

REPORT AND SPECIAL PRESENTMENTS

OF THE

SPECIAL PURPOSE GRAND JURY – 2009 - 2010

IN THE SUPERIOR COURT

GWINNETT COUNTY, GEORGIA

MAYDEL MASSELLI-MONTERO, FOREPERSON

WILL C. WARRICK, III, VICE FOREPERSON

JANICE N. MCCLOSKEY, CLERK

OLIVER BOJARSKI, DEPUTY CLERK

Report and Presentments of the Special Purpose Grand Jury

The 2009 - 2010 Session of the Gwinnett County Special Purpose Grand Jury consisted of the following members:

Maydel Masselli-Montero, Foreperson
Will C. Warrick, III, Vice-Foreperson
Janice N. McCloskey, Clerk
Oliver Bojarski, Deputy Clerk

Emily D. Chesser
William K. Conklin, Jr.
Randall Cunico
Art Cuthbert
Tamara (Tammy) L. Delk
Dawn Fischer
Sandra Franklin
Kenneth Gauthier
Joseph Gentry
Brian Green

Sally Gustafson
Latonya Holt
Robert Johnston (excused)
Carole de la Cruz Jones
Ronald (Ron) D. Miller
Holly Shelnut
Randy Sneed
David Charles Steffes
Joseph Yeager

INTRODUCTION

The Special Purpose Grand Jury was empanelled by a vote of the Superior Court judges on November 9th, 2009. We have been hearing evidence essentially every other Friday since December, 2009. During that time we have followed the order which empanelled the Grand Jury and inquired into the acquisition of land by the Gwinnett County Board of Commissioners from 2004 until 2009. Utilizing a methodology which will be described later, the Grand Jury made a detailed inquiry into five land acquisitions which were ostensibly purchased for parks. It should be noted at the outset that none of the properties, three of which were purchased in 2007, are currently being utilized as parks.

The Grand Jury has diligently inquired into the standard county practices for land acquisitions, and the results of deviations from these practices. The information that we were required to review was so voluminous that the District Attorney was forced to establish a secure website to produce the documents in an electronic format to make these documents available for review. We heard the testimony of over 70 witnesses both from county government and the private sector. It is this evidence which allows us to reach our conclusions and make our recommendations.

From the beginning, each individual Grand Jury member believed that we were engaged in important work. It was our goal to determine whether

or not the elected officials and county employees were making decisions that were proper, legal, and wise in the expenditure of taxpayer money. This task was undertaken at no small price, both personally and financially, by each Grand Jury member. The Grand Jury wishes to express our appreciation to member Robert Johnston who stayed with us as long as he could until financial and work issues forced him to seek an excusal. It is unfortunate that the individual elected county Commissioners did not take our task as seriously. In fact, one was heard to say in the Grand Jury waiting room that we were "a pain in the ass." The Grand Jury regrets that an elected official would make such a remark. It is particularly worrisome that this remark was made about a group of citizens who were summoned to be grand jurors and have been performing their civic obligation for the last ten months.

The Grand Jury wishes to thank and commend many of the witnesses who appeared before us, including members of the county staff, who brought records for our review, prepared for their testimony by looking at notes and documents and in several cases prepared presentations and charts to assist us in understanding their testimony. In particular the Grand Jury wishes to thank and commend former Commissioner Lorraine Green for her willingness to appear on numerous occasions. The Grand Jury also appreciates her prepared and knowledgeable testimony as well as her familiarity with the community.

By contrast, under oath, every single sitting County Commissioner testified that they had not reviewed any of the readily available documents prior to their testimony. This failure to prepare in even the most basic way for their appearance resulted in a lack of recall about most important facts of each transaction. It is the Grand Jury's opinion that this failure to prepare for their appearance in any meaningful way is not only an insult to the Grand Jury but is consistent with the way in which decisions are made involving millions of taxpayer dollars.

That being said, it is our purpose that the citizens of Gwinnett County know the results of our investigation, hear our recommendations and that the judges of the Superior Court consider our work complete.

HISTORICAL CONTEXT

The Grand Jury heard testimony that prior to late 2007, the County was actually in competition with developers in its efforts to acquire land for various government purposes such as parks, water treatment, and roads. Prior to 2007, in order to be competitive, county government often paid more than the appraised price of land. In fact, this was so common that oftentimes the first offer to buy made by the County was appraised value plus ten percent. The Grand Jury heard examples of purchases prior to 2007 where even this offer was insufficient to induce sellers to sell.

In late 2007 and certainly by 2008, the real estate market collapsed. Prices for raw land plummeted and proposed developments were foreclosed on. Yet, the Grand Jury heard testimony from the Director of Support Services and from the current elected County Commissioners that county government continued its practice of offering, and paying, at least the appraised price plus ten percent.

Neither the Director of Support Services, nor the commissioners could provide the Grand Jury with a plausible explanation for continuing the practice.

STANDARD PRACTICES IN LAND ACQUISITION

In our first 3 meetings the Grand Jury was presented evidence about how land is acquired by county government in the normal course of business. In general, we found that several departments are involved in land acquisition depending on the purpose for which the property is being acquired.

Department of Support Services

The Grand Jury heard testimony from Steve North, the Director of Support Services. He testified that the role of his department in land acquisition was two-fold. In the case of park acquisition, once a need had been established for a park or a particular tract had been identified, he was

notified by the Director of Community Services, Phil Hoskins. He would then direct his staff to either locate a suitable parcel or parcels to meet the need or to conduct an evaluation of an identified parcel.

The evaluation process consisted of several steps. First, employees of Support Services would research the property using available county resources to determine the apparent suitability of the property for the proposed purpose. The owner of the property may also be contacted to determine if there is an interest in selling and at what price. The second step was to receive Board of Commissioners' approval to obtain an appraisal of the property. If approval was denied, the process would end.

After the appraisal was approved, North would request bids from a list of approved appraisers, select the lowest qualifying bidder and have the appraisal done. Once the appraisal was done, the results of the work of Support Services would be presented to the Board of Commissioners in an executive session. Since 2006, the commission has adopted a rule that there can be no vote on land purchases in executive session, these votes must be made in an open public meeting. Based upon this rule, Mr. North testified that if he receives a "consensus" from the Board and "direction" from the Board he moves forward to the next step.

Mr. North could not, nor could any present or former county employee, describe how he determined that there was a "consensus." It was variously

described as “no one said anything,” “no one disagreed, everyone nodded.” The consensus or directions to Mr. North are not recorded in any county document and as we learned later, no elected commissioner had a clear recollection of the meetings. In fact, on at least one of the transactions reviewed in detail, there was a strenuous disagreement about the purchase price between Chairman Bannister and Commissioner Beaudreau, but this was described by county staff that they left the meeting believing there was a “consensus” to purchase the property at a higher price. This is a common practice which ended up costing taxpayers \$1,152,662.00. To date, the Grand Jury has not been provided with an explanation of this “consensus” concept but does note that Webster’s Dictionary defines consensus as:

- a) general agreement; unanimity
- b) the judgment arrived at by most concerned

Mr. North then testified that once a consensus had been arrived at, he was authorized to negotiate a purchase price within the limits set by the Board. If an agreement could be reached with the seller, the documents were delivered to the Law Department for the preparation of a formal offer which was then submitted to the Board of Commissioners for approval to purchase. No purchase or offer was final until approved by the Board.

