, that you have a certification, that requirement doesn’t seem to have any reasonable relationship to the intent of the ordinance. Meaning that the intent of the ordinance is to make sure that Wrecker Services are providing appropriate services to the citizens of Henry County. If you will note, on the application, nowhere on the application does it require a certification that they’re pointing to in this Ordinance. The application requires applicants certify no ownership of direct or indirect interest in any other wrecker service firm being considered for participation in the Police Duty Wrecker Service Program. Applicant further certifies that its manager has no ownership of direct or indirect interest in any other wrecker service firm being considered for interest. The application that was submitted to the Wrecker Service Committee never requested
any information that’s now being alleged as a violation. Certainly, there’s no evidence here that Mr. House or Corner Lot Towing, LLC, had any other interest in any Wrecker Service Committee. We think under the application process, we complied with the ordinance. In fact, Corner Lot Towing has complied with the ordinance. But the other issue that raises a question is why the ordinance would exclude anybody that owned a body shop or a vehicle repair business, or automobile parts business. What rational relationship does that have to the intent of the ordinance? When we looked at it, we thought, that clearly is a restraint on trade because it’s not prohibiting any type of conduct if the effect of the intent of the ordinance is to make sure that towing companies provide a certain standard of service, then they can list out any requirements that they need for that service. But simply to say because you, or even further any of your employees have any interest or receive any compensation from one of those businesses, you’re automatically excluded; we think it’s a restraint on trade. Certainly, if Number 9 of this Ordinance said that if you are white, or any of your employees are white, you can not be a part of this Wrecker Service; everybody on this commission would have no problem saying, you can’t do that, that’s discriminatory. If it said, if you are Methodists, or any of your employees are Methodists – I’m Methodist, so I’m using that as an example – which you can’t be on the Wrecker Service Committee. Every commissioner here would say that’s discriminatory. We can’t do that. Well, what you’ve done in this case and what this ordinance does is, it says if you own these certain types of businesses, no matter how good your company is, you can’t even be considered to be on the Henry County Wrecker Service, and then the ordinance doesn’t provide any reasonable rationale as to why those people should be excluded. If you look at my letter, I think I cited. There certainly is case law out there that talks about Wrecker Rotation Lists and not constituting a property right, but there are other more recent cases that say yes, it is a property right, especially like the Henry County Program where you are granting them a license and they have a right to conduct their business. When you have that type of situation, the courts look at that and say, is this a restraint on trade, are you prohibiting somebody from pursuing their legitimate business. So, we ask the Wrecker Service Committee to look at that issue. Obviously, they don’t have the authority to do anything about that with the ordinance, but this body does. We think that is an issue that needs to be addressed because, as we see it, it’s a discriminatory classification that doesn’t relate to what you’re trying to do. What you’re trying to do is get wrecker services on there that are providing a good service. That’s what you have in Corner Lot Towing. They’ve been providing a good service. They’ve been active here in Henry County. They have employees that are here, live here, work here, and are dependent on Corner Lot Towing and this business for their livelihood. So we would ask that you take that into consideration in reviewing the Wrecker Service Committee. Again, what seems to be going on, if you go back to the very beginning of this dispute, is the Wrecker Service Committee received an anonymous complaint saying hey, we don’t think their impound facility is up to par and we think that maybe they violated this part of the ordinance. That complaint didn’t come from a citizen that had used their service. You have wrecker service companies that are looking for technical violations and they want to have other wrecker service companies kicked off the rotation list so that there’s a greater opportunity for them to get on it. I think that the
commissioners should take a step back and say, what we’re looking for is wrecker services that are providing a valuable service to the folks that use them. As long as we have no customer complaints about those services or about those charges, we’re not going to go in and try to find technical reasons to throw off a company that’s doing a good job for the Henry County Wrecker Service and for the citizens of Henry County. In this case, there was not one issue, there was no evidence presented that Corner Lot Towing has not fulfilled every requirement that it’s been called to do under the Wrecker Ordinance that it’s not responded to every call, that it’s not been courteous to the customers served, or that it has not charged reasonable services for the services that it has provided. Therefore, we would ask that, one, either the commissioners just overturn this decision, place Corner Lot Towing back on the Wrecker Rotation List with the finding that Corner Lot Towing does not own any body shop, any car repair facility; it is not an automobile parts provider. They are the applicant. They are the legal entity providing the service. They clearly fall within the ordinance. If the commissioners are not inclined to do that, we would ask that you remand this case back to the Wrecker Service Committee on this issue of the ordinance and whether what type of business you own has any relevance to the actual applicant and the services that are being provided. Again, we think that you don’t have to go that far because the applicant is Corner Lot Towing, LLC; it’s not Mr. House. The only finding by the Wrecker Service Committee relates to Mr. House and not Corner Lot Towing. With that, I’ll answer any questions that the commissioners may have.

