

The regular meeting of the Beaufort County Planning Commission (hereinafter "Commission") was held on Monday, August 6, 2007, in County Council Chambers, the Beaufort County Administration Building at 100 Ribaut Road, Beaufort, South Carolina.

Members Present:

Mr. Jim Hicks, Chair
Mr. Brian Flewelling

Mr. Alan Herd, Vice Chair
Mr. Frank Mullen

Ms. Diane Chmelik
Mr. Vernon Pottenger

Member Absent: Ms. Mary LeGree and Mr. Ronald Petit (*Note that the Planning Commission representation for the Bluffton/Daufuskie area has been vacant since Mr. Thomas Mike's resignation in February 2007.*)

Member Vacancy: District 4 (Bluffton and Daufuskie Island)

Staff Present:

Ms. Delores Frazier, Assistant Planning Director
Mr. Robert Merchant, Long Range Planner
Ms. Barbara Childs, Admin. Asst. to Planning Director

CALL TO ORDER: Chairman Hicks called the meeting to order at approximately 6:08 p.m.

PLEDGE OF ALLEGIANCE: Chairman Hicks led those assembled in the Chambers with the pledge of allegiance to the U.S.A. flag.

REVIEW OF MINUTES: The Commission reviewed the July 2, 2007, meeting minutes. The following changes were recommended:

1. Page 4, third paragraph of item 11, Mayor Tom Peeples instead of Mayor Steve Riley;
2. Page 5, second full paragraph entitled "Public Comment," Joe Croley instead of Crowley;
3. To reflect on all the motions during this meeting that Mr. Hicks voted "for" each of them. This change is in keeping with the County Council request that all motions reflect the vote of the respective board chairman.

Motion: Mr. Flewelling made a motion, and Mr. Herd seconded, **to accept the July 2, 2007, minutes as amended.** The motion **was carried unanimously** (FOR: Chmelik, Flewelling, Herd, Hicks, Mullen and Pottenger).

CHAIRMAN'S REPORT: Northern Regional Plan is scheduled to be considered by the Town of Port Royal on Wednesday night by resolution.

PUBLIC COMMENT for items other than agenda items: None were received.

NORTHERN BEAUFORT COUNTY REGIONAL PLAN

Mr. Merchant briefed the Commission. The participating governments in the Plan are the City of Beaufort, the Towns of Port Royal and Yemassee and Beaufort County. Other participating agencies are Lowcountry Council of Governments, the Greater Beaufort Chamber of Commerce, the Beaufort-Hilton Head Economic Development Partnership, Beaufort-Jasper Water and Sewer Authority, and the Beaufort County Board of Education. Mr. Merchant noted the various meetings held and the active website in regarding to this Plan. Urban growth boundaries, future annexation plans, regional transportation needs, fiscal impact and other regional issues such as stormwater management and affordable housing were discussed. The Plan recommends preserving 60% of Northern Beaufort County as rural. Transportation in the year 2025 is expected to fail on Joe Frazier Road, Boundary Street, Woods Memorial Bridge, and Highway 21 based on projected population growth. The County's Comprehensive Plan will combine the Northern and the Southern Regional Plans for a complete picture. The Northern Regional Plan will be a success if 60% of the northern area is preserved as rural, if annexations are held to the agreed upon areas, and if all the participating governments adopt baseline standards for consistency in development. The Plan will go through parallel adoption processes by each participating government. Intergovernmental agreements are the next step to implement this Plan.

Discussion included the fiscal impact methodology and revenue sources availability, a clarification of the heavy industrial definition, annexation procedures involving crossing municipal boundaries, the steering and implementation committees of the Northern and the Southern Regional Plans, the inclusion of the Board of Education as a voting committee member, the adoption process by the affected jurisdictions, concern that rising expectations may slow down the adoption process, the growth data gathering process, and the newly adopted Priority Investment Act with the 10-year Capital Improvement Program (CIP) requirement.

Public Comment:

1. Ms. Wendy Zara, a representative for the Coalition for Smart Growth, stated that the Coalition, based on the opinion of an economist, was concerned that the growth projections used for the Plan were too low. The Coalition is hoping that growth is tracked more accurately before it is too late. They are assuming that the intergovernmental agreements will become law. She noted that she was a member of the Technical Advisory Committee of the Northern Regional Plan and had not heard any further about their work. She noted that the effects of the service community had not been taken into the growth projections (i.e. Sun City as a retiree community would add to the schools by virtue of the service community needed to support the retiree community).
2. Mr. David Tedder, another Technical Advisory Committee member, noted that implementing the intergovernmental agreements would be hard work, regardless of the input by the Technical Advisory Committee. He would hate that political instead of technical expertise was used in the development of these agreements. The Technical Advisory Committee has been awaiting further involvement in regarding to the

development of those agreements. (Mr. Hicks noted that the Advisory Committees would have to await the adoption of the Plan by all the jurisdictions and the formation of an Implementation Committee to see if further work is required of the Advisory Committees.)