Mr. North also testified that his department was responsible for the purchase of land for other facilities such as fire stations, police precincts and libraries but that the process was the same.

Since the Grand Jury did not select any acquisitions by this department for further review, we have no comment on the operation of the Department of Support Services. The Grand Jury does note that Director Steve North provided us with documents which supported his testimony and answered our questions.

DEPARTMENT OF COMMUNITY SERVICES

The Grand Jury heard testimony from Phil Hoskins regarding the role of his department in land acquisitions. Mr. Hoskins testified that land needs for his department were identified from two primary sources. First was the Master Plan developed by county staff and approved by the Board of Commissioners in 2004 and 2007. The second was the traditional practice of placing a large "active" park near high schools so that the park athletic program would support the athletic program at the high school. Mr. Hoskins testified that there was no formal process in place between the county government and the Gwinnett County Public Schools to coordinate this process.

Once a need had been identified, the process of acquisition was turned over to the Department of Support Services to handle the acquisition. Mr.

Hoskins testified that he was present at executive sessions when properties related to his department were presented to the Board. He also attempted to describe to the Grand Jury the "consensus" concept.

Since the Grand Jury did not select any acquisitions by this department for further review, we have no comment on the operation of the Department of Community Services. The Grand Jury does note that Director Phil Hoskins provided us with documents which supported his testimony and answered our questions.

LAW DEPARTMENT

Karen Thomas, the County Attorney testified that the role of her department fell into two general categories. First, her department is responsible for the preparation of all legal documents related to the purchase in the "standard acquisition." Second, her department is responsible for litigating or overseeing the litigation of re-zoning cases, condemnations and all other cases which may arise out of land acquisition. In the course of preparing for litigation, county attorneys are authorized to hire appraisers of their own choosing as expert witnesses without the necessity of Board approval.

Since the Grand Jury did not select any acquisitions by this department for further review, we have no comment on the operation of the

Law Department. The Grand Jury does note that Karen Thomas provided us with documents which supported her testimony and answered our questions.

DEPARTMENT OF WATER RESOURCES

Lynn Smarr, the Director of Water Resources testified that her department acquired land for sewer and water lines, pump stations and treatment facilities. These acquisitions were handled within the department and no property could be purchased without Board approval.

Since the Grand Jury did not select any acquisitions by this department for further review, we have no comment on the operation of the Department of Water Resources as it relates to land acquisition. The Grand Jury does note that Director Lynn Smarr provided us with documents which supported her testimony and answered our questions.

DEPARTMENT OF TRANSPORTATION

The Grand Jury heard testimony from Brian Allen regarding land acquisition by his department. Mr. Allen described that his department was responsible for acquiring land for roads including intersections and rights of way. He described that his department acquired land in accordance with the Transportation Master Plan through either purchase or condemnation. Land acquisition was done within the department.

Since the Grand Jury did not select any acquisitions by this department for further review, we have no comment on the operation of the Department of Transportation. The Grand Jury does note that Director Brian Allen provided us with documents which supported his testimony and answered our questions.

GENERAL FINDINGS

- It should be noted that none of the acquisitions reviewed by the Grand Jury followed the procedures outlined by these witnesses.
- The procedures described above are not in any comprehensive document or procedure manual that the Grand Jury could find.
- No present or past commissioner who testified before the Grand Jury displayed any familiarity or understanding of this process.
- Land parcels in which the county may be interested in purchasing are identified from a variety of sources including inquiries from sellers, contacts with individual commissioners, and investigation by county employees.

- No parcel would be put on an executive session agenda for review by the Board unless staff received the approval of the District Commissioner for the district in which the land was located or the approval of the Chairman.

METHODOLOGY

The Grand Jury was presented evidence that as of November 13, 2009 the county government owned approximately 4,682 discrete parcels of land. These parcels ranged in size from several hundred acres to parcels which could be measured in square feet. We were then presented evidence that during the time period from 2005 to 2009 the county acquired 1,156 parcels of varying sizes.

We quickly realized that to examine each transaction during the relevant time period would be impossible for a group of twenty-three citizens had been asked to “put aside the press of their everyday lives” and serve as Grand Jurors. At the suggestion of the District Attorney, we developed a set of criteria to evaluate the purchases to determine which transactions would be reviewed.

We applied these criteria to all of the land acquisitions and arrived at seventeen (17) potential properties. Of those seventeen (17) we selected five (5). After ten months of evidence and after hearing testimony twice a

month for those ten months we are confident that we have enough information to draw our conclusions and issue this report.

The criteria which the Grand Jury used to filter the transactions were as follows:

- Was the transaction initiated by an individual commissioner? (As opposed to initiated by staff as part of a Master Plan)
- Was the transaction to settle litigation?
- Was there a relationship between the seller and the commissioner who initiated the purchase?
- Was there a significant difference between the county's appraisal and the purchase price?
- How long had the seller owned the property before it was sold to the county?
- Was the parcel suitable for the proposed use?

The information to answer these questions was provided from public records, the testimony of investigators from the District Attorney's Office and from the testimony of the previously mentioned county employees.

The properties which were initially selected for review were identified by the Grand Jury as follows and each transaction will be described in detail in this report.

RABBIT HILL PARK EXPANSION

Summary of the Transaction

The Rabbit Hill Park expansion was actually made up of three separate transactions spanning several years and involving a number of parcels. The stated purpose for the acquisition was to provide an expansion of the existing Rabbit Hill Park and/or to settle pending litigation.

According to the evidence that was presented, these tracts of land are located along Rabbit Hill Road in Dacula and are across from and adjacent to the existing Rabbit Hill Soccer Park. The three transactions resulted in the acquisition of 124.3 acres by the Gwinnett County Board of Commissioners in 2005 and 2007.

Transaction 1

According to the testimony of James Braden, he purchased a tract of land on Rabbit Hill Road in 2003 primarily to reinvest funds from another transaction primarily for tax reasons. The tract was a roughly triangular piece of property consisting of approximately 19.5

acres. When Braden purchased the property, it was zoned as part of a Light Industry District (M-1) and was physically located in the district represented by Commissioner Kevin Kenerly.

In February 2003 Braden applied to have the property re-zoned for multi-family residences at a density of 8 units per acre (RM-8). A vote by the Planning Commission on November 2003 denied the zoning as requested but allowed for detached single family dwellings (R-ZT Detached). The Board of Commissioners upon motion of Commissioner Kenerly, voted to modify the original zoning request to R-ZT Detached.

After the re-zoning was approved, as modified, Braden and the Gwinnett County Board of Commissioners were sued by Publix Supermarkets who operated a large distribution facility on an adjacent tract. Publix contended that placing residences so close to the distribution center would lead to a disruption of their business.

In order to settle the lawsuit, the Board of Commissioners purchased the tract for \$1,903,163.00 and entered into certain agreements regarding future development of the property.

