SUMTER CITY - COUNTY PLANNING COMMISSION

Minutes of the Meeting

November 28, 2012

ATTENDANCE

A regular meeting of the Sumter City – County Planning Commission was held on Wednesday, November 28, 2012, in the Planning Department Conference Room located in the Liberty Center at 12 W. Liberty St. Seven board members – Mr. Jay Davis; Mr. Burke Watson; Mr. Dennis Bolen; Mr. Charles Segars; Mr. David Durham; Ms. Constance Lane; Ms. Sandra McBride – and the secretary were present. Mr. Jimmy Davis was absent. The meeting was called to order at 3:00 p.m. by Mr. Jay Davis.

MINUTES

Mr. David Durham made a motion to approve the October 24, 2012, minutes as presented. The motion was seconded by Ms. Sandra McBride and carried a unanimous vote.

Mr. David Durham made a motion to amend the agenda to move SN-12-01, Corkscrew St./Cutleaf Dr. to the first item on the agenda. The motion was seconded by Ms. Constance Lane and carried a unanimous vote.

NEW BUSINESS

Chairman Jay Davis opened the Public Hearing portion on the meeting.

SN-12-01, Corkscrew St. / Cutleaf Dr. (City)

Ms. McCullum presented this request to change the name of the public street which serves as the entrance to the Willows Subdivision from Corkscrew St. to Cutleaf Dr. in an effort to simplify giving direction to residences within the subdivision. She stated the subdivision has been completely built-out and although two parcels have frontage on Corkscrew St., no parcels have been addressed off of the street nor have any driveways been located on the street. Ms. McCullum stated approval for the change has been granted by the Auditor's Office, E-911 and County Mapping. Mr. James Harley was present to speak on behalf of this request. There was no one present to speak against the request. The public hearing was closed.

After a brief discussion, Mr. Burke Watson made a motion to approve this request as presented. The motion was seconded by Mr. Dennis Bolen and carried a unanimous vote.

OA-12-14, Adult Uses and Sexually Oriented Businesses (City)

Mr. George McGregor presented this request to amend the City Zoning and Development Standards Ordinance, including, but not limited to Articles III, IV, V, VIII, and X related to the regulation of Adult Uses and Sexually Oriented Businesses. Amendments proposed relate to use permissibility in certain zoning districts; definitions; supplemental regulations; and parking. Mr. McGregor stated the City has asked the Planning Staff to review all of our local zoning ordinances and business license ordinances relating to adult uses and sexually oriented businesses. The City has engaged an out-of-town counsel, the law office of Scott Bergthold, as well as local counsel Murrell Smith, to help recommend changes to the zoning ordinance. The amendments are intended to dovetail with a comprehensive sexually oriented business licensing and regulatory ordinance City Council considered at First Reading on November 20, 2012. The proposed changes are intended to strengthen the City's protections against the negative secondary effects of sexually oriented businesses. Mr. McGregor turned the meeting over to Mr. Bryan Dykes, with the law office of Scott Bergthold, who joined the meeting by conference call.

Mr. Dykes stated that they were talking about recommended amendments to the City's zoning regulations relating to adult uses and sexually oriented businesses. He stated any law that regulates adult entertainment or sexually oriented businesses has to be adopted not based on moral opposition to a particular form of expression, but based on the documented negative secondary effects that are associated with the class of land use. Mr. Dykes referenced the Supreme Court Case of *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 51-52 (1986) (legislative secondary effects information need not be local). In 1986, the Supreme Court said that a city can adopt regulations based on the documented experiences of other jurisdictions as long as whatever the City relies upon is reasonably believed to be relevant to the negative secondary effects the city is trying to prevent. Mr. Dykes stated there was a wide variety of sources for secondary effects and gave the following list:

1. Land Use Reports
2. Crime Impact Reports
3. Judicial Opinions
4. Expert Reports
5. Anecdotal Data

Mr. Dykes further stated there are various types of secondary effects and lists the following:

1. Negative impacts on surrounding properties
2. Personal and property crimes, public safety risks, confrontations
3. Lewdness, public indecency, illicit sexual activity and potential spread of disease
4. Illicit drug use and trafficking
5. Litter, aesthetic impacts, traffic, noise, blight

