

STATE OF GEORGIA

COUNTY OF CLAYTON

RESOLUTION NO. 2008 – 97

A RESOLUTION ADOPTING A MORATORIUM ON THE ACCEPTANCE OF ALL ZONING RELATED APPLICATIONS FOR REVIEW AND CONSIDERATION BY THE CLAYTON COUNTY BOARD OF COMMISSIONERS, THE ZONING ADVISORY BOARD, THE BOARD OF ZONING APPEALS, AND TO THE CLAYTON COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT AS THEY RELATE TO EXISTING OR PROPOSED PROPERTIES WITHIN ALL ZONING DISTRICTS WITHIN CLAYTON COUNTY TO BE IN EFFECT FROM ENACTMENT, THROUGH AND INCLUDING JULY 23, 2008, OR EARLIER; TO ADOPT AN EFFECTIVE DATE OF THIS RESOLUTION; AND FOR OTHER PURPOSES.

WHEREAS, Clayton County recently repealed the 1987 Zoning Ordinance and adopted the 2008 Zoning Ordinance, effectively changing the administration and enforcement of various zoning related activities within the County; and

WHEREAS, the County deems it necessary to adopt a Moratorium on all zoning related applications submitted to the Board of Commissioners, the Zoning Advisory Board, the Board of Zoning Appeals, and to the Clayton County Department of Community Development for the purposes of allowing time to clear existing zoning agendas, to appoint members to various boards and committees as required by the 2008 Zoning Ordinance, and to prepare Clayton County employees and staff for the administration of the 2008 Zoning Ordinance; and

WHEREAS, the CLAYTON COUNTY BOARD OF COMMISSIONERS have been vested with substantial powers, rights and functions to generally regulate the practice,

conduct or use of property for the purposes of maintaining health, morals, safety, security, peace, and the general welfare of the unincorporated portions of Clayton County ; and

WHEREAS, Georgia law recognizes that local governments may impose moratoria on zoning decisions, building permits, and other development approvals where exigent circumstances warrant the same, pursuant to the case law found at Taylor v. Shetzen, 212 Ga. 101, 90 S.E.2d 572 (1955); Lawson v. Macon, 214 Ga. 278, 104 S.E.2d 425 (1958); and most recently County of Roswell et al v. Outdoor Systems, Inc., 274 Ga. 130, 549 S.E. 2d 90 (2001); and

WHEREAS, the Courts take judicial notice of a local government's inherent ability to impose moratoria on an emergency basis; and

WHEREAS, the Georgia Supreme Court, in the case of DeKalb County v. Townsend, 243 Ga. 80 (1979), held that, "To justify a moratorium, it must appear first, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals." The Board of Commissioners have found that the interests of the public necessitate the enactment of a moratorium for health, safety, morals and general welfare purposes by means which are reasonable and not unduly oppressive; and

WHEREAS, the Board of Commissioners have, as a part of planning, zoning and growth management, has repealed and adopted a new Zoning ordinances and have been studying the County's best estimates and projections of the type of development which could be anticipated within the unincorporated areas of the County; and

WHEREAS, the Board of Commissioners therefore consider it paramount that land use regulation continues in the most orderly and predictable fashion with the least amount of disturbance to landowners and to the citizens of the County. The Board of Commissioners have always had a strong interest in growth management so as to promote

the traditional police power goals of health, safety, morals, aesthetics and the general welfare of the community; and in particular the lessening of congestion on County streets, security of the public from crime and other dangers, promotion of health and general welfare of its citizens, protection of the aesthetic qualities of the County including access to air and light, and facilitation of the adequate provision of transportation and other public requirements; and

WHEREAS, it is the belief of the Board of Commissioners that the concept of “public welfare” is broad and inclusive; that the values it represents are spiritual as well as physical, aesthetic as well as monetary; and that it is within the power of the County “to determine that a community should be beautiful as well as healthy, spacious as well as clean, well balanced as well as carefully patrolled,” Berman v. Parker, 348 U.S. 26, 75 S.Ct. 98 (1954), it is also the opinion of the County that “general welfare” includes the valid public objectives of aesthetics, conservation of the value of existing lands and buildings within the unincorporated portions of the County, making the most appropriate use of resources, preserving neighborhood characteristics, enhancing and protecting the economic well-being of the community, facilitating adequate provision of public services, and the preservation of the resources of the County; and

WHEREAS, the moratorium for the acceptance of zoning related applications shall include, but not be limited to all rezoning applications, zoning related permit applications, sign applications, and variance applications; and

WHEREAS, the Board of Commissioners deems it in the County’s best interest and the objectives provided herein can be best served by adopting this Resolution to provide that the above referenced Moratorium should remain in effect through and including July 23, 2008.

**NOW THEREFORE, BE IT RESOLVED BY THE CLAYTON COUNTY BOARD
OF COMMISSIONERS AND IT IS HEREBY RESOLVED:**

SECTION I. FINDINGS OF FACT

The Board of Commissioners hereby makes the following findings of fact:

(a) It appears that the County's newly enacted Zoning Ordinance is in the process of being reviewed and revised and the Board of Commissioners is in the process of appointing member to the various Boards and Committees as required by the newly enacted 2008 Zoning Ordinance and preparing the staff for the administration of the 2008 Zoning ordinance;

(b) The above processes requires that a limited cessation of the acceptance of all zoning related applications;

(c) It is necessary and in the public interest to delay, for a reasonable period of time, the processing of any applications for such period of time, to ensure that the same are consistent with the long-term planning objectives of the County.