CHAIRMAN MATHIS: Does any Board member have a question?

COMMISSIONER PRESTON: I have one.

CHAIRMAN MATHIS: Mr. Preston?

COMMISSIONER PRESTON: I notice, because I hear your point on the business, that part wasn’t filled out. Why, under the “corporation” did they also not list the principals? Because if you’re making the case that it’s standing as its own entity, I mean, there is a question that specifically addresses it as a corporation, with the principals and that was empty, too.

MR. WANGERIN: Well, if you look at subparagraph B, it says, name all parties having a financial interest in the firm or corporation in the past two years, at the bottom of the first page; and Mr. House is listed there.

COMMISSIONER PRESTON: Right. But there was a question under “corporation”, list the names of all the principals; so that was just erroneously left off?

MR. WANGERIN: It was either erroneously left off or since it was a limited liability company, they didn’t think of listing members as opposed to principals.
CHAIRMAN MATHIS: Any other questions? Don, did you have something else you wanted to add?

MR. ASH: Yes, ma’am. Let me explain up a couple of more points for you. During the hearing, there was some discussion in reference to the application. Chief Nichols actually questioned Mr. House in reference to it. His response was, he was not aware of it. But he later went on to say that all these businesses operate under one umbrella, which is the umbrella, Corner Lot, Incorporated. Secondly, he talked about in reference of the used parts dealer. Let me speak to you to the intent. Part of what we deal with in the Wrecker Service Ordinances in our county, these Wrecker Services are dealing with our citizens and people who travel through Henry County. We have a great concern that in the event a vehicle is towed in or held, and then later sold for parts. We did question Mr. House in reference to the auto parts business. The direct question we asked him, if a person came in and wanted to buy a used auto part, would you sell it to him; and he said, yes. That constitutes a used auto part sales or dealership. Most importantly, I think it’s important for us to understand the intent of our ordinance is that we’re concerned about our citizens. We’re concerned about our community. Where we don’t have a specific complaint on Corner Lot, there is an area that if a vehicle is impounded and say the citizen can not recover that vehicle, at some point those parts could be sold as used. That’s our intent.

MR. WARDREN: Can I respond to that?

CHAIRMAN MATHIS: Certainly.

MR. WARDREN: Thank you. Two issues that I think you raised. One was, the salvage yard may sell an after-mark, or somebody could come out there and get a part off a vehicle and, thus, it is an automobile parts dealership. That’s not how it’s defined under state law. You go to a convenience store out here on 75 and you pull in to one of those convenience stores. You can go in there and you can buy an automobile part. You can buy a headlamp for your car, you can probably buy battery cables, you can buy emergency supplies. That doesn’t mean that the convenience store is an automobile parts dealership. That’s a very specific thing where you are in the business and that’s where your profit comes from, is selling parts for the repair of vehicles. That is not what the salvage yard does. The salvage yard comes in, takes vehicles, dismantles those vehicles and then sells those parts, like the alternators or the brake cords or anything else, to those distributors and that’s their income stream. If somebody’s got a 1959 Desoto or whatever and he’s got a salvage one out there, to go out and get a part, that’s not his business. Secondly, they talked about where we have concerns that if a vehicle is impounded, that maybe the parts will end up with Mr. House. If you’re familiar with the Abandoned Vehicle statute of this state, there is a very specific and detailed procedure you have to go through. Once you get that vehicle, within 3 days you have to submit to the state for details of who owns that vehicle. Once you get that detail, you have to send a letter not only to the owners but anybody that has a lien interest in that vehicle, saying that you impounded that vehicle and telling them what the fees are. If those fees are not paid within 30 days, you have to
send in a second certified letter saying that the vehicle is now declared abandoned and that they have a chance to redeem that vehicle through a Magistrate Court proceeding. After you do that, you have to file with the Magistrate Court to have that vehicle declared abandoned. The Magistrate Court then has to review that and make sure that everybody has had proper notification and then it can foreclose that lien. There are multiple backup safeties that you have to follow before you can ever have a vehicle declared abandoned. But when it is declared abandoned, and then you have to go through the procedure of selling it. When you sell that vehicle, it has to be done under Sheriff’s Sale, that’s certified. The Sheriff certifies what those funds are. You have to deduct your fees from towing the vehicle and then any other money that’s left over, you either have to send it to the owner if you know who it is, or you have to give it to the county. There are protections in place for businesses and Corner Lot Towing follows those procedures meticulously. We don’t believe that’s a reason for our concern, to say they shouldn’t be on the list.

