

Sumter City-County Planning Commission

April 23, 2014

OA-14-04, Private Street Access for Large Lot Subdivision (County)

I. THE REQUEST

Applicant: Harry Ives

Request: Request to amend relevant portions of Article 7, Article 8, and Article 10 related to subdivision access provisions and clarification of private easements for large lots, in order to allow private street access for new residential subdivision lots in excess of 5 acres.

II. BACKGROUND

The Applicant, Mr. Harry Ives, has indicated that he has an option on approximately 45 acres on Byrd St., off of Camden Highway, in the County. He wishes to subdivide the property into 5 lots ranging in size from 5 acres to 15 acres. Byrd St. is a private, dirt road approximately 7,000 feet in length, with variable travel width averaging 20 feet and variable total right of way. Byrd Rd. is not a public street, having never been accepted by action of the Sumter County Council. Byrd St. serves 21 existing parcels and falls within 7 distinct parcels (based on GIS data-NOT based on a bone fide survey).

Mr. Ives (through local real estate representation) requested subdivision approval in November of 2013. The Zoning Administrator responded with a zoning determination stating the subdivision could not be approved¹. Because the street is private, new or additional subdivision of lots (of any size) are not permitted under the County Zoning Ordinance. New subdivision of lots could only take place ***IF*** the road was upgraded to public street standards and accepted by the County. (See page 3 for a plat of the Byrd St. subdivision).

The County does allow access easements/private streets meeting the lifetime family transfer and conveyance from a parent to child. After 5 years, these lots may be sold to anyone. The Ordinance also provides for an upgrade to private rural community drives once those family transfers are sold after 5 years. The Applicant's request would expand the use of these private streets.

Mr. Ives is asking the County to amend the ordinance to allow regular, market rate, large lot subdivision of 5 acres or more on private streets (either on new private streets or on existing private streets). This would apply to Byrd St. and other private streets in the County.

¹ Zoning Determination Letter December 9, 2013.

State Law and the Zoning Ordinance provide for a subdivision exemption for parcels over 5 acres when no new street is involved. This means primarily that there is no subdivision review or approval by Staff or the Planning Commission. Owners submit the lots for information only and may proceed to the courthouse to record the lots. The exemption does not apply here as a new street is required—due to the fact that the existing dirt road is non conforming, that no new lots can be approved on it, and that a new street must be constructed meeting public street requirements of County.

Access issues really are at the heart of the matter. The ZO states a parcel is exempt if no new street is involved: yet it also requires “*all streets to be public*” and “*all lots to be accessible*” by a public street—or a private street PD, or a rural community drive. Thus the direction is provided is clear: no development of private easements or streets unless when used in rural family situations or planned developments.

One challenging factor relates to existing private roads in the county which may not contain current easements and has unknown ownership. The draft recommendation can easily apply to new private development. However, the subdivision on existing private streets, with some lots already present, make limits more difficult.

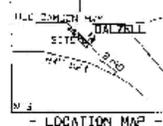
The Planning Commission reviewed some of these subdivision access issues and provided recommendations to County Council under OA 11-03 in June of 2011². County Council took the matter up in committee but did not move beyond this committee-level discussion.

As part of the Applicant’s request we have added recommendations related to access for agricultural large lots.



