

The regular meeting of the Beaufort County Planning Commission (hereinafter “Commission”) was held on Monday, January 3, 2008, in County Council Chambers, the Beaufort County Administration Building at 100 Ribaut Road, Beaufort, South Carolina.

Members Present:

Mr. Jim Hicks, Chair	Ms. Diane Chmelik, Vice Chair	Mr. Brian Flewelling
Ms. Mary LeGree	Mr. Frank Mullen	Mr. Ronald Petit
Mr. Edward Riley III		

Members Absent: Mr. Vernon Pottenger

Member Vacancies: One (At-Large representative--formerly Alan Herd since November 2007)

Staff Present:

Mr. Anthony Criscitiello, Planning Director
Ms. Delores Frazier, Assistant Planning Director
Ms. Barbara Childs, Admin. Asst. to Planning Director

CALL TO ORDER: Chairman Hicks called the meeting to order at approximately 6:02 p.m.

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

CHAIRMAN’S REPORT:

- 1. Agenda Changes:** Chairman Hicks noted some modifications to tonight’s agenda—both Parkway Access Management Plans are withdrawn by staff until the next Commission meeting; the text amendments will be heard after the Administrative Appeal and after the rezoning request.
- 2. Welcome to Newest Planning Commissioner:** Chairman Hicks welcomed the newest Commissioner, Edward Riley, who will represent the Bluffton and Daufuskie areas. Mr. Riley, formerly of Virginia, served for 10 years as a planning commissioner.

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

PORT ROYAL ISLAND ZONING MAP AMENDMENT/REZONING REQUEST FOR R100-31-160 FROM SUBURBAN (S) AND COMMERCIAL SUBURBAN (CS) TO CS; OWNER: RAYMOND HORN

Mr. Criscitiello briefed the Commission. The parcel is split zoned and the applicant wanted a single zoning of commercial suburban. The Northern Regional Plan shows the parcel as part of a regional growth boundary, where upzoning would occur only when the property were annexed into a municipality. Since the regional growth boundary process has not been formalized, this rezoning request will be processed by the County. The municipalities have been notified of this rezoning request, and have not forwarded any comments to the Planning staff. The current business is a non-conforming use. No buffers are required between suburban and commercial suburban zoning districts.

Applicant's Comments: Mr. Ray Horn is trying to understand the whole process, how everyone thinks, and how his rezoning request is moved forward. He was not aware of the split zoning when he purchased the property. He is trying to sell the property and the interested purchasers seem to have shied away from the purchase. If he is unable to sell the business, then he would have to stay, but it is not his preference. He thought that when the property was purchased it was one zoning.

Public Comments:

1. Mr. Paul Pacheco did not understand the negative comments from the staff report. He noted he was the potential purchaser of the property. He does not see why the property is not zoned commercial suburban. The area is growing and the changed zoning would enhance the neighborhood.
2. Ms. Pat Harvey Palmer, the realtor representing Mr. Horn, stated the property is zoned commercial suburban in the front, but suburban in the back. With the proper buffering, any business would be better than the existing business.

To address Mr. Pacheco's comments, Chairman Hicks noted that Mr. Criscitiello represented the Planning Department.

Mr. Criscitiello noted that the 1991-1998 zoning map showed the zoning of the front half of the property was neighborhood commercial and the back half was Development District. The property was split zoned since 1991, and remained as such when the 1999 ordinance took effect.

Discussion included the date the property was purchased (1993), clarification that property fits into the Corridor Review Board within 500 feet of Parris Island Gateway and the buffer requirements (15 ft on sides and rear), clarification on abutting residential homes on the back of the property, noted that commercial property were along the corridor, interface between differing uses required, support of rezoning, residential property owners did not realize significant impact to their property, caution into planning of buffer instead of allowed uses, split zoned property difficult for property owner to sell property, supposed rationale on split zoning a property, non-support of split zoning, and the lack of homeowners at tonight's meeting to indicate support or not support.

Motion: Ms. Chmelik made a motion to forward to County Council a recommendation of denial of the Port Royal Island Zoning Map Amendment/Rezoning Request for R100-31-160 from Suburban (S) and Commercial Suburban (CS) to CS. No second was received and the motion died.