3. Ms. Zara was concerned that the public had not been involved too much in the Plan. Public support is going to be needed in order to support the Plan.

Motion: Mr. Flewelling made a motion, and Ms. Chmelik seconded, **to recommend to the County Council to adopt, by resolution, the Northern Beaufort County Regional Plan.** Further discussion included the parallel adoption process of the Plan by the participating jurisdictions, the notification to all participating jurisdictions if changes are part of the adoption process, the involvement of Jasper County and the City of Hardeeville in both the Southern and Northern Regional Plans, and the public input process. The motion **was carried unanimously** (FOR: Chmelik, Flewelling, Herd, Hicks, Mullen and Pottenger).

Note: *Chairman Hicks recessed the meeting at approximately 7:08 a.m. and reconvened it at 7:20 p.m.*

ADMINISTRATIVE APPEAL OF DECISION BY THE DEVELOPMENT REVIEW TEAM (DRT) ON DENYING APPROVAL FOR PLATTING & SUBDIVISION OF 6 LOTS IN HARBOR ISLAND PUD NOT MEETING CURRENT ENVIRONMENTAL QUALITY STANDARDS; Appellant: Preferred Island Properties, Inc. / Robert Honeycutt / David Tedder

Ms. Delores Frazier, Assistant Planning Director, briefed the Commission. The Development Review Team (DRT) in October 2006 heard a request for a six-lot subdivision within the Harbor Island Planning Unit Development (PUD), with a setback of 20 feet from the OCRM critical line. The DRT denied the request stating that the subdivision did not meet the required 50-foot setback from the OCRM critical line that was in the current Beaufort County Zoning and Development Standards (ZDSO). The DRT based their decision on the following ZDSO sections:

- ZDSO Section 106-7(2)b that states that all PUDs are subject to current standards unless otherwise provided for in a development agreement or in an ordinance that created or amended a particular PUD. The Harbor Island PUD does not have a separate setback standard from the OCRM critical line. Based on this ZDSO Section, unless Beaufort County Council has approved new setbacks for Harbor Island PUD, all new lots in Harbor Island are subject to the 50-foot setback requirement.
- ZDSO Section 106-1845(4)a that states that single-family detached and duplex buildings shall be set back 50 feet.
- ZDSO Section 106-1845(5) that indicates that the DRT is authorized to grant some relief from the 50-foot setback in situations where existing conforming or nonconforming lots are too small that one could not feasibly build a house and meet the 50-foot setback. In such situations the DRT is authorized to grant a waiver down to 20 feet from the critical line in order to build a house. In this case, because the lots were newly created, the DRT determined:

1. that they did not have authorization to grant this variance for these new lots,
2. that the lots were subject to meeting the current ordinance requirement of 50-feet, and
3. that if the applicant wished to have a different standard applied to these lots, then it would have to be approved by County Council.

Mr. David Tedder, representing the applicant, noted that Mr. Honeycutt was present at tonight's meeting. When the appeal was filed there was a long detailed mapping of the twists and turns this project had taken since Mr. Honeycutt purchased the property in 1987, including the County changing the standards on him in 1999 and him being involved in lawsuits with the Harbor Island Property Owners Association for years. He noted that a plan was brought forth in 2003 and 2004 when the master plan was amended to bring back something in the area of Mr. Honeycutt's property. The original master plan for Harbor Island intended for something to be built on the property Mr. Honeycutt purchased. Some units were moved away, some were brought back. The plat that Mr. Criscitiello gave you showed some lots were platted and given waivers from the river buffer. Mr. Honeycutt's property was shown as future development on that plat at that time. 24 lots were placed there. When sewer was available, a submission for a master plan amendment was made. Ms. Diane Chmelik is familiar with the fact that we had two appeals to the Zoning Board of Appeals (ZBOA) when the Property Owners Association appealed the granting of the master plan amendment that is the same basic plat that was reviewed by the DRT this past August or September 2006. That same plan showed that it was impossible to have a house of any size commensurate with the surrounding homes unless there was a waiver. After that appeal was over in December 2004, we received a concept plan approved by the DRT that granted a waiver from the OCRM 50-foot setback. The granted waiver was appealed by the Harbor Island Property Owners Association, and they later dropped their appeal. We had concept plan approval and then moved forward to get the other approvals toward a final approval--a daunting task. The approval process changed from a three-step to a two-step process in June 2004. Our plans were granted in July 2004. An error was made in not requesting an extension in December 2005 when they received DHEC approval but was awaiting approval on sewer. If that extension had been requested, we would not be here. When we tried to bring the project forward we were told we had to resubmit, and we did. But this time, the DRT said that in June 2004 we changed the PUD vesting requirements, and in fact it was a gotcha. It just didn't seem equitable or fair for someone who had been through litigation for three years to have a gotcha like that when he had a pending application/submission, which is basically the same thing. We submitted everything, tried everything. We went to the ZBOA for a variance on the time limits. The ZBOA did not grant the variance. We are now before the Commission appealing the legal interpretation by the DRT. The Commission, as a quasi-judicial body using the interpretive tools used by the courts, will determine whether a mistake was made interpreting the ordinance. There is no doubt that what Ms. Frazier said was true—that the ZDSO Section 106-7 was amended. Prior to June 2004, there were references to river buffers in ZDSO Sections 106-7(1) and (3)—the first was deleted. Interpretive standards indicate if a standard is mentioned in one place, but not in another, the standard is intended to be excluded. Regardless of what was intended, you must look at what was done. The courts upheld a case, despite the intent of the Newberry County Council for landfills to be a special use, that landfills were a permitted use because the Newberry ordinance indicated as such. In Mr. Honeycutt's case, we