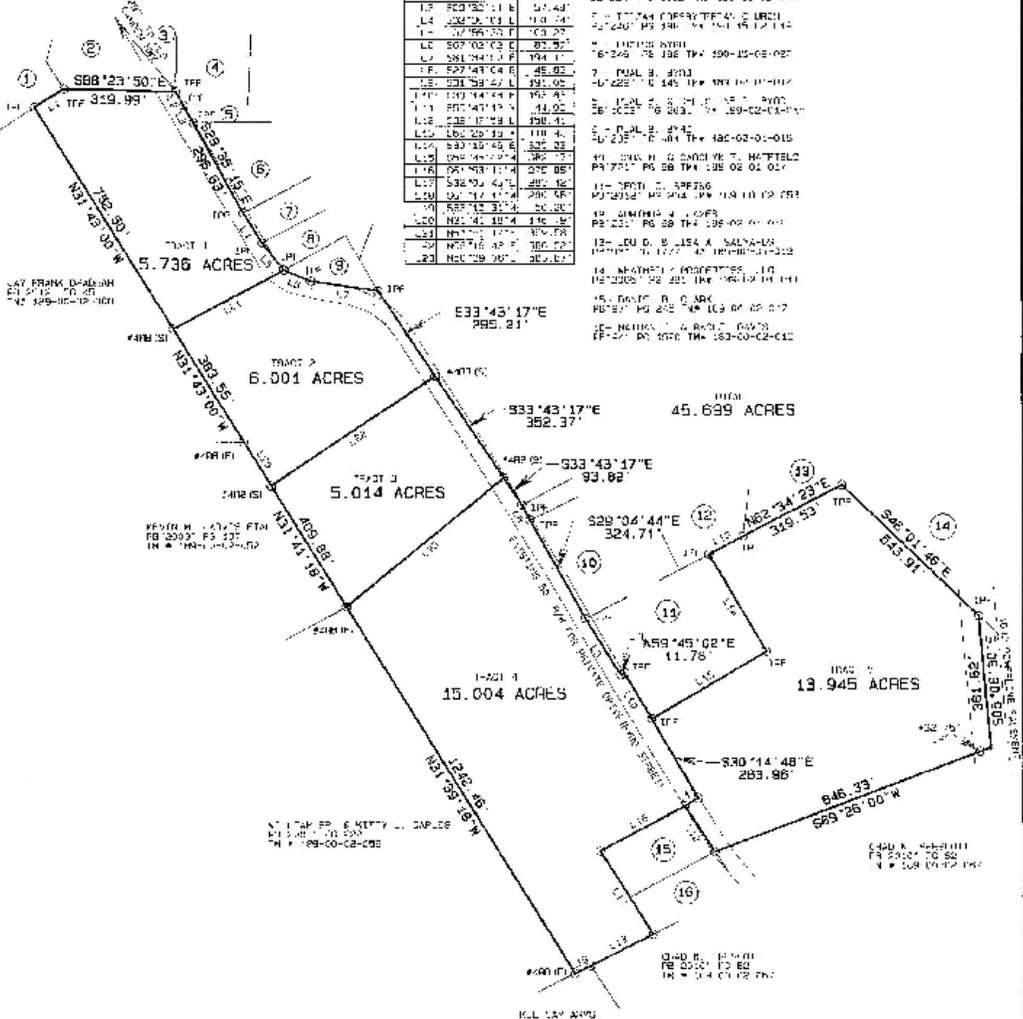
Byrd St., Sumter County

² Sumter City-County Planning Commission Staff Report, June 22, 2011.



LINE	BEARING	DISTANCE
L1	S88°23'50\"	319.99'
L2	S88°23'50\"	319.99'
L3	S88°23'50\"	319.99'
L4	S88°23'50\"	319.99'
L5	S88°23'50\"	319.99'
L6	S88°23'50\"	319.99'
L7	S88°23'50\"	319.99'
L8	S88°23'50\"	319.99'
L9	S88°23'50\"	319.99'
L10	S88°23'50\"	319.99'
L11	S88°23'50\"	319.99'
L12	S88°23'50\"	319.99'
L13	S88°23'50\"	319.99'
L14	S88°23'50\"	319.99'
L15	S88°23'50\"	319.99'
L16	S88°23'50\"	319.99'
L17	S88°23'50\"	319.99'
L18	S88°23'50\"	319.99'
L19	S88°23'50\"	319.99'
L20	S88°23'50\"	319.99'
L21	S88°23'50\"	319.99'
L22	S88°23'50\"	319.99'
L23	S88°23'50\"	319.99'

- PROPERTY OWNERS
- 1. J. C. ...
 - 2. ...
 - 3. ...
 - 4. ...
 - 5. ...
 - 6. ...
 - 7. ...
 - 8. ...
 - 9. ...
 - 10. ...
 - 11. ...
 - 12. ...
 - 13. ...
 - 14. ...
 - 15. ...
 - 16. ...
 - 17. ...
 - 18. ...
 - 19. ...
 - 20. ...



GRAPHIC SCALE 1"=300

0 300 600 900

NOTE: SUMNER COUNTY HAS NO MAINTENANCE RESPONSIBILITY FOR BYRD STREET PRIVATE DRIVE, BUT AGREES TO COURTESY SCRAPE THE DRIVE NOT TO EXCEED THREE INSTANCES PER YEAR AS REQUESTED.



