



COUNTY COUNCIL OF BEAUFORT COUNTY
Beaufort County Community Development Department

Beaufort County Government Robert Smalls Complex
Physical: Administration Building, 100 Ribaut Road, Room 115
Mailing: Post Office Drawer 1228, Beaufort, SC 29901-1228
Phone: 843-255-2140 / FAX: 843-255-9432

The regular meeting of the Beaufort County Planning Commission (hereinafter "Commission") was held on Monday, June 4, 2018, in County Council Chambers, the Beaufort County Administration Building at 100 Ribaut Road, Beaufort, South Carolina.

Members Present:

Mr. Robert Semmler, Chairman	Mr. Randolph Stewart/Vice-Chairman	Ms. Diane Chmelik
Dr. Caroline Fermin	Mr. Kevin Hennelly	Mr. Jason Hinchler
Ms. Cecily McMillan	Mr. Harold Mitchell	Mr. Ed Pappas

Member Absent: None

Staff Present:

Mr. Eric Greenway, Community Development Director
Mr. Robert Merchant, Assistant Community Development Director
Mr. Christopher Inglese, Assistant Staff Attorney
Ms. Barbara Childs, Administrative Assistant to the Community Development Director
Mr. Curtis Coltrane, Legal Counsel for the Planning Commission

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

PLEDGE OF ALLEGIANCE: Mr. Semmler led those assembled in the Council Chambers with the pledge of allegiance to the flag of the United States of America.

ELECTION: Mr. Semmler noted that the election of Commission Chairman and Vice-Chairman had not occurred since the beginning of the year and he called for nominations for the following:

- **Chairman:** Ms. Diane Chmelik nominated Mr. Robert Semmler as Chairman, and Dr. Caroline Fermin seconded the nomination. No other nominations were offered and the nominations were closed. The vote was unanimous (FOR: Chmelik, Fermin, Hennelly, Hinchler, Mitchell, Pappas, and Stewart; ABSTAIN: Semmler). Mr. Robert Semmler was elected as Chairman of the Planning Commission.
- **Vice-Chairman:** Dr. Caroline Fermin nominated Mr. Randolph Stewart as Vice-Chairman, and Mr. Jason Hinchler seconded the nomination. No other nominations were offered and the nominations were closed. The vote was unanimous (FOR: Chmelik, Fermin, Hennelly, Hinchler, Mitchell, Pappas, and Semmler; ABSTAIN: Stewart). Mr. Randolph Stewart was elected as Vice-Chairman of the Planning Commission.

REVIEW OF MEETING MINUTES: The Commissioners reviewed the February 5, 2018 minutes. **Motion:** Ms. Diane Chmelik made a motion, and Mr. Ed Pappas seconded the motion, **to accept the minutes as written.** The motion **carried (9-0--FOR: Chmelik, Hennelly, Hinchler, Pappas, and Semmler; ABSTAINED: Fermin, McMillan, Mitchell, and Stewart).**

CHAIRMAN'S REPORT: Mr. Semmler commented on the ---. Mr. Semmler asked the Commissioners to introduce themselves to the public and the area they represent. He also asked that all cell phones be turned off during the meeting.

PUBLIC COMMENT on non-agenda items: None were received.

SOUTHERN BEAUFORT COUNTY STREET NAME CHANGE PETITION FROM CONEY ISLAND LANE TO DOGFISH LANE, NEAR THE INTERSECTION OF HODGE AVENUE AND SAWMILL CREEK ROAD, BLUFFTON; APPLICANT: ROBERT A. GOSSETT

Mr. Robert Merchant briefed the Commissioners that the staff recommended approval of the name change.

Commission discussion included querying whether the Emergency Management Services (EMS) and the Fire Department had been notified (*Mr. Merchant explained the road renaming process where the petition came from the EMS department.*), querying the historical reference of the requested name, querying the fee involved with the name change, and a description of the road involved being a driveway.

Applicant's Comment: None received.

Motion: Mr. Harold Mitchell made a motion, and Dr. Caroline Fermin seconded the motion, **to approve the Southern Beaufort County Street Renaming from Coney Island Lane to Dogfish Lane.** No further discussion occurred. The motion carried (9-0--FOR: Chmelik, Fermin, Hennelly, Hincer, McMillan, Mitchell, Pappas, Semmler, and Stewart).

