

The regular monthly meeting of the Beaufort County Zoning Board of Appeals was held on Thursday, September 24, 2009, in Council Chambers, Beaufort County Administration Building, at 100 Ribaut Road, Beaufort, South Carolina.

MEMBERS PRESENT

Mr. Thomas Gasparini, Chairman
Mr. Edgar Williams, Vice Chairman
Mr. Chester Williams

Mr. Phillip LeRoy
Mr. Timothy Rentz

MEMBERS ABSENT

Mr. Claude Dinkins
Mr. Kevin Mack

STAFF PRESENT

Ms. Hillary Austin, Zoning Administrator
Mr. Tony Criscitiello, Planning Director
Mrs. Lisa Glover, Zoning Analyst III

CALL TO ORDER: Mr. Gasparini called the meeting to order at 5:05 p.m.

PLEDGE OF ALLEGIANCE / MOMENT OF SILENCE: Mr. Gasparini led those assembled in the Pledge of Allegiance, and a moment of silence in honor of our country's military service members.

ADOPTION OF AGENDA:

MOTION: Mr. Chester Williams made a motion to adopt the agenda as submitted. Mr. Edgar Williams seconded the motion. The motion passed unanimously (FOR: Gasparini, LeRoy, Rentz, C. Williams and E. Williams).

ADOPTION OF MINUTES: Mr. Gasparini stated, that since there's not a quorum to adopt the July 23rd, 2009 minutes, the minutes will be adopted at the next scheduled meeting. Mr. Gasparini also stated, that the minutes from the August 27th, 2009 meeting will be adopted at the next scheduled meeting.

Mr. C. Williams stated, that he would like to make a correction to the July 23rd, 2009 minutes; on page 1, it states, "Mr. C. Williams recused himself from this appeal application". Mr. Williams stated to add, that he also stepped down from the platform and left the room.

LINDLY B. MINGLEDORFF'S (ADMINISTRATIVE & VENUE APPEAL)

Mr. Gasparini stated, that items 5 & 6 are both appeals, and he would like to state for the record, in the last two or three meetings, he and Mr. Chester Williams represented the appellant Mr. Mingledorff in a professional capacity, and both he and Mr. Williams will be recusing themselves from this appeal application. Mr. Gasparini stated, that at this time he's going to turn the gavel over to the Vice Chairman, Mr. Edgar Williams, and he and Mr. Chester Williams are going to step down from the platform and leave the room; once the application is heard, they will return back to the hearing.

Mr. E. Williams stated, that since there's not a proper quorum, this appeal application has to be heard at the next scheduled meeting.

MOTION: Mr. Rentz made a motion to table this appeal application until next month, due to the lack of a quorum. Mr. LeRoy seconded the motion. The motion passed unanimously (FOR: LeRoy, Rentz, and E. Williams; RECUSED: Gasparini, C. Williams).

Mr. Gasparini & Mr. Chester Williams returned back to the meeting; Mr. Edgar Williams gave the position of chair back to Mr. Gasparini.

Mr. Rentz recused himself for the next application, because he is the applicant for Ernest Drive Mine (Special Use request).

ERNEST DRIVE MINE (SPECIAL USE/REVISIT)

Mr. Criscitiello explained to the board, that on October 16th, 2009, the applicant appeared before the Development Review Team for a recommendation and approval to appear before the Zoning Board of Appeals on a special use application, for a mine extraction activity in the Rural-zoning district on St. Helena Island. Mr. Criscitiello stated, that the Development Review Team recommended approval, subject to several conditions listed on the staff report. Mr. Criscitiello read into the record the Development Review Team's staff report, dated September 15, 2009, which stated, "(1) Applicant shall submit the Wetland Delineation letter from the Army Corp of Engineer, prior to the ZBOA meeting. (2) Applicant shall submit a letter from DHEC, stating that the General Mining Permit, which expired on May 31, 2009, is still valid, prior to the ZBOA meeting. (3) Applicant shall agree to keep the haul road in passable condition, which accommodates emergency vehicles. (4) Applicant shall submit an end-use plan at DRT's final review, which shows that all criteria for a subdivision have been met, which would eliminate the need for variances at the time of development. (5) Applicant shall submit the Cost Estimate for the mine reclamation at DRT's final review. This cost estimate will be approved by the County Engineer. (6) PLEASE NOTE: Any improvement proposed for the existing curb cut will require an Encroachment Permit from the County Engineer, and be submitted for the DRT's final review. (7) Time limit for two-years. If dirt will be used for anything other than state road projects, the applicant shall submit a mining permit from DHEC". Mr. Criscitiello stated, with those conditions and findings of the Development Review Team in preparation of today's meeting, this project is consistent with the comprehensive plan, based on the fact that

