



## COUNTY COUNCIL OF BEAUFORT COUNTY

### Beaufort County Community Development

Beaufort County Robert Smalls Complex  
Administration Building, 100 Ribaut Road, Room 115  
Post Office Drawer 1228, Beaufort SC 29901-1228  
Phone: (843) 255-2171 • FAX: (843) 255-9446

The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, July 27, 2017, in the Council Chambers, Beaufort County Administration Building, at 100 Ribaut Road, Beaufort, South Carolina.

#### **MEMBERS PRESENT**

Mr. Edgar Williams, Vice Chairman  
Mr. John Chemsak  
Mr. William Cecil Mitchell, III  
Mr. Kevin Mack  
Mr. Joseph Passiment  
Mr. Chester Williams

#### **MEMBERS ABSENT**

Mr. Thomas Gasparini, Chairman

#### **STAFF PRESENT**

Ms. Hillary Austin, Zoning Administrator  
Mrs. Tamekia Judge, Zoning Analyst III  
Mr. Anthony Criscitiello, Planning Director  
Mr. Eric Larson, Land Management Director

#### **VACANCY**

None

**CALL TO ORDER:** Mr. E. Williams called the meeting to order at 5:04 p.m.

**PLEDGE OF ALLEGIANCE / MOMENT OF SILENCE:** Mr. E. Williams led those assembled with the Pledge of Allegiance.

#### **REVIEW OF AGENDA:**

**MOTION:** Mr. C. Williams made a motion to adopt the agenda as written. Mr. Mack seconded the motion. The motion passed (FOR: Chemsak, Mack, Mitchell, Passiment, C. Williams and E. Williams; ABSENT: Gasparini).

#### **REVIEW OF MINUTES:**

**MOTION:** Mr. Mack made a motion to postpone the adoption of the June 22, 2017 meeting minutes until next month. Mr. C. Williams seconded the motion. The motion passed (FOR: Chemsak, Mack, Mitchell, Passiment, C. Williams and E. Williams; ABSENT: Gasparini).

#### **KRISTIN MASTERS – (SETBACK VARIANCE)**

Mr. Chemsak recused himself from the hearing.

Mr. Jeremiah Simons representing Kristin Masters stated, "We are trying to get the Variance on the basis that we built the shed in the wrong location. Throughout the neighborhood just about every shed is on the back corner of the property line. The adjacent property, we have a letter stating that it is fine with them."

Mr. C. Williams stated to Mr. Simons, "We're required to follow the Code, and the Code has certain criteria set out that we need to find that the application is in compliance with, and reading through your application I didn't see anything implying that the application was in compliance for the granting of a Variance."

Mr. Simons replied, "There wasn't, we're just requesting it so we don't have to tear it down and move it. We are willing to pay a small fine for not complying; we were just going off of the neighborhood."

Mr. Anthony Criscitiello, Beaufort County Planning Director stated, "The Staff's position is basic, they are encroaching onto another property owner's property and the County does not have the capacity at a Staff level to grant an encroachment onto another's property. To do so would be highly improper from our standpoint. The request for a variance is hard to justify and the Staff recommends disapproval. We have a remedy that is available in the code that could move it closer to the property line than would be normally expected under the code, but we could not agree to recommending to this Board to allow the property owner to encroach onto someone else's property. The property owner built the shed without a permit. Had they obtained a permit this would have been cleared up at that time."

Mr. Mitchell asked Mr. Criscitiello, "The shed encroaches onto another's property?"

Mr. Criscitiello replied, "Yes, by 1.2 feet."

Mr. C. Williams asked Mr. Criscitiello, "The Staff's position is that there are no extraordinary or exceptional conditions that warrant the Variance?"

Mr. Criscitiello replied, "That is correct."

Mr. Mack asked Mr. Simons, "Are you willing to move the structure to become more conforming?"

Mr. Simons replied, "If it can be modulated, then we can move it."

**There being no further comments from the Applicant or the County and no further questions from the Board, Mr. E. Williams called for public comment. Public comments are limited to three minutes. There was no public comment.**

Mr. C. Williams stated that the application doesn't have any extraordinary or exceptional conditions that apply to this property, so he move that based on the testimony and the Staff's recommendation, that the Variance application be denied.

Mr. Mack seconded the motion.

**MOTION: Mr. C. Williams made a motion to deny the Variance application based on the testimony and the Staff's recommendation. Mr. Mack seconded the motion. The motion passed (FOR: Mack, Mitchell, Passiment, C. Williams and E. Williams; RECUSED: Chemsak; ABSENT: Gasparini).**

#### **MI STAR GAZER LLC – (DOCK VARIANCE) (REVISIT)**

Mr. Kevin Dukes, attorney with the Law Firm Harvey and Battey, representing the Applicant, stated to the Board, "We're here today for a Variance from Article 4, Division 2.9.190(D)(2)(B) which refers to the lengths of docks on a small tidal creek. In this case we are seeking a Variance to increase the length of what is allowed under the Code of 300-foot to a length of 403-foot. This was carried over from last month's meeting. In our last submission we had insufficient pictorials, so hopefully this information will be more helpful. The Variance is in harmony with the purpose and intent of the Development Code and it doesn't adversely affect the health and safety or create an injury to the adjoining properties. The primary condition here is there is an overview of the subject parcel, depicted as Lot 5, and you will see that we are asking to place this dock in the largest pool on the creek. The creek does get closer to the parcel on up top, but those locations create a situation where it is an undockable dock and is not usable or functional either for the landowner using the dock or for the public trying to bypass the dock to get to the upper reaches of the creek due to the width. This of course is not a condition created by the landowner; it's a naturally occurring condition. Looking at the general impact on the surrounding community, this is a new development and it is part of the peninsula. It's five lots, it was a 55-acre parcel that was subdivided into 5 lots. There is a conservation easement on this property which only allows for two docks to be placed on the property, one facing toward the Port Royal Sound and one facing toward Station Creek, and actually a

third dock which goes out into the salt water pond to the north. There are tight restrictions; there are also large parcels with minimal development and minimal impact development as a whole."

Mr. C. Williams asked Mr. Dukes, "When you say there are restrictions dealing with the number of docks, is that just for this particular lot or is it for the five lot subdivision?"