**MAP AMENDMENT TO THE BEAUFORT COUNTY COMPREHENSIVE PLAN, CHAPTER 4:
FUTURE LAND USE MAP 4-9 TO:**

- A. REMOVE THE HAMLET PLACE TYPE ON THE BUCKINGHAM LANDING COMMUNITY AT THE FOOT OF THE BRIDGE TO HILTON HEAD ISLAND;**
- B. CHANGE THE VILLAGE PLACE TYPE THAT CORRESPONDS WITH THE HILTON HEAD NATIONAL PROPERTY AT THE CORNER OF BLUFFTON PARKWAY AND MALPHRUS ROAD TO A HAMLET PLACE TYPE.**

--AND--

**MAP AMENDMENT TO THE BEAUFORT COUNTY COMMUNITY DEVELOPMENT CODE,
PREAMBLE, DIVISION P.20, PAGES P10 AND P-11 TO:**

- A. REMOVE THE HAMLET PLACE TYPE FROM THE BUCKINGHAM LANDING COMMUNITY AT THE FOOT OF THE BRIDGE TO HILTON HEAD ISLAND;**
- B. CHANGE THE VILLAGE PLACE TYPE THAT CORRESPONDS WITH THE HILTON HEAD NATIONAL PROPERTY AT THE CORNER OF BLUFFTON PARKWAY AND MALPHRUS ROAD TO A HAMLET PLACE TYPE.**

Mr. Robert Merchant briefed the Commissioners on the map amendments. He stated substantive changes to both the Comprehensive Plan and the Community Development Code maps. He explained the rationale for the changes. He stated that not all walkable areas are equal. He noted a workshop where County Council asked for these amendments. He showed a power point presentation. He explained the elimination of the hamlet place type from the Buckingham Landing area limits future upzoning there. He then explained the reduction of the Hilton Head National area from hamlet to village place type.

Commission discussion included the on-going litigation and its impact on the action that the Commission may recommend (*Mr. Christopher Inglese, Assistant County Attorney, noted that the on-going litigation has no effect since the Commission is tasked to recommend future.*).

Applicant's Comment: None were provided, since the Staff is the applicant.

Public Comment: Mr. Evan Williams, representing Scratch Golf, the owner of Hilton Head National, objects to the County's proposal to downgrade the zoning of Hilton Head National. It is inappropriate to take action when there is an existing litigation against the County on the property. There is no rationale to take action. There is no sufficient basis for the downzoning. The County formulated the form-based code suitable for a mixed-use development on the property. The downzoning is an arbitrary and capricious act.

Further Commission discussion included non-support of the former rezoning request of Hilton Head National that would have too intense/inappropriate proposed uses such as a hotel and a water park; reiteration of the on-going litigation of the Hilton Head National property; noting that the Commission recommendation would not affect development of the property; querying the rationale for changing the Hilton Head National place type

(Mr. Merchant noted the impact of the village place type could be out of character with the surrounding area and the strong opposition from neighboring communities; clarifying the difference between the place types (commercial sizes differ, noting the Calhoun Street and Corner's Community developments); querying the number of village place types in Bluffton; clarifying the public outcry on village place types; clarifying the removal of the Buckingham Landing place type; querying whether input was received from the municipalities; agreeing to the Buckingham Landing change but not the Hilton Head National change; reiterating trusting the Code to create walkable places to schools, small shops, etc.; and not being in favor of the Hilton Head National change without input from the municipalities.

Recusal of Commissioner Kevin Hennelly: Mr. Semmler noted that Mr. Hennelly was recusing himself from the map amendments on the Hilton Head National place type due to financial consequences. Recusal form is attached as a matter of record.

Motion: Ms. Diane Chmelik made a motion, and Mr. Harold Mitchell seconded the motion, **to recommend approval to County Council on the Map Amendment to the Beaufort County Comprehensive Plan, Chapter 4: Future Land Use Map 4-9 to remove the Hamlet Place Type on the Buckingham Landing Community at the foot of the bridge to Hilton Head Island.** No further discussion occurred. The motion carried (9:0--FOR: Chmelik, Fermin, Hennelly, Hincer, McMillan, Mitchell, Pappas, Semmler, and Stewart).

Motion: Ms. Diane Chmelik made a motion, and Mr. Ed Pappas seconded the motion, **to recommend approval to County Council on the Map Amendment to the Beaufort County Comprehensive Plan, Chapter 4: Future Land Use Map 4-9 to change the Village Place Type that corresponds with the Hilton Head National property at the corner of Bluffton Parkway and Malphrus Road to a Hamlet Place Type.** No further discussion occurred. The motion **failed** (2:6:1--FOR: (FOR: Chmelik, Hincer); AGAINST: Fermin, McMillan, Mitchell, Pappas, Semmler, and Stewart; ABSTAINED: Hennelly).

Motion: Mr. Ed Pappas made a motion, and Ms. Diane Chmelik seconded the motion, **to recommend approval to County Council on the Map Amendment to The Beaufort County Community Development Code, Preamble, Division P.20, Pages P10 and P-11 to remove the Hamlet Place Type from the Buckingham Landing Community at the foot of the bridge to Hilton Head Island.** No further discussion occurred. The motion carried (9:0--FOR: Chmelik, Fermin, Hennelly, Hincer, McMillan, Mitchell, Pappas, Semmler, and Stewart).