contend that river buffers on a PUD are not applicable because it was not addressed. Under 90-3 (ordinance before 1999) there was a provision for allowing river buffer variances for PUDs and others. Harbor Island was one of the approved PUDs with adopted standards. By looking at the master plan, one could recognize that those lots were not intended to be built with a 50-foot buffer—there is not enough room. The master plan shows 6 lots on Mr. Honeycutt's property. The ordinance was not amended until Mr. Honeycutt's application was going through the DRT process. The DRT has already granted a variance, and we had to obtain affidavits from the DRT members who had voted on it to give to the court. In particular, the affidavit from Hillary Austin, the County Zoning and Development Administrator, basically said that the DRT has in the past allowed developers to plat lots that did not meet the 50-foot OCRM setback if the building footprint was shown. The DRT asked the same thing of Mr. Honeycutt at first concept and they approved it. The same plan was resubmitted and denied. Mr. Tedder believes that the DRT felt the amended Section 106-7(4) tied their hands and they could not grant such variances. He does not agree since PUDs approved under the old ordinance have the ability to be made consistent. He believes the DRT did not follow Section 106-7(2)(b) and (c). The Harbor Island master plan showed those lots and those footprints when it was approved in 2003. That master plan is on file as approved by the courts after appeal; you have to let him have those buildings there. In regards to common law vesting, Mr. Honeycutt has worked hard on this project for a number of years, including master plan amendment, concept plan presentation and court proceedings. At the time his concept plan was pending with DRT, Harbor Island Property Owners Association suing him on two other matters contributed to the situation he is in today. The law allows a property owner free use of his/her property, unless restrictions are strictly construed. Mr. Tedder showed various photos of Mr. Honeycutt's property and the surrounding area with existing houses. He believes the Commission has the ability to act as if it was the DRT by changing or modifying the Dart's decision or making its own decision in accordance with the facts of law as seen by the Commission. I request the you determine that a master plan was approved, it showed a standard, it showed a building footprint, it does not fall under the explicit provisions of the ZDSO Section 106-7(2) because it had already been approved at the time this ordinance was passed and, in any event, by the failure to include river buffers to existing PUDs more than 50% completed, it does not apply because it does not talk about river buffers or OCRM setbacks at that point. The ordinance talks about single-family residences, not PUDs, and utilities. In the event that you do not follow that logic, the question is should the DRT have created a standard based on what was out there. If you do not find that the master plan was already in effect and showed a standard explicitly on that plat, the DRT should have looked at other projects near Mr. Honeycutt's property that were granted variances from the OCRM river buffer, as Mr. Criscitiello's memo indicated, so that the projects could be platted or forward Mr. Honeycutt's project to County Council. Mr. Tedder did not believe the project should be forwarded to County Council; instead, the Commission has sufficient information to rule on the appeal tonight.

Discussion included a clarification that when this project came before the ZBOA the issue was a matter of shifting densities only and the river buffer standard was removed because it was superfluous since that standard was covered under current environmental standards; a consideration that the Commission look at the basic issue of whether the DRT correctly believed they did not have the authority to grant variances on lots in accordance with the ZDSO Section

106-1845(5); a belief that the project should have gone before the County Council because it was amending the Harbor Island PUD; a clarification of Mr. Tedder's contention that the DRT has the authority to make changes to facilitate the master plan if the master plan does not address a particular standard; a clarification that the ZDSO section does give the DRT authority to come up with standards comparable with the surround areas for older master plans that do not have specific standards, but the DRT has always considered setbacks from the river buffer to be an environmental quality standard;

Final Argument: Mr. Tedder asked that the Commission to give Mr. Honeycutt some relief on this project by allowing him some lots, or mitigating, or crafting new standards if they do not accept the fact that the master plan that was submitted on record in the files does not give a setback to build to that is different from the ZDSO standard. At some point the law needs to do what is right by its citizens. Mr. Honeycutt and his wife have worked on this project for so many years. It is a daunting task getting to a concept plan. Several problems occurred involving other agencies or parties. He had a waiver, he had a master plan. Let him build the six lots.