the proposed use is allowed in the use table, provided that the special use conditions are met. The required buffers of 100 feet along the residential uses and zoning will be provided, and the mining activity will only continue for a two-year period of time. The applicant will bring any substandard roads up to acceptable county standards, and the applicant shall be required to fence the area, if water is to remain in the pond for a period of time of more than one day; every 25 foot along the length of fence will have signs posted, that there's no trespassing allowed on property. The site will be bermed or walled, to ensure the maximum noise at the property line does not exceed 65 decibels, and the activities will only operate between the hours of 6:30 a.m. and 6:30 p.m., Monday – Friday, and occasionally on Saturdays. The applicant shall submit a Community Impact Statement, which provides for all environmental conditions. The applicant shall also submit a site plan that shows the location of the borrow pits, the property setbacks, and the natural resource areas, all of which have already been submitted to the Development Review Team for review. Mr. Criscitiello stated, that the Development Review Team recommends approval of this special use request, based on those conditions outlined in the staff report.

Mr. E. Williams asked Mr. Criscitiello, "Is the two-year time frame the extent of the project?"

Mr. Criscitiello answered, "To my understanding, the project will only be for two years; if the project continues for more than two years, the buffers will have to be increased to 400 feet instead of 200 feet".

Mr. E. Williams asked Mr. Criscitiello, "Are there any safety concerns that need to be rectified?"

Mr. Criscitiello answered, "There are no safety concerns that I'm aware of".

Mr. LeRoy asked Mr. Criscitiello, "When will the two years start?"

Mr. Criscitiello answered, "From the time the Development Review Team grants final approval".

Mr. C. Williams stated, that the proposed pond area on two sides of the pond shows a 100-foot setback; and he's puzzled with the condition that states, if the pond is not completed within two years, the buffer would have to be increased to 400 feet. Mr. Williams stated, that it appears that if the buffer is increased to 400 feet, nothing could be constructed on the lots.

Ms. Austin stated, that the reason why the applicant went with the two-year limitation, was because they knew they would not be able to meet the 400-foot buffer requirement of the zoning ordinance.

Mr. Gasparini stated, that he's also concerned with the safety conditions around the pond.

Mr. Michael Brock with Ward Edwards Engineering Company explained to the board, that they had to place an easement around the drainage ditches; and in addition to the easement, it is also an 8-foot high, 20-foot wide vegetated berm. The buffer has to start at the easement and not the property line. Mr. Brock stated, that the large area of open space/green space is heavily dense with hardwood and pine trees, and it will help to alleviate some of the noise. Mr. Brock stated, that there shouldn't be a concern with the noise levels and hours of operation, because according to Dhec's permit, work can only be conducted between the hours of 6:30 a.m. and 6:30 p.m., they usually stop work at approximate 5:30 p.m. Monday – Thursday, and 4:30 p.m. on Friday. Mr. Brock stated, that this dirt is only for state roads, they cannot use it for a construction site to dig a hole or anything like that; if they want to use the dirt for anything else other than a state project, Dhec would have to issue a new permit. Mr. Brock stated, that it is also a requirement that if the water is standing over more than 24 hours, they have to place a fence around the pond.

Mr. LeRoy asked Mr. Brock, "Will there be any stock piling on site?"

Mr. Brock answered, "No".

There being no further comments from the applicant or the county, and no further questions from the board, Mr. Gasparini called for public comment, and limited the comments to three (3) minutes each.

Mr. Reed Armstrong, resident of St. Helena Island and member of the St. Helena Community & Cultural Protection Overlay District Committee stated to the board, that he reviewed the Community Impact Statement for the application, and it appears to meet most of the requirements for a special use permit, but there's two components that wasn't addressed; the consideration of two alternative sites, which is required as part of the Environmental Impact Assessment, and second is the consideration of land-use compatibility from the relationship of a proposed development with surrounding land, as called for in the Area Impact Assessment portion of the Community Impact Statement. Mr. Armstrong stated, that the applicant should be required to address those two issues. The land use compatibility issue, is important for St. Helena, as far as how the judgment should be made, whether it's compatible with the land uses. Mr. Armstrong reminded the board, that St. Helena was singled out for special protections in the Comprehension Plan of Zoning Ordinances, under the provisions of the St. Helena Cultural Protection Overlay District. The zoning ordinance states, that one of the purposes of the Cultural Protection Overlay committee, is to preserve the traditional land uses on St. Helena. Mr. Reed stated, that Appendix C, of the zoning ordinance, gives a definition of CPO which states, "Uses and activities that massively alter the natural landscape, or is inconsistent with the intent of the CPO district". Mr. Armstrong suggested to the board, that the board request the CPO committee provide recommendations and responses on the subject of the land use compatibility, as part of the Community Impact Statement prior, to the decision of the special use permit.