Mr. Dukes replied, "That is for the five-lot subdivision. One has been allowed to be placed on this lot, which is Lot 5, and there is also a shared dock which is shared between Lots 4 and 3. The total frontage on this entire development is over 6600-foot and the lot size is over 2300-foot, so you have two docks on over 6600-foot and one dock on over 2300-foot. We're asking that you make a Variance from a rigid code and allow this Variance because it is in keeping with the general harmony of the Development code. If this was available for a shared dock with another property owner, we would not be here and the code would allow the dock to extend up to 500-foot and the rationale behind that is to prevent against many docks being placed on many creeks congesting the waterway. Those concerns are not relevant. We believe, in keeping with the code, allowing us to get up halfway to the 500 feet section, which would be in keeping with the code. The next two lots already share a dock, and the Ordinance requires docks be shared with an adjoining property owner, in this case there isn't an adjacent owner that would be available to share. The other option would be to subdivide this lot into two lots, and I don't believe anyone would want that. I believe it would create a greater impact on the public as opposed to the environment. We are asking for the dock to be placed at 55 feet and we believe this is the only location that would allow the owner to have a dock and turn his boat around and be able to dock at the dock and also have a float, which allows the public to bypass the dock."

Mr. Passiment asked Mr. Dukes, "What's the depth of the creek in that area?"

Mr. Dukes replied, "The depth of the creek varies on the NOIA chart, and these two forks of the creek doesn't show up; they are more or less dry at low tide."

Mr. C. Williams asked Mr. Dukes, "Do you think that's the case on the proposed dock location?"

Mr. Dukes replied, "The proposed dock location shown on the chart is filled with water at all tides. It is my understanding that it is not navigable at all tides."

Mr. C. Williams asked Mr. Dukes, "The sheet that you showed has three alternate locations on the South fork that narrows?"

Mr. Dukes replied, "I showed the locations to show that they narrow as far as accessibility."

Mr. C. Williams stated, "That also tells me that the interference of navigation is pretty nominal given the fact that there are no other property owners that are further up the creek."

Mr. Dukes replied, "I said that to say you obviously won't be taking a large boat up through there, also there are large flats out there."

Mr. C. Williams asked Mr. Dukes, "Where is the shared dock located between Lots 3 and 4?"

Mr. Dukes replied, "It runs more or less in line with the property line and go out 500 feet. We continue to work with the Conservation League; they are okay with the position of the Variance for the dock location. OCRM is okay too, should this Body decide to grant the Variance."

Mr. C. Williams asked Mr. Dukes to explain what the extraordinary and exceptional conditions are for the Variance, because the County Staff stated there are no extraordinary and exceptional conditions.

Mr. Dukes replied, "It is my understanding that the County has taken a position that there is a dock on the property. I would agree that you could build a dock going out from the property, but the question here is whether you could build a dock with access to that creek by way of vessel and be able to have a dockable

location at that dock and have a functional dock at this area. Our position is that you cannot have it except in this location and putting it in these other alternate locations would create a burden on the general public specifically on the northern side where you have that spillway coming out of the saltwater pond."

Mr. C. Williams stated, "I would agree on the northern branch; it's more problematic, but I am having difficulty understanding why you can't put one on the southern branch."

Mr. Dukes replied, "It comes down to accessibility and functionality of the dock and whether it is actually usable. Yes, you can put a dock in at that location, but would it be fully functional as a dock? Our position is no, it would not."

Mr. C. Williams stated, "I guess that all depends on what sort of boat you want to have. There's no requirement for you to have a boat with a dock and a dock doesn't necessarily has to have a boat lift. In your write-up you say without the additional length, boat access to the dock would be impracticable and the value of the property would be significantly decreased. Based on the Code, this factor does not constitute sufficient grounds for a Variance."

Mr. Dukes replied, "That in itself is not sufficient, that's not what we are arguing. We are saying, in keeping with the general rationale with the shared dock distances, by allowing the 100 feet you gain significantly more. I think the request fits in the prevue of the Code."

Mr. Mack asked Mr. Dukes, "Is the 18 feet where the old dock located?"

Mr. Dukes replied, "It was coming off of the general corner; I've stood on the bank and only saw a few boards that were there."

Mr. Chemsak stated, "So, you're saying the dock is gone?"

Mr. Dukes replied, "That's correct, DHEC would not grant a refurbishment permit, only a replacement."

Mr. Anthony Criscitiello stated to the Board, "This is the most contentious thing that County Council dealt with when writing the Code. When it states not to exceed 300 feet, when you get down to legislative intent, the Applicant is asking for more than 100 feet than what County Council wrote in the Code. While the Board has discretionary authority it stretches credulity to go so far beyond what County Council had in mind when it said, "Shall not exceed 300 feet". The idea here is that we have a precious natural resource and we should be mindful of that and try to protect it. The fact that there is an existing dock that can be rebuilt, there is no reason why you have to have a dock to suit all purposes at all times. It could be a crabbing dock or it could be something else, and it doesn't mean that the property is unusable despite the fact that they can't get a 403-foot dock; so the Staff's position is to stay close to County Council's legislative intent. If the Applicant is open to this, they can apply for a text amendment."

Mr. Chemsak asked Mr. Criscitiello, "If the Applicant split the lot, you would approve a longer dock as a shared dock, correct?"

Mr. Criscitiello replied, "I can't say that. We are trying to stay as close to the 300 feet limit as close as possible."

**There being no further comments from the Applicant or the County and no further questions from the Board, Mr. E. Williams called for public comment. Public comments are limited to three minutes.**

Mr. Joe Cardee representing Bay Pointe Vista stated, "This is the Community that adjoins Mr. Gray's property. I've owned my property for about ten years. We have enjoyed the view that Mr. Gray has and we hate to see it destroyed with a 400 feet dock with a pier on the end. There is no navigability in Crab



Creek during low water. I've kayaked in there and there is no turnaround much less float. It's a terrible thing to put a 400-foot dock to tie up a boat that you can only use six hours a day possibly."