Transaction 2

The second transaction in the Rabbit Hill expansion involved several tracts with an aggregate of 90.58 acres. The evidence before

the Grand Jury showed that D.G. Jenkins Development Corp., a corporation owned and operated by David Jenkins purchased the property in November of 2005 for \$7,981,400.00. When Jenkins purchased the property there was a pending re-zoning application filed by the seller C.E. Smith to zone the property from R-100 (Single Family Residence) to R-ZT (Residential Zero Lot Line/Townhouse). Jenkins, represented by the law firm of Mahaffey, Pickens and Tucker amended the application to include some commercial development on two of the included tracts.

In July of 2006, the Board of Commissioners denied the applications and left the property zoned R-100 for the commercial application. The residential application was approved as R-100 modified and R-ZT. In light of the re-zoning decision and its effect on his planned development, Jenkins instructed his attorneys to file suit against Gwinnett County.

In April of 2007 Jenkins transferred ownership of the property from D.G. Jenkins Development Corporation to Sydney Investments for a stated purchase price of \$10,390,554.00. This transaction was described by Jenkins as a "cash out" transaction that did not change the real ownership of the property or his plans for developing the property.

In May of 2007 based upon a motion by Commissioner Kenerly, the County agreed to purchase the property for \$16,260,000.00 as an active park and to settle the lawsuit.

Transaction 3

The third transaction was the acquisition of 14.2 acres located adjacent to Rabbit Hill Park. The testimony disclosed that the property was purchased in May of 2006 by Charles Ashworth d/b/a/ Cidpro, Inc. This purchase was made to acquire a full interest in the property from a partnership in which Mr. Ashworth was a partner. The purchase price in 2006 for 14.22 acres was \$370,865.00.

Mr. Ashworth applied in August of 2007 to change the zoning to R-ZT. This application was denied by both the Planning Commission and by a vote of the Board of Commissioners. The zoning was modified from RA-200 to R-60 with the stipulation that the owner donate approximately 4 acres to the County.

Based upon the vote of the Board, Mr. Ashworth instructed his attorney Lee Thompson to file suit against the County. In October 2007 Ashworth sold the property to the County for \$1,000,000.00 partially based upon the purchase price paid to Jenkins and Braden. This payment was made in settlement of the litigation and as an expansion of Rabbit Hill Park.

TESTIMONY OF WITNESSES

Based upon our findings and recommendation, the Grand Jury believes that a presentment or report is not the appropriate forum to report our findings.

FINDINGS OF THE GRAND JURY

Based upon a review of all the evidence and testimony of witnesses, the District Attorney is directed to prepare a Bill of Indictment which charges Kevin Kenerly with one count of Bribery and two counts of Failure to Disclose Financial Interest. The Bill of Indictment is to be served upon Kevin Kenerly in accordance with law and brought before us for our consideration on October 8, 2010.

PEACHTREE INDUSTRIAL BOULEVARD PROPERTY

Summary of the Transaction

The Grand Jury heard testimony and received evidence regarding a tract of land located on Peachtree Industrial Boulevard which consisted of 66.635 acres.

In the Spring of 2006, this parcel of land was identified as a possible site for an active park for the new Lanier High School cluster. Pursuant to procedure, the Department of Support Services contacted the owner, Mr. Wendell Starke to determine his interest in selling. Mr. Starke indicated that he would be willing to sell for the price listed in an appraisal he had obtained which was approximately \$10.5 million dollars. The Department of Support Services obtained an independent appraisal which placed the value at \$10.89 million dollars. Mr. Starke indicated that he would be willing to sell at his original price.

Former County Administrator Jock Connell testified that on six different occasions between September 2006 and March 2007, he requested permission from the district commissioner, Kevin Kenerly, to place the purchase on an executive session agenda to get Board approval to move forward with the purchase. On each occasion, permission was denied.

By April of 2007, Mr. Starke was frustrated by the lack of action by the County and accepted an offer from Brickton Commercial Partners, LLC to buy

58 acres of the parcel for \$9.995 million dollars. The property was placed under contract during the first week of April, 2007.

Brickton Commercial Partners is a company owned by David Bowen, Thomas Michael Phelps, Jr. and Eric Cape. They testified that they purchased the property for development but that after they put the property under contract, they were informed by Mr. Starke's agent that the County had been interested in the property. The partners instructed their attorney to inquire about the County's interest and set an asking price of 13.95 million dollars. The attorney, Lee Tucker of Mahaffey, Pickens & Tucker confirmed the interest and communicated the asking price.

Brickton closed on their contract and purchased the property on August 6, 2007. The Gwinnett County Board of Commissioners, upon motion by Kevin Kenerly, voted to purchase Brickton's 58 acres on August 7, 2007. The County closed with Brickton on August 14, 2007 paying the asking price of \$13,950,000.00.

TESTIMONY OF WITNESSES

The Grand Jury acknowledges that when we first applied the criteria for review to this transaction, there were several areas of concern. However, after a complete review of the evidence only one question remains unanswered.

Mr. Wendell Starke testified that in the Spring of 2006 he was prepared to sell the entire tract of land to Gwinnett County and entered into good-faith negotiations with the County.

The county staff, including Steve North and Jock Connell, testified that they were ready to move forward with the purchase as early as September, 2006.

The principals of Brickton Commercial Partners, LLC testified that they had been interested in the property and had made prior offers since 2001. They testified that Mr. Starke's agent approached them in March of 2007 and that they put the property under contract during the first week of April, 2007. Their stated intention was to build a development similar to the Suwanee Town Center. They particularly believed this development would be successful since the proposed Sugarloaf Extension was slated to end right in front of the property. The timing of the closing date was adequately explained by both the principal and their bankers as having to do with

financing considerations. The Grand Jury finds nothing improper regarding the purchase of the tract by Brickton.

The principals of Brickton testified that they learned of the County's interest in the property after placing the property under contract. This was confirmed by Mr. Starke and his agent. The principals then testified that because they wanted to resolve the issue with the County they set a "take it or leave it" purchase price. The County took it.

Commissioner Kevin Kenerly did not testify and asserted, through counsel, his Fifth Amendment right against self-incrimination. The delay from September 2006 until April 2007 was never explained.

FINDINGS OF THE GRAND JURY

The Grand Jury had been unable to ascertain the reason why Commissioner Kenerly would not allow the land purchase to be placed on the Executive Session agenda for review by the entire Board. This transaction is a prime example of the custom of district courtesy gone wildly out of control. No Commissioner should be allowed by rule or custom to control the agenda of the entire Board. Staff should be allowed to take it upon themselves to bring a matter of this magnitude to the entire Board or, at the very least, to the Chairman for action. This example of blind adherence to custom cost the taxpayers three point four million dollars.

LAKES PARKWAY PROPERTY

Summary of the Transaction

The Grand Jury heard testimony and received evidence that this is an 8.27 acre parcel located on Lakes Parkway outside of Lawrenceville. The property is located in District 1 which was represented by former Commissioner Lorraine Green until January 1, 2009 when Commissioner Shirley Lasseter took office. The property was acquired by Elite Land Development, Inc. in April 2005 for \$300,000.00. The principle owner of Elite, Joe Dixon, testified that the original purpose of the purchase was to build office condos and that in fact he had begun development of the project with the installation of infrastructure. However, because of financial issues and the failing economy, he was unable to complete the project.