Motion: Mr. Flewelling made a motion, and Mr. Petit seconded, **to forward to County Council a recommendation of approval of the Port Royal Island Zoning Map Amendment/Rezoning Request for R100-31-160 from Suburban (S) and Commercial Suburban (CS) to CS. The motion was tied (FOR: Petit, LeGree, Flewelling; AGAINST: Hicks, Riley and Chmelik; Abstained: Mullen), and the Planning Commission is forwarding this rezoning request to the County Council without a recommendation.**

ADMINISTRATIVE APPEAL OF DECISION BY THE DEVELOPMENT REVIEW TEAM (DRT) TO GRANT FINAL APPROVAL TO THE LOWCOUNTRY FAMILY SKATING CENTER AT R100-31-205 ON ROBERT SMALLS PARKWAY; APPELLANT: SHADOW MOSS PROPERTY OWNERS ASSOCIATION

Chairman Hicks read a procedural guide for conduct during administrative appeals to reflect the process by which tonight's appeal would occur.

Presentation of the General Nature of the Case from the DRT's Position: Ms. Frazier briefed the Commission that the Development Review Team (DRT) approved the site plan. On March 20, 2007, Horton Properties submitted their application for approval of a 13,490-square foot commercial indoor skating rink and family center on a 2.7-acre site adjacent to the Shadow Moss subdivision on Robert Smalls Parkway. The Shadow Moss subdivision is within the Town of Port Royal. The property is zoned commercial suburban and the skating center is a limited use subject to the following limitations: that the use take access from a collector or arterial road, which this property does; and that a community impact statement be included with the submittal, which occurred and a portion was included in the Commission packet. In comments to the applicant (Horton Properties), the DRT expressed concern regarding potential impact to the Shadow Moss subdivision from the proposed development. The County ordinance does not require a buffer between commercial suburban zoning and any municipal boundary. The Shadow Moss property, before it was annexed into the Town of Port Royal, was zoned suburban. As noted in the rezoning project heard by the Commission earlier, there is no buffer requirement between suburban and commercial suburban zoning districts. Because the property was located along the highway corridor overlay district, the DRT applied the buffer requirements for that overlay district which was either a 10-foot wide natural buffer along the sides and rear of the property or a 15-foot wide planted buffer. The DRT required a 15-foot wide planted buffer on the side abutting the Shadow Moss subdivision. The DRT gave final approval on November 5, 2007, subject to the following conditions in order to help mitigate the incompatibilities between this project and the adjoining residents of Shadow Moss: in addition to the 15-foot planted buffer, that a privacy fence be built to help screen the adjacent single-family lots from the parking lot glare and that the 15-foot buffer be well vegetated. The privacy fence would run the entire length of the property excluding the 50-foot highway overlay road buffer area. The Staff provided the Commissioners with the relevant sections of County's Zoning and Development Standards Ordinance (ZDSO) regarding the use table, the community impact statement, a portion of the buffer table and the letter that was sent to the applicant with the DRT's approval and conditions.

Appellants' Comments: Mr. Michael Regan, representing the Shadow Moss property owners and a property owner himself, was told the property owners could not speak at the hearing. He feels the Development Review Team (DRT) made an error in interpreting the County ordinance. The intent of the law is to provide a buffer. Because Shadow Moss is in the Town of Port Royal, the DRT did not take into consideration the intent of the ordinance to mitigate nuisances between zoning districts. Secondly, when the community impact statement was submitted, it was inadequate--it was a simple statement from Ward Edwards that stated "the said use was compatible with the existing community. We do not feel their concerns were addressed, including noise and parking lot nuisances. The buffer consists of several palm trees and a fence which is not the well-vegetated buffer required by the DRT by any stretch of an imagination. Thirdly, we were concerned whether all the paperwork was submitted properly regarding the wetlands statement from the U.S. Army Corps of Engineers (COE). The applicant did submit a letter from the COE stating they were not able to determine the overall wetlands on the property due to some Supreme Court ruling. The COE letter was not a wetlands determination. Every Shadow Moss homeowner signed the letter indicating they had issues with the development. We are in the Town of Port Royal, but are also Beaufort County taxpayers. We ask the County to address our concerns and the impact this skating rink will have on the Shadow Moss subdivision, not only the use, but also the parking area and its associated noise nuisances. Mr. Regan noted that his wife wrote the appeal, but was unable to be at tonight's hearing.