Mr. Ted Brewer stated, "I live in Bay Point Vista which is adjacent to the Applicant; I have been living there about a year and a half now. The marsh from my house you cannot see, but there is an area on Bay Point Vista you can see it very well. The place where Mr. Dukes was talking about, the permit permitted docks where the coverage we can see the dock is very minimal. They are calling for a 55-foot dock by 4-foot with a 12-foot ramp going down to an 8-foot dock, going back to that area at high tide, there is not a lot of area you can go by access for people going back there will be very limited; I hate to see the dock being extended. I am very concerned about the view, looking over it at the wildlife is the main concern."

Mr. C. Williams stated, "I tend to agree with the County's assessment here, clearly from the Applicant's application there are other locations where a dock can go that doesn't require a Variance. Extraordinarily when reading the County Code and the State Code those conditions are typically physical characteristics of the property. The fact that you can't get a boat dock within 300 feet, I don't think falls within those criteria, and doesn't mean you can get a dockable dock; I move that based on the application before the Board and the testimony along with the Staff recommendation find that there are no extraordinary or exceptional conditions and move to deny the application."

Mr. Chemsak seconded the motion.

**MOTION: Mr. C. Williams made a motion to deny the Variance request because there are no extraordinary or exceptional conditions to grant a Variance. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Mack, Mitchell, Passiment, C. Williams and E. Williams; ABSENT: Gasparini).**

#### **ERNEST DRIVE MINE EXPANSION – (SPECIAL USE) (REVISIT)**

Mr. Tom Holloway, Attorney with Harvey and Battey and representing Ernest Drive LLC, stated, "This would be the third time before this Board on this application which is for a mine expansion or an amendment of a Special Use permit for a surface mine located on St. Helena Island on Ernest Drive. The Special use permit was granted I believe in 2009 to predecessor Rentz Construction. It was a 34-acre site for an 8.08-acre mine. My client has acquired 5 additional acres which brings the site up to 39.27 acres and this application is to amend the Special Use permit that was granted previously to allow the additional 10-acre mine area. This matter came before the Board on November 17, 2016 and there was a lot of discussion among the Board members and the Community comments. The conclusion of the matter was tabled and sent back to SRT for further communication. Mr. Chester Williams wanted to find out from the SRT whether or not the requested amendment minimized the adverse impact on the surrounding areas. Mr. Gasparini wanted additional information from SRT related to water discharge off of the property and noise. The matter came back before the Board on January or February of 2017 and at that time Mr. Gasparini correctly noted that since this application was granted in 2009 it was under the prior ordinance and it should be evaluated under the prior ordinance that was in effect before 2014, so the matter was sent back to the SRT for review. We met with the SRT and what I would like to tell you is that the criteria specifically involved with the expansion or the amendment for this permit is whether or not the amendment would minimize the adverse impact. Some of the things that have been developed through this process were really good. Some of the neighbors were concerned about water discharge coming off of the property. After the hurricane came through, the pumps were running at this project for several weeks nonstop and water was discharging off of the property. Some estimates from Carolina Engineering may have been 2 million gallons a day into the County ditch system that goes through the neighborhood and comes out under Ball Park Road. The mine hasn't been operating since then because it is exhausted and that is the reason for the requested amendment to add additional space. One of the items through working with the SRT that was developed is a system called the Faircloth skimmer and that is a system to allow the water to leave the property at no more than the permitted rate that has been recommended by the SRT which would be 500 gallons per minute in a two-hour period per day. Under no circumstance can the volume of water leave this property in excess of the allowable limit. Formally there

was a pump that could come on and discharge as water levels fluctuated. Under this circumstance there would be no additional water allowed to leave the system. The way they explained it to me, it's a pipe with a skimmer on the top and it has a sediment cloth on the top of it so it collects the sediment and the sediment falls and the pipe is like a 2.7-inch pipe; which only allows so much water to go through the pipe in a 24-hour period. No matter how much water is in that facility, only 60,000 gallons maximum can go through it in a 24-hour period versus the 2 million gallons, so not only are the adverse impacts related to water, it is minimal."

Mr. C. Williams asked Mr. Holloway, "What happens to the excess water over and above the 60,000 that can't leave the site?"

Mr. Holloway replied, "It will stay on site. The area of the pond is increased, but the water will stay on site in the pond; it will not be able to escape the area. The other item that was of concern was if the pumps ran after normal business hours it could create noise and could possibly interfere. Well there is a decibel limit for pump use and that applies to working hours, but what do you do after hours. Well, under this system with the Faircloth skimmer there is no noise because there is no pump; there is no pumping to remove water from the system. The water will be in the area to be mined per the plans submitted. As the water comes into the sediment basin, the water will be able to escape as per the limits as agreed upon with the SRT and go into the County ditch system. There are two-24 inch pipes under Ball Park Road and there is a gauge to be installed there. At no point will there be any water allowed to be discharged from this mine if the water exceeds the allowable limit under the gauge as agreed upon; that's basically half of the level of water in the pipe. The reduced level of water coming off of this site as proposed with the Faircloth skimmer is most probable that the water on this site would not reach the pipe on Ball Park Road."

Mr. C. Williams asked Mr. Holloway, "If it is in the drainage system, where is it going to go?"

Mr. Holloway replied, "It will go into the ground. So, when you look at what was permitted in 2009 and what was presented in November 2016, this meets all concerns that were recommended by the Staff. The Staff for SRT has recommended approval of the project subject to 12 conditions and we are in agreement with the conditions that would be to have a cash bond for any road repairs related to truck traffic, that the mining be limited to 2 years and the hours of operation are governed by the Code which is 6:30 a.m. to 6:30 p.m. We had previously put in the plan that the hours would be 7:00 a.m. to 5:00 p.m."

Mr. C. Williams asked Mr. Holloway, "Is that what the plans currently show?"

Mr. Holloway replied, "Yes, that's what we want. We want to minimize impact to the Community and we have no problem reducing the hours as allowed under the Ordinance."

Mr. C. Williams asked Mr. Holloway, "Has DHEC issued a permit for the expansion?"

Mr. Holloway replied, "Yes, DHEC has issued the permit. There is a \$25,000 reclamation bond on file with DHEC. If this is approved and moved onto SRT, we will put in place a bond for any road maintenance that may be required. The level of noise shall not exceed 65 decibels as agreed upon; and the pond slopes are required by Ordinance and recommended by SRT, so we agree. There will be no pumping off site, there will be draining. My client has agreed that everyday there is construction on site to go to Ball Park Road and check the gauge. If the gauge is in excess of half of the level of the pipe, there will be no discharge of water that day."

