

The regular meeting of the Beaufort County Planning Commission (hereinafter "Commission") was held on Thursday, September 2, 2010, in County Council Chambers, the Beaufort County Administration Building at 100 Ribaut Road, Beaufort, South Carolina.

Members Present:

Mr. Jim Hicks, Chair	Mr. Robert Semmler, Vice Chair	
Ms. Diane Chmelik	Mr. Ronald Petit	Mr. Edward Riley III
Mr. E. Parker Sutler	Ms. Mary LeGree	

Members Absent: Mr. John Thomas, Mr. Charles Brown

Staff Present:

Mr. Anthony Criscitiello, Planning Director
Ms. Linda Maietta, Planning Assistant

CALL TO ORDER: Chairman Hicks called the meeting to order at approximately 6:00 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 June 7, 2010, meeting minutes. **Motion:** Mr. Sutler made a motion, and Mr. Petit seconded the motion, **to accept the June 7, 2010, minutes as written.** The motion **was carried** (FOR: Hicks, Chmelik, Sutler, Petit, LeGree, Riley; ABSTAINED: Semmler).

The Commission reviewed the July 1, 2010, meeting minutes. **Motion:** Ms. Chmelik made a motion, and Mr. Semmler seconded the motion **to accept the July 1, 2010, minutes as written.** The motion **was carried unanimously** (FOR: Hicks, Chmelik, Sutler, Petit, LeGree, Riley, Semmler).

CHAIRMAN'S REPORT: Chairman Hicks noted that two members were absent tonight, Mr. Thomas and Mr. Brown.

PUBLIC COMMENT for items other than agenda items: No comment was received.

PORT ROYAL ISLAND ZONING MAP AMENDMENT/REZONING REQUEST FOR R100-24-20 & 416 (8.29 ACRES TOTAL, AT THE INTERSECTION OF JOE FRAZIER, LAUREL BAY AND RUG RACK ROADS IN BURTON), FROM RURAL WITH TRANSITIONAL OVERLAY AND RURAL-RESIDENTIAL WITH TRANSITIONAL OVERLAY TO COMMERCIAL SUBURBAN; OWNERS/APPLICANTS: TINMARK GENERAL PARTNERSHIP/M CAREY & T SCHWARTZ

Mr. Anthony Criscitiello briefed the Commission and provided background information:

- This property was considered by the Planning Department a few years ago.
- As stated in the staff report, advice was given that rear portions of property would remain rural to be compatible with the surrounding zoning.
- Also stated in the staff report that future consideration might be given for commercial use that would be compatible with the highway frontage that is present.
- Applicant did take the advice and the subdivision did occur.
- The location seems logical for commercial use; however, the existing commercial area is obsolete. Probably one of the major reasons the applicant is here. To bring some economic and commercial vitality back into the area.
- However, given the current state of planning in the County, this area is part of a future endeavor on part of the County and the municipalities, the City of Beaufort and the Town of Port Royal, for a vision development as part of the form based code.
- The staff felt it was premature to bring the zoning forward for consideration. Would prefer to allow the consultant come and provide the charette and the visioning efforts for this area of Burton, allowing for the zoning and development to be more comprehensively dealt with as we see coming forward. This effort would be embraced by the County and the municipalities of the City of Beaufort and the Town of Port Royal.
- The staff recommended denial based on the above.
- The sub-committee of the Planning Commission met and recommended approval with a 2 to 1 vote for allowing the property to go to commercial suburban.
- Today, received an email from the City of Beaufort Planning Director, Libby Anderson, requesting this application be presented to the Joint Northern Regional Planning Commission. The Commission has yet to be impaneled but in the month of October that this is likely to be presented and adopted by County Council.
- If that is the case, this would be an ideal project to be reviewed by the Joint Northern Regional Planning Commission. Based on how that would be set-up, that would come back to this Planning Commission for a decision or recommendation for County Council.