In 2007, Elite through its agent initially approached the County to purchase the land for a park or as a headquarters for a central library.

On February 17, 2009 the Gwinnett County Board of Commissioners voted to purchase the 8.27 acres for \$1,161,500.00 from Elite. The purchase was placed on the consent agenda and approved by consent. The proposed use was for a trailhead of 35 acres already owned by the County.

TESTIMONY OF WITNESSES

Mr. Phil Hoskins, the Director of Community Services first became aware of the property when it was proposed as a possible site for a central library. He did not recall who brought it to his attention but he rejected the site because of its location. When asked to consider alternate uses, Mr. Hoskins stated that the property provided entry to approximately 25 acres already owned by the County but that it would require access across the Yellow River. He stated that he had a feasibility study done which indicated that a twelve foot wide pedestrian bridge would cost approximately one million dollars. The cost of the bridge was included in the PowerPoint presentation which was made to the Board of Commissioners in Executive Session.

Mr. Steve North testified that as Director of Support Services he was assigned by the Board of Commissioners to negotiate the purchase of the Lakes Parkway property on behalf of Gwinnett County. He stated that on January 6, 2009 the Board was first presented the property in Executive Session and requested a cost estimate on the bridge. On January 20, 2010 the tract was brought up again including the cost of the bridge and Mr. North was authorized to negotiate a purchase price of appraisal plus up to fifteen percent (\$1,000,000.00 + up to 15%).

Mr. North stated that by January 20, 2010 he knew that sitting Senior Judge James Oxendine was acting as an agent for the seller. On or about January 20, 2010 he contacted James Oxendine at his office in the courthouse to deliver the preliminary offer letter with the offer of appraised value. Oxendine told him that rather than mail the letter, North could just bring it over to his office. That is exactly what North did.

North testified that James Oxendine, upon receipt of the letter in his office, made a counter offer of appraised value plus 10 percent. North agreed and the purchase price was set at one million one hundred and eleven dollars. North testified that on January 30, 2010 he received a call from James Oxendine and again met in Oxendine's office in the courthouse. Oxendine told North that he knew North's authority to negotiate was appraised value plus 15 percent and that he needed to change the purchase price to reflect that amount. Mr. North testified that he was surprised that Oxendine was aware of the limits of his authority. Based upon that knowledge and the position of James Oxendine as Senior Judge he felt further negotiations would not be feasible.

Former County Administrator Jock Connell testified that he first became aware of the property when it was brought to his attention by former Senior Judge James Oxendine. Mr. Connell testified that Mr. Oxendine indicated that he was representing the sellers, that they needed to sell, and proposed that the County purchase the property for a library site.

Mr. Connell stated that Mr. Oxendine met with him four to six times to press the sale since Connell was not inclined to recommend the purchase of the property. He stated that the property could possibly be used to "fill a gap" in that area of the county but its acquisition was not a staff priority. Mr. Connell stated that he was convinced that a member of the Board of Commissioners disclosed the limits of the negotiating authority granted by the Board.

Commissioner Kevin Kenerly, Bert Nasuti and Mike Beaudreau all testified that they deferred to Commissioner Shirley Lasseter in this land acquisition because of district courtesy and therefore had very little knowledge of the transaction. They denied knowing about the cost of the bridge when they voted to purchase. They denied knowing that James Oxendine represented the seller.

Commissioner Shirley Lasseter testified that she took office in January, 2009 as District 1 Commissioner. She stated that she first learned of the proposal to purchase the property in Executive Session. She did not recall the specific authorization given to Mr. North. She stated that she did not know James Oxendine was the seller's agent. She stated that she had looked at the property. Mrs. Lasseter denied that she initiated the purchase and then she relied on staff to work out the details and bring the purchase forward when they were ready. She acknowledged that it was logical that she would have initiated the process, and that she should have been the one

to put the matter on the Executive Session agenda but denied doing so. She testified that she did not know about the change in purchase price and the negotiation with James Oxendine.

Former Judge James Oxendine testified that he did not consider his actions to be engaging in the practice of law. He stated that he was doing a favor for the son of his old friend Randall Dixon and took no fee. He stated that it was common knowledge that Gwinnett County paid 15 percent over the appraised value and he had just made a mistake when he agreed to 10 percent. He denied that he had received any information from any County Commissioner about the negotiation authority granted to Mr. North.

FINDINGS OF THE GRAND JURY

First, it was a stunning revelation to the Grand Jury that no member of the county staff expressed any reservations about being involved in a real estate transaction where a sitting Senior Superior Court Judge is acting as the seller's agent. If the Commissioners who testified are to be believed, it is inconceivable that this information was not disclosed prior to any vote to purchase. Leaving aside questions of fees and negotiating a land deal in a judge's office in the courthouse, the sheer impropriety of this representation should have been a warning sign.

Second, despite testimony to the contrary by County Commissioners, they were presented with information regarding the cost of the pedestrian

bridge prior to the vote to purchase. The evidence is clear on that fact. They weren't paying attention.

Third, it is the conclusion of the Grand Jury that the information regarding the negotiation authorization was given to James Oxendine after he signed the initial purchase price agreement. Also it was common practice for the Board of Commissioners to authorize 10 percent over appraisal not 15 percent. An examination of all of the evidence, including the relationships of the parties, can only lead to the conclusion that it was a member of the Board of Commissioners who disclosed this information. While this conduct may not constitute a crime, it is certainly a bad business practice which led to an unfair benefit to the land seller in this case.

The Grand Jury believes that the conduct of former Senior Judge James Oxendine was inappropriate if not unethical. However since he has left the bench there seems to be no sanction available for us to recommend.

Commissioner Shirley Lasseter testified about her recollection of the events which led up to this property acquisition. After observing her demeanor and hearing her testimony the Grand Jury specifically recommends the following:

1. That Commissioner Lasseter develop at least a basic understanding of the land acquisition process;

2. That Commissioner Lasseter become more engaged in issues which affect her district and the entire county;
3. That Commissioner Lasseter must understand her role as a policy maker and decision maker rather than relying on the county staff to do her work for her.

In conclusion, the Grand Jury can find no rational, reasonable basis for the acquisition of this property other than to bail out the son of an old friend of several members of the Board of Commissioners. The Grand Jury can find no evidence of a crime in this transaction but that doesn't make it right.

GIVENS ROAD PROPERTY

Summary of the Transaction

The Grand Jury heard testimony and received evidence regarding this 33.198 parcel of land which adjoins Palm Creek Park in District 3 represented by Commissioner Mike Beaudreau. The Grand Jury learned that the property was placed under contract by Falcon Investments, LLC, a company owned by Marvin Hewatt and Larry Fleeman, in October of 2007. Once the property was placed under contract, Mr. Hewatt instructed his attorney Lee Tucker of Mahaffey, Pickens & Tucker to file a re-zoning application to change the zoning from RA-200 to R75 Modified. Both the

Planning Commission and the Board of Commissioners voted to deny the application. Hewatt then instructed Tucker to file suit against the County.