Mr. C. Williams asked Mr. Holloway, "Is that a manual inspection each day?"

Mr. Holloway replied, "Correct, that's a requirement from SRT. What will happen is on work days they will go down there and check the gauge before they do any work. If there is a discrepancy, no work will occur. If you may recall, water comes downstream from our property. It's a part of the discharge that is stored on the other property and moves downstream."

Mr. C. Williams asked Mr. Holloway, "What are the chances of the upstream backing up if you can't discharge water out of the mine site?"

Mr. Holloway replied, "There is plenty of storage. They will compartmentalize the area, making compartments on the property to store water."

Mr. C. Williams stated that, "That is difficult to conceptualize because the plans do not show it."

Mr. Holloway replied, "The plans do show all the items as required by the Ordinance."

Mr. C. Williams replied, "Yes, but it doesn't show what you are talking about right now."

Mr. Jeff Ackerman stated to the Board, "You are correct, the plans do not show the method and means of construction. Those methods and means will be dictated by the control of the water through the Faircloth skimmer that Mr. Holloway explained. Right now there is an 8-acre pond on the property, so during the construction they will move away from the 8-acre pond and start excavating. As they excavate, if they encounter ground water, that water will be pumped to the 8-acre pond to be stored. As it gets stored in the 8-acre pond the Faircloth skimmer would pick it up and give it a constant discharge to the offsite area. Then they would systematically continue to work in the drier area; basically the 8-acre will not be connected to the area they are excavating."

Mr. C. Williams stated, "The plan does not show that."

Mr. Ackerman replied, "The plan shows the end product when everything is completed."

Mr. C. Williams asked Mr. Ackerman, "What do we have before us that shows what all of the conditions are, so someone can go back later and check and say you are or are not complying with the conditions of the approval?"

Mr. Ackermann replied, "The area that the County would be concerned is the location of the Faircloth skimmer and that's shown on the drawings."

Mr. C. Williams stated, "You are talking about compartmentalizing and none of that is shown; I have a difficult time approving something someone is asking to approve when I can't look at it."

Mr. Ackerman replied, "Because that is hard to show on a plan. What we are talking about is how the contractor is going to manage the water during the project."

Mr. Holloway stated to the Board, "The concern of the County SRT was, they wanted to be clear about the water that comes off of the property. What went on inside the walls of the property, making a compartment and moving water was not their concern. It was what comes in and what goes out; that was why the Faircloth skimmer idea was developed so there could be no excess discharge and there would be no issue downstream. If there was an issue with downstream, the gauge into the pipe is the fail-safe, so that shuts down the project."

Mr. C. Williams replied, "I understand all of that, but again, you have a proposal before us that talks about compartmentalizing and I don't see anything that shows me that."

Mr. Holloway replied, "The compartmentalizing is not the application, the application is to expand the site subject to the recommendations of the SRT. The process, as it goes through, I described it to you so the Board could have a full understanding of how the project was contained on site. The application is for a special use permit expansion or amendment from 8.08 acres to 18 acres. I understand what you are saying, but the process is controlled by SCDHEC in the mining permit and that's part of the requirement of SRT to prove that we have that with a Reclamation bond and the future end use plan with a Natural resource plan and that everything complies with the goals of the Comprehensive plan. I think the

submission complies with the Special Use requirements under the Ordinance that's applicable to this case."

Mr. C. Williams asked, "Post development and looking at the future end use plan, how you would control discharge of water from the property from this point?"

Mr. Ackerman replied, "The end use plan will be a residential subdivision and at that point what we would do is go back before the SRT and ask for approval of a permanent control structure for the Storm water pond. At that point the mine becomes a Storm water pond for the residential subdivision and we would submit detailed drainage calculations to County Engineering and to the State that shows how the control structure will function and would limit the post development runoff to the predevelopment runoff during a rainfall event."

Mr. C. Williams asked, "When was the original Special Use permit granted?"

Mr. Holloway replied, "I believe it was 2009."

Mr. C. Williams asked, "And it was good for two years, correct?"

Mr. Holloway replied, "It was, at that time there was an economic collapse and there was a State statute that put in place the stay of exhaustion of permits."

Mr. Passiment asked Mr. Holloway, "You said there will be a manual inspection on a daily basis to determine the height of the water, correct?"

Mr. Holloway replied, "That is a recommendation from the County Staff and we are in agreement with that."

Mr. Passiment asked Mr. Holloway, "Will this manual inspection take place at a certain time each day or will it vary?"

Mr. Holloway replied, "It will begin at the work day, which begins at 7:00."

Mr. Passiment asked, "Will there be documentation stating whether you can proceed on site?"

Mr. Holloway replied, "Yes there will be logs maintained on the site."

Mr. E. Williams asked Mr. Holloway, "Will the County be checking the logs on a daily basis?"

Mr. Holloway replied, "I don't know what the requirements are, but I know that DHEC regularly inspects the property, so if the County want a daily log on that, please put it in the recommendation and we will comply."

Mr. Mack asked Mr. Holloway, "What height will the 8-acre pond be before the Faircloth skimmer is activated?"

Mr. Ackerman replied, "We've got it set right now at elevation 17. That's the elevation of the ditch that is on our property and leaves our property and goes toward Ball Park Road. The first place it hits a culvert is under Ball Park Road which is a 24-inch pipe, it continues across and goes into the Wesley Felix Park area where it goes into another 24-inch culvert pipe, and then it goes back into the detention pond behind the ball field and the parks."

Mr. Mack asked Mr. Ackerman, "Once it leaves the detention pond, have you guys ever traveled to see where the water ends up on Ball Park Road? Is there a clear County ditch where this water accesses an outfall?"



Mr. Ackerman replied, "The water goes until it gets to Crystal Springs Road and then back underneath Ball Park, then it runs down a roadside swale down Ball Park Road until it gets to a wetland area and then it go back underneath Ball Park Road out to Village Creek."

Mr. Mack stated, "That is my problem; I don't see where this water is clearly accessing an outfall ditch. It seems like it is overflowing at the low point you talked about."