SUBDIVISION SURVEY FOR:

TURBEVILLE'S BYRD TRACT

PROVIDENCE TOWNSHIP SUMNER COUNTY

TAX MAP # 189-00-02-066

REFERENCES: PB'2010' PG 82

SCALE: 1" = 300' DATE: 11/20/2013

HUEL G. BAILEY
 SURVEYOR
 120 P & H 106
 601 7511 S.W. 25th St.
 RD 30 428-3324

III. ZONING ORDINANCE CONSIDERATION

1. **Access to agricultural lands and timber parcels.** There is no specific guidance in the zoning ordinance providing for legal access to land locked agricultural or timber parcels. We propose a simple change which permits these parcels of 10 acres or more be served by a 15' private access easement and driveway, shown on a plat or described in a deed, so long as no primary residential or commercial uses exists on the property. The Zoning Ordinance Review committee (June 17, 2011) suggested that at a minimum a written statement of approval from the property owner(s) could be provided in lieu of a bone fide easement. We recommend adding a section g. to 8.e.13:

g. Agricultural and Timber parcels of 10 acres or more which do not have frontage on a public street may be served via a minimum 15' private access easement. No primary residential or commercial use is permitted on the property. In the alternative access may traverse adjacent properties with the written approval of all property owners.

1. *The subdivision of property pursuant to specific directions for the divisions of the property set out in a will executed prior to the effective date of the Subdivision Ordinance adopted as Ordinance 1287 on December 1, 1991 in the City of Sumter, and November 12, 1999 in the County of Sumter.*

2. **Private Access for Large Lot Residential.** Today the County permits private access streets and easements only for lifetime family transfers. If the property is sold outside of the lifetime family transfer within 5 years, it must be upgraded to a rural community drive. After 5 years the lifetime family transfer may be sold outside of the family and the private access easement (rural community drive) may remain in place.

Yet, over the years, the development community has expressed some interest in permitting, what we have called rural community drives (I have used the term interchangeably with private access easements/streets), for large lot residential properties. So we have discussed the possibilities of allowing private drives to serve large market rate lots of 5 acres or more.

This would be an extraordinary step for the County who has strictly allowed private streets only to accommodate family transfer subdivision.

From a Planning perspective Staff has no particular objection to this concept in the abstract. Private streets access easements are used in other peer South Carolina counties, serving large rural lots. But, in practice, there are a number of details that must be resolved in order to protect both future homeowner and the community at-large.

If considered by the Planning Commission and County Council for approval, we would recommend clear guidelines similar to the current rural community drive language. We recommend a limitation on the number of lots served and a minimum lot size for market rate development consistent with what Mr. Ives requests at 5 acres. We recommend the

restrictive covenants accompany the subdivision application and a formal maintenance agreement; that each be reviewed by the County Attorney. The size recommendation is based in the fact the higher the land costs, the more likely the quality of the development and the surety of the private access agreement.

It must be noted for the record that the County Council has long been concerned over the prospect of permitting private drives, only to be pressured later by constituents for public acceptance. This is a legitimate concern echoed by the County Director of Public Works and the Sumter City-County Fire Chief. If private streets are approved in this manner, we think this works best by expanding the scope of the Rural Community Drive section of the ordinance:

Section 8.e.1.c.2 of the Zoning Ordinance would be amended in relevant part:

2. Rural Community Driveways (RCD) shall be allowed **only** in the unincorporated areas of Sumter County when serving **no more than five** lots.
 - a. The Rural Community Driveway (private street w/ public access easement) may serve subdivisions related to lifetime family transfers as defined in Article 10 and shall serve market rate subdivisions;
 - b. The private street easement shall be clearly shown on the subdivision plat;
 - c. That such lots shall be not less than five (5) acre in size and be no less than 125 feet wide at the building line for market rate lots; Such lots shall not be less than one (1) acre and be no less than 125 feet wide for lifetime family transfers;
 - d. That the private street shall be privately maintained and owned by all property owners, and shall be accessible to each lot so created, and to a public street;
 - e. That access, ownership and maintenance of the private street be the sole responsibility of the affected property owners, and so stated in restrictive covenants accompanying the sale and/or transfer of each lot, and so noted in the capital letters on the deed of record, as follows: “The private street providing access to lots in this subdivision is privately owned and is not maintained by Sumter County nor the City of Sumter, nor is it likely to be maintained in the future. Owners of lots in this subdivision are financially obligated to maintain this street for the benefit of all property owners in the Subdivision.”
 - f. The restrictive covenants shall refer to the plat required for recording;
 - g. That further subdivision of lots shown on the plat shall be prohibited by the restrictive covenants, except the provisions of this Section shall not prohibit adjustments in lot lines which do not reduce the size of any

affected lot to less than one (1) acre, and where no additional lot is created.