CHAIRMAN MATHIS: Okay.

MR. ASH: Madam Chair, if I could just add one last thing. He did reference the abandoned vehicle policy. But during direct question, during the hearing, we specifically asked Mr. House, if you impound a vehicle, liquidate it, is there an opportunity that if someone comes into your business and wants to buy an alternator off that vehicle, would you sell it to him; and he said, yes. In our hearing. That’s where our concern is. This is a vehicle that’s been liquidated and impounded by the county to later dispose of. He said he would sell the part, and that’s where I’m concerned.

CHAIRMAN MATHIS: So we back up to the fact that under our eligibility standards, initially had the application – LaTonya, you can come up – had the application included the relationship in some way, shape or form to a used car dealership, a salvage dealership or a title pawn, under our ordinance they would not have met the eligibility standards and would not have been put on the rotation initially. So we’re going back to if that application had been filled out completely in all likelihood. We’re not here disputing the service that they have provided. We’re not here complaining about exorbitant charges or anything else. We’re going back to the eligibility requirements or standards that the county has in place. The county’s goal is to try to assure that the citizens are in no way, shape or form going to be subject to some type of abuse or the services being misused. It’s a stop-gap measure to prevent a problem down the road. Would that be a fair assessment?

MS. WILEY: Yes. All of my notes, you mentioned everything that I was going to come up here and say, Madam Chair. You’re absolutely correct. That is the eligibility standard. The Committee was deprived of the opportunity had that information been placed on the application as is required by ordinance, the Committee in its due diligence would, in all likelihood, have inquired further of the applicant. The Committee was deprived of that opportunity. When the
Committee later found out, the due cause hearing was held in order to make an inquiry, not to just take Corner Lot off of the list automatically, but its due diligence during the hearing to find out exactly how those businesses operated and the possible conflict that would exist with respect to the actual Rotation List itself. So you have stated the purpose and policy of that restriction very aptly. Let me just back up, too, Mr. Wangerin. The ordinance does not restrict Corner Lot Towing from operating its business. Corner Lot Towing is absolutely able to operate a towing business in Henry County. The ordinance at issue today is if the Corner Lot Towing is eligible to be on the county’s Rotation List. That’s a separate inquiry. Being on the County Rotation List is a privilege, it is not a right. In order to be on the County’s Rotation List, you have an absolute right to set the qualification standards for the entities that will be on the Rotation List. So I don’t want the impression to be that the county is prohibiting someone from engaging in trade; because that’s totally not the case.

CHAIRMAN MATHIS: And just so our citizens will understand why we’re even having this conversation, because it doesn’t relate to the ability of the owner to operate his business in the county, but to be on a County Rotation. That means if there is an accident or incident, a wrecker company would be contacted by someone who is under the employment of Henry County to come and to clean up the wreckage or tow the vehicle. There is a responsibility on county government to assure that anyone we place a call to is going to meet a particular standard that we have outlined in our ordinance.

MS. WILEY: Yes, ma’am.

CHAIRMAN MATHIS: Okay.

MR. WANGERIN: Madam Commissioner, just one point and that is nowhere in the Henry County Ordinance does it say that you can’t own a salvage business or a used car dealership. That is not the language that’s contained in the Ordinance that was brought before the Wrecker Service Committee.

CHAIRMAN MATHIS: Did someone want to speak to that?

MS. WILEY: We’ll place the Ordinance provision that dealt with the application standards.