Mr. LeRoy stated, that most of the current subdivisions requires lakes, so the only real issue is the material that would be sold.

Mr. Armstrong stated, that there are different provisions for digging a pond, versus a sand mining operation in the zoning ordinance. Mr. Armstrong informed the board, that the next St. Helena Island Cultural Protection Overlay district meeting is on October 15th, 2009.

Ms. Alfreda Thompson stated to the board, that her family does not want this mining project in their community. Ms. Thompson stated, that the hours of operation will be from 6 a.m. to 6 p.m. for a couple of years; and no one spoke about the farm trucking during that time, and it could be a dangerous situation having all of those trucks coming and going. Ms. Thompson stated, that they want to keep and preserve the island in it's natural environment, and would like an alternative spot that would not interfere with their residential rural area.

Mrs. Mary Lamie stated, that her property is adjacent to the subject property; she called Dhec because she was concerned about the property perking, due to the fact she hasn't built on the property yet. Mrs. Lamie stated, that Dhec told her that the septic tank has to be 75 feet from the property. Mrs. Lamie asked, "Is the buffer zone from the end of his property?"

Mr. Gasparini explained, that he understands the buffer zone is to the easement, then to 100-foot buffer; so the mine is going to be approximately 100-feet from any property line.

Mr. James Brown stated to the board, that the water is a problem, because he has a ditch on his property line and water stays in that ditch to approximately four feet; and when they start digging the mine, his property will start draining out, and he has animals on his property. Mr. Brown stated, that he doesn't feel like he should give up his rights so the applicant can dig a pond.

Mr. Gasparini asked Mr. Criscitiello, "Is there any requirement that the St. Helena Island Cultural Overlay District Committee should be consulted?"

Mr. Criscitiello answered, "No".

Mr. LeRoy asked, "Isn't it a Dhec or County requirement about damage of adjacent properties, as a result of the mining operation?"

Ms. Austin answered, "Yes". Ms. Austin stated, that Section 106-1360 (3)(C) states, "Studies shall be done before application submittal, to ensure that pumping during the active use of the site will not result in groundwater contamination or salt water intrusion. Monitoring wells shall be installed to monitor this. Should groundwater contamination or salt-water intrusion occurs, the county shall require the mine to be closed immediately and require the mine operator/landowner to undertake corrective action and pay for any damages resulting from the operation. The mine operator shall be strictly liable for any harm to adjacent properties". Ms. Austin stated, that the applicant gave an Environmental Impact Assessment, which states, "As per the contractor, the only anticipated dewatering activity would be in the rim ditch within the proposed pond

construction limits. No groundwater well-points are anticipated; therefore, a cone of depression analysis is not applicable”.

Mr. E. Williams stated, that he has a problem with the level of water for the pond. Mr. Williams asked, “How deep will the pond be?”

Mr. Brock answered, “It depends on where the water level is”.

Mr. Gasparini called for a brief recess at 6:11 p.m.; meeting called back to order at approximately 6:15 p.m.

MOTION: Mr. LeRoy made a motion to approve the special use application, with the condition that the recommendations of the Development Review Team be incorporated in the special use permit, and that the special use permit be contingent with the full compliance of Section 106-1360 of the Zoning & Development Standards Ordinance, and there be a security safety fence, and cost estimate for the mine reclamation at the Development Review Team’s final review. Mr. Chester Williams seconded the motion.

MOTION: Mr. Chester Williams amended the motion, to set a two-year time limit on the mining operations on the property. Mr. LeRoy seconded the motion. The amended motion passed unanimously (FOR: Gasparini, LeRoy, C. Williams and E. Williams; RECUSED: Rentz).

Mr. E. Williams stated, that he has concerns about the safety of the pond; a child could fall into the pond.

Mr. Gasparini stated, that the motion indicated that a fence was going to be placed around the pond for safety precautions.

MOTION: The original motion passed (FOR: Gasparini, LeRoy, and C. Williams; AGAINST: E. Williams; RECUSED: Rentz).

ADJOURNMENT

MOTION: There being no further business to come before the board, Mr. Edgar Williams made a motion to adjourn. Mr. Chester Williams seconded the motion. The motion passed unanimously (FOR: Gasparini, LeRoy, Rentz, C. Williams, and E. Williams).

The meeting adjourned at approximately 6:30 p.m.