- h. That the restrictive covenants shall provide that they not be amended or modified except by written consent of the Sumter City-County Planning Commission (or any other successor organization) and all property owners in the subdivision;
- i. That the restrictive covenants shall require that any deed conveying an interest in any lot in the subdivision shall conspicuously contain the following language with an appropriate space for a signature by the grantee or grantees acknowledging same. **“The real property described in this deed is subject to restrictive covenants recorded in Deed Book ___ at page _____. These restrictive covenants provide, among other things, a financial commitment to maintain a community driveway. These restrictive covenants are specifically acknowledged by the grantee(s).”**
- j. That the plat required for recording be prepared in accordance with the plat approval requirements for minor subdivisions;
- k. That the easement containing the private street shall not be less than fifty (50 ft.) feet wide and the lot shall meet minimum width requirements for the district. Roadbeds shall have an all-weather surface of crusher-run of not less than fifteen feet (15 ft.) for family subdivisions and twenty feet (20 ft.) for market rate in width and a 50 foot radius cul-de-sac at the end of the right-of-way for emergency vehicle turnaround. In addition, for market rate development:
 - Road shall be an all weather surface with a base at least 4 inches thick of compacted stone
 - Road shall have a cul-de-sac terminus with a 50 ft. radius
 - Road shall not exceed 1200 ft. in length
 - Road shall adequately address drainage and stormwater management
 - Road design plans shall be approved by the County Director of Public Works
- l. That the owner shall conspicuously place and maintain on the private street all traffic control signs and a street name sign showing the RCD as a private driveway.
- m. That the uses for property on an RCD shall be residential (as allowed by zoning district) and Home Occupations only.
- n. That the private street shall be maintained by all adjacent property owners. If Sumter County incurs any costs to maintain the road, those costs shall

be a lien on all lots on the RCD and that those costs will be allocated equally among the lots and added to the ad valorem taxes on those lots.

- o. If any lot on a RCD is voluntarily transferred as limited by subsection a. above outside the family within the 5 years following the final inspection of the dwelling on the final lot, the RCD shall be upgraded to a road that meets all Sumter County standards to be accepted into the County Road System or as a private street consistent with the standards set forth in this section.. After 5 years, the RCD may remain as is for property transfer.
- p. If a lot is transferred as described above, it must be approved as a minor subdivision with review by the City-County Planning department.
- q. All plat documents, restrictive covenants, easements, maintenance agreements, and or other legal plats and documents shall be reviewed and approved by the Sumter County Attorney.

IV. STAFF RECOMMENDATION

Staff is previously on record as supporting the concept of private street development for large lot rural subdivisions. We continue to support this idea, especially for new subdivision development on new private streets.

Unfortunately, the issue as applied to Byrd Street or any other preexisting, nonconforming, dirt or gravel private street in the County is more problematic. Byrd St. is unquestionably in poor condition due to ruts, narrow width, intermittent flooding, and other design flaws. It was established prior to modern land use regulations. To allow more subdivision on Byrd St.. without any upgrades to the street seems irresponsible, from a public policy perspective. On the other hand, without upgrades, no subdivision can ever take place on the 7,000 ft. road which connects Old Camden Highway to 521.

There is potential, we estimate, for up to 15 additional 5 acre lots fronting on Byrd St. If built out, a total of perhaps as many as 25-30 homes would access Byrd St. The poor dirt surface cannot absorb the additional trips without further, massive degradation. The street, as difficult to pass today, would be virtually impossible for public safety vehicles to access. This is not to mention the irregularity of the intersection with Old Camden Highway, which, according to previous conversations with SCDOT, requires some realignment.

So, where does this leave us? This is a two level review it would seem: 1) Should we permit private streets for large lot, market rate development? 2) If yes, then what precautions (limitations) are necessary to ensure the public health safety and welfare?

Staff has reached out to the applicant (April 10 and April 15) requesting an Applicant's perspective on some of these issues such as number of lots, lot size, and most critically, road surface improvement minimums. Additionally, there remain other complex matters related to maintenance responsibilities, the matter of what to do with existing property owners who access Byrd St., and

proof of absolutely secured right of way. For Byrd St., it is not clear what exactly the Applicant is willing to proffer, if any, related to improvements to the street. As of the time of publication we have not received that input.

For existing private streets, it may be best, if new subdivision on private streets is supported by the Commission and Council, that individual review takes place with final approval, including development conditions, at the Planning Commission. The Commission would review relevant facts including but not limited to, condition of road, total number of trips, input from public safety and public works, and surrounding resident notification.

V. PLANNING COMMISSION – APRIL 23, 2014

The Sumter City-County Planning Commission at its meeting on Wednesday, April 23, 2014, voted to recommend denial of this request.

VI. COUNTY COUNCIL – MAY 13, 2014 – FIRST READING