Mr. Ackerman replied, "You are right, I didn't see it when I went out 3 weeks ago to go look at it again. There's still a small trickle of water coming down Crystal Springs to Ball Park Road. When the Applicant was pumping the water at a much higher rate, for a much longer duration, it was easier to determine where the water was going."

Mr. Mack stated, "That's my main concern, as far as the discharging creating more of a wetland for the property owners on the downstream; I don't want to create a wetland area for them in the low lying areas."

Mr. Ackerman replied, "What was being pumped before the hurricane was about 2 million gallons per day and now the daily volume of 60,000 gallons. In this regard, the culvert that goes underneath Ball Park Road, can handle about 10,000 gallons per minute, what we're proposing to run to it is about 41 gallons per minute. We are only going to use about .4% of that pipe by limiting the discharge to the 60,000 gallons for a 24-hour period. The problems we saw before the hurricane will be taken away with the regulation of the Faircloth skimmer."

Mr. Mack asked Mr. Ackerman, "When it is time to bind the two ponds together, the Faircloth skimmer won't be in place; how will you make it work?"

Mr. Ackerman replied, "They won't be able to take and remove as much material out of the pond, because the berm will have to remain in place in order to separate the areas where they are digging. The Faircloth skimmer will come out when we make the subdivision application."

Mr. Chemsak asked Mr. Ackerman, "What guarantee do we have that you will put a subdivision in after all of this is over?"

Mr. Ackerman replied, "That is a part of why we are here, it will be done".

Ms. Austin stated, "That is a part of the end use plan."

Mr. Anthony Criscitiello Beaufort County Planning Director stated, "This has been forwarded to you from the Staff Review Team with a series of recommendations, 12 in total. The process before us tonight is the opportunity to expand the mine to include the additional acreage that has been purchased by the Applicant and to build a larger pond as a result of that process. The 12 recommendations from the SRT are designed to facilitate the approval of this if the Zoning Board of Appeals feels disposed to do that. The four-lot subdivision is the end use plan for this property and that I think is a key consideration. Once that subdivision is approved then the County requirements for site planning are put in place and then we deal with the property as it will be developed in the future. There will be bonds posted in this proposal to make sure the Hall Road is maintained and in good condition and we make sure that we have the property in a position that at the end of the day, the four-lot subdivision will be a functional subdivision and the pond in part and parcel of the larger plan. One thing that has not come up in this discussion is the question of the fence. There are a lot of concerns of the citizens at the SRT in regards to the fence as a the concern of safety for the children that may climb over the fence and get into the pond as children may very well likely do. Based on the ZDSO, Zoning & Development Standards Ordinance, there is no exact standard in regards to the height of a fence. The fence is currently four feet, and the Board has the discretion to make that higher. If that would be the desire of the Board then that would be something the SRT would consider in regard to the final application as it would be presented to you. We are regulated under the ZDSO not the Community Development Code which says that the fence could be 8 feet with the ZDSO not having a specific standard for height. You have the ability and the prerogative to ensure that safety

for children in the area might be better protected. We feel that the Applicant has done what we have asked them to do and they have done the end use plan and they have done the mining plan and we have before you a recommendation of approval. I have here with me the Storm Water Utilities Director, Mr. Larson who is an expert in Engineering and these issues in regard to mining might be of benefit for you to hear from him if he does come up."

Mr. C. Williams asked Mr. Criscitiello, "What were the sense of comments that you had from the surrounding property owners that the SRT reviewed?"

Mr. Criscitiello replied, "It was concern about water coming off of the property and flooding downstream from the mine. Mr. Ackerman discussed a new technique that we haven't heard about before that could be very interesting to apply in dealing with the decibels and pumping noise."

Mr. Chemsak asked Mr. Ackerman, "Do you still have to pump the water from the mining pit over to where the Faircloth skimmer is, correct?"

Mr. Ackerman replied, "Yes, you are correct. The excavation work would be ongoing and from time to time, the water in the area that is being excavated would be pumped to the 8-acre site and what we intend is that pumping would only take place during the hours that the pit is being worked and there wouldn't be any pumping at night. There certainly wouldn't be any pumping to the offsite condition."

Mr. E. Williams asked Mr. Criscitiello, "You stipulate about the fence for the safety of the children which concerns me also. Why wasn't that put in part of the resolution under the twelve items for the fence, was that discussed in the approval?"

Mr. Criscitiello replied, "No, it was not."

Mr. E. Williams asked Mr. Criscitiello, "Can they go beyond the four feet?"

Mr. Criscitiello replied, "Yes, you can stipulate higher."

Mr. Chemsak state, "I would like to hear from the County Engineer on the Faircloth skimmer".

Mr. Eric Larson, Director of Environmental Engineering and Land Management stated, "Within my Division are Planning and Zoning and Storm Water. I serve as the Storm Water Utilities Manager on a day to day basis, along with Rebecca Baker who works in the Storm Water department. She's the one that attends the SRT and does the Staff review. The two of us reviewed this. Rebecca has been out there multiple times with the Applicant and reviewed this project. The Faircloth skimmer is a very good idea; I actually told Jeff I am glad he thought of this because we were having a lot of trouble figuring out how we were going to regulate flow. They call it a skimmer because it floats on top of the water. So unlike a pipe where the invert is at the bottom of the pond and the more head pressure from a deep pond pushing water through it at a faster rate, the skimmer is at the top and its got small perforations in it and it's basically slowly trickling the water off. As the water elevation goes down, the skimmer is floating so it always stays on top of the water. They have sized it properly. They had approval for the 500 gallons per minute for two hours in the previous approval, we kind of used that as the yard stick and they've sized the skimmer and the perforations and the size of the pipe that the skimmer is attached to, to mimic the 60,000 gallons per day. I am comfortable with the design and the discharge volume. They have the ability to stop the flow completely if the pipe or ditch becomes clogged."

Mr. C. Williams asked Mr. Criscitiello, "In the recommendations considering the proposal for the Faircloth skimmer, is there any reason to have any reference to pumping anything on the property at all?"

Mr. Criscitiello replied, "This was after the discussion of the Faircloth discussion. What is being proposed by Mr. Ackerman is an enhancement of the whole process of approval."