Mr. Sutler had a question on Item 3 of the Staff Report regarding how applicant's parcel "wraps" a parcel that contains a cellular tower. Was that the case in 2007 also? Mr. Criscitiello confirmed that it was. Mr. Sutler questioned that it was in existence then. Mr. Criscitiello confirmed that it was.

Chairman Hicks invited the applicant to the podium for his presentation before the Commission continued their discussion.

Applicant Timothy Schwartz came to the podium to address the Commission as follows:

- Property under discussion was zoned commercial previously spanning three decades having up to as many as four businesses running on it at one time. There has never been a house built on this property. It has always been commercial property.
- Started to rezone this property in 2001. Went to the Planning Department after the county-wide rezoning and requested the property be changed back to commercial suburban. Instructed to make an application and follow the entire re-zoning process.

- However, property was grandfathered which made it possible to continue to run the businesses as they were, non-conforming to the zoning. (Mr. Schwartz provided a timeline to members of the Commission.) Continued to run the self-storage business from 2002 through 2006.
- In 2007, spoke to Mr. Criscitiello in regard to putting the zoning back to what it was. Mr. Criscitiello was against rezoning the whole parcel because it would back up to high density rental homes. Per his direction, a sub-division permit was obtained to re-zone the front half of the property. This was done. It was costly and time consuming.
- In July 2010, first time formerly applied to re-zone the rest of the property back to commercial suburban. The applicant reiterated comments made in the staff report and stated he was surprised the recommendation was for denial. The applicant addressed each issue raised by the staff for denial and provided explanations and/or solutions.
- The response from the Port Royal Island Subcommittee was positive.
- Mr. Schwartz feels that he is a good person, pays his taxes, provides a service to the community and to contractors. His request is not a huge change; it is what the property has been used for over the last five decades.
- When questioned by Mr. Sutler, Mr. Schwartz stated that he spent \$12, 000 to subdivide the property in 2007. This included surveying; and engineering; ~~plumbing~~.

Ms. LeGree had a question regarding the ramifications if the property was not approved to be rezoned commercial. Does that shut your business down?

Mr. Schwartz replied that yes, it would very likely shut the business down. The applicant has to refinance his loan.

Ms. LeGree commented that the business is up and running and is doing well so that in this kind of climate, we certainly don't want to see another business go down.

Mr. Sutler asked the applicant that if he remains out of compliance, will that threaten the loan with the banker?

Mr. Schwartz replied that the bank doesn't want to issue a loan for a business on residential property

Chairman Hicks stated that he doesn't believe the applicant can say it would affect the loan but could certainly say it could affect the loan. Chairman Hicks called for any other questions of the applicant. Commission proceeded with discussion. Chairman Hicks started the discussion by looking at and summarizing the email from Ms. Libby Anderson, Director of Planning for the City of Beaufort. He advised the Commission that when considering commercial zoning to go through the checklist. If approved, would this adversely affect the adjoining landowners? If granted the rezoning to commercial, the applicant can put in whatever commercial zoning allows. Considering the request from Ms. Anderson, Chairman Hicks discussed the following choices:

- The Commission cannot defer, it is not within their power. The Commission can delay a decision for 30 days if there is a reason to delay. In those 30 days, the Commission could request the City of Beaufort, not the Joint Planning Commission that doesn't exist, to make comments on this during those 30 days and then come back to this group at the next meeting. That is an alternative.

- The Commission can't wait because this gentleman has been asked to wait while the government, us, accomplishes many, many things over a great deal of time. The applicant merits consideration at this time and not to be put off by what the form based code might be, not to be put off by the Planning Commission, not to be put off by what we wrote in 2009, not to be put off when we did the comprehensive plan.
- No objection to denial but if this request is denied, the reasoning should support why the property shouldn't be commercial zoning in that area. Voting no to wait for another action by the government would appear to be of questionable fairness. Chairman Hicks opened the floor for discussion.