During the pendency of the suit in preparation for litigation, the county law department commissioned an appraisal which valued the property at \$1,138,000.00.

During the pendency of the litigation Mr. Hewatt met with Chairman Charles Bannister in Bannister's office in the courthouse and had delivered his own appraisal which valued the property at \$2,423,000.00. This meeting occurred in February, 2009.

On May 5, 2009, the Board of Commissioners voted to approve the purchase of the property for \$2,290,662.00.

TESTIMONY OF WITNESSES

Mr. Marvin Hewatt testified that in addition to other business interests, he and his partner had made several land purchase investments. The business plan he described was that a parcel of land would be located, the property would be purchased, and the property would be re-zoned for high density residential purchases then sold on a per lot basis to a developer.

He testified that in 2007, Falcon Investments purchased approximately 33 acres of land located on Givens Road for forty-eight thousand five hundred dollars per acre. Once the purchase was made, Mr. Hewatt instructed his attorney, Lee Tucker to file a re-zoning application to change

the zoning from RA-200 (Residential/Agricultural) to RA-75 (High Density). The application was filed and eventually denied. Mr. Hewatt testified that during the pendency of the re-zoning application, he met with Commissioner Mike Beaudreau but was not encouraged by the commissioner's response to his application. His exact words were, "he didn't say what I wanted to hear."

After the denial, Mr. Hewatt authorized his attorney to file a lawsuit which was served on Gwinnett County on December 2, 2008. While the lawsuit was pending, Mr. Hewatt testified that he had received a phone call from his attorney instructing him to get an appraisal of the property because the county appraisal had valued the land at approximately thirty-four thousand dollars per acre. Based upon this conversation, Mr. Hewatt hired James Clower to appraise the property.

Mr. Hewatt testified that Mr. Clower appraised the property at approximately seventy-three thousand dollars per acre.

Mr. Hewatt testified that on February 24, 2009 he met Mr. Clower in the office of Chairman Charles Bannister and Mr. Clower delivered the appraisal directly to the Chairman. He then stated that he received a call from his attorney who told him that the county had made an offer of approximately sixty-eight thousand dollars per acre. Mr. Hewatt testified he was not happy with the offer but acting on advice of counsel he accepted it.

Mr. Hewatt described his relationship with Chairman Bannister as a friend and political supporter. He stated that he allowed Bannister to use a billboard for political advertising without charge and the use of a van for political purposes without a charge. The Grand Jury has been unable to locate these contributions on Mr. Bannister's disclosure filings. Mr. Larry Fleeman testified that the van was later purchased with Bannister campaign funds.

Mr. James Clower testified that he did an appraisal of the Givens Road property at the request of Lee Tucker on behalf of Tucker's client Falcon Investments. He stated that his opinion of value of the property was seventy-three thousand dollars per acre and that the highest and best use was for a RA-200 subdivision. He stated that his value per acre was based on the amount paid per acre for comparable tracts adjusted for an economic decline.

Mr. Clower then testified that he personally delivered his appraisal to Chairman Charles Bannister and Marvin Hewatt in the Chairman's office in the Justice and Administration Center. He stated that he believed it was on February 23, 2009. He remembered because Mr. Hewatt and Chairman Bannister pointed out an error in the appraisal where the appraisal was directed to Marvin Hewatt rather than Lee Tucker. He said he left, returned to his office, made the correction and returned to the chairman's office.

When he returned, Mr. Hewatt was still in the office so he delivered the appraisal and left.

Commission Chairman Charles Bannister testified that he had known Marvin Hewatt for years and considered him a friend. Bannister said that Hewatt had sent him a plat of the Givens Road property expressing an interest in selling the property to the County. Chairman Bannister testified that he had a recollection of the re-zoning application, its denial and the subsequent lawsuit. He was also aware of the County appraisal of the property. He stated he believed the County appraisal was too low based on prior County purchases. Chairman Bannister remembered becoming aware that the County had received an appraisal from a third party which valued the land at approximately seventy thousand dollars per acre but was unclear about where that appraisal originated.

Chairman Bannister on the 23rd of July, 2010 denied that he met with Marvin Hewatt in his office and denied that he received the appraisal from James Clower or Marvin Hewatt. On August 20, 2010, after the Grand Jury had subpoenaed his calendar, Mr. Bannister acknowledged that the meeting may have taken place since it was on his calendar but again denied receiving the appraisal from Hewatt or Clower.

Chairman Bannister stated that he decided to "take the lead" on this particular purchase because of "so many no votes" coming from

Commissioner Mike Beaudreau. He stated that getting this land transaction passed was to get Mr. Beaudreau's attention. To quote his testimony, "It was pure politics." He testified that this purchase was an object lesson to Commissioner Beaudreau.

Commissioner Kevin Kenerly testified that after the lawsuit was filed, he spoke to Marvin Hewatt's attorney who attempted to settle the lawsuit with the purchase of the land by the County. He said that he voted to deny the re-zoning request out of district courtesy. Mr. Kenerly testified that after the lawsuit was initiated he was in favor of the land acquisition because of his perception that the Law Department lost most re-zoning suits and the zoning decisions of the Board of Commissioners were not upheld. He also stated that he believed that the County appraisal of the property was incorrect and not in line with previous purchases in the same area.

Kenerly testified that Chairman Bannister produced an appraisal at an Executive Session but that he didn't know where the appraisal came from. However, he stated that based on a lack of information from county staff, he believed that the sellers appraisal was a more accurate assessment of the value of the property. Kenerly stated he witnessed a heated discussion between Chairman Bannister and Commissioner Beaudreau and therefore he stated that he believed that Chairman Bannister was pushing the acquisition to "stick it to Mike". He stated that he disregarded district courtesy in his vote because Commissioner Beaudreau had benefitted from previous Board

actions but then publicly criticized these actions. He cited the 2008 millage rate vote as an example.

Commissioner Bert Nasuti basically testified to the same facts and perceptions as Kenerly.

FINDINGS OF THE GRAND JURY

The Grand Jury could not find any evidence of any direct payment to any public official to induce any performance of an official duty. However, it is clear that in this land acquisition the regular process was subverted to benefit a long-time friend and political supporter of Charles Bannister. Just as disturbingly, over one million dollars of taxpayer money was used to make a political point. The Grand Jury believes that all of the district commissioners who voted in favor of the Givens Road property acquisition made choices that were financially unsound, motivated by petty politics and generally wrong for the citizens of Gwinnett County.

Furthermore, this particular acquisition is an example of what appears to be a complete disconnect between county staff and the current Board of Commissioners. Business decisions are being made without seeking input from staff, without staff volunteering information or without any real knowledge of the likelihood of success of any particular lawsuit.

The Grand Jury heard testimony in this case that the tract in question was not part of the Parks Master Plan nor did the park that adjoined the

property need to be expanded. Despite that information the Board pursued acquiring the land.

The Grand Jury also heard testimony that the perception of Commissioners Kenerly, Nasuti and Beaudreau was that the lawyers for the County were unable to prevail in zoning lawsuits so settlement was their only option. The testimony from the Law Department was that the County prevails in most zoning lawsuits and in any event the result of a loss would be a remand for a new zoning decision not the payment of monetary damages.