Motion: Mr. Harold Mitchell made a motion, and Ms. Diane Chmelik seconded the motion, **to recommend approval to County Council on the Map Amendment to The Beaufort County Community Development Code, Preamble, Division P.20, Pages P10 and P-11 Change the Village Place Type that corresponds with the Hilton Head National property at the corner of Bluffton Parkway and Malphrus Road to a Hamlet Place Type.** No further discussion occurred. The motion **failed** (2:6:1--FOR: Chmelik and Hincer; AGAINST: Fermin, McMillan, Mitchell, Pappas, Semmler, and Stewart; ABSTAINED: Hennelly).

TEXT AMENDMENT TO THE BEAUFORT COUNTY COMMUNITY DEVELOPMENT CODE (CDC): ARTICLE 3, SECTION 3.3.50 REGIONAL CENTER MIXED-USE TO PERMIT UNIT-PER-UNIT CONVERSION OF LODGING TO MULTI-FAMILY – AMENDED TO:

AN ORDINANCE ESTABLISHING A CONDITION USE FOR AFFORDABLE HOUSING DEVELOPMENTS IN THE REGIONAL CENTER MIXED USE (C5) ZONE DISTRICT

Mr. Christopher Inglese, County Assistant Staff Attorney, briefed the Commissioners. He showed a power point presentation and noted the history of the ordinance. He stated that County Council wanted assurances that the hotel conversions would be affordable to the workforce. He mentioned issues identified for affordable housing including school impact fees, an assurance for affordable rents, and parking. The landowner would elect to set aside a percentage of the units as affordable housing—20% for 25 years or 30% for 20 years.

Commission discussion included concern that the percentage appeared timid; querying whether input had been received from the Suburban Lodge owner or any other developers; a definition of affordable housing since the AMI for Beaufort was \$72,000.00; querying height restrictions, monitoring, and enforcement requirements; a reiteration of the parking analysis showing a deficit of 10 parking spaces; the suggested density reduction; noting the proposed ordinance being available to all C5 zoning; concern with the existing density; concern that developers will convert approved hotels to apartments to circumvent the intent of the Code; clarification on the County Council's process regarding the proposed ordinance; noting City of Charleston having a similar ordinance as the proposed ordinance; and querying if input had been received by the municipalities.

Public Comment: Ms. Deborah Johnson, a representative of the Lowcountry Affordable Housing Coalition, explained the membership of the Coalition. She explained that Mr. Robert Merchant had brought the ordinance to the Coalition for their input. Ms. Angela Childers, chairman of the Coalition, supports the proposed ordinance. The Housing Needs Assessment and an affordable housing coordinator are in place. She noted that most renter households are 1 or 2 persons, earning under \$50,000. Annually. More affordable housing tools are needed to alleviate the lack of such housing.

Further Commission discussion included non-support of rezoning the County for one building, concern with parking and criminal activity problems, recommending an affordable housing impact fee, belief that there is a wolf in sheep's clothing with this proposed amendment, and recommending looking at all the impacts of this proposed amendment.

Motion: Mr. Kevin Hennelly made a motion, and Mr. Ed Pappas seconded the motion, **to recommend approval to County Council on the Text Amendment to the Beaufort County Community Development Code (CDC): Article 3, Section 3.3.50 Regional Center Mixed-Use to permit unit-per-unit conversion of Lodging to Multi-Family – amended to: An Ordinance Establishing A Condition Use for Affordable Housing Developments in the Regional Center Mixed Use (C5) Zone District.** No further discussion occurred. The motion carried (8-1--FOR: Chmelik, Fermin, Hennelly, Hincer, McMillan, Mitchell, Pappas, and Semmler; AGAINST: Stewart).

Mr. Semmler asked that Mr. Inglese's power point presentation be included in the minutes. Mr. Semmler urged coordination with the municipalities regarding this and other amendments.

Note: Mr. Semmler recessed the meeting at 7:40 p.m., and reconvened the meeting at 7:48 p.m.

ADMINISTRATIVE APPEAL OF THE STAFF REVIEW TEAM (SRT) APPROVAL OF A 25-LOT SUBDIVISION (R200 015 000 0558 0000, -0559 0000, & -0560 0000; KNOWN AS LOTS 7, 8, AND 9 OF ACADEMY PARK SUBDIVISION) ON FAIRFIELD AND ALUMNI ROADS AND FACULTY DRIVE, LADY'S ISLAND; APPELLANTS: RICHARD S. BOLIN, ET. AL.

Mr. Semmler noted asked for brevity by the presenters. He noted that he was able to limit presentations to 10 minutes, by ordinance. The Planning Commission is represented by their own attorney, and the County by the Staff Attorney. Mr. Semmler noted that one of his rights was to ask that the Planning Commission attorney sit with the Commission in Executive Session to address questions. He stated that he would be exercising that right.