Ms. Chmelik agreed with comments made by Chairman Hicks. While not a person in favor of rezoning, Ms. Chmelik feels the applicant has jumped through enough hoops and it is not fair that we ask this gentleman to wait.

Chairman Hicks asked Mr. Criscitiello if the zoning is contiguous to City of Beaufort property. If it is contiguous to City of Beaufort owned property, they could, in fact annex this.

Mr. Criscitiello confirmed that the property is contiguous to the City of Beaufort property.

Mr. Schwartz spoke to Ms. Libby Anderson three or four years ago, probably within the 2007 timeframe and she would not even entertain an application stating the property was not contiguous to the City of Beaufort property and it was not in the City's plans to do any annexation outside the Laurel Bay gate. Ms. Anderson referred the applicant back to the County.

Mr. Sutler stated he sees absolutely no reason why the Commission shouldn't approve Mr. Schwartz's application. Mr. Sutler feels a little bit of compassion for Mr. Schwartz from personal experience but believes he's done everything that he has been asked to do and then some.

Chairman Hicks, speaking to the Commission, asked again if there is a reason given why this property should not be rezoned commercial. Would it adversely affect the surrounding properties? Would it adversely affect the road, the traffic? Is there a use that would be inappropriate for this area? Please look right up the road connecting to this and there is already similar commercial property. Secondly, as far as the City of Beaufort commenting on this, we should always consider the City of Beaufort's comments. These comments could then be forwarded to the Chairman of the Natural Resources Committee for consideration, rather than waiting for the Joint Planning Commission to be formed. Chairman Hicks asked that the Commission make a decision; could be no, could be yes, but move the package onto County Council.

Ms. LeGree questioned why the City of Beaufort needs to be contacted for comment.

Chairman Hicks explained that in January 2010, the City of Beaufort proposed, and the Northern Regional Plan Implementation Committee, concurred that a joint Planning Commission be formed. The City of Beaufort passed an ordinance saying that it would occur. The Town of Port Royal also passed an ordinance saying it would occur. The County then got an ordinance and the Commission passed that ordinance. The ordinance then went to the Natural Resources Committee. At the Natural Resources Committee, there was a request that the folks in Southern

Beaufort County be allowed to comment. The Natural Resources Committee had the package sent there for comments. Those comments are back now and it will be brought back to County Council.

Ms. LeGree stated that committee is not up and running yet.

Chairman Hicks confirmed that statement.

Ms. LeGree stated we should deal with what is before us now without even thinking about going to a committee that does not exist. Ms. LeGree is sensitive with putting that proviso in the motion.

Chairman Hicks explained the proviso is that the City of Beaufort be requested to make comment; not the Joint Planning Commission. If they were to annex this property in the future, the place that it would go would be into the City of Beaufort. Therefore, under the concept of working together, this Commission could make a proviso that they be allowed to comment but go ahead and make our decision tonight.

Mr. Petit commented that the wisdom of recognizing what is in the process of being developed is certainly worthwhile on the part of the Commission but even if the request for comments from the City of Beaufort is not addressed in the motion, wouldn't it be reasonable to think, with the County knowing the cooperative efforts going on, the County would ask the City to comment anyway about the growth zones?

Chairman Hicks feels the Commission has to address it as a request was made to the Commission. Therefore, as part of the motion, we should address it. What it is saying, in essence, is that no, we're not going to wait until we form another commission but we do acknowledge it and invite the City of Beaufort to make comment.

Mr. Riley agreed with Chairman Hicks. The Commission has a proposal in front of us and we need to act on it one way or the other. Mr. Riley does not think the Commission can wait for a Joint Planning Commission that may be formed or may not be formed or a charette that may or may not be done in the next year or form based zoning which may or may not be done for a year. Mr. Riley agrees with Mr. Sutler. We've got a gentleman here that was down-zoned, in my opinion. He tried to follow the procedure to get it rezoned. Mr. Riley not only visited the site (yes, it is a storage facility) but he also reviewed the list of occupancies allowed in commercial suburban. The only one that would cause concern is hotels and motels. Mr. Riley did not feel the property under application is big enough for that. Mr. Riley thinks the Commission has to address an inequity and proceed on that basis.