This particular case, in the opinion of the Grand Jury, was not one which cried out for settlement unless the agenda was to allow the landowner to make a profit on the sale. If settlement was not mandated, the question of varying appraisals would never have come up. The only conclusion that can be reached is that the Board of Commissioners made a decision based on faulty information or perception or there was an agenda other than the best interests of the public at work in this case.

Based upon the contradiction between the testimony of Charles Bannister and Marvin Hewatt, the Grand Jury directed the District Attorney to prepare and present an indictment charging Charles Bannister with Perjury.

On October 8, 2010 Mr. Bannister asked the Grand Jury not to indict him and to allow him to resign effective immediately. After a consideration of the evidence in the case, the proposed charge, and in the interest of limiting costs to taxpayers and expediting a resolution of this matter, the Grand Jury decided that it was in the best interest of the citizens of Gwinnett County to allow Bannister to resign and for the Grand Jury to return a "No Bill" of Indictment. The Grand Jury in making this decision also considered the following factors:

- In our investigation which included a review of financial records, we did not uncover any evidence of an illegal payment or bribe in this transaction. The proposed charge was based upon contradictions in testimony before us, not upon the transaction itself.
- The Grand Jury weighed the possible outcomes. If we had returned an indictment then removal from office would have depended upon the outcome of the criminal trial. The Grand Jury decided that assured, permanent removal from office was the appropriate solution to one of the problems we uncovered in our investigation.

I-85 AT BEAVER RUIN PROPERTY

Summary of Transaction

The Grand Jury heard testimony regarding these two parcels containing 36.79 acres (Tract A) and 21.12 acres (Tract B). In 2005 these two tracts were owned by Retail Development Partners, LLC, a company which is owned by Wayne Mason and others. In 2005, Retail Development applied for a re-zoning of Tract A from Commercial (C-2) to Multi-Family Residential (RZM). The Planning Commission voted to recommend approval of the re-zoning however, the Board of Commissioners upon motion of former Commissioner, Lorraine Green voted to deny the re-zoning. Retail Partners filed suit to challenge the denial.

During the litigation Tract A was appraised at a value of \$4,650,000.00. On February 15, 2007, the County purchased Tract A for \$4,650,000.00 and Mr. Mason donated Tract B which consisted of a stream and wetlands. The purpose of the purchase was for a public park and settlement of litigation.

TESTIMONY OF WITNESSES

Mr. Wayne Mason testified that he and other partners originally acquired a tract of land which he called the Rich's site in 1980 or 1981 and that the tract originally was made up of over one hundred acres. Actually, the Grand Jury learned that the tract contained one hundred thirty-three acres. He testified that after two or three years, he wanted to sell the

property based on an offer but that his partners didn't want to sell so his partners bought him out for 5.7 million dollars.

Mr. Mason testified that he reacquired the entire piece of property back in "the 1990's" for 5.5 million dollars. He stated that one of the reasons he reacquired the tract was he needed stream buffer credits to develop another property at the now intersection of Pleasant Hill Road and North Berkley Lake Road. He also stated that since he knew the property was zoned for commercial development, he could use the property in his business.

Mr. Mason then testified that he sold part of the property which has frontage on Satellite Boulevard for commercial development and used his approved stream crossings to subdivide the remaining property. He stated that he applied for a zoning which would allow for the construction of apartments, was granted the re-zonings and sold each of the parcels for in excess of 5 million dollars. By 2007, the only parcel that had not been sold was the parcel in question in this inquiry and the property surrounding the stream. This was a total of approximately 57 acres.

Mr. Mason told the Grand Jury that he received an offer to sell 30 acres for the purpose of building apartments contingent upon a re-zoning of the property. He applied for the re-zoning, received a positive recommendation from the Planning Commissioner but when the matter went

to a vote before the Board of Commissioners, his application was denied. When the application was denied, Mr. Mason instructed his attorneys to file suit against Gwinnett County.

Mr. Mason testified that while the re-zoning process was ongoing he had no official conversations with any county commissioner but acknowledged that he may have spoken to one or more informally. After the filing of the lawsuit, Mr. Mason acknowledged that he spoke to Lorraine Green urging her to buy the property because he was confident he would win the lawsuit.

Significantly, Mr. Mason also testified that as early as 2001 the Gwinnett County Commission voted to condemn the entire 133 acres for green space acquisition. He testified that his understanding was that the condemnation effort was dropped because of problems with title to the property and because Commissioner Nasuti wanted an aquatic center on Peachtree Industrial Boulevard.

Mr. Mason finally agreed to settle the lawsuit for less than the contract price he had been offered and agreed to donate the wetlands (Tract B) to the County. He stated that he agreed to settle because when he considered the tax ramifications, the court costs and the value of the wetlands if he kept them, it made no business sense.

Lorraine Green, former District 1 Commissioner testified about her involvement in this transaction. She began by saying that from the outset she was opposed to Mason's re-zoning application. She stated that it was her belief that the last thing that Satellite Boulevard needed was more apartments. However, she testified that she was contacted by representatives of the neighborhoods adjoining the tract who were willing to negotiate with the re-zoning applicant if they could not stop the re-zoning. Mrs. Green testified that she remained opposed to additional apartments and so despite the recommendation of the Planning Commission, after consultations with the Law Department, she made the motion to deny the re-zoning. She said that, with the exception of Chairman Charles Bannister, it was not difficult to persuade the other commissioners to support her motion.

Mrs. Green testified that the idea to purchase the property for green space came from her. She testified that she was aware of the events of 2001 and believed the purchase was appropriate. She testified that although the litigation was only about Tract A, she insisted on the donation of Tract B as part of the settlement. Mrs. Green also testified that she asked for an engineering study to be done to assure herself that the proposed development by Mr. Mason was in fact feasible. Once this had been done, despite opposition from Bannister and some hesitancy from Nasuti, she

made the motion to purchase the land to settle the lawsuit and as an acquisition of green space. The motion passed by a vote of 4 to 1.

Chairman Charles Bannister testified that his opposition to the land purchase began with the vote to deny the re-zoning application. He stated that he was opposed to the purchase of the property because of the development costs to the County. He also testified that he was opposed to the re-zoning application because he had made a campaign promise not to allow any more apartments. Chairman Bannister abstained from the vote to deny Mason's zoning application.

Mr. Bannister testified that after the filing of the lawsuit, he believes he inquired about the County's chances to prevail and was assured that zoning votes were rarely over turned. He then stated that when the subject of purchasing the land came up, he was surprised because he had spoken to Community Services Director Phil Hoskins and had been informed about the high costs of developing the property. He stated based on his prior knowledge of the property and the other factors he mentioned he was opposed to the purchase of the property.

FINDINGS OF THE GRAND JURY

The Grand Jury finds no evidence of wrongdoing in the acquisition of this parcel of property. This is no evidence of any improper payment made to, or solicited by, Lorraine Green in her role as a public official.