Chairman Hicks noted that appeal was well written and discussed asked for the Commission discussion to be based on the three points of the Appellants' appeal.

1. Community Impact Statement: Discussion included an opinion on the insufficiency of the impact statement in addressing lighting and noise impacts to the surrounding neighborhood, an opinion that the Development Review Team (DRT) should have required a more detailed study from the applicant, an opinion that the DRT actions were made after weighing the Appellants' concerns, a clarification that the Shadow Moss subdivision is in the Town of Port Royal and the proposed skating rink property is in the County, a comment that the property was in the growth zone of the Town of Port Royal and that the Town of Port Royal should have been asked to comment on this project, and a concern that a transcript of the DRT hearing was not available to determine if the negative impacts were addressed.

Ms. Frazier noted that the DRT did discuss that the project was next to a residential neighborhood and had added the requirements of a privacy fence to help mitigate the lights in the parking area from shining into the residential homes and placing the front door to the skating rink on the opposite side of the residential properties; however, the DRT, was unable to mitigate the Shadow Moss residents' anticipated concern regarding the noise from loud cars in the parking area.

Further discussion included the reiteration of a well-vegetated buffer requirement by the DRT, a clarification between the 50-foot highway buffer and the 15-foot side and back buffers, and the suburban zoning of Shadow Moss prior to its annexation into the Town of Port Royal.

Appellants' comments: Mr. Regan noted that many Shadow Moss residents attended the DRT, but minutes were not taken. Since the community impact statement was submitted, it is a public document and they paid for copies. He read the one sentence regarding the community impact statement. The said sentence was not adequate and the DRT should have required more.

Motion: Mr. Petit made a motion, and Ms. LeGree seconded, **that from the facts presented it does not appear that the DRT made a mistake in regards to the community impact statement.** The motion was carried (FOR: Hicks, Flewelling, Mullen, Petit; AGAINST: Chmelik and Riley).

2. Wetland Delineation:

Ms. Frazier noted that the May 1, 2007, U.S. Army Corps of Engineers (COE) letter gave a preliminary determination that there appears to be an accurate depiction of the existed 0.02 acres of Federally defined freshwater wetlands. The COE was unwilling to give a final wetland determination because of a Federal ruling. The March 19, 2007, letter by the County Natural Resource Planner noted his determination of accuracy on the wetlands. Based on both letters, the DRT made a decision that the applicant's engineer provided the appropriate documentation regarding wetland delineation.

Commission discussion included a clarification that the Corps of Engineers (COE) did not have authority to determine isolated wetlands but could offer its opinion which legally could not be relied upon, and the rationale for the County's request for the COE letter.

Ms. Frazier noted that the COE determined there a jurisdictional wetland was accurately depicted. Since the jurisdictional wetland was not being disturbed, no further COE action was required by the DRT. Ms. Hillary Austin stated that the Office of Ocean Coastal Resource Management (OCRM) will become involved if non-jurisdictional wetlands are filled. Mr. Criscitiello stated that a delayed decision beyond 60 days would automatically require County approval because of state law.

Further Commission discussion included a query that the COE letter may not be required if the sufficiency of the delineation was agreed upon by the County natural resources personnel, and the non-issue that the wetlands are not being disturbed.

Appellant Comments: The vagueness of the Corps of Engineers letter as to the size of the wetlands is of concern. Also of concern is if the developer were to physically begin disturbing the land and filling in the wetlands who would know the actual size of the wetlands, since the Corps of Engineers had not physically come to inspect the wetlands. The Appellant's contends that the wetlands could be larger than the developer's engineer had stated and the COE did not come down with its final delineation.

Motion: Mr. Petit made a motion, and it was seconded, **that the DRT did not err in their determination that the wetland delineation requirement was met by the**

applicant. The motion **was carried unanimously** (FOR: Chmelik, Hicks, Flewelling, Mullen, Petit; and Riley).