MR. WANGERIN: The section, Section 9 says: Certification, given under oath, that applicant does not, nor does any member of the applicant’s staff, own or have interest in or receive any compensation from a body shop or any vehicle repair business or automobile parts provider and that applicant does not, nor does any member of the applicant's staff, recommend body or auto work to a third party and that applicant does not lease any property from the owner of a body or auto shop. The three categories are body shop, vehicle repair business, and automobile parts provider. It does not say auto salvage. It does not say used car dealership. We’ve provided you with specific state definition of what auto graveyard is.
CHAIRMAN MATHIS: Does any Board member have a question of either the Wrecker Committee or the representative of Corner Lot? If there are no further questions the instructions to the Board are as follows: The Board can make three recommendations. You can uphold the August 6, 2012 decision of the Wrecker Service Committee imposing a revocation on Corner Lot Towing. You can reverse the August 6th decision of the Wrecker Service Committee imposing a revocation, and Corner Lot Towing shall be immediately restored to its status as an approved Wrecker Service; or, you may remand the case back to the Wrecker Service Committee with conditions and directives. With that being stated, I will look to a Board member to make a motion.

COMMISSIONER BOWMAN: I move that we uphold the Wrecker Committee’s findings.

CHAIRMAN MATHIS: We have a motion by Mr. Bowman to uphold the decision of the Wrecker Service Committee imposing the revocation on Corner Lot Towing. Is there a second? We have a second by Mr. Holmes. All in favor of that motion? Motion carries 4-0.

MR. WANGERIN: Thank you for time. I appreciate it.

CHAIRMAN MATHIS: Thank you.

Mr. County Manager, do you have anything for Public Session? Ms. County Attorney, anything for Public Session?

MS. WILEY: No, ma’am.

CHAIRMAN MATHIS: Upcoming Meetings and Events. Tuesday, August 21st, our meeting has been canceled. That is an election day in Henry County and we encourage our citizens to get out and cast their votes in that election. Monday, September 3rd, all county offices will be closed in observance of the Labor Day holiday. Tuesday, September 4th, the time of the Regular Meeting has been changed. That’s typically a 9:00 a.m. meeting, but that meeting will be held at 6:30 p.m. Monday, September 15th at 9:00 a.m. and Tuesday, September 16th at 6:30 p.m. Those are all Regular Meetings.

We do not have an Executive Session today. It’s a miracle.

COMMISSIONER STAMEY: Madam Chair, before you go any further.

CHAIRMAN MATHIS: Mr. Stamey.

COMMISSIONER STAMEY: Just for point of clarification, the contract with AvPORTS, was that deliberately skipped over?

CHAIRMAN MATHIS: It’s been tabled. That item was tabled.

COMMISSIONER STAMEY: Okay, because it was in my book. I just wanted to make sure.
CHAIRMAN MATHIS: It was not on this morning’s final agenda. Mr. Preston had asked that he be allowed some time to review that information more in depth.

COMMISSIONER STAMEY: Thank you.

CHAIRMAN MATHIS: If there is no further business to come before the Board, I will entertain a motion to adjourn.

COMMISSIONER STAMEY: Move to adjourn.

CHAIRMAN MATHIS: Motion by Mr. Stamey – oh, Mr. Bowman?

COMMISSIONER BOWMAN: I just need to make one comment. Tomorrow morning we have ribbon cutting at Eagle’s Landing Parkway, correct? Where on Eagle’s Landing Parkway?

MS. HOOVER-ERNST: It was on the invitation. It will be at the Carters Facility and I can’t recall off the top of my head what the address for that is.

COMMISSIONER BOWMAN: At the Carter Facility?

CHAIRMAN MATHIS: Near the swamp. That would be near the swamp. For people who are not sure where the Carters Facility is, it’s right there near the swamp.

COMMISSIONER BOWMAN: Okay.

CHAIRMAN MATHIS: So we have a motion by Mr. Stamey to adjourn. Is there a second?

COMMISSIONER BOWMAN: Second.

CHAIRMAN MATHIS: Second by Mr. Bowman. All in favor? Motion carries 5-0; we stand adjourned.

Elizabeth “BJ” Mathis, Chairman

Shay Mathis, County Clerk