Mr. Dykes further stated that the legislative findings that are identified in the proposed ordinance are that sexually oriented businesses, as a broad category of land use, are associated with a wide range of adverse secondary effects including but not limited to these kinds of effects including public and property crimes. This means the city is looking at and dealing with a category of establishments. The city does not have to prove these effects are happening locally or that there is a problem with any particular business at the time. Instead, the city is justified in relying on the experiences of other communities. Listed below is a list of cases that will support the city with the amendment of its zoning regulations for sexually oriented businesses:

1. *Renton v. Playtime Theatres, Inc.*, 475 U.S. 41, 54 (1986) (holding cities may restrict where adult businesses operate but not effectively deny them a reasonable opportunity to do so)
2. *Illinois One News, Inc. v. City of Marshall*, 477 F.3d 461 (7th Cir. 2007) (upholding location restriction on adult bookstore because land elsewhere in city provides adequate alternative)
3. *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007) (upholding zoning adult businesses to industrial zone)
4. *Tollis, Inc. v. County of San Diego*, 505 F.3d 935 (9th Cir. 2007) (upholding zoning that isolates adult businesses to industrial zones; reasonable to assume that will patrons would not be discouraged by inconvenience of having to travel to industrial zone)
5. *Plaza Group Properties v. Spencer County*, 877 N.E.2d 877 (Ind. Ct. App. 2007) (upholding rule that sexually oriented businesses be at least 1,000 feet away from churches, schools, residences, and other sensitive land uses)

Mr. Dykes continued by stating that it is common knowledge and experience that alcohol tends to make problems worse. He referenced an expert report by Richard McCleary, Ph.D., a criminology professor who studies crime and the factors that increase crime risks. The report notes that alcohol aggravates the high crime risks that sexually oriented businesses impose because it clouds the judgment and it lowers inhibitions. When strip clubs have access to alcohol, they tend to be more likely to engage in unlawful activity or be victims of crime. While the zoning amendments do not specifically address alcohol, the cases in the record recognize that regulating sexually oriented businesses is a simple way to address negative secondary effects, including those that alcohol can exacerbate. Mr. Dykes referenced the following cases where the courts supported the ban on the sale/consumption of alcohol at sexually oriented businesses:

1. *Flanigan's Enterprises v. Fulton County*, 596 F.3d at 1282 (2010)
2. *Richland Bookmart, Inc. v. Knox County*, 555 F.3d at 532 (2009)
3. *Daytona Grand, Inc. v. Daytona Beach*, 490 F.3d at 882 (2007)

He stated that in these cases, the courts recognize that governments

have an interest, that if served, by reducing the negative secondary effects by separating alcohol and adult establishments.

Mr. Dykes stated that the following is a list of cases that support various other kinds of adult business regulations:

1. *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986) (upholding location restriction for adult theaters)
2. *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 774 (2004) (upholding sexually oriented business licensing ordinance as applied to retail-only adult bookstore)
3. *H & A Land Corp. v. City of Kennedale*, 480 F.3d 336 (5th Cir. 2007) (holding that Indianapolis and Oklahoma City studies justify regulation of retail adult bookstore)
4. *Flanigan's Enterprises v. Fulton County*, 596 F.3d 1265 (11th Cir. 2010) (alcohol ban)
5. *Peek-A-Boo Lounge v. Manatee County*, 630 F.3d 1346 (11th Cir. 2011) (nudity prohibition, interior configuration, alcohol ban, licensing)
6. *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007) (zoning, nudity prohibition, and alcohol prohibition)
7. *Artistic Entm't, Inc. v. City of Warner Robins*, 331 F.3d 1196 (11th Cir. 2002) (licensing and alcohol ban)

Mr. Dykes stated the next three cases address the retail only type of adult stores designed where people go in and buy a retail product and takes it home with them:

8. *World Wide Video of Washington, Inc. v. City of Spokane*, 368 F.3d 1186 (9th Cir. 2004) (upholding regulation of retail-only adult stores)
9. *Richland Bookmart, Inc. v. Knox County*, 555 F.3d 512 (6th Cir. 2009) (upholding secondary-effects regulation of retail adult bookstore)
10. *High Five Investments, LLC v. Floyd County*, No. 4:06-CV-190, R. 128 (N.D. Ga. Mar. 14, 2008) (upholding regulation of retail-only store through licensing with set-back provision)