Motion: Mr. Semmler made a motion, and Ms. Chmelik seconded the motion, **to recommend that County Council approve the map amendment/rezoning request for R100-24-20 and 416 from rural (8.29 acres) at the intersection of Joe Frazier, Laurel Bay, and Rug Rack Roads in Burton be rezoned from rural with transitional overlay and rural residential with transitional overlay to commercial suburban and invite the City of Beaufort to comment as appropriate.**

Chairman Hicks recognized the motion. Chairman Hicks asked if anyone present would desire to make public comment at this time. Hearing none, public comment period is closed. Chairman Hicks called for further discussion.

Ms. LeGree had one comment to make. She felt the staff did not want to recommend approval for this application because the staff is anticipating an upcoming charette and form based zoning. She is hoping that form based zoning is not going to create problems like this down the road and that the staff plans ahead. Ms. LeGree sensed that the staff really wanted the applicant to wait until this form based zoning was in effect. Was that your main reason for not wanting to approve his request?

Mr. Criscitiello stated the staff was not opposed to the commercial nature. The staff was asking for the Planning Commission to understand that we are right now in the middle of developing the form based code and dealing with the consultant in regard to charettes. This area will be one of the charette areas. It's not the use on the ground today, it's the uses that will be allowed in commercial suburban in the future that's an issue. The applicant may very well decide to remove every one of the structures that are there today and build something which is commercial suburban on that property and he has the entitlements through the commercial zoning. The point made by the staff is that if we are looking for the vision – what is that vision – and if the entitlements are granted now then many of the opportunities and choices that are available to you as Planning Commissioners and to County Council may be more difficult. That was the reason.

Chairman Hicks called for further discussion. Hearing none, he called for a vote. **The motion passed unanimously (FOR; Hicks, Chmelik, Sutler, Semmler, Petit, LeGree, Riley).**

Chairman Hicks provided a quick synopsis on the Joint Planning Commission motion going before County Council later this month. County Council will appoint two members from Port Royal, two members from City of Beaufort, and two members from the County. Those two members may come from the Commission or at the desire of County Council, appoint two other members. Chairman Hicks feels it is a step in the right direction because we will get a little more input. It also means that the County will do away with subcommittees for Port Royal Island and Lady's Island. On the other hand, the County will still have subcommittees for St. Helena, Southern Beaufort County, Northern Beaufort County and Dale. Just another way of doing business and will give us a united municipal county concept coming in. It's a good thing.

Mr. Riley agreed that it's a step in the right direction.

Mr. Semmler commented that the Commission sees a few cases like this where the property owner goes back a number of years and it was rezoned in that 1999/2000 period. The County did the blanket rezoning and the property owners get the grandfather clause and then they want to make it official to change it back to what it was. They comply with everything the County asks them to do and they spend a lot of money and Mr. Semmler believes there is an obligation that need to recognize.

Mr. Petit commented that he has seen a positive, gradual transition under the leadership of our current Director of Planning. Mr. Petit also sees the Metropolitan Planning Commission a move in the right direction.

Motion: Mr. Petit made a motion, and Mr. Sutler seconded the motion, **to adjourn the meeting.** The motion **was carried unanimously** (FOR: Hicks, Chmelik, Sutler, Semmler, Petit, LeGree, Riley).

Chairman Hicks adjourned the meeting at approximately 6:50 p.m.

SUBMITTED BY: _____
Linda Maietta, Planning Assistant, Planning Department

Jim Hicks, Beaufort County Planning Commission Chairman

Approved: October 4, 2010; as amended
(addition is underlined, deletions are ~~struck through~~)