Motion: Dr. Caroline Fermin made a motion, and Mr. Jason Hincer seconded the motion, **that the Planning Commission move into Executive Session to receive legal advice from their attorney regarding the Appeal.** The motion carried (9-0: FOR: Chmelik, Fermin, Hennelly, Hincer, McMillan, Mitchell, Pappas, Semmler, and Stewart).

Note: Mr. Semmler recessed the meeting at 7:53 p.m. for the Commissioners to move into Executive Session; he reconvened the meeting at 8:17 p.m.

Presentation by County Government on the general nature of the case:

Mr. Eric Greenway, Beaufort County Community Development Director, briefed the Commission on the Administrative Appeal on the March 7, 2018, Staff Review Team (SRT) decision to approve a subdivision in Academy Estates. The SRT has to make sure that any development plans, both minor and major, comply with the Community Development Code (CDC) in regards to lot width, road frontages, access, setback issues, tree preservation, and stormwater. He noted that there were some minor updates to be met before final approval was given. Upon receipt of the changes by the developer, the development permit was issued on March 14th. We received an Administrative Appeal on April 5th from Mr. Richard Bolin to appeal the SRT decision to the Planning Commission. Mr. Greenway stated that the SRT did our job in accordance with the CDC that County Council adopted in compliance with the Comprehensive Plan. Mr. Greenway noted that the SRT made sure that the project complied with the Lady's Island Community Preservation zoning classification.

Presentation by the Appellant for the specific basis of the Appeal:

Mr. Richard Bolin, the appellant, asked if the request for a dismissal by the developer would be heard first. Mr. Bolin also noted that he was not the only appellant because the application says "and others." Mr. Semmler stated the Commission would like to hear the specific basis for the appeal from Mr. Bolin. Mr. Bolin acknowledged that the Commissioners were volunteers and thanked them for their service.

He displayed a chart (an exhibit) of his subdivision to justify his appeal. (Mr. Bolin stepped away from the microphone and some of his words are muffled.) This is what we're talking about. We have an existing 125-acre subdivision with an average 3-acre size lots. The developer purchased three lots and wants to place 25 houses on those 3 lots, doubling the population of that existing subdivision. We don't think it's correct because there are words throughout the CDC and the Lady's Island Community Preservation (LICP) District regulations saying that all new developments is intended to match existing developments in character, scale, and density. Obviously, this (project) does not. Now, the glitch comes in the LICP there is a minimum lot size. We believe the SRT has misinterpreted the intent. (Mr. Bolin was asked to speak into the microphone for his words to be recorded.)

We believe that this is a misapplication of the standards. In the CDC and the LICP regulations, there are 65 different references to new developments being consistent in character, scale, and density to their surrounding developments. The glitch is that there is also a minimum lot size requirement. The SRT has interpreted that minimum lot size requirement, and I don't have the exact size but it's like 10,000 or 11,000 square feet and I'll arbitrarily call it a quarter of an acre. They are interpreting that minimum lot size requirement instead of being a restriction, among other restrictions; they're interpreting that to be permission. Their thought process by this decision is that as long as the developer meets that quarter-acre lot size requirement, his lot size is a quarter acre, all of those other 65 different references to character, scale, and density throughout the CDC can be ignored. That is permission—as long as you make the quarter-acre lot size, you can forget all those other things. We don't believe that is correct; we don't believe that it meets the legislative intent of the County Council.

Two years ago we appealed a similar subdivision in this location. Six of you (Commissioners) heard the appeal. All six members on the Commission expressed doubts and disappointment. They did not like what was happening here (pointing to his chart) cause it's obvious. They all expressed their reservations that it did not meet the spirit/intent of the Code. But three of them said you have a minimum lot size requirement; we feel we have to disallow your appeal based on that. It was a 50-50 tie vote. That is an obvious picture. Most of the conversation during our appeal back then centered on Academy Estates was established with 5-acre lots basically and the covenants allowed division into lots not less than 1-acre. The covenants expired and we did not renew them; the developer came in and took advantage of that. But that was the basis that the County, SRT employees, and attorney used. Most of the discussion during our appeal back then was that we don't have any covenants; therefore there is no basis to reject this subdivision application. There were a lot of comments if we had covenants the situation may have been different. So where are we now? The developer has come back with a different subdivision. But in the interim we took the advice of a County employee and we now have covenants. What I want you folks to do is take a bigger picture of this and give them (the staff) some greater

leeway/advice. Now, a bunch of us went in and we reestablished new covenants with 1-acre minimum lot sizes. All the owners in our subdivision did not sign up (the new covenants). We believe we have two-thirds of all the residents signed on with the covenants. These covenants do not apply to the three lots in question. What we believe we have done is set a measurable standards by which you folks, if you decide that you would like to go ahead and look closer at the legislative intent of those 65 references, we give you a logical basis to which you can make that judgement and have it be valid. So that is why we are here tonight—to ask you to take the legislative view; look at the overall county. What's it going to look like in the next 25 years? Remember Oyster Bluff, they came in and cut down every single tree within view. The houses you can almost reach and touch from each other. Whereas in our 40-year old existing Academy Estates subdivision on the average these are now 3-acre lots. When you go out there you don't see houses, you see trees—and that's why we went out there to live. I looked up a statistic—since 1997 Beaufort County has spent something like \$150 million preserving land, preserving nature, through the Open Lands Program. It's about 23,000 acres average price something like \$6,500 per acre. Right here (pointing to his illustration) we have 125 wooded acres that the residents in maintaining those woods at a value free to the County of a million dollars.