In essence, this acquisition came down to a question of priorities. If Gwinnett County had won the lawsuit, Mr. Mason would have been left with a tract of land which was already zoned for commercial development. If the County had lost the lawsuit, apartments would have been built. This District Commissioner was faced with a difficult choice. Whether she made the correct choice depends on one's point of view. On one hand, green space and wetlands were preserved, while on the other hand, valuable property was removed from the tax digest.

RECOMMENDATIONS OF THE GRAND JURY

The Special Purpose Grand Jury would like to thank District Attorney, Danny Porter, Stan Hall and the entire staff of the District Attorney's office for the professional and capable assistance they have provided this Grand Jury. We also want to express our appreciation to the court reporters Holly Brown and Tara Johnson. We also wish to commend the bailiffs Bob Hettesheimer and Mark Henderson for their professionalism and support as the bailiffs to the Special Purpose Grand Jury.

After the conclusion of ten months of testimony and evidence, the Special Purpose Grand Jury makes the following recommendations:

I. DISTRICT COURTESY

We understand that district commissioners work on a part-time basis for Gwinnett County in addition to their full-time employment. Therefore,

due to the sheer volume of transactions and the amount of information involved in each transaction, commissioners often end up deferring to the commissioner of the district in which the transaction is proposed. This practice is known as district courtesy. It is the opinion of the Grand Jury that this concept of district courtesy, while useful in some ways, is at the root of the problems with each land transaction we examined. District courtesy has allowed commissioners to avoid responsibility and accountability for their votes. We heard on numerous occasions a commissioner testify that, unless there was something unusual about the transaction, they always voted with the district commissioner. This in effect allowed one commissioner to totally control a decision which affects all citizens of Gwinnett County. An example of this control is the Peachtree Industrial Boulevard property. The completely arbitrary and unexplained delay by Commissioner Kenerly in keeping the transaction from the agenda essentially ended up costing the taxpayers approximately four (4) million dollars. No individual commissioner should have this kind of power.

The Grand Jury is strongly of the opinion that certain transactions such as parks transcend the concept of district courtesy. These are transactions which involve millions of dollars and affect all citizens of Gwinnett County. All commissioners should be involved and held responsible for all phases of these types of projects.

II. REORGANIZATION OF COUNTY GOVERNMENT

The Grand Jury recommends that the basic structure of Gwinnett County government be changed. The current system with one full-time chairman and four part-time district commissioners does not provide adequate representation to the citizens of the County. The current system with its reliance on district courtesy and its over-reliance on county staff provides too many opportunities for conflicts of interest and fosters a culture of inappropriate business relationships which have been the common thread running through our investigation.

The majority of the Grand Jury is in favor of making all current county commission seats, including the Chairman, a full-time position. Essential to this concept would be that these new commissioners would be adequately compensated and would be prevented from having any outside business interests which could potentially conflict with their responsibilities to govern. The expectation of these full-time commissioners would be that they would have the opportunity to be better informed and make better decisions. This system would also eliminate potential conflicts between their private life and public responsibility.

In considering this recommendation, the Grand Jury recognized that it is unrealistic to expect the current part-time commissioners to be able to balance their private lives and occupations with the immense amount of work needed to make intelligent decisions on county matters. Full-time

commissioners, who would not be allowed to have outside employment, could devote the necessary time to each decision.

The Grand Jury also considered the cost of this system. Full-time commissioners would have to be adequately compensated to attract the type of candidate who could do the job. The Grand Jury recognizes that at first glance, this appears to be an additional cost to taxpayers. But, if just one of the land transactions we investigated could have been prevented by a wiser decision, that would more than pay for the salaries of full-time commissioners.

On the other hand, many members believe that moving to full-time commissioners may not be the answer. These members believe that the concept of a part-time Citizen/Commissioner is still valid. The members who support the idea of part-time commissioners do agree that the current system does not provide adequate representation and provides too many opportunities for misconduct. These members agree that the current workload is too burdensome and the current commission districts are too large for one person to adequately do the job on a part-time basis.

The alternate recommendation of the Special Purpose Grand Jury is to re-structure the current system to include more County Commissioners representing smaller districts. This would have multiple benefits to the citizens of the County.

- It would decrease the pervasive influence of district courtesy.
- It would reduce the workload on individual commissioners to allow and require them to make decisions based on all the facts.
- More districts would allow for better representation of each district.
- More districts would dilute the ability of one commissioner to totally control any given transaction.

Given these advantages and the Grand Jury's ultimate demand for more accountability, the proposal to add commissioners has significant merit.

III. BUSINESS PLAN

It is the opinion of the Grand Jury that the current business plan utilized by Gwinnett County government needs significant improvement. During the course of our investigation we observed serious pervasive lack of communication, information sharing, and even trust between the County Commissioners and the heads of the major departments of county government. On numerous occasions department heads testified that they were not asked to offer an opinion about a particular land transaction. There was no inquiry by the Board of Commissioners about how the purchase would fit into the Parks Master Plan or the best use of the property was. Members of the staff, including the current and past County Administrator consistently testified that they were not asked and did not give an opinion whether a particular transaction was in the best interest of the citizens. One department head testified "that wasn't his job."

County Commissioners on the whole testified that department heads did not provide them with the information to make informed decisions. One current Commissioner described the staff as “note takers.” It was clear from the testimony that the decisions are being made by commissioners based on a PowerPoint presentation made in Executive Session. Sometimes these sessions occur fifteen minutes before a vote is taken. Although the evidence shows that each commissioner is provided with a large packet of information, either because of time limitations or for other reasons, the packets are not being looked at.

The Grand Jury is of the opinion that there should be better communication between the County Staff and the Board of Commissioners. This communication should be clearly documented so that staff is clear on the intentions of the Board of Commissioners and the Board is clear about its intentions. Because of this lack of documentation, the Grand Jury was forced to dissect each transaction in order to determine the truth behind each purchase. The goal of the business process should be that every citizen should be able to examine any transaction conducted by Gwinnett County government and evaluate that transaction objectively. The county government should be able, and willing, to explain on each transaction who proposed it, who recommended it, why the Board voted for it, and why it benefitted the citizens. Citizens should expect no less and the Grand Jury

finds that Gwinnett County government has failed to deliver on this expectation.

IV. LAND ACQUISITION

Commissioner Kenerly testified that he believed that the citizens of Gwinnett County had given him a mandate to acquire land to build parks and preserve green space. The Grand Jury does not disagree but we found a process that is ruled more by custom and by the whims of individual commissioners than it is by sound business decisions and economic considerations. The Grand Jury believes that the entire land acquisition process should be restructured to increase efficiency and, most importantly, accountability.

- First and foremost the acquisition should be based upon a philosophy of obtaining best value for the taxpayer's dollar. Instead of the current philosophy of buy it and make it work, each transaction should be critically examined to determine its current or future use and value. The presumption should be that unless a transaction can be justified under stringent standards known to all involved, the Gwinnett County Board of Commissioners should decline the purchase.
- Decisions to purchase land are important to all citizens and should transcend all notions of district courtesy. All information on all land transactions along with staff recommendations should be given to all

County Commissioners as soon as the transaction is ready to be considered. No single commissioner should have the power to single-handedly delay consideration of a purchase for political or other reasons.