He stated the record also includes studies and reports that identify various negative secondary effects of adult businesses that have been documented in large and small cities from across the country. Mr. Dykes referenced the following list of cases:

1. Tucson, Arizona (illicit sexual behavior in adult bookstore)
2. New York, New York (adverse impacts on surrounding properties)
3. Garden Grove, California (ambient crime risk)
4. Houston, Texas (illicit sex acts)
5. McCleary Expert Report (2008 Jackson County, MO report) (refuting industry experts)
6. Oklahoma City, Oklahoma (adverse impacts on surrounding properties)
7. Memphis, Tennessee ("Lewd, nude, and under review" and

nuisance articles, plea documents)

8. Fulton County, Georgia (secondary effects documents discussed in *Flanigan's* 2010 case)
9. Manatee County, Florida (affidavits re: illicit sex acts and alcohol law violations)
10. Spokane, Washington (secondary effects of retail adult bookstores)
11. Hillsborough County, Florida; Metropolis, Illinois (investigator affidavits)

Mr. Dykes stated that the experts that look at secondary effects and sexually oriented businesses made the following observations that are useful in this context:

1. Finding of secondary effects from sexually oriented businesses is scientifically robust, being confirmed in wide variety of data sources
2. Sumter has a substantial government interest in regulating adult businesses to prevent the identified negative secondary effects
3. Industry "studies" violate methodological rules: CFS (calls for service) are weakly correlated to actual crime; Most vice crimes never result in CFS; *See Daytona Grand & 5634 E. Hillsborough*
4. All subclasses of sexually oriented businesses, including retail-only stores, have secondary effects

Mr. Dykes referenced the following cases that rejected the industries counter challenges to adult business regulations:

1. *City of Erie v. Pap's A.M.*, 529 U.S. 277 (2000) (Linz)
2. *Daytona Grand, Inc. v. City of Daytona Beach*, 490 F.3d 860 (11th Cir. 2007) (Linz, Fisher)
3. *SOB, Inc. v. County of Benton*, 317 F.3d 856 (8th Cir. 2003) (Linz)
4. *Gammoh v. City of La Habra*, 395 F.3d 1114 (9th Cir. 2005) (Linz)
5. *G.M. Enterprises, Inc. v. Town of St. Joseph*, 350 F.3d 631 (7th Cir. 2003) (Linz)
6. *World Wide Video of Washington v. Spokane*, 368 F.3d 1186 (9th Cir. 2004) (McLaughlin)
7. *Fantasy Ranch, Inc. v. City of Arlington*, 459 F.3d 546 (5th Cir. 2006) (Morris)
8. *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996 (9th Cir. 2007) (Linz, Goldenring)
9. *High Five Investments, LLC v. Floyd County*, No. 4:06-CV-190, R. 128 (N.D. Ga. Mar. 14, 2008) (McLaughlin)
10. *Peek-A-Boo Lounge v. Manatee County,* 630 F.3d 1346 (11th Cir. 2011) (Fisher, Danner)

Mr. McGregor stated the proposed amendment would permit all adult businesses by right (no conditional or special exception review) in the Heavy Industrial (HI) and Light Industrial-Warehouse (LI-W) zoning districts with established separation standards from sensitive land uses

such as homes, schools, parks churches, etc.

After some discussion, Mr. Dennis Bolen made a motion to recommend approval of this request as presented. The motion was seconded by Ms. Constance Lane and carried a unanimous vote.

PD-03-11 (Rev. 4), The Arbors (City)

Ms. McCullum presented this request to amend the Planned Development (PD-03-11: Rev. 3) in order to allow for the combination of lots in the subdivision. She stated the Planned Development has not developed as well as expected, therefore the applicant would like to have the option of combining two lots for one house, or combining three lots and re-subdivide into two lots to allow for two houses. This would create larger lots and less density. Mr. Talmadge Tobias was present to speak on behalf of this request. After some discussion, Mr. David Durham made a motion to recommend approval for this request. The motion was seconded by Mr. Charles Segars and carried a unanimous vote.

OA-12-11 and OA-12-12, Traffic Impact Studies (City/County)

Mr. George McGregor presented this request to amend Article 7, Section 7.d.10. *Traffic Studies for Major Subdivision and/or Site Plan.* He stated this Ordinance Amendment is intended to bring the local TIS requirements into alignment with SCDOT Standards in order to prevent a potential developer from having to complete two separate and different TIS studies for the same project.