Mr. Semmler asked Mr. Bolin to state the specific basis of his appeal.

Mr. Bolin stated that the SRT gave too much emphasis and credence to the minimum lot size and they ignored the legislative intent of the County Council and the CDC that new developments must match the older developments in character, scale, and density.

Extenuating or Mitigating Factors by Mr. Chester Williams representing the developer:

Mr. Williams and Mr. Tom Taylor represent Academy Park LLC (the developer), the principal is Robert Sample. We agree with Mr. Greenway that the SRT made a correct decision. You heard Mr. Bolin testify that the 1975 covenants expired. You heard him testify that the new covenants, keep in mind that there was a gap of 17 years between when the old covenants expired in 2000 and when the new covenants were put in place in 2017, that those (new) covenants do not apply to the Academy Park properties. Mr. Williams showed Exhibit B2 that was included in the meeting packet to the Commissioners. It shows the boundaries of the original Academy Estates. Mr. Williams thinks that Mr. Bolin's map is incorrect—Mr. Williams point to two lots on Mr. Bolin's chart that were not part of the Academy Estate subdivision. The lots highlighted in blue (on Mr. Williams' exhibit) have not signed on to these new covenants. He noted that every lot along Fairfield Road have not signed on. There are 41 lots now from the original 25; of those 48% have not signed on to the new covenants--that is hardly a consensus. The real thrust of Mr. Bolin's argument can be found on the bottom of page 4 of his narrative: "We do not ask that the proposed development be stopped nor that the lot size meet the average 3-acre size in the Academy Estate subdivision. We only ask that the lot sizes be increased to a size equal to or larger than the size of 1 acre minimum established by current restrictive covenants of the neighborhood." His definition of the neighborhood is a very restrictive, self-serving definition that is just Academy Estates. In fact, the neighborhood is much bigger than that. The staff took all this into consideration and they determined that this application met the requirements of the CDC and were in compliance with the Comprehensive Plan.

Mr. Williams showed Exhibit C that was part of their brief submitted (to the Planning Commission). It shows Academy Parks lots in relation to the entire neighborhood. They are going to be subdivided into a quarter acre lots. Mr. Bolin is correct. The minimum lot size of the LICP is 10,890 square feet which is exactly a quarter of an acre. Mr. Bolin said that this doesn't meet the character of the neighborhood; it doesn't maintain or improve the livability or character of the neighborhood. What Mr. Bolin doesn't tell you is that other statements of the purpose LICP include encouraging in-fill of available land and providing a choice of housing types. This is language that County Council put into the Code, as they did with all the rest of the language. Mr. Bolin has not offered any fact that shows that the SRT was incorrect in their decision. All he has provided are assertions, conjectures, non-professional opinions that he thinks it doesn't meet the character of the neighborhood. We don't think that's sufficient to overturn the staff decision, and we have also pointed out in a previous motion that Mr. Bolin or anybody else whose name is on the signature page of the appeal actually has standing to press this

issue. They haven't demonstrated that they will suffer any particularized harm as a result of this subdivision. We have asked previously that the entire appeal be dismissed just on standing grounds. We've also moved formally to intervene. I think Mr. Coltrane is familiar with that case law; in fact he was the one who argued the case that is cited in our motion to intervene. I think we are indeed a proper party here. We ask that you take all this into consideration and uphold the decision.

Extenuating or Mitigating Factors by Mr. Bolin:

As he (Mr. Williams) said I was doing, he has also cherry picked his words. The CDC requires that new development should in-fill around and in-between existing homes with a similar density and character. The character of the new homes should be based on the height, massing, and setback of surrounding homes, and greenway buffers which don't really apply here. I do seriously object to one thing he said. What is the definition of neighborhood? In his brief, which I assume you have all seen and I got it late Friday afternoon, and I assume there was some confusion as to whether you received it or not—a 26-page brief? In that brief, he brought up the definition of the neighborhood because that word is used extensively in the CDC. The orange (pointing to his chart) represents the original plat of Academy Estates subdivision. He tried to point out that there's lots of smaller lots in and around Academy Estates. So, it's not legitimate for us to say that our neighborhood is composed of large lots. Fairfield Road—there are some small lots along Fairfield Road. The average lots along Fairfield Road are at 1-acre. So, if you include Fairfield Road in our neighborhood, that 1-acre minimum is still sustained. He referenced some small lots on Little Capers (Road); yes, they are small lots. But if you add the 20 acres along Fairfield with our 125 (acres) here (pointing to his chart), you have 145 acres; and if you add the 7 or 8 acres here (along Little Capers Road), these 7 or 8 acres will not determine the characteristics of that 145 acres area. They simply are too small to define density on that basis. Furthermore, he (Mr. Williams) attempted to infer that Brindlewood (pointing to his chart) right down here, is not attached to Academy Estates, should be considered as part of our neighborhood. I don't think so; there is no connection between Brindlewood and our neighborhood. He (Mr. Williams) tried to imply that Celadon should be included in our neighborhood. I don't buy that either because there is no connection between Celadon and Academy Estates. Further he states that Sam's Point Road, a busy highway, is immediately visible from his (Academy Park) property. Okay, that is true; if you're standing at this corner (Mr. Bolin pointing to his chart) and looking directly down the road, you see about fifty feet of it, looking directly into the Newpoint subdivision. And of course he is correct. I did make a slight wording misjudgment in my appeal when I said that we did not ask that this density match the three acres, instead it match the 1 acre in the subdivision. There are other reasons for the density in his (Academy Park) subdivision to match the one acre standard. I go back a few years--DHEC (South Carolina Department of Health and Environmental Control) did a long extensive septic tank study and came to the conclusion that septic tanks in Beaufort County should be on lots not smaller than 1-acre for public safety and health (reasons). 2007 Northern Regional Plan, community preservation districts, page 35: "These areas are supposed to serve the surrounding rural communities, areas surrounding—not in here, but in the community preservation areas should consist of small scale retail and service uses, and low to moderate density residential, approximately one dwelling unit per acre." So we have other reasons to say that the one acre lot size minimum should apply. He has 17 acres there; he can put 17 houses on it and still make a lot of money. Also, the CDC gives Eric (Greenway) a lot of flexibility and leeway. He can make all sorts of judgements, easements, agreements—he has lots of power. What I'm asking you folks to do is recognize the legislative intent and give him (pointing to Mr. Greenway) some backup to make those decisions. As a part of that, you folks are at an important situation here—you're going to do a lot to establish standards for Beaufort County. And on this lot size question, whether or not these quarter acre lots will be permitted throughout the County—you can have a big influence on it. You will never come up with the more perfect example of the question you're trying to decide than this scenario right here. If you add Fairfield Road, the little lots along Capers, and the big lots of Academy Estates, you're looking at about 150 to 155 acres. Are we going to disrupt the 155 acres because the SRT does not give full credence to the legislative intent? Is this going to be the standard for Beaufort County?

Mr. Semmler thanked Mr. Bolin for his comments. He noted that he will call Mr. Bolin one more time.

Mr. Tom Taylor, serving as litigation counsel in this case, noted that the Administrative Procedures that this Board operates by allow for a cross examination when it feels it is appropriate. You all know that what we are doing is important in many ways, but one of them is also to establish a record in case this is later appealed. I'd ask the Chairman for about 60 seconds to ask about four questions to Mr. Semmler just to make sure that the record is perfected on appeal in case we have to do that, if the Chairman would allow me.

Mr. Bolin stated Mr. Taylor meant to ask Mr. Bolin, not Mr. Semmler.

Mr. Semmler noted what Mr. Taylor meant; however, Mr. Semmler said he wanted the Commission to ask questions and that is the process he would be following.

Discussion by the Commissioners included:

- Jason Hinchler to Mr. Bolin: Why did you let the covenants (for Academy Estates) expire in 2000? Mr. Bolin said, "Complacency. Quick and simple." Mr. Hinchler said that was your ammunition. Mr. Semmler said that's in the past, we can't do anything with that.
- Harold Mitchell to Mr. Bolin:
 - "Are you a resident of the neighborhood?" Mr. Bolin said he has been there since we built the house in 1990; that's what 27 years.
 - "In what role, legal role, do you have in representing the folks in the neighborhood?" Mr. Bolin said I have no legal responsibility at all.
 - "So you're speaking for yourself?" Mr. Bolin said I speaking for myself. And that was the reason why I brought up the question before. Because I forget the number, but about 20 people signed this appeal and they're all individual and distinct. I speak for nobody but myself, but I think most of them agree with me.
- Randolph Stewart: Sorry to say 27 years living at home and my family and there are things in development. I read our code that allows us to rule in these particular matters which is the first time I've had to do this. And one thing it says is that you have to prove that they (SRT) erred, and I don't feel the proof—the burden of proof is on you. And I personally for one do not feel that it has been proved.
- Kevin Hennelly: I have a question for the planner, if this is inappropriate?
- Robert Semmler: No
- Kevin Hennelly to Mr. Greenway: So what is it 25 lots or whatever this turns out to be? Each lot gets an individual perk test? Mr. Greenway said that is correct. As part of our approval procedure, DHEC (Department of Health and Environment Control) had to give us approval that each one of the lots would have an on-site septic system that would be functional according to their standards that they regulate.
- Kevin Hennelly: Okay, so the twenty-five lots are not guaranteed; he has got to present plans and pass 25 individual septic plans? Mr. Greenway--General speaking, what happens is that DHEC is constantly modifying and updating their standards. But typically, what you have are two types of approval. One is a general suitability letter that you get whenever you're proposing a development. Before the individual lots are approved, they give you a lot by lot letter telling you which lots can have a functional system on it. Before we issue the final approval for the plat, we obtain the lot-by-lot letter to make sure each lot that was approved had a septic system, either that could be nationally placed there or an engineered system that could be approved on that property as part of our approval procedure.
- Harold Mitchell to Mr. Greenway: Just to make sure I understand, has that already happened? Mr. Greenway—That has already happened. We've issued development approval; there is work going on currently.
- Mr. Semmler to Mr. Williams: I recall the original time this came up before the Commission. As you heard earlier today, I'm a real advocate of talking to your neighbors. Has that effort been made? Mr. Williams—I'd ask Mr. Sample that question. Mr. Robert Sample (speaking from his seat and not into

the microphone so his words are somewhat muffled)—Sir. Mr. Williams asked Mr. Sample to speak into the microphone.

- Mr. Semmler to Mr. Sample: Please identify yourself Mr. Sample.
 - Robert Sample. I am the sole member of Academy Park LLC. Mr. Chairman, I would like the Board to know that I have been in contact with several of the board members (of Academy Estates). I've had discussions with Mr. Courtney over the years. There's a gentleman I've also spoken to, but he's not here tonight. I can't remember his name, but I rode with him a long time ago on a golf course. But, yes, I'd like the Board to know that I even, before I purchased the second portion of this development, I gave this Board, I mean these people of the neighborhood, through Mr. Courtney to buy my original five acres at cost. They never...they didn't do it. And so I went on and I bought the adjacent property and finished the development. I want the Board to know that I bent over backwards to give them an opportunity to buy the property at cost—didn't mark it up. And Mr. Courtney, who is in the audience, we had a discussion about this. Yeah; so yes.
- Mr. Williams to Mr. Semmler: Any other questions. Mr. Semmler—That answered my question and I appreciate that. Any other discussion or questions from the Commission? Thank you sir.

Mr. Semmler: The next item I want to do is Final Argument. Believe me, this is not a court of law. And I do not pretend to be a lawyer or a judge or anything else. But, I'm following a process that is contained in what we have at the County. And so I'm going to give a final opportunity for Mr. Bolin for final argument, and then for Mr. Williams for you to give a final argument, and then the Commission is going to vote. So please stick to the facts. I know there's a lot of emotion tied to this. But I sure would like to get this in Kiplinger style, if we can.

Final Argument:

- Mr. Bolin: I guess I'm up. I lost track... There are words on the subject of septic tank. There are words that Beaufort...
- Mr. Semmler: Mr. Bolin, excuse me.
- Mr. Courtney (standing in the back row of the audience): Sorry, if this is the final, I wanted a chance to speak.
- Mr. Semmler to Mr. Courtney: Sir, you are not an aggrieved party.
- Mr. Courtney: I'm on the...
- Mr. Semmler: No, Mr. Bolin is the only one who's appealed.
- Mr. Bolin: I protest that sir.
- Mr. Semmler to Mr. Courtney: Sir, will you please sit down?
- Mr. Courtney: I'm Joe Courtney who he was talking about.
- Mr. Semmler: Sir, please. Mr. Bolin, you have the mike.
- Mr. Bolin: Okay, if my fellow appellants are not going to be recognized.
- Mr. Semmler: Mr. Bolin, I want to address that right now. All the people behind you that agree with you, when we finish this, they may approach Ms. Childs and give their name and she will put it in the minutes of this hearing that we are having now. But for right now, you're the only person who appealed and I want you to speak. This is your final argument.
- Mr. Bolin: Well, allow me to express a little bit of confusion cause I believe the appeal paperwork was properly filled out; that all these other folks were equally recognized as appellants as myself. And I don't know what good it does to allow them to give their names to the clerk if they're not allowed to speak.
- Mr. Semmler: Sir, is this your final argument?
- Mr. Bolin: Give me about ten...(muffled voice in the background regarding "continuance"). Give me about...(muffled voice in the background regarding "continuance"). Yes, that may be the solution. Administrative Code Procedures, where, right here. Rules of Procedures for the Beaufort County Planning Commission, Article 5, Section 5, Continuances: An applicant shall have the right to request and be granted one continuance. I now request that continuance. I do not believe that we have had

adequate time for the other appellants to speak. Therefore, I would like to...I'll just end by requesting that continuance which I am entitled to by the rules and regulations of the appeal process.