Further discussion included clarifying that this is the second administrative appeal heard by the Commission, noting the purpose of the Commission regarding administrative appeals, sympathizing that the applicant has experienced a very disadvantageous set of circumstances that could have been concluded by a timely extension request, querying if the plan that was submitted to amend the master plan at conceptual had building footprints, clarifying that the appropriate plan had to have a County stamped approval, clarifying that Mr. Tedder should have produced reasonably sufficient evidence that the purported existing lots were recorded tax parcels with the County, a reiteration that the Commission should not consider new or altered plans except for the information submitted to the DRT for this appeal, reiterating that the ZDSO ordinance stated that PUDs are subject to whatever the current standards are at that time if the standards were not specifically addressed in the PUDs master plan, agreeing with the interpretation of the DRT on this project, believing that lots do not exist until the approving authority approves a plan, hoping that there were other avenues to pursue for Mr. Honeycutt, and the unfortunate administrative oversight that changed the plan.

Motion: Mr. Herd made a motion, and Ms. Chmelik seconded, **that the Development Review Team (DRT) did not err in their decision regarding denying the subdivision of six-lots on Harbor Island.** The motion was carried unanimously (FOR: Chmelik, Flewelling, Herd, Hicks, Mullen and Pottenger).

OTHER BUSINESS:

1. **May River Community Preservation (MRCP) Committee:** Mr. Herd noted that this Committee's name had been changed from the Bluffton CP Committee. The MRCP Committee has met monthly since May. and Mr. Herd is recommending the appointment of the thirteen ~~has become acquainted with the following~~ individuals to the MRCP Committee: Stephen Bischoff, Scott Corkern, Joe L. Grant, ~~Margaret~~ Margaret Jones, Paul McCue, Peter Lamb, Jimmy McIntire, Ed Pinckney, Jerry Reeves, LuEllen Robertson, Carlus Schultz, Roberts Vaux and Don Blair (~~who will be~~ representing the ~~Town of~~ Bluffton Planning Commission). Mr. Blair is the Town of

Bluffton's Planning Commission Chairman and has been included in the MRCP Committee. Mr. Herd is recommending the appointment of the above thirteen individuals to the MRCP Committee. **Motion:** Ms. Chmelik made a motion, and Mr. Pottenger seconded, **to appoint the thirteen individuals--Stephen Bischoff, Scott Corkern, Joe L. Grant, ~~Mararet~~ Margaret Jones, Paul McCue, Peter Lamb, Jimmy McIntire, Ed Pinckney, Jerry Reeves, LuEllen Robertson, Carlus Schultz, Roberts Vaux and Don Blair (who will be representing the Town of Bluffton Planning Commission)--to the May River Community Preservation Committee. The motion was carried **unanimously** (FOR: Chmelik, Flewelling, Herd, Hicks, Mullen and Pottenger). Mr. Herd asked that the members be contacted.**

2. **Daufuskie Island Community Preservation (DICP) Committee:** Mr. Herd noted that Marianne McEvoy has served as secretary of the group and Ms. Yvonne Wilson has not attended the meetings in a long time. Mr. Herd is recommending that Ms. Marianne McEvoy replace Ms. Yvonne Wilson on the DICP Committee. **Motion:** Ms. Chmelik made a motion, and Flewelling seconded, **to replace Ms. Yvonne Wilson on the Daufuskie Island Community Preservation Committee with Ms. Marianne McEvoy.** The motion was **carried unanimously** (FOR: Chmelik, Flewelling, Herd, Hicks, Mullen and Pottenger).

ADJOURNMENT: Motion: Mr. Flewelling made a motion, and Mr. Herd seconded, **to adjourn** the meeting. The motion was **carried unanimously** (FOR: Chmelik, Flewelling, Herd, Hicks, Mullen and Pottenger). The meeting adjourned at approximately 8:23 p.m.

SUBMITTED BY:

Barbara Childs, Admin. Assistant to the Planning Director

Jim Hicks, Beaufort County Planning Commission Chairman

APPROVED:

October 1, 2007, as corrected (deletions are ~~struck through~~, additions are **bolded and underscored**)