3. Buffer:

Ms. Frazier noted that during the review of the project the DRT looked at the zoning and the uses of the property being reviewed and the surrounding property. The property is zoned commercial suburban and the abutting Shadow Moss subdivision was in Town of Port Royal—no buffers were required. The DRT saw that the Highway Corridor Overlay setbacks of 15 feet for side and back buffers, so the DRT applied the more stringent standards. The fencing requirement was added because of anticipated light intrusion to the neighboring residents.

Discussion included the bufferyard planting requirements that are defined in the Zoning and Development Standards Ordinance (ZDSO), the landscape plan approved by the Corridor Review Board for the project, the non-buffer requirement if the abutting property were not in the Town of Port Royal, and the required landscape architect on the Corridor Review Board to determine the adequacy of landscaping for any project.

Appellants' Comments: They understood that the DRT was working within the County ordinances. They did not feel the County mitigated the buffer to provide adequate coverage to the abutting Shadow Moss residents.

Motion: Mr. Flewelling made a motion, and Ms. LeGree seconded, **that the DRT did not err in their determination of applying the most stringent buffer requirements allowed by the ordinance for this project.** The motion **was carried unanimously** (FOR: Chmelik, Hicks, Flewelling, Mullen, Petit; and Riley).

Motion: Mr. Flewelling made motion, and Ms. LeGree seconded, that the Development Review Team (DRT) did not err in their decision to grant final approval for the Lowcountry Family Skating Center on Port Royal Island R100-31-205 on Robert Smalls Parkway. The motion was carried unanimously (FOR: Chmelik, Flewelling, LeGree, Hicks, Mullen, Petit and Riley).

Note: Chairman Hicks recessed the meeting at approximately 7:35 p.m. and reconvened the meeting at approximately 7:48 p.m.

Chairman Hicks noted that there was no one in the audience to offer public comment on the next agenda item.

TEXT AMENDMENTS TO THE BEAUFORT COUNTY ZONING AND DEVELOPMENT STANDARDS ORDINANCE/ZDSO:

A. Article I. In General; Sec. 106-8. Exemption from subdivision review: to require base site area calculation for minor subdivisions.

Mr. Criscitiello briefed the Commission. This amendment relates to making base site area calculations the same for minor and major subdivisions. The Staff is trying to prevent minor subdivisions from counting land that should not be used, such as marshlands.

Discussion included agreement to the staff recommendation and a clarification of the amendment.

Motion: Ms. Chmelik made motion, and Mr. Flewelling seconded, **to forward to County Council a recommendation of approval for the Text Amendment to the Beaufort County Zoning and Development Standards Ordinance/ZDSO, Article I, Section 106-8 that will require the base site area calculation for minor subdivisions to be the same as for major subdivisions.** The motion was carried unanimously (FOR: Chmelik, Flewelling, Hicks, LeGree, Mullen, Petit and Riley).

B. Article I. In General; Sec. 106-18. Definitions: amend the definition of "subdivision" to correspond with State statutes.

Mr. Criscitiello briefed the Commission that this amendment would make the ZDSO definition parallel with the State statutes.

Discussion included a clarification of the amendment.

Motion: Mr. Flewelling made motion, and Mr. Riley seconded, **to forward to County Council a recommendation of approval for the Text Amendment to the Beaufort County Zoning and Development Standards Ordinance/ZDSO, Article I, Section 106-18 to amend the definition of "subdivision to correspond with State statutes.** The motion was carried unanimously (FOR: Chmelik, Flewelling, Hicks, LeGree, Mullen, Petit and Riley).

C. Article III. Administrative Procedures; Sec. 106-402. Notice of public hearings: to exempt administrative appeals from mailed notice requirements.

Mr. Criscitiello briefed the Commission that this amendment would exempt administrative appeals from mailing notices to abutting property owners. Since public comments are not received during administrative appeals, the mailed notification was not necessary.

Discussion included whether the County attorney's opinion was given on this amendment (it was not), a clarification on the amendment, concern that abutting property owners would not know about the appeal with the elimination of mailed notification, support for openness in government even if public comment would not be taken, a clarification of the Development Review Team/DRT process regarding public comment, and the sufficiency of public notification with a posted sign on the property indicating the appeal and a legal notice in the newspaper.