Mr. Carl Croft and Mr. Mack Kolb expressed their concerns about this ordinance amendment being more restrictive than SCDOT.

After more discussion, Mr. Burke Watson made a motion to send this request back to the Ordinance Subcommittee for further study and review. The motion was seconded by Mr. David Durham and carried a unanimous vote.

MSP-12-51/HCPD-12-38, 6090 Myrtle Beach Hwy. (County)

Ms. Claudia Rainey presented this request for Major Site Plan and Highway Corridor Protection District review approval for the construction of a new fire station and the conversion of the old station into an EMS Facility on property located at 6090 Myrtle Beach Hwy. near Dabbs Crossroads. There is a residence relatively close to the site and there is no screening between the two uses. The proposal includes current cross-over and install two new cross-overs in the median on Myrtle Beach Hwy. Ms. Rainey stated that staff would like to see as much of the natural habitat preserved as possible during construction. She stated the following items need to be submitted:

- landscape plan showing changes recommended by staff;

- Approved Stormwater Plan
- SCDOT Encroachment Permit

Mr. Charles Segars stated that it appears as though the footprint of the building crosses Mollywoods Lane which is a deeded easement.

Mr. Scott Bell was present to speak on behalf of this request and stated he and the applicant are in agreement with staff's recommendations. He stated that the applicant is in the process of purchasing the property from the property owner and is aware of Mollywoods Lane being a deeded easement. It is being negotiated as part of the purchase agreement to reopen the abandoned road to the right of Mollywoods Lane to have access to the hunting club.

After some discussion, Ms. Sandra McBride made a motion to approve this subject to the submitted site plans titled, "Renovations to Dabbs Fire Station #19," prepared by RS Bell Architects LLC dated 11-01-2012; sheets L-1, S-2, A-6 and the following staff recommendations:

- All natural woods on site are to be preserved and protective barrier installed around perimeter except where building footprint, driveways, parking area and elements such as retention ponds, wells, septic system etc. are to be located.
- Although the exterior of the building does not meet the requirements of the highway corridor, the preservation of the wooded areas will buffer this site significantly and reduce the need for much of the landscaping that would be required if the entire site were to be cleared. Protection of the forested area is a significant trade-off environmentally and should be encouraged. Additionally, the forest areas will help screen the site from view and lessen the visual impact that materials such as metal siding may have.
- Landscaping plan is resubmitted showing changes recommended by staff.
- An approved Stormwater Plan
- SCDOT Encroachment Permit

RZ-12-09, 755 Electric Dr. (City)

Ms. Donna McCullum presented this request to rezone a +/- 5.09 parcel located at 755 Electric Dr. from Heavy Industrial (HI) to Light Industrial-Warehouse (LI-W) in order to construct an in-patient psychiatric mental hospital that will have the potential to offer out-patient counseling/mental health services. The site is directly across the street from the SC Department of Disabilities & Special Needs Office which is the state agency which funds this type of facility. After some discussion, Mr. David Durham made a motion to recommend approval for this request. The motion was seconded by Mr. Burke Watson and carried a unanimous vote.

	SD-12-02, Lee's Preserve (County) Mr. George McGregor presented this request for preliminary plat approval to develop a large lot 35 unit (plus open space areas) residential subdivision on the west side of Loring Mill Rd., north of Wise Dr./Patriot Parkway. He stated there are multiple zoning districts on the property, however, the preliminary subdivision has no constraints associated with those districts. The 2030 Land Use Plan is important in this particular situation; the Land Use Plan has this particular property in our Military Protection planning area, but large lot subdivisions are supported under the plan. Mr. Mack Kolb was present to speak on behalf of this request. After a brief discussion, Mr. Burke Watson made a motion to approve this request as presented The motion was seconded by Mr. Charles Segars and carried a unanimous vote.
DIRECTOR'S REPORT	NONE
ADJOURNMENT	With no further business, Mr. Burke Watson made a motion to adjourn the meeting at approximately 4:10 p.m. The motion was seconded by Mr. Charles Segars and carried a unanimous. The next regularly scheduled meeting is December 19, 2012.
	Respectfully submitted, *Wanda F. Scott* Wanda F. Scott, Planning Secretary