SECTION 2. IMPOSITION OF MORATORIUM

(1) There is hereby imposed a moratorium on the acceptance by County of all zoning related applications;

(2) The duration of this moratorium shall be until July 23, 2008, or the expiration of (45) days;

(3) This moratorium shall be effective as of the date of adoption of this Resolution;

(4) This moratorium shall have no effect upon approvals or permits previously issued, permits for repairs or renovations, or as to development plans previously submitted and approved by the County. The provisions of this Resolution shall not affect the issuance

of permits or site plan reviews that have been approved by the County on or before the effective date of this Resolution or prior to the adoption of this Resolution;

(5) As of the effective date of this Resolution, no applications for development, permits or licenses for the above described uses will be accepted by any agent, employee or officer of the County with respect to any property in the unincorporated portions of the County, with the exception of those residential permits for the restoration of properties destroyed by fire or other acts of nature, or for accessory buildings and accessory uses and any application of such license or permit so accepted for filing will be deemed in error, null and void and of no effect whatsoever and shall constitute no assurance whatsoever of any right to engage in any act, and any action in reliance on any such license or permit shall be unreasonable;

(6) The following procedures shall be put in place immediately. Under the Supreme Court case of Cannon v. County of Forest Park, 255 Ga. 63, 335 S.E.2d 294 (1985), the Supreme Court stated, "Where a landowner makes a substantial change in position by expenditures and reliance on the probability of the issuance of a building permit, based upon an existing zoning ordinance and the assurances of zoning officials, he acquires vested rights and is entitled to have the permit issued despite a change in the zoning ordinance which would otherwise preclude the issuance of a permit." Pursuant to this case, the County recognizes that, unknown to the County; de facto vesting may have occurred. The following procedures are established to provide exemptions from the moratorium where vesting has occurred:

(a) A written application, including verified supporting data, documents and facts, may

be made requesting a review by Board of Commissioners at a scheduled meeting of any facts or circumstances which the applicant feels substantiates a claim for vesting and the grant of an exemption.

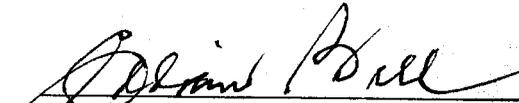
SECTION 3. **Severability:** It is hereby declared to be the intention of the Board of Commissioners that all sections, paragraphs, sentences, clauses and phrases of this Resolution are and were, upon their enactment, believed by the Board of Commissioners to be fully valid, enforceable and constitutional. It is hereby declared to be the intention of the Board of Commissioners that, to the greatest extent allowed by law, each and every section, paragraph, sentence, clause or phrase of this Resolution is severable from every other section, paragraph, sentence, clause or phrase therein. It is hereby further declared to be the intention of the Board of Commissioners to the greatest extent allowed by law, no section, paragraph, sentence, clause or phrase of this Resolution is mutually dependent upon any other section, paragraph, sentence, clause or phrase of this Resolution. In the event that any phrase, clause, sentence, paragraph or section of this Resolution shall, for any reason whatsoever, be declared invalid, unconstitutional or otherwise unenforceable by the valid judgment or decree of any court of competent jurisdiction, it is the express intent of the Board of Commissioners that such invalidity, unconstitutionality or unenforceability shall, to the greatest extent allowed by law, not render invalid, unconstitutional or otherwise unenforceable any of the remaining phrases, clauses, sentences, paragraphs or sections of the Resolution and that, to the greatest extent allowed by law, all remaining phrases, clauses, sentences, paragraphs and sections of the Resolution shall remain valid, constitutional, enforceable, and of full force and effect.

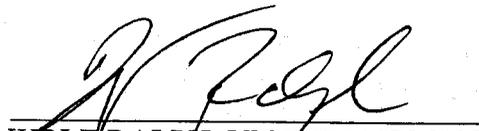
SECTION 4. All Resolutions or parts of Resolutions in conflict with this Resolution are, to the extent of such conflict, hereby repealed.

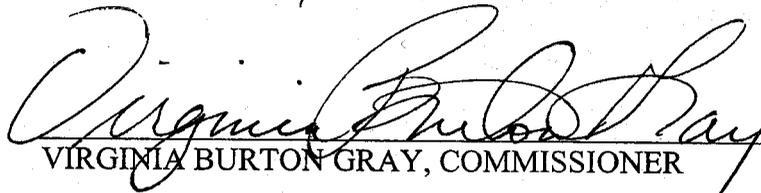
SECTION 5. The preamble of this Resolution shall be considered to be and is hereby incorporated by reference as if fully set out herein.

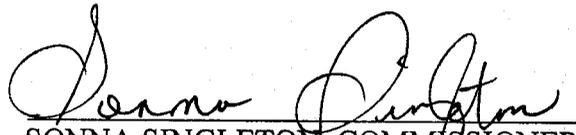
SO RESOLVED, this 10th day of June, 2008.

CLAYTON COUNTY BOARD OF COMMISSIONERS


ELDRIN BELL, CHAIRMAN


WOLF RALPH, VICE CHAIRMAN


VIRGINIA BURTON GRAY, COMMISSIONER


SONNA SINGLETON, COMMISSIONER

(Absent)
MICHAEL EDMONDSON, COMMISSIONER

ATTEST:


SHELBY D. HAYWOOD, CLERK