**There being no further comments from the Applicant or the County and no further questions from the Board, Mr. E. Williams called for public comment. Public comments are limited to three minutes.**

Ms. Alice Zingeralli stated, "I live on the property behind the mine and my home has been vibrated off of the foundation, I have to pay to have that redone. The roads are in terrible shape, it has pot holes all over the road. I am concerned about the children in the area; a four-foot fence is nothing. I am totally opposed to them being able to dig anymore dirt out of there. The pumps have been running more than 24 hours and it might have been during the hurricane; the noise I can hear it and it's unbearable."

Mrs. Priscilla Drake stated, "I've been in attendance at the Staff Review meetings and I've shared how I feel and I've also done a tour in December when the Ernest Drive folks and the County, because there were complaints. In 2009 I didn't know about this because I wasn't close enough, but I am now because I live on Ball Park Road. My concern is that I am an educator and I feel even worse listening to the presentation and more concerned. A fence around a playground has vertical and horizontal bars to keep the kids in, I've gone around the Community looking at the fences around and that it's not high enough. Posting, it's posted very well. You call it a pond and the amount of water that was there in December and the wire system is not very sturdy, the post is not very heavy and of course some of the post goes along the height of the fencing, I could see a child crossing or even going over and pushing the boards down and even going down. When they were building Wal-mart there were trucks going up and down the roads and of course tearing it up. After one of those meetings, the work was supposed to be discontinued and that work was not discontinued. I called the County office and they spoke to someone; the gate has not been opened so the work must have stopped. There are folks that are complaining about water that did not collect in their yards before. I have concerns and you are doing a subdivision of four houses. Okay put in the houses, but 18 and half acres of water. I can't take our children off of our minds. Folks are used others who come in historic communities and make promises and then what happens, who maintains after. One kid die and what happens when one of those kids crosses over to that mine, slips and then there was no sloping and that's a part of the plan to include the sloping, what happens? Yes, I understand that dirt has to come from somewhere but you are talking about not an isolated piece of land where you don't have a lot of folks around but we are talking about Saxonville and Ball Park Road where there are houses along those two roads. I totally disagree with the approval of the expansion. I hope you would keep the hearts of our children in your hearts and if they aren't there put them there."

Mr. William Smith stated, "When we talk about this mine, we don't want this in our Community. I am asking the Board to not allow them to violate our people and make the right decision, because as you see they do not care, they are not in compliance, because they never fixed the road."

Mr. James Brown stated, "I am the adjacent owner to the property right next to it. They are talking about pumping the water off to the second pond, and he's talking about it is a County ditch; that is not a County ditch. The ditch cuts through my property. I am not satisfied with this because it is affecting me. My property is getting devalued because of them. It is up to the Board to make the right decision. My watermelon field wouldn't grow because they are sucking up all the water. Am I supposed to suffer because they want to make money? I don't want them there. They are not filling in the pot holes that the County has asked them to fix. What they have there now is good; they do not need to extend the pond."

Mr. Dan Zingarelli stated, "I live on Saxonville Road and we've been taking Club Bridge Road to Martin Luther because Ball Park Road is torn up. I used to work up North, with an 18-acre pond and you are only using a skimmer; what happens when we get 5 – 18 inches of rain, is that skimmer going to be able to release that water? We are talking sand and they don't have a liner, we are talking a lake not a pond, what will hold the banks back from erosion? When the lake gets up to the top, what will happen? I hope you'll make the right decision."

Public comment session closed.

Mr. C. Williams asked Mr. Criscitiello, "In the recommendation for the second criteria about the two-year limitation, where does the buffer of 400 feet come from?"

Mr. Criscitiello replied, "It's stated in the ZDSO, the property is not big enough for the 400 feet so it is limited. The limitations are good for 200-foot, the limitations of the actual site prohibits the buffer to be that large."

Mr. C. Williams asked Mr. Criscitiello, "What effects does the permit extension of the Joint Resolution have on the two-year limitation?"

Mr. Criscitiello replied, "I can't answer that because I am not an attorney?"

Mr. C. Williams asked Mr. Ackerman, "With the skimmer system, what sort of pumping is necessary for the property?"

Mr. Ackerman replied, "The only pumping that would be done is in the area that is being excavated. The water will be pumped over to the existing 8-acre pond."

Mr. C. Williams asked Mr. Ackermann, "So, the 8-acre pond is tapped out?"

Mr. Ackerman replied, "Yes it is."

Mr. C. Williams asked Mr. Ackerman, "Is there a separate sediment basin?"

Mr. Ackerman replied, "Yes, it is and that is where the Faircloth skimmer is located. There will also be a turbidity curtain in front of the Faircloth skimmer."

Mr. C. Williams asked Mr. Holloway, "Is your client okay with the condition that there is no pumping at all on the site except from the site that is being excavated into the old site?"

Mr. Holloway replied, "Yes. As for the Joint Resolution, that expired in 2016 so that's not available in the future to extend the permit another two years."

Mr. C. Williams asked Mr. Holloway, "Is the permit that was issued in 2009 still valid?"

Ms. Austin replied, "Yes."

Mr. C. Williams asked Ms. Austin, "For how long?"

Ms. Austin replied, "Our permits are vested, you get two years to use the permit and if you haven't used the permit, you can come in and request five one-year extensions."

Mr. C. Williams asked Ms. Austin, "Have they filed for any of those five one year extensions?"

Ms. Austin replied, "No."

Mr. C. Williams asked Ms. Austin, "Well then they lost the right to do that."

Ms. Austin replied, "In 2008, all the permits, the Resolution stated that anything that was valid in 2008 on had a stay, so there was no two years, and no five-year extensions, the permits were on hold. Cleland bought the permit from Rentz in 2014; the permit was still valid and they used the permit. The condition of the permit was that they could only dig for two years because it didn't have the appropriate buffers."

Mr. C. Williams asked Ms. Austin, "There hadn't been any digging before then?"

Ms. Austin replied, "No, because Mr. Rentz only timbered the property and sold it. So, the permit was not used until Cleland bought the property and permit from Mr. Rentz."



Mr. E. Williams asked Ms. Austin, "If in 2005, if they didn't reapply then the permit would have expired, is that correct?"

Ms. Austin replied, "It would have."

Mr. E. Williams asked Ms. Austin, "So, in 2005 no one came about and asked for an extension of the permit. Then in 2014 you gave them a right to be issued a permit?"