Motion: Mr. Flewelling made motion, and Mr. Riley seconded, **to forward to County Council a recommendation of approval for the Text Amendment to the Beaufort County Zoning and Development Standards Ordinance/ZDSO, Article III, Section 106-402 to exempt administrative appeals from mailed notice requirements.** The motion was carried (FOR: Flewelling, LeGree, Hicks, Mullen, Petit and Riley; AGAINST: Chmelik).

D. Article IV. Zoning Districts; Sec. 106-926. Developments in more than one zoning district: to prohibit uses in the "lower-intensity" district that are not otherwise allowed in that district.

Mr. Criscitiello briefed the Commission that this amendment would prevent uses from spilling over onto split zoned parcels, would insure that non-allowed uses remain non-allowed in their respective zoning districts, and would protect adjacent property owners from higher-intensity uses that were not allowed uses.

Discussion included a query regarding how this text amendment would impact the earlier rezoning request by Mr. Horn, an agreement in closing such a loophole, and a clarification of the amendment in relation to the rezoning request on the Polowana property since the DRT had agreed administratively to keep lower-intensity uses within their intended zoning districts.

Motion: Mr. Flewelling made motion, and Mr. Petit seconded, **to forward to County Council a recommendation of approval for the Text Amendment to the Beaufort County Zoning and Development Standards Ordinance/ZDSO, Article IV, Section 106-926 to prohibit uses in the lower intensity district that are not otherwise allowed in that district when more than one zoning district is involved.** The motion was carried unanimously (FOR: Chmelik, Flewelling, Hicks, LeGree, Mullen, Petit and Riley).

E. Article VI. Open Space and Density, Lot and Building Intensity, Bufferyards and Landscaping, Exterior Storage and Illumination; Sec. 106-1526. Table explanation: to clarify explanation of terms.

Mr. Criscitiello briefed the Commission that this amendment allows consistency with the base site area to be calculated landward, not including marshes. .

No discussion occurred.

Motion: Ms. Chmelik made motion, and Ms. LeGree seconded, **to forward to County Council a recommendation of approval for the Text Amendment to the Beaufort County Zoning and Development Standards Ordinance/ZDSO, Article VI, Section 106-1526 to clarify the explanation of terms.** The motion was carried unanimously (FOR: Chmelik, Flewelling, Hicks, LeGree, Mullen, Petit and Riley).

F. Appendix A1. Airport Overlay District / MCAS-Beaufort; Sec. 7. Nonconforming uses and structures: to clarify allowed expansions to nonconforming places of assembly and worship.

Mr. Criscitiello briefed the Commission that this amendment clarified the legislative intent that only minor expansions to nonconforming churches within the Airport Overlay District would be permitted. This amendment closes an area of ambiguity by further defining what expansions would not be deemed to increase the “occupant load” of the building.

Discussion included having the amendment instead of relying on past corporate knowledge of Commission decisions, the unlikelihood of researching such precedence, and the ability to amend portions of the ordinance that have created problems in the past.

Motion: Ms. Chmelik made motion, and Mr. Riley seconded, **to forward to County Council a recommendation of approval for the Text Amendment to the Beaufort County Zoning and Development Standards Ordinance/ZDSO, Appendix A1, Section 7 to clarify allowed expansions to nonconforming places of assembly and worship in the MCAS Beaufort Airport Overlay District.** The motion was carried unanimously (FOR: Chmelik, Flewelling, Hicks, LeGree, Mullen, Petit and Riley).

OTHER BUSINESS: Chairman Hicks assigned Mr. Flewelling to the Southern Beaufort County Subcommittee.

ADJOURNMENT: Motion: Mr. Riley made a motion, and Mr. Flewelling seconded, **to adjourn** the meeting. The motion **was carried unanimously** (FOR: Chmelik, Flewelling, Hicks, LeGree, Mullen, Petit and Riley). The meeting adjourned at approximately 8:25.p.m.

SUBMITTED BY: _____
Barbara Childs, Admin. Assistant to the Planning Director

Jim Hicks, Beaufort County Planning Commission Chairman

APPROVED: February 4, 2008