- Mr. Semmler: Sir, if I'm not mistaken the Commission has 60 days to hear an appeal, and you made your first one then you asked for a continuance already. So this is the 60th day. We can't extend it anymore.
- Mr. Bolin: That continuance was due to the action of the Commission, not by me; and the regulation says I am entitled to one. So, I think what I hear you say is that time has run out; you no longer have authority to hear this appeal after today.
- Mr. Semmler: Today is the last day.
- Mr. Bolin: So you are constrained by a rule or regulation or law or something that this has to end tonight. Okay. Well if you will then just give me about a minute or two to think of any last comments I may have. (Long pause) Okay, I think that I have covered the main issues. I would just make one 30-second last repetition and point out CDC paragraph 1.2.10.D—intend to preserve, protect, and enhance the character of established neighborhoods. Next paragraph, preserve or enhance the character and quality of the County and its neighborhoods, maintain and improve the livability of existing residential neighborhoods, the sewage disposal recommendation of one house per acre, 2007 Northern County Beaufort Regional Plan of a maximum density of one house per acre, and our new covenants which go along with it. So before you vote, ask yourself deep in your heart the honest question--does that enhance the neighborhood? I trust you will make a good and honest judgement and vote in the best interest of Beaufort County.
- Mr. Williams: Thank you Mr. Chairman. For the record I'd like to note that Mr. Bolin's verbal request for continuance is I think is the third time he's made a request for a continuance. I think you're right to deny that. I think you're exactly right. State Code 6-29-1150.C says the Planning Commission must act on an appeal within 60 days. And you're exactly right, today is the 60th day. Mr. Bolin said this is a high intensity density use. And in fact it is not. You got 25 units on 17 acres, that's less than 2 units per acre. And the Lady's Island CIP says that densities ought to be between 2 and 4 units per acre. This is lower than what the stated purpose of the Lady's Island Community Preservation District is. The County Staff made the right decision here. Mr. Bolin has not pointed out any facts at all that point to a reason why the County made an error. The burden of proof is on him. He has failed to carry that burden.

Mr. Semmler: Commission, I'm bringing it back up to us for a vote. Okay, I'm going to ask for a motion. We have to vote on it, yea or nay on the request for the appeal. So, I need a motion. (Mr. Coltrane, the Commission attorney, spoke to Mr. Semmler—conversation not audible.) Any further discussion amongst the Commission before we vote?

Mr. Hincer: Well, I would like to say that my heart does go out to the people sitting out here and the people that are living around this area and people living on Lady's Island because there's been a lot of change and a lot of development. And I understand that. I've lived my whole life through it. I think it's very unfortunate that you all did not renew your covenants at that time. And I don't disagree that that the lot size may be too small for that type of development in that area. But the fact of the matter is that it does meet, Staff did do their job and they did meet the standards that were set up. Now whether they're correct or whether they're not, I'm not here to say that, that's what we're here to judge on is. And I'm in the hot seat and I really do feel for all of you, I really do.

Motion:

Mr. Jason Hincer: I make a motion **to support Staff's decision in this matter**. I think that they did what they were supposed to do.

Mr. Harold Mitchell: I second.

Mr. Semmler: We got a motion, we got a second, basically to deny the appeal. Can I get by the show of hands if you agree with that motion to deny the appeal?

The motion **carried (9:0--FOR: Chmelik, Fermin, Hennelly, Hincer, McMillan, Mitchell, Pappas, Semmler, and Stewart).**

Ruling:

The Move to deny the appeal because:

1. The appellant did not show a particular injury arising from the approval made by the SRT of the Academy Park Subdivision.
2. The appellant did not show the existence of facts to show that the SRT decision does not comply with the requirements of the Community Development Code.
3. The facts outlined in the SRT's approval show that the SRT's decision confirms to the Community Development Code.
4. The appellant did not show any legal error in the decision of the SRT.

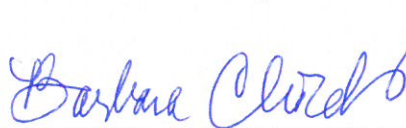
Announcement:

The announcement on the ruling of the appeal of the Staff Review Team's approval of the 25-lot subdivision has been denied.

NEW/OTHER BUSINESS: None were discussion.

ADJOURNMENT: Mr. Semmler, with no objections from the other Commissioners, adjourned the meeting at approximately 9:06 p.m.

SUBMITTED BY:



Barbara Childs, Administrative Assistant to the Planning Director



Robert Semmler, Beaufort County Planning Commission Chairman

APPROVED: August 6, 2018

*Note: The video link of the June 4, 2018, Planning Commission meeting is:
http://beaufort.granicus.com/MediaPlayer.php?view_id=3&clip_id=3814*