Ms. Austin replied, "No, Mr. Rentz got his permit in 2009 not 2005. The permit was still valid when the resolution came into play. The permit was on hold, so you didn't have to ask for extensions. The resolution ended in December 2016 and because he has used the permit, once you use the permit it is still valid."

Mr. C. Williams asked Mr. Larson, "Mr. Brown testified that the ditch where the outfall from the Burrow pit goes is not a County ditch but it's a private ditch. Is it a County maintained ditch?"

Mr. Larson replied, "It's not a County maintained; according to our records it's a private ditch until it gets to Ball Park Road. Roadside ditches are state, so there is no County maintenance of that area."

Mr. C. Williams asked Mr. Holloway, "Do you agree with Mr. Larson where the outfall is, is private and not County maintained?"

Mr. Holloway replied, "I was under the impression that it was a County ditch. The people who are upstream drains onto their property until it get to Ball Park Road."

Mr. C. Williams stated, "My concern is have you increased the scope assuming there is a prescriptive easement; I would take it that there is an expressed easement that your client has to discharge to the ditch."

Mr. Holloway stated, "There is no written easement that I am aware of."

Mr. C. Williams stated to Mr. Holloway, "The concern is whether or not you are unduly increasing the burden of asserting the state with the amount of water you are pumping out."

Mr. Holloway replied, "I don't think the water that leaves the property is any different than the amount of water that would leave from the project."

Mr. C. Williams stated, "That's clearly not the case, because you have 8.5 acres more of impervious coverage property than you had before so you have more and you will have a greater storm water runoff now than you had before the 8.5-acre lake was done."

Mr. Holloway replied, "This is the ditch system that existed at that area, the entire time the project has gone through. The original Special Use permit was granted under these conditions, and this was an amendment; just an improvement. We've come back with a better plan to help discharge upstream and downstream. The fence and trespassing signs are posted."

Mr. E. Williams stated, "I have a deep concern with this application, I've listened carefully to the residents of the Community and when something like this is brought in, I will not in good conscious vote to approve this application."

Mr. C. Williams asked Mr. Criscitiello, "What is the County's position on the road?"

Mr. Criscitiello replied, "When you have trucks taking dirt away, it will be a tremendous impact on the roads so we have a bond for the roads to ensure the roads are in good condition."

Mr. C. Williams asked, "Was that condition addressed when the approval was granted in 2009?"

Mr. Criscitiello replied, "I do not remember."

Mr. Mitchell made a motion to approve the mine with the conditions set forth in the recommendation of the SRT.

Mr. C. Williams seconded the motion for discussion. Mr. C. Williams stated, "I am concerned about the discharge of water on a private ditch. I think the volume of water coming off of the property into that ditch now that there is an 8.5 acres pond with impervious coverage, there will be an increase in the amount of discharge. I am concerned about the height of the fence and the buffer."

Mr. Chemsak stated, "I agree with Mr. Williams about the height of that fence and the discharge to a private ditch."

Mr. Mack stated, "I have concerns for the discharge on Ball Park Road. The fence concerns me because you can easily walk around it with the little poles holding it up. If the pond was out in an open area where there was no Community or no houses, I wouldn't have this concern; and with them voicing their opinions it should speak volumes."

Mr. Passiment stated, "Item #2 doesn't specify the time frame when it will start and when it will end. If this does become approved, I think that Item #2 should be specified and the bond to be done after the time frame. What do you do for the residents during that time frame before the road is fully restored?"

Mr. C. Williams stated, "I'm not ready to say that the concerns can't be addressed; from what I hear, I am not sure the Applicant want us to vote on this."

Mr. E. Williams stated, "That we can't tell the Applicant what to do, we have to grant it or deny it; and, if the Applicant wants to withdraw it, they have that right."

Mr. C. Williams stated, "It would be fair to allow the Applicant to carry it over to address the concerns."

Mr. Holloway stated, "I would like to table the project to address the concerns."

Mr. C. Williams stated that if the application should be carried over the Applicant shall properly notify the property owners again. I believe a date to carry this over until at least 30 days after the SRT meeting.

**MOTION: Mr. C. Williams made a motion to table the Application at the request of the Applicant, in order to meet with the SRT to the address the concerns of the Community. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Mack, Mitchell, Passiment, C. Williams and E. Williams; ABSENT: Gasparini).**

#### **GAIL & SHERYL BRUCE (RIVER BUFFER VARIANCE)**

Mr. William Court with Court Atkins Architect representing the Applicants, stated, "We are requesting a Variance from Article 5, Division 5.11.60 and Table 5.11.60.A which describes setbacks and buffers related to OCRM critical lines on buildable lots. For reference in the application package, I included the original 1985 plat of the Indian Hill section of Windmill Harbour where the lot is located, which showed the critical line as well as the then current prescribed 20-foot construction setback on the lots. Also included is the current survey which shows Lot 8 which is the only remaining lot unbuilt in that section. It shows the new OCRM delineated which moved slightly east. The next diagram shows our request to use the original prescriptive 20-foot setback off of the critical line. The third document shows a site diagram within the buildable area that we are requesting, a conditioned footprint of the building structure, a small front porch, stairs and service yard with a small rear porch along with a paver terrace with a plunge pool. Due to the site constraints, about half of the plunge pool is located within the footprint under the porch and all of it is still in the requested 20-foot setback line. It is the owner's belief that with the Variance request they are meeting a hardship relief of dimensional standards of the code. It is also the owner's belief that

they will not incur any special privileges. I have read the Staff recommendation that they are in support of the residence. I have conferred with the POA for the pool and there are 14 pools that would also be within similar guidelines."

Mr. C. Williams asked Mr. Court, "Are there any pools in that neighborhood?"

Mr. Atkins replied, "No."

Mr. C. Williams asked Mr. Court, "Is there a Community pool?"

Mr. Court replied, "Yes."

Mr. Bruce stated, "I didn't see anything in the recommendation stating why a pool would be a privilege, I think it would be a restriction on us if we can't have a pool."

Mr. C. Williams stated, "Clearly, without a doubt, you can't construct a home on the lot without a Variance, but I have a problem with approving a pool when your neighbors doesn't have a pool."

Mr. Chemsak asked Mr. Bruce, "Is the pool salt water?"