- No Limited Liability Company should be permitted to apply for a rezoning, acquire property from the county or sell property to the county without a full disclosure of the individual identities of the shareholders.

The Grand Jury recognizes that an LLC is a legitimate type of company formed for a variety of legitimate reasons but it should not be a vehicle to conceal the identity of individuals who are doing business with the government.

- The Grand Jury found that the minutes of Executive Sessions as they now exist are not useful to determine what actually happened in the meetings. They are cursory at best and only reflect the final action taken. The Grand Jury recommends that Executive Sessions be audiotaped or videotaped to insure that later review will reveal what actually happened in the meetings.

- As stated earlier, the concept of consensus in Executive Session leaves all parties involved confused and unsure about the decision that was actually made. The Grand Jury recognizes that this procedure was instituted to ensure that all votes were made at public meetings. The Grand Jury also recognizes there are many topics, such as land pricing and negotiation

strategy that should not be discussed at a public meeting. The current process should be re-evaluated since it clearly is not working.

- The Grand Jury became concerned about the apparent difference of opinion between commissioners and staff about the appraisal process and results. It appears that staff trusts the process and results implicitly while the current Board of Commissioners does not trust it at all. Provisions should be made and procedures put in place for those situations in which the seller's appraisal and the County appraisal vary. The decisions made by the Board of Commissioners, especially in settlement of litigation, must be made based on appraisals that the Board trusts and which are legally defensible.
- The Grand Jury found a profound lack of communication between the County Law Department and the members of the Board of Commissioners. The attorneys from the Law Department who testified told us that the county prevailed in the majority of cases in which a rezoning decision had been made. Several members of the Board of Commissioners testified that most of those cases were remanded for a different decision. In other words, the county lost the case. When pressed for specifics, neither the County Attorneys nor the Commissioners could provide the Grand Jury with detailed information. It would seem that one of the fundamental pieces of information needed by the Board of Commissioners in deciding whether to settle a lawsuit would

be an evaluation of the likelihood of success, including success in past cases. Members of the current Board testified that they were not provided this information. The County Attorneys testified that the Board was provided the information. Without the documentation procedures mentioned earlier, the Grand Jury is unable to determine what happened. The Grand Jury is of the opinion that this type of information is critical to making informed decisions. The Grand Jury recommends that Gwinnett County government take whatever steps are necessary to restore confidence in the Law Department and to make sure that information is available to make sound decisions.

- The practice of offering appraisal price plus ten percent for land acquisition should be abolished. County government should have trained real estate negotiators on staff to obtain the best value for taxpayer dollars. These negotiators should be experienced, aware of market conditions and have sufficient authority to conduct aggressive negotiations on behalf of taxpayers without undue influences from outside forces.
- The Grand Jury has found that SPLOST funds have been used for a variety of purposes from land acquisitions outside the Parks Master Plan to settlement of litigation. The Grand Jury is of the opinion that these actions have placed the passage of future SPLOST votes in jeopardy. SPLOST funds should be used for clearly delineated purposes approved by

the voters, not as a general pot of money to be used for various purposes based upon a commissioner's desire.

- Finally, land acquisition should follow a clearly defined and set system of policies and procedures. These procedures should be public and designed to make the property acquisition decision as objective as possible and based upon a valid business reason. Deviation from these procedures should be the exception rather than the norm and each deviation should be adequately documented.

V. ETHICS REFORM

The Grand Jury was surprised to learn that the ethics ordinance passed by the Gwinnett County Board of Commissioners has not been significantly reviewed or changed since its passage in 1993. This is simply unacceptable. The Grand Jury recommends that the ethics ordinance be reviewed and updated as necessary every two years. This should be a priority of the elected Board of Commissioners.

The Grand Jury has heard sufficient testimony to conclude that comprehensive enforceable ethics ordinance should be a priority for Gwinnett County Government. The only way that any semblance of trust can be re-established is for citizens to believe that their elected officials and county employees are acting ethically and on their behalf. The basics of such an ethics ordinance would have to include full disclosure of business

interests and prohibitions against receiving gifts or other things of value. Without these basics, trust cannot exist.

CONCLUSION

Based upon the evidence gathered during the course of our investigation, the Grand Jury, as a group of citizens, has been increasingly concerned about the path that Gwinnett County government is on. We have seen decisions involving millions of dollars made with little or no information or for the most venal reasons.

As interested citizens we have carefully considered our decisions and recommendations. It is now up to the elected leaders of Gwinnett County to carefully consider these recommendations and implement those they believe would best serve the public interest.

In many ways, Gwinnett County is still a great place to live, work and raise our children but in order to remain great, changes must be made.

In addition to the publication of presentments, we recommend that a copy of these presentments be delivered to:

Mr. Charles Bannister, Former Chairman, Gwinnett County Board of Commissioners

Ms. Shirley Lasseter, Gwinnett County Board of Commissioners

Mr. Bert Nasuti, Gwinnett County Board of Commissioners

Mr. Mike Beaudreau, Gwinnett County Board of Commissioners

Mr. Kevin Kenerly, Gwinnett County Board of Commissioners

Mr. Daniel J. Porter, Gwinnett County District Attorney

Honorable Dawson Jackson, Chief Superior Court Judge, Gwinnett Judicial Circuit

Honorable Michael C. Clark, Superior Court Judge, Gwinnett Judicial Circuit

Honorable William M. Ray, II, Superior Court Judge, Gwinnett Judicial Circuit

Honorable Karen E. Beyers, Superior Court Judge, Gwinnett Judicial Circuit

Honorable Ronnie K. Batchelor, Superior Court Judge, Gwinnett Judicial Circuit

Honorable Melodie Snell Conner, Superior Court Judge, Gwinnett Judicial Circuit

Honorable Debra K. Turner, Superior Court Judge, Gwinnett Judicial Circuit

Honorable R. Timothy Hamil, Superior Court Judge, Gwinnett Judicial Circuit

Honorable Tom Davis, Superior Court Judge, Gwinnett Judicial Circuit

Honorable Warren Davis, Superior Court Judge, Gwinnett Judicial Circuit

Karen Thomas, County Attorney

Steve North, Department of Support Services

Phil Hoskins, Department of Community Services

Lynn Smarr, Department of Water Resources

Brian Allen, Department of Transportation

Glenn Stephens, County Administration

Done this ____ day of October, 2010.

By the Grand Jury

MAYDEL MASSELLI-MONTERO, FOREPERSON

JANICE N. MCCLOSKEY, CLERK

ORDER

The within and foregoing Report and Presentments of the Special Purpose Grand Jury, having been presented, it is ordered that the same be filed with the Clerk of this Court and spread upon the minutes thereof.

It is ordered that the Report and Presentment of the Special Purpose Grand Jury be published in the Official County news media, The Gwinnett Daily Post, as a legal notice, at least one time with costs to be paid from the general funds of Gwinnett County.

This _____ day of October, 2010.

HONORABLE MICHAEL C. CLARK
SUPERVISING JUDGE
GWINNETT COUNTY SUPERIOR COURT
GWINNETT JUDICIAL CIRCUIT