Mr. Bruce replied, "That was the plan, but if the Board recommend a better plan then we would consider that."

Mr. Anthony Criscitiello stated, "Staff recommends approval of the Variance without the pool. The house without a Variance would be difficult. Staff recommends approval of the residence providing on-lot storm water calculations and rain garden with the placement of gutters to direct runoff of water away from the creek. The pool does not seem to represent a hardship."

Mr. E. Williams asked Mr. Criscitiello, "What's your reasoning for recommending approval of the residence without the pool?"

Mr. Criscitiello replied, "To move it from the setback as much as possible. The pool would add additional burden in terms of providing additional surface in that 20-foot setback and difficulty in meeting the intent of the Ordinance."

**There being no further comments from the Applicant or the County and no further questions from the Board, Mr. E. Williams called for public comment. Public comments are limited to three minutes.**

Mr. John Desayue stated, "This house would be built adjacent to my property line; we would be sharing a common wall. I object to the idea of walking out of the back of my garage and directly to my property line there is a swimming pool. I would challenge the idea that there are lots of pools on grade next to the marsh, they may be there but I have lived there for 15 years and I haven't seen that."

Ms. Patricia Holmes stated, "I live at 9 Indian Hill which is directly across from the property, and I have issues with the pool and wildlife being that close to the marsh and the size of the house. Could they make it a smaller house? There is also a Community pool that they could use. I am not in favor of the pool."

Mr. Bruce stated, "Listening to the Staff's comments and the area that the pool would cover, the part that's not under the house is about 40 square feet. We are not opposed to having a fence to protect from children or animals getting into the pool, we want to do the right thing with the neighbors. We will have a party wall and we are willing to work with this if we could have the pool approved."

Mr. Chemsak asked Mr. Criscitiello, "Is there a side setback between this house and the adjacent house?"

Mr. C. Williams stated, "No, it's a party wall with a zero lot line. This is a classic case, without a Variance the lot is essentially unbuildable. I am fine with the County's recommendation for the house. I move that based on the application and the testimony the application for Variance for the house meet the criteria and the portion of the application for the pool be denied."

Mr. Chemsak seconded the motion.

**MOTION: Mr. C. Williams made a motion grant the Variance for the house at 20 feet from the Critical line and deny the Variance for the swimming pool. Mr. Chemsak seconded the motion. The motion passed (FOR: Chemsak, Mack, Mitchell, Passiment, C. Williams and E. Williams; ABSENT: Gasparini).**

#### **CLINT & ELLEN FAW HENDERSON (RIVER BUFFER VARIANCE)**

Jennifer Helms, a realtor with Island Realtor representing the Applicant stated, "We are asking for a River Buffer Variance on Fripp Island. The lot that we are looking at would be impossible to build on with the river buffer going back to 50 feet. We have received approval from Fripp Island ARB. We are asking for 10 feet on one side back off of the critical line and 15 feet on the other side. The backside will be a porch, so the home is moved forward, and as you can see from the shape of the lot, you can't move it back any further; it is situated as best as can be. This development was created for smaller homes in the 1980's and since then people have put larger homes on the lots."

Mr. Anthony Criscitiello stated, "In this situation we are recommending approval subject to a redesign and pulling the house forward to the 20 feet setback buffer. The homes in this area were originally smaller and that was the terms in that area in terms of development."

Mr. C. Williams stated, "The house next door appears to be much closer to the critical line. Did you all take that into consideration when you made the recommendation?"

Mr. Criscitiello replied, "No, we were just looking at the house before us."

Mr. Mitchell stated, "You would lose a lot more space if you moved the house due to the shape of the lot."

Mr. Criscitiello stated, "If you took the size of the house and rotate it, it may not work; but to redesign the house may."

Ms. Helms stated, "We are unable to redesign the house. I didn't realize that action was to be taken on the recommendation. Fripp Island allowed us to be at 17 feet on the front. We did think that the home next door being a few feet off of the critical line; that we would be okay."

Mr. C. Williams asked, "What are the setbacks for the homes on the other lots?"

Ms. Helms replied, "The marsh setback is 50 feet. There is a number of homes right up to the marsh."

**There being no further comments from the Applicant or the County and no further questions from the Board, Mr. E. Williams called for public comment. Public comments are limited to three minutes.**

Mr. Coleman White, broker for the seller stated, "Homes to the left is at 2.5 feet from the critical line. If you look at the other homes in Sawgrass and their position to the critical line, it would be 10 – 15 feet at the most. They are very small lots and over the years the homes were built closer to the marsh. With regard to the additional 20 feet coming from the critical line, I urge you to look at the shape of the lot and consider something less than 20 feet."

Mr. Mitchell made a motion to grant the Variance as requested.



Mr. Mack seconded the motion.

Mr. C. Williams made a motion to amend the Variance with the two conditions listed in the Staff report.

**MOTION:** Mr. Mitchell made a motion grant the Variance. The Variance was amended to include the two conditions set forth in the Staff report. 1) Applicant shall submit the On-lot Storm Water calculations. If a rain garden is required, applicant shall show the location of said rain garden on the site plan outside of the 20-foot buffer area. 2) Applicant shall be required to place gutters on the structure to capture the roof runoff and discharge said runoff as far from the critical line as possible. Mr. Mack seconded the motion. The motion passed (FOR: Chemsak, Mack, Mitchell, Passiment, C. Williams and E. Williams; ABSENT: Gasparini).

#### **NEW BUSINESS**

Mr. C. Williams made a motion to select Mr. Gasparini as Chairman for 2017 and Mr. E. Williams as Vice Chairman.

Mr. Mack seconded the motion.

**MOTION:** Mr. C. Williams made a motion to select Mr. Gasparini as Chairman for 2017 and Mr. E. Williams as Vice Chairman. Mr. Mack seconded the motion. The motion passed (FOR: Chemsak, Mack, Mitchell, Passiment, C. Williams and E. Williams; ABSENT: Gasparini).

#### **ADJOURNMENT**

**MOTION:** There being no further business to come before the Board, Mr. C. Williams made a motion to adjourn. Mr. Mack seconded the motion. The motion passed (FOR: Chemsak, Mack, Mitchell, Passiment, C. Williams; ABSENT: Gasparini).

The meeting adjourned at approximately